

Women's Rights in Africa: Exploring the Integration of CEDAW and ACHPR in Addressing Violence against Women

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Abstract:

In Africa, the quest for women's rights has been marked by widespread gender-based violence, entrenched discrimination, and restricted access to economic, healthcare, and educational opportunities. Despite these formidable obstacles, it is crucial to advance women's rights given that women make up approximately half of the continent's population. International instruments like the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) affirm women's entitlement to equality and freedom from discrimination. Moreover, regional agreements such as the Maputo Protocol and legal frameworks like the African Charter on Human and Peoples' Rights (ACHPR) offer additional safeguards for women's rights across Africa. These global agreements and legal frameworks play crucial roles in advocating for women's rights, shaping policies, and reforming laws to tackle gender-based discrimination and promote women's empowerment. However, effectively implementing these instruments within African national contexts to combat violence against women presents challenges due to inherent weaknesses and complexities. This paper explores the impact of CEDAW and ACHPR on addressing women's rights, specifically violence against women.

Keywords: ACHPR, CEDAW, Gender, Human Rights, Intimate, Women Rights, Violence Against Women.

1. Introduction

Increased interpersonal violence, especially the frequency of Violence Against Women and Children (VAW/C), has been related to crises and periods of unrest. However, since ancient times, women have been viewed as men's property, and men's control has allowed them to take advantage of violence against women (VAW). Women's varying status is accountable for a variety of variables in different parts of the world. More than a third of women in the world have experienced physical or sexual violence, or both, from an intimate partner or non-partner in their lives, according to the World Health Organization (WHO). The Office of the High Commissioner for Human Rights (Ohchr), defined violence against women as unequal power relations between men and women as a result of cultural manifestations. For the idea of VAWs, the WHO has employed language such as the concerted use of physical violence or force, threatened or real, against oneself, another person, or a group that is hurtful, mental injury, poor development, or has a high risk of incidence. This is a global phenomenon mainly occurs in societies where women are seen as property and a male member of society is given power. In a patriarchal society, the issue of male domination and VAW cannot be resolved.

When race, ethnicity, and other types of discrimination are connected with VAW, the worst form of human rights violence and the deadliest form of VAW happen across most countries, cultures, classes, and ages. Abuse occurs in the workplace, on the streets, and even in prison. According to WHO (2013), there is a significant frequency of violence in Africa, the Eastern Mediterranean, and Southeast Asia, as well as the prevalence of VAW among physical and/or sexual intimate partners in various parts of the world. Power inequalities underlying any kind of violence trigger the most systemic abuse of women's human rights, and VAW is triggered by power imbalances and inequality in structural men and women relationships. The actual effect of these power inequalities on women includes physical kicking, slapping, and beating, which often result in serious damage or death; sexual injuries, sexual abuse, violence, and rape, as well as psychological abuse, varies among cultures and countries around the world. VAW by an intimate male partner, according to Krantz and Moreno, is the most common sort of violence that exists globally among affluent and poor people.

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Under representation, a lack of equal opportunity for progress, and prejudices about women in leadership continue to keep women out of top positions around the world, including Ghana. Women in Africa are frequently treated as second-class citizens rather than leaders, and patriarchal culture oppresses and subjugates them. Since the mid-1990s, countries around the world have been collaborating to find ways to put an end to acts that damage women's rights. DV cases continue to be widespread in Africa, Asia, the Middle East, Europe, and other parts of the world, despite various regional and universal laws intended at protecting women's rights. This, among other factors, influenced the researcher's decision to conduct this study on the fiction or reality of women's rights protection and promotion in Africa by regional and universal human rights systems.

