

WOMEN'S RIGHTS IN AFRICA: A PENDULUM BETWEEN RAISED HOPES AND REALISED DREAMS

By

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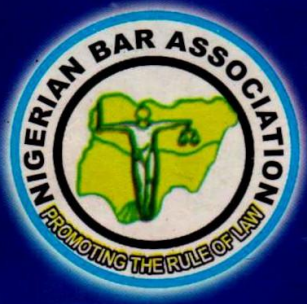
Abstract

It is difficult to deny the fact that women's rights in Africa have its own uniqueness in terms of ideology, legal framework, implementation and challenges. This paper retrospectively and introspectively examines women's rights in Africa within the above contexts. With the global awakening on the multi-facets of women's rights, African women who hitherto were either at the rear or at the balcony, in terms of their rights, started having high hopes in the giant promises made by the African Union and national governments through programmes, declarations and instruments. Sadly, like a pendulum, women live in between promises and fulfillment. There is no certainty that these hopes have been realized because of the failure of the promisors to take practical steps to ensure that the promises are fulfilled. This paper does not only diagnose the reasons behind the failed promises, but it goes further to suggest how they can be steadily realized.

1. Introduction

For those who travel long distances on high ways, more often than not, the reflection of the sun on tarred roads create the impression that one is approaching a sea few meters away. Unfortunately, when you draw closer, you find that the sea literally vanishes. It was just a mirage! The issue of women's rights in Africa may not exactly be described as a mirage, but it is a reflection or story of the uncertainties, unpredictability and

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difficulties that women bemoan on the journey between the promise of their rights and the point of realization of their rights. Women's rights are gradually gathering momentum in Africa and a lot of strides have been made in this regard. On this point it was observed as follows:

Perhaps the greatest demonstration of Africa's determination to improve its human rights situation occurred when the African Ministers of Justice and Attorneys-General met in Tunis in November 1992....The meeting further emphasized the need to improve the human rights situation in Africa through elevating the status of women and children in African society by supporting their rights and defending their democratic participation in and contribution to natural development. . .¹

This paper is an exegesis of the rights of women in Africa. The writer adopts a combination of the narrative, interpretative and comparative methods to examine the topic. The paper highlights, from a historical and contemporary perspective, the struggle for the realization of women's rights in Africa. The paper also examines the conception, recognition and protection of human rights in Africa with that of the western world not just as an exemplar, rather the paper proceeds to articulate the peculiar challenges of women's rights in Africa. The paper unveils peculiar factors militating against the realization of these rights and ends with recommending key actions that the respective stakeholders can play in moving women's rights in Africa from the point of raised hopes to realized dreams by way of protection, enjoyment and enforcement of these rights.

¹ D.D. Nanjira, "The Protection of Human Rights in Africa: The African Charter on Human and Peoples Rights"; in Jamisz Symonide (ed.) *Human Rights :International Protection, Monitoring ,Enforcement* (England: Ashgate Publishing Limited, 2003) p.231.

2. **Women's Rights: A Global Concern**

The issue of women's rights cuts across all facets of human endeavor and it has attracted a lot of attention. As Gold rightly put it:

Women's issues affect not only women; they have profound implications for all humankind. Women's issues are human rights issues. We, as a world community cannot even begin to tackle the array of problems and challenges confronting us without the full and equal participation of women in all aspects of life.²

It is difficult to trace with certainty the origin of the clamour for women's rights. This is possibly because of the multi-faceted nature of women's rights, the varying stages of development of women's rights and poor records of the demands for women's rights in some parts of the world.³ To this writer, one of the oldest records of the clamour for rights of women arose about 6000 years ago. This had to do with the demand by the "Daughters of Zelophedad" for female inheritance of landed property and the right to protect the property of their deceased father in the ancient Israel.⁴ Another informed, notable and historic record of the clamour for women's rights is said to have occurred in the year 1790 in the United States of America, when Abigail Adams, wife of the second President of United States of America wrote to her husband about the need for the respect and protection of the rights of women in the young American nation. She wrote as follows:

² S. D Gold, *Roberts V. Jaycees: Women's Rights*(New York: Marshall Cavendish Bench Mark, 2009) p.118.

³ Some complaints and agitations of women have not been seen as a struggle for 'rights' in the proper sense of the word. For example the Seneca Falls declaration of 1948 is often regarded as the declaration of "Sentiments" .See Harper, T post for more on the declaration.

⁴ See The Gideons International Inc., *Holy Bible* (Nashville: The Gideons, 1980) p.180 Numbers 27 Verses 1- 10.

Remember the ladies and be more generous and favourable to them than your ancestors. Do not put such unlimited power into the hands of the husbands. Remember all men would be tyrants if they could...if particular attention is not paid to the ladies, we are determined to form a rebellion and will not hold ourselves bound by any law in which we have no voice or representation.”⁵

Although there may have been in existence pockets of agitations for rights of women at various levels, the history of formalized public agitation for the rights of women has been traced to the year 1848. According to Harper⁶

Many point to the start of the women’s movement as the two-day women’s rights convention held in Seneca Falls, New York, in July 1848 organized by Lucretia Mott and Elizabeth Cady Stanton, the convention concluded with a Declaration of Sentiments that objected to the unfair treatment of women politically, culturally and economically. It was the first large scale public demand for women to have the vote.

The above mentioned Seneca Falls convention generated a lot of concerns and sparked off series of activities at the individual and group level as women became more conscious of their rights.⁷ Series of advocacy and litigations were commenced by women to enforce their rights and they secured judicial

⁵ C. Lunardini, *What Every American Should Know About Women’s History* (Massachusetts: Adams Media Corporation, 1997) p.8.

⁶ T. Harper, *The Complete Idiots Guide To The U.S. Constitution* (USA: Alpha Books, 2007) p.210.

