

## WOMEN'S RIGHTS IN AFRICA: MYTH OR REALITY

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You are a woman,  
And a human being  
All human beings have rights  
And so do you.

But how unfortunate, that  
Rights of women have been trampled on:  
Because of law of creation  
Expounded in the Holy Book of God;

Because of the attitude of society;  
Because of outmoded customs;  
In marriage and family practices;  
And especially because of ignorance.<sup>1</sup>

### **Introduction**

Both men and women are entitled on an equal footing to the full protection of their rights and freedoms because they are human beings.<sup>2</sup> It is evident however, that women as a social category are almost everywhere subordinate to men, although the degree of their subordination varies. The subordination of women predates the development of the cash economy, peasant agriculture, and more developed trade and industrial systems. While many analyses of the subordination of women focus on their economic roles, their subordination is also evident at the political and especially at the ideological level, where it is reflected in symbol systems that connect female/male with left/right, dirt/cleanliness, evil/good and other such world evolving dichotomies. Thus, women's rights cannot be expected to emerge without changes in the political and ideological as well as in the economic sphere.<sup>3</sup>

Without sounding blasphemous, the scriptures are replete with semblances of subjugation of women or infringement on their rights. From the very first book of the Bible in the creation, the Almighty God created the woman from the ribs of the man,<sup>4</sup> a sign of inequality, to the mind of this writer. The creation of the man was more complex and involving than that of the woman.

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<sup>1</sup> Mrs Matembe (one time women's representative in Ugandan Parliament) in her manual on women's rights cited by Joan Kakwenzire (member, Human Rights Commission, Uganda) in "Women's and Children's Rights in Africa: An Analysis" in Abayomi, T, *Human Rights and Democracy in Africa – Yesterday, Today and a Vision of Tomorrow*, Lagos, Adroit Pegasus Associates, 1993, 153.

<sup>2</sup> Okagbue, I, *Women's Rights are Human Rights*, Lagos, Nigerian Institute of Advanced Legal Studies, 1996, 1.

<sup>3</sup> Howard, R E, "Women's Rights and the Right to development" in (Cohen, R *et al* (eds) *Human Rights and Governance in Africa*, University Press of Florida, 1993, 111.

<sup>4</sup> Genesis 2:20-22.

In some other instances, women were ordered not to speak in churches but rather get home and enquire from their husbands any seemingly opaque area of the scriptures, sermon or teachings.<sup>5</sup> Furthermore, it is stated:

Let the woman learn in silence with all subjection. But I suffer not a woman to reach, nor to usurp authority over the men, but to be in silence.<sup>6</sup>

Once again with much faith and trust in the word of God and the sanctity of it, but for the sake of academics, this seems an infringement of the human rights of women.<sup>7</sup>

The status of women has, through the ages, been a cause of grave concern in every culture and in every clime. In some areas of the globe, it has passed the stage of sympathetic concern and has entered an era of aggressive feminism.<sup>8</sup> Cultural institutions, particularly religion, are often cited for their role in violence against women. The frequency with which women, the family, and the home are seen to overlap with culture – indeed, to be the main vessels for the maintenance and continuation of cultural and religious traditions – is striking.<sup>9</sup> Now, we believe that the earlier world order took a cue from the scriptures and the combination of culture and tradition to perpetuate the subordination of women before the efforts by the international community to promote equality between different groups in the enjoyment of human rights and the articulation of the norm that no particular group should be accorded less favourable treatment than the other.

The African culture and tradition offers no help at all in this direction, as the woman is discriminated against in all strata of life. An old African folk song runs thus:

Why did you come, O girl?  
When we wished for a boy?  
Take the jar and fill it from the sea  
May you fall into it and drown.

This speaks volumes about the resentment of the girl child in the African culture and tradition.

The focus of this paper is to examine the paradoxical juxtaposition of the traditional and modern view of the subject “women’s human rights in Africa” and see to what extent the modern efforts of equalizing women with men have impacted on the tradition and culture of Africa. The subsequent parts of this paper are broken down as follows:

- (a) Definition of concept of human rights;
- (b) The legal framework of women’s human rights;
- (c) Situation and analysis of women’s rights in Africa;
- (d) Conclusion.

We hope that at the end of this discussion we shall have contributed to knowledge in some way.

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<sup>5</sup> 1 Corinthians 14:34-35. See also the Quran chapter Nur 24:31: “The woman is forbidden to wear any apparel that purports to display her beauty in the presence of people apart from her very close relatives.” In matters of inheritance “Allah commands you as regards your children’s inheritance: to the male the equivalent of the portion of two females.” Chapter Nisa 4:11: “... As to those women on whose part you fear misconduct, admonish them (first), \*(then) refuse to share their beds, (and lastly) beat them (lightly)...” Chapter 4:34 political participation: “Never would a community succeed which entrusted the direction of its affairs to a woman.” (Tradition of the Prophet Bukharee) This statement is a statement of the prophet (S.A.W.S) but by virtue of Quaranic authority is effectively a statement from Allah.

<sup>6</sup> 1 Timothy 2:11-12.