2. CEDAW And The ACHPR

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is among the most widely supported human rights treaties, globally, serving as a comprehensive international declaration of women's rights. Nearly 180 nations have ratified CEDAW since its adoption by the UN General Assembly in 1979, with only six countries abstaining. CEDAW safeguards women's political, legal, civil, and economic rights, requiring states to establish tribunals and institutions to combat discrimination against women. Additionally, it mandates periodic reporting by states on measures taken to fulfill their obligations under the convention. CEDAW consists of sixteen articles aimed at ensuring equality and non-discrimination for women, addressing various forms of gender-based discrimination. The convention emphasizes the importance of legislative measures to promote women's full development and advancement, in line with the principles of equality and human dignity. As a result of CEDAW, several countries have enacted gender-equitable laws and policies to address issues such as domestic abuse, rape, sexual harassment, and human trafficking. Furthermore, CEDAW adopts a substantive approach to equality, focusing on achieving equality of results rather than just equality of opportunity. The convention condemns gender stereotyping and urges states to eliminate social and cultural norms that perpetuate gender inequality. It also addresses discrimination within the family and promotes measures such as affirmative action to advance gender equality.

The Optional Protocol to CEDAW, adopted in 1999, provides additional mechanisms for enforcing the convention. It allows individuals to file complaints with the CEDAW Committee regarding violations of women's rights and enables the committee to conduct inquiries into systemic human rights abuses. The protocol enhances the effectiveness of CEDAW by establishing an international complaints mechanism specific to women's rights, facilitating greater accountability and enforcement of states' obligations. CEDAW serves as a cornerstone of international efforts to promote gender equality and protect women's rights. Through its provisions and the Optional Protocol, CEDAW provides a comprehensive framework for addressing gender-based discrimination and advancing women's empowerment worldwide.

In addition to the CEDAW, the African Charter on Human and Peoples' Rights (ACHPR) provides another layer of security to women. Signed in 1981, it is a relatively young regional human rights system in Africa that emphasizes collective rights, recognizing the inter-connectedness of individual and group rights. Ratified by a vast majority of states following an active campaign by OAU Heads of State, the Charter outlines rights and obligations and establishes bodies responsible for upholding them, including the right to development and all "generations" of rights. Notably, the Charter addresses non-discrimination against women and aims to preserve and enhance women's rights while combating inequality. It mandates states to eliminate discrimination against women and protect their rights as outlined in international agreements. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, also known as the Maputo Protocol, was enacted by the Member States of the African Union to advance and protect the rights of women and girls across the continent. Ratified by 42 nations and signed by many more, the Protocol addresses various issues affecting African women, including domestic abuse, polygamy, HIV/AIDS, and female genital mutilation. It defines "Positive African Values" and expands upon the rights outlined in the African Charter, particularly emphasizing reproductive autonomy and choice. However, criticisms include the Protocol's failure to explicitly define discrimination against women and protect rights to equality and consent to marriage, as well as its emphasis on traditional values that have hindered women's rights in Africa.

The CEDAW and the African Charter had played significant roles in advancing women's rights in Africa. While they face issues such as reservations, lack of intersectionality, and implementation challenges, these instruments have been instrumental in reducing the abuse suffered by women worldwide. Nonparty state local administrations have utilized these instruments to advance gender equality, demonstrating their potential to fill gaps left by states that refuse to ratify or implement human rights accords. Overall, the contribution of the CEDAW and the African Charter to the protection and promotion of the rights of African women is evident through their various implementation mechanisms and their ability to serve as models for local governments to follow in strengthening women's rights. Although these charters have seen success, there exist inherent weaknesses in both the CEDAW and the ACHPR that result in unintended consequences for women's rights in Africa.

3. Inherent Weaknesses of the CEDAW and ACHPR and Women Rights

The Convention and its monitoring Committee are in a great position to remedy the prevalent gendered faults in the human rights canon. The CEDAW does, however, have several, well-known structural weaknesses. In academic studies on the CEDAW's limitations, the issue caused by governments attempting to "hollow out the heart of their duties" by making several reservations to the Convention has also gained attention. States can ratify CEDAW with reservations, but they can only bind themselves to the parts they want to follow. It is acknowledged that some rights may take longer to come into being than others. Some economic, social, and cultural rights, for instance, can take longer to achieve because they need for a bigger outlay of funds or more significant structural adjustments. Some nations may have laws, customs, and religious or cultural practices that discriminate against women in place at the time of ratification; it may take years to reform discriminatory practices or eliminate discriminatory language from the law. A State's obligation is said to be "progressive" in cases when it is not reasonable to expect it to realize a right away. This means that it can be satisfied by making sincere efforts that result in small steps toward the realization of the right. In light of this, CEDAW allows ratification subject to reservations, provided that the reservations do not conflict with the Convention's goal and purpose. Articles 2 and 16 in particular are thought to be the Convention's fundamental elements, making reservations to them unlawful.

