



## Women, Children and Race as Addressed by The African, Inter-American, and European Regional Human Rights Protection Systems

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### Introduction

Every individual has the right to be treated in a humane way. These rights are often considered universal legal guarantees that reflect the expected standards of care necessary to allow people to interact with each other with equal opportunities and dignity. Since the 1948 adoption of the Universal Declaration of Human Rights, the need to uphold the rights and privileges of individuals has become integrated into national, regional, and international legal systems. (UNICEF, 2020). The legal significance of the declaration of human rights was particularly demonstrated in the Supreme Court Justice Black's concurrent opinion in the case *Oyama v. California* (*Oyama v. California*, 332 U.S. 633, 1948). According to Bitker (1971), the case's outcomes were informed by the thirty articles of the Universal Declaration of Human Rights. These ideals were also shared by all the states in the USA; nevertheless, the full accomplishment of these ideals had not been attained in the country. It was not until the 1920's that the United States illegalized political discrimination directed at women following the enactment of the 19th amendment of the constitution.

Since the implementation of human rights regulations, governments globally have been forced to restrain from denying citizens their rights to education and fair healthcare services. Governments are also obliged to ensure that citizens live in a non-discriminatory environment in which they are accepted and tolerated regardless of their economic statuses, property, social and national backgrounds, sex, color, and race. In addition, international human rights call upon the state to implement practices, programs, policies, and laws to safeguard ethnic or racial groups from unintended or deliberate abuse. Human rights are universal, meaning that they are applied equally regardless of gender, ethnicity, and race. Nevertheless, international human rights are violated in different countries.

The issues of gender equality as it pertains to the rights and privileges of women have been considered fundamental aspects of the Universal Declaration of Human rights. Several years after the implementation of the Universal Declaration of Human rights, it was uncovered that certain privileges are specific to women and children's needs and should be emphasized. These freedoms were later detailed and highlighted in subsequent regional and international instruments, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) that

was first adopted in 1979. The CEDAW set out fundamental core human rights principles and agendas that aim at reducing the level of discrimination against women and children. So far, the principle helped facilitate the provision of equal opportunity for women to access education, employment opportunities, and healthcare. The CEDAW also declared the rights of women to take control of their reproduction.

The rights of children, as specified in the international human rights declaration, emphasize that children have the same rights as adults and must be protected from discrimination (UNICEF, n.d.). Children should not be perceived as their parent's property or objects of charity since they have their own rights and freedoms. The Convention on the Rights of the Child stipulated the rights and privileges of children that must be taken into consideration in order to enable them to attain their full potential with regards to their educational and healthcare needs. The convention provided children with a legal identification as fundamental members of societies, families, and communities regardless of their ages and stages of development. By acknowledging children in this way, the Conventions on the Rights of the Child focused on their holistic well-being. Human rights regulations for children also emphasized that there is constant urgency to ensure that young people develop accordingly in a mutually cohesive environment.

The primary reasons for emphasizing the rights of children in separate conventional human rights documents include:

1. Children are legally considered independent individuals with their challenges, ideologies, and opinions who deserve to be treated with dignity.
2. The life of a child starts out as that of other independent beings; nevertheless, they require constant guidance and nurturing to become productive members of society. In instances where parents or guardians are unable to provide the care necessary in allowing children to attain their full potential as productive adults, the state is legally obliged to provide care that meets the child's interests.
3. The inactions or actions of the government may negatively or positively affect children psychologically and mentally on a long-term basis. All aspects of government policies, especially those that pertain to healthcare and education, influence the growth of children.
4. It is important to integrate the perceptions and opinions of children in the political processes.
5. Children are in most cases negatively influenced by disproportional societal changes, including alterations of family structures, fragmented social welfare organizations, migration, and climate change. The outcome of these changes may be worse in embattled areas.
6. Children are the future of society, and this means that when the rights to healthcare and education are not provided in a fair and equitable manner, children will not grow to become effective contributors to the social and economic development of the society in which they live.

Intersectional discrimination against women and children was recognized as a significant hindrance to the attainment of equality for marginalized populations. The problems of racial and gender discrimination against women and children across the national and international borders have prompted legal approaches to uncover the most appropriate policy regulations necessary in reinforcing equality laws. The occurrence of intersectional discrimination has constantly been acknowledged in numerous United Nations conferences and documented in publications, including the Beijing Platform for Action and the 2000 Report of The Twenty Third Special Session of the General Assembly. These and other similar certifications have attracted significant attention on the importance of acknowledging the effects of intersectional discrimination and their influence on vulnerable populations of women and children. Publications on women and children's rights issues have not offered in-depth insights into the developmental complexities that victims of social abuse are forced to endure as a result of discrimination.