⁷ Prior to this time “women were regarded by some as too flighty or not smart enough or too concerned with taking care of their homes and families”. See T. Harper, *T Op. Cit.* p.6.

protection.⁸ The women in America proceeded to get the blessing of the Legislature which ultimately led to the Nineteenth Amendment of the Constitution.⁹

The campaign for women’s rights also developed through the formation of associations or advocacy groups. Among these were National Women Suffrage Association in 1969; National American Women Suffrage Association, 1890; National Association of Coloured Women, 1896; National Women’s Trade Union League for Improved Wages and Working Conditions, 1903 among others.¹⁰ What may be gleaned from the above is that the records of the clamour and championship of women’s rights tilt more towards America. However, the Aba Women’s Riot that took place in Nigeria, Africa in 1929¹¹ was one of the most notable demonstrations of the fact that male domination, even in a place such as Africa, was becoming most intolerable to women around the world. The riot was a fallout of direct taxation introduced in Nigeria, here one of the officers eventually assaulted a woman in the cause of trying to forcefully execute his functions. The women gathered in thousands and demanded among others for the removal of the man from his office, which they got and also secured his conviction for the assault.¹²

The pockets of agitation for the recognition and protection of Women’s Rights as seen today can be said to have assumed

⁸ For Example in the case of *Minor v Happersett*, 88 U.S. 162 (1874) the United States Supreme Court decided that women as citizens are entitled to register and vote under the Fourteenth Amendment to the Constitution. See T. Harper, *Op. Cit.* at p.212.

⁹ T. Harper, *Op. Cit.* p. 216.

¹⁰ See A. Imbornoni, “Women’s Rights Movement in the U.S.: Timeline of Key events in the American Women’s Right Movement” (1848-1920) available at <http://www.infoplease.com/spot/womenstimeline1.htm> accessed September 23, 2014.

¹¹ Full story of the cause of the riot and the effect is available at <http://www.historians.org/tl/lessonplans/nc/trask/abarebels.htm> accessed October 21, 2014.

¹² *Ibid.*

international recognition in the wake of the 20th Century.¹³ The formation of the League of Nations¹⁴ which was the first global common platform for examining issues affecting the nations of the world can actually be seen as the foundation for the global appreciation of the need to look into the rights of women. As Gasiokwu puts it,

The Covenant on the League of Nations represented an important step towards equality of men and women. In 1937, the League appointed an expert committee to undertake a comprehensive study on the legal status of women, the work of which was unfortunately interrupted by the outbreak of the Second World War.¹⁵

The efforts made under the League of Nations were reinforced when the United Nations Charter came into existence in 1945. The views of Poe, Wendel-blunt and Ho¹⁶ are worth noting:

International efforts to guarantee women's rights began, for most intents and purposes, with the passage of the UN Charter in 1945. In Article 55(C) of that Charter, it is stated that the "United Nations shall promote...universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." Countries acceptance of this document is a condition for gaining membership into the United Nations. Thus, it is a document that

provides a sound base, establishing the rights of women on an equal footing with men.

In 1946 the United Nations recognized the need to specifically examine the status of women since this was gradually becoming a global concern. Thus, the Commission on the Status of Women was established as other Commissions of ECOSOC.¹⁷ The adoption of the Universal Declaration of Human Rights in 1948¹⁸ was like the big Cap that crowned the global protection of the rights of women.

Sequel to the adoption of the Universal Declaration of Human Rights several other specific instruments and actions developed to give the rights of women a more secure footing globally. Some of these subsequent deeds are the International Covenant on Civil and Political Rights, 1966; The International Covenant on Economic and Socio Cultural Rights, 1966¹⁹. The United Nations General Assembly demonstrated a radical commitment to women's rights when it passed Resolution 3010(XVII) of 18th December, 1972 proclaiming 1975 as the International Women's Year. The global recognition of women's rights has also led to series of international conferences on women's rights where concrete resolutions and plans of action have taken place at the international plane.²⁰

¹³ For example the Hague Convention of 1902 dealt with issues of conflicts in National Laws on Marriage, Divorce and Guardianship of Minors; the 1904 and 1910 Conventions were adopted to combat trafficking in women. See Gasiokwu M. U. *Human Rights, History, Ideology & Law* (Nigeria: Fab Aniehi (Nig.) Ltd, 2003).

¹⁴ Signed at Versailles, June 28th 1919.

¹⁵ See footnote 13.

¹⁶ S. Poe, D. Wendel-Blunt, and K. Ho, "Global Patterns in the achievement of Women's Rights to Equality", *Human Rights Quarterly*, 19.4 (1997) p. 814.

¹⁷ See Z. Kedzia, "United Nations Mechanisms to Promote and Protect Human Rights" J. Symonide (ed.) *Human Rights: International Protection Monitoring Enforcement* (England: Ashgate Publishing Limited, 2003) p.22.

¹⁸ Adopted by the General Assembly of the United Nations on December 10, 1948. Article 2 prohibits distinctions on the basis of sex among others.

¹⁹ J. Ezeilo, "Genderizing the Judiciary in Commonwealth Africa for the 21st Century" in Ezeilo, J(Ed.) *Compilation of International Human Rights Instruments and Articles on Women's Rights* (Nigeria: Women's Aid Collective, 2003) p.21.

²⁰ For instance the International Conference of Women's rights, 1968; Mexico Declaration, 1975; CEDAW, 1979; Nairobi Forward Looking Strategies, 1985; Vienna Declaration and Programme of Action, 1993; Beijing Declaration of 1995 among others. See Ezeilo, *Op. Cit.* p.21.

The globalization of the rights of women had an impact on the regions of the world. The focus of this paper is on Africa, thus further discussions will be on the development of this rights in Africa.

3. Women's Rights: The African Promises

Unlike the western world, discussions about women's rights in Africa were for decades treated with great indifference. Hurdley summarizes the position as follows:

Although American and European women have achieved equality in most aspects of life, women in other parts of the world are still second class citizens who suffer discrimination and sometimes persecution...in parts of Africa; girls must undergo horrifying ritual of genital mutilation²¹

The development of women's rights in Africa is somewhat peculiar and a lot of global attention has been paid to the development of women's rights in Africa.²² There were in existence series of independent national struggles for women's rights in Africa.²³ Women's rights as we conceive it today in Africa was a gradual ancient metamorphosis from innocent struggles for better conditions of human life to gender sensitivity. McFadden gives a clearer insight as follows:

African women have been an important and increasingly visible part of modern African political life. We participated in anticolonial struggles as trade unionists, political leaders, wives and mothers-often in the more traditional ways that

²¹ J. A. Hurdley, *Women's Rights* (USA: Green Haven Press, 2002) p.161.

