

DEFENDING AND ENFORCING WOMEN'S HUMAN RIGHTS

INTRODUCTION

The question has often been asked: "If women's rights are human rights why it is necessary to have special conventions and protocols on the rights of women?" Quite often the person that asks this question suddenly gets wiser the moment he or she becomes aware of the effects of unequal power relations between men and women in society. Gender as a social construct has tended to constrict women's physical and social mobility for centuries and relegated them to a lower status.

The current global focus on the status of women has given rise to the misconception that women want an unfair advantage over the men especially in access to social amenities, educational opportunities and decision - making. Critics of gender-based affirmative action often accuse women of clamoring to reap where they did not sow, and trying to get into public office without competing for it. Such is the level of ignorance about gender issues that ironically a good number of women are opposed to measures aimed at closing the gender gap in various spheres of life; gaps that were created through years of discrimination, oppression and suppression of women. Far from coveting what does not belong to them, women are actually demanding their due, and every measure that has so far either been proposed or taken at international and local levels to close the development gap between men and women is justified, for nothing has been given to women that is not theirs by right. It is obvious that human rights can only be defended within the law. The body of human rights law includes any that can be used to promote or protect human rights. It is primarily found in three forms which are constantly evolving: in state constitutions (particularly their Bills of Rights); in treaties and conventions and covenants; and in international customary law (e.g. certain provisions of the Universal Declaration of Human Rights). Human rights are a powerful tool for promoting social justice. It has been said that the process of gaining recognition of a right leads to better enforcement and the process of enforcing leads to greater recognition of the rights.

Women's rights can simply be defined as the human rights of women. Although human rights are said to apply to everyone irrespective of gender or other classifications, they have been further interpreted in the context of the cultural, environmental and social realities of women. Women's rights are therefore not an arbitrary creation but are derived from the International Bill of Rights, which encompasses the whole gamut of rights enjoyed by people today. It includes the United Nations Declaration of Human Rights, and the International Covenant on Economic Social and Cultural Rights. Two common features of these rights are the principle of equality of all persons and non-discrimination based on the fact that all humans without exception need the basic freedoms and conditions that are back of these rights.

The recognition and international acceptance of Human Rights and Social Justice did not come on a platter of gold so also the special Instruments that detail the Human Rights of Women. The history of humankind is replete with continuous struggles for personal and collective survival; individuals and groups struggle for economic empowerment, political emancipation, equality and social justice. There have also been fights against racial and religious bigotry. The love of freedom, order and security has been expressed in the many wars to secure independence, peace and social justice. It also accounts for the resistance against oppression and suppression. Brave men and women have fought and given their lives for what they believe to be just causes. Recognition of Human rights

therefore came after centuries of struggles and debates when human community worked out certain principles, and safeguards for the enjoyment of fundamental freedoms and liberties. The United Nations Declaration on Human Rights, The African Charter on Human and Peoples Rights, the Covenant on Economic and Social Rights as well as constitutions and other legal instruments the world over have sought to guarantee these Rights.

Human Rights derive from the natural attributes of human beings, especially the inherent quality of personal dignity. For this reason Human Rights have been described as those basic claims which human beings as individuals or groups need to maintain a minimum standard of decent living respect and worth. It is not for any body or government to give Human Rights, as it is an entitlement that has to be promoted and protected at all costs.

CLASSIFICATION OF RIGHTS

Human rights can be grouped according to their nature. Thus there are fundamental rights, economic rights, development rights, social rights, civil and political rights, and cultural rights. Others are, group and minority rights; children's rights; and women's rights. Fundamental Rights are those that touch on the sanctity of life or the physical existence of human beings. They include the right to life, liberty and mental integrity, freedom from torture freedom from cruel and inhuman treatment, and the right to decent and healthy standard of living.

Civil and political rights include the right to vote and be voted for, the right to a have access to public services of one's country' right to equality before the law the right of citizens to respect one another as well as the right to protection without discrimination. Economic rights on the other hand are the rights to own and use material goods and services of the world for a decent livelihood. It includes the right to work; the right to human and safe conditions of work the right to join and organize trade unions; the right to equal pay for equal work etc. Cultural Rights refer to ones rights to participate in the cultural practices of his or her people, the right to enjoy the benefit of research, the freedom to seek the truth and the right to education among others. In other words the fulfillment and the promotion of human rights create the favourable environment for individual and group development.

