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LAW & HUMAN RIGHTS

The 1999 constitution and the woman question (2)

By Joy Ngozi Ezeilo

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We need to engender the language of the preamble and substitute the word 'we' with 'men' and 'women'. This will not only be gender specific but also accord with universal human rights norms that have unequivocally entrenched the principle of equality and non-Discrimination.

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Chapter II on Fundamental Objectives and Directive Principles of State Policy deals with this important aspects of the Constitution outlining the political, economic, social, educational, foreign policy, environmental objectives of the Nigerian Nation. It contains also obligation of the mass media, directive on Nigerian culture, National ethics and duties of the citizen. According to section 13: It shall be the duty and responsibility of all organs of government and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this constitution.

Section 14(1) states the fact that the Federal Republic of Nigeria shall be a state based on the principles of democracy and justice; and also recognize the fact that sovereignty belongs to the people, whereas section 14(3) entrenches what is now known as federal character.

A careful perusal of all the sections of this chapter reveals total gender blindness. Most of these provisions presented an ideal opportunity to be gender specific adopting men and women or genderless/gender neutral terms like "Everyone" "all persons" etc.

For example section 14(2) (b) which stipulates that "the security and welfare of the people shall be the primary purpose of government" should have used a gendered language that would read:

" the security and welfare of men and women shall be....

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Further, the principle of federal character entrenched in the Nigerian Constitution is in effect an affirmative action provision and therefore ought to have extended its application based on gender. The most disappointing is the fact that the lofty ideals contained in this part are non-justiciable.

The Judicial Powers vested in accordance with the foregoing provisions of this Section (c) shall not, except as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter 11 of this Constitution”.

The rights recognized under this Chapter of the constitution are basically socio-economic rights considered to be of paramount importance to women. Therefore, making these important provisions unenforceable has enormous implications for women's human rights.

The resource argument is the most advanced for making the ECOSOC rights non justiciable. I submit that these arguments no longer hold true. What it cost Nigeria to democratize (including all the aborted transitions) would have been enough to eradicate poverty in all its forms in Nigeria. Further, the indivisibility, interdependence and interrelatedness of these rights - Civil and Political and Economic, Social and Cultural rights have now crystallized.

For example, right to education falls within civil and political as well as socio-economic rights. What lack of education means for women is early marriage, harmful traditional practices, lack of self-determination all leading to socio-economic underdevelopment of women and girls. The trend in most recent constitutions is to recognize these ESC rights and make them justiciable.

Further, there is need to expand the content of substantive rights in Chapter II to include pre-natal and post natal medical care for women, right to work, right to social security amongst others.

Citizenship

The 1999 Constitution has failed to solve the problems associated with citizenship in a democratic Nigeria. The 1999 constitution recognizes only one class of nationals namely citizens of Nigeria of whom there are three categories: (i) Citizens by birth: The following persons are citizens of Nigeria by birth: Every person born in Nigeria before the date of Independence, either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria:

Every person born in Nigeria after the date of Independence either of whose parents or any of whose grandparents is a citizen of Nigeria; and Every person born outside Nigeria either of whose parents is a citizen of Nigeria.

As Professor Nwabueze noted, citizenship by birth is used in the constitution not in its generally accepted sense of citizenship derived from the circumstances of birth in a country (*jus soli*) but rather in a special sense of citizenship acquired automatically at birth. Birth in Nigeria by itself alone confers no citizenship; unlike in the United States and elsewhere where anybody born in the country is a citizen whether or not the parents are themselves citizens. Therefore, descent

from Nigeria parents carry greater importance than birth within a country.

