



## Women and Human Rights Violations in Nigeria

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### Abstract

This paper examines the issues of rights of women in Nigeria. Foremost Charters and Conventions on human rights, such as the Universal Declaration of Human Rights (UDHR), the African Charter on Human and People's Rights (ACHPR) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), feature prominently in analysis of subject matter of this research. The paper reveals that in several aspects of life, women rights in Nigeria are violated. Right to inheritance, personal dignity, assault, work are denied women without caution in Nigeria. Organizational structure of international bodies, the public private dichotomy in state responsibilities, non-implementation of domesticated laws on women's rights, weak NGOs on women's rights, lack of political will, culture and religion, the paper identifies as challenges to substantial realization of women's rights in Nigeria. Women must rise up to claim their rights, this can be done through education and enlightenment. Women should support each other in politics, economy and social life. International and regional charters/protocols should be domesticated and enforced to improve on the deplorable women's rights records in Nigeria.

**Keywords:** Human Rights, NAPTIP, CEDAW, ACHPR, UDHR.

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### INTRODUCTION

In spite of the efforts to engender human rights in human history, the status of women and slavery remain precarious in the development of human rights. Fundamental human rights, such as respect for dignity of persons, property rights, rights to vote and be voted for are all denied women even in the advanced societies. The Second World War demonstrated clearly the british

nature of man to his fellow man and property; the outrageous behavior by governments of nations to its citizens and aggression of other nations against human rights and the maintenance of international peace and security.

The contingency to maintain world peace and security, contain the massive unemployment, disease as well as huge maternal and infant mortality, after the horrible Second World War prompted the community of world nations to adopt the “Universal Declaration of Human Rights (UDHR)”. The UDHR, was adopted and proclaimed by the United Nations General Assembly on the 10<sup>th</sup> December, 1948.

The preamble to the United Nations (UN) Charter states:

We the peoples of the United Nations, 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 ... have resolved to combine our efforts to accomplish these aims....

This Charter also contain articles pertaining to human rights, with emphasis on respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion (Articles 1, 13, 55, 62, 68 and 76).

Apart from the UDHR, there are other regional and national instruments, such as the African Charter on Human and Peoples’ Rights and the Constitution of Federal Republic of Nigeria. In the instruments, the protection of human rights have been expanded, taking into consideration all the rights of members of the society, but disappointedly, women rights have not been adequately addressed. Women activists and those concerned with gender equality and justice have proved that for more than 48 years after the declaration of UNDR and the accompanying articles, women continue to be discriminated against in virtually all aspects of life, particularly in the exercise of political power, seeking redress through the legal system, finding jobs with adequate remuneration, establishing property rights, access to education, and exercising reproductive rights (Oyelade, 2017).

The position as pointed out will require an investigation into why issues of women’s rights have not been given the attention it deserved. In Africa, the discrimination against women rights in family property inheritance, domestic violence, traditional practices that inflict pain on women are still rampant. But the degree of discrimination against women in Africa varies from one country to another. This paper seeks to examine the level of discrimination against women rights in Nigeria.

This paper is divided into six sections, the second section is the conceptual framework, third, the legal framework on women’s rights, the fourth section discuss CEDAW report on women’s rights in Nigeria, while section five is the conclusion.

## **CONCEPTUAL FRAMEWORK**

### ***Human Rights***

Human rights are defined as those claims made by men, for themselves or on behalf of other men, supported by some theory which concentrates on the humanity of man, on man as a human being, a member of humankind.

Antonio Cassese (1995), describe human rights as an ideological and normative ‘galaxy’ in rapid expansion, with a specific goal: to increase safeguards for the dignity of the person. Human rights therefore represent an ambitious attempt to bring humanity into the political institutions and the societies of all states. Human rights dominate the natural instinct, making man a ‘social’ rather than a ‘natural’ animal and crystallizing the rule of behavior to be respected by all persons and all nations. Human rights are based on an expensive desire to unify the world by drawing up a list of guidelines for all governments, an attempt by contemporary world to introduce a measure of reason into its history (Umozurike, 1997).

