

EMANCIPATION, DECOLONIZATION, AND GENDER IN THE CONTEXT OF AFRICAN INTEGRATION

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Abstract

The 1960s institutionalization and formalization of Africa's continental integration was a manifestation of the ontological fragility of the concept of emancipation in the African context. As a concept, continental emancipation excluded concerns of women and formalized the divorce between decolonization and racial domination on the one hand and social emancipatory movements on the other. This divorce was contrary to the expectation of women who sought the end of colonial subjugation as a turning point for women's emancipation from not only colonial and racial domination but also from social oppression. This Article argues that the continental emancipation project betrayed the hopes of women who sought decolonization or the end of white racial domination as central to the end of gendered and gendering social subjugation. This Article will have four parts. The first part will be a general introduction and will explore women's emancipation in the context of regional integration studies. The second part will explore the internal contradictions of the concept of emancipation. The third part will explore the marketization of regional integration in Africa and the debates surrounding gender in trade agreements. The fourth part will be the conclusion and suggest a way forward.

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I. INTRODUCTION

This Article examines the shifting legal understanding of regional integration and the contradictory post-colonial developments that limited the understanding of emancipation to decolonization and the end of racial domination.¹ In my previous work (hereinafter first article), I attempted

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1. *Black’s Law Dictionary* defines “emancipate” as “[t]o set free from legal, social, or political restraint.” *Emancipate*, BLACK’S LAW DICTIONARY 598 (9th ed. 2009). Hence, for the purpose of this Article, emancipation is the removal of restraints on human freedom irrespective of its local or global origins, whether it is economic, social, legal or political. Decolonization is the process of ending colonial subjugation. Some scholars, for instance, Franz Fannon, understand decolonization as a violent phenomenon, while others, for instance, Mahatma Gandhi, use a non-violent strategy for decolonization. See Ketu H. Katrak, *Decolonizing Culture: Toward a Theory for Postcolonial Women’s Texts*, 35 MOD. FICTION STUD. 157, 161 (1989). In this Article, I understand decolonization to take either or both strategies to achieve political decolonization. But

to reconceptualize regional integration as emancipation by looking at history, economics, politics, and law in post-colonial Africa.² By looking at the existing epistemological pluralism of the concept of regional integration that failed to consider Africa's unique emancipation history, I proposed moving away from Eurocentric and neoliberal conceptions of integration.³ However, this first article, apart from proposing that Africa needs to adopt a broader conception of emancipation to reflect the current emancipatory movements in the continent, did not delve into these emancipatory movements. In another article (hereinafter second article), I tried to understand what, how, and when African states behave in solidarity to advance the continental emancipatory project.⁴ Furthermore, I traced how African states behave towards each other on African human rights issues when confronted with the loss of access to European markets.⁵ The second article concluded that state behavior among African states in the early 1960s started on principles of Africanness or norms of solidarity.⁶ However, through time it was diluted to include considerations that at times are detrimental to the continental emancipatory project.

This Article, which builds on the two articles mentioned above, examines how and when the limited understanding of emancipation that excludes women's emancipation crystalized. It explores select women's

decolonization in all its senses—political, territorial, economic, epistemic, and legal—is far from complete, and the means of achieving it are different in different situations.

2. See Luwam G. Dirar, *Rethinking and Theorizing Regional Integration in Southern Africa*, 28 EMORY INT'L L. REV. 123 (2014).

3. In this Article, the use of the phrase epistemological pluralism refers to how scholars from different disciplines understand regional integration without considering how it is understood in other disciplines. For instance, economists focus on the economic aspects of regional integration and assume that the political, legal, and social impacts of regional integration will be positive. On the contrary, however, regional integration is not as compartmentalized as its disciplinary inquiry. Rather regional integration, particularly in Africa, is first and foremost a decolonization and anti-racial domination movement that encompasses economic, political, social, and legal unity.

4. See Luwam G. Dirar, *Norms of Solidarity and Regionalism: Theorizing State Behavior Among Southern African States*, 24 MICH. ST. INT'L L. REV. 667 (2015).

5. *Id.* at 709. In their negotiations for Economic Partnership Agreements with the EU, African states pursued a dual approach. They negotiated under sub-regional groupings and bilaterally as well. This approach at times created multiplicity of competitive policies between individual African states and the sub-regional groupings.

6. As I explained in prior work, “[n]orms of solidarity form and regulate solidarity as logic of appropriateness among African states in general and Southern African states in particular. Alternatively, norms of solidarity are patterns of thought that establish state behavior by formulating concepts of the function and value of African-ness.” *Id.* at 669 (defining norms of solidarity). See also Leopold Sedar Senghor, President of Sen., Address at 1963 African Summit (May 23, 1963), in U.N. ECON. COMM'N FOR AFR., *CELEBRATING SUCCESS: AFRICA'S VOICE OVER 50 YEARS 1963–2013* 85, 85 (2013) (discussing how African-ness is rooted in pre-history, geography, ethnology, and culture and clearly establishing that African-ness is a sum of African-civilized values and that it has no religious connotation).

movements in the African continent and analyzes how women's participation in the decolonization movement failed to give them the promised post-colonial emancipation. It examines how participation in decolonization movements had this vision of equality among all shades of people and gender equality. For this reason, I will look at the experiences of the Abeokuta Women's Union in Nigeria.⁷ In East Africa, I will look at Eritrean women activists' experiences in its decolonization project and their post-colonial position.⁸ Third, in South Africa, I will look at the experiences of South African women's movements. Of course, these experiences are not meant to totalize all African women's experiences, and these experiences do not necessarily fully represent women's experiences even in the emancipation movements of Eritrea, Nigeria, or South Africa.

One might wonder why the focus on these three states and the role of women in their decolonization movements. My focus on these states and women's role in their emancipatory movements is two-fold. Firstly, these three movements represent interesting perceptions of decolonization. For instance, at the African Union level, the question of Eritrea's independence from Ethiopia was viewed as a separatist movement rather than a decolonization movement.⁹ Similarly, the African Union took an

7. See generally Judith A. Byfield, *Taxation, Women, and the Colonial State: Egba Women's Tax Revolt*, 3 MERIDIANS 250, 250–77 (2003) (Abeokuta is the capital of present-day Ogun State in Western Nigeria. In 1946 small-scale women traders (market women) rioted against arbitrary colonial taxes and the failure of the traditional leader, Alake of Egbaland, Oba Ademola II. The Abeokuta Women's Union, founded by a local female teacher Funmilayo Ransome-Kuti advocated for the rights of market women against arbitrary taxes and failure of the Alake to advance their concerns. The Abeokuta Women's Union riot is considered one of the earliest anti-colonial riots in Nigeria. Furthermore, the riot successfully managed to stop the British colonial taxes on market women and for the Alake to abdicate his throne in 1949.).

8. This Article will not focus on the National Union of Eritrean Women (NUEW). The NUEW was established in 1979 as part of the Eritrean People's Liberation Front. Although the organization in its post-colonial life claims to be a non-governmental organization its non-governmental status is questionable at best. For instance, Tekea Tesfamichael noted that the Government of Eritrea has mandated the NUEW to promote gender equality. A non-governmental organization defines its own mandate unless it is a governmental organization. Tekea Tesfamichael, President of Nat'l Union of Eritrean Women, Remarks to the Committee on the Elimination of Discrimination Against Women (Feb. 14, 2020).

9. Modern-day colonization of Eritrea dates to the 1884 Berlin Conference that transformed the territory and people of today's Eritrea from citizens to Italian subjects. When Italy was defeated in WWII, Eritrea became a British protectorate and subsequently a U.N. sanctioned federation. See Amare Tekle, *A Tale of Three Cities: The OAU and the Dialectics of Decolonization in Africa*, 35 AFR. TODAY 49, 49–60 (1988) (criticizing the failure of the OAU on the Eritrean question); see also Bernard C. Moore, *Third World Colonialism and Strategies of Liberation: Eritrea and East Timor Compared*, 62 AFR. TODAY 65, 65–67 (2016) (book review) (discussing how African Union states were reluctant to condemn Ethiopia's colonization of Eritrea); see Eduardo Anze Matienzo, *Final Report of the United Nations Commissioner in*

anti-apartheid or a racial equity stance rather than the approach it took in similarly situated African countries, for instance, Zimbabwe.¹⁰ Lastly, Nigeria's decolonization movement represents the African Union's classical conception of decolonization—liberating African states and people from white Western domination.¹¹ Secondly, the role of women in emancipatory and decolonization movements in these states is a combination of militant guerrilla fighters and peaceful activists, thereby showing the diversity of roles women took in the decolonization movement of their homeland.¹²

This Article ultimately shows that the conception of decolonization and emancipation movements did not pay off for African women. This is not to claim that decolonization has not bettered the status of women or freed them from white colonial domination but rather that the post-colonial status of women continues to be subject to social subjugation. Additionally, this Article shows that Africa's integration movements in the early 1960s had a limited understanding of emancipation that

Eritrea, U.N. Doc. A/2188 (Oct. 17, 1952); see Irma Tadia, *Post-Twentieth-Century Eritrea*, 5 NE. AFR. STUD. 7, 7–29 (1998) (discussing if the Eritrean decolonization process as a 1960s decolonization delayed by global and regional factors).

10. The point here is not to claim that all members of the Organization of African Unity accepted minority white rule in South Africa as a question of apartheid only. On the contrary, the position of African states condemned the subjugation of Black South Africans but had different approaches towards South Africa. For instance, on June 19, 1971, the OAU passed a declaration against any dialogue with apartheid South Africa by a two-thirds majority vote. See Mehrunnisa H. Iqbal, *The Organisation of African Unity – 1969-73*, 26 PAK. HORIZON 50, 54 (1973). The predecessor of the African Union, the Organization of African Unity (OAU), condemned the unilateral declaration of independence on November 11, 1965, by the white minority regime in Southern Rhodesia (Zimbabwe). On December 3, 1965, the OAU passed a resolution that stated, “[i]f the United Kingdom does not . . . prepare the way for majority rule in Southern Rhodesia by December 15, 1965, the Member States of the OAU shall sever diplomatic relations on that date with the United Kingdom.” K. Mathews, *The Organization of African Unity*, 33 IND. Q. 308, 315 (1977).

11. Nigeria is a founding member of the Organization of African Unity, and the Charter of the Organization of African Unity is claimed to have been drafted by the then Nigerian Attorney General Dr. Teslim Elias. Olajide Aluko, *Nigeria's Role in Inter-African Relations: With Special Relations to the Organization of African Unity*, 72 AFR. AFF. 145, 145 (1973).