<sup>7</sup> Some writers however would not agree with this writer that the Scripture verses quoted were meant to subordinate women. Oputa JSC quotes more scripture verses than this writer, but believes that God created a complementary role for the man and the woman and that it is us, the men, for selfish reasons, that have created subordinate roles for women. See Oputa, C, “Women and Children as Disempowered Groups,” in Kalu, A U and Osinbajo, Y, (eds) *Women and Children under Nigerian Law*, Lagos, Federal Ministry of Justice, 1993, 1-2.

<sup>8</sup> Ibid.

<sup>9</sup> Human rights dialogue: Fall 2003 Series 2 No 10, Introduction, p 4.

## Conceptual Definition of Human Rights

At its most basic level, a human right is a safeguarded prerogative granted because a person is alive. This means that any human being granted personhood has rights by virtue of species membership. And a right is a claim to something (by the right holder) that can be exercised and enforced under a set of grounds or justifications without interference from others. The subject of the right can be an individual or a group and the object is that which is being laid claim to as a right.<sup>10</sup> Human rights are therefore those rights that every human being possesses and is entitled to enjoy simply by virtue of being human. At the 1993 World Conference on human rights, governments reaffirmed in the Vienna Declaration that human rights are the birthright of all human beings and that the protection of human rights are based on the fundamental principle that all persons possess an inherent human dignity and that regardless of sex, race, colour, language, national origin, age, class, or religious or political beliefs, they are equally entitled to enjoy their rights.

The 1993 World Conference also specifically recognised the human rights of women and the duties of States to protect and promote such rights, including the right to freedom from violence.<sup>11</sup>

A human right is a moral right held unconditionally and unalterably by all and only human beings. Human rights are often said to belong to persons already, prior to and independently of legislative enactment.<sup>12</sup> In the same vein, Oputa JSC defines human rights as follows:

Some rights are inalienable as they attach to the human person and form an essential part of his/her humanity. To deny any human being (be he a man or be she a woman) such rights will be at best to distort his or her humanity and at worst to destroy that which is most essential to us as human beings – our humanity. Other rights are secondary and protective and assist in the enforcement of essential and primary rights. But an essential primary right which cannot be enforced is a white elephant, a toothless bull-dog, omnipotent in theory and on paper but hopelessly impotent in fact and in practice.<sup>13</sup>

All the above definitions are in line with the natural law school which posits that law (and human rights) is derived from God and inalienable. H L A Harts<sup>14</sup> and Joel Feinberg<sup>15</sup> believe that human rights predates legislations or legislative enactments and cannot be conferred on an individual by government or a group of persons. Human rights are therefore frequently held to be universal in the sense that all people have and should enjoy them, and to be independent in the sense that they exist and are available as standards of justification and criticism whether or not they are recognized and implemented by the legal system or officials of a country.<sup>16</sup>

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<sup>10</sup> Cohen, R, "Endless Teardrops: Prolegomena to the Study of Human Rights in Africa," in Cohen, R *et al* (ed) *Human Rights and Governance in Africa*, 4.

<sup>11</sup> Women's Human Rights: Step by Step: A Practical Guide Using International Human Rights Law and Mechanisms to Defend Women's Human Rights, by Women, Law and Development International and Human Rights Watch. Women's Rights Project, p 8.

<sup>12</sup> Feinberg, J, "Human Duties and Animal Rights," in *Rights, Justice and the Bands of Liberty*, Princeton University Press, 1980, 54.

<sup>13</sup> *Op cit* p 1.

<sup>14</sup> Harts, H L A, "Are They Any Natural Rights" in Quantum , A (ed), *Political Philosophy*, Oxford, Oxford University Press, 1967, 54-55 where he defines natural (human) rights as: (1) Rights which all men have if they are capable of choice; they have the rights of men and not only if they are members of some society or stand in some special relation to each other; (2) these rights are not created or conferred by man's voluntary action like other moral rights.

<sup>15</sup> *Op cit*.

<sup>16</sup> Nicel (1992); 561-2 culled from the internet encyclopaedia of philosophy.

A careful analysis of the definitions offered herein reveals the inherent nature of human rights in every person in a society. This negates therefore, the assertion by some Western writers that human rights did not exist in pre-colonial Africa because human rights derive from human nature, both moral and physical; they must inhere in individuals and in our mutual need to live meaningful lives.

### **Legal Framework for the Protection of Women's Human Rights**

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.<sup>17</sup>

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 (UDHR). 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 19 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."<sup>18</sup> 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.<sup>19</sup>

The fourteen distinct rights guaranteed under article 2 of the UDHR include:

- (a) life, liberty and security of person (art 3)
- (b) freedom from slavery and servitude (art 4)
- (c) freedom from torture, or cruel, inhuman or degrading treatment or punishment (art 5)
- (d) equality before the law (art 7)
- (e) not being subjected to arbitrary arrest, detention or exile (art 9)
- (f) freedom of movement and residence (art 13)
- (g) nationality (art 15)

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<sup>17</sup> See articles 1, 13, 55, 62, 68 and 76.

<sup>18</sup> Art 1.

<sup>19</sup> Art 2.

