

5-1-1987

The Rights of Women, The African Charter, and The Economic Development of Africa

Winston Langley

Follow this and additional works at: <http://lawdigitalcommons.bc.edu/twlj>

 Part of the [International Law Commons](#), [Law and Economics Commons](#), and the [Women Commons](#)

Recommended Citation

Winston Langley, *The Rights of Women, The African Charter, and The Economic Development of Africa*, 7 B.C. Third World L.J. 215 (1987), <http://lawdigitalcommons.bc.edu/twlj/vol7/iss2/5>

This Article is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College Third World Law Journal by an authorized administrator of Digital Commons @ Boston College Law School. For more information, please contact nick.szydowski@bc.edu.

THE RIGHTS OF WOMEN, THE AFRICAN CHARTER, AND THE ECONOMIC DEVELOPMENT OF AFRICA

WINSTON LANGLEY*

I. INTRODUCTION	215
II. RECOGNIZED WOMEN'S RIGHTS	216
A. <i>Civil Rights</i>	217
B. <i>Socio-Economic Rights</i>	217
III. A BRIEF EVALUATION AND DISCUSSION	219
A. <i>Political and Employment Rights of Women</i>	219
B. <i>Family and Health Care Rights of Women</i>	219
IV. WOMEN'S RIGHTS, AFRICA'S COMMITMENT AND DEVELOPMENT	220

I. INTRODUCTION

The establishment of the United Nations in 1945 prompted an interest in human rights.¹ The Charter of the United Nations attests to a faith in fundamental human rights, specifically in the dignity and ultimate worth of the person, and recites among its purposes the "promotion and encouragement of respect" for those rights "for all without distinction as to race, sex, language, or religion."² The Charter assigns to the General Assembly the task of conducting studies and making recommendations to realize these purposes. The Charter also commits the U.N. to "promote universal respect for, and observance of, human rights and fundamental freedoms, . . . with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations."³ Particular organs of the U.N. give advice on how to promote human rights and fundamental freedoms. Member states pledge to take joint and separate action in cooperation with the U.N. to achieve the desired conditions of social "stability and well-being."⁴

It is due largely to the assumed obligation to take joint and separate action that in 1948, the Universal Declaration of Human Rights (UDHR) was adopted.⁵ This declaration was followed by two international instruments, the 1966 International Covenant on Civil and Political Rights and that on Economic, Social, and Cultural Rights, which spell out specific rights in accordance with the common standard elaborated in the UDHR.⁶ The assumed obligation was also the impetus for certain regional human rights instruments such as the 1950 European Convention for the Protection of Human Rights

* Professor of Political Science/Program of International Relations, University of Massachusetts-Boston.

¹ Langley, *Human Rights: Aspects of Their Global Significance*, 4 IMPRINT 9 (1983).

² See U.N. CHARTER arts. 1, 8, 13, 56, 62, 68.

³ *Id.*

⁴ *Id.*

⁵ See G.A. Res. 217 (111), U.N. Doc. A/810, at 71 (1948) [hereinafter UDHR].

⁶ See G.A. Res. 2200 XXI, U.N. Doc. A/6316, reprinted in 6 I.L.M. 360, 368 (1967).

and Fundamental Freedoms,⁷ and the 1969 American Convention on Human Rights.⁸ Similarly, in 1981, African states adopted the African Charter on Human and Peoples' Rights, officially known as the Banjul Charter on Human and Peoples' Rights.⁹

Despite global and regional promotion of human rights, the United Nations consistently receives reports of human rights violations which cast doubt upon the commitment of many member nations. One specific area of violation and questionable commitment on the part of states is that concerning the rights of women.¹⁰ Indeed, even the regional instruments purporting to give effect to the obligation to promote human rights and fundamental freedoms, which states assumed under the U.N. Charter, pay only passing attention to the issue of women's rights.

The objective of this article is to examine the Banjul Charter on Human and Peoples' Rights and to evaluate the extent to which it accords recognition to the rights of women. Emphasis will be placed on the relationship between the recognition of the rights of women and the prospect for the socio-economic development of Africa. This article will first review currently recognized women's rights and appraise those rights in light of the objectives they seek. Second, this article will provide an analysis of the commitment that African states have to women's rights and will indicate the effect that current recognition of these rights will have on the socio-economic development of Africa.