²² See for Example the United Nations Economic Commission for Africa, Eight Regional Conference on Women(Beijing +15) held on 19-20 November 2009 where the peculiar problems faced by the women of Africa were widely discussed by the UN Commission. See <http://www.un.org> accessed August 9, 2014.

²³ Like Aba women's riot of 1929 in Nigeria see footnote 11 ante;

women have entered politics. But we have also made fundamental changes to the body politic of Africa in very significant ways: By engaging in anticolonial struggles, we introduced gender into African politics, though largely through forms sanctioned by men, and often our entry was through the patronage of men. African women have fought patriarchy and male privilege for centuries. By involving ourselves in the anticolonial resistance, we crossed over the very boundaries which had constructed politics as a male preserve. Our presence in these movements, our rejection of women's traditional status, was met with resentment and resistance.²⁴

The corporate advancement of Human Rights in Africa can be traced to the formation of the Organization of African Unity in 1963²⁵ which among other purposes was to "promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights".²⁶ Although the United Nations Charter and The Universal Declaration of Human rights have provisions which can be used to protect the rights of women, women's rights in Africa has been historically bedeviled by ideologies which have had the effect of making the rights impotent in practice. As Diana Fox²⁷ observed:

The arenas of women's human rights and human rights in Africa specifically, are domains which emphasize the polemic of the relativist horn and the

²⁴ P. McFadden, "The Challenges and Prospects for the African Women's Movement in the 21st Century", 1997 available at <http://www.hartford-hwp.com/archives/30/152.html>, accessed October 11, 2014.

²⁵ Adopted In Addis Ababa, Ethiopia in May 1963

²⁶ See Article 2(e) of the OAU Charter.

²⁷ D. Fox, "Women's Human Rights In Africa: Beyond The Debate Over The Universality Or Relativity Of Human Rights", available at <http://www.africa.ufl.edu/asq/v2/v2i3a2.htm> accessed October 11, 2014.

Universalist horn. The perspectives of each surface in socio-cultural and philosophical questions about the relationship of the individual to society in Africa. The African Charter on Human and Peoples' Rights, adopted in 1986, underscores for many the tension between individual human rights and group or peoples' rights. In the relativist view, the sanctity of the extended family in Africa undermines the legitimacy of individual rights, viewed as a western import. Other human rights instruments too, such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), adopted by the General Assembly in 1993, privileges an independent, free woman.

At a continental level after the formation of OAU in 1963, some paper efforts have been made towards the advancement of the rights of women with specific reference to Africa. Notable among the continental stride is the African Charter on Human and Peoples Rights of 1981²⁸ where in the preamble there was an Undertaking by the Continent to "eliminate colonialism, neo-colonialism, apartheid, zonism...all forms of discrimination, particularly those based on race, ethnic group, colour, sex, language, religion or political opinion". Article 18(3) of the said Charter is very specific in the mention of women. It Provides: "The state shall ensure the elimination of every form of discrimination against women and also ensure the protection of the rights of the woman and child as stipulated in international declarations and conventions". The Constitutive Act of The African Union (AU Act), 2000²⁹ also pays particular attention to women in its preamble; one of the principles of the AU Act is Gender equality.³⁰ Another African Instrument that recognizes

²⁸ Adopted by the OAU in Nairobi in June 1981.

²⁹ Adopted in Lome, 2000, the AU is the successor of the OAU, see M.U. Gasiokwu, *Human Rights, History, Ideology & Law* (Nigeria: Fab Anieh (Nig.) Ltd, 2003).

³⁰ See Article 4(1) of the AU Act.

the rights of women is the Protocol on the African Human Rights Court, 1998 where adequate gender representation is required in the nomination of Judges to serve in the Court.³¹ One of most radical instruments on the rights of women in Africa is the Protocol on the Rights of Women in Africa, 2003.³² The protocol which has 32 Articles makes elaborate provisions for the clear definition, itemization, remedies, monitoring and interpretation of women's rights respectively.³³ It is pertinent to list the key issues and nature of rights addressed in the protocol in order to have a panoramic view of women's rights in Africa. The Protocol which comprises of 32 Articles addresses several rights of women. Interestingly, the Protocol goes further to address the rights of women in the private circles and not just issues that can only be seen in the public.³⁴ Article 5 addresses the issue of elimination of harmful practices and gives the details of such practices, especially those that are common in African societies like female genital mutilation, scarification, medicalization of the female genitals among others.³⁵ The issue of minimum age of marriage being 18 years, making of marriage voluntary and making monogamy as the preferred form of marriage is also highlighted in the Protocol. Married women are also given the right to retain their maiden names, nationality, equal rights with men to have their children go by the woman's nationality and right to acquire and manage their own property.³⁶ The rights of women in event of divorce are also provided for. Thus women have equal rights to seek for divorce and upon divorce they have right to equitable sharing of joint property deriving from the marriage.³⁷ Some other interesting

³¹ Adopted in 1998 at Addis Ababa, see Article 12(2).

³² Adopted in July 2003, entered into force in November, 2005.

³³ This is the first time that the African Union is dedicating an entire protocol to specifically canvass the rights of women.

³⁴ E. g Article 4(2) (a) obligates State Parties to enact and enforce laws to prohibit all forms of violence against women "whether the violence takes place in private or public"

³⁵ Article 5(a)(d).