- (h) the right to marriage and to found a family (art 16)
- (i) freedom of thought, conscience and religion (art 18)
- (j) peaceful assembly and association (art 20)
- (k) work (art 23)
- (l) health (art 25)
- (m) education (art 26)

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.<sup>20</sup> The same normative standard is expressed in regional documents such as the African Charter on Human and People's Rights<sup>21</sup> and can be found at the national level for example in the 1999 Nigerian Constitution, the 1996 Constitution of the Republic of South Africa.<sup>22</sup>

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.

One may wonder why the issue of women's rights was not given serious consideration as it should under the mentioned international human rights instruments! Okagbue<sup>23</sup> 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.<sup>24</sup>

<sup>20</sup> Article 2 of ICESCR.

<sup>21</sup> Article 2. See also the European Convention for the Protection of Human Rights and Fundamental Freedoms, art 14, and the American Convention on Human Rights, art 1.

<sup>22</sup> Chapter II on the Bill of Rights, ss. 9, 10, 11, 12, 13, 14, 16, 19, 25 etc.

<sup>23</sup> Okagbue, I, *op cit* 9-10.

<sup>24</sup> Ibid at 11-12 quoting Charlesworth, H, "Feminist Approaches to International Law: Towards a Revision of Human Rights," (1990) 12 *Human Rights Quarterly*, at 625; Maggita, Esther Amalie, "Why Men Came out Ahead: The Legal

(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.<sup>25</sup> 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.<sup>26</sup>

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.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup>

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.<sup>30</sup>

(c) *Barriers of Culture and Religion*

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Regime and the Protection and Realisation of Women's Rights in Uganda, (2000) 6 (No 1) *East African Journal of Peace and Human Rights*, 34 writing on the rights of women in Uganda has added two other points which could also be generalized: (a) the character of African (Ugandan) laws where they incorporate a community's customs and values, whether domestic, economic, religious or moral; the law acts primarily as a means of social control which entrenches these values in the interest of a society's document class; (b) the culture of patriarchy which is an ideology of male supremacy which results from the social construction of gender.

<sup>25</sup> Human Rights Dialogue, Fall 2003 Series 2 No 4, p 4.

<sup>26</sup> Okagbue, *op cit.* 12.

<sup>27</sup> Ibid, citing Schneider, E, "The Violence of Privacy," (1992) 23 *Connecticut Law Review*, 925.

<sup>28</sup> Ibid, citing Charlesworth, *op cit.*, n 25 at 626,

<sup>29</sup> Ibid, citing Charlesworth, *op cit.*, at 629.

<sup>30</sup> Ibid, citing Bunch, C, "Women's Rights as Human Rights: Toward a Re-vision of Human Rights," (1990) 12 *Human Rights Quarterly* at 487.

Another factor responsible for the invisibility of issues concerning women on the human rights agenda is the clash between many of these concerns and cultural and religious traditions. The argument has been espoused that human rights must be looked at in the context of the social, religious and cultural customs and beliefs prevailing in a community. Practices that seem to violate human rights concern in one part of the world may, therefore, be viewed differently elsewhere.<sup>31</sup> Sensitivity to cultural arguments has often resulted in human rights discourse ignoring violations of the human rights of women, such as genital mutilation, which occur within a cultural milieu.<sup>32</sup>

(d) *The Rights versus Needs Debate*

Part of the origin of the neglect of the human rights of women stems from the priority which is accorded to civil and political rights. Since many women's issues emanate from their position as the majority of the world's poor, they are more concerned with access to such basic needs as food, fuel, safe water, shelter, education, rudimentary health care, skills acquisition, development and employment opportunities, access to credit facilities and so on. The provision of such basic needs can be located within the discourse on economic, social and cultural rights, the so-called second generation rights and the right to development, one of the so-called third generation rights.<sup>33</sup>

The world countries have especially insisted on the interdependence of civil and political rights and economic and social rights. Thus, the preamble to the African Charter states:

... civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and ... the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.<sup>34</sup>

However, despite the rhetoric about the indivisibility of the different sets of rights the tendency by many has been to regard socio-economic rights as mere idealistic aspirations that fall outside the core human rights framework and indeed which do not properly constitute rights at all.<sup>35</sup>

In response to the gaps in human rights thinking, women's groups and organizations have been working in solidarity around the world to develop new ideas on human rights and get them accepted by the UN and the governments of the world. The global campaign on Women's Human Rights targeted a series of UN world conferences and used these to promote public awareness and seek concrete commitments to women's human rights.

The recognition of these problems by the world community led to the adoption of a UN Decade for Women (1976-1985) as well as the Convention on Elimination of Discrimination against Women (CEDAW) 1979 which sets the standards for eliminating discrimination between men and women. The UN Decade for Women's three major themes are: equality, development, and peace.<sup>36</sup>

Equality means elimination of what is by law or in actual situation discrimination against women and full observance of the equal rights of women. The main international instrument promoting equality between the sexes is CEDAW which has been ratified by more than 115 countries. The convention now has an additional protocol allowing

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<sup>31</sup> Ibid at 14.

<sup>32</sup> Ibid at 14-15.

<sup>33</sup> Ibid at 17-18. She also stated other so-called third generation rights which include the right to self-determination, the right to share in and benefit from the common heritage of mankind, the right to peace, the right to a healthy and balanced environment and the right to humanitarian disaster relief.

<sup>34</sup> Para 7 of the preamble to the African Charter.