In another document by the Committee on the Elimination of Racial Discrimination that sought to explore primary dimensions of intersectional racism, it was revealed that there is a lack of official publications or policy statements that provide focused attention on specific ways that racially marginalized women and children deal with discrimination. A structured examination of the combined impacts of gender and racial inequalities, alongside their strategic, policy, and legal implications, has also stirred debates on current inadequacies of international human rights requirements. The first approach to eliminate the challenge of gender-based racial discrimination against women and children is to uncover key inadequacies in how the issue of women, children, and race are addressed within the International Declaration of Human Rights, as will be analyzed in this paper. Most importantly, this paper will shed light on the inadequacies or challenges to the execution of anti-racial human rights laws across Africa, Inter-America, and Europe, particularly those that govern marginalized women and children populations.

### **Women, Children and Race as Addressed by the African Human Rights Protection Systems**

Even though the concepts of women and children's human rights are new in Africa, indigenous individuals and communities living on the continent have fought for equal employment and education opportunities, dignity, freedom, and social justice for decades. The term 'human rights' has largely been applied in Africa to help realize the principal objectives of the international human rights violation (African Commission on Human and Peoples' Rights, 2020). Nevertheless, considering the historical exploitation of Africans following their colonization by a western power, there are evident struggles in implementing human rights reforms. The outlined principles within the African Charter on Human and Peoples' Rights are often a reflection of the region's experience of colonialism and slavery. For instance, the majority of the human rights stipulations are focused on upholding the freedom to make choices concerning socio-political and economic factors. In a majority of instances, citizens often resort to violence if they feel that their constitutional rights have been breached. The African Union Constitutive Act also encourages intercessory actions by member states in case the requirements laid there are desecrated (African Commission on Human and Peoples' Rights, 2020).

The human rights systems in Africa have so far failed to attain the desired objectives. Human rights violations on colossal scales. The process to legally create and sustain efficient institutional structures that will aid in the protection and consolidation of human rights and freedoms has become a struggle due to cultural factors, including perceptions of existing social hierarchies. The status hierarchy formations in contemporary African societies have a range of group-level and personal implications. For decades, women and children have been considered the lowest ranking members of society, a fact that exposes them to unfair and discriminatory treatment (Amnesty International, 2020).

According to a National Library of Medicine publication by Mandalaywala et al. (2020), "status hierarchies can be based on a wide variety of factors, including (but not limited to) physical size or prowess, access to resources, wealth-holding, social or decision-making power, and prestige or social influence" (Para. 1). The current trends in the discrimination of women and children have significantly infiltrated into socio-legal requirements on the handling of women. As children grow into young adults, they gain the ability to track and detect these hierarchies, which they use to predict dominance. Women across continents have also become aligned with perceptions of dominance from male members of society, thus making it less likely that they will acknowledge and fight intersectional discrimination against them. Due to the varying success in the implementation of anti-discriminatory human rights laws in Africa, there have been calls to increase understanding of the examples and key aspects of the African human rights protection systems.

### **African Human Rights Treaties**

The main human rights treaties and protocols in Africa include:

1. The African Charter on Human and Peoples' Rights (Banjul Charter)

The Banjul Charter was first formulated to protect civilians' socio-economic, cultural, and political rights and freedoms. It also acknowledged the equal rights to self-determination and development for individuals regardless of their ethnic backgrounds, political affiliations, gender, and age. This charter also entitled each person to legally protected freedoms and privileges as stipulated in the International Declaration of Human Rights, without bias or discrimination based on their social status. Most importantly, this regulation offered special protection for physically and mentally disabled people. People with a disability had for long been ignored, thus necessitating the implementation of the Banjul Charter.

2. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).

This protocol remarkably complemented existing human rights regulations in Africa by emphasizing the rights of women. This treaty offered a succinct definition of intersectional discrimination against women. Besides, the charter addressed the role of traditional practices or values such as early forced marriages and female genital mutilations in interfering with the legal implementation of fairness and equality for women. The Maputo protocol also protected women's right to reproductive and healthcare decision-making. According to [Womeneabled.org](http://Womeneabled.org), Article 14 of this convention urges for reinforced "special protection of women with disabilities, requiring state parties to facilitate their access to employment, vocational training, and participation and to ensure that women with disabilities are free from violence, sexual abuse, and discrimination."

3. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (Disability Protocol).

The disability protocol (ADP) was formulated based on the rights and freedoms enshrined in the United Nations Charter and the United Nations Convention on the Rights of Persons with Disabilities. The adoption of this protocol has positively impacted the highlighted groups of vulnerable populations. Key provisions of the protocol include protecting, ensuring, and promoting equal enjoyment of individuals. Besides, the charter sought to uphold respect for their decisions or choices. The disability protocol covers individual rights to discrimination, the security of disabled people, liberty, and equality.

4. African Charter on the Rights and Welfare of the Child (ACRWC)

The ACRWC was first adopted by the Assembly of Heads of State and Government of the Organization of African Unity in 1979. The process of adopting the charter took place during the 16th Ordinary Session in Liberia. The creation and implementation of this charter was a reactionary move to the need for appropriate measures that would protect the rights and freedom of African children. The majority of the African head of states, through their delegated ministers, had pointed out that the situation of African children was unsuitable for holistic growth and development as a result of prevailing hunger and exploitation in the majority of African countries. Besides, children living in disaster-prone regions and in areas from low socio-economic statuses required constant care as safeguards to enhance their physical and emotional maturity. The law acknowledged and recognized that children occupied privileged and unique positions within contemporary African societies; therefore, they needed a stable environment characterized by love, mutual understanding, and happiness in order to thrive.

The existing protocols have reaffirmed the commitment of African state parties in combating discrimination against women and children through the assistance of legislative and constitutional measures. In this regard, relevant state parties have integrated equal women and child protection rights in their legislative instruments and constitutions and conducted necessary awareness campaigns to ensure effective application. In addition, the relevant state personnel has implemented regulatory measures that ban various forms of discrimination that pose increasing risks to the wellbeing of women and children. Most importantly, state parties have dedicated their resources to restructuring both cultural and social patterns of conduct against women and children through communication techniques, information management, and education. The goal of incorporating these strategies in enforcing anti-discriminatory laws is to eliminate traditional and cultural practices that represent women and children as inferior.

The Protocol to the African Charter on Human and Peoples' Rights on The Rights of Women in Africa have also reaffirmed the provision of women's right and welfare in Africa as per the requirements of the United Nations Plans of Action on the Environment and Development.<sup>[1]</sup> This charter recognized the crucial roles of African women in preserving the continent's rich cultural values and beliefs. Key actors in the development of the charter believed that any traditional practices that prevented women from attaining their goals or hindering their psychological and physical growth should be abolished. The goal was to ensure that women as vulnerable populations were to be protected through legal means in order to attain their goals. According to the Protocol on the Rights of Women published by the UNHCR, the principle of equality within the African context sought to

Promote gender equality as enshrined in the Constitutive Act of the African Union as well as the New Partnership for Africa's Development, relevant Declarations, Resolutions, and Decisions, which underline the commitment of the African States to ensure the full participation of African women as equal partners in Africa's development.

Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on The Rights of Women in Africa that discrimination against women was defined as the restriction and exclusion based on an individual's sex or gender. Therefore, African states were called upon to combat women discrimination by:

1. Incorporating the principle of equality in legislative instruments and national constitutions, alongside ensuring their effective implementation.
2. Effectively enacting and executing appropriate regulatory measures that curb and prohibit any form of discrimination among the vulnerable groups.
3. Incorporating a gender perspective in national and regional development initiatives, empowerment programs, and legislative reforms.

### **Women, Children and Race as Addressed by the Inter-American Human Rights Protection Systems**

The Inter-American human rights system is accountable for safeguarding, overseeing, and promoting human freedoms and privileges within the 35 independent countries constituting the Organization of American States (OAS) (OAS, 2020). The Inter-American Court of Human Rights and the Inter-American Commission on Human Rights are the two primary entities that facilitate the administration of human rights principles. The Inter-Americas Commission for Human Rights has implemented human rights reforms to help protect the rights and freedoms of women and children. In the year 2020, the IACHR called for the United States to help execute the structural reforms within its justice and security institutions in order to alleviate historical injustices against individuals from the minority populations. The Inter-Americas human rights systems cited that societal issues such as discrimination are becoming key indicators of racial profiling (Inter-America Commission on

Human Rights, n. d.). The increase in the rates of police brutality and incarceration of black people indicate that societal challenges such as delinquency and drug abuse disproportionately affect black populations. In addition, existing policies on the application of excessive police force, alongside the implementation of more stringent drug use reforms, have negatively impacted the attainment of human rights principles among the indigenous and Afro-American communities due to institutional racism. According to the Organization of American States (OAS) (2020),

The IACHR urges the State to make said reforms a central axis of transformation in eradicating institutional racism present in the actions of law enforcement authorities, as well as in the operation of the justice system, which has a disproportionate impact to the detriment of Afro-descendant persons.