A parent or grand-parent of a person is deemed to be a citizen of Nigeria if at the time of the birth of that person such parent or grandparent would have possessed that status by birth if he had been alive on October 1, 1960. (ii) Citizenship by registration:

This second category of citizenship is provided for under section 26 and subject to the provisions of section 28. According to the provision a person may be registered as a citizen of Nigeria, if the President is satisfied that - he is a person of good character he has shown a clear intention of his desire to be domiciled in Nigeria and he has taken the oath of allegiance prescribed in the seventh schedule to this constitution. Importantly, it is stated in sub section (2) that the provisions of this section shall apply to - any woman who is or has been married to a citizen of Nigeria; or every person of full age and capacity born outside Nigeria any of whose grandparents is a citizen of Nigeria. The provisions of section 26 (2)(a) clearly do not apply to husbands of female Nigerian citizens. This is blatant sex discrimination that cannot be justified in any democratic society like ours. It contradicts even the constitutional provision in section 42 which prohibits sex discrimination. This provision ought to be expunged from our constitution so that Nigerian men and women can confer full residency rights to their foreign spouses.

iii. The third category is citizenship by naturalization covered by Section 27 and made subject to section 28 on dual citizenship. This need not detain us except to say that the conditions precedents for grant of citizenship by naturalization are too stringent and need to be liberalized. The required compulsory period of residence need to be reduced from 15 years to 10 years. Additionally further reduction for a period not exceeding 5 years should be allowed for foreign spouses of female Nigerians. As naturalization is now the only option for them to becoming citizens of Nigeria

Furthermore, section 28 on dual citizenship should be amended so that persons who acquired Nigerian citizenship by birth should not be required to forfeit their original nationality. Since citizenship by naturalization is also conditional upon good behaviour and could be revoked by the President, it appears incongruous to ask the person on naturalization to forfeit its original citizenship.

The most obnoxious part of this constitution dealing with citizenship is Section 29 that made provisions concerning renunciation of citizenship. Section 29(4) stipulates that for purposes of denunciation full age" means the age of eighteen years and above"any woman who is married shall be deemed to be of full age. One wonders how this very obnoxious and discriminatory provision found its way into the new constitution. It is the first time such a provision appeared in a Nigerian Constitution.

It is highly retrogressive, incompatible with modern sociology and a legalization of child marriage with its attendant consequences. This provision should be expunged forthwith from the 1999 constitution.

Finally on citizenship, I would like to suggest that we should use gender specific words. Using prepositions 'he' or 'she' to ensure that

its provisions apply equally to all without distinctions on grounds of sex or gender.

Again the issue of indigeneity - an identified problem especially for women must be clarified in the constitution. Specific provisions should be entrenched outlining conditions and circumstances when a person not originally from a particular state should become or be regarded as an indigene of the place. This could be based on grounds of residence and/or marriage. Also state citizenship/indigeneity could be based on cite of labour of individual - place of work. We should also address the issue of federal centralism, which disempowers the citizens and exacerbates the indigeneity problem. The constitution needs to explicitly define state of origin and empower women disadvantaged by indigeneity policies to be an indigene of two states simultaneously. That is their state of origin at birth and their husband's state in cases where wife's state is different from that of the husband.

Fundamental Rights

This part of the constitution also called bill of rights contain classical provisions on civil and political rights the so-called first generation of rights only. Sections 33 -44 deals with substantive rights namely: -

Right to life - s. 33

Right of dignity of human person - s.34

Right to personal liberty - s.35

Right of fair hearing - s. 36

Right to private and family life - s. 37

Right to freedom of thought, conscience and religion - s. 38

Right to freedom of expression and the press - s. 39

Right to peaceful assembly and association - s. 40

Right to freedom of movement - s. 41

Right to freedom from discrimination

Right to acquire and own immovable property anywhere in Nigeria - s. 43

Payment of compensation in case of compulsory acquisition of property - s. 44

Section 45 deals with restriction and derogation from fundamental rights and freedoms, while section 46 made provisions for its enforcement and granting of financial or legal aid to indigent citizens whose rights recognized under this Chapter have been violated.

Section 42 of the 1999 constitution seems to be the most relevant provision through which women can fight against discrimination. Although, it is not a right that can be exercised on its own alone it must be linked to violation of other substantive rights recognized in the bill of rights.

Even though section 42 may prove very useful to women, it is still not adequate. Commenting on similar provision under the 1979 (section 39) constitution, I concluded that the provisions are inadequate as it preserves equal status for women and men only in relation to laws and as far as practices, customs or other actions are concerned, there is no protection from discrimination.

