

Beijing Declaration and Women's Property Rights in Nigeria

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Abstract

In Nigeria, women have suffered various forms of discrimination and oppression during property sharing, especially in terms of land for economic purposes and other physical assets. The challenge has been that, in patriarchal societies, like Nigeria, women are regarded as subservient to men and are never considered in property sharing. Rather, the woman is often regarded as part of the property to be shared especially during the loss of her spouse. Most disturbing is that, though statutory law and international laws have affirmed women's rights to land and other property, women are often denied access and ownership to property due to unfavorable customary practices. This paper examines women's property rights in Nigeria. In doing so, it looks critically into Nigeria's compliance with the 1995 Beijing Platform of Action. It also identifies some factors such as customary and statutory laws as responsible for the discrimination of women vis-à-vis their rights to property and inheritance. In addition to these, it concludes that, the 1995 Beijing Declaration is yet to be fully integrated and domesticated in the national legislations that protect women and their rights to property. In carrying out this research, secondary sources were

consulted. Recommendations were made bordering on equality between men and women and gender-sensitivity in legal institutions.

Keywords: Women's Rights, Property Rights, Beijing Declaration, International Law, Nigeria's Compliance

Introduction

This paper addresses Nigeria's compliance with human rights documents while at the same time revealing the plight of Nigerian women with respect to the discrimination they experience in their rights to property. Many attempts have been made at the global and regional levels to eliminate all forms of discrimination against women. These attempts have culminated in several legal human rights instruments that protect the rights of women to property. In other words, there exist a plethora of human rights instruments at the international, regional and domestic levels (Ayanleye: 2006, 130). Nigeria is a signatory to some of these documents, notably the Universal Declaration of Human Rights (UDHR), CEDAW, the Beijing Declaration and Plan of Action, the African Charter on Human and Peoples' Rights and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Put differently, Nigeria has signed and ratified these documents. Also at the national level, the Nigerian Constitution makes provisions for the protection of women's rights.

However, women are still faced with a number of challenges arising from the pervading influence of ignorance, poverty and illiteracy. In addition, there exist laws and gender-bias traditions that are gender insensitive. Women's rights to property which include, access to, ownership and control of property, have been under serious contention and it is necessary to point out that, the problem of discrimination and subjugation of women are not a new phenomenon in Nigeria. The discrimination women experience with respect to their rights to property can be traced historically to the pre-colonial and colonial era. This paper gives an

overview of the violation of women's rights to property in pre-colonial, colonial and post-colonial Nigeria. It will also examine Nigeria's compliance with the provisions of international and national legal documents that protect the property rights of women. In doing this, the factors responsible for the perpetuation of discrimination and subjugation of women will be identified.

Women's Property Rights in Pre-Colonial and Colonial Nigeria

The condition of women in Nigeria in the pre-colonial era was that of subjugation and perpetual subordination. In other words, women were viewed as subordinates when compared with their male counterparts. According to Njoku (1980), the world belonged to men because most traditions gave premium to men. Women's primary duty was to bear children and their prowess at carrying out this duty endeared them to their husbands. This meant that childless women were objects of ridicule to their husbands, other wives and the society (William: 1968, 4). They had no voice. Furthermore, women were relegated to the background where they had to engage in agricultural activities and house-keeping.

However, despite the subordinate roles women played, they still had some rights which Abdulraheem (2010) termed 'personal rights'. These rights entitled them to have access to personal property such as farms. It is very crucial to mention that, women in pre-colonial Nigeria were not the owners of the land on which farming was done. They could only cultivate on their husbands' or relatives' plots of land. However, farming activities enabled women in this era to have some level of financial independence. They also possessed the right to buy and sell in the market. Women in this era were not entitled to own land (Akande: 1999, 114) neither were they legible to inherit family property. This was especially true when the woman did not have any male child to inherit the father's property instead of her. Women were considered property to be

inherited or shared at the death of their husbands. This is known as widow inheritance and it was a prominent practice peculiar to the Igbos (Abdulraheem: 2010). This practice gave men a higher status than women (Omoruyi: 1994, 101). Umeh (2005) however argued that, a woman's kinship, birthplace and class status among other things determined her direct rights to land ownership. She stated that, allocations of land to daughters as bride wealth existed in Nigeria before the advent of colonialism. Also, divorced, single and widowed women received land from their immediate families (p. 2)

