

Human Rights, Gender and Discrimination: An Appraisal on Gender Impacts on Culture and Religion, Education and Workplace in Nigeria

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ABSTRACT: Gender equality or non-discrimination has been recognized in a wide range of binding and none binding international human rights instruments, including declarations and other standards e.g. Convention on the Elimination of All Forms of Discrimination against Women adopted in 1979 and came into force 3 Sept. 1981, Convention on the Elimination of All Forms of Racial Discrimination of 1965, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights etc. International and national law chiefly regulates discrimination as it relates to gender equality when addressing cases of human rights. Equal treatment of men and women in the workplace around the globe including Nigeria is faced with several challenges. In recent time, women have made progress in the educational sector and despite their educational attainments; they are faced with discrimination at the workplace. The discrimination witnessed by women on a daily basis is not distant from the level of education or access to education as well as culture and religion, which equally regulate rights and duties of women in various backgrounds. This paper addresses human rights as it relates to gender and discrimination by appraising gender impacts on culture and religion, education and workplace under Nigerian perspective. State party's obligation under international and or national law in human rights protection under civil and political rights as well as economic social and cultural rights will also be addressed. In conclusion, possible reforms are suggested, which includes adopting national human rights legislation dealing specifically on discrimination in the workplace

KEYWORDS: Human rights, gender equality, discrimination, workplace, culture and religion.

1. Introduction

Rights are generally a complex thing to assert where they are limited by legislation or the faulty mechanism to enforce such rights. Human rights have been a major issue since the Second World War, as it became a major issue around the globe. To this extent, human rights have become notorious issue around the globe, which needs a careful consideration in all aspect.

Human rights are subject of international law, which has broadened the scope of rights enforcement. This is due to the premise that the impact of international human rights on the international community is a unique one that shows great insight. A quick example is that the role of the individual has been developed to be subject of international law, claiming title to territory cannot go outside the consideration of the people living there i.e the inhabitants; this has shown that the treatment of individual rights has gone beyond state level thereby limiting State's sovereignty because the treatment of individual human rights is a matter of international concern and not solely for domestic jurisdiction (McCorquodale and Dixon 2003, 175).

Human rights as rights of an individual do not actually rest solely on his or her nationality, as human rights are subject of international law, hence the protection of these rights goes beyond national jurisdiction as rights not adequately protected by the state can be appealed against under international law but all national machinery must have been exhausted.

The preamble to the Universal Declaration of Human Rights, which was adopted on 10 December 1948, asserted that 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.' As pointed out by M.N Shaw (2014, 194) in his book *International Law*, he asserted that right itself is a controversial issue, which is subjected to jurisprudential debate. This is on the premise that some rights are deemed to have it enforced immediately while other rights are regarded as a future pattern of behavior (Shaw 2014, 194). Also, the United Nations Charter (Preamble) in its starting words emphasized that 'We the People of the United Nation determined... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women...'. All other international instruments have been preaching equality of men and women and non-discrimination as it relate to sex, race, religion, colour political opinion etc.

Without going into legal jurisprudence of human rights, this article will view the concept of human rights, gender and discrimination under international law in order

to ascertain the objective of international law and the framof protecting human rights under international law. State's party obligation under international law will be viewed linking it with Nigeria's obligation in protecting human rights under international law and to also know the impact of gender on religion and culture as it relates to education and workplace in Nigeria.

2. The Concept of Human Rights, Gender and Discrimination under International Law

Around the globe, international law and various treaties have provided protections for human rights and to eliminate all acts that are discriminatory in nature in order to promote an environment of peace, equality and social justice. All treaties have reflected in their provisions the principles enshrined in the Universal Declaration. So they have urged all parties to take steps to ensure the objectives are attained in their national law. This is with a view to creating an orderly community that will bring about equality in all the sector of government.

Several commentators have argued that there is no acceptable definition of human rights but at the same time they have all agreed that the rights to be protected amongst others are the rights under civil and political rights and economic social and cultural rights. These rights have been able to explain the concept of human rights with a lot of jurisprudence. In this context, it has been argued that human rights are divided into first, second and third generation (Wallace 2005, 226). The first generation rights are rights covered by civil and political rights while second-generation rights are the rights guaranteed under economic, social and cultural rights and finally group rights are regarded as third generation human rights (Wallace 2005, 226).