II. RECOGNIZED WOMEN'S RIGHTS

The Banjul Charter does not specifically address the issue of women's rights, but rather incorporates them by reference. For example, Article 18 of the Charter begins by declaring the family the "natural unit and basis of society" and enjoining states to protect the family since it is the "custodian of morals and traditional values."¹¹ Article 18 then proclaims that African states "shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and child as stipulated in international declarations and conventions."¹²

Since human rights are applicable to "all persons," "all members of the human family," "everyone and every human being," women are implicitly accorded protection under regional and global instruments promoting human rights.¹³ Despite this protection, women suffer from specific social as well as other limitations.¹⁴ In recognition of these limitations, a number of international human rights instruments which uniquely bear on the rights of women have been adopted. Some instruments are not incorporated by Article 18 because African states are not parties to them.¹⁵ However, since 1945 three human rights instruments have been adopted which embody much of what the global

⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, 213 U.N.T.S. 221.

⁸ See OAS Treaty Series No. 36 at 1, OAS. OFF Rec. OEA/ser. L/V/II.23 doc. 21 rev. 6 (1979), reprinted in 9 I.L.M. 673 (1970).

⁹ See text approved by the OAU Ministerial Conference in Banjul, Gambia, January, 1981, reprinted in 21 I.L.M. 59 (1981).

¹⁰ Ramcharan, *Equality and Nondiscrimination* in L. HENKIN, *THE INTERNATIONAL BILL OF RIGHTS* 247 (1981).

¹¹ See art. 18, §§ 1, 2, *supra* note 9.

¹² Art. 18, § 3, *supra* note 9.

¹³ See *supra* note 2.

¹⁴ R. SIVARD, *WOMEN: A WORLD SURVEY* (1985).

¹⁵ See e.g., The European Social Charter in *E.T.S.* No. 35. See also, arts. 60, 61, *supra* note 9.

community had done to protect and promote the rights of women. These instruments are the Convention on the Political Rights of Women (CPRW),¹⁶ the Declaration on the Elimination of Discrimination Against Women (DEDAW),¹⁷ and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹⁸ Collectively, these instruments deal with several categories of women's rights including civil and socio-economic rights.

A. Civil Rights

Both women and men enjoy certain recognized civil rights, such as the right to a fair trial and the freedom of expression. Relevant international instruments, however, have highlighted other women's rights which include the right to vote in *all* elections and to be eligible for election to all publicly elected bodies, to participate in the formulation of government policy and the implementation thereof, and to take part in non-governmental organizations and associations concerned with the public life of nation-states.¹⁹ Nations which are parties to these instruments agree to take "all appropriate measures" to ensure that women have the opportunity to represent their governments at the international level and to participate in the work of international organizations on equal terms with men and without discrimination.²⁰

In addition, these relevant international legal instruments impose a duty on states to recognize women as having equal rights with men to acquire, change, or retain their nationality. The instruments ensure that neither marriage to an alien nor change of nationality by the husband during the marriage shall automatically modify the nationality of the wife, render her stateless, or force upon her the nationality of her husband. Finally, states are enjoined to grant women rights equal to men with respect to the nationality of their children.²¹

B. Socio-Economic Rights

Socio-economic rights embodied within international instruments deal with women's rights to employment, education, health care, and domestic freedom.

In the area of employment, nation-states assume an obligation to eliminate discrimination against women and to ensure equality with men. In particular, states agree to recognize that women have the same right as men to employment opportunities, to freely choose their profession, to achieve promotions and job security, to receive equal remuneration and treatment with respect to work of equal value, and to obtain social security as well as employment and disability benefits. Women are also recognized as having a right to "protection of health and safety, in working conditions, including the safeguarding of the function of reproduction."²²

¹⁶ Convention on the Political Rights of Women, 1953, 193 U.N.T.S. 135.

¹⁷ G.A. Res. 2263 (XXXII), U.N. Doc. A/6880 (1968).

¹⁸ Adopted by the U.N. Gen. Assembly, Dec. 8, 1979, G.A. Res. 34180, (XXXIV), U.N. Doc. A/0000 (1979).

¹⁹ See arts. 1, 2, 3 of the Convention on the Political Rights of Women, *supra* note 16; art. 4 of DEDAW, *supra* note 17; and arts. 7, 8 of CEDAW, *supra* note 18.