The Human Rights structures in the Inter-Americas are responsible for settling disputes regarding alleged human rights breaches and may stipulate emergency responses in instances when victims of abuse prove to be facing immediate danger. These entities also incorporate several human rights promotions and monitoring activities. Other relevant agencies include the Inter-American Commission of Women (CIM) and the Follow-up Mechanism to the Belém do Pará Convention (MESECVI). The Inter-American Commission for human rights began its operations in the 1960s. Nevertheless, it took several years before it was sanctioned to commence operations in the processing of cases concerning violations of human rights. The main rights that are protected by the Inter-Americas include the rights to privacy, personal liberty, humane treatment, property ownership, nationality, and fair trial. These principles also encompass the protection of the freedom of expression and thoughts. The Inter-American Human Rights principles prohibit discrimination against disabled persons, forced disappearances, psychological, sexual, and physical assault, and degrading punishment.

Statistics by the Department of Justice's Bureau of Justice Statistics revealed the worrying trends and patterns in racial profiling in the inter-Americas. The institution revealed that although Afro-descendants constituted only 12% of the entire inter-American population, an overwhelming 33% of convicted prisoners were members of the racially marginalized population. The NAACP also confirmed these findings by noting that although there were only 12.5% of illegal drug users in the inter-Americas in the year 2015, 58% of incarcerations and 29% of arrests done involved this minority population. Besides, information on racial profiling as gathered by the IACHR's Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) highlighted that people of Afro-American descent earned 60% less income compared to the white populations, thus indicating the dire need for racial and social equality reforms across all spectrum of public service delivery. There is the notion that an anticipated 20% of African Americans across the inter-Americas were living way below the poverty line, as indicated by statistics from the United States Census Bureau. Therefore, the commission acknowledged potential challenges that are faced by African-American people trying to maneuver through the judicial systems and prove their innocence.

### **The IACHR Stand on Racial Profiling**

The IACHR has for decades documented concerns regarding the existence of racist reforms that encourage the marginalization of ethnic and racial minority populations. The commission has received numerous complaints and reports concerning racist activities by law enforcement, especially during the "Stop and Frisk" operations. These practices were identified as causing the criminalization of individuals from poor racial minority backgrounds. Initially, the IACHR described racial profiling as

A tactic adopted for supposed reasons of public safety and protection [...] motivated by stereotypes based on race, color, ethnicity, language, descent, religion, nationality, place of birth, or a

combination of these factors, rather than on objective suspicions, [which] tends to single out individuals or groups in a discriminatory way based on the erroneous assumption that people with such characteristics are prone to engage in specific types of crimes (IACHR, para. 143).

This definition of racial profiling does not call for an explicit expression of discrimination targeted against a particular ethnic and racial group but may be applied to indicate unequal enforcement. Due to racial profiling, individuals of Black African descendants are likely to face conviction, arrest, prosecution, and pursuit by law enforcement personnel if they are suspected of engaging in unlawful criminal activities. For decades, racial profiling has been identified as a primary determinant of equality reforms across Brazil and the United States. The concept of racial profiling across the Inter-Americas has been a historical aspect of social reforms formulation within the frameworks of peer pressure and substance abuse.

Key recommendations by the IACHR intended to curb racial injustices include:

1. Ensuring and undertaking adequate and quality funding for local, state, or national investigations into effective ways of regaining the public trust in the capacity of the governmental bodies to ensure that victims of racism are adequately counseled and compensated, alongside being guaranteed constant legal protection from:
  1. Racially discriminatory treatment practices by civilians or the police.
  2. Excessive police brutality is directed at members of the minority populations, including women and children, as society's vulnerable groups.
  3. Unfair incarceration, sentencing, prosecution, and disproportionate arrest.
  4. Lack of access to cultural, socio-economic, and environmental rights attributed to the racial differences.
2. Designing, executing, and offering financial incentives to government programs that aim at gathering disaggregated, reliable, and accurate qualitative and statistical information on the status of human rights for individuals from the colored community as a way of addressing socio-environmental challenges affecting these individuals. Specifically, the Commission focused on gathering information on the hardship conditions that racial minorities endured. These efforts mostly incorporated diversity and gender-based approaches to help reduce instances of racial discrimination.
3. Steering processes that allow the realignment of international human rights standards with domestic laws as crucial steps in reinforcing inter-American protection entities. Specifically, the commission has made several calls to the United States to sanction conventions against various forms of intolerance, racial discrimination, and racism as effective strategies of protecting the rights of marginalized populations.
4. Considering appropriate amendments to domestic laws that may compromise the attainment of fair and equitable human rights.
5. Ensuring that local, state, and federal government agencies operate in adherence to relevant domestic laws that oversee the investigating, oversight, and monitoring of human rights violation incidents by private individuals and police departments.

