

International Human Rights

**The Protection of the
Rights of Women and
Female Child in Africa:**

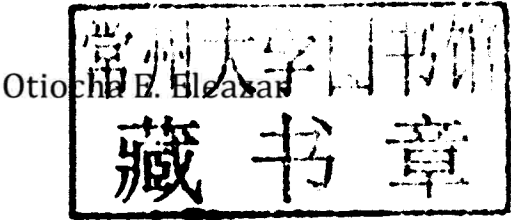
Theory and Practice



Otiocha E. Eleazar



**INTERNATIONAL HUMAN RIGHTS: THE PROTECTION
OF THE RIGHTS OF WOMEN AND FEMALE CHILD IN
AFRICA: THEORY AND PRACTICE**



International human rights: the protection of the rights of women and female child in Africa: theory and practice

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DEDICATION

To my mother, Nneoma Naomi Otiocha. (Madam General)
Mama, you have shown true love and sacrifice to all your children.

Acknowledgments

I wish to express my sincere gratitude to my God and Lord Jesus Christ, whose unfailing mercies has made it possible for the completion of this book.

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Finally, I am forever grateful and thankful to my wife Chioma, for her support and love. To my children; Ony, Kelechi, Mmesoma and Amarachi, I say thanks to all of you for your patience as I worked on this book.

And to all, both mentioned in this page and unmentioned, I say may God richly bless and reward all of you for your support and prayers.

Eleazar Otiocha

Abbreviations

African Charter on the Rights and Welfare of the Child	ACRWC
African Union	AU
Centre on Housing Rights and Evictions	COHRE
Convention against Torture and other cruel inhuman or degrading treatment or punishment	CAT
Convention on the Elimination of all Forms of Discrimination against Women	CEDAW
Convention on the Rights of the Child	CRC
Declaration on Elimination of Violence against Women	DEVAW
Food and Agricultural Organization	FAO
Female Genital Mutilation	FGM
Inter-African Committee on traditional practices affecting the health of women and children	IAC
International Court of Justice	ICJ
International Covenant on Civil and Political Rights	ICCPR
International Covenant on Economic, Social, and Cultural Rights	ICESCR
International Labor Organization	ILO
Organization of African Unity	OAU
Universal Declaration of Human Rights	UDHR
United Nations	UN
United Nations Development Programme	UNDP
United Nations International Children's Emergency Fund	UNICEF
Vesico Vaginal Fistula	VVF
World Conference on Human Rights	WCHR

Preface

The recognition of women and female rights as a different concept in international law has fully been accepted in modern nation states. The fight for the protection and advancement of women and female rights as an international human right has been an on going work. Women and female children all over the world have always enjoyed lesser rights when compared with men and boys in every society whether primitive, developing or developed societies.

The 1948 Universal Declaration of Human Rights (UDHR) “affirming the equality of men and women” has been considered a landmark in the quest for the universal equality of all human beings. This declaration notwithstanding, women and girls all over the world have continued to suffer discrimination and inequality with their men and boys counterpart in most societies.

The enactment of the Convention on Elimination of all forms of Discrimination against Women in 1979 was one of the first universal answers to this problem. In 1979, the United Nations General Assembly adopted the Convention on Elimination of all forms of Discrimination against Women (CEDAW), thus recognizing some special rights for women. The treaty came into effect on 3rd of Sept 1981. This convention otherwise known as “women’s bill of rights” established a bench mark for judging and protecting women’s rights worldwide.

Africa followed the train of promoting women’s rights by adopting the Maputo Protocol on July 2003. The protocol came into force on 25th November 2005 after it had been ratified by 15 African countries. This protocol elevated the rights of African women to an unprecedented level. The coming into force of the African protocol on the rights of women in Africa was highly celebrated.

Many governments all over the world have enacted laws and regulations to promote and protect the rights of women and female children. A lot of laws have been put in theory to give women equality with men. In reality or

practice, many women all over the world still find it difficult to realize their rights.

This book attempts to look at how far the law on the rights of women, that is the law in books has become the law in practice/reality in Africa with Nigeria as a case study.

This book acknowledges that in theory many African states have tried to change the statute books to accord women some level of equality with men but at the same time a look at the practice of the law in many African states shows a different pattern of law. There is a big disconnect between women's theoretical rights and the reality or practice of the theory.

June 2011

Eleazar Otiocha

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Chapter 1

Human Rights and International Human Rights in Africa

1 (A) Origin and History of Human Rights

The origin of human rights is controversial¹ just like the concept of human rights. According to Ishay, the question of the origin of human rights is a politically charged question.² Currently, there are still some controversies on the precise origin³ and meaning⁴ of the concept of human rights.

Historically it is believed that human rights is as old as the human race.⁵ As Shapiee argues "it is not an exaggeration to say that human rights can be traced to the origin of the human race itself."⁶

To some people, the concept of human rights has always existed with the human race since the origin of man.⁷ Some human rights writers believe in the idea that people enjoy rights simply by virtue of their humanity and this idea is as old as man and history.⁸ This idea may be traced back through the political and legal theories of natural law, philosophers, the Roman law and even beyond.⁹

The concept of human rights can be found among the writings of early philosophers like Plato, Aristotle, Cicero, and among early cultures and

¹ Micheline R Ishay, *The History of Human Rights. From Ancients Time to Globization Era* 18 (University of California Press 2004).

² Id.

³ Id. at 19. Here Ishay refers to Rene Cassin as claiming that the concept of human rights originated from the Bible, especially from the ten commandments and old testament old books of the bible; while others dispute this claim by asserting that the concept of human rights could be traced to the Hammurabi Code, the oldest surviving collection of law.