WOMEN AND DEVELOPMENT

The right to development which was first proclaimed by the General Assembly of the United Nations in 1986 states that nations and individuals should make conscious efforts towards socio- cultural advancement, economic expansion and technological progress; not just for higher standard of living but also to achieve a friendly environment where every individual realizes his or her full potential as a human being. This obligates nations to guarantee an equal distribution of rights and obligations between men and women, thus elevating the issues of child rights, women's rights and gender equality. There have been various theories as to how to rapidly integrate women in sustainable development.

One of the strategies is Women and Development (WAD) approach that addresses women's economic oppression in class structures. It espouses the idea that women's empowerment will come through the elimination of all structures of class oppression. This is however different from the ordinary usage of the term which generally captures in

totality the rights of women to development, their place in the human development index and their role in development.

The United Nations took major step towards integrating women in development in 1946 when it set up the Commission on the Status of Women to monitor the situation of women and promote their rights. The work of the Commission helped to identify the areas of discrimination against women and gender inequality. In 1975 the status of women received special attention with the declaration of that year as the International Women's year. The first World Conference on women that held in Mexico City the same year linked, for the first time, the role of women on a global scale to pressing political, social and development issues. Four years later, the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). It became effective in 1981 after being ratified by twenty countries. Although Nigeria ratified CEDAW in 1985, it has not become a domestic law because of constitutional bottleneck. The defunct 1979 constitution had provided that an act of parliament would be required for the purpose of making international agreements enforceable in Nigeria. That same provision exists today as section 12 of the 1999 constitution of the Federal Republic of Nigeria. Ruling without a parliament for many years, the military regimes did not domesticate the instrument.

CEDAW AND WOMEN'S RIGHTS

CEDAW has been described as the Women's Bill of Rights because it contains comprehensive provisions on women's human rights including what actions should be taken to promote, fulfill and protect women from the infringement of the rights. It defines discrimination and also spells out what all countries should do to ensure that women enjoy human rights without discrimination. The document contains 30 Articles and each one deals with a specific theme and an agenda for action by country governments to guarantee women the enjoyment of the rights

The true yardstick to measure equality in any society is how far all the components of that society enjoy the basic human rights and fundamental freedoms. These rights reflected in chapter iv of the 1999 constitution of the Federal Republic of Nigeria as Fundamental Rights include the Right to life, the Right to Dignity of the Human Person, Right to Freedom of thought, conscience and Religion; Right to Freedom from Discrimination; Right to Acquire and own immovable property anywhere in Nigeria. Chapter two of the Constitution enumerates the economic and social rights under the Directive Principles of State Policy.

CEDAW being a guide for the implementation of these rights as they relate to women cover such issues as political participation, harmful traditional practices, economic empowerment, and violence against women and so on. For example the Right of Life as contained in the constitution is expatiated in CEDAW Article 12 to include adequate maternal health care. With about 100 deaths in every 1000 births, Nigeria is known to have one of the highest rates of maternal death in the world.

The Rights of women to personal dignity is violated in many ways such as human trafficking dignity, and humiliating widowhood rites.

Article 6 of CEDAW specifically provides that governments should take steps to suppress trafficking in women. But a recent newspaper report states that at least 50 Nigerian girls who are victims of trafficking are repatriated from abroad every week.

The introduction of Sharia law in some states has exposed how far a constitutional flaw and misinterpretation of religious can be exploited to pervert natural justice and exalt discrimination as women are at the butt of the ensuing bigotry.

Despite the constitutional provisions that guarantee a person's right to own property and Articles 13 and 14 of CEDAW that provides for the elimination of discrimination in social, cultural and rural life, women are not allowed to inherit or even purchase land in some parts of Nigeria. This harmful practice constitutes one of the major causes of women's poverty as most women have no collateral to enable them take bank loans or raise money in some other ways.

Article 16 of CDAW requires state parties to take appropriate measures to eliminate discrimination against women in all matters relating to marriage but some exceptions, when a traditional marriage is dissolved the woman is forced to leave her home with none of her belongings and in some cases denied access to her children. Sometimes all she gets is a paltry sum of money in lieu of labour pain and in some communities her dowry is returned to her husband as though nothing has changed since the marriage was contracted.