Justice Kayode Eso of the Nigerian Supreme Court describes human rights as:

A right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence, and what has been done by our Nigerian Constitution since independence is to have these rights enshrined in the constitution so that those rights could be immutable to the extent of the non-immutability of the constitution itself (Ransome Kuti v AGN).

While Osita (1984) in his definition describe human rights as a set of ‘demands’ or claims which individuals or groups make on society, some of which are protected by law and have become part of the *lex lata* while others remain aspirations to be attained in the future. This definition disregards the fact that human rights are inalienable. The rights arrogated to man not by the state but by the virtue of our humanity. Also, Osita’s definition fail to recognize the fact that there are certain situation, which do not necessarily fit into the description of his human rights, but are still regarded as embodying the notion of rights.

Human rights are therefore those rights held by all human beings irrespective of any other rights or duties that they may have in any other capacities. These rights are categorized into first generation rights, such as rights to be heard, right not to be enslaved, the second generational rights are positive rights, and they require the affirmative action of the state for its implementation. These rights are contained in the Economic, Social and Cultural Rights, while the third generation rights, also known as solidarity rights, refers to right to development, right to ownership of common heritage of mankind as well as right to the environment.

### ***Women’s Rights***

In contemporary Sub-Saharan Africa (SSA), women face a lot of human rights abuses. In Africa, the female folk hardly share experiences of sexual discrimination and abuse, intimate violence, political marginalization and economic deprivation. The age-long marginalization of rights of women applies even to the developed world. For instance the right to franchise was extended to women only in 1920 in the United States, UK. 1928, France 1944, Germany 1919, Nigeria 1958 and Saudi Arabia 2015 (Okogbule, 2017).

Several instruments have been put in place to remove the discriminatory practices against women, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) was adopted in 1979; followed by the adoption of the protocol of the Africa Charter on Human and People’s Rights on the rights of women in Africa. As a result of these

instruments, parts of women's rights abuse, such as right to inheritance, and other discriminatory practices have reduced as a result of powerful judicial pronouncements.

Women rights are therefore the rights that pertain to women as special creatures, with specific characteristics. Some of these women rights include, the family inheritance, right to procreation, right not to be raped or battered, right to associate freely and express themselves. In the UDHR 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 the spirit of brotherhood. Fourteen distinct rights are guaranteed under article 2 of the UDHR. They include, the right to life, liberty and security of person, from slavery and servitude, freedom from torture or cruel, inhuman or degrading treatment or punishment, equality before the law, right not be subjected to arbitrary arrest, detention or exile, freedom of movement and residence, nationality, the right to marriage and found a family, freedom of thought, conscience and religion, peaceful assembly and association, freedom to work and be educated.

The African Charter on Human and Peoples' Rights (ACHHPR) was adopted in Nairobi, Kenya in 1981. It recognizes the peculiar African historical and cultural values and also includes the values within human rights corpus. The charter makes provision for group rights or the rights of peoples', indivisibility of human rights and the inclusion of duties of citizens to their states and communities. The African Charter has certain peculiar elements or provisions that are not found in other regional charters or instrument. Particularly, the charter reflects and recognizes the distinct African values where an individual is seen not as isolated being but part of the family or society. ACHHPR interprets rights in the context of the rights of members of community. The right of an individual in a typical African society is subsumed in the community rights, culture and preferences. It is the respected African community rights that ensure peace, and harmonious living among community members.

### **Legal Framework on Women's Rights in Nigeria**

The preamble to the United Nations (UN) Charter states: "We the peoples of the United Nations, 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 ... have resolved to combine our efforts to accomplish these aims..." The same Charter contains articles pertaining to human rights and with emphasis on respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. One of the most important achievements of the UN in the area of protection of human rights is the Universal Declaration of Human Rights 1948. Member states of the UN pledge to promote respect for the human rights of all. To advance this goal, the UN established a commission on human rights and charged it with the task of drafting a document spelling out the meaning of the fundamental rights and freedoms proclaimed in its Charter. On December 1948, the UDHR was adopted by the then 56 members of the UN. The vote was unanimous, although eight nations abstained.

The first paragraph of the preamble of the UDHR sums up the essence of human rights. It states:

[R]ecognition 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.