<sup>35</sup> Okagbue, *op cit* p 18.

<sup>36</sup> Iber, D, "Factors Inhibiting Women's Rights in West Africa," ISHR WAC p 2.

individual complaints before the UN Human Rights Committee in case of serious breaches.<sup>37</sup>

Development sought to integrate women into all development planning efforts, to eliminate their marginalization based on psychological, social and cultural grounds.<sup>38</sup>

Peace was mentioned as international peace – this has been disturbed by international tension and conflicts resulting in gross violation of the UN Charter and in which women suffer most in time of crisis. The decade sought to address this problem. Furthermore, the draft Declaration on Violence against Women recently adopted by the UN condemns physical assault, sexual harassment or psychological injury to women. The Declaration then calls on governments to prevent, investigate and punish every violence against women whether committed by individuals or states and their agents.

Article 1 of CEDAW defines discrimination against women as:

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

This comprehensive definition of discrimination is meant to address the multifaceted nature of problems women face. States are bound to eliminate discrimination as defined by Article 1. So they are also obliged to eliminate discrimination against women in all spheres of life, especially the family.

CEDAW is a radical document that aims to change and transform the structural barriers to equality. Rather than just adding to the list of rights already covered by other treaties, it emphasizes the importance of changing the system within which women's rights are violated.

Other measures taken to ensure women's empowerment include UN conferences on women and other meetings held since 1974 which address human rights as well as social, development and economic issues. The World Conference on Human Rights held in Vienna, Austria in 1993 adopted the historic declaration that "women's rights are human rights." At the Population and Development Summit held in Cairo, Egypt in 1994, thousands of women brought visible support and added strength to the new widely accepted concept of women's reproductive rights. The declaration and programme of action arising from the World Summit for social development in Copenhagen, Denmark in March 1995 contained very extensive and far-reaching commitments. They include the creation of an enabling economic, political, social, cultural and legal environment that will enable people to achieve social, development, eradicating poverty in the world, promoting the goal of full employment, social integration and full respect for human dignity as well as achieving equity and equality between women and men. By this, the Copenhagen Declaration effectively merged women's rights into the broader covenant on human rights and the central role of women into social development. The theme of the Fourth World Conference on Women held in Beijing, China (September 4-15 1995) was titled Action for Equality, Development and Peace. The Conference focused on the need to enhance the economic employment of women, noting the increasing "feminization" of poverty and inequality in economic structures and policies in all forms of productive activities and in access to resources.

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<sup>37</sup> Ibid. There are other International Conventions which are precursors to CEDAW. For example, the Equal Remuneration Convention 1951, the Convention on the Political Rights of Women 1952, the Convention on the Nationality of Married Women 1957, the Convention Against Discrimination in Education 1960, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1952.

<sup>38</sup> Ibid.



The Conference also emphasized the crucial link between the advancement of women and progress for society as a whole.<sup>39</sup>

### **Situational Analysis of Women's Right in Africa**

Since the drafting of CEDAW in 1979, global attention has focused on eradicating all forms of gender related violence. Instructively, however, though the world has come to accept that women's rights are human rights, governments across the globe especially in Africa have lacked the will to put in place structures that could strengthen and protect the rights of women.

Such was the dismal situation on the global scene when the UN Secretary General, Kofi Annan, said that there could be no real progress if the world still condoned violence against women. He said:

Violence against women is perhaps the most shameful human rights violation and it is perhaps the most pervasive. It knows no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to be making real progress towards equality, development and peace.<sup>40</sup>

In Africa the situation of women is most precarious, because most African legal systems do not make specific provisions, apart from the general non-discrimination clauses, to advance the cause of women. Francophone legal systems in Africa have done much better in formulating family laws, either in their constitutions or as separate codes. Similarly, Islamic states have made provisions, though not always fair to women. Anglophone countries, with the exception of Ghana, Tanzania and recently Kenya, have no elaborate legal provisions on the family. And this, in most cases, has tended to put women in subordinate positions within the family.

### **The Ugandan Example**

In Uganda, women's cries for equal rights seem to emphasize oppression within the family unit. Very few women can comprehend the colonial and neo-colonial forces that underlie the exploitation of both men and women. Women have a point when they attack those aspects of culture and law that are visible and which tend to emphasize what is detrimental to their social advancement and enjoyment of equal rights.<sup>41</sup>

Ugandan women have been so subjugated or subordinated that they hardly think of themselves as humans. A poem written by Mrs Maria Matembe depicts the dehumanizing situation of Ugandan women.<sup>42</sup>

Domestic violence against women in Uganda has also accounted for the rapid growth in cases of HIV infection. The experience of many Ugandan women illustrates the ways in which domestic violence can play a critical role in rendering women vulnerable to HIV infection. As a result of violence or a fear of violence, Ugandan women are unable to protect themselves from infection and have access to HIV/AIDS services.

In addition to women's greater physiological susceptibility, social, cultural, and legal forms of discrimination compound their vulnerability to HIV. Domestic violence, already a leading cause of female injury, deprives women of bodily integrity by eliminating their ability to consent to sex, negotiate safer sex, and determine the number and spacing of their children. In many cases, the threat of abandonment or eviction

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<sup>39</sup> Iber, D, *op cit* 2-3.