Unfortunately, the CEDAW is one of the human rights conventions with the most reservations, having been ratified by 48 parties. Additionally, one of the parts with the greatest objections is Article 2, which describes the steps that states must take to end discrimination. The reasons given by the parties for not being able to follow the conditions include legal, cultural, and religious ones. A party's capacity to avoid responsibility allows it to continue supporting discriminatory actions like virginity testing, domestic violence, and female genital mutilation (FGM). According to the Committee, reservations made in response to Article 2 are incompatible with the goals and objectives of CEDAW, which further restricts its application. When governments adopt CEDAW but make exceptions to its key requirements, they consciously demonstrate that they are not interested in fundamentally altering their legal frameworks to reflect ones that enhance gender equality. Due to pressure from the CEDAW Committee, some nations have dropped their objections, but the majority have kept them. Reservations inherently work against the CEDAW's goal and purpose leaving a gap in the ability of the state to be held responsible for its failure to pass legislation aimed at eradicating the discrimination and injustices that women around the world. Reservations have complicated the convention's effects.

Under the CEDAW, States are expected to take adequate action to end discrimination, but there is no set standard for what those actions should be. Women still experience discrimination despite some parties having passed legislation that appears to promote gender equality. The Committee's mandate to "consider the progress made in the implementation of the Convention" rather than to monitor compliance or identify violations and the Convention's lack of a specific complaint procedure have historically posed a significant structural barrier to the protection and promotion of women's rights, compounding the difficulty of reservations. Weak implementation and obligation procedures paint a picture of a weak CEDAW infrastructure. Predicated upon the axiom women's rights are human rights, there must be a move for the creation of an international court for women's rights, comparable to the International Court for the Protection of Human Rights, to deal specifically with the atrocities, severe violence, inequality, and other grave forms of negativity that affect women worldwide and for which national and regional legal systems have failed to provide a remedy.

Given the trauma, violence, and discrimination women experience around the world—some of whom have died, suffered permanent paralysis, and suffered other negative effects—the argument that establishing an international court for women's rights would be expensive is the first indication that state parties are not committed to women's issues. Given that the United Nations and States Parties spend enormous sums of money just on maintaining peace and that many times war arises out of people's political, religious, and economic greed, it is therefore worth to spend money on protecting women rather than to go and let them go through such unfortunate ordeals. Evidently, the Fifth Committee (Administrative and Budgetary) delivered 19 draught resolutions and 1 draught decision to the General Assembly, closing the second half of its resumed session, urging it to approve a 6.37 billion yearly budget for United Nations peace keeping.

The CEDAW has also come under fire for its erratic treatment of intersectionality. There are no rules that directly address the interactional identities of women in it. This disparity supports a theory in which women are only subject to gender discrimination rather than other types of discrimination such as racism, classism, ethnocentrism, and heterosexism. Intersectionality is regularly mentioned in the Committee's reports. However, intersectional analysis is not always accurate and can even be completely absent. The convention has additionally come under fire for neglecting to consider the unique demands of women in circumstances that do not correspond to those of the typical

western lifestyle. The ACHPR on the other hand, in its article 18(3) of the ACHPR mentions that the State shall ensure that all forms of discrimination against women are eliminated and that children's and women's rights are protected in accordance with international declarations and agreements. Violence against women is an act that continues as long as there is persistent gender inequality. At its heart, gender-based prejudice affects all women, regardless of their money, color, culture, or geography, and is a cause as well as a result of violence against women. The following limitations have militated against the efficiency of the charter.

