

Women's rights in Africa: the work carried out by organisations of women in legal careers in Senegal

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A number of African countries have for several years now tried to create a modern legal framework that is more egalitarian than the rules inherited from the colonial period, but discriminatory principles persist in the legislation of several countries, which brings us to redouble our reflections with relation to two key themes (and at two different levels).

First and foremost, in Africa as a general rule, married women are always subject to the guardianship of their husband, who is invested with the authority of the head of the family by the texts and laws governing personal relationships. Nevertheless, the majority of recent African texts establish a woman's ability to exercise a profession that is distinct from that of her husband, and also to perform legal procedures. It is nevertheless true to say that these rights are restricted by certain ambiguous provisions [1].

The majority of legislators in Africa have in fact opted for a "low-profile" restriction of the freedom of a married woman [2]. Married women can indeed work without the authorisation of their husband, but the latter may object to her doing so if the interests of the family are threatened. In Cameroon, for example, women have, since 1981, had the right to exercise a profession without the prior authorisation of their husband. However the latter

has the right to object to her doing so, if her salary is not greater than the expenses occasioned by her absence from the home. In Nigeria, the constitution stipulates that the State must guarantee all citizens, without discrimination of any kind, access to “adequate means of earning a living” and “guarantee [them] appropriate employment” [3]. Traditionally, however, these notions do not have the same meaning when they apply to women as when they apply to men. In Ivory Coast, despite its reputation as a “modernist” country, women are not allowed the liberty to manage assets as a general rule [4]. Only women working in commerce have the right to administer the assets acquired through the exercising of their profession. If, however, they exercise a profession that is non-commercial, the law only recognises this right as the result of a decision of justice and if the husband does not fulfil his family obligations [5].

Numerous African countries have a dual legal system: a framework of customary practices often coexists with modern legal structures

Thus numerous African countries have a dual legal system [6]: a framework of customary practices often coexists with modern legal structures, particularly at a community level, which makes a change of behaviour through legal reforms more difficult to achieve [7].

International Conventions and Protocols in favor of women’s rights

In Africa, real efforts have been made in the field of women’s rights. The vast majority of West African countries ratified unreservedly the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), together with the Maputo Protocol on Women’s Rights of 2003 appended to the African Charter on Human and Peoples’ Rights [8].

In line with other international instruments, the African continent has adopted legal texts relating to women’s rights through the Organisation of African Unity (OAU), since become the African Union (AU). The main examples are the additional protocol appended to the African Charter on Human and Peoples’ Rights relating to Women’s Rights (the Maputo Protocol) referred to above, and the solemn declaration of the heads of state and government concerning gender equality in Africa [9].

The Maputo Protocol was adopted by the African Union (AU) during its second summit held on 11 July 2003 at Maputo in Mozambique. It came into force on 25 November 2005 after being ratified by 15 Member States of the AU. Out of 53 Member States of the AU, 49 have signed the Protocol and 31 have ratified it [10]. It is a crucial legal instrument for women’s rights which extends and reinforces the rights enunciated in other instruments relating to human rights. The Protocol guarantees a vast range of rights for women in the economic domain and in relation to social well-being. Above all, it was prepared by Africans and conceived to reflect the concerns of African women.

This innovative text supplements the African Charter on Human and Peoples' Rights, which did not take the question of women's rights sufficiently into consideration. The Charter emphasises African traditions and cultures, which in some ways can have negative effects on the implementation of women's rights.

This instrument deals with certain issues that are not addressed effectively in other instruments but which are of particular importance for African women, including HIV/AIDS, the inheritance of widows and the dispossession of their assets, women's reproductive right to a medicalised abortion when a pregnancy is the result of rape or of incest, or when the continuation of the pregnancy endangers the health or the life of the mother. The Protocol to the African Charter on Human and Peoples' Rights (PACHPR) has the great advantage of defining key concepts such as discrimination, women's rights, harmful practices, etc [11].

Driven by the same desire for better recognition of women's rights in Africa, in Addis Ababa in 2004 the Heads of State and Government of the Member States of the African Union adopted the Solemn Declaration on Equality between Men and Women in Africa [12]. It refers to all the pertinent legal instruments relating to women's rights and reinforces the legal mechanisms already existing in Africa [13].

In this declaration of historic importance, the Heads of State and of Government of the Member States of the African Union reaffirmed their desire for the integration of women at the highest level, thus giving priority to questions such as the recruitment of child soldiers and the application of economic, social and legal measures specific to women.

In addition, the Declaration requires the total application of parity between men and women in the decision-taking organs of the African Union and the ratification at national level of the Protocol to the African Charter on Human and Peoples' Rights in relation to Women's Rights in Africa, together with the protection of women against violence and discrimination [14].