12. This Article looks at the role of women in the decolonization project of Nigeria as one of non-violent resistance. This is not to claim that Nigerian women cannot engage in violent activism but rather that there is very little literature on the role of women in guerrilla warfare in Nigeria's independence movement. Temitope Oriola, *The Delta Creeks, Women's Engagement and Nigeria's Oil Insurgency*, 52 BRIT. J. CRIMINOLOGY 534, 534–56 (2012) (discussing the role of women in violent protests in the Delta-Creeks region in the late 90s and early 2000s). In the Eritrean context, women participated in guerrilla warfare and peaceful resistance. See Victoria Bernal, *Equality to Die For?: Women Guerrilla Fighters and Eritrea's Cultural Revolution*, 23 POL. & LEGAL ANTHRO. REV. 61, 61–76 (2000). Similar to the Eritrean context, the role of women in the South African context is a combination of guerrilla warfare and peaceful resistance. See Siphokazi Magadla, *Women Combatants and the Liberation Movements in South Africa*, 24 AFR. SEC. REV. 390, 390–402 (2015).

excluded women from the emancipation project.¹³ Finally, this Article shows that some sub-regional integration agreements that function as building blocks of contemporary Africa's continental project follow or emanate from precolonial arrangements and thereby have a colonial ontology. Several African sub-regional integration arrangements emulated the Eurocentric conception of regional integration, which relegated women's emancipation to a post-colonial incremental equality movement. One might ask if emulating the European model of integration—a functionalist approach that prioritized economic integration and viewed human rights as a trickle-down effect of integration—has significant bearings on women's status in post-colonial African states. Some scholars attribute the status of women in Europe to the role of the European Court of Justice in the expansion and institutionalization of the E.U. gender policy.¹⁴ This makes one question whether the European capitalist integration model improved the status of women or was a multitude of other factors.¹⁵ Indeed, European women enjoy a much broader range of freedom and rights at the legal and social level compared to their African counterparts.¹⁶ Would emulating an integration scheme that has delivered for European women not also work for African women? This is an interesting question that falls beyond the contours of this Article and would assume that social structures for African and European women are the same for cross-fertilization of integration models to lead to the same outcome.

13. In this Article, references to the 1960s emancipation project is limited to the continent's decolonization and anti-racial domination movements.

14. See Rachel A. Chicowski, *Women's Rights, the European Court, and Supranational Constitutionalism*, 38 L. & SOC'Y REV. 489 (2004) (discussing the role of the European Court of Justice in expanding and institutionalizing European gender policy).

15. Tracing the history of transforming women's status in the European Union leads to the Rome Treaty. Women's equality was expected as a limited spillover of economic integration leading to equality in employment. Article 119 of the Rome Treaty states that "[e]ach Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied." Article 119 opened the door for worker councils or unions to contest the contours meaning of equality at work and expand it when possible. But defining equality within the workplace also had its limitations. The first is the frame—equality limited to the workspace and, second, to 'sex' equality. See generally Andrea Peto & Ian Manner, *The European Union and the value of gender equality*, in VALUES AND PRINCIPLES IN EUROPEAN UNION FOREIGN POLICY 97, 97 (Lucarelli S. & I. Manners eds., 2006).

16. Looking at the Women Peace and Security Index of Georgetown University, one notices that Mauritius is the highest ranked among African states and globally ranked 64th. Most African states dominate the bottom of the list. On the other hand, most European states are ranked at the top of the list. See GEORGETOWN INSTITUTE FOR WOMEN, PEACE AND SECURITY, WOMEN PEACE AND SECURITY INDEX 2021/2022 2 (2021), <https://giwps.georgetown.edu/wp-content/uploads/2021/11/WPS-Index-2021.pdf> [<https://perma.cc/6Y4M-D28L>]. Similarly African women have more laws constraining women's decisions to join and remain in the labor force than their European counterparts. See *Workplace*, WORLD BANK GROUP, https://wbl.worldbank.org/en/data/exploretopics/wbl_sj [<https://perma.cc/3QYW-AGCT>].

One can argue that there is a minor, if any distinction, between women's emancipation and the equality movement. On the contrary, while movements against racial domination and colonization were recognized as continental emancipation projects, women's rights movements were considered national equality movements. The distinction being, as a continental project, emancipation was a priority for African governments. On the other hand, equality movements were left to the domestic political policies of member states.

Some might consider the central argument of this Article condescending to the achievements of the post-colonial African integration initiatives. This Article does not devalue the normativity of continental integration in Africa. It builds a critique that would expand existing market-centered analysis that symbolically acts gender neutral but is actually biased. In the first conference of the Organization for African Unity, African political thinkers failed to appreciate forms of oppression that did not emanate from European colonists. The speeches of the founding political thinkers of African integration did not center on topics of social subjugation, for instance, patriarchy, toxic masculinity, discrimination against ethnic minorities, and third world colonialism.

A holistic approach to emancipation conceptualizes integration as a continuum of decolonization ranging from political, economic, legal, and epistemic liberation to social liberation. Indeed, one might argue that to claim a link between emancipation and regional integration is a stretch. One might inquire if there is a correlation between regional integration, emancipation, and gender equality? How did African political thinkers engage with the concept of gender equality and recognition of women in the discourse of regional integration law? Alternatively, what role did women activists play in the decolonization movement of Africa?

Women engaged in militant and pacific decolonization movements; however, their participation was underappreciated, narrowly narrated, and subjected to patriarchal limitations on a woman's societal role. Women were seen not as decolonization activists, be it peaceful or militant, but as mothers of would-be heroes, soldiers, or martyrs of the decolonization project.¹⁷ In contra, women actively participated in the

17. See generally Selina Makana, *Motherhood as Activism in the Angolan People's War, 1961–1975*, 15 MERIDIANS 353 (2017) (discussing how patriarchal narratives of national liberation struggles in the African continent fail to appreciate the role of women in the independence struggle). The lack of recognition and/or underestimation of women's role in military occurs both from their colleagues and those fighting against them. For instance, Hiwet Yonanes, a female member of the Eritrean infantry, describing her experience in actual combat against Ethiopian soldiers in the 1998-2000 border conflict, noted how the Ethiopian soldiers underestimated her combat capabilities and attempted to capture her. See Ian Fisher, *Like Mother, Like Daughter, Eritrean Women Wage War*, N.Y. TIMES (Aug. 26, 1999), <https://www.nytimes.com/1999/08/26/world/like-mother-like-daughter-eritrean-women-wage-war.html> [<https://perma.cc/77KZ-VDTH>].

continental decolonization project and defied colonialism in all its manifestations. Female activists stood against colonial political, legal, and economic domination and social gender subjugation. Besides, women independence activists defied the simplistic and patriarchal conception of a woman's character and actions as peaceful and demonstrated that women assumed equal roles in actual warfare. For instance, Eritrean women activists made up one-third of the guerrilla fighters of the Eritrean People's Liberation Front.¹⁸ That is not to say that women did not advocate for peaceful resistance against colonialism. For instance, Margaret Ekpo¹⁹ and Ransome-Kuti,²⁰ Nigerian women activists, engaged in non-violent movements to advocate for the decolonization of Nigeria and the recognition of women. In addition, women's movements did not only advocate for decolonization and recognition of all citizens, but at times, women's activists even stood for the equality and recognition of sects of society that did not believe in gender equality.

This Article uses a post-colonial feminist approach to deconstruct the relationship between regional integration and emancipation in the African continent. The experiences of women discussed in this Article might seem to generalize the experiences of African women, but it also acknowledges the plurality of experiences of African women and discusses select women's movements for comparative discourse. Post-colonial statehood in Africa adopted the epistemes of western movements and rejected women's movements as disrespectful to the culture and religion of the post-colonial citizenry. For instance, the 1962 Citizenship Law of Somalia denied women from passing citizenship for their children born from alien residents.²¹ The experiences of *misto* (mixed race) in the Eritrean context was that the kids were left stranded as stateless by both

18. See Trish Silkin, *Women in Struggle: Eritrea*, 5 THIRD WORLD Q. 909, 911 (1983) (discussing how women comprise a third of the Eritrean People's Liberation Front). This Article is cognizant that women's participation in armed warfare includes the use of modern military weapons and spices. For instance, Ethiopian women used chili pepper to fight Italian colonial ambition in the battle of Adwa.

19. Margaret Ekpo was a Nigerian activist who was initially trained as a teacher and later went to become a medical doctor. Ekpo founded Aba Market Association in 1946. She used the Aba Market Association as a platform to advocate for women's rights and decolonization in Nigeria. She was a leading member of the National Council of Nigeria and Cameroons (NCNC) and participated in constitutional conferences in London and Lagos. She actively advocated for the victims of the Iva Valley Strike and Enugu Colliery massacre. See Uche U. Okonkwo, *Herbert Macaulay As the Father of Nigeria's Nationalism: A Historical Misnomer and Misogyny Regarding the Role of Igbo Women in the Decolonization Process*, 21 J. INT'L WOMEN'S STUD. 172, 173-74 (2020).

20. See Byfield, *supra* note 7.

21. Somali Citizenship No. 28 (1962) arts. 2(a), 13(3) (stating that Somali citizenship can be acquired through a father who is a Somali citizen, and under the 1962 Citizenship Law of Somalia, women and their descendants were denied citizenship when they married a non-citizen).

the imperial and colonial state that withheld recognition.²² With all its limitations of generalization, this Article retains its value by moving the discourse of regional integration beyond state-centric analysis and focusing on social concerns in regional integration studies. Alternatively, this Article scrutinizes a market-centered analysis of regional integration that assumes that regional integration is tantamount to free trade among member states and neutralizes social concerns. In addition, this Article shows that regional integration at its core has solidified patriarchy and the gendered impact of free marketization.

A. *Imagined Equality and Sovereign Statehood*

The limited understanding of emancipation imagined equality of African states with other states in the world. African states saw the end of colonization as the crystallization of African sovereign equality when the former African colonial state became an equal subject of international law, just like the former colonial power.²³ On the contrary, however, African states imagined equality remains far from complete. The most straightforward example of the lack of global equality of states is the non-permanent status of African states on the United Nations Security Council.²⁴ The current permanent members of the Security Council: the United States of America, France, the United Kingdom, China, and Russia, choose to advance or regress African causes if and when it suits their self-interest or normative goals.²⁵ Despite consensus in the unequal permanent membership in the Security Council, the United Nations rhetorically portrays states as equal.²⁶ Similarly, African states' status in the global economic regime, particularly the World Trade Organization,

22. See Angela Giuffrida, *Eritreans of Italian descent demand Rome finally grant them citizenship*, THE GUARDIAN (Oct. 13, 2021), <https://www.theguardian.com/world/2021/oct/13/eritreans-italian-descent-demand-citizenship-italy-eritrea> [https://perma.cc/8DJB-YPKL] (discussing how persons of mixed Italian and Eritrean race face citizenship issues in both countries).

23. See generally Hans Kelsen, *The Principle of Sovereign Equality of States as a Basis for International Organization*, 53 YALE L.J. 207 (1944) (discussing the concept of sovereign equality as a basis for the formation of the United Nations).

24. See Michael J. Kelly, *U.N. Security Council Permanent Membership: A New Proposal for a Twenty-First Century Council*, 31 SETON HALL L. REV. 319 (2000) (discussing how the formation of the United Nations is closely tied to post-war winners, alternatively called allied forces, during World War II as permanent members of the Security Council).

25. The five permanent Security Council members have ultimate veto power and can block decisions that affect African states without taking into consideration the views of Africa or Africans. See U.N. Charter arts. 23, 27.

26. See, e.g., U.N. Charter art. 2 (“The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles. . . . All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.”).

displays how the global economic order tilts against third-world countries. The lack of reforms to create an equal global economic order was lamented by the President of Brazil, Luiz Inácio Lula da Silva who noted, “[r]ich countries are putting off reform at multilateral agencies such as the International Monetary Fund (IMF) and the World Bank. We simply cannot understand the paralysis of the Doha Round, whose conclusion will, above all, benefit the poorest countries of our world.”²⁷ That is to say that reforms for an equitable economic order that rally significant support from low and middle-income states are continuously ignored, delayed, or rejected.