The articles 55(2), 33, and 56(3) and (5) clearly indicates that the OAU Heads of State were naturally hesitant to give the Commission a large role in defending human rights since a strong Commission might cast doubt on the integrity of African political leaders in their different nations. Nearly the entire purpose of the Commission was to advance human rights. Damages, restitution, or reparations cannot be granted by it. It can only provide suggestions to the parties; it is not permitted to condemn a violating State. It had extremely minimal powers when it was established and currently does. As a result, Member States in Africa now routinely disobey the Commission's proposals, directives, and statements. Egypt has not implemented the Commission's recommendations since the case's completion. Although Egypt's inaction serves as a crucial reminder that the African Commission on Human and People's Rights can only rule on a state's compliance with its treaty obligations - it cannot overturn domestic decisions nor can it force states to take action.

The word "victim" was never mentioned by the Charter's authors, despite the fact that it is obvious from the Commission's mandate that its goal is to look into complaints from victims. Article 55 simply mentions "other communications," hence the term "individual communications" or "petitions" must be interpreted into this. In actuality, the Charter makes no mention of the possibility that a State Party would have violated the rights of its citizens. To put it mildly, the provisions given for petition by non-state entities, particularly individuals, are woefully inadequate. Such a petition won't be taken into consideration until it receives the simple majority of the eleven-member Commission. Again, this is in stark contrast to what would happen under the European Convention on Human Rights.

Implementation issues of international and regional legal frameworks, remain a significant barrier to the advancement of women's rights in Africa. Due to a lack of institutional capacity and resources in many countries, there are gaps in the application and enforcement of gender-sensitive laws and policies. Cultural norms and patriarchal attitudes that limit women's autonomy, decision-making authority, and resource access are the main causes of gender inequality. In addition, because of conflict, displacement, and humanitarian crises, women and girls are more susceptible to gender-based violence, exploitation, and discrimination. Comprehensive strategies that bring together governments, civil society organizations, grassroots movements, and international partners in cooperative efforts to advance gender equality, safeguard women's liberties, and encourage women and girls throughout the African continent are needed to address these implementation challenges.

4. Addressing Intimate Partner Violence (IPV) and Gender-Based Violence (GBV) within the Africa Domestic Context: Challenges in Integrating CEDAW and ACHPR

The issues of violence against women (eg. IPV and GBV) has attracted the attention of both international and regional community. Its delicate nature has made the UN through its instruments including the CEDAW postulate a strong abhorrence to these practices since they violate the rights of women. The African human rights system in its Maputo Protocol in article 5 abhors any harmful practices that militate against women rights. It is important to note that IPV designates violence that occurs between people in sexual or romantic relationships while GBV describes any act done to someone against their will as a result of gender-norms, and unequal power relationships. Irrespective of the effectiveness of the CEDAW and the African Charter in the protection of African women, the following factors are some challenges that militate against integration of regional and international legal policies on IPV and GBV within the African domestic settings.

The article 2 of the CEDAW, the UN Charter in its article 1 suggest a concepts of gender equality. These legal provisions abhor any discrimination in all spheres of human life that offers one gender a comparative advantage over the other in all human endeavors include culture, economic, social, education among others. This assertion is supported by the preamble and article 9(1) of the ICCPR, art 1 and 3 of the UDHR, and article 19 of the CRC. The article 5(a-d) of the Maputo Protocol succinctly prohibit any cultural practice that violate women's rights including FGM. The instrument enjoins all states to eliminate practices that are harmful to women. Contrary to the above legal prescriptions, violence is made acceptable by patriarchal and sexist ideologies in order to maintain men's dominance and superiority in Africa in particular and the world in general. Other cultural factors include gender stereotypes and prejudice, normative expectations of femininity and masculinity, the socialization of gender, an understanding of the family as a private space under the control of men, and a general acceptance of violence as a part of public life (for example, street harassment of women) and/or as an acceptable way to resolve conflict and assert oneself.