³⁶ Article 6

³⁷ Article 7

rights are right to “be represented equally at all levels with men in all electoral processes”³⁸ and the “right to decide whether to have children, the number of children and spacing of children”³⁹ Widows are also given special rights. State Parties are to take legal measures to ensure “that a widow shall automatically become the guardian and custodian of her children after the death of her husband, unless this is contrary to the interests and welfare of the children.”⁴⁰ The Protocol goes further to address peculiar challenges faced by women such as right to inheritance, widow’s rights to inherit her husband’s property,⁴¹ protection of elderly women,⁴² women with disabilities⁴³ and women in distress.⁴⁴ The Protocol mandates State Parties to evolve appropriate remedies for violation and vests the jurisdiction of interpreting the Protocol on the African Court on Human and Peoples Rights (African Court).⁴⁵

A greater commitment of the leadership of Africa to the rights of women was shown in the Solemn Declaration on Gender Equality in Africa, 2004.⁴⁶ An important feature of the Declaration was the expansion and promotion of Gender parity in the Organs and Agencies of AU.⁴⁷ It is also instructive to note that a lot of African nations have not only ratified the above instruments but have also incorporated them into their municipal laws; beyond this too some of the countries have

³⁸ Article 9

³⁹ Article 14. The right to decide whether to have children or not is not contained in Article 15 of CEDAW which is akin to Article 14(1)(b) of Women’s Protocol. Thus the Women’s Protocol has more expansive provisions than CEDAW in a lot of regards.

⁴⁰ Article 20.

⁴¹ Article 21.

⁴² Article 22.

⁴³ Article 23.

⁴⁴ Article 24.

⁴⁵ See Articles 25 and 27.

⁴⁶ At Addis Ababa in July 2004.

⁴⁷ See Paragraph 4 of the Declaration.

domestic legislations geared towards the protection and enforcement of women’s rights. Looking at the legal foundation itself backed up by the myriads of declarations, is it not safe to say that there are highly raised hopes that the ills suffered by African women will not only become a thing of the past, but that women are guaranteed a glorious future?

4. The African Reality

A major issue about women’s rights in Africa is that the reality on ground, in terms of progress, is hardly commensurate with the reports, instruments and other areas of investment. This scenario is of serious concern even to African leaders. As was carefully set out in the Preamble to the African Charter the leaders were deeply:

Concerned that despite the ratification of the African Charter...and other International Human Rights Instruments by majority of states parties, and their solemn commitment women in Africa still continue to be victims of discrimination and harmful practices.⁴⁸

In this section the writer takes a panoramic view of the actual implementation of the aforementioned promises and pockets of reports or cases on experiences by women in Africa. A neater approach will be to discuss the reality on ground from the context of the African union, ratification status of state parties, local legislations backing up the rights of women, laws and practices that frustrate the move towards the rights of women and the live cases showing the existing paradigm.

⁴⁸ See Preamble to Protocol to the African Charter on Human and Peoples’ Rights on Rights of Women in Africa, Adopted in July 2003.

i) African Union.

The African Union has taken some steps towards the realization of women's rights. The first is by the several instruments and declarations as listed above. The next is the actual implementation of the contents of the instruments or declarations. An interesting example can be found in the preamble to the Solemn Declaration on Gender Equality in Africa⁴⁹ where it was stated as follows:

Standing by our Decision on gender parity taken at the Inaugural Session of the AU Assembly of Heads of State and Government in July 2002 in Durban, South Africa, implemented during the second Ordinary Session of the Assembly in Maputo, Mozambique, 2003, through the election of five female and five male commissioners.

Going by the above, the aspect of women's representation in bodies created by the African Union has to a large extent been addressed. One lacuna at the continental level is that of all the specialized technical committees established in Article 14 of the AU Act⁵⁰, there is none on women unlike the United Nations which had a commission in 1946 on women issues.⁵¹ What the AU has is a mere Women's Unit⁵². The absence of such specialized technical committee, it is submitted, leaves a yawning gap between the Africa Union itself and the women. Thus, there is no mechanism of the AU that deals with the core challenges of women from a specialized perspective. Another interesting effort made by the AU is the championing of the

⁴⁹ *Op. Cit.*, note 34

⁵⁰ *Op. Cit.*, see Article 14(1)(a-f) which lists several committees.

⁵¹ *Op. Cit.* See note 17

⁵² R. Rabouche, 'Laqbor, Land and Women's Rights in Africa: Challenges for the New Protocol on the Rights of Women' available at <http://www.law.harvard.edu/students/orgs/hrj/iss19/rebouche.shtml>. Accessed 8/9/2014.

rights of women in the area of development through the New Partnership for Development of Africa (NEPAD) which has as part of its mission statement the promotion of gender equality.⁵³

ii) African Commission

The African Commission on Human and Peoples' Right⁵⁴ which is responsible for receiving communications on violations of human rights.⁵⁵ The Commission has also helped in addressing the issue of violation of women's rights, ranging from freedom from discrimination, right to property, fair trial, and equality before the law among others.⁵⁶ Regrettably some of the cases are withdrawn before decisions are reached. For instance, in the case brought by *Interights on behalf of Safiya Yakubu Hussaini and Etal v Nigeria*⁵⁷ The complaint was filed by Interights on behalf of Safiya Yakubu Hussaini and others who have been allegedly subjected to gross and systematic violations of fair trial and due process rights in the Sharia Courts in Nigeria. The Complainant alleged that MsSafiya Hussaini, a Nigerian woman and nursing mother was sentenced to death by stoning by a Sharia Court in Gwadabawa, Sokoto State, Nigeria, for an alleged crime of adultery, which sentence was the latest in a series of serious and massive violations of the right to fair trial and associated guarantees. The Commission took steps to deal with the matter but before it could go far in the matter the Complainant wrote and withdrew the complaint.⁵⁸ In its attempt to reinforce and promote the rights of women in Africa, the

⁵³ *Ibid.*

⁵⁴ Established under the African Charter in 1987, see *PULP Op. Cit.* p. 96.

⁵⁵ See s.30 of the African Charter. Article 45 sets out the mandate of The Commission to include the power to investigate, hear complaints, make recommendations etc.

⁵⁶ See http://www.achpr.org/english/Decison_Communication/Egypt/Comm.%20261-02.pdf accessed October 25, 2014.

⁵⁷ 269/2003-available at http://www.achpr.org/english/Decison_Communication/Nigeria/Comm.%20269-03.pdf accessed October 26, 2014.

⁵⁸ *Ibid.*

African Commission on Human and Peoples' Rights (The Commission) created the position of the Special Rapporteur on the Rights of Women in Africa in 1998. The first Special Rapporteur, Commissioner Julienne Ondziel Gnelenga, served from 1998-2001 when her term as member of the Commission came to an end. In October 2001, Commissioner Angela Melo was appointed as Special Rapporteur on the Rights of Women in Africa.⁵⁹

iii) African National Courts.