<sup>40</sup> Aderibigbe, Y, "Women and the War against Gender Violence," *The Guardian* (Lagos), Thursday, October 21, 2004, p 15.

<sup>41</sup> Kakwenzire, J, "Women's and Children's Rights in Africa: An Analysis" in Abayomi, T (ed) *Human Rights and Democracy in Africa – Yesterday, Today and a Vision of Tomorrow*, Lagos, Adroit Pegasus Associates, 1993, 150.

<sup>42</sup> The poem is reproduced at the end of this article as an appendix.

constraints economically dependent women to remain in abusive relationships, thereby exacerbate their vulnerability to HIV infection. One HIV positive woman said:

He used to force me to have sex with him. He would beat and slap me when I refused.... The very first time I asked my husband to use a condom because I didn't want to give birth he said no. he raped me and I got pregnant,. I'm still with him because I don't have a cent. He at least pays the rent.<sup>43</sup>

Many women in Uganda viewed domestic violence as a natural by-product of marriage. Customs such as the payment of 'bride price,' whereby men essentially purchase their wives' sexual favours and reproductive capacity, underscores men's entitlement to dictate the terms of sex. practices such as widow inheritance by a man of his brother's widow can expose women to unprotected and unwanted sex with HIV-positive partners.<sup>44</sup>

An examination of the Ugandan Constitution of 1962 shows that it has provisions that actually promote discrimination against women. Article 20(3) reads:

For the purpose of this article, the expression discriminatory means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place or origin, political opinions, colour and creed, whereby persons of such descriptions are subjected to disabilities and restrictions to which persons of such other descriptions are not subjected to; as are not accorded privileges or advantages which are not accorded to persons of another description.

In the above provision, the Constitution did not mention discrimination based on sex. This is an unfortunate omission. The Constitution outlaws other forms of discriminatory tendencies, save in customary and family laws, areas where discrimination against women are most pronounced. In defence of custom, article 20(1) of the Ugandan Constitution 1962 reads:

Subject to the provisions of clause (4) of this article, no law shall make provisions that are discriminatory either of itself or of its effects.

Clause (4) reads:

Clause (1) of this article shall *not* apply to any law so far as that law makes provision to [among other things]

(a) adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; or

(b) for application in the case of a particular race or tribe of *customary law*.

Unfortunately, Uganda still pursues and maintains a legal regime that not only fails to terminate discrimination against women, but also contributes towards the same. It has thus failed to protect and achieve, as it is obliged, the practical realization of women's rights. The current legal system does not provide an enabling environment within which these rights can be fully protected and enjoyed. Equally disheartening is the fact that a mere change in the law – which Uganda has done and continues to do – is not enough to completely and adequately address the many issues that affect women. Reliance on the law and law reform merely provides statutory/theoretical protection and is in itself not sufficient to achieve the practical realization of women's rights.<sup>45</sup> It is interesting to note that most of the laws in Uganda do not on their face appear discriminatory against women. Indeed, for the most part, they use non-sexist language which encompasses – at least on paper – both women and men and which therefore ostensibly protect both. Save for a few cases, the laws appear to offer similar

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<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Naggita, E D, "Why Men Come Out Ahead: The Legal Regime and the Protection and Realization of Women's Rights in Uganda," (2000) 6 (No 1) *East African Journal of Peace and Human Rights*, 34-35.

guarantees and protection to both women and men. Unfortunately, it is this kind of legal regime that has rendered women invisible by assuming that they are at parity with men.<sup>46</sup> In practice, however, factors such as cultural beliefs and customary practices (which are recognized as part of the law of Uganda) have rendered the legal protection of women's rights inadequate and insufficient.<sup>47</sup>

The 1967 Constitution provides for equality for all, but unlike its 1962 predecessor, it did not prohibit discrimination on grounds of sex. It also allowed discrimination in matters of personal law, that is, marriage, divorce, adoption, succession and inheritance.<sup>48</sup> Most creditworthy in the National Reform Movement's gender equality efforts has been the promulgation of the 1995 gender-sensitive constitution, probably the first of its kind in Africa. Unlike earlier Constitutions, the one of 1995 addresses itself specifically to the question of the status of women.

The 1995 Constitution marks a significant departure from its predecessors in that it endeavours to address past omissions and redress the mistakes and shortcomings in the area of gender, both procedurally and substantively.<sup>49</sup> Yet, it is apparent that this undertaking has been approached from the wrong premises and its emphasis misplaced. The major emphasis has mostly been directed towards the use of gender-neutral/non-sexist language and the enactment of gender-neutral laws. While this appears politically correct, in practice it does not necessarily translate into gender sensitiveness or positive consideration for women's rights. In spite of the neutral laws, however, other factors that interface with the legal regime have remained unchanged. In other words, the ways in which men and women operate in society have recognized historically and culturally constructed and socially located.<sup>50</sup> Thus, in spite of the gender-neutral laws, the existing unequal opportunities between women and men have rendered women more invisible.<sup>51</sup>

### **The South African Position**

Section 9(1) of the South African Constitution 1996 provides for equality of all persons before the law and the right to equal protection and benefit of the law. Section 9(3) states:

The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair *unless it is established that the discrimination is fair*.