In fact, item 61 on the exclusive list reinforces that thought as it excludes the federal government from making laws relating to the

formation, annulment and dissolution of marriages under Islamic law. Of course, this area poses the greatest challenge to realization of women's human rights. Nigeria should adopt the trend in modern constitutions of enacting an equal opportunity clause or provision that clearly embody the equality and non-discrimination principles. Mentioning specifically men and women and not just lumping 'sex' as one of the prohibited grounds for discrimination. The language of the constitution that is supposed to advocate for equality and non-discrimination is far from being gender sensitive. The word "he" was used and given the content of that right it is arguable whether "he" here could be said to mean "she".

There is a need to enlarge the content of Chapter IV, which unlike Chapter II is enforceable. Some of the provisions in the fundamental objectives and directive principles of state policy should be transferred to this Chapter. Economic and social rights including the right to work, free choice of employment, just and favourable remuneration and trade union rights; rights to rest and leisure, right to a standard of living adequate for health and well being including right to food and shelter should part of fundamental rights and freedoms contained in chapter IV. Sexual and Reproductive health rights of women should be specifically recognized. Also, right of women and girls to inherit and succeed to their husbands or fathers property should be recognized. The 1992 Ghana Constitution recognizes this right and other specific rights for women and children.

Furthermore, we need to expand the definition of those who can bring an action to enforce the fundamental rights provision. As it stands, it may be difficult based on the application of Locus standi for persons other than those directly affected to seek redress.

IMPLEMENTATION OF TREATIES

Section 12(1) provides for implementation of treaties ratified by Nigeria. In particular, the domestic enforcement of treaties entered into by Nigeria.

According to the section 12:

- (1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted by the National Assembly.
- (2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.
- (3) A bill for an Act of the National Assembly passed pursuant to the provisions of this subsection (2) of this section shall not be presented to the president for assent, and shall not be enacted unless it is ratified by majority of all the Houses of Assembly in the Federation.

As I have argued elsewhere ratified human rights treaties will be of little importance to individual's subjects of rights thereon if not applied by national judges and administrators. Nigeria adheres to the common law legal system, which adopts a dualistic approach with regard to treaty interpretations and applications. Thus, an additional Act of Parliament is required to incorporate the treaty and make it a domestic law. The process outlined in section 12(3) for incorporation of treaties are rigorous and it may be extremely difficult to domesticate human rights treaties particularly dealing with contentious issues like women's rights and children's rights.

The provisions of 1979 Constitution are relatively easier and should be readopted.

I purposely left out consideration of sections dealing with powers of the three arms of government: Executive, Legislative and Judiciary. Also Resource allocation and Federalism, not because they do not have implications for women's rights as over centralization of wealth at the center without any visible trickle down effect to women and children at the bottom of the ladder impacts on their socio-economic and legal rights. I have left them out primarily because almost all interest groups in Nigeria have over flogged the issue without a moments consideration of the gender implications of the constitution of the Federal Republic of Nigeria 1999 on women. The pertinent question is how can we as women hold ourselves bound by these laws that we have no voice and representation in the making?

CAUSES OF CONSTITUTIONAL EXCLUSION OF WOMEN IN NIGERIA

I want to go back to the question I raised earlier on: Why is the female gender excluded from the constitution and constitution making processes in Nigeria? Why was it impossible for us to get specific provisions for women in the constitution despite seemingly gender consciousness of Nigerian Society, work of women's rights organizations and numerical strength of women? What really went wrong?

Feminists, women's rights activists and groups have not before now participated actively in debates about a Nigerian Constitution. It is only now that we are organizing and demanding inclusion and representation in the constitution making. But as the Igbos' will say: "tabugbo" meaning that today is still early if we can begin to make the desired impact. Females who were involved in the nationalist movement were more concerned with survival of Nigerian nation than getting specific rights for women. Although, they would not have predicated that an independent Nigeria would abandon its women and adopt a very retrogressive approach to women's human rights.

The conceptualized dichotomy of public and private sphere distinctions also made it very difficult for women to feature in the political space where constitutions are debated and negotiated. The experiences of women that have made an incursion into the so-called men's space served to discourage others from making similar attempt.