One hypocritical fact about the issue of women's rights in Africa is the fact that some of the African leaders will participate in the adoption of some of the instruments enhancing the rights of women but nothing is done to ensure that these regional instruments or declarations are ratified by their countries, thus it takes a long time before some of the instruments affecting the rights of women enter into force.⁶⁰

A startling reality is the fact that in reality some African countries still have some practices that are in total negation of the rights of women in Africa. It is pertinent at this stage to look at some of the instances and cases in this regard. Some African national courts have also helped in addressing some of these problems. In the Tanzanian case of *Ephrahim v Patory & Anor*⁶¹ where females under Haya customary law had no power to sell land, the Court of Appeal relying on the International

⁵⁹ See African Commission website at http://www.achpr.org/english/info/index_women_en.html accessed October 25, 2014.

⁶⁰ For example the Protocol on the rights of women in Africa was adopted since 2003, as at 2007 more than half of the countries were yet to ratify the Protocol. See http://www.achpr.org/english/info/women_prot.htm accessed October 26, 2014. In some cases the reservations made by the countries seem to weaken the effect of the instrument in the country. For instance in 2005, Gambia made several reservations while adopting the protocol on Women's rights, although it eventually remove the reservations in 2006.

See same web page.

⁶¹ (1990) LRC p. 376

Instruments ratified by Tanzania held that discrimination against women on grounds of sex had been prohibited. In *Dow v. A.G. Botswana*,⁶² a landmark case in Botswana where the court held unconstitutional the 1984 Citizenship Act which denied citizenship to the children of female citizens married to alien fathers. In the Zimbabwe cases of *Rattigan v Chief Immigration Officer*,⁶³ *Salam v Chief Immigration Officer*,⁶⁴ and *Re Wood*⁶⁵ which dealt with rights of female citizens married to foreign husbands whose application for permits to work or reside in Zimbabwe had been denied by the Immigration Department. The court held that the action undermined and devalued the protection of freedom of movement accorded to each of the wives as a member of a family unit. In the Zambian case of *Longwe v Intercontinental Hotels*⁶⁶ the petitioner was refused entry in the respondent hotel on the ground that she was unaccompanied by a man. The court held that the petitioner had clearly been discriminated against on the basis of her gender contrary to the constitution by the application of the hotel's entry policy.

Notwithstanding the above, in a number of cases in Africa, the courts though acknowledging the fact of discrimination were blindfolded with the entronement of customs and traditions. In the Kenyan case of *Virginia Edith Wambui Amanim Akpabio v Joash Ochieng Ougo & Anor*⁶⁷ an attempt to use women's international human right standard failed dismally. The court refused to allow the wife to bury the husband contrary to Luo custom on the ground that no African citizen of Kenya can

⁶² Chloka Beyani in R. Cook (eds.) *Human Rights of Women*, (Philadelphia: University of Pennsylvania Press, 1994) p. 29.

⁶³ (1994) 1 LRC 343, Zim SC.

⁶⁴ (1994) 1 LRC 354, Zim SC.

⁶⁵ (1994) 4 LRC 153, Zim SC.

⁶⁶ (1993) 4 LRC 221.

⁶⁷ Court of Appeal at Nairobi 13th February, 1987, reported in E. Cotran (ed.) *Casebook on Kenya Customary Law* (1987).

divest himself of the association with the tribe of his father if those customs are patrilineal. It noted that section 82(3) (4) and (5) of the Constitution of Kenya allows for discriminatory rules respecting burial. Also in the Nigerian case of *Onwuchekwe v Onwuchekwe*⁶⁸ the court, though did not make reference to the Nigerian Constitution, toed the same line and refused to reject as repugnant to natural justice, equity and good conscience a custom under which women owned with their property.⁶⁹ Although in *Mojekwu v Mojekwu*⁷⁰ the Court of Appeal held unconstitutional and contrary to democratic values an age long Ibo customary law under which females were not allowed to inherit their father's property as their male counterparts.⁷¹

It is expedient to note that a lot of progress has been made in Africa towards the realization of the rights of women. On 8 March, 2009, over one hundred organizations, present throughout the continent, launched the Campaign "Africa for women's rights: ratify and respect!"⁷². This initiative aims to put an end to discrimination and violence against women in Africa, calling on states to ratify international and regional instruments protecting women's rights, to repeal all discriminatory laws, to adopt laws protecting the rights of women and to take all necessary measures to ensure their effective implementation. A tour of the report from some of the countries reveals that some form of realization of the rights is being experienced while in some countries so much needs to be done. Here the writer

⁶⁸ (1991) 5 NWLR 273 SC

⁶⁹ See also the Nigerian case of *Nzekwu v Nzekwu* (1991) 2 NWLR 373 and *Amadi v Nwosu* (1992) 5 NWLR 273 SC

⁷⁰ (1997) 7 NWLR 512, Judgment of the Court of Appeal delivered on April 10, 1997.

⁷¹ See generally E. Ezeilo, (ed.) "Influence of international human rights law on African municipal system" *Compilation of International Human Rights Instruments and Articles on Women's Rights* (Nigeria: Women's Aid Collective, 2003) p. 70-75.

⁷² Available at http://www.africa4womensrights.org/public/Dossier_of_Claims/DossierofClaimsENG.pdf accessed on September 28, 2011

reproduces some reports from a few African countries just to give an insight on the reality on ground.⁷³ The following are excerpts from the report in respect of some African countries.

In Burkina Faso, April 2009, a law was passed establishing a quota for women's representation on electoral lists. The law requires each political party to submit a list of candidates which includes a minimum of 30% women in local and national elections. Those parties that fail to comply received a 50% cut in funding. Despite the legal prohibition of early and forced marriage (*Code des personnes et de la famille*, art. 234), these practices remain widespread in Burkina Faso. Poverty and the prospect of a dowry push families to arrange religious marriages for their daughters as soon as they reach puberty, from age 11. Most of these young girls are illiterate, which facilitates their submission to their husbands and hinders their access to employment.