The phrase "unless it is established that the discrimination is fair" has to be with the peculiar situation of South Africa, the erstwhile apartheid system, where some people had been disadvantaged in the past in the sphere of politics and economics and a justifiable discrimination is desirable to remedy the injustices.

The realities of women's human rights in South Africa is however much the same with other African countries in that the rights of women is obscured by African culture and tradition. Violence against women has been described as the most extreme expression of the gender inequality that underscores social relations in South Africa.

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<sup>46</sup> Ibid at 35.

<sup>47</sup> Ibid at 35.

<sup>48</sup> Tuhaise, N P and Kibalama, E, "Affirmative Action and the Status of Women in Uganda," (2000) 6 (No 1) *East African Journal of Peace and Human Rights*, 100.

<sup>49</sup> Ibid at 101.

<sup>50</sup> Naggita, E D, *op cit*, citing Bazilli, S (ed) *Putting Women on the Agenda*, 1991, 8.

<sup>51</sup> Ibid. See also Nyemu, C I, "The International Human Rights Regime and Rural Women in Kenya," (2000) 6 (No 1) *East African Journal of Peace and Human Rights*, 1-33.

This violence exists in numerous forms, and it has been estimated that one in four South African women are victims of gender-based violence.<sup>52</sup> Violence against women is not merely a post-apartheid occurrence. It has always been part of South Africa's social fabric in all cultures and racial groupings; it was just kept quiet.<sup>53</sup>

### North Africa

Throughout the world, perhaps as many as 5,000 women and girls a year are murdered by members of their own families, many of them for the "dishonour" of having been raped, often as not by a member of their own extended family. Many forms of communally sanctioned violence against women, such as "honour" killings are associated with the community's or the family's demand for chastity and virginity. In Egypt, a father paraded his daughter's severed head through the streets shouting "I avenged my honour." "Honour" killings tend to be more prevalent in, but not limited to, countries with a majority of Muslim population. However, Islamic leaders have condemned the practice and say it has no religious basis.<sup>54</sup>

### The Nigerian Situation

In Nigeria the traditional concept is that a man's wife is part of his properties. And one of the human rights norms in the 1999 Constitution is section 42 which gives to every Nigerian citizen the right to freedom from discrimination. This includes the fact that no Nigerian citizen shall be discriminated against on grounds of sex.

As far back as 1935, the Chief Secretary to Government, in a reply to Lady Abayomi's representation that "both sexes must be equally and fairly educated" and equally paid, said;

Women don't make good saleswomen and since women don't have the financial responsibilities as men, they should not receive equal salaries.

This is clearly a classic example of discrimination. Discrimination against women on grounds of sex runs through the classical era during which the women's domestic position was completely subordinated to that of the man (*patra potestas*) whether he was the father, brother or husband. Women had rather little, if any at all, legal personality.<sup>55</sup>

Even in contemporary Nigeria, despite constitutional provisions, the political rights of women remain greatly circumscribed by law and tradition.<sup>56</sup> Women are daily denied access to politics, education, health, etc. In matters of inheritance and succession, attention is normally directed to the male members of the family to the exclusion of the female members. In the parental home, the girl is treated as a temporary member. Unfortunately also, when the woman is received in marital family, she is also received as a stranger and a temporary member of that family since there can be a divorce.

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<sup>52</sup> Harper, C, "Rights for all in the New South Africa," *Human Rights Dialogue*,8.

<sup>53</sup> Ibid. This writer was privileged to visit South Africa in November 2004 and had opportunity to interact with South Africans on this topical issue of women's human rights. He was able to gather from women the resentment in which their male counterparts hold them. The response was that "our men don't like us that is why we like foreigners, especially Nigerians. They are caring." Further, on various TV channels in South Africa various forms of abuse against women, abductions and rape are shown on a daily basis. Before this writer left South Africa, there was a 16-day campaign and appeal by women organizations to project women as human beings and not as slaves or something to be taken at the convenience of men.

<sup>54</sup> "Widespread Violence against Women in Africa," documented @afrol.com, p 2.

<sup>55</sup> Justice P Nnaemeka-Agu, "Human Rights and Domestic Law" in Nweze and Nwankwo (eds) *Current Themes in the Domestication of Human Rights Norms*, Enugu, Fourth Dimension, 2003, 21-22.

<sup>56</sup> The 2005 National Conference (Confab) is a good indication of women subordination. The Confab is peopled by men and the number of women is greatly insignificant. Activists in Ogun State sued the State Government for non-inclusion of women in the State's delegates to the Confab. Oyo State delegation had no woman delegate to the Confab.

There is also the problem of domestic violence which comes in various forms and often involves physical battering of the wife to resolve conflicts, sexual harassment, denial of income for upkeep, female genital mutilation (FGM) or female circumcision, widowhood practices/rites and widow inheritance rights.

In some customs in Nigeria, a woman is not allowed to inherit her husband's estate, instead she may be inherited along with the estate of her husband by another male in the family.<sup>57</sup> Other customs in Nigeria give preference to the male child against the female in matters of inheritance.<sup>58</sup> The law supports such custom if properly pleaded and proved.

