



Constitutionally Guaranteed Discrimination

That the fairer sex, weaker sex, whatever you want to call the female sex has struggled (and is still struggling) for centuries, for equality and/or parity with men is not news. Over time this struggle has broken many barriers across different societies in different countries, some more than others and some not at all. What was news to me last week was finding out that Section 26 of the 1999 Constitution institutionalises gender discrimination against women. Paradoxical for a country which makes a lot of noise about the promotion of women and totally contradictory to the right to freedom from discrimination in Section 42 of the Constitution which says, in totally inelegant and confusing text, that no Nigerian should benefit or be disadvantaged solely because of their ethnic origin, their sex, their religion or their opinion.

The effect of the provision on naturalisation and citizenship in Section 26 of the 1999 Constitution is discriminatory against women because it means that when Nigerian women marry foreigners, their husbands cannot become naturalised Nigerians but when Nigerian men marry foreigners, they can transfer their nationality to their wives. Why is this different treatment necessary?

Unfortunately, when it comes to the enforcing the general fundamental human rights of women - whether it is their right to liberty, freedom of expression, or even ownership rights, the Nigerian woman is already sometimes disadvantaged by social, cultural and religious norms and laws. Yet our law makers and executive seem blind to this as they blithely sign up to different conventions which they have no intention of adhering to and attending forums where they cannot report any meaningful progress in making the lives of women better.

For example, Nigeria is a party to the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW Convention) yet as of July 2008, the international CEDAW Committee expressed 'deep concern at the persistent failure by Nigeria to enact a law to ensure that CEDAW is enforceable'. In 2005 our National Assembly refused to adopt the provisions of the CEDAW Convention when they rejected a draft bill. In a country where we all know laws

are not really adhered to, for our predominantly male National Assembly to refuse to even 'capture' these protections and rights on paper is a clear indication of the real position on improving the lives of Nigerian women.

Most recently at the 9th session of the Human Rights Council in Geneva, the Nigerian delegation was positively laughed at for saying our domestic violence laws were adequate - this in a country where, according to a 2003 demographic and health survey, 64.5 per cent of Nigerian women consider it normal to be beaten by their husbands and where only one Nigerian state has a law in place to address violence against women.

What do we get instead? We get a smokescreen of activity with an entire Ministry dedicated to women 'affairs' as well as a national centre for women development (NCWD)... what exactly are their mandates? In Section 2 of the National Commission for Women Decree 1992 (which was later upgraded into a full fledged Federal Ministry for Women's Affairs and Social Development), there are ten objectives for the Commission for Women and the first one pretty much says it all: 'to promote the welfare of women in general'.

What did 'promoting the welfare of women' mean when the Commission was first set up and what does it mean now, seventeen years later? It is safe to wager that it still means the same thing; in effect, the welfare of the Nigerian woman has not improved despite all the talk and all the show. We are still struggling to get a handle on the discrimination of the female child when it comes to education, the bad treatment of widows, the selling of young girls into prostitution, sex with under aged girls leading to vesico vaginal fistula (VVF) and employment discrimination; the list is endless.

What is scary is that while a multitude of non-governmental organisations is focused on quietly redressing these issues without the support of a legal framework, our Federal and State legislators and executives, are slowly eroding even the little rights women have with laws addressed at controlling how women clothe themselves. If our Constitution itself discriminates against women, how many laws are

out there with provisions which are unfair and which continue to subtly reinforce in our minds, and the minds of our children, that women are second class citizens?

How many private and public organisations are, like the Central Bank of Nigeria, happily enforcing adverse discriminatory rules against women such as that women are not entitled to certain benefits which their male colleagues enjoy because they are, as women, not deemed 'heads' of their household'. What if their husbands are dead? What if their husbands are terminally ill and have not worked for years? What if their husbands are just ne'er do wells who cannot or will not provide enough for their families? In such situations must a female executive in such a place air her private issues in order to get benefits which should be her right?

Theoretically, Nigeria is serious about improving the welfare of women - along with the Ministry and NCWD, every Federal and State first lady has a pet project aimed at improving the welfare of women and/or children. We even have a National Committee on the Reform of Discriminatory Laws Against Women... so what are they all really doing? Blame it on poor or erratic internet service but all efforts to find meaningful news on the past achievements of the Ministry of Women's Affairs failed. I did find a story about a children's party hosted by the Ministry at the start of this year as well as details of the Minister of Women's Affairs visit to the women's development centre to assess its facilities. Is it possible for the Minister and the new Director General of the NCWD to give us a list of the things they intend to achieve at the end of each year? We are stakeholders and just as we expect companies in which we hold shares to meet the targets set and publicised in annual general meetings or offer prospectuses, we should expect government and its agencies to be accountable to us.

We all have a responsibility, to ourselves and to future generations to ensure that for a start, we have the legal framework to improve the welfare of women. The members of the legal profession, including the Ministry of Justice and the Law Reform Commission, have all been incredibly lax about challenging laws which erode the fundamental human rights of women. Where lawyers come across provisions of law which are contrary to such rights, they need to flag it and publicise it. Where lawyers are advising clients on employment contracts or drafting regulations - they need to be vigilant and ensure women are being treated fairly and the Ministry of Justice which gets to see most bills have the perfect opportunity to act as a check to ensure nothing contrary or discriminatory passes through - it has to be a joint effort.

But first, Section 26 of the 1999 Constitution needs to be amended immediately, either as part of the constitutional review process or as something driven by the Federal Ministry of Women's Affairs, the National Commission on Human Rights or the Law Reform Commission because what this section does apart from magnifying the serious legal issues within our Constitution, is it makes a mockery of every halfhearted Nigerian initiative to make the lives of women better.

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