²⁰ *Id.*

²¹ See art. 5 of the DEDAW, *supra* note 17. See also art. 9 of CEDAW, *supra* note 18.

²² See art. 11 of CEDAW, *supra* note 18. See also art. 10 of CEDAW, *supra* note 18.

With respect to protection of health and safety, women have unique needs. Consequently, applicable human rights instruments seek to prevent discrimination against women on the grounds of marriage or maternity. In order to "ensure them *the effective right to work*,"²³ states assume the obligation to take measures to prohibit discrimination against women on grounds of pregnancy, maternity leave or marital status. As parties to the instruments, nation-states agree to introduce maternity leave with pay or comparable social benefits without loss of former employment seniority or social allowances. Nation-states also agree to encourage the development of supporting social services which are necessary to enable parents to combine family responsibilities with work obligations.²⁴ Finally, by protecting women in other "areas of [the] economic and social order," states vow to eliminate discrimination against women in the exercise of their right to family benefits, to bank loans, mortgages, and other forms of financial credit.²⁵

In the area of health care, women are recognized to enjoy the right to "appropriate services in connection with pregnancy, confinement and the post-natal period,"²⁶ with free services where necessary. They are also entitled to adequate nutrition during pregnancy and lactation.²⁷

With respect to education, women are recognized as having the right to the same conditions as men for career and vocational guidance, for access to academic and other studies, and for the attainment of diplomas in educational institutions.²⁸ These concerns, however, do not eliminate the need for equal opportunities for women in the human rights instruments. These instruments seek the elimination of stereotypical roles of men and women at all levels and in all forms of education through the encouragement of co-education, by conferring the same benefits of scholarships, study grants, equal access to continuing education, and equal opportunity to participate actively in sports and physical education. Nation-states also agree to reduce the female student dropout rates and to organize programs for girls and women who have left school prematurely.²⁹

Article 16 of CEDAW confers on women the same rights as men to enter into marriage, to freely choose a spouse, and to enter into wedlock only by their free and full consent. Similarly, women have an equal right to decide freely on the number and the timing of their children, and to have access to information, education, and other means to enable them to exercise these rights. Further, women share with men the same rights and responsibilities as parents, regardless of marital status, for the guardianship, wardship, trusteeship, and adoption of children. In addition, wives and husbands have the same personal rights, including the right to choose a family name, a profession, and an occupation. Men and women also have the same rights with respect to the ownership, acquisition, management, administration, enjoyment, and disposition of property.³⁰

²³ *Id.*

²⁴ *Id.*

²⁵ See arts., 13, 14 of CEDAW, *supra* note 18.

²⁶ Art. 12 of CEDAW, *supra* note 18.

²⁷ *Id.*

²⁸ See art. 10 of CEDAW, *supra* note 18. Similarly, women enjoy equal rights of access to the same curriculum, the same examinations, teaching staff with qualifications of the same standard, and school premises as well as equipments of the same quality.

²⁹ *Id.*

³⁰ See art. 16 of CEDAW. See also, art. 6 of DEDAW, *supra* note 17.

III. A BRIEF EVALUATION AND DISCUSSION

A. *Political and Employment Rights of Women*

The framers of the human rights instruments discussed in this article understood that women had to take an active role in defining what equality they wanted, and that growth in their political power would be an important result. Hence, the instruments enumerate the rights "to vote in all elections," "to be eligible for election to publicly elected bodies," and "to hold public office and exercise all public functions."³¹ Furthermore, the instruments emphasize the right of a woman to participate in public life at the international, national, local, and community levels.³² On the whole, the linking of the right to vote with the right to actually formulate and implement public policy reflects the realization that, even in societies where the major features of patriarchy have been seriously questioned and challenged,³³ the right to vote in and of itself can be a mere formality, contributing little or nothing to the goal of equality.

Nationality is one of the more pronounced problems which has affected women. States, by law, have required that a woman who married an alien would automatically lose her former nationality and gain the citizenship of her husband. If this marriage was subsequently dissolved, she could lose her newly-gained nationality and thereby become a stateless person, losing the international protection accorded a citizen. The justification advanced for this policy was the traditional principle of "unity of the family." Thus, that unity was purchased at the price of the equality of women. CEDAW, however, represents the culmination of efforts since the 1930's³⁴ to change traditional international law relating to nationality, and replace it with the principle of independence and equality of women.