However, there seems to be some hope in the horizon. In *Mojekwu v Mojekwu*<sup>59</sup> the Court of Appeal declared the 'oli-ekpe' custom of Nnewi which permits the son of the brother of a deceased person to inherit his property to the exclusion of his female child as discriminatory and therefore inconsistent with the doctrine of equity. In his landmark judgment, Tobi JCA stated:

We need not travel all the way to Beijing to know that some of our customs, including the Nnewi 'oli-ekpe' custom ... are not consistent with our civilized world in which we all live today, including the appellant. In my humble view, it is the monopoly of God to determine the sex of a baby and not the parents. Although the scientific world disagrees with this divine truth, I believe that God the Creator of human being, is also the final authority of who should be male or female. Accordingly, for a custom or customary law to discriminate against a particular sex is to say the least an affront on the Almighty God himself. Let nobody do such a thing. On my part, I have no difficulty in holding that the 'oli-ekpe' custom of Nnewi is repugnant to natural justice, equity and good conscience.

This is a welcome respite on women's human right in Nigeria. In spite of this however, a lot of customs still continue unabated in Africa that impinge greatly on the human rights of women.

It can be said however that in Nigeria, the struggle for equality between males and females has shifted from women's efforts to win equal and respectable positions in the home and society which was inflicted upon them by traditional African values to their unchallengeable assertion of their right to equal access to society's resources. This is more so with regard to positions in the governance of the country, to education, jobs to its economy and all the good things of life.<sup>60</sup> Even in Uganda and in other African states due to the activities of women groups and NGOs in awareness campaign and

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<sup>57</sup> *Tribunal on Violations of Human Rights in Nigeria* 2002, CIRDOC Public Education Series No 12, Enugu, Fourth Dimension, 40-41.

<sup>58</sup> The Benin custom backs the first son, whether he is first in line or not, the power to inherit the Igiogbe, i.e. the house which the deceased used and recognised as the family house: *Ogbahon v Registered Trustees, CCG (2001) FWLR (pt 80) 1496 (CA)*; *Adeniji v Adeniji* [1972] 1 All NLR (pt 1) 298 (eldest son is head of family, not the eldest child – a daughter). Among the Aniochas of Delta State, the first son inherits everything in trust for his siblings and his mother.

<sup>59</sup> [1997] NWLR 572.

<sup>60</sup> Justice Oputa recounted instances of abuses of human rights in the Eastern part of Nigeria. He said in ancient Nigeria, the father and after him the husband had the detestable Roman *patria potestas* which included the right and power to discipline, to sell or even kill his daughter (in case of the father) or his wife (in case of the husband). Women thus having no legal status correspondingly had no legal rights. He mentioned also how were dehumanized during burial and funeral rites of their husband: she is forced to shave her hair – pubic hair inclusive – drank water used to wash the dead and sleep almost naked on a bare floor. In the area of ownership of property and the payment of bride price and dowry which depict outright sale of the woman, a license for the beastly behaviour of the man against his wife: Oputa, C, "Women and Children as Disempowered Groups," *op cit*, 8-10. In Senegal, if a woman is beaten by her husband for a wrong done to him or for whatever reason at all whether the woman is wrong or right, it is incumbent upon the woman to beg and seek his favour by whatever means she can or else the gods would not be happy with her and she might not prosper in her ways unless her husband forgives and blesses her.

sensitization of women and their impact on government activities, we now have more women in the political and economic spheres.

Despite these developments, majority of African women still live under the scourge of male domination. The rural women do not know about the activities of women groups and NGOs. This is an area where NGOs should beam their searchlights to educate the rural women and bring them out of ignorance about the progressive wind of change that is taking place globally.

Also, African governments have not been forthcoming in carrying out their international obligations with regards to women's human rights. They only pay lip service to international treaties without making efforts to abide by them. Apart from a few African countries that have developed separate codes for the enforce of women's human rights, most of them still rely on the general non-discrimination clauses in their constitutions, and this is not enough to liberate women.

Furthermore, statistics in the area of women abuse are notoriously difficult to establish largely because of under-reporting. In January 1999 South African Police Services Child Protection Unit in Kwazulu-Natal received 320 reports of rape of children and teenagers under 18 years alone. But statistics exposed just a small extent of the crime. This is due to several factors: the acceptance of such violence as normative by individuals and authorities, lack of confidence and trust in the police, the embarrassment women experience in describing assaults of a sexual nature. Other factors include economic dependence on abusers, the fear of future retaliations, and the difficulty in obtaining convictions.<sup>61</sup>

Another factor which seems to propagate the denial of women's human rights in Africa is the importance placed on the family as the most institutional unit. Statistics on domestic violence are, if anything, difficult to establish. Domestic violence takes place within an ideological context that views the family or household as the private sphere. A review of literature seems to indicate more and more that the family can no longer be regarded as the traditional scene of love and serenity, but is rather a potentially dangerous institution, and a conflict-prone one.

The African Charter on Human and Peoples Right, even though professing to eliminate every discrimination against women and also censure the protection of the rights of the woman and the child s stipulated in international declarations and conventions,<sup>62</sup> seems to be blowing hot and cold as it elevates and promotes the family and traditional values of the society.<sup>63</sup> Our contention is that the value and traditions and customs are the fora by which women's human rights are trampled upon.

