THE EFFECT OF PLURAL LEGAL SYSTEMS ON INTERNATIONAL HUMAN RIGHTS LAW AND PRACTICE AND ITS IMPACT ON women

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Plural Legal Systems (PLS) occurs when countries have more than one source of law in their legal systems that has largely developed over a period of time as a result of colonial inheritance, religion and deep rooted socio-cultural factors. Although not widely common in the western world or Middle Eastern countries, which have always been predominantly guided by sharia law, it is a wide spread problem in third world countries spread across Africa, Asia, South America and the Caribbean. PLS usually consists of two to four sources of law in a particular country depending on the country’s origin and belief system. For example, an African country could have the following systems operating under the legal system: customary law which has been in the society since the country’s origin, English common law due to colonialism, statutory law which usually develops after independence in the search for the country’s own identity and some form of religious law. Although this system appears to be fair, non-discriminatory and a reflection of the history and development of these countries, it however generates significant problems that are detrimental to the development and practice of national and international human rights law.

Many countries in the world have become members of the United Nations (UN) as a result of the need for international peace and security as well as the development of international law. They have also become parties to a host of international treaties and agreements among which include international human rights treaties and agreements such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Declaration on the Elimination of Violence against Women (DEVAW) and many more. When a state is party to a treaty or agreement, the terms and agreements of that treaty are binding on that state and the state is expected to implement these terms at the national level and in many instances to periodically give progress reports. What happens in states that have PLS is a derogation of state responsibility in observation and

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1 Applicable only to countries that have been colonised by the British, other countries colonised by other European world powers at the time usually adopted their forms of law or legal systems.

2 Not all African countries have up to four legal systems, some as little as two, but to illustrate how complex the laws in states with PLS can be.
practice of these agreements under the guise of religious beliefs or traditional customs\(^3\) which are duly provided for in their various legal systems.

In many cases, women are the unfortunate victims of gross human rights abuse and violations because normally under these religious and customary laws they are a traditionally subordinated and marginalised group. ‘Fundamental contradictions inherent in the legal system - the coexistence of modern, statutory laws with traditional customary laws and practices – has created a complex and confusing legal regime under which women generally are denied adequate legal protection...Not surprisingly, many of the problems which are faced today in much of Africa ‘are the product of trying to piece together, in a hasty fashion, not only the different legal systems but also fundamentally different conceptions of society and the family’’.\(^4\) What this suggests is that there are inconsistencies that exist in the application of customary law as well as the inability of policy makers to find some common ground between the preservation of culture and the protection of human rights alongside various sources of laws. Whenever it suits human rights abusers and violators, they have customary and religious laws to support their deeds, leaving many women victims without hope for justice, peace and freedom. In other words, international human rights law recognises women’s rights as human rights while religious and customary traditional laws recognise women’s rights only within the context of subordination, oppression and discrimination.\(^5\)

PLS interests me because of the boomerang effect it has on the development and practice of international human rights law and women’s rights. While the UN, international organisations, NGO’s and the international community as a whole are striving to bring peace, freedom and justice to various peoples worldwide especially women and children, PLS creates a safe haven for human rights abuse and violation. What is indeed very hypocritical

\(^3\) Even though states with diverse religions and cultural beliefs sign international human rights treaties with the knowledge that they have state responsibility to observe their terms and agreements, they still go ahead and have reservations on the grounds of gender and religion most especially with regard to women’s rights.


about it is the fact that most states that have PLS are parties to various human rights treaties and agreements, yet they are still human rights violators themselves which makes a mockery of a system that, if practiced the way it is supposed to, would indeed bring peace, freedom and justice to many. This is not to say that international human rights law in theory is perfect and that if implemented in practice it would erase human rights abuse and violations completely, nor to say that some injustice and inequality within a legal system signifies a failure of that system; however, if states adopt a single and unified legal system, not only would there be an improvement in justice and equity, but there would also be a drastic reduction in human rights abuse and violations and most importantly a better quality of life for women.

A single and unified legal system most typically provided in a Constitution would cater for every group and the needs of a state as well as allow the implementation and practice of international human rights law to be a more realistic goal as it can be easily incorporated into the legal system instead of being seen as yet another paper development to add to the already complicated, muddled and confusing legal system. This is not an easy task to achieve with states that have PLS and cannot be attained overnight but by a gradual process as there are many issues at stake, most especially the regulation and fear of the loss of some cultural traditions and religious values which are seen as a representation of the origin and identity of the various peoples within a state. The bottom line remains that PLS is detrimental to the growth and development of democracy, freedom, peace, justice and equity, and, if not addressed appropriately, it would only keep facilitating underdevelopment and human rights abuse and violations. Until policymakers realise that they have to create a uniformed or integrated legal regime that is very straight forward in its structure and application, it is very unlikely that there can be laws that are equitable and fair or even bring justice to women and various groups of people in general.
REFERENCES