In the colonial era, a lot of changes were introduced in Africa and this had a lot of effect on the rights available to women. Some of the changes affected the educational, political and economic rights. The European colonizers introduced 'new patriarchal conceptions of the appropriate conceptions of the appropriate social roles for women' dictated by them. While women were left to grow food crops, men dominated the process of cultivation which was not the case in the pre-colonial era. Colonial administration placed a lot of restrictions on women and introduced the assumptions of European patriarchy into the Nigerian society. Women, in the colonial era, were engaged in domestic chores; they were considered subordinate to men. It was believed that, if women were financially independent, they would not respect their husbands and in laws. Therefore, colonial administration reinforced the social inequality system in pre-colonial Africa. They could not own landed property and in fact, their access to land was limited in that, women were just planters of crops and not cultivators. They were basically home keepers and according to Rojas (1994) and Abdulraheem (2010), they were peasant farmers 'with no capital since they were not economically independent'.

In sum, colonial administration did not improve the economic condition of women at all. It only reinforced the subordination of women and perpetuated gender inequality with its male-oriented policies. Hence, women's rights to property were not considered important.

Women's Rights to Property in Post-colonial Nigeria

The rights of women generally in the post-colonial era witnessed great positive changes than during the pre-colonial and colonial periods. This is much so because, the post-colonial era witnessed Nigeria's independence from colonial administration and the era of constitutional developments in the country. It is necessary to state here that, Fundamental Human Rights has been a prominent feature, right from the independence constitution till the current 1999 Constitution of the Federal Republic of Nigeria. Chapter three of the 1960 Constitutional Order in Council (which paved way for independence in Nigeria) had provisions for Fundamental Human Rights (Oluyede: 1992, 29). Also, Chapter two of the 1999 Constitution of Nigeria states that, discrimination on the basis of sex is prohibited while Chapter four, sections 33-43 guarantees the fundamental rights to life, dignity of human person, personal liberty, freedom of statement, freedom from discrimination and right against compulsory acquisition of property without compensation (Isiramen, 2002). Section 43 clearly states that, 'every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria', (Constitution of the Federal Republic of Nigeria, 1999). These Constitutional provisions form the basis upon which the rights of women in Nigeria are premised.

In addition to these, Nigeria made efforts at the international level to protect the rights of women. Some of these efforts included participating in international conferences. Some of these conferences were, the First International Women's Conference in Mexico (1975), World

Conference in Copenhagen (1980), Nairobi Conference (1985), the World Conference on Human Rights (1993) and the 1995 Beijing Conference. Nigeria has also ratified several international human rights documents that protect the rights of women – most important among these documents are the 1979 Convention on the Elimination of all forms of Discrimination against Women and the 1995 Beijing Plan of Action.

Furthermore, in 1982, a special Committee on Women and Development was inaugurated by the Federal Ministry of Social Development, Youths and Sports. This committee was to center on,

...major priority areas for concrete action such as education, employment, health and agriculture. It was also expected to conduct research into problems of women nationwide and evolve measures aimed at improving the lot of women and work towards the advancement of women in all spheres of endeavor (Sani: 2001, 78).

In 1987, a Department of Women in the Federal Ministry of Social Development, Youths and Sports was established to plan and execute projects and programs relating to women. Also, in accord with the 1985 Nairobi Forward Looking Strategies, the government established the National Commission for Women. One of the key objectives of the Commission was to work towards the total elimination of all social and cultural practices tending to discriminate against and dehumanize womanhood (ibid.) Sani (2001) further states that, the adoption of the 1995 Beijing Platform for Action by national governments resulted in the creation of the Federal Ministry of Women's Affairs and Social Development. In 1999, this ministry metamorphosed into the Federal Ministry of Women Affairs and Youth Development. On April 21 2004, it became the Federal Ministry of Women's Affairs. The Ministry is mandated to ensure the promotion of equal rights between men and women and 'corresponding obligation through advocacy and service delivery programs' (p. 80). It is charged with the responsibility of promoting the cause of the Nigerian women and children also responsible for formulating

policies that focus on the needs and aspirations of Nigerian women and children (Federal Ministry of Women Affairs, 2004).