The influence of the UDHR has been substantial; its principles have been incorporated into the constitutions of most of the more than 185 nations now in the UN. Although a declaration is not a legally binding document, the UDHR has achieved the status of customary international law because people regard it “as a common standard of achievement for all people and all nations.”

In the UDHR ‘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.’ It goes further:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Other international human rights treaties include: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 1965), the International Covenant on Civil and Political Rights (ICCPR, 1966), the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984), the Convention on the Rights of the Child (CRC, 1989), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW, 1990), the Convention on the Rights of Persons with Disabilities (CRPD, 2006), and the International Convention for the Protection of All Persons from Enforced Disappearance (CPEd, 2006) all in their treaty body General Comments interpreting their various treaty provisions, address specific issues of human rights concern pertaining to sexual orientation.

Norms against discrimination based on sex can also be found in such international documents as the International Covenant on Economic, Social and Cultural Rights (ICESCR) which also add up to the International Bill of Rights. The same normative standard is expressed in regional documents such as the African Charter on Human and People’s Rights and can be found at the national level for example in the 1999 Nigerian Constitution, the 1996 Constitution of the Republic of South Africa.

According to the Declaration on the Right to Development adopted by the UN General Assembly in 1986,

Development is a comprehensive economic, social, cultural and political process; it aims at the constant improvement of the well-being of individuals; it is based on their active and meaningful participation in development and in the fair distribution of benefits resulting therefrom. Everyone is entitled to a social and economic order in which the rights and freedoms set forth in the Universal Declaration of Human Rights can be fully realised.

From all international, regional and national instruments on the protection of human rights of human beings generally, we should all go to sleep and rest assured that women are adequately protected from all forms of discrimination and abuses. But alas! We cannot rest on our oars because women are still not recognized as persons entitled to enjoy these rights, especially in Africa. Women activists and those concerned with gender equality and justice have proved that for more than 48 years after this universally accepted pronouncement, women continue to be

discriminated against in virtually all spheres of life, particularly in the exercise of political power, seeking redress through the legal system, finding jobs with adequate remuneration, establishing property rights, access to education and exercising reproductive rights.

The July 4, 1776 Declaration of America's Independence, also re-iterated that:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights: that among these are life, liberty and the pursuit of happiness.

While the preamble of the 1999 Constitution of the Federal Republic of Nigeria reads:

We the people of the Federal Republic of Nigeria, have firmly and solemnly resolved... to provide for a constitution for the purpose of promoting good governance and welfare of all persons in our country, on the principle of freedom, equality and justice... do hereby make, enact and give to ourselves the following constitution.

Ss. 37, 38, 39, 40, 41 and 42 of the Constitution provides for different levels of rights for all categories of persons in Nigeria. But the right of women to inheritance, privacy and self-dignity is abused in Nigeria. In Nigeria for instance, the practice of circumcision violates the right of self-dignity and respect as enshrined in S. 34, while women recruited in the various paramilitary in Nigeria are conditioned not to be pregnant for a period of time.

One may wonder why the issue of women's rights was not given serious consideration as it should in spite of international and national human rights instruments. Okagbue proffers four reasons:

(a) *The Organisational Structure of International Bodies*

Okagbue says: Some of the myopia on the human rights of women no doubt stems from the overwhelmingly male composition of the structure of the international legal order. The significance of the fact that all major institutions of the international legal order are peopled by men has been described thus:

Long term domination of all bodies wielding political power nationally and internationally, means that issues traditionally of concern to men become seen as general human rights concerns, while "women's concern" are relegated to a special limited category, because men generally are not the victims of sex discrimination, domestic violence and sexual degradation and violence, for example, these matters can be consigned to a separate sphere and tend to be ignored.

(b) *The Public/Private Dichotomy in State Responsibility*

A crucial advance in the campaign against violence against women came from the insight of feminist like Australian National University legal scholar Hilary Charlesworth, who pointed out in 1984 that women's experiences are rendered nearly invisible in international law and

traditional understandings of human rights because both originally operated on the assumption that the public and private domains are sharply differentiated. Not only was the beating, rape, or mutilation of a woman in her home at the hands of relatives viewed as a private matter, but the abuses themselves were acknowledged to the point that statistics on many forms of abuse remain difficult to collect. The inclusion of the private sphere within the purview of human rights is a development that underlies this issue or dialogue.