In many African cultural setups, the idea of women's entitlement and ownership has led religious and historical traditions to condone the physical abuse of women. As a result, the idea of ownership legitimizes control over women's sexuality, which many legal regimes have deemed necessary to maintain patrilineal succession. The effect of these cultural factors is that in a patriarchal society renders it extremely difficult to integrate international and regional policies on IPV and GBV into the African domestic setting. Often adverse cultural practices like female genital mutilation, a practice condemned by both international law and regional human rights systems seem to enjoy dominance in the many parts of sub-Saharan Africa even though some countries like Ghana have criminalize such practices in line with the universal and regional human rights systems that seeks to protect and promote women's rights. Despite the fact that FGM is a cultural practice and not a religious tenet, it is practiced by many religious organizations under the mistaken belief that it is obligatory. Refusing FGM can have severe social ramifications, such as being rejected by one's family, becoming an outcast, and, in severe situations, being denied the right to speak in public, like in some sections of Uganda. While the majority of gender-based violence is illegal in the majority of African nations, the practices of law enforcement frequently favor the offenders, which contributes to poor levels of trust in public institutions and the fact that the majority of these crimes go unreported. Unfortunately, the issue of IPV and GBV is highly prevalent within many African countries and communities. Pathetically, many communities in the Sub-Saharan Africa view being a victim of gender-based violence as shameful and frail, and many women continue to be accused of encouraging violence against themselves through their actions. This explains why reporting and investigation continue to be at low levels.

The legal distinction between public and private settings persisted in certain nations until recently, making women particularly susceptible to domestic violence. Unlike Europe many of legal process has masculine undertone. Women who report their partners for violence are subjected to ridicule and embarrassment in many African communities. Often some of this violence are not reported to the police but rather addressed by family heads or some respectable persons in the society. The effect is that there is a vicious cycle of violence meted out constantly to these women. Delays in civil and criminal litigation coupled with high-cost of the legal process scares and prevent women from reporting violence against them. In general, women are disproportionately vulnerable to violence due to a lack of economic means. It develops self-perpetuating cycles of violence and poverty, making it very challenging for the victims to free themselves. Men may use violent tactics to assert their masculinity when they are experiencing unemployment and poverty. Women are aware of key obstacles to girls' access to education include school costs, inadequate restrooms and privacy, sexual harassment by male teachers, and laws that disallow young moms. Women are disproportionately impacted by the existence or absence of social programs and policies that guarantee health care, education, child care, housing, food, and water in the context of the global financial crisis and deepening economic inequality because women are the primary unpaid providers for these needs when the State is absent. In so far as there is a great disparity between the economic capabilities of men and women the integration of international policies and regional policies on IPV and GBV within the African domestic settings would be impossible.

Many governments in the Sub-Saharan Africa appear to lack the political will and edge to champion and spearhead the issue of women. In many Africa countries including Ghana, Nigeria among others due to women's under representation in politics and power, they have fewer possibilities to influence debates, influence policy changes, and take steps to prevent gender-based violence and support equality. Affirmative action programs may be required of nations that have ratified the CEDAW in order to address systematic discrimination, according to Article 2(2) of the convention. However, it specifies that these programs "must under no circumstances have the effect of maintaining separate or unequal rights for various racial groups after the objectives for which they were adopted have been accomplished." "The principle of equality occasionally compels States parties to take affirmative action in order to lessen or remove factors which cause or serve to perpetuate discrimination banned by the Covenant," according to the United Nations Human Rights Committee. There is still a long way to go as African continent, and progress is slow because many countries are unfavorable to women's descriptive representation. For example, Ghana has ratified the CEDAW but successful governments have failed women in passing the affirmative action bill which has sat in the Ghanaian parliament over twenty years now. Indeed, this situation would not be different from many other African Countries. However, according to the United Nations and African Union (2020), some African countries, such as Rwanda (61.25%), Senegal (41.35) and South Africa (46.35%), among others, have the highest rates of representation in the World as a result of the adoption of affirmative action policies.

The non-effectiveness of the CEDAW in fully unleashing its potential and effectiveness in the fight mitigating violence against women is that the CEDAW philosophical and legal roots in Western cultures, it may not fully take into consideration the variety of cultural norms and values found in African societies. Since decisions are frequently made in the context of family and community institutions, the Convention's emphasis on individual rights and liberty may conflict with the communalistic ideals found in many African cultures.