In Burundi, the adoption in April 2009 of a new Penal Code strengthening the repression of sexual and domestic violence and sexual harassment (art. 560) and prohibiting polygamy (art. 530). The 2005 Constitution provides for a minimum of 30% of women in the Government (art. 129), in the National Assembly (art. 164) and in the Senate (art. 180). The new electoral law of 2009 provides that Communal Councils must be composed of 15 members with at least 30% women (art. 181).

In Côte d'Ivoire, the establishment in 2006 of the Equality and Gender Directorate within the Ministry of the Family, Women and Social Affairs, responsible for coordinating government activities in the fight against gender discrimination and the adoption of the National Policy on Equal Opportunities, Equity

⁷³ *Ibid.* The reports give a country by country situation on ratification of women's rights instruments, domestic laws and practices in respect or violation of the rights of women.

and Gender in April 2009 to promote the consideration of gender in the public and private sectors.

In Ethiopia the adoption of amendments to the Family Code in 2001 which raised the minimum legal age for marriage to 18 for both men and women (art. 7), abolished the provision conferring marital power on the husband as the head of the family and added additional grounds for divorce (art. 76) by mutual consent of the spouses. The adoption of a Criminal Code in 2005 which criminalized several harmful traditional practices such as abduction (art. 586), female circumcision, infibulations or other harmful practices (art. 565, 566 & 567), early and forced marriage (art. 648), widow inheritance and polygamy (art. 650). It also criminalized domestic violence (art. 564). The adoption of the National Action Plan for Gender Equality 2006-2010 in 2005.

In Ghana, despite the adoption of the Domestic Violence Act 2007, domestic violence remains extremely prevalent in Ghana. It is estimated that 1 in 3 women in Ghana experience it within the family. Statistics from the DOVVSU in 2008 showed that 12, 245 cases were reported to the unit in that year. Problems include a general lack of public awareness of legal provisions and insufficient support for victims. Although the Domestic Violence Act prohibits doctors from charging fees for the medical reports required to bring complaints, in practice doctors continue to charge victims resulting in many abandoning their formal complaints.

In Guinea-Conakry, three types of law are applied: customary, religious and statutory law; creating confusion that undermines respect for women's rights. Adultery is considered a ground for divorce if committed by the wife. If committed by the husband; it will only be considered as such if the act took place in the family home (art. 341 and 342).

In Nigeria, Sharia law recognizes four main types of divorce. The *talaq* procedure can only be initiated by the husband. It allows him to repudiate the marriage by announcing out loud that he intends to divorce his wife. The *khul'* procedure allows a woman to request a divorce by paying a "ransom" to her husband in order to terminate the marriage. The *khul'uis* settled in court. The *tafriqand*, *faskh* procedures also require court intervention. Divorce is pronounced following an investigation into the truth of the wife's accusations. Under the Penal Code of Northern Nigeria, husbands are permitted to beat their wives provided it does not rise to the level of "grievous hurt" (section 55). Under Sharia law, the husband can withdraw maintenance if his wife refuses sexual intercourse. Under Sharia law (eg. Kano State Sharia Penal Code), a woman alleging rape must produce four witnesses to the rape. If the rape is not proved she can be punished for adultery with a prison sentence or flogging.

5. Key Factors Impairing the Realization of Women's Rights in Africa

The realization of the rights of women in Africa is still an on-going struggle with glimmers of hope here and there on one hand, and fears and hopelessness on the other hand. Having examined the reality on ground as set out above, this section of the work seeks to itemize some of the core factors that frustrate the realization of women's rights in Africa.

(i) Weak Enforcement Mechanisms at the International Level:

This is a chronic problem of international law and human rights⁷⁴ and the rights of women is not an exception. Article 26 of the Protocol to the African Charter on

⁷⁴ See Z.Kedzia, "United Nations Mechanism to Promote and Protect Human Rights", in J. Symonides, (ed.) *Op. Cit* pp. 3-90 where the writer overhauls the enforcement mechanisms and discusses the weaknesses inherent therein.

Women's Rights⁷⁵ makes room only for periodic reports from states for the purpose of monitoring; Article 27 vests the African Court on Human and People's Rights with the interpretation of the rights. The question is, how many people would readily want to go to the international court to challenge these actions suffered by women? Would states who are anti-women's rights make objective reports? These and many more questions beg for answers.

(ii) **Non-ratification, Reservations and Improper Implementation at National Levels**

As earlier noted, not all countries ratify the various instruments on women's rights.⁷⁶ In some cases the delay in ratification frustrates the effectiveness of the instrument in issue. Some countries ratify but make reservations about certain clauses while some have a hypocritical approach towards the implementation of these rights. Rebouche⁷⁷ discussed the issue with special reference to the Protocol to The African Charter on the Rights of Women as follows:

Whereas the African Charter and CEDAW allow parties to make specific and detailed reservations, there is no provision for reservations in the Protocol. A number of African states have ratified CEDAW with a long list of reservations. It is unlikely that states with extensive reservations under CEDAW would commit to the Protocol without exception. Some African states already registered objections to

⁷⁵ *Op. Cit.*

⁷⁶ For instance as at August, 2005, over 2 years after the protocol on the rights of women was adopted, only 12 of the 52 countries had ratified the Protocol. Thus even though more countries eventually ratified the Protocol, the slow pace of ratification affects the coming into force of the Protocol and ultimately realizing the hopes raised by the Protocol.

⁷⁷ *Op. Cit.*, see footnote 40.

certain provisions of the Protocol at the drafting meetings.

(iii) **Conflicting National Judicial Approaches.**

Sometimes some national courts refuse to give effect to some of these rights on one breath and in another breath they enforce same or similar rights. Thus, while some women enjoy the protections others are still at the stage of raised or damaged hopes. Addressing this subject Ukhun⁷⁸ observed in relation to some Nigerian Court decisions as follows:

The cases examined above show inconsistency on matters dealing with cultural discrimination against women. Apparently clear provisions of relevant human rights instruments, including the 1999 Constitution, should be the overriding guide.... While the decision in *Ukeje v Ukeje* rejects cultural discrimination against women, *Lawal-Osula v Lawal-Osula* and *Mojekwu v Iwuchukwu* (Sic-Mojekwu) appear to endorse such discrimination.