The enforcement of these rights has entertained a lot of jurisprudential debate. This could be a result of the wordings of the treaties. The International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights orchestrated this debate due to the wordings used in enforcing these rights. Both sister treaties enshrined in them the principles in Universal Declaration of Human Rights. The action words on the enforcement of these rights by State Parties have generated some controversies. This will be explained properly under "Human Rights and States Obligations"

All human beings have human rights, a right which is inalienable because they belong to human family and such right cannot be taken away from humans except with due

process of the law. All humans have fundamental human rights due to the fact that they are human beings. This is the right international law seeks to protect. Except humanity is denied, no human right or fundamental rights can be taken away due to its universality, except by due process of the law creating those rights. Human rights are interdependent and indivisible; this is on the premise that the improvement of one right facilitates the advancement of the other rights. Furthermore, the deprivation of one right negatively affects other rights (UN Human Rights Office of the High Commissioner).

Under Art 1 of the Universal Declaration of Human Right, it can be seen that the principle of non-discrimination is complemented by the principle of equality. It states 'all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood (UN Universal Declaration of Human Rights 1948, art 1). Non-discriminatory clause and equality is reflected in a number of treaties and other international instruments. The Convention on the Elimination of all Forms of Discrimination against Women provides for non-discrimination and equal rights of men and women. It states:

“For the purpose of the present convention, the term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedom on political, economic, social, cultural, civil or any other field.” (Convention on the Elimination of all Forms of Discrimination against Women, art. 1)

Non-discrimination and equality are embedded in this provision. The worrisome aspect with this provision lies with the status of transgender. Several states that are party to this treaty have not recognized transgender as a status. Nigeria is an example of such countries. The question is whether transgender is covered by this provision. It is quite clear that this provision is specifically for equality of men and women and the provision covers whom soever the law declared to be woman or man.

A similar provision is enshrined under art 2(1) of the International Covenant on Civil and Political Rights 1966 (hereafter referred to as ICCPR). It provides that State Parties are to respect the rights of every individual in their territories without distinction or any form of exclusion as it relates to race, colour, sex, language, religion, language, political or other opinion, national or social origin, property, birth or other status. This provision was complemented by article 3 as it also provides for gender equality.¹ The International Covenant on Economic, Social and Cultural Rights

1966 (hereinafter ICESCR) provides for non-discrimination under art 2 (2) and its provision is the same with the provisions of art 2(1) of the ICCPR. Again, under the ICESCR, gender equality (International Covenant on Economic, Social and Cultural Rights 1966, art 3) is provided for, which all State Parties are to protect. To enjoy economic, social and cultural rights, steps are to be taken to ensure such rights are enjoyed to the fullest. The steps to be taken by State Parties, under ICESCR are usually subjected to “available resources” while in the case of ICCPR reverse is the case as the rights, State Parties covenant to protect are subject to immediate realization. This will properly be analyzed under state obligation in order to know when the phrase “available resource” should be disregarded under ICESCR.

In a nutshell, the concept of human rights is the protection of the inalienable rights of human beings from civil, political, economic, social and cultural exploitation by the State or any institution where the rights of an individual(s) are in question. It deals with the relationship between the individual and the state or a similar organized society with government.

3. Human Rights and States Obligations

State Parties are under an obligation to protect the objectives of international law or treaties signed and ratified. It is quite important for states parties to adhere to the obligations stipulated by international law so that states can comply with international law and treaty obligations (Henkin 1995, 47). State obligations under international law are numerous but we restrict state obligation in this context to domestication of international law into national law in Nigeria. International law or treaty is incorporated into national law either by way of international customary law or through the legislative process as in the case of dualism. Nigeria operates a dualist system of treaty incorporation and legislative process of law enactment applies to treaty incorporation in Nigeria.

Treaties and conventions have mandated State Parties to take steps to incorporate the provisions of the treaties concluded by them into national law. This is one vital obligation of State Parties under international law. Under art 2 (1) of the ICESCR, art 2(2) ICCPR, art 2(b) Convention on the Elimination of all Forms of Discrimination against Women (hereafter referred to as CEDAW) and many more international instruments have provided for state obligation on the implementation of treaty into national law.