The vast majority of West African countries ratified the Convention on the Elimination of all Forms of Discrimination Against Women, together with the Maputo Protocol on Women's Rights. Despite these efforts, gender inequalities persist in economic, socio-cultural and political spheres

Gender inequalities persist in all economic, socio-cultural and political spheres. In reality, women and girls come up against constant difficulties for gaining access to their legal rights, to education and to health and economic resources. Despite the efforts deployed by African States to improve their situation, various specific technical, socio-cultural and economic constraints explain this reality. Improvements have been made to gender integration programmes in public policies at both regional and national levels [15]. Despite these efforts, the reality is a long way from matching the commitments undertaken.

Certain countries, including Senegal, subsequently referred to the entire body of legal protective instruments in their constitutional framework, becoming an element of internal legal consolidation.

Senegal's case

In Senegal, the General Census of Population, Habitat, Agriculture and Livestock (RGPHAE) noted a quasi-equality in the workforce between men and women. Women constitute 51.1% of the population. They represent 53.0% of the electoral population, compared with 49.7% for men [16].

It must be recognised that there is an absence of a single homogeneous status for women in Senegalese society. The status of women is in fact different according to the various ethnic groups and geographical zones. Their status is also determined by the social system depending on whether the model is: matrilineal or patrilineal [17]. A matriarchy is a social system in which women have the power through its institutions, whether they be political (the decision-making mechanisms are controlled by women), social (women rule the family through the matrilineal system) or economic (the activities generating revenue are controlled by women), whereas a patriarchy constitutes the management of power by men.

Senegal developed at a slow rhythm between 2008 and 2015 in economic terms. According to the Plan for an Emerging Senegal (PES), social inequalities and territorial disparities continue to be a cause of concern. Senegal is in fact one of the 34 Least Developed Countries (LDCs) in Africa out of the total of 48 existing on the planet, with a very low human development index, a low level of revenues, considerable demographic growth and difficulties for the attaining of the Millennium Development Goals (MDGs). To these problems can be added an economy that is still fragile and vulnerable to both internal and external shocks and crises, in which multiple challenges persist in terms of production, development of infrastructure and governance.

In legal and regulatory terms, various provisions give ample opportunities to Senegalese women and reinforce their legal status. This is the case of the Constitution of 22 January 2001, which recognises equality between the sexes by affirming it in its introduction and main text through various different articles.

Senegal has a legal and regulatory framework that is favourable to the promotion of equality between men and women, due to the ratification of the following relevant international and regional instruments:

- The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).
- The Convention on the Rights of the Child, The African Charter on the Rights and Welfare of the Child (ACRWC).
- The Protocol to the African Charter on Human and Peoples' Rights in relation to

Women's Rights (Maputo Protocol).

- The Additional Declaration in relation to the equality of rights between men and women for sustainable development in the Economic Community of West African States (ECOWAS).
- ECOWAS Vision 2020.
- The Solemn Declaration in favour of equality between men and women in decision-taking mechanisms and in terms of electoral posts.
- The African Union's Agenda 2063.
- The Sustainable Development Goals (SDGs).

By ratifying the majority of the international conventions and treaties designed to respect the principles of the Rule of Law, the Senegalese State reminds us from the very introduction to its Constitution (reaffirmed in Article 98) the importance given to international conventions and treaties governing the international relationships that operate on three basic premises: respect for the principle of reciprocity, respect for security, and respect for human rights. Nevertheless, it must be admitted that the importance of these conventions lies in their harmonisation with the existing legislation to ensure their effective application, which explains the interest in their ratification. In terms of harmonisation, we can perceive a real desire on the part of the State which is displayed by the ratification of the majority of the international conventions and treaties but for which the application is slow to take effect [18].

Senegal reaffirms its attachment to international conventions, and especially to equality between men and women, through its Articles 7, 18, 19 and 22. The latter generally refer to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and to the Protocol to the African Charter on Human and Peoples' Rights, usually referred to as the Maputo Protocol. They in fact address in succession the issues of sexual equality, the prohibition of female genital mutilation, the prohibition of child marriage, and provide for women's access to the land while at the same time promoting the provision of schooling for girls.

The ineffective application of International Protocols and Conventions on gender equality can be explained by the ignorance of harmonised laws. There is a need to develop a real policy of popularisation and raising awareness, accompanied by training initiatives

The political desire has thus taken the form of the harmonisation of the legislative structure so as to respond to the international conventions and treaties ratified by Senegal. Thus in 1999 the law concerning acts of violence was adopted as a response to international

concerns about the violent treatment of women and the need to combat the multiple discriminations to which women are subjected [19]. In 2005, the law adopted concerning reproductive health enabled women to control their fertility, thus responding to the directives of the Maputo Protocol [20]. The same approach applied in 2008 with regard to the legislative provisions favouring women's access to the armed forces, to the gendarmerie and to the police; and to the law on parity adopted in 2010, the first positive effects of which in favour of women [21] were a 43% proportion of representation of women in the National Parliament, never before recorded in any previous legislature, and a strong trend towards 50% of women in the total of local elected representatives in all the regions of Senegal [22].