## Conclusion

In this paper we have made efforts to state that despite the very many international instruments promoting human rights generally and women's human rights in particular, the incidence of women human rights abuse still pervades or permeates every cultural strata in Africa.

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<sup>61</sup> Roopnarian, U, "A Gendered Perspective on Violence in South Africa," [File://A:\PR...\Feminista](#) IV 2n 11 page 2 of 7. In relation to the difficulty in obtaining conviction on assault or rape against a woman, see Kakwenzire, J's account, *op cit*, 157 where she quoted an example of male chauvinism in a Ugandan court of law. Recently a village woman sued a man for raping her niece. While recounting the episode she could not call a spade a spade due to some cultural hang-ups. So she used local jargon to express herself which is perfectly understood by at least everyone in Kampala. The magistrate wishing to ridicule and embarrass the lady insisted that she use specific names and words to describe the episode. The poor woman could not, and the magistrate remanded her in custody for some days allegedly for contempt. There was a public outcry in the newspapers and the woman was released. But the humiliation had had its impact. That lady will think twice before suing any other man, and many other women who read that story would also probably shy away.

<sup>62</sup> Article 18(3).

<sup>63</sup> Article 18(1) and (3).

Worldwide, the initiative of NGOs on violence against women is one of the most important contributions to ending gender-based oppression. They should however be more present in the rural areas in their awareness and sensitization campaign of the rights of women. Through the work of African NGOs, with the support of international organisations, FGM is being challenged and the practice outlawed, giving millions of girls and women hopes for a life with rights, health and security.<sup>64</sup> Further, the principle of human rights and especially women and children's rights should be simplified and taught in secondary schools as part of the curricula as done in South African schools.

African governments should live up to their obligation under international treaties and conventions. They should also legislate specifically on women's human rights and criminalize all violations or abuses on women's human rights.

In order to achieve real rights of women and their full participation in nation building and self development, it has been suggested that there should be gender partnership, `a new social contract in which men and women work in equality and complementarily.<sup>65</sup> The Universal Declaration on Democracy states that "The achievement of democracy presupposes a genuine partnership between men and women in the conduct of the affairs of society in which they work in equality and complementarily, drawing mutual enrichment from their differences." Professor Okorodudu Fubara opined further that the stumbling block to the realization of an ideal situation in the human society is how to get that major shift in values and mindset for the men to now make a u-turn and accept women as equal partners in either politics, the paid labour force or as equal contributors to society's well-being and development. This is a big problem all over the world. The Inter-Parliamentary Union Surveys revealed that "whatever a country's historical experience and the degree to which attitudes have evolved, the fact remains that men are reluctant to accept women as political partners. This only reinforces the fact that a great deal of awareness-raising still needs to be done."

The truth of the above assertion is that men need to re-orientate their minds and come to the reality of accepting the women as equal partners in every facet of life. If no drastic measures are taken to remedy the injustices suffered by women, then the second half of humanity, women, will remain subjugated.

## **APPENDIX – WOMEN OF UGANDA BY MRS MARIA MATEMBE**

Women of Uganda

What should I call you?

I am desirous of giving you a name

But which one?

Which name shall I give you?

Shall I call you tractors?

For you to till the land

Which you do not own

Yes, you till the land all day long

But what is your pay?

What payment does a tractor receive for tilling the land?

Please help me answer.

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<sup>64</sup> "Widespread Violence against Women in Africa Documented" @afrol.com.

<sup>65</sup> Okorodudu-Fubara, M T, "Constitutional Democratic Values in the New Millennium: Legal Reflections on Socio-Cultural Effects of Women Empowerment," paper presented at the Society Role Model and Achievers Gold Award Programme on Saturday, July 24, 2004, Ikeja, Lagos.

Women of Uganda  
What shall I call you?  
I am desirous of giving you a name  
You deserve yet another name  
But which one?  
Please advise me  
Which name shall I give you?

Shall I call you factories?  
For you produce children  
Whom you neither own nor control  
Yes, you are factories for you have no control over your uterus  
You are better factories when you produce sons  
But rejected factories when you produce girls.  
But what is your pay?  
What payment does a factory receive for production?  
Please help me answer.

Women of Uganda  
What shall I call you?  
You deserve yet another name  
But which one?  
Please advise me  
Which name shall I give you?

Shall I call you donkeys?  
Yes, you are donkeys  
For you are ever heavy laden  
With luggage, both on head and at the back  
Tomorrow it is firewood on the head and a seven month pregnancy  
But what is your pay?  
What payment does a donkey receive for carrying a load?  
Please help me to answer

But women of Uganda  
Donkeys are treasured by their owners or masters.  
Tractors are also treasured by their owners and users.  
But what about you?

Who treasures you?  
Who knows your worth?  
Beasts of Burden they call you  
Chattels is your name  
For they buy with bride price.

Women of Uganda  
I mourn for you  
You are at the center of production  
But are at the periphery of benefits  
You hold half the world



But you own nothing;  
You have no property,  
You have no home  
You have no children

Women of Uganda  
For how long will this be?  
For how long will you be silent?  
Time has come that you must talk  
Yes, you must shout that the world may hear  
That your dues will be granted  
And a better name you shall get.