Unequal global realities and the imagined equality of African states were at odds for the more than half a century of Africa’s post-colonial existence. During the formative years of the Organization for African Unity (OAU), Emperor Haile Selassie of Ethiopia argued that recognition of Africa was inherent in its existence. In his words, “[t]his world was not created piecemeal. Africa was born no later and no earlier than any other geographical area.”²⁸ Despite Africa’s ultra-optimistic imagination of equal membership in the global society, there was consensus that decolonization was a process that continued in the post-political decolonization era. For instance, Kwame Nkrumah rightfully noted, “the struggle against colonialism does not end with the attainment of national independence.”²⁹ That post-independence period for African leaders was the period to achieve social emancipation. Nkrumah reasoned that “[i]ndependence is only the prelude to a new and more involved struggle for the right to conduct our own economic and social affairs; to construct our society according to our aspirations, unhampered by crushing and humiliating neo-colonialist controls and interference.”³⁰ The question would then be, is social emancipation in its broader sense, and women’s emancipation specifically, a post-colonial project?

Besides this limited construction of imagined equality of states, at least within Africa, there was a move towards an imagined perception that all shades of people (black, brown, and white) are equal. This perception is most apparent in the anti-Apartheid position African leaders took in the first Organization for African Unity conference of heads of state. The discourse concerning decolonization during the conference did

27. Luiz Inácio Lula da Silva, President of Braz., Address at the Sixty-Fourth Session of the United Nations General Assembly, U.N. Doc A/64/PV.3 (Sept. 23, 2009).

28. His Imperial Majesty Haile Selassie I, Emperor of Eth., Address at the 1963 African Summit (May 23, 1963), in *CELEBRATING SUCCESS: AFRICA’S VOICE OVER 50 YEARS 1963–2013*, *supra* note 6, at 1, 1.

29. Kwame Nkrumah, President of Ghana, Address at the 1963 African Summit (May 23, 1963), in *CELEBRATING SUCCESS: AFRICA’S VOICE OVER 50 YEARS 1963–2013*, *supra* note 6, at 34, 34.

30. *Id.*

not include South Africa. In the South African context, the debate was about racial equality and decolonization of Namibia.

Namibia, formerly called South-West Africa, was a former German colony put under South African mandate in 1920 by the League of Nations. After the formation of the United Nations, South Africa's claim of trusteeship or mandate over Namibia was continuously debated by the General Assembly of the United Nations, but these debates did not question South Africa's independence. South Africa's reluctance to abide by the General Assembly's recommendation led to an international legal dispute in front of the International Court of Justice (ICJ).³¹ The case was brought up to that court by two African states, Ethiopia and Liberia. A reading of the memorial submitted by the government of Ethiopia shows that the Ethiopian government did not have an attitude that questioned South Africa's independence.³² Similarly, the founding states of the OAU, Ethiopia being one of them, did not question South Africa's independence during the OAU's formative years. Several African leaders shared similar criticism against mistreatment and racial discrimination in South Africa and called for the decolonization of Namibia.

For the OAU founding states, the question of South Africa's independence was already formally settled as it gained independence from Britain in 1910.³³ That might be due to the African understanding of sovereign statehood, which Ali Mazrui rightfully conceives of sovereign equality as achieved not when African states assume domestic control but rather when they cease to be colonies.³⁴ For instance, there are two narratives of when Eritrea gained sovereign statehood. The first narrative is based on when the Eritrean People's Liberation Front assumed control of Eritrean territory, signifying that it ceased being an Ethiopian colony.³⁵ The second narrative is based on the international

31. WILLIAM A. SCHABAS, *THE INTERNATIONAL LEGAL ORDER'S COLOUR LINE: RACISM, RACIAL DISCRIMINATION, AND THE MAKING OF INTERNATIONAL LAW* 221–27 (2013).

32. Memorial of Ethiopia, *South West Africa (Eth. v. S. Afr.)*, 1966 I.C.J. Pleadings 32 (Apr. 15, 1961).

33. *South Africa (1910–present)*, UNIV. OF CENTRAL ARK., <https://uca.edu/politicalscience/dadm-project/sub-saharan-africa-region/south-africa-1910-present/> [<https://perma.cc/HGW6-HU3V>] (discussing when South Africa gained its independence).

34. Ali A. Mazrui, *The United Nations and Some African Political Attitudes*, 18 INT'L ORG. 499, 499 (1964) (discussing how African states understand the concept of 'sovereign statehood').

35. Eritrean official state narratives account for the day of independence as May 23, 1991. On that day, the Eritrean Peoples' Liberation Front took control of Eritrea territory and took responsibility for domestic affairs. At that time, Eritrea was not able to conduct foreign relations and lacked international recognition. Two years later, on May 28, 1993, after a public referendum on independence, Eritrea joined the United Nations and received international recognition. See Abraham Zere, *Remembering the Eritrean Dream on Independence Day*, ALJAZEERA (May 24, 2017), <https://www.aljazeera.com/opinions/2017/5/24/remembering-the-eritrean-dream-on-independence-day> [<https://perma.cc/9AY3-6XCR>] (discussing how Eritrea's independence day is

legal conception of sovereign statehood when Eritrea was recognized as an independent sovereign state and an actor in foreign relations.³⁶ Nevertheless, in the domestic national celebration of the country's independence, Eritrea does not follow Ali Mazrui's analysis and officially celebrates its independence on the day the Eritrean People's Liberation Front took control of Eritrean territory.

II. RECONSTITUTING WOMEN'S EMANCIPATION MOVEMENTS

Conceptualizing women's emancipation in the post-colonial African context builds on synergies between continental integration and official decolonization priorities that failed to make inroads for women's emancipation on intrinsic grounds. One might argue that the logic of this failure might be the result of 1960s African political thinkers adjudicating between European colonization and white racial domination. Therefore, the argument follows that the inclusion of women's emancipation would have steered the 1960s African political thinkers into the tenuous territory of social oppression and its end through recognition and redistribution. However, a turn toward social oppression lacked political logic. Those who stand to gain through social emancipation in general and women's emancipation carried very little influence with those who set the agendas in major continental integration projects. Hence, the heads of state that attended the first conference of African leaders that resulted in the Organization of African Unity were all men.³⁷ That is not to say that men do not appreciate the concerns of the women's emancipation movement but rather to emphasize the agency, representation, and recognition of women's concerns was on the back burner.

marked by the moment when Eritrean Peoples' Liberation Front fighters walked into Eritrea's capital, Asmara).

36. Ravinder Rena, *The Women Employment In Eritrea – Reflections From Pre And Post-Independence Period*, 50 INDIA J. LAB. ECON. 357, 364 n.3 (2007) (explaining how Eritrea's formal independence date is May 24, 1993, instead of May 24, 1991).

37. The heads of state of Ethiopia, Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo-Brazzaville, Congo-Leopoldville (Congo-Kinshasa today), Dahomey (Benin today), Gabon, Ghana, Guinea, Ivory Coast, Liberia, Libya, Malagasy (Madagascar today), Mali, Mauritania, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika (Tanzania today), Tunisia, Uganda, Egypt, and Upper Volta (Burkina Faso today) participated in the first African heads of state conference that led to the formation of the Organization of African Unity. In addition to the heads of state, Mr. Ajuma Oginga-Odinga, representing the African Liberation Movements in Non-independent Territories, attended the Conference. Twenty-one independence movements, including the African National Congress of South Africa, made-up the African Liberation Movements in Non-independent Territories. The Conference was held in May 1963 in Addis Ababa, Ethiopia. *See generally* AFRICAN UNION, SPEECHES AND STATEMENTS MADE AT THE FIRST ORGANIZATION OF AFRICAN UNITY (O.A.U.) SUMMIT (1963), https://au.int/sites/default/files/speeches/38523-sp-oau_summit_may_1963_speeches.pdf [<https://perma.cc/2K2M-UT73>].

A direct reference to women during the first conference of African leaders was made only twice in the speeches of the heads of African states.³⁸ Moktar Ould Daddah, the Islamic Republic of Mauritania's first president, made one these references. Daddah called for continental meetings of women's associations. Daddah's call for these meetings was "to eliminate the causes of that isolation of which we have for so long been harvesting bitter fruit."³⁹ The reference to women did not highlight women's issues or social emancipation but a casual membership to African citizenship, which could also lead to continental women's activism. The question is, however, did Daddah envisage women's activism at the continental level? In a second, more interesting reference, Sekou Toure, the first president of the Republic of Guinea, noted, "[t]he conditions for the rapid achievement of this aim [African unity] have demanded the attention and mobilized massively the energies and abilities of our various states, our parties, our trade unions, our associations of intellectualism, of women, of young people and all the organizations grouping serious-thinking men in Africa."⁴⁰ On the one hand, this reference appreciates women's contribution to African unity. Still, the accolade of men as "serious-thinking" is equally condescending when Toure fails to categorize women as "serious-thinking."⁴¹

Formal engagement with women's rights was absent from the first African Heads of state conference in 1963 to the 1980s. Formalized engagement with women's rights at the continental level dates to the 1980s with the adoption of the African Charter on Human and People's Rights (Banjul Charter). The Banjul Charter prohibits discrimination against women and calls on African states to "ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman . . . as stipulated in international declarations and conventions."⁴² The Banjul Charter imposes duties on African women

38. An empirical search of the speeches given during the first conference demonstrates the word women was used only twice. *Id.*

39. H.E. Moktar Ould Daddah, President of Mauritania, in *CELEBRATING SUCCESS: AFRICA'S VOICE OVER 50 YEARS 1963–2013*, *supra* note 6, at 73, 74.

40. *Id.* at 89.

41. H.E. Sekou Toure, President of the Republic of Guinea, in *CELEBRATING SUCCESS: AFRICA'S VOICE OVER 50 YEARS 1963–2013*, *supra* note 6, at 54, 56.

42. African Charter on Human and Peoples' Rights art. 18, June 27, 1981, 1520 U.N.T.S. 217 (The African Charter on Human and Peoples' Rights is known as the Banjul Charter because it was adopted in Banjul, the capital of The Gambia.) [hereinafter Banjul Charter]. The only time the words "woman" or "women" was used in the Banjul Charter is in Article 18(3). Article 18(3) of the Banjul Charter states that "[t]he State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions." Obviously, all the general non-discrimination principles, for instance, Article 2 of the Banjul Charter that prohibit discrimination based on sex are also key to promote women's equality movements. Article 2 of the Banjul Charter is a general

“towards [her] family and society, the State and other legally recognized communities and the international community.”⁴³ Furthermore, the Banjul Charter notes that women’s rights should be “exercised with due regard to the rights of others, collective security, morality and common interest.”⁴⁴ The question would then be how African states reconcile women’s right to equality with questions of women’s duties towards their family, society, and the state, which might not necessarily subscribe to women’s equality as understood within international human rights law.

A. *Equality, Emancipation, and Independence Movements*

Both men and women had a shared objection to subjugation without actually sharing a conception of emancipation.⁴⁵ Women thought that the end of colonization would lead to the social transformation of their status from subordinate to their male comrades to equal. For instance, in the Eritrean independence movement, the Eritrean People’s Liberation Front (EPLF) expected women to be equally responsible for guerrilla warfare and emphasized equality through equal participation and social production.⁴⁶ In the EPLF, women fighters “lived and fought side by side with men in mixed units.”⁴⁷ Furthermore, women fighters had to forgo and suppress social conceptions of femininity in its superficial sense and wear unisex outfits without makeup or the traditionally expected hairstyle for Eritrean women.⁴⁸ Gender equality was wrongfully perceived as

non-discrimination provision. It states that “[e]very individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.”