⁴ James Avery Joyce, *The New Politics of Human Rights* 1-2 (St. Martins Press 1978), where he argues that nobody knows for sure what human rights are or where they began, but every body knows what they are not and where they stop.

⁵ Michael Palumbon, *Human rights: Meaning and History* 13 (Robert E. Krieger Pub. Co. 1982). See also generally, J. Donney & R. E. Howard (eds.), *International Handbook of Human Rights*, Greenwood Press (1987).

⁶ Rohimi Hj.Shapiee, *Third Generation Human rights- Rights of the Third world: Concepts and Policy Considerations* 40 (Percetakan Negara 1994).

⁷ Yougindra Khushalani, *Human Rights in Asia and Africa*. 4 Human Rights Law Journal, 404-405 (1983), See also generally, Joh E. Lewis, *A Documentary History of Human Rights: A Record of Events Documents and Speeches that shaped our World* (Carroll & Graff 2003).

⁸ George William Mugwanya, *Human Rights in Africa: Enhancing Human Rights through the African Regional Human Rights System* 16 (Transnational Publishers 2003).

⁹ Id.

societies such as Jews, Christians, Chinese, the Hammurabi Code, and Quran.¹⁰ The idea of human rights can be found in the works of sages, philosophers, prophets and poets from different countries and faiths in all countries including India, China, Japan, Persia, Russia, Turkey, Egypt, Israel, several countries of Africa, and pre-Columbian civilization of South America.¹¹

The culture and history of the earliest civilizations show that the concept of human rights has been cherished through the centuries in many lands and is as old as history itself, because it concerns the need to protect the individual against the abuse of power by the monarch, the tyrant or the state.¹²

In every history of creation and every traditional account, whether from the lettered or unlettered world, however they may vary in their opinion or belief of certain particulars, all agree that all men are born equal, and with equal natural rights. Even the Mosaic account of creation, whether taken as divine authority or mere history, talks about human rights and equality of man. In the biblical account of human history and creation, God in many places demanded that man be treated with dignity and respect.¹³

The demands of the bible correspond with the wordings of the drafters of UN Declaration of Universal Human Rights.¹⁴ Supporting this view, Ishay argues that the first article of the Universal Declaration of Human Rights by declaring that all human beings “should act toward one another in a spirit of brotherhood,” corresponds with the biblical injunction “love your neighbor as yourself.”¹⁵

History alludes to the fact that in every primitive and ancient society, the respect for the rights of man was of utmost importance.¹⁶

¹⁰ Ishay, supra note 1, at 19-27.

¹¹ A.H. Robertson & J.G. Merrills, *Human Rights in the World: An introduction to study of the protection of human Rights* 8 (Manchester University Press, 4th ed. 1996).

¹² Id.

¹³ Leviticus 19:33 (NIV), Micah 3 (NIV) & Romans 12: 9-12 (NIV), See also Lewis, supra note 7, at 357.

¹⁴ Shapiee, supra note 6, at 14; where he argues that more direct historical antecedents of the concept of human rights can be traced to its foundation in Christianity and Roman law.

¹⁵ Ishay, supra note 1, at 19. See also, Mathew 22:34-40 (NIV).

¹⁶ Id. See also, Rohimi Hj. Shapiee, supra note 6, at 40-43, Robertson & J.G. Merrills, supra note 12, at 7-8, where it is argued that in many ancient cultures of Egypt, China, Persian,

Thus, long before the adoption of the United Nations Charter, the concept of human rights had consistently developed with form and content determined by different social and political considerations.¹⁷

It has been argued that the modern day concept of human rights is one of the legacies of western liberal democracy, which came as a result of western rejection of the conservative Judeo-Christian religious teachings and clamor for individual liberty as way of achieving the utmost happiness of mankind.¹⁸

The reasoning of the school of thought which argues that human rights has been with man in antiquity is predicated on the fact that wherever there is a group of people or community of human beings, there must be issue of the rights of human beings or respect for the rights of human beings.¹⁹

There are those who disagree with this idea that human rights has always existed with every primitive society since the origin of man. This disagreement is rooted in the belief that primitive society was more concerned with morals and not legal and individual rights as conceptualized by modern day human rights.²⁰

This controversy notwithstanding, there is some consensus among international law and international relations scholars on the origin²¹ of the modern day concept of human rights.²²

Russian, Turkey, Israel, Japan, Cyprus, African nations, they all claim to practice human rights. For example, it is reported that one of the Pharaohs' of ancient Egypt was giving instructions to his vizirs to the effect that "when a petitioner arrives from upper or lower Egypt, they should make sure that all is done according to the law, that custom is observed and the rights of each man respected" and the code of Hammurabi, the king of Babylon 2000 years before Christ in which the monarch records his mission "to make justice reign in the kingdom, to destroy the wicked and the violent, to prevent the strong from oppressing the weak and to enlighten the country and promote the good of the people.

¹⁷ Mugwanya, *supra* note 8, at 16.

¹⁸ A.J.M. Milne, *Human Rights and Human Diversity* 1 (Macmillan Press Ltd 1986).

¹⁹ *Id.* at 405.

²⁰ Shapiee, *supra* note 6, at 14.

²¹ Ishay, *supra* note 1, at 65. It is widely agreed that our modern conception of human rights originated in Europe and America, the story of their inception which is embedded in the political, economic and technological changes associated with the rise of the west and relative decline of rival civilizations.

²² This book will concentrate on the modern day concept of Human Rights as an international obligation which came into being after the formation of United Nations in 1945 and the 1948 Universal Declaration of Human Rights. Many international law scholars