Nigeria has shown commitment in respecting international law or treaty to which it is a party. Section 42 of the Nigerian Constitution provides for non-discrimination. It provides that no one should be discriminated against by reason of ethnic group, place of origin, sex, religion or political opinion arising out of any law in force in Nigeria or any executive or administrative action of the government (Constitution of the Federal Republic of Nigeria 1999 as amended, s 42(1) (a) (b) and (2)). This is one of the most important constitutional provisions that are directly in line with art 2 ICCPR, art 2 ICESCR and the provisions enshrined in CEDAW.

Section 19 of the Nigerian Constitution, it provides that “the foreign policy objectives shall be; respect for international law and treaty obligations as well as the seeking of settlement of international disputes by negotiation, mediation ...” (Constitution of the Federal Republic of Nigeria 1999 as amended, s 19 (d)). The Constitution is the supreme law of the country and all other laws in Nigeria must be consistent to its provisions or otherwise declared void to the extent of its inconsistency (Constitution of the Federal Republic of Nigeria 1999 as amended, s 1). The constitution has provided for Nigerian commitment in carrying out its obligations under international law, which also extend to implementing treaty signed and ratified by Nigeria into national law. And Nigeria went further to constitutionalized non-discrimination.

Careful perusal of the Constitution of Nigeria, the limitation in carrying out its obligation of domesticating international law into national law is not without difficulties. Under section 12, it foresees that no treaty between Nigeria and any other country shall have the force of law, except it passes through normal legislative process (Constitution of the Federal Republic of Nigeria 1999 as amended, s 12 (1) and (2)). Nigeria operates the dualist system of treaty incorporation. A treaty signed and ratified by Nigeria is not binding per se and cannot be relied on in courts as a binding law but only serves as persuasive law. Furthermore, the provisions contained under section 19 of the Constitution is not justiciable (Constitution of the Federal Republic of Nigeria 1999 as amended, s 6 (6) (c)) as they are mere principles, which the State or Federal government must adhere to when enacting law or domesticating treaty into national law.

In dealing with discrimination as provided for in the ICCPR, State Parties obligation in enacting law is subject to immediate realization and Nigeria is under an obligation to enact law to deal with discrimination acts in the workplace without any form of delay arising from available resources as ICESCR stipulates. Realization and limited resources are vital elements in understanding the nature of State Party’s obligation. This is because under General commitment No. 3 of the Committee on ICESCR, it was stipulated that where state obligation is to enact law to deal with cases of

discrimination under economic, social and cultural right, that the issue of “available resources and progressive realization” should be disregarded as law should serve as a step taken to ensure equality or ensure non-discrimination. The phrase “available resource” has given State Parties much leeway to violate human rights as they base their excuses on scarce resources.²

Inequality in the workplace are numerous e.g. large number of women been concentrated in the lowest pay jobs and least skills, the occupation of 6% of managerial positions by women, dominant in unemployment rates by women (Deller Ross 1994, 3) etc. are disparities which section 42 of the Constitution has limited coverage on and laws are needed to deal with direct and indirect discrimination in the workplace e.g. stereotyping, desperate treatment, overt sex discrimination etc., law(s) are needed to define them, the procedure to follow in redressing such violation and the punishment that is proportionate to such violation. Again, international law or treaty is not binding in Nigeria and litigants who suffer violation of rights in the workplace cannot rely on the provisions in national courts. Courts can only be informed of the international law best practice i.e. it is only persuasive to court and litigants. Hence, the immediate fulfillment of the obligation of enacting anti-discriminating laws or incorporating treaty provisions in ICCPR, ICESCR, CEDAW and all other treaties entered into by Nigeria into national law is of paramount importance. Nigeria cannot invoke constitutional provisions in section 12 for its inability to carry out its obligations as it has covenanted to do so. This is in line with the assertion of *Louis Henkin*, when he stated that international law in a system of impermeable state, does not concern itself with constitutional limitation in fulfilling its obligations (Deller Ross 1994, 75).