43. *Id.* art. 27(1).

44. *Id.* art. 27(2).

45. Of course, this is a generalized claim made with full understanding that the distinction of men versus women is not binary nor are men/women homogenous in their thought, political, and ideological belonging. Also, it is not a claim founded on empirical dichotomies of men versus women.

46. Woldemikael notes, albeit from a very nationalist point of view, that the Eritrean People’s Liberation Front (EPLF) emerged from an earlier independence movement called the Eritrean Liberation Front (ELF). The ELF started in the early 1960s in the lowlands of Eritrea. *See generally* Tekle Mariam Woldemikael, *Political Mobilization and Nationalist Movements: The Case of the Eritrean People’s Liberation Front*, 38 AFR. TODAY 31 (1991) (discussing the history of the EPLF); *see also* Patrick Gilkes, *Eritrea: Historiography and Mythology*, 90 AFR. AFF. 623, 623–28 (for a more critical history of the EPLF and the Eritrean independence movement in general).

47. Victoria Bernal, *From Warriors to Wives: Contradictions of Liberation and Development in Eritrea*, NE. AFR. STUD. 129, 134 (2001).

48. *See* Asgedet Stefanos, *Eritrean Women: Defending National Borders and Challenging Gender Boundaries*, 20 SAIS REV. 167, 171 (2000) (discussing and comparing the attire and hairstyle of the female guerrilla fighter with that of the post-colonial female soldier, the author notes that the post-colonial female soldier adopted feminine hairstyle compared to the afro style of the guerrilla fighters).

physical machismo and biopolitical control of the guerrilla fighters' sexuality through the prohibition of civil unions, marriage, and sex.⁴⁹ Hence, for the EPLF, women's equality was not an intrinsic concept rooted in egalitarianism or humanity but rather in the equal participation of women in combat, civil, and social services. Despite the EPLF's narrow conception of gender equality, one should not dismiss its transformative achievements. The EPLF raised the age to marry during the independence struggle, banned feudal marriage practices, and banned female genital cutting in liberated areas.⁵⁰ Some of these policies were incorporated in the post-independence laws; however, the recognition and representation of female guerrilla fighters was unsatisfactory. For instance, a former guerrilla fighter summed up her frustration in the post-colonial period as "[a]fter all we sacrificed . . . it is like we are being thrown away."⁵¹ Margaret Ekpo experienced similar relegation in the Nigerian context. After participating in the constitutional delegation that negotiated the end of colonial rule in Nigeria, a remarkable achievement, the National Council of Nigeria and the Cameroons (NCNC) refused to support her candidacy in the 1959 general election.⁵²

The status of women in independence movements and access to join movements was not always on par with men. Several independence movements held patriarchal conceptions of women. The Eritrean liberation movement, for example, denied women membership for the first decade of its existence.⁵³ In the Nigerian context, some memberships to community-based anti-colonial activist groups were granted to women as a proxy of a male family member. For instance, Margaret Ekpo's early activism is traced to community meetings where she "participated on behalf of her husband who could not attend because of his work as a civil

49. Christine Mason, *Gender, Nationalism and Revolution: Re-Assessing Women's Relationship with the Eritrean Liberation Front* (Mich. State Univ. Women & Int'l Dev., Working Paper No. 274, 2001).

50. See, e.g., DAN CONNELL, HISTORICAL DICTIONARY OF ERITREA 351–53 (3d ed. 2019) (discussing marriage reforms of the EPLF). Generally, the EPLF Civil Code improved the status of women compared to the 1960s Ethiopian Civil Code that governed civil affairs in Eritrea until 1991. It prohibited dowry, marriage by abduction, raised age of marriage to eighteen for women and twenty for men, required consent of both the bride and groom for validity, made husband and wife household co-heads, recognized the wife's right to divorce, recognized and legitimized children born out of wedlock, etc.

51. Bernal, *supra* note 47, at 139.

52. LARAY DENZER & MARGARET EKPO, DICTIONARY OF AFRICAN BIOGRAPHY (Emmanuel K. Akyeampong & Henry Louis Gates, Jr. eds., 1st ed. 2011).

53. See generally Worku Zerai, *Organising Women Within a National Liberation Struggle: Case of Eritrea*, 29 ECON. & POL. WKLY. 63 (1994).

servant.”⁵⁴ Despite these hurdles, women joined independence movements and made strides to liberate their countries.

B. *Hierarchy of & Contradiction of Emancipatory Movements*

The phenomenon of women’s emancipation movements, like that of the narrow conception of emancipation in 1960s Africa (as decolonization and racial domination), was complex and at times contradictory. The first, the 1960s emancipation movements, sought to liberate Africa and Africans from white racial domination and European colonization. The latter, women’s emancipation movements sought to liberate women from social subjugation in addition to liberating them from white racial domination and European colonization.⁵⁵ Some female activists wrongfully accepted women’s emancipation as secondary to political liberation. An African National Congress (ANC) member noted, “I am a woman, a worker, and I am black. Therefore, I must fight for my freedom on three fronts. I believe we must fight the greater evil, apartheid first.”⁵⁶ This sentiment captures the self-sacrificial role women assumed to grapple with the complexity and contradiction of the independence struggle, which relegated women’s emancipation to the post-colonial period or after the end of apartheid.

The existence of a hierarchy among emancipatory movements was a sentiment commonly shared among 1960s political entrepreneurs. For instance, Kwame Nkrumah’s famous emphasis on political kingdom put social emancipation secondary to political freedoms. Nkrumah stated, “[i]ndependence is only the prelude to a new and more involved struggle for the right to conduct our own economic and social affairs; to construct our society according to our aspirations.”⁵⁷ Nkrumah made it clear that social emancipation cannot exist without political freedom. Likewise, most participants of the 48th National Conference of the African National Congress denied quota-based equal representation for women on a nationalist justification “that we first have to have national liberation,” and women’s emancipation and recognition will be a post-apartheid project.⁵⁸ This sentiment of the hierarchy of emancipatory movements is

54. Tayo Agunbiade, *Remembering Margaret Ekpo and the Enugu Strike Massacre*, ALJAZEERA (Dec. 12, 2020), <https://www.aljazeera.com/features/2020/12/12/remembering-margaret-ekpo-and-enugu-strike-massacre> [<https://perma.cc/QZ6Q-W2BR>].

55. See Dirar, *supra* note 2.

56. Zine Magubane, *Attitudes towards feminism among women in the ANC, 1950-1990: A theoretical re-interpretation*, in *THE ROAD TO DEMOCRACY IN SOUTH AFRICA VOLUME 4* (1980-1990) 975, 975 (2010).

57. See Kwame N’krumah, President of the Republic of Ghana, Address at the 1963 African Summit (May 23, 1963), in *CELEBRATING SUCCESS: AFRICA’S VOICE OVER 50 YEARS 1963–2013*, *supra* note 6, at 34, 34.

58. Pat Horn, *ANC 48th National Conference*, 11 *AGENDA: EMPOWERING WOMEN FOR GENDER EQUITY* 15, 16 (1991).

also shared by Worku Zerai, one of the three women who first joined the EPLF in the early 1970s. Zerai noted, “[t]he national liberation struggle can solve the primary contradiction at that particular time, namely, imperialism and other contradictions will remain including class and sexism.”⁵⁹ The question would then be, when and how do we achieve women’s emancipation in the post-colonial or post-apartheid period?

The contradiction of women’s movements in the independence struggle is, at times, a generational perception of activism where the activism of the past is wrongfully perceived as more righteous than the contemporary. For instance, comparing the first generation of female independence fighters with female soldiers of the 1998–2000 border war with Ethiopia, Asgedet Stefanos wrongfully concluded that the current soldiers see their role in the army conventionally “as a career opportunity for individual advancement—rather than with collective revolutionary and sacrificial zeal of the female independence fighters who preceded them.”⁶⁰ Stefanos fails to recognize that female army members are recruited as part of the current endless and mandatory national service system in Eritrea. For Stefanos to conclude, female members of the Eritrean army lack zeal is a generalization that fails to capture the shift in the political landscape towards authoritarianism and forced conscription. Demobilization from the Eritrean army may only be possible through the physiobiological necessity of pregnancy.⁶¹

In South Africa, Pat Horn rightfully lamented the disconnect between women in government and women activists.⁶² Horn highlighted the contradiction between the post-apartheid election of women to the South African parliament and how those women parliamentarians lacked a sense of “urgency to transform the position of women” post-election.⁶³ First, the contradiction might reflect the position of women during the African National Congress (ANC) anti-apartheid struggle. For the ANC, women’s participation added human force against the enemy. For instance, at the 48th ANC National Conference, only seventeen percent of the delegates were women, and a vote for equal representation in the ANC ranks failed.⁶⁴ Women delegates represented by the ANC Women’s League argued that equal representation of women ought to exist not only on the Constitution Commission but also in every other position. Secondly, even beyond the ANC, several scholars have shown that

59. Zerai, *supra* note 53, at 63.

60. Mazrui, *supra* note 34, at 171–72.

61. See HUM. RTS. WATCH, SERVICE FOR LIFE: STATE REPRESSION AND INDEFINITE CONSCRIPTION IN ERITREA 44 (2009).

62. See Pat Horn, *Where is Feminism Now?*, 26 AGENDA: EMPOWERING WOMEN FOR GENDER EQUITY 71, 72–73 (1995) (discussing the role of women in government and the disconnect with women in civil society organizations).

63. *Id.* at 73.

64. Horn, *supra* note 58, at 16.

women's participation or membership in parliament does not necessarily lead to a positive outcome for women's issues. For instance, Claire Devlin and Robert Elgie showed that there is no correlation between increasing women parliamentarians and positive policy outputs on women's issues.⁶⁵

At times, the contradiction within women's movements is based on class, where women in the upper-class structure might not participate in the emancipatory goals of, for instance, working-class women.⁶⁶ Like other emancipatory movements, women's emancipatory movements aim to bring progressive change. And in doing so, women's emancipatory movements are at times problematic and continuously interacting with social forces.

III. AFRICAN INTEGRATION AND GENDER: COLONIAL AND POST-COLONIAL AFTERLIVES

African integration and disintegration initiatives date back to the colonial period. The later disintegration of Africa was legalized by the General Act of the Berlin Conference, dividing Africa into a colonial territory, and transforming Africans from citizens into subjects.⁶⁷ That is not to say that Africa before 1885 was integrated but rather to center its Afrocentric ontology of Africans and Africa. On the other hand, the Berlin Conference centered European domination through market-based objectives. For instance, the Berlin Conference ushered in neoliberal ideals of a free market and advocated that "[t]he trade of all nations shall enjoy complete freedom."⁶⁸ The agreement granted free movement of goods, vessels, and people at the outset. However, the reference to

65. See generally Claire Devlin & Robert Elgie, *The Effect of Increased Women's Representation in Parliament: The Case of Rwanda*, 61 PARLIAMENTARY AFFS. 237 (2008) (discussing the correlation between having a high number of women parliamentarians and policy output).

66. Horn notes that the working-class woman is "[e]xploited by the chains of [her] role which keeps [her] nose to the grindstone and which is shared and experienced with [her] sisters." On the other hand, Horn describes the middle-class woman as "[e]xploited by [her] dependence on male approval which keeps [her] divided from [her] sisters and which is common but experienced alone." Pat Horn, *Two Women*, 3 AGENDA: EMPOWERING WOMEN FOR GENDER EQUITY 64, 64 (1988) (comparing through a poem the working-class woman and the middle-class woman in South Africa).