(iv) **Growing Distortion of Womanhood**

The growing invasion of the global scene with transsexualism and lesbianism is now raising concerns in African countries that it becomes difficult to appreciate whether the core vulnerabilities of womanhood have not been trampled on the ground by the invasion of these practices. There is a growing confusion on the rational for

⁷⁸ C. E. Ukhun, "Cultural authoritarianism, women and human rights issues among Es an people of Nigeria", *African Human Rights Law Journal*, Vol.5, No 1. 2005 pp.144-145.

some of these sensitive rights in Africa.⁷⁹ Horn captured this issue as follows:

African governments have largely sided with conservative “moralists” in discussing and voting on sexual rights. At Beijing, African governments were willing to consider a limited articulation of sexual health and rights in light of the related epidemics of violence against women and HIV/AIDS on the African continent (Klugman, 2000). However, with the exception of South Africa, African governments voted en masse to eliminate any mention of sexual orientation from the final document (Jimenez and Careaga, 2003: 21-22), and have held this position in subsequent negotiations. As Aken’ova comments, these experiences “have confirmed that the context in which [activists] work... promotes the heterosexual male as the uniquely empowered sexual agent” (2004c: 4).

(vi) **Lack of Enlightenment and Apathy Among Women**

Many women are still ignorant of their rights as provided for in the respective instruments. Others demonstrate indifference to these rights. Indeed most of the women in Africa are illiterate and have never come across the instruments on their rights, even if they were to see the instruments they cannot read them. Addressing this issue, Merry⁸⁰ discussed the aspect of “Vernacularization” of Human Rights for greater adaptability to local communities. On the aspect of indifference it has been

⁷⁹ J. Horn, “Re-righting the sexual body” available at <http://www.feministafrica.org/index.php/re-righting> accessed October 22, 2014.

⁸⁰ S.E. Merry, *Human Rights & Gender Violence* (United States of America: University of Chicago Press, 2006) p.219

reported that “...women also sometimes blame themselves for sexual assault, find it too painful to speak about to surveyors, or may not identify sexual assault, especially by an intimate partner as assault at all.”⁸¹

(vii) **Patriarchal Nature of African Society.**

The nature and structure of the African Society is patriarchal, thus concern for the rights of women is largely secondary. Thus, women’s issues rarely take centre stage in African society. McFadden⁸² supports this view about the patriarchal nature of African society and its effect on women’s rights.

... Our Africanness is defined by and through a patriarchal norm which defines Africans through the male. The establishment of authenticity for African women has to become a central tenet of the African Women’s movement in the 21st century. We must not have to derive and or reflect African. ~~ness~~ ~~ness~~ through any male.

(viii) **Impact of Democracy.**

Democratic practice is in favour of majority carrying the vote. Thus, the idea of reserving percentages of offices and opportunities for women is not primarily consistent with the ideals of democracy which also emphasizes equal opportunity for everyone⁸³. If one is to go by strict democratic culture it may be difficult to attain some of the rights of women as advocated in the instruments such as Article 9(1)(b) which requires states to ensure that

⁸¹ M.J. Doak, *Women in American Society* (USA: Gale, 2008) p.134.

⁸² Op. Cit, see footnote 24 above.

⁸³ For example in Burundi the 2005 Constitution provides for a minimum of 30% of women in the Government (art. 129), in the National Assembly (art. 164) and in the Senate (art. 180). The new electoral law of 2009 provides that Communal Councils must be composed of 15 members with at least 30% women (art. 181) see http://www.africa4womensrights.org/public/Dossier_of_Claims/DossierofClaimsENG.pdf accessed on September 28, 2011.

“women are represented equally at all levels with men in all electoral processes.”

(ix) **Contradictory National Laws.**

The existence of certain laws which directly or indirectly deepen discrimination or harmful practices against women side by side with some ratified international instruments gives national judiciaries and executive bodies loopholes to violate international instruments in favour of their national legislations. Charrad⁸⁴ shows how several Islamic laws operating in some African countries have adversely affected the realization of several rights of women.

(x) **Poverty**

Enforcing the rights of women could be very costly as it may involve securing the services of a solicitor, mobilizing law enforcement agents or filing complaints. The poverty level in Africa is still high; thus, women who are at the subsistence level may not have the means of pursuing these rights. Eseyin and Ohaeri⁸⁵ suggest that women should be economically empowered to enforce their rights. In the Mexico Report of the World Conference of the International women's Year⁸⁶ it was stated as follows:

It was recognized that in most countries, a wide gap existed between *dejure* and *defacto* situation of women. It was also emphasized that equality under the law had little meaning in conditions of poverty, when sheer survival required all

⁸⁴ M. M. Charrad, *States and women's Rights* (London: University of California Press, 2001) pp.28-50.

⁸⁵ M. Eseyin and v Ohaeri, *Women's Rights in Nigeria How protected* (Nigeria: Chewora, 2004) p.109.

⁸⁶ Available at <http://www.un-documents.net/a30r3520.htm> accessed August 15, 2011.

the efforts, time and energy of both men and women.

(xi) **Fear of Stigmatization or Ostracism.**

Some drastic measures may have to be taken by a woman in order to ventilate her grievances. Some of these could involve turning over her husband to the police in cases of domestic violence, separating from the man, terminating an unwanted pregnancy or refusing to give birth to children. These are all actions that can attract stigmatization and in extreme cases ostracism or denial of certain privileges in the African traditional setting. Commenting on this Fox⁸⁷ noted that:

Women's struggle for human rights often position them in opposition to family and social networks where their roles and rights have been defined; however, because of the sanctity of the family, they often choose not to seek empowerment and freedom which sets them against their own kin

(xii) **Poor whistle blowing mechanisms.**

As a corollary to the issue of stigmatization, it is important to note that sensitive issues pertaining to the violation of women's rights must be handled maturely to protect the woman from further abuse or to give her a level playing ground for quick recovery from the abuse. There should be confidential and secure channels of reporting rape, sexual harassment, domestic violence and other oppressive conducts without exposing the woman to scandal or elimination. Unfortunately, perhaps, due to under-development in some African settings, the channels for confidential ventilation of these grievances are either lacking or are porous. Thus, the chances of exposing