Traditional human rights theory primarily focuses on violations perpetrated by the state against individuals. Under this framework, acts perpetrated by private individuals are not human rights concerns because private acts would usually be ordinary criminal offences which the regular processes of criminal law would effectively deal with. Thus until very recently, the main forms of human rights instruments have been almost exclusively on the prohibition of violations of the civil and political rights of individuals by state parties.

Feminists have pointed out that this public/private dichotomy is based on social and cultural assumptions of what is valued and important and that these assumptions are deeply gender based. The public realm of the workplace, the law, economics, politics, intellectual and cultural life where power and authority is exercised is regarded as the natural province of men which is properly patrolled by the law, while the private world of the home, the hearth and children is seen as the appropriate domain of women where state intervention is undesirable. It is, therefore, possible to view the public/private dichotomy as an ideological construct which is used to rationalize the exclusion of women from the sources and distribution of power and to make it possible to maintain regressive systems, of control over women without interference from human rights guarantees which operate in the public sphere.

Through these means, the customary laws, cultural practices, traditional institutions and conceptions of family life which are primarily responsible for the subservient position of women, have generally remained outside the purview of human rights discourse. This attitude has a significant impact on the human rights of women because many of the problems women encounter arise from their entrapment within a socio-cultural and economic milieu which makes them vulnerable to abuses which are neither exclusively political nor solely caused by states.

### **CEDAW Report on Women's Rights in Nigeria**

The Convention on Elimination of all forms of Discrimination Against Women (CEDAW) shadow report presented to the United Nations committee on the Elimination of all forms of Discriminations Against Women between June 30 to July 18, 2008 in New York contends that denials and violations of women rights in Nigeria is ripe and rampant, though they agree that the Nigerian Government ratified CEDAW in 1985. They attribute the sorry state of Women Rights in Nigeria to non-domestication and non- implementation of CEDAW. CEDAW contends that the level of Discrimination Against Women is very high. They criticize the 1999 constitution for not giving a comprehensive definition of the concept of discrimination against women but give a general note against all forms of discrimination including discrimination on the basis of sex. They note that other laws that are specifically made on Discrimination Against Women exist only in five states out of the thirty six states of Nigeria and are rarely enforced.

CEDAW noted that certain provision of the 1999 Constitution out rightly discriminates against women. For example while the constitution provides that women who marry non-Nigerians cannot confer Nigerian citizenship on their husbands by virtue of the marital union,

Nigerian men who marry non-Nigerians automatically have Nigerian citizenship conferred on their wives on the basis of marriage.

They noted that most of the socio-economic legal and political frameworks needed to protect and promote Women's Rights have not been effectively implemented. For example, in 2007, the national assembly rejected the bill for the domestication of the convention on Elimination of all forms of Discrimination against Women (CEDAW) which automatically put on hold every process of integrating CEDAW convention as an integral part of the criminal justice and legal administrative system in Nigeria.

The report maintains that gender or sex stereotypes continues to be reinforced in Nigeria as agents of socialization such as the family, schools, churches, mosques and the media have become custodians as well as disseminators of gender roles, stereotypes, prejudices, and discriminatory practices. There is an emphasis on male superiority over female with a patriarchal Structure. The report notes that gender stereotypes are reinforced by lack of national legislations aimed at disabusing the mind of people of such stereotypes and specifying punishment for offenders.

They noted that trafficking and sexual exploitation of women and children still goes on despite Government establishment of National Agency for Prohibition of Trafficking in Persons (NAPTIP). This they observed is because the root causes of trafficking like poverty, unemployment and illiteracy have not been addressed by the Government. Moreover, CEDAW and the protocol to the African Charter on Human and people's rights on the Rights of women in Africa which adequately defines and Prohibits Discrimination Against Women has not been domesticated, meaning that Nigerian Women cannot take advantage of the two instruments in the national courts. This is because section 12 of the 1999 constitution clearly states that "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 into law by the National Assembly" (Olanmi & Company, 2007, p. 1).