67. Using the term "disintegration" more in its literal English meaning rather than as is conceptually used in regional integration studies See generally *General Act of the Conference of Berlin Concerning the Congo*, 3 AM. J. INT'L L. 7 (1909) (agreement resulting from the Berlin Conference).

68. See *id.*

“nations” and “people” in the text of the treaty was limited to European states and European people respectively.⁶⁹

Furthermore, the agreement subjugated the African citizenry and colonized the continent by a neutral-sounding expression of entrusting the “material and moral improvement” of the African to the hands of the European Christian Missionaries.⁷⁰ The Berlin Conference and the subsequent experiences of colonialism in Africa also had an integrating effect. Jumping to the early years of post-colonial Africa, the formation of the Organization of Unity is a reaction to combat colonization and white racial domination.

Some colonial integration agreements, the predecessor to the Southern African Customs Union, for instance, originated during the colonial period to integrate colonial territories for the benefit of the colonial power. The Southern African Customs Union (SACU) was initially a union between “the British Colony of Cape of Good Hope and the Orange Free State Boer Republic.”⁷¹ In 1910, SACU’s membership grew to include the British High Commission Territories.⁷² Similar to the Berlin Conference of 1885, SACU allowed free movement of products between the British colonies of the Union of South Africa and territories.⁷³ SACU

69. *Id.* (referring to European states as “powers” throughout the agreement. For instance, Article 4 of the agreement states “[t]he Powers reserve to themselves to determine after the lapse of twenty years whether this freedom of import shall be retained or not.”).

70. *Id.* at 12. Article 6 states,

All the Powers exercising sovereign rights or influence in . . . bind[ing] themselves to watch over the preservation of the native tribes, and to care for the improvement of the conditions of their moral and material well-being, and to help in suppressing slavery, and especially the slave trade. They shall, without distinction of creed or nation, protect and favour all religious, scientific or charitable institutions and undertakings created and organized for the above ends, or which aim at instructing the natives and bringing home to them the blessings of civilization.”

71. *History of SACU*, S. AFR. CUSTOMS UNION, <https://www.sacu.int/show.php?id=394> (discussing the history of SACU).

72. The British High Commission Territories are what used to be called Basutoland (Lesotho), Bechuanaland (Botswana), and Swaziland.

73. *See* Southern African Customs Union Agreement art. 2, June 29, 1910, <https://www.sacu.int/sacu-agreement-1910> [<https://perma.cc/9B96-22TZ>]. Article 2 of the SACU Agreement states:

1. There shall be a free interchange of the products and manufactures of the Union and the Territories with the exception of spirits and beer, the duties of Customs and Excise on which shall be subject to the following provisions: (a) In the case of spirits distilled from the product of the vine the duty shall not exceed 9s. per proof gallon, with an allowance for under proof down to 7s. 6d. per gallon. (b) In the case of other spirits the duty shall be leviable at no lower rate than the

was an agreement between and among the different British colonies to benefit the British imperial government.

There is consensus among regional integration scholars that the Berlin Conference does not represent integration in the way regional integration is understood. Most of the discussions around the Berlin Conference are around the role of the conference in the scramble for Africa. These discussions result from an understanding of the colonial ambition of the treaty. On the other hand, integration scholars discuss SACU as the oldest integration agreement in Africa by looking at its colonial origins.⁷⁴ Interestingly, the 1910 agreement did not involve independent African states or Africans. In addition, the SACU agreement did not even consider the disadvantaged black South Africans that were denied equal opportunity until the end of apartheid.⁷⁵ It seems that consent is central to the formation of regional integration, and for that reason, in this Article, the understanding of integration is limited to the post-colonial period. This section will focus on debates surrounding gender and Africa's integration agreements.

A. *Gender Equality in African Integration Agreements*

What is equality? Can we truly have equality in all its senses? For decades, these questions have been the subject of theoretical and philosophical inquiry but have received little attention in African integration initiatives. This section will analyze the equality provisions in

above, and at no higher rate than that imposed on spirits imported from abroad.

(c) In the case of beer the duty shall be leviable at a rate not exceeding 4d. per gallon.

2. That portion of the Union known as the Province of the Cape of Good Hope shall, notwithstanding anything contained herein, be entitled to levy the special Excise duties or equivalent Customs duties on patent medicines and cigarettes manufactured locally and intended for consumption in that Province.

74. See generally Jamie de Melo & Yvonne Tsikata, *Regional Integration In Africa: Challenges And Prospects* 6–7 (World Inst. for Dev. Econ. Rsch., FERDI Working Paper No. 2014/037, 2014) (discussing SACU as the oldest customs union in Africa); see also Trudi Hartzenberg, *Regional Integration In Africa* 3 n.3 (World Trade Org., Staff Working Paper No. ERSD-2011-14, 2011) (analyzing the five major regional integration schemes in Africa, Hartzenberg notes “the Southern African Customs Union, the oldest functioning customs union, is not one of the recognized building blocks of the African Economic Community.”).

75. See generally Holly E. Reed, *Moving Across Boundaries: Migration in South Africa, 1950-2000*, 50 *DEMOGRAPHY* 71 (2013) (discussing how the pass law of apartheid South Africa limited black South Africans from moving around the country freely); see also Rulof Burger & Rachel Jafta, *Returns To Race: Labour Market Discrimination In Post-Apartheid South Africa 2* (Stellenbosch Univ., Econ. Working Paper No. 04/06, 2006) (discussing the wealth, income and educational disparity among white and black South Africans, Burger and Jafta note that apartheid South Africa led to poverty, low wage earning, and lack of educational opportunity for black South Africans).

African continental integration agreements. Of course, the central argument of this section is that despite the inclusion of equality or gender-sensitive provisions in African continental and sub-continental integration initiatives, the operationalization of these provisions is flexible and dependent on politics, economy, profoundly entrenched patriarchy, and at times on the continental and sub-continental judiciary. Including equality provisions in African continental and sub-continental integration is not a self-sufficient normative concept but depends on state actors.

1. Gender Equality in the 1960s–1990s

The 1963 Charter of the Organization of African Unity does not mention women.⁷⁶ The African Charter on Human and People's Rights of 1981, alternatively called the Banjul Charter, references women twice. Article 18(3) of the Banjul Charter states that “[t]he State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.”⁷⁷ By grouping women and children together, the Banjul Charter seemed to view women as only mothers or vulnerable subjects of the state in need of protection. Further, it imposes a duty of women towards their “family and society” to “strengthen positive African cultural values” for the sake of morality and common interest.⁷⁸ Undoubtedly, individual rights don't exist in a vacuum but rather coexist with group or community rights. However, in most African states, both cultural and social contexts dedicate women to household and childcare; therefore, these provisions could relegate women spatially to domestic and unpaid care.

The Lagos Plan of Action in the 1980s attempted to harmonize policies that affect women at the continental level.⁷⁹ For instance, in legislative and administrative matters, the Lagos Plan of Action called for

76. See Charter of the Organization of African Unity, May 25, 1963, 479 U.N.T.S. 39.

77. Banjul Charter, *supra* note 42; see also Deborah A. Wean, *Real Protection for African Women? The African Charter on Human and Peoples' Rights*, 2 EMORY J. INT'L DISP. RESOL. 425, 429 (1988) (discussing the history of the African Charter on Human and Peoples' Rights and its implications for women's rights in Africa); see also Makau W. Mutua, *The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties*, 35 VA. J. INT'L L. 339 (1995).

78. Chapter II of the Banjul Charter imposes various duties on individuals. Article 27(1) states that “[e]very individual shall have duties towards . . . [their] family and society.” Furthermore, Article 27(2) notes that the rights enshrined in the Banjul Charter “shall be exercised with due regard to . . . morality and common interest.” Article 29(7) notes that “[t]he individual shall also have the duty to preserve and strengthen positive African cultural values.” Banjul Charter, *supra* note 42.

79. See ORGANIZATION OF AFRICAN UNITY, LAGOS PLAN OF ACTION FOR THE ECONOMIC DEVELOPMENT OF AFRICA 1980–2000 (1980).

“standardization within each Member State of the various legal systems governing marriage, personal relationships in the family and inheritance in order to eliminate existing discrepancies and inconsistencies.”⁸⁰ It also called for law enforcement agents to enforce equal treatment of men and women strictly, for states to institute punishment for the infringement of equal treatment clauses, affordable or *pro bono* legal services, sex education for boys and girls, the establishment of equal treatment institutions if they did not already exist, and the involvement of women in law-making—a mass campaign for equality of men and women.⁸¹ Furthermore, what is peculiar about the Lagos Plan of Action is that it had a special provision for women under apartheid. It noted, “special attention should be paid to the legal situation of women under apartheid.”⁸² What is not clear is how and what special attention means for women under apartheid. Although the clause calling for special attention to women under apartheid is not clear, the Lagos Plan of Action coincided with the Southern African Development Coordination Conference and the height of the anti-apartheid movement among Southern African states. Interestingly, the Lagos Plan of Action is a formal acknowledgment that the status of women, particularly rural women, has not seen significant improvement.⁸³

The Abuja Treaty of 1991 followed the Lagos Plan of Action. Unfortunately, however, the Abuja Treaty of 1991, albeit briefly reiterated the ethos of the Lagos Plan of Action by stipulating that “[m]ember states agree to formulate, harmonize, coordinate and establish appropriate policies and mechanisms for the full development of the African woman through the improvement of her economic, social and cultural conditions.”⁸⁴ What is problematic here is that the Abuja Treaty focuses on improving an African woman’s economic, social, and cultural conditions without adequate emphasis on women’s political and legal empowerment. Furthermore, the Abuja Treaty adopted purely market-oriented goals and measures for trade liberalization as the core engines of development. Alternatively, by adopting trade liberalization as the core development policy without analyzing trade-flows in the continent, and if neoliberal trade liberalization leads to redistributive development and

80. *Id.* § 325(b).

81. *Id.* §§ 309(b), 325(a), (c)–(d).

82. *Id.* § 325(g).

83. *Id.* § 315. Section 315 of the Lagos Plan of Action states that “the situation of rural women does not seem to have undergone much improvement since 1975. Lack of accessibility makes it impossible for information and training to reach many rural women and lack of transport and assured markets for their farm produce and handicrafts tend to decrease their productivity.”

84. Treaty Establishing the African Economic Community, art. 75(1), June 3, 1991, 30 I.L.M. 1241.

equality of women, the Abuja treaty failed to transform the status of women on the continent.

2. Gender Equality in the 2000s

The Constitutive Act of the African Union's notes that gender equality is one of its foundational principles but not necessarily an objective.⁸⁵ It is not clear if the omission of gender equality as one of the objectives of the African Union (AU) was an unintentional drafting oversight or an intentional rejection of gender equality as an objective. Indeed, the inclusion of gender equality as a foundational principle after its omission by the OAU is progress. However, its omission as an objective shows that gender equality is a non-operational normative aspiration in the continent's integration project.

The first African Union summit participants, just like that of the OAU, were all men. At the first summit of the African Union, the heads of state appointed five female commissioners and advocated that future appointments of commissioners should be based on gender parity. Moreover, the African Union seems to follow the gender parity principle in its appointment of commissioners. However, when it comes to the appointment of Chairperson and the Deputy-Chairperson, the African Union Constitutive Act does not make gender parity a goal. Furthermore, men have held these positions for the entirety of the organization's existence. Alternatively, the AU could have moved to a co-chair alternative where a man and woman can be appointed with equal mandates to conduct the functions of the Chairperson.