Hence, women's rights to property, and their rights generally, have received significant recognition both at the international and national levels in Nigeria.

Women's Property and Inheritance Rights in Marriage and Divorce in Nigeria

Various international conventions and declarations have recognized and provided legal platforms for the protection and promotion of women's property rights. However, the challenge is that, women still face serious discrimination in their rights to property which include rights to ownership, control, access and inheritance. In major parts of Nigeria, especially among the Hausas, Yorubas and major areas in the South East and South-South regions of Nigeria, women still have limited or no access to property. Some identified reasons for this discrimination and denial include discriminatory customary laws, registration of land in spouse's name, lack of human rights' awareness and lack of implementation of human rights' laws and policies.

Another major reason is the tripartite system of marriage laws in Nigeria (that is, customary, religious and statutory). This system has resulted in 'a plurality of legal provisions and precedents regarding property rights and inheritance' (UNICEF, 2001). This legal plurality makes it difficult to implement and enforce certain laws that enhance, promote and protect women's right because these laws contradict one another. Religious laws contradict customary and statutory laws and vice versa. For instance, the Islamic law recognizes equality between men and women and according to Garba (2003), in a research carried out in Jigawa State, Sharia courts have no difficulty in defending the land rights of women in all the cases that were reported. Similarly, the UNICEF Report (2001) on Children's and Women's Rights states that,

Under the Statutory marriage, the Married Women's Property Act gives women the right to acquire, hold or dispose of property, whether acquired before or after marriage. Upon divorce, her rights may be enforced through court processes. Similarly, under the Matrimonial Causes Acts in some states, the courts can rule that women have a share of family property in the event of divorce on equity grounds. (p. 180).

Under statutory laws, women have the right to access, own and even control property. In fact, they have they have the right to file cases of discrimination or denial of these rights in the court of law.

This is not the case under customary law as these property rights are not upheld. Customs and traditions are key impediments to the implementation of these laws. According to reports from UNICEF (2001),

In some ethnic groups, particularly in the South East, widows cannot inherit land or other property upon their husbands' deaths, although they may be allowed to hold them in custody for their sons, depending on the agreements with their in-laws. Among the Igbo, women also cannot take away property acquired during marriage without their husbands' consent. Among the Yoruba, however, daughters have a right to inherit a share of their fathers' land and other property. Also, under the Islamic law, the woman is better protected, as she can own property in her own right as well as inherit property from parents or husbands. Upon divorce, however, she loses all rights to her husband's property (p. 180).

In some parts of Nigeria, access, control and ownership of property depend on a number of factors. Some of these factors are marriage and ability to bear male sons or son preference. A research carried out on Ozalla Community in Edo state reveals that,

...inheritance is patrilineal and a woman's right to land is pegged on marriage. Hence, a daughter does not receive land when her father dies and even a widow does not inherit land; she generally acts as a caretaker until her sons come of age...a childless woman or a woman who bore only daughters is in a precarious position as she does not stand any chance of acquiring any form of land within the family (Iruonagbe, 2009: 7).