Related to this is the fact that women are not in power or in decision-making positions where they can influence the political process and change the laws and policies. Women's political powerlessness means that they always have to beg, shout, fight and even cry to be included. Lack of concerted action by women's groups have also made it impossible for women to speak with one voice in lobbying and agitating for their rights particularly the right to participate in determination of issues concerning them.

Customs, culture, religion and tradition are constantly used to deny women equal status in law and practice. The same constitution that prohibits sex discrimination accords recognition to customs and tradition that discriminate against women by reason of their sex and gender. The 1999 constitution and other legal standards in Nigeria are heavily weighted against women.

RECOMMENDATIONS

From my discussion there are twelve critical issues of concern to women with regard to the 1999 constitution and Gender and Constitution Reform Network (GECORN) have articulated these as part of women's demand in the on-going constitutional review. The following recommendations outlined here focuses on those twelve critical issues:

1. THE LANGUAGE OF THE CONSTITUTION

The 1999 Constitution should be re-drafted so that the language becomes user and gender friendly. The word "he or him" should be replaced with he/she and him/her and replacing person with men and women or any person or everyone.

2. CITIZENSHIP

Section 26 (2) should be amended to confer citizenship by registration to a foreign spouse of a woman just like her male counterpart. This section should be abrogated. There is no justification for allowing an under aged woman to have a rights to revoke or renounce her citizenship if it is not expected of her male counterpart. The other implication of this is that this section could become a mischief in a country where child marriage is prevalent.

3. INDIGENESHIP

It is recommended that a Nigerian citizen that has resided in any state of the federation for a period of more than 5 years shall be entitled to all right and privileges of the state. A Nigeria woman shall have a right to enjoy the indigeneship of both her place of origin and that of her husband.

4. DISCRIMINATION

Section 42(3), 1999 constitution is restrictive, nullifies and impairs women's rights and the rights of others and thus should be abrogated. The provision of Section 42(1) should be expanded to clearly enshrine the principle of gender equality and non-discrimination.

5. RIGHT TO DIGNITY OF WOMANHOOD

The scope of Section 34 1999 Constitution should be expanded to include protection against harmful cultural and traditional practices affecting the health and rights of women and girls and other protection from other gender based violence such as widowhood practices, female genital mutilation, forced marriage and others which have constituted a continuing threat to the lives of women in Nigeria.

6. POLITICAL RIGHTS

Political Parties structures must reflect gender balance and we therefore recommend that in line with the international commitments of the government that at least 30% affirmative measure for women in both elective and political appointive position must be guaranteed through constitutional provisions.

Independent candidacy must be encouraged to facilitate women's participation where first past the post test often place women at great

disadvantage in seeking elective position.

7. REPRODUCTIVE HEALTH AND RIGHTS

Reproductive health rights has emerged as a development and Human right issue and thus should be clearly spelt out in the constitution of Nigeria to protect women and girls.

Free and qualitative ante natal and post natal care to reduce the high mortality rate and guarantee women right to safe motherhood.

Access to information and education relating to reproductive health and rights and encouraging proper understanding of maternity as a social function and the protection of motherhood and childhood.

8. ENFORCEABILITY OF SOCIO-ECONOMIC RIGHTS

Section 6 (6) (c) of the constitution should be amended to ensure accountability of government and its institutions to implementation of Chapter II of the constitution. To this end any amendment to the constitution must remove all restrictions and make it possible for all Nigerians to be able to enjoy these rights.

State Social Order: Section 19 (d) should be strengthened to include not only respect for international laws/conventions signed and agreed to, but also implementation and incorporation into National laws and adequate representation of women and men on equal basis at the international levels. The socio-economic rights enshrined in the constitution should be made enforceable.

Specific Social and Economic Rights such as right to education, health, work and adequate housing should be moved to Chapter IV containing the bill of rights

9. FEDERAL CHARACTER COMMISSION OR ESTABLISHMENT OF EQUAL OPPORTUNITY COMMISSION?

We proposed that the Federal Character principle in Section 14 (3) be amended to include gender as one of indices for composition and conduct of affairs of government. This will ensure gender balance in political appointment as well as gender balance in composition of such body.