The African Charter on Human and People's Rights and its Protocol on Rights of Women in Africa, alternatively called the Maputo Protocol, was adopted in 2003.⁸⁶ Despite adopting the Maputo Protocol, the African Union continues its male-centric existence. The Council of Heads of State that formulates AU policies are a culmination of domestic patriarchy as it comprises the heads of state of African states. Until the election of Ellen Jonson-Sirleaf in 2005, Africa had not had a female head of state. Later, Malawi's Banda, Ethiopia's Zewde, and Tanzania's Suluhu became the Heads of State in their respective states. Then the question remains: are Africans inherently patriarchal and incapable of

85. Constitutive Act of the African Union, July 11, 2000, 2158 U.N.T.S. 3 (compare Articles 3 and 4(l)).

86. Frans Viljoen, *An Introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, 16 WASH. & LEE J. CIV. RTS. & SOC. JUST. 11, 12 (2009) (arguing that the adoption of the Maputo Protocol is a testament of "the greater visibility and mobilizing strength of women's organizations in Africa and its culmination of a dual drafting process: one initiated by the women's movement and one steered by the 'Inter-African Committee on Harmful Traditional Practices Affecting Women's and Children's Health'").

electing a woman president? Alternatively, are African integration initiatives inherently patriarchal and neoliberal?

3. The African Continental Free Trade Area (AfCFTA) and Gender Equality

The African Continental Free Trade Area (AfCFTA), reviving the neoliberal development theories of the Abuja treaty of 1991, envisions sub-regional groupings in the continent as building blocks of continental free trade.⁸⁷ The general objectives of the AfCFTA are the free movement of goods, services, capital, and people.⁸⁸ The AfCFTA notes that it aims to “promote and attain the sustainable and inclusive socio-economic development, gender equality and structural transformation of the State Parties.”⁸⁹ However, the AfCFTA’s reference to gender equality could be a means to achieve economic cooperation rather than an end in and of itself. The AfCFTA’s preamble specifically refers to “the importance of . . . gender equality” within the context of “the development of international trade and economic cooperation.”⁹⁰ Indeed, Africa’s transformation is dependent on gender parity. His Excellency Wamkele Mene, the Secretary General of AfCFTA, noted that small and medium-sized enterprises “run by women account for close to 60 percent of Africa’s GDP, creating about 450 million jobs.”⁹¹ Mene argued that it would be a “catastrophic mistake” for the AfCFTA to fail to include women in its implementation.⁹² Therefore, the AfCFTA must include women in both a substantive and procedural manner.⁹³

First, the AfCFTA needs to emphasize the substantive inclusion of women as consumers and traders. The AfCFTA has only a single reference to women in its Protocol on Trade in Services, which states,

State Parties agree, where possible, to mobilise resources, in collaboration with development partners, and implement

87. See Agreement Establishing the African Continental Free Trade Area, preamble, Mar. 21, 2018, 58 I.L.M. 1028 [hereinafter AfCFTA].

88. *Id.* art. 3.

89. *Id.*

90. *Id.*

91. Kingsley Ighobor, *AfCFTA: Traders to have opportunities to scale up and expand their markets in 2022*, AFR. RENEWAL (Jan. 7, 2022), <https://www.un.org/africarenewal/magazine/january-2022/afcfta-traders-have-opportunities-scale-and-expand-their-markets-2022> [https://perma.cc/8MA6-CWE2].

92. *Id.*

93. This author’s opinion is that substantive inclusion is direct and justiciable gender conscious in AfCFTA. With substantive inclusion, the AfCFTA would move from general reference to gender parity as an objective without any teeth in enforceability. The word “procedural” is used to refer to the three core procedural values of inclusivity: (1) drafting and negotiation; (2) leadership of the AfCFTA Secretariat; and (3) representation in the AfCFTA’s dispute resolution systems.

measures, in support of the domestic efforts of State Parties, with a view to . . . improving the export capacity of both formal and informal service suppliers, with particular attention to micro, small and medium size; women and youth service suppliers.⁹⁴

This reference is a lax provision that gives signatories of the AfCFTA significant room to refrain from proactively taking measures that advance women's equal participation in the market. Realizing the gap in gender consciousness of the AfCFTA in February 2022, the AU Assembly of Heads of State decided to include a Protocol on Women and Youth in Trade (the Protocol) within the scope of the AfCFTA. The Protocol, which is currently under negotiation, is an essential development in how Africa's continental integration initiatives engage with questions of gender equality.⁹⁵

Secondly, the AfCFTA needs to consider its procedural inclusivity towards women. Do women share adequate responsibility in the governance of the AfCFTA Secretariat? And lastly, do women have equal representation in the AfCFTA's dispute settlement mechanism? It is too early to judge women's substantive and procedural inclusion in AfCFTA.

4. Gender Equality Matrix in Africa's Sub-Regional Integration Initiatives

The African Union recognizes eight sub-regional integration initiatives as building blocks of continental integration.⁹⁶ These sub-regional integration initiatives are the Arab Maghreb Union (AMU); the Common Market for Eastern and Southern Africa (COMESA); the Community of Sahel-Saharan States (CEN-SAD); the East African Community (EAC); the Economic Community of Central African States (ECCAS); the Economic Community of West African States (ECOWAS); the Intergovernmental Authority on Development (IGAD); and the Southern African Development Community (SADC). The history of these sub-regional integration initiatives is diverse and rich. For instance, the IGAD was formed to combat desertification and drought in the region. On the other hand, the SADC began as a form of resistance to the then Apartheid South Africa. What is common in all these sub-regional integration initiatives, however, is that most if not all of these sub-regional integration initiatives track the success of their integration

94. AfCFTA, *supra* note 87, art. 27, 2–2(d).

95. *Women and Youth in Trade*, AfCFTA, <https://au-afcfta.org/trade-areas/women-in-trade> [<https://perma.cc/C6WP-RSQK>].

96. *See* Treaty Establishing the African Economic Community, *supra* note 84, art. 28(1), (“During the first stage, Member States undertake to strengthen the existing regional economic communities and to establish new communities where they do not exist in order to ensure the gradual establishment of the Community.”).

efforts by using solely market-centered benchmarks rooted in neoliberal ideals of trade liberalization. Nevertheless, most sub-regional integration initiatives have gender equality provisions or protocols. Therefore, the next subsections create a matrix of the eight sub-regional integration initiatives and their impact on the status of women in Africa.

a. African Maghreb Union (AMU)

The AMU is a union among Algeria, Libyan Arab Jamahiriya, Mauritania, Morocco, and Tunisia. Established in 1989, the member states of AMU build on the “common history, religion, and language that unite peoples of the Arab Maghreb.”⁹⁷ Despite the African Union’s inclusion of the AMU as a building block of continental integration, the AMU aims to create a “wider union comprising of Arab and African countries.”⁹⁸ It adopts standard policies to achieve “industrial, agricultural, commercial and social development of member States.”⁹⁹ Furthermore, the AMU aims to establish cooperation in “safeguarding the spiritual and moral values emanating from the tolerant teachings of Islam, and at preserving the Arab national identity, and to take the necessary measures to attain these goals.”¹⁰⁰ This emphasis on adherence to Islam’s spiritual and moral values fails to capture or recognize questions of gender equality that could be interpreted to contradict Islamic values.¹⁰¹ Of course, it is not the intention of this Article to insinuate that Islam and gender equality cannot coexist but rather to note that some AMU states, for instance, Algeria, have used their interpretation of Islam to make reservations to international human rights instruments.

Algeria’s reservations to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) restrict women’s rights to choose their residence and limit equal rights for men and women on matters relating to marriage and divorce.¹⁰² Algeria’s reservation restricting women’s right to choose their residence could be interpreted to contradict Article 2 of the treaty instituting the AMU. Article 2 of the treaty notes that the AMU aims to “[w]ork[] gradually towards achieving

97. Treaty Instituting the Arab Maghreb Union preamble, Feb. 17, 1989, 1546 U.N.T.S. 161 [hereinafter AMU Treaty]; see also Carole Murray, *Treaty Creating the Arab Union of the Maghreb*, 7 ARAB L.Q. 205, 205 (1992).

98. AMU Treaty, *supra* note 97, preamble.

99. *Id.* art. 3.

100. *Id.*

101. See, e.g., Nadia Sonneveld & Ahmed Tawfik, *Gender, Islam and Judgeship in Egypt*, 11 INT’L J.L. CONTEXT 341 (2015) (discussing how Egyptian religious leaders and scholars engage with judicial appointment of women).

102. Convention on the Elimination of All Forms of Discrimination Against Women art. 15, Dec. 18, 1979, 1249 U.N.T.S. 13, 19 I.L.M. 33. See Eva Herzer, *Report from the U.N. Committee on Elimination of Discrimination Against Women*, 85 WOMEN L.J. 19, 21 (2000) (for a general introduction and history of CEDAW).

free movement of persons.”¹⁰³ Similarly, Article 12(1) of the Banjul Charter guarantees the right to freedom of movement and residence. The right to choose one’s residence is central to advancing the other fundamental rights, for instance, the right to work and education.¹⁰⁴ Furthermore, the African Commission on Human and Peoples’ Rights comments that “[m]andatory residence must not be imposed on anyone, unless prescribed by law. Impediments, whether socially constructed or politically driven, must be removed for the exercise of the right of freedom to choose residence.”¹⁰⁵ Despite these regional and international legal instruments on freedom of movement and residence in the AMU, Algerian women face legal barriers to enjoying these freedoms. The validity of Algeria’s reservation on CEDAW is questionable under the Vienna Convention on Law of Treaties, however.¹⁰⁶ More importantly, the question remains, how did women and women’s advocacy groups contest these reservations?

In the context of the AMU, the sub-regional judiciary is rarely used by member states as a judicial avenue to resolve disputes.¹⁰⁷ As James Gathii explained, member states prefer diplomatic rather than judicial solutions.¹⁰⁸ Even Morocco and Algeria, who have been in a bitter rivalry over the disputed territory of Western Sahara, have yet to use the AMU judiciary to resolve their disputes.¹⁰⁹ One might argue that the jurisdiction of the AMU judiciary is limited to the AMU Treaty and other treaties created under the AMU framework. On the contrary, a careful reading of Article 13 of the AMU Treaty grants broad interpretive powers to the

103. AMU Treaty, *supra* note 97, art. 2.

104. Maya Sahli Fadel, *General Comment No. 5 on the African Charter on Human and People’s Rights: The Right to Freedom of Movement and Residence (Article 12(1))*, AFRICAN COMM’N ON HUM. & PEOPLES’ RTS., ¶ 8 (Nov. 10, 2019), <https://achpr.au.int/en/node/905> [<https://perma.cc/6BHV-7QSA>].

105. *Id.* ¶ 11.

106. Belinda Clark, *The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women*, 85 AM. J. INT’L L. 281, 282–89 (1991).