4. Impact of Gender on Religion, Culture, Education and Workplace in Nigeria

Respect for human rights and a belief in justice are highly rooted in the religious and cultural tradition around the globe (Jayawickrama 2002, 7). Nigeria operates religious and cultural diversity as provided by the Constitution under section 10, 21 and 38. Religion and culture regulate most rights and duties of individuals in Nigeria. As their pattern of behavior are ordered by their beliefs. This legal pluralism can be traced to the colonial era, as customary law and English law was meant to co-exist. This is particularly important to the northern part of Nigeria that practices sharia law, where Islamic law orders rights and duties. Some cultures are fading away due to court pronouncement and decisions declaring them void. The case of *Edet v Essien*

(1950, 12 NLR, 518) is an example. The court declared a custom and tradition in Calabar repugnant to natural justice, equity and good conscience, on the ground that custom which allows another man to claim paternity of children born of another man that did not pay dowry on the woman that bears him the children was held to be repugnant by the court. Most cultures in Nigeria tend to favour male more than female thereby creating gender disparity in most aspect of human endeavor.

The notion is that male are seen as the breadwinner of the family given them a dominant position in the society. This has created a huge gap between male and female in education and workplace. This disparity also cut across inheritance, early girl child marriage and holding key positions in the society. Though Sharia law lay down laws on succession, which seems a little bit fairer than that of customary law. Both laws are adverse to the female in terms of gender equality. Businesses and properties over the years have been given to male children on the basis of customary law and a lot of female have been disinherited, on the notion that custom do not allow women to inherit properties from their deceased parents. However, the recent decision of the Supreme Court of Nigeria is changing this position of customary law. An Igbo customary law that excludes female from inheriting from their late father's property was held to be unconstitutional (Library of Congress 2014).

The factors leading to gender disparities are numerous; the very common one in the northern part of Nigeria is girl child early marriage. Female children are married off while the male children are sent to school. This is the reason why more males are in the labour sector than females. The recent case is that of Ese Oruru who was abducted in Bayelsa in Niger Delta some time in 2015 and was moved to Kano for the purpose of marriage without parental consent. Ese Oruru was rescued due to public outcry (Addeh 2016). So many teenage girls are victims of girl child marriages, due to lack of interest or poverty such acts are condoned without seeking redress on such violated rights and again, Islamic law approves of it.

Education is one of the determining factors of equality of men and women in the workplace. The inequality of men and women in the workplace is based on the level of education. Under customary/sharia law, male are given preferences in all aspects of human endeavor and education is not left alone. Due to male preference syndrome, a lot of female are not enrolled in school. They are made to either marry or engage in petty trade. It is believed that female children end up in another man's house as wife who will change her family name to another man's name. Women have been stereotyped to be less productive unlike men. Recently, large numbers of females are enrolled in schools and a lot of women are university graduates. However, they are still facing discrimination in workplace.

5. Conclusions

Since the end of the Second World War, the direct impact of constitutional or international human rights law on individual labour relations has become a major issue. Nevertheless or exactly because of this, it has become difficult to clearly separate the law of individual labour relations from individual rights. In general, the concept of human rights deals with the relationship between the individual and the state or a similarly organized society with government.

It is in light of such human rights law that numerous multilateral treaties today address discrimination in the labour sector. Gender equality or non-discrimination has been included in a wide range of international human rights instruments. It has also become a matter of constitutional law in many states. Whether or not States comply with their obligations on equal treatment of men and women can be taken from the laws enacted and the mechanisms enforcing them.

Equal treatment of men and women is faced with a lot of challenges in Nigeria, and education is one of them. Despite educational progress, Nigerian women are still faced with various challenges in attaining equality in the labour sector. Furthermore, the Nigerian government's failure to adopt substantive anti-discrimination law has caused gender equality in the labour sector in the nearest future to be nearly unattainable. However, Nigeria has signed and ratified several human rights treaties. It has failed to carry out her obligations of domesticating most of them into national law. For equal treatment of men and women to be obtainable in Nigeria, many more steps have to be taken. These include the enactment of national law on equal treatment by incorporating international instruments that have been signed and ratified by Nigeria.

Notes

- ¹ International Covenant on Civil and Political Rights 1966, art 3; It provided that: The States Parties to the present Covenant undertake to ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.
- ² See the interpretation of available resources by UNHRC.

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