Establishment of Equal Opportunity Commission to replace the Federal Character Commission. The trend world wide is to have such body to monitor observance and implementation of policies and programmes to reflect gender equity and ensure social justice to all irrespective of sex, religion, ethnic group among other grounds for which discrimination is prohibited.

10. RIGHT TO INHERITANCE

It is recommended that there should be a provision guaranteeing the rights of widows and widowers to inheritance of properties jointly acquired in the absence of a will.

Female and male children should have explicitly stated rights to inheritance.

11. LAND USE ACT

The Land Use Act according to the yearnings of Nigerians should be repealed or at least amended to guarantee equal access to land and adequate compensation to men, women and the poor.

12. WOMEN WITH DISABILITIES

We recommend that the provision of Chapter IV of the constitution should specifically address the rights of people with disabilities especially the needs of women within that category.

CONCLUSION

That law is gender blind and of course gender bias is truly reflected in previous constitutions of Nigeria, in particular the 1999 constitution. These constitutions have shown virtually no recognition that sex or gender can be a significant dimension in defining the substantive contents of individual rights or that it can affect the choice of methods that must be adopted by states to ensure that all individuals within their jurisdiction enjoy these rights equally.

Maintenance of distinctions and categorization of rights in the 1999 constitution are major set back to women's rights in Nigeria. The most important rights -if we are to prioritize are made non-justiciable. Yet poverty and violence of all sorts are the most pervasive violations of women's rights.

Civilized sociology requires that in a democratic society where democratic values holds sway; we should recognize gender issues which has assumed same importance as ethnicity and religion and would therefore play a major role and impact whether negatively or positively on the democratization process. However, the woman or gender questions if addressed will play an important role in peace and unity of this country. As a Nigerian woman for example, I have multiple identities - an Igbo, a woman, Christian and a southerner. But my gender identity is of more important consideration to me than my ethnic identity. The reason is that no ethnic group has been found to be most benevolent to women - according them rights and privileges deserved.

Therefore, that a woman (very gender sensitive) becomes president of Nigeria holds a better prospect for me as a woman and I think majority of women will support such candidature irrespective of whether she is - Hausa, Tiv, Ijaw, Yoruba, Efik, Urhobo, Ogoni, Igala or an Igbo woman. I see women not because we belong to the same gender as the only groups that can come together across party, ethnic, and religious divide because they are able to see a commonality of purpose that transcends their differences.

For sustainability of our nascent democracy, a peaceful Nigeria, we need to take into account gender matters. Modern constitutions of other African countries namely: - South Africa, Ghana, Uganda, Eritrea, Malawi to mention but a few have specific provisions on women and children. This simply recognized the fact that motherhood and childhood deserve special protection. The important fact is that colonialism, imperialism, debt crisis, food crisis, water crisis; environmental issues impact especially and differently on women and their children.

Nigeria is very much part of the globalized world and cannot afford to be going backward when sister countries are forward looking. Its

constitution needs to reflect the international obligations it has undertaken, particularly, to eliminate all forms of discrimination against women. A consultative process to broaden and deepen the contributions of the Nigerian women to constitutional reform/making should be initiated and sustained by all those concerned with promotion and protection of women. The civil society organizations should take the lead in creating awareness, educating and mobilizing support for women's participation in constitution making, general governance and development initiatives taking place in the Country.

In conclusion, I wish to posit that the 1999 constitution should be amended to reflect the gender composition of Nigeria protecting women as full citizens with rights also applicable to their male counterparts. The review has presented an ideal opportunity to give visibility to women's concerns for both participation and adequate protection in proposed constitutional amendments. Nigerians should work towards giving themselves a new grundnorm with full participation of women and all stakeholders to make a constitution that will come into force before the next general election in 2007.

Gender democracy, evidenced by the balanced participation of women and men, is considered a cornerstone of democratic development. The empowerment and autonomy of women and the improvement of women's social, economic, and political status is essential for the achievement of both transparent and accountable government as well as sustainable constitutional democracy and development in all areas of life. Although Nigeria has finally transited from military rule to civil rule, it has to take steps to ensure participation of all stakeholders especially women who will in collaboration with men work towards a sustainable democracy fore grounded on constitutionalism.

Joy Ngozi Ezeilo

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