The document sadly noted that the African Charter on Human and peoples' Rights which Nigeria has domesticated did not specifically define Discrimination Against Women. Though the report acknowledged that Nigeria has domesticated the African Charter on Human and people's Rights, and enacted the Trafficking in persons (Prohibition) law enforcement and Administration Act, 2004, the Universal Basic Education and other related matters Act 2004, and the child Rights Act at the Federal level but in sixteen (16) states CEDAW is yet to be domesticated.

Other laws mostly at the state level that aim at protecting the rights of women are: Malpractices against widow and widowers (prohibition) law 2005 in Ekiti, Enugu, Imo, Ebonyi and Anambra States; Law to prohibit Domestic Violence Against Women and maltreatment law No.10 of 2004 by the Cross River State Government; Inhuman treatment of Widows (Prohibition) law 2004 of Edo State; Law prohibiting Domestic Violence in Lagos State 2007 (passed by the house but not signed) and in Ekiti State; Law prohibiting Withdrawal of the Girl-Child from school for marriage purpose in Kano, Niger, Gombe, Bauchi, and Borno States; Schools' Rights (Parents, Children and Teachers) Law No. 2, 2005, Rivers State; Street Trading Restriction Law, 2004, Anambra State and Women's Reproductive Rights Law, 2005, Anambra State.

CEDAW also blamed the Nigerian Government for not having official data on Domestic Violence Against Women which they insist is high. Government is criticized for Ministries of Women Affairs at the Federal and State levels, women and children still suffer from domestic violence. The Violence against Women prohibition Bill 2003 has not been formerly raised on the

floor of the House of Assembly, Domestic Violence Protection Bill 2005 has passed first and second readings in the House but is still at committee level while the Draft Bill on Elimination of Violence 2006 has only passed first reading at the National Assembly.

The report observed the Supreme Court judgment of *Mojekwu V. Iwuchukwu* in which the Supreme Court held that there was no justification for the court below to pronounce that Nnewi's native custom of "Oliekpe" was repugnant to natural justice, equity and good conscience thereby dashing the hope of women on a better enforcement and enjoyment of women's rights (Olakanmi & Company, 2007, p. 64).

In the area of marital rape and violence in marriage, they noted that there is no law in Nigeria on marital rape, and domestic violence is classified under common assault which downplays the seriousness of the offence and reduces it to a mere misdemeanor. In *Akinbuwa Vs Akinbuwa*, the court refused to effect divorce on grounds that the violent spouse must first be convicted of the offence occasioned by the violence before the court can consider it extreme violence capable of granting a divorce (p. 64). Literature reviewed shows that there is gross denial of women rights in both Sudan and Nigeria.

### **Challenges to Enforcement of Women's Rights in Nigeria**

At the national level, the procedure for domestication of CEDAW and the protocol is a major challenge. While several countries have acceded to CEDAW, many have not taken the extra step to domesticate it and make it part of their national laws. What this means in effect is that its provisions cannot be directly applied in national courts. States parties do not always have the political will to implement commitments made at the international level.

The challenges faced in implementing CEDAW are a good indication of those that the protocol will face, from which important lessons can be drawn. The mandate of the CEDAW Committee is to monitor its implementation by the states parties which have ratified it, and this is done through periodic reports. Unfortunately this is one area that has not been taken very seriously by states parties. Many have two or more reports outstanding, while some have submitted none. This is a major challenge to the committee's work.

While the process of reporting is thorough, to a great extent it remains in the hands of governments; NGO participation is weak. The examination of states parties' reports is not intended to be adversarial, but should be done in a manner that promotes constructive dialogue between the states parties and the committee.

The African Court on Human and Peoples' Rights is an approach of last resort when all other domestic remedies have failed to provide satisfactory results. Pending the full establishment of the African Court, the African Commission on Human and People's Rights (the commission, hereafter) is seized with matters of interpretation arising from the application and interpretation of the protocol. The commission was established under Article 30 of the charter. Its primary responsibility is to promote and ensure the protection of human rights on the continent. Its four areas of mandate are: promotional activities, protective activities, the examination of state party reports and the interpretation of the African Charter on Human and Peoples' Rights. It holds regular sessions twice a year in around April and November and can hold extraordinary sessions.