To this can be added the Law on Nationality, adopted in 2013, which has enabled a considerable number of spouses to discover the positive impact on legal texts of the battle conducted by male and female militants for the elimination of discrimination based on gender. In effect, since the coming into force of the reform of the Nationality Code in July 2013, more and more men have acquired Senegalese nationality through marriage. Before the adoption of the new Nationality Law, women of another nationality married to Senegalese men benefited from Senegalese nationality, whereas foreign men married to Senegalese women did not have the same privilege.

Finally, the adoption of Law No. 2020-05 of 10 January 2020, criminalising rape and paedophilia, and also leading to a tougher stance on sentencing and aggravating circumstances with regard to sexual harassment and indecency, represents a major advance in terms of the fight against gender-based violence. The criminalisation of rape was a demand of the associations for the defence of women's rights following the recording of a series of sexual aggressions. Until now, rape was considered in Senegal as a simple offence, punishable by five to ten years in prison. Now, thanks to the law to be voted on in the National Parliament, the perpetrators of these crimes can be given a sentence of up to life imprisonment.

All these laws voted through respond to the concerns of international conventions such as the CEDAW and the Maputo Protocol but, although their application has already started, they are not yet effective. The ineffectiveness of the application can, in general, be explained by ignorance of the harmonised laws, leading to a need to develop a real policy of popularisation and raising of awareness accompanied by training initiatives to ensure their wider diffusion not only among lawyers but also among the general population and organisations defending women's rights and militating for the effective Rule of Law free from discrimination based on gender.

When we examine the administrative and political framework, the existence can be noted of a benchmark framework of public policies sensitive to gender, namely the Plan for an Emerging Senegal (PES), since the key themes of the Priority Action Plan (2019-2023) integrate gender issues and favour the inclusive, equitable and egalitarian participation of the participants in the development process [23]. This mechanism reinforces the National Strategy for Gender Equality and Equity II (NSGEE 2016-2026) which is appended to the Plan for an Emerging Senegal (PES) [24].

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In addition, for many years now, movements defending women's rights have been fiercely fighting against gender inequalities by campaigning for laws discriminating against women to be changed [25].

The role of the Association of Senegalese Women Jurists

It is in this context that the Association of Senegalese Women Jurists (AJS), created in 1974 and made up of women in legal careers and associated on a voluntary basis, set the aim of contributing to the promotion and protection of human rights in general and the rights of women and children in particular [26]. The Association of Senegalese Women Jurists (AJS) is particularly focused on the promotion and popularisation of the law, the fight against gender-based violence, the legal and judicial aid provided in its "law shops", the provision of advice and training to the general population, the fight against all forms of discrimination and the promotion of equality-based gender relations [27]. In addition, it is today the leading force pleading for the harmonisation of national legislation with international and regional instruments for the promotion and protection of women's rights regularly signed and ratified by Senegal [28].

The AJS has developed important programmes that have enabled a large number of women and also of male citizens to gain access to information about their rights in general and those of women in particular. For this purpose, the AJS has had to undertake the translation of certain international conventions into the various national languages (Wolof, Pulaar and Manding), and through the Cinémaréna project has also travelled the length and breadth of Senegal raising awareness in accordance with international conventions of themes such as ensuring girls continue to attend school, genital mutilation and child marriages. This project has also allowed for the establishment of the AJS emergency telephone line for victims of gender-based violence, which aims to offer free legal advice on line.

In addition, the AJS has set up listening and orientation centres (referred to as "law shops"), an initiative that is much appreciated since it brings justice closer to hand by raising awareness and providing aid to those accused in order to solve problems before appearing in court. This activity is tied to partnerships with local media in order to raise awareness of international conventions such as the Maputo Protocol, which is also the subject of a partnership with religious bodies.

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In addition to this vital raising of awareness, the training of certain stakeholders, which is an essential contribution to the policy of harmonisation and is a response to the lack of effectiveness of the laws concerned, Thanks to the support of its partners such as the Catalan Agency for Cooperation for Development (ACCD), the AJS has had the opportunity to organise update training sessions with magistrates, judges and lawyers concerning gender-based violence (GBV). These have also been carried out with gendarmes and police officers so as to ensure the best possible approach to victims of violence, together with update training sessions with the medical corps and trade union representatives concerning the Maputo Protocol, and in addition training for paralegals, i.e., community contact persons who assist the local population with any daily issues they may be experiencing in relation to legal questions. The training carried out generally takes the form of initiatives aiming to increase the effectiveness of the harmonised laws which, as has to be recognised, are still at a stage in which they are continuing to evolve.

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