The viewpoints and experiences of African women were not sufficiently represented throughout the CEDAW writing process, which was predominantly involving Western nations. Because of this, the Convention might not adequately address the particular difficulties and concerns that African women confront, such as those pertaining to violence, economic marginalization, and access to healthcare and education. Domestic violence also receives insufficient resources and attention, and gender-based violence is occasionally dismissed as a non-issue. Importantly, there is the possibility that many a large number of stakeholders—including legislators, law enforcement, and civil society organizations lack the knowledge and expertise necessary to apply the ACHPR and CEDAW frameworks to combat GBV and IPV.

5. Empowering Women: Key Strategies for Advancing Rights and Security in Africa

To effectively address violence against women in Africa and advance gender equality, integrating the principles of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the African Charter on Human and Peoples' Rights (ACHPR) is crucial. One significant avenue for progress lies in promoting STEM education—comprising science, technology, engineering, and math—which can empower women economically and mitigate their vulnerability to violence. STEM education equips women with the skills and knowledge needed for financial independence, reducing reliance on abusive relationships or family members. By fostering critical thinking and problem-solving abilities, STEM education also challenges traditional gender norms that perpetuate violence. Encouraging girls and women to pursue STEM fields fosters a culture of inclusivity and gender neutrality, countering patriarchal systems that underpin violence against women. Moreover, STEM education facilitates access to resources and information vital for preventing violence, including sexual consent education and reproductive health awareness. Integrating these subjects into STEM curricula empowers women to make informed decisions about their bodies and relationships, reducing their susceptibility to victimization. Furthermore, STEM professionals can leverage their expertise to develop innovative solutions for addressing gender-based violence, such as mobile applications for reporting incidents and enhancing public safety infrastructure. This underscores the transformative potential of STEM education in empowering women as change agents and advocates for violence prevention.

In addition to educational initiatives, enhancing the capacity of law enforcement, judiciary, and medical professionals is imperative. Training programs should focus on applying CEDAW and ACHPR principles in cases of intimate partner violence and gender-based violence, ensuring victim support and gender sensitive approaches throughout legal proceedings. Rigorous national legal reforms are also necessary to align domestic laws with international standards set by CEDAW and ACHPR. This entails criminalizing intimate partner violence and gender-based violence, safeguarding survivors' rights, and guaranteeing access to support services and legal recourse. Strengthening national human rights institutions and gender equality commissions is essential for overseeing the implementation of CEDAW and ACHPR provisions, including those addressing violence against women. Establishing robust monitoring and evaluation mechanisms will enable stakeholders to track progress, refine strategies, and enhance outcomes for women and girls. By implementing these recommendations and integrating CEDAW and ACHPR principles into efforts to combat violence against women, stakeholders can advance gender equality, women's rights, and the prevention of violence across Africa.

The integration of the African Charter on Human and Peoples' Rights (ACHPR) with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) presents a promising avenue for addressing gender-based violence (GBV) and intimate partner violence (IPV) in Africa. By leveraging the principles and provisions of these international and regional human rights treaties, African nations can bolster women's rights and prevent violence through institutional strengthening, societal transformation, and substantial legal reforms. The comprehensive framework provided by ACHPR and CEDAW offers a multifaceted approach to action. By embedding these tools into national policies and programs, African countries can catalyze transformative change, ranging from legislative reforms criminalizing IPV and GBV to the establishment of survivor support services and the launch of awareness campaigns challenging harmful gender stereotypes. Additionally, prioritizing women's rights within regional human rights frameworks demonstrates a commitment to upholding global norms of gender equality and non-discrimination. Nevertheless, the success of this integration endeavor hinges on collaborative efforts among governments, civil society organizations, grassroots movements, and other stakeholders. Effective translation of CEDAW and ACHPR requirements into tangible initiatives that benefit women and girls across the continent necessitates coordination and cooperation. Overcoming obstacles at various levels—local, state, and federal—requires sustained advocacy, resource mobilization, and capacity-building endeavors. Crucially, centering the voices and experiences of African women is imperative for the development and implementation of programs aimed at addressing IPV and GBV. By prioritizing women's rights, African nations can foster inclusive, equitable, and violence-free societies where all individuals can thrive. Ultimately, the integration of ACHPR and CEDAW offers a pathway toward realizing the vision of a continent where women are safe, respected, and empowered to exercise their rights without fear of discrimination or violence.

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