The commission has 11 part-time members. They are independent experts and act in their personal capacity rather than as representatives of their governments. The integration of the protocol into the implementation mechanism of the commission is consistent with the provisions

of the charter itself. It will ensure that women whose rights under the protocol have been violated will have final recourse to the African Court to have their rights established and enforced. Furthermore, individuals other than the victims themselves, as well as human rights NGOs, can bring a complaint on behalf of the victims to the court.

One of the challenges facing domestication of the protocol is the multiplicity of legal systems in most African countries. While in a few countries international treaties, once ratified, automatically become part of national law, in most cases they have to be passed by an act of parliament to bring them into effect.

The domestication and further ratification of the protocol have been slowed by a lack of political will. Even though most countries have established national gender machineries, these are weak and lack adequate authority, capacity, human resources and funding. This is coupled with inadequate skills in gender analysis among planners and implementers, and limited gender awareness within communities.

The African Court on Human and Peoples' Rights, which is an important tool in interpreting the protocol, is not yet fully functional. Even when it is, access to it by civil society organisations, which have been the main champions of the protocol, will be limited to those countries that have signed a declaration to facilitate such action.

Women's participation in politics and decision making remains low, and this slows down their influence on governments to carry out their obligations under the protocol. Women's access to justice is further inhibited by illiteracy and ignorance of their rights and how to access them. Some cultural and traditional practices continue to hold back progress in realising the provisions of the protocol.

Most of the human rights instruments set a ceiling and a floor as frameworks that women can use to combat discrimination in its many forms. However, these tools in themselves are not perfect. For example, the language employed in some of them is either too complicated or too broad or both; this could create problems of interpretation, especially at the national level. They also fail to address the issue of recourse in cases of non-compliance. It has been said that they can only bark because they lack the teeth they need to bite. The consequences of non-compliance and non-enforcement need to be built into them.

Another problem is the strategy of placing reservations on some key provisions. This negates the principle of women's rights as first and foremost being inalienable, integral and indivisible. One other obstacle that has been identified at the national level is that few lawyers are aware of the protocol and are therefore unable to cite it in support of their arguments. Not many law students take up courses in gender and the law where these are part of the curriculum, hence their ignorance about the protocol and other women's rights instruments.

The proliferation of instruments has also been cited as a possible factor hindering compliance because each one requires a different reporting and accounting procedure, thereby placing a huge burden on states. There is also inadequate dissemination of information about these instruments at the local level.

The multiplicity of laws in different countries is such that most countries will have to enact new legislation to domesticate the protocol after ratification. A number of countries that have ratified the protocol, such as South Africa and Mauritius, did so with harmful reservations, signifying their unwillingness completely to abandon practices that discriminate against women. The legitimacy of entering reservations on the treaties may be questionable because of the substance of such reservations.

## CONCLUSION

Charter on Human and Peoples' Rights would suffice to take care of the women's rights issues that were omitted from it. The charter is perhaps distinct from other regional systems of human rights protection in that it has specific provisions that address the rights of women. This is apart from the commonplace provisions on the rights to equality and freedom from discrimination characteristic of most international instruments of this kind. With regard to the rights of women the charter provides that 'The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions' (Article 18: 3).

However, this provision has been regarded as too general, giving no substance to the rights of women, thereby placing these rights in a situation that has been described as a 'legal coma'. Addressing the rights of women alongside those of children is also criticised. While recognizing that both women and children have been victims of enduring violence, it raises the question of why the latter are equated with the former. Nevertheless, the charter is seen as creating the bedrock for the protection of women's rights in Africa. It provides a basis from which states have to account for the status of women and the protection of their rights within national legal systems. And it enjoins African states to take positive steps to ensure that their national laws and policies seek or result in the attainment of these two primary goals. Since then there have been significant developments towards a more comprehensive legal regime for the protection of women's rights in Africa, resulting in the drafting of the protocol to the charter.

The protocol can be a tool that forces states to prioritise legislative measures to eliminate harmful traditional practices. It provides a foundation on which human rights acquire legality in the African context, and a basis for assertions that African women's rights to equality are no longer contested. What is critical at this point is to see greater dynamism from domestic courts, the charter and the African Court on Human and Peoples' Rights in giving meaning and precedence to the protocol.

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