Women in some occupations are not allowed to marry before they attain a certain level and in some cases such as the law enforcement and security agencies female staff must present the particulars of their suitors for scrutiny and approval by higher authority. In most establishments women pay higher taxes than men because many tax exemptions are denied them. It is not a secret that some employers forbid their new female staff from getting pregnant until after some given number of years and that in many private sector organisations, maternity leave is without pay. All these practices are contrary to Article 11 of CEDAW.

THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS

The African Charter was unanimously adopted at an OAU meeting of African Heads of States held in Kenya in 1981. The Charter laid out a range of rights and duties that should always be respected and established an African Commission to oversee its implementation. To make the Charter effective, a protocol to establish an African Court on Human and People's Rights was adopted in 1998 and came into force in January 2006. The Protocol on the Rights of women in Africa (Women's Protocol) which entered into force in 2005 provides more comprehensive and specific guarantees in relation to women's human rights than the Charter. The Women's Protocol recognizes and guarantees a wide range of women's civil, political, economic, social and cultural rights

PROMOTING WOMEN'S RIGHTS

Although governments have obligations to promote and protect human rights including women's human rights, it is clear that many governments all over the world pay lip service to that aspect of democracy. In many countries and most especially in Africa the issue of the violation of human rights by those that are supposed to protect them has become a recurring sore point. Military dictatorships have entrenched human rights abuses to the extent that civilian leaders that succeed them have found such practices

irresistible. On the issue of women's rights, governments tend to provide the minimal requisite mechanisms for example the establishment of Women's Commission or Women's Affairs Ministry, and the formulation of Gender/women's policy that get dusty on the shelves. There is also the yearly report to the Council on the Status of Women which many critics believe to contain wild claims. Despite being signatories to CEDAW, the African Charter on Human and People's Rights, such instruments hardly count on the issues of enforcing women's. The constitution guarantees the right to freedom from discrimination, yet some of the provisions in it are contradictory to the principles of human rights and some policies of government are clearly discriminatory. The Federal Character policy, which indirectly curtails some married women's rights to political participation, is a violation of Article 7 of (CEDAW) that obligates governments to take measures to eliminate discrimination against women in political and public life.

Article 4 of CEDAW provides for Affirmative Action whereby governments should take special measures such as dedication of quotas in appointments in order to accelerate equality between men and women. The Nigerian constitution, that provided for federal character is entirely silent on gender character through Affirmative Action or any other strategy. Today women are grossly under represented both in the legislature and executive arms of government despite constituting about half of the population.

Chapter iii of the constitution dwells on citizenship. Whereas section 26, sub section 2a, provides that "any women who is or has been married to a citizen of Nigeria" is entitled to Nigeria citizenship but no such privilege is granted a man married to a woman who is a citizen of Nigeria. The unfortunate part of it is that CEDAW which Nigeria ratified since 1985 has not been domesticated, and is yet to find relevance in the Nigerian law system. Meanwhile women's organizations and other human rights activist continue to labour under this hostile environment, using various strategies to promote women's rights. Under the legislative advocacy women have drafted and sponsored various bill both at the National and State legislatures with varying degrees of success. Notably in the area of violence against women, some states like Cross River and Edo have passed laws although with limited provisions. There is a VAW Bill in Lagos state awaiting attention of the legislators.

CHALLENGES AND PROSPECTS OF ENFORCING WOMEN'S RIGHTS

The most fundamental of the challenges confronting the women's rights defender is the inadequacy of the legal instruments, both international and local, in the area of enforcing the rights. For example up till 1996 when the optional protocol to CEDAW was adopted, there were no immediate remedies for women whose rights had been violated. The optional protocol now provides for the Communication and Inquiry procedures which aim at addressing the inadequacies of the Convention. The Communications procedure allows individuals and groups or advocates submitting communications to the CEDAW on behalf of or group of individual women alleging violations of the provisions of the Convention. Under the Inquiry procedure advocates may submit relevant information to the committee as regards grave violations of women's rights. It would also appear that the optional protocol still falls short of providing the needed remedy. However its Communication procedure enhances CEDAW's existing mechanism by providing an individuals complaint process while the Inquiry procedure provides yet another avenue

for investigation of violations and especially where individual communication is not possible.

The African Court on Human and People's Rights offers a more effective alternative for enforcing African women's rights since it considers cases that are brought to it by states parties and individuals.