The focus on employment in the human rights instruments discussed in this article should not be regarded as simply ensuring that women have jobs. Employment should be seen as a more fundamental principle, namely that women have an equal right to pursue freedom and dignity as well as economic security; and that all of these are dependent upon gainful employment.

B. *Family and Health Care Rights of Women*

A few illustrations will highlight the far-reaching impact of family and health issues upon women. Matrimonial regimes have historically been partial to men with respect to parental rights and obligations. For example, authority frequently belonged exclusively or principally to the father, and in some countries, if that authority was lost, it would not automatically pass to the mother. Often, in cases of the dissolution of marriages, the custody of the children would be awarded to the father "regardless of the merits of the

³¹ See *supra* note 20.

³² Only a few women participate in public life on an international level. However, as the international political realm increasingly shapes what occurs nationally and locally, especially in the area of political economy, the presence of women in international councils will be correspondingly important.

³³ K. NEWLAND, *THE SISTERHOOD OF MAN* (1979).

³⁴ The League of Nations Treaty Series (L.N.T.S.) CLXXIX No. 4137, at 89.

case."³⁵ However, in opposition to that view, the human rights instruments discussed here support "the same rights and responsibilities of parents" in matters relating to children and guardianship.³⁶

Although the discussion of health care seems concerned primarily with pregnancy and child-bearing, it is actually a much broader concept; pregnancy and child-bearing are emphasized because they have special significance to women.

IV. WOMEN'S RIGHTS, AFRICA'S COMMITMENT AND DEVELOPMENT

The rights of women that have been examined throughout this article are those that are recognized by the Banjul Charter. They reach beyond the scope of anything previously attempted by any regional grouping of states,³⁷ and for this accomplishment alone, African states should be congratulated. There are, however, some questions which have arisen concerning the extent to which African states are genuinely committed to women's rights. The reasons for such doubts are the earlier historical reactions to certain aspects of women's rights, i.e., the opposition to a shift in authority from the husband to one shared with the wife;³⁸ and the fact that the rights recognized are not explicitly a part of the Banjul Charter, but are instead incorporated only by reference. However, it should be noted that other areas of international law are also incorporated only by reference in the Banjul Charter.³⁹ Furthermore, given the many international instruments required to deal with the rights of women,⁴⁰ the Banjul Charter would be overly complicated if it included the terms of all of them. Conversely, including only some of the rights, might convey the mistaken impression that certain women's rights were included, while others were omitted. Far more significant, rather, is the relationship of these newly-recognized rights and the prospects for the development of African states.

It is hardly a secret that African states are among the least developed in the world. This lack of development has little to do with a lack of natural resources, which Africa has in abundance. Instead, it is the lack of technical, social, and political resources that has caused Africa's underdevelopment.

For example, the growth of the agricultural sector of the economy is of utmost importance for Africa's development. Women are responsible for over half the agricultural production in Africa, yet African women have but 57% of the educational opportunities of males.⁴¹ African agriculture cannot develop or become competitive if the group principally engaged in it receives such low priority in the field of education.

Economic development is not defined merely in terms of per capita growth in income; it also entails social integration, and an equal sharing of responsibility and power. The full and complete development of a country or a continent requires the

³⁵ UNITED NATIONS, THE UNITED NATIONS ACTION IN THE FIELD OF HUMAN RIGHTS 103 (1983).

³⁶ See *supra* note 30.

³⁷ As before indicated, the European states adopted a Social Charter which recognized certain rights of women. It does not, however, approximate the comprehensiveness of what the African Charter seeks to do.

³⁸ See 10 U.N. GAOR Supp. (No. 40) para. 9, U.N. Doc. A/33140 (1978).

³⁹ See *supra* note 9, arts. 60, 61.

⁴⁰ See *supra* note 35, at 94.

⁴¹ With respect to post-secondary educational opportunities women have only 7% of the educational opportunities of men in some African states. See SIVARD, *supra* note 14, at 23. See also, Marshall, *Development Dependence, and Gender Inequality in the Third World* 29 INT'L STUD. Q. 217 (1985).

freeing of its human potential and the fullest participation of all its citizens in all fields, men and women alike. The under-utilization of half of any population, as is the case with women in Africa, is an obstacle to economic and social progress. Those who, because of outdated notions of equality, cannot support the emancipation of women should at least lend their support in order to achieve economic development in Africa. The economies of African states will never develop fully unless they promote the rights of women.