Iruonagbe (2009) explains further that, the subservient role of statutory laws to customary laws of land tenure is responsible for the discrimination women experience vis-à-vis their rights to property. Under the customary law in Edo state and most parts of South Eastern Nigeria, laws governing inheritance are very discriminatory against female children, 'especially when parents do not usually document all their assets in a 'will' that would have been used as occasion demands' (p. 8). Even when there is a will, it is contested against by family members. When women are denied their rights to property, especially land, or discriminated against, it becomes traditionally difficult for them to 'obtain access to bank loans or other forms of credit through the banking system for survival. They do not have the collateral which banks require under the lending procedures' (UNICEF: 2001, 180). In a situation where they eventually benefit from a loan, a male guarantor is required. On the other hand, in Islamic Law, women can claim some rights to property even though there is still a degree of discrimination in ensuring these rights. A widow is only entitled to a certain share of her late husband's property and this is determined by the presence or absence of children and other wives. She is entitled to $\frac{1}{4}$ of her late husband's property where there are no children and $\frac{1}{8}$ where there are children. A widower on the other hand, is entitled to $\frac{1}{2}$ of his wife's property in a situation where she died childless and $\frac{1}{4}$ where she had children (Adekile: 2010). Also among some Yorubas, widows are not deemed fit to inherit their late husbands' estate. They are considered property to be shared and they are sometimes, 'shared' to the younger brother of the deceased husband especially when she has no children. Women's right to inheritance is a very vital issue as it relates to one of the underlying causes of high levels of poverty and housing insecurity among women. Inheritance rights is very

vital in the transfer of wealth in the society and directly relates to protection of women's right to adequate housing and land rights and 'are inextricably linked with their economic autonomy' (Scholz: 2004). Adekile (2010) asserts that,

The inhibitions placed on women in the family and inheritance laws systematically prevent the full realization of economic rights and poverty is the resultant consequence (p. 4).

Closely related to the above are the woman's rights to property in divorce. When a marriage is dissolved, the issue of property sharing and adjustment becomes very critical and essential. A divorced woman cannot lay any claim to a part of the property acquired by her husband during their marriage. The husband's property, whether movable or immovable, is not the common property of the couple. He does not require any form of consent from his wife before carrying out any activity on the property. Although, there are several legislations that protect women's rights to property in divorce. Some of these laws are the 1970 Matrimonial Causes Act and the 1959 Married Women's Property Law. Despite these laws, divorced women still find themselves in compromising situations especially when the man just has a property that he registered in his own name. The issue of sharing property with his divorced wife becomes a daunting task. The woman, who is financially dependent upon her husband before the divorce finds it difficult to file a case against her husband in the law court because of the financial implications of carrying out such an act. The resultant effect of this therefore is that, she becomes homeless and destitute.

In sum, promoting and protecting the property rights of women is very essential because,

The ownership of property determines one's wealth; wealth governs one's ability to care for oneself and to care for one's family. Property thus satisfies the basic needs of food, clothing and shelter (Wilson: 1993, 335).

Implementation of the 1995 Beijing Declaration and Plan of Action in Nigeria

After the adoption of the Beijing Platform for Action (PFA), there has been significant attention to women's rights at the national level. National governments have,

increasingly positioned their efforts to achieve the strategic objectives of the Platform for Action within a human rights framework, especially the Convention on the Elimination of All Forms of Discrimination against Women. Action taken by states has included constitutional and legislative reforms to eliminate discrimination against women; enhanced roles of the courts and judiciary in the protection of women's rights; new and expanded national action plans, strategies and institutional mechanisms; and more systematic capacity-building and awareness-raising (Women's Consortium of Nigeria, 2004).

It is very pertinent to state that, when the 1995 Beijing Conference was held, Nigeria was under the military regime of Gen. Sani Abacha. Gross violations of human rights were a prominent feature of this regime, as it was with other military regimes. Insecurity of life and property, poverty and socio-cultural prejudices all contributed to the violation human rights (Women's Consortium of Nigeria, 2004). This also affected the rights of women despite the international human rights instruments and institutions that protect their rights.

Yet in Nigeria attempts were made at different points before the 1995 Beijing Conference at addressing gender issues. Wives of past Heads of States attempted bringing women's issues to the fore. Some of these attempts were the Better Life for Rural Women (BLP) initiated in 1986 by late Mrs. Maryam Babangida (who was the wife of Gen. Ibrahim Babangida), and the Family Support Program (FSP) embarked on, in November 1994 by Mrs. Maryam Abacha (wife of late Gen. Sani Abacha). Much could not be achieved on women's rights during the military regime because of repression.