## **Protection of The Rights of Children in The Inter-America Human Rights Protection Systems**

As enshrined in the International human rights laws, the rights of children should be protected considering that they are key to a country's future stability. The IACHR acknowledges the special status of children as growing and developing individuals. The recognition goes in line with the creation of a moral and ethical obligation on the part of the state to accord children enhanced and

special protection. The duty also stems from the requirements enshrined within the 19th Article of the American Declaration of the Rights and Duties of Man and the United Nations Convention on the Rights of the Child. On a larger scale, the inter-American regional institutions have managed to protect the rights and freedoms of children through maintaining compliance with the international human rights declarations, codes, and special protection rights.

There are numerous indicators of the legislative committee of the inter-American institutions in protecting the rights of young ones. Recent advances such as the implementation of free education and medical coverage for children have enabled inter-American governments to improve literacy rates and reduce child mortality and morbidity. In addition to these measures, the IACHR constantly evaluates conditions relating to children's fulfillment of their rights across the different countries.

In terms of protecting the rights and privileges of children, the IACHR also noted the increasing prevalence of sexual violence against adolescent girls. Thus, the IACHR has demonstrated a commitment to reinforce sexual violence reforms. Besides, the IACHR has established that adolescent pregnancy is a challenge affecting the psychological and mental development of children. The IACHR has noted that around 10 million girls aged below 15 years get pregnant every year, thus making the region rank second in terms of the percentage of teenage pregnancy. Most importantly, the country has worked to ban corporal punishment that causes unnecessary psychological and mental trauma to children, despite being socially acceptable.

### **Women, Children and Race as Addressed by the European Regional Human Rights Protection Systems**

The Council of Europe maintains that the effective and sustainable protection of human rights is highly dependent on national and regional mechanisms and developments. European citizens depend on primary laws and policies to enjoy their rights and privileges, thus mandating the inclusion of these rights in the region's constitution. The Council of Europe also noted that the execution of human rights should be implemented at the grassroots levels, as well as within neighborhoods and communities. The duty and obligations of the state with regards to the implementation of human rights are, therefore, to fulfill, protect, promote, and respect the constitutional rights of citizens. The regional human rights mechanisms have played a crucial role in ensuring that European governments comply with international human rights standards. The European human rights structure is overseen by the European Court of Human Rights situated in Strasbourg, France.

The Court was founded in 1959 as a body of the European Council to help reinforce the execution of the European Convention on Human Rights. The three categories of human rights protection that it was obliged to provide as stipulated by the World Health Organization included:

1. Responsive action that incorporated initiatives that are undertaken to help alleviate confirmed patterns of abuse, alongside preventing recurrence.
2. Remedial action that entailed initiatives designed to restore the dignity of victims of inhumane treatment, by providing support as they undertake legal procedures and creating improvements in the victims' living conditions.
3. Environment building activities are designed to consolidate and establish conducive environments where the rights and privileges of individuals are protected and sustained regardless of social and economic statuses.

The European Court of Human Rights has come up with the criterion for evaluating the admissibility of cases concerning the violation of human rights. These guidelines stated that an individual who has directly suffered from various forms of abuse might present the cases or a legal



professional assigned to the case. According to the provided guidelines, victims of abuse who are going through the admissibility phase are not obliged to seek the help of a lawyer; however, the need for legal counsel becomes mandatory once the case is accepted. The criteria also acknowledged that individuals could also sue states for their failure to take appropriate actions that led to delayed justice or further harm to the victims. Most importantly, the guideline emphasized that cases were only admissible in court if the defendant and accused exhausted all domestic avenues without finding effective solutions. Lastly, the European Court of Human Rights noted that the accused were required to file their applications at least six months after the hearing is complete in the domestic court of law.

[1]African Commission of Women and People's Rights,  
<https://www.achpr.org/legalinstruments/detail?id=37>, (Last visited Feb 1, 2021)