107. The AMU Judicial Body is composed of two judges per member state and are appointed for six years terms. The Judicial Body has jurisdiction over disputes relating to the interpretation or application of the AMU Treaty and other treaties concluded within the AMU. The AMU judiciary, like its other African counterparts, is rarely invoked by member states. See Brian Sang YK, *Friends, Persons, Citizens: Comparative Perspectives on Locus Standi and the Access of Private Applicants to Sub-Regional Trade Judiciaries in Africa*, 13 OR. REV. INT’L L. 355, 362 (2011); Olabisi D. Akinkugbe, *Dispute Settlement Under the African Continental Free Trade Area Agreement: A Preliminary Assessment*, 28 AFR. J. INT’L & COMP. L. 138, 151 (2020).

108. See generally James T. Gathii, *African Regional Trade Agreements as Flexible Legal Regimes*, 35 N.C. J. INT’L L. 571, 573–75, 657–60, 667 (2010).

109. See *Timeline: Algeria and Morocco’s Diplomatic Disputes*, ALJAZEERA (Jan. 15, 2023), <https://www.aljazeera.com/news/2023/1/15/timeline-algeria-and-morocco-diplomatic-disputes> [<https://perma.cc/7JBR-JAYX>] (regarding the timeline and cause of the ongoing dispute between Algeria and Morocco).

judiciary.¹¹⁰ In conclusion, there is little evidence to show how the AMU will protect and expand women's rights in the region.

b. CEN-SAD: Community of Sahel-Saharan States (CEN-SAD)

The CEN-SAD is a regional economic integration among Benin, Burkina Faso, Cape Verde, the Central African Republic, Chad, Comoros, Côte d'Ivoire, Djibouti, Egypt, Eritrea, The Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Libya, Mali, Mauritania, Morocco, Niger, Nigeria, São Tomé and Príncipe, Senegal, Sierra Leone, Somalia, Sudan, Togo and Tunisia.¹¹¹ Established in 1998, it aims to integrate its member states through "economic, cultural, political and social integration."¹¹² Despite the African Union's inclusion of the CEN-SAD as a building block of continental integration, the CEN-SAD's contemporary existence is debatable. The CEN-SAD website has been broken throughout this Article's research and writing process.¹¹³ Secondly, the ousting of Muammar Ghaddafi and the regional and local insecurity weakened the CEN-SAD organization.¹¹⁴ Since the death of Ghaddafi, the CEN-SAD summit met once in 2013 and agreed to revise the 1998 CEN-SAD Treaty.¹¹⁵ The revised Treaty lacks the requisite ratifications to make it enforceable, however.¹¹⁶ Furthermore, the revised Treaty fails to include any gender-sensitive policy or provision.¹¹⁷

c. Common Market for Eastern and Southern Africa (COMESA)

The COMESA is the largest and contemporaneously active regional economic integration project in Africa.¹¹⁸ It is a common market among

110. AMU Treaty, *supra* note 97, art. 13.

111. *CEN-SAD: Current Path forecast*, ISS AFRICAN FUTURES (Dec. 13, 2023), <https://futures.issafrica.org/geographic/recs/cen-sad/#forecast> [<https://perma.cc/FXB6-JAHC>] (showing that CEN-SAD's membership fell from 29 to 25 African states when Guinea, Kenya, Liberia and Sao Tome and Principe left the economic integration arrangement).

112. G.A. Res. 56/598, ¶ 3, U.N. Doc. A/RES/56/92 (Dec. 12, 2001).

113. *See Sorry!*, <http://www.censad.org/cgi-sys/defaultwebpage.cgi> (last visited Jan. 22, 2024); *see also CEN-SAD - The Community of Sahel-Saharan States*, U.N. ECON. COMM'N FOR AFR., <https://archive.uneca.org/oria/pages/cen-sad-community-sahel-saharan-staes> (last visited Mar. 25, 2024) (listing <http://www.censad.org> as CEN-SAD's website).

114. *See* Saeed Ali Ahmed Taha, *Efforts of Integration in the African Regional Groupings (The Community of Sahel-Saharan)*, 13 AFR. PERSP. 16, 29 (2016); *see generally* Dafna Hochman, *Going Legit: Qaddafi's Neo-Institutionalism*, 4 YALE J. INT'L AFF. 27 (2009) (discussing the Role of Muammar Ghaddafi in institutionalizing CEN-SAD).

115. Ali Ahmed Taha, *supra* note 114.

116. *See generally* Community of Sahel-Saharan States Revised Treaty, Feb. 16, 2013, <https://au.int/en/recs/censad> [<https://perma.cc/HL8H-R3SR>] (failing to mention enforcement mechanisms of the organization).

117. *See generally id.* (failing to mention any gender-sensitive policy or provision).

118. *Common Market for Eastern and Southern Africa (COMESA)*, OFF. OF THE U.S. TRADE

Burundi, Comoros, the Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Eswanti, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tunisia, Uganda, Zambia, and Zimbabwe.¹¹⁹ It is a one of the sub-regional integration projects that functions as a building block of continental integration.¹²⁰

The COMESA Treaty acknowledges women's important role in socioeconomic transformation and sustainable growth.¹²¹ The *chapeau* of Article 154 of the COMESA Treaty notes that without women it is "impossible to implement effective programs for rural transformation and improvements in the informal sector."¹²² Although the COMESA Treaty makes general references to women's role in development, the particular emphasis in the *chapeau* on women's role in transforming rural and informal economies makes one wonder if the drafters of the COMESA Treaty had a limited conception of the role of women in development.

However, looking at Article 154, one finds that the drafters of the COMESA Treaty call on member states to (1) promote the participation of women in decision-making structures; (2) eliminate discriminatory laws, norms, and customs; (3) provide civic education geared to boost women's equality; (4) promote women's equal participation in the workforce; and (5) improve the productive capacity of women.¹²³ Reading Article 154 together with the COMESA Gender Policy, one finds that the member states of COMESA have a broader conception of the role of women in development that extends beyond informal and rural economies.¹²⁴ Furthermore, the text of Article 155 of the COMESA Treaty specifies the role of women as a "vital economic link" to the broader economic transformation of the member states.

REPRESENTATIVE, <https://ustr.gov/countries-regions/africa/regional-economic-communities-rec/common-market-eastern-and-southern-africa-comesa#:~:text=The%20Common%20Market%20for%20Eastern,population%20of%20about%20390%20million> [<https://perma.cc/Q984-93NR>].

119. Treaty Establishing the Common Market for Eastern and Southern Africa art. 1, Sept. 1994, 33 I.L.M. 1067 [hereinafter COMESA Treaty].

120. Article 3(f) of the COMESA Treaty states "[t]he aims and objectives of the Common Market shall be: . . . to contribute towards the establishment, progress and the realization of the objectives of the African Economic Community." *Id.* art. 3(f).

121. *Id.* art. 154.

122. *Id.*

123. *Id.* art. 154(a)–(e).

124. In 2002, COMESA adopted a gender policy to guide gender mainstreaming processes in the community. STATE DEP'T FOR GENDER AND AFFIRMATIVE ACTION, COMESA PROGRAMMES – GENDER POLICY 2 (2002), <https://www.gender.go.ke/sites/default/files/publications/COMESA-gender-policy-1.pdf> [<https://perma.cc/G699-A2RC>]. The COMESA member states revised the 2002 Gender Policy in 2016 to align with the progressive policies of the COMESA Social Charter, Africa's Agenda 2063, Beijing+20 outcomes, and the SDGs. INT'L PLANNED PARENTHOOD FED'N, THE STATE OF AFRICAN WOMEN 114 (2018), <https://africa.ippf.org/sites/africa/files/2018-09/SOAW-Report-Chapter-4-Regional-Economic-Communities.pdf> [<https://perma.cc/9KHA-76GN>].

Despite the specific treaty text calling for member states to eliminate customs and laws that discriminate against women, some COMESA member states made reservations to CEDAW and the Banjul Charter. For instance, Egypt put a general reservation on Article 2 of CEDAW. It stated that it is willing to comply with CEDAW “provided that such compliance does not run counter to the Islamic Sharia.”¹²⁵ In line with this general reservation, Egypt made a substantive reservation to Article 16 of CEDAW, which guarantees the equality of men and women in marriage and its dissolution.¹²⁶ Egypt further commented in its official reservation to Article 16 of CEDAW is not binding “out of respect for the sacrosanct nature of the firm religious beliefs which govern marital relations in Egypt, and which may not be called in question.”¹²⁷

At the continental level, Egypt registered a reservation to Article 18 of the Banjul Charter as well. Egypt again stated it will be bound by Article 18 only to the extent it is consistent with Sharia Law.¹²⁸ Article 18 requires that the state must eliminate all discrimination against women.¹²⁹ The validity of this reservation, just like Egypt’s reservation to CEDAW, is of questionable validity under the Vienna Convention on Law of Treaties. One could inquire if these reservations defeat the purpose of the Banjul Charter and the CEDAW. However, as before, the bigger question is how women and women’s advocacy groups contested these reservations.

Although women and women’s rights groups have standing in the COMESA judiciary, Egyptian women also have access to alternative sub-regional and continental judicial authorities.¹³⁰ For instance, the Egyptian Initiative for Personal Rights and INTERIGHTS (EIPR & INTERIGHTS) brought allegations of violation of women’s rights to the African Commission on Human and Peoples’ Rights (the African Commission).¹³¹ EIPR & INTERIGHTS argued that the Egyptian

125. Convention on the Elimination of All Forms of Discrimination Against Women, *Declarations, reservations, objections and notifications of withdrawal of reservations*, U.N. Doc CEDAW/SP/2006/2, 12 (Apr. 10, 2006).

126. *Id.* at 11.

127. *Id.*

128. *Reservations and Declarations to the African Charter*, AFR. COMM’N ON HUM. & PEOPLE’S RTS., <https://achpr.au.int/en/node/649> [<https://perma.cc/K6V4-KRXL>] (noting Egypt’s reservation that “article 18 be implemented in accordance with the Islamic Law”).

129. Banjul Charter, *supra* note 42.

130. The COMESA Court of Justice was established under Article 7 of the COMESA Treaty in 1994. *See* COMESA Treaty, *supra* note 119, art. 19(2). The COMESA Court of Justice has a First Instance Division and an Appellate Division. *Id.* The COMESA Court of Justice is comprised of twelve judges, seven of whom serve in the First Instance Division and five in the Appellate Division. *Id.* art. 20(1); *see* Sang YK, *supra* note 107, at 367; *see also* Gathii, *supra* note 108, at 589–91.

131. Egyptian Initiative for Personal Rights v. Egypt, Decision 323/2006, African

government violated its non-discrimination obligation under Article 18(3) of the Banjul Charter.¹³² The plaintiffs argued “violence against women can amount to discrimination under the . . . [Banjul] Charter, and that States therefore have a legal obligation to prevent it, and take measures to thoroughly investigate, prosecute and punish in cases where it occurs.”¹³³ In its defense, The Egyptian government contradicted the plaintiffs’ factual submission but did not contest the applicability and validity of Article 18(3) of the Banjul Charter.¹³⁴ The African Commission held that “violence against women affects, compromises or destroys the enjoyment and exercise by women of their fundamental and human rights in different spheres of life.”¹³⁵ The African Commission concluded that violence against women amounts to discrimination against women.¹³⁶ The decision of the African Commission in the EIPR & INTERIGHTS case was precedent-setting in the continent. Almost ten years have now passed since that landmark decision.¹³⁷ However, its implementation in Egypt and the broader COMESA region remains in question. Egypt has yet to report on implementing the EIPR & INTERIGHTS decision.¹³⁸ Secondly, the African Commission’s quasi-judicial status means that its decisions would have legal effect only when adopted by the Assembly of Heads of State of the African Union.¹³⁹ The African Commission did report the need to follow-up on implementing the EIPR & INTERIGHTS decision to the Assembly of Heads of State.¹⁴⁰ Looking at the Assembly of the Union, Twenty-Second Ordinary

Commission on Human and People’s Rights [Afr. Comm’n H.P.R.], ¶ 75 (Dec. 16, 2011), <https://achpr.au.int/index.php/en/node/636> [<https://perma.cc/8ZZP-YW6U>].

132. *Id.* ¶ 3.

133. *Id.* ¶ 87.

134. *Id.* ¶¶ 96–102, 109–13.

135. *Id.* ¶ 165.

136. *Id.* ¶ 75.

137. *See Egyptian Initiative for Personal Rights*, Decision 323/2006 ¶ 25.

138. *See* CTR. FOR HUM. RTS., SHADOW REPORT TO EGYPT’S 2017 PERIODIC REPORT 18 (2019), https://www.chr.up.ac.za/images/centrenews/2019/files/Egypt_Shadow_Report_15_April_2019_-_Centre_for_Human_Rights.pdf [<https://perma.cc/W6X4-24HT>] (noting that Egypt was required to report back to the Commission within six months and recommending the Commission to ask Egypt to clarify its position about this remedy).

139. *See* Banjul Charter, *supra* note 42, art. 54; *see also* Rachel Murray & Elizabeth Mottershaw, *Mechanisms for the Implementation of Decisions of the African Commission on Human and Peoples’ Rights*, 36 HUM. RTS. Q. 349, 351 (2014) (“[The African Commission] decisions are not viewed as legally binding, are perceived as unacceptable interferences with state sovereignty.”); *see also* George Mukundi Wachira & Abiola Ayinla, *Twenty Years of Elusive Enforcement of the Recommendations of the African Commission on Human and Peoples’ Rights: A Possible Remedy*, 6 AFR. HUM. RTS. L.J. 465, 471 (2006) (discussing the ability of states to argue that African Commission decisions are recommendations and not legally binding instruments).

140. AFR. COMM’N ON HUM. & PEOPLES’ RTS., 35TH ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS 7 (2013).

Session, however, it is hard to know if the Assembly of Heads of State actually adopted the EIPR & INTERIGHTS decision.¹⁴¹

An alternative avenue for implementing the EIPR & INTERIGHTS decision could have been the COMESA judiciary. The COMESA Treaty provides that any resident in the COMESA region may “refer for determination by the Court the legality of any act, regulation, directive, or decision of the Council or of a Member State on the grounds that such act, directive, decision or regulation is unlawful or an infringement of the provisions of this Treaty.”¹⁴² However, despite over two decades of existence and having jurisdiction over trade and fundamental rights issues, the COMESA Court of Justice has neither dealt with human rights issues in general, nor women’s rights in particular.¹⁴³

d. Southern African Development Community (SADC)

The SADC is a regional economic community that comprises Angola, Botswana, Comoros, the Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, United Republic Tanzania, Zambia and Zimbabwe.¹⁴⁴ The SADC is a building block of continental integration.¹⁴⁵ The SADC Treaty does not explicitly mention women or gender equality. However, SADC and its member states aim to act in accordance with human rights.¹⁴⁶ The SADC Treaty’s objectives also note that the member states seek to “support the socially disadvantaged through regional integration.”¹⁴⁷

In 2008, the SADC member states adopted the SADC Protocol on Gender and Development.¹⁴⁸ The Protocol came into effect in 2013 following the ratification of the instrument by two-thirds of SADC

141. Decisions of the Twenty-Second Ordinary Session of the Assembly of the African Union Assembly/AU/Dec.490-516(XXII) (Jan. 30–31, 2014).

142. See Sang YK, *supra* note 107, at 369.

143. See *Court Decisions*, COMESA CT. OF JUST., <https://comesacourt.org/court-decisions/> [<https://perma.cc/P6JA-H5CH>] (for a list of COMESA Court of Justice decisions).

144. *Member States*, S. AFR. DEV. CMTY., <https://www.sadc.int/member-states> [<https://perma.cc/N3RH-VWYS>].

145. *Regional Economic Communities*, AFR. UNION, <https://au.int/en/recs> [<https://perma.cc/XB3F-NQ5T>].

146. Treaty of the Southern African Development Community art. 4, ¶ c, Aug. 17, 1992, 32 I.L.M. 116 [hereinafter SADC Treaty].

147. *History and Treaty*, S. AFR. DEV. CMTY., <https://www.sadc.int/pages/history-and-treaty> [<https://perma.cc/UQ2S-EMXQ>]; SADC Treaty, *supra* note 146, art. 5(1)(a). Article 5(1)(a) of the SADC Treaty states that “[t]he objectives of SADC shall be to promote sustainable and equitable economic growth and socio-economic development that will ensure poverty alleviation with the ultimate objective of its eradication, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration.”

148. INT’L PLANNED PARENTHOOD FED’N AFR., *The Regional Economic Communities and Women and Girls’ Rights*, in STATE OF AFRICAN WOMEN REPORT (2018).

member states.¹⁴⁹ Building on the member states commitment to CEDAW, the SADC Protocol on Gender and Development has the most extensive and detailed provisions for gender equality. It aims to “provide for the empowerment of women, to eliminate discrimination and to achieve gender equality and equity.”¹⁵⁰

The SADC Protocol on Gender and Development calls on member states to eliminate discrimination and discriminatory policies, laws, and customs that exist in member states. Unlike any other regional economic community in Africa, it has explicit text acknowledging unpaid care work and calls on member states to adopt policy measures to alleviate the burdens of care work.¹⁵¹ However, the success of these progressive provisions heavily depends on dispute settlement mechanisms. The Protocol calls for amicable resolution of disputes about its interpretation and implementation.¹⁵² When amicable dispute resolution fails, the dispute can be referred to the SADC Tribunal.¹⁵³ However, with the suspension of the SADC Tribunal, the future of women’s rights litigation among SADC member states is unclear.¹⁵⁴

e. Economic Community of West African States (ECOWAS)

The ECOWAS has fifteen member states, namely, Benin, Burkina Faso, Côte d’Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Sierra Leone, Sénégal and Togo.¹⁵⁵ Established in 1975, ECOWAS is a building block of continental integration and aims to “foster collective self-sufficiency for its member states.”¹⁵⁶

149. *Botswana signs Revised SADC Protocol on Gender and Development*, S. AFR. DEV. CMTY. (May 11, 2017), <https://www.sadc.int/latest-news/botswana-signs-revised-sadc-protocol-gender-and-development> [<https://perma.cc/4JK8-H8NB>].

150. SADC Protocol on Gender and Development, art. 3(a), Aug. 17, 2008 [hereinafter SADC Protocol].

151. *Id.* art. 16 (stating that “States Parties shall conduct time use studies by 2015 and adopt policy measures to ease the burden of the multiple roles played by women”).

152. *Id.* art. 36(1).

153. *Id.* art. 16.

154. Mia Swart, *A house of justice for Africa: Resurrecting the SADC Tribunal*, BROOKINGS (Apr. 2, 2018), <https://www.brookings.edu/articles/a-house-of-justice-for-africa-resurrecting-the-sadc-tribunal/> [<https://perma.cc/C2EB-Q8GL>]. Initially, the SADC Tribunal had jurisdiction to review individual and state complaints regarding violations of the SADC legal instruments. However, it was disbanded in 2011 after a ruling in *Campbell v. Republic of Zimbabwe*, Decision 2/2007, Southern African Development Community Tribunal. The SADC Tribunal held that the Zimbabwean government’s land seizures violated the principles of equality as stated in the SADC Treaty.

155. *About ECOWAS*, ECON. CMTY. W. AFR. STATES, <https://www.ecowas.int/about-ecowas/> [<https://perma.cc/SN4V-9FNU>].

156. *Id.*

The ECOWAS Treaty has an explicit textual commitment to improve the condition of women in the member states. It mandates member states to “formulate, harmonise, co-ordinate and establish appropriate policies and mechanisms for the enhancement of the economic, social and cultural conditions of women.”¹⁵⁷ Despite the explicit language in Article 63 of the ECOWAS Treaty, it fails to provide a concrete roadmap or benchmarks to achieve equality.¹⁵⁸

The ECOWAS Court of Justice, which has jurisdiction to hear cases by natural or artificial persons, can also be an avenue for making concrete progress in implementing Article 63 of the ECOWAS Treaty and other regional and international gender equality laws.¹⁵⁹ For instance, in *WAVES v. the Republic of Sierra Leone*, a non-governmental organization, Women Against Violence and Exploitation in Society, and the Child Welfare Society sued the government of Sierra Leone on behalf of pregnant adolescent schoolgirls.¹⁶⁰ In this case, the then Minister of Education, Science and Technology of Sierra Leone banned pregnant girls from attending school “as they serve as [a] negative influence on their peers.”¹⁶¹ Applicants sought relief under the non-discrimination principles of the Banjul Charter, the African Charter on the Rights and Welfare of the Child, the Maputo Protocol, and CEDAW among other international legal instruments.¹⁶² The ECOWAS Court of Justice held that banning pregnant schoolgirls from attending school constituted discrimination and was a violation of the non-discrimination provisions of the Banjul Charter on Human and People’s Rights.¹⁶³ Despite

157. Revised Treaty of the Economic Community of West African States art. 63, ¶ 1, July 24, 1993, 35 I.L.M. 660 [hereinafter ECOWAS Treaty].

158. *Id.* art. 63, ¶¶ 2–3 (discussing the measures ECOWAS member states should take to ensure gender equality are to “identify,” “assess,” “stimulate dialogue,” and “provide framework[s]”).

159. ECOWAS Supplementary Protocol A/SP.1/01/05, Amending the Preamble and Articles 1, 2, 9, and 30 of Protocol A/P.1/7/91 Relating to the Community Court of Justice and Article 4 Paragraph 1 of the English Version of the Said Protocol, art. 3 & art. 4(c) (Jan. 19, 2005); ECOWAS Treaty, *supra* note 157, art. 15, ¶¶ 1, 4.

160. *Women Against Violence and Exploitation in Society v. Sierra Leone*, Judgment ECW/CCJ/JUD/37/19, Community Court of Justice [ECOWAS], 2 (Dec. 12, 2019) (case brought by the non-profit, non-governmental organization Women Against Violence and Exploitation in Society and the Child Welfare Society on behalf of pregnant adolescent schoolgirls in Sierra Leone who were barred from attending school based on their status as pregnant adolescents).

161. *Id.* at 21.

162. *Id.* at 2–3.

163. See Banjul Charter, *supra* note 42, arts. 1, 2, 17(1). The ECOWAS Community Court of Justice eloquently noted:

It is the Responsibility of the State of Sierra Leone to ensure that girls attend school just as their male counterpart. It is also equally its obligation to ensure that they are afforded equal opportunities as anyone else and not to be

progressive judgments, the enforcement of the ECOWAS Court of Justice decisions falls to the political will of member states, which puts women's rights issues in a grey area.¹⁶⁴

f. Economic Community of Central African States (ECCAS)

The ECCAS was established in 1983.¹⁶⁵ Its members are comprised of Angola, Burundi, Cameroon, the Central African Republic, the Republic of Congo, Gabon, Equatorial Guinea, the Democratic Republic of Congo, Rwanda, Sao Tome and Principe, and Chad.¹⁶⁶ ECCAS is one of the recognized pillars of