A landmark change and recognition of women's rights occurred when the military regime of General Abdulsallam Abubakar handed over to a civilian administration. This recognition is reflected in sections 33-43 of the 1999 Federal Constitution of Nigeria as mentioned above.

In discussing the implementation of the Beijing Declaration and Platform for Action in Nigeria, it is necessary to mention that, the Federal Government took some steps to ensure that, the rights of Nigerian women were promoted. In doing this, 'States Ministry of Women Affairs and Social Development were created in the thirty-six (36) states of the Federation and a Women's Department in the Federal Capital Territory, Abuja, (Federal Ministry of Women Affairs, 2004). This was to evolve and encourage grass-root participation. The State ministries worked together with the Federal Ministry of Women's Affairs in translating the Platform for Action into local action for the benefit of Nigerian women. The Federal Ministry of Women's Affairs also collaborates with several UN Agencies (such as the United Nations Development Fund for Women (UNIFEM), United Nations Children's Fund, (UNICEF), United Nations Development Program (UNDP), International Labor Organization (ILO) and the World Health Organization (WHO). These agencies offer technical and financial assistance to the Ministry of Women's Affairs in its bid to execute its functions with regards to women.

Furthermore, in creating awareness among women of their rights, Non-governmental Organizations (NGOs) simplified and translated the Beijing Platform for Action (PFA) into some widely spoken Nigerian languages and distributed nationwide. NGOs like the Women in Law and Development in Africa (WiLDAF), BAOBAB for Women's Human Rights and the Civil Liberties Organization (CLO), have also been front liners in ensuring the implementation of the PFA and 'holding the government accountable to their covenants made at the Conference' (Women's Consortium of Nigeria, 2004).

Again, the Federal Government formulated policies that would impact on the lives of women. Some of these policies are the Women in Agriculture Policy, National Poverty Eradication Program, and the Policy for Development (ibid). Some states, namely, Enugu (2001), Oyo

(2002), Ekiti (2002), Anambra (2004) and Edo (2004) have adopted laws that protect the rights of widows to discrimination.

Despite all these attempts at implementing the Beijing Declaration and PFA, women in Nigeria still experience discrimination in their access to scarce resources, especially land and this has been a major cause of the feminization of property. Feminization of poverty refers to the high levels of poverty among women when compared to men. Women are discriminated against and this is institutionalized in the form of repressive and discriminatory customary and statutory laws (such as the Married Women's Property Act, Marriage Act and the Matrimonial Causes Act) and patriarchal systems. Research reveals that discrimination is perpetrated by the state, community and family members and particularly rooted in the family (ibid).

Constraints to the overall implementation of the PFA can be summarized as follows:

1. Inadequate awareness of and commitment to gender issues generally.
2. Inadequate sensitization of the general populace
3. Lack of capacity building for women
4. Absence of total political commitment for women's development
5. Low budgetary allocation to both the National and State Women's Machinery
6. The inter-ministerial committee lacks the effectiveness required for the implementation of agreed actions because members are often not at a level of authority necessary to influence the decision-making process in their ministries (Federal Ministry of Women Affairs, 2004).

7. Age-old customs and traditions and repressive national legislations.
8. Patriarchal nature of the Nigerian society.

Conclusion

Despite these constraints to the full implementation of the Beijing Declaration and Platform for Action, important changes have taken place, some of which have been mentioned and discussed above. However, much still has to be done in implementing the 1995 Beijing Declaration. In South Eastern Nigeria, widows are denied their inheritance rights, daughters are not entitled to family property because of son-preference, and childless women cannot have a share in their husbands' property. They are forcefully ejected from matrimonial homes and denied access to property acquired in the course of marriage. Their rights to property which include right to inheritance have been an illusion rather than substantive. Therefore, the PFA needs to be fully integrated in national legislations for women to enjoy their absolute rights to property.

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