⁸⁷ *Op. Cit.*, see footnote 27.

complaining women to greater odium or risk are very high. Generally, whistle blowing has its global setbacks and it is submitted that it is worse in Africa. Commenting on Whistle blowing a writer observed:

It takes a particular type of courage—the courage to be unpopular—to become a whistle-blower. Initially, Watkins, Cooper, and Rowley were warned to keep quiet but they kept talking, like generations of female truth-tellers before them. Look at Rosa Parks, who refused to move to the back of the bus, galvanizing the country's civil rights movement. Retired Army Lt. General Claudia J. Kennedy, the highest-ranking female officer, was the one to expose sexual harassment in the armed forces. And it was Erin Brockovich, a minor legal clerk who helped a town triumph over a multimillion-dollar corporate polluter.

The decision for these women to do what's right over what's convenient comes at a very high price. Whistle-blowers get fired, blacklisted, and branded as troublemakers, making it harder to find new employment. The cost can be sometimes even higher—women in the armed forces and police corps often dread filing sexual harassment claims in fear of backlash by their male colleagues for turning against one of their own.

In fact, the three whistle-blowers—Watkins, Cooper, and Rowley—each served as the chief breadwinners in their families, with husbands who were full-time, stay-at-home fathers. For each one of them, the decision to blow the whistle meant jeopardizing a paycheck their families depended on. While Rowley was granted whistle-blower protection, she still expressed concern for reprisals in her letters to FBI chief Robert Mueller. There are no guarantees

whistleblowers do not receive some sort of professional punishment, however subtle.⁸⁸

6. Conclusion and Recommendations

This paper sought to examine the hopes offered to African women by the myriad of international, regional and national human rights instruments, on the one hand and the extent of realization of these hopes in Africa. The work traced the history of women's rights and examined the development of these rights especially in the United States and the United Nations. It is manifest from this work that one cannot at this stage say that the hopes of the African women have been realized. The situation on ground in Africa shows a remarkable improvement in the last few years, especially by the African Union which has made series of instruments, declarations and some positive steps. Commendable strides have also been made at National levels as shown in the reports made in this regard.⁸⁹ Regrettably, some loopholes still exist at the international level which calls for better approaches. Some countries in Africa have gone far to offer significant realization of the rights of women and the Judiciary in some African countries have put smiles on the faces of women. The work has shown that several laws are still in existence in African countries which work hardship on the women and literarily dashed the hopes of women. The Courts have also created a lot of confusion as shown in conflicting decisions on the rights of women.

This work has gone ahead to unveil some of the factors responsible for the non-realization of the rights of women in

⁸⁸ A. Matal, "Hail Women Whistle-blowers" online article of May, 3, 2005 available at <http://www.thecrimson.com/article/2005/5/3/hail-women-whistleblowers-last-week-the/> accessed October 23, 2014.

⁸⁹ See Footnote 60 for full links to the report.

Africa. In the light of the revelations set out in this work this writer is fortified to make the following recommendations:

- (i) International law should be re-examined to avoid the goal shifting approaches adopted by some countries on ratification of Human Rights Instruments. When it comes to human rights treaties adoption at the international level should suffice so that the treaties can enter into force automatically.
- (ii) Massive awareness should be made about the rights of women and room should be made at state levels for free legal services for women who allege violation of their rights.
- (iii) Whistle blowing mechanisms must be put in place in all the traffic lanes of life and the interest of women must be protected from further violation.
- (iv) Sensitization should be made to the society at large to discourage stigmatization of all those who have been victims of gross abuses⁹⁰.
- (v) Courts should be very pro-active to strike down laws which violate fundamental rights of women at the earliest opportunity.
- (vi) Women's rights must take into account the rights of other gender in the society and the ideals of democracy. Thus, the emphasis should be on encouraging men to see the competence of women; and the aspect of equality of opportunity should be emphasized. As O'Reilly and Flowers⁹¹ put it: "I mean, rights don't just belong to you. You rights and my rights have to be balanced against the legitimate rights of other people as well."

⁹⁰ E.g. Victims of Rape, Genital Mutilation, Sexual Harassment and the like.

⁹¹ B. O'Reilly, *Kids are Americans Too* (USA: Harpe: Collins Publishers, 2007) p.5

- (vii) Care must be taken in respect of the issues bordering on trans-gender, gay and lesbians in Africa. The courts must be creative in interpreting such rights in a way that it protects credible African values on one hand and the internationally protected rights on the other hand. Thus aspect of African cultural relativity must be balanced with Universal ideals. As Ayton- Shenker observed:

Taken to its extreme, this relativism poses a dangerous threat to the effectiveness of International Law and international System of human rights that has been painstakingly constructed over the decades. If cultural tradition alone govern state compliance with international standards, then of human Right would be given legitimacy; accordingly, the promotion and protection of human rights perceived to be culturally relative would only be subject to state discretion, rather than international legal imperative. By rejecting or disregarding their legal obligation to promote and protect universal human rights, states advocating cultural relativism could raise their own norms and particularities above international law and standards⁹²

- (viii) The courts in African states have to be co-ordinated in arriving at decisions bordering on the rights of women to avoid further confusion in this regard. This writer advocates periodic conferences to be attended by African Judges where some common approaches can be identified

⁹² D. Ayton-Shenker, "The challenge of Human Rights and cultural diversity" Available at <http://www.un.org/rights/dpi1627e.htm> (Accessed October 29, 2014).

about interpreting some of these rights. As Udombana⁹³ opined:

In the meantime-and probably in the long run as well-transitional judiciaries in Africa should expound African constitutions with Africa's ugly past and present challenges in mind. They should draw upon international and comparative law to assert their institutional authority and should 'abandon their longstanding insularity and inertia in matters of jurisprudential innovation and borrowing'.

⁹³ N. Udombana, N "Interpreting Rights Globally" (2005) 5 *African Human Rights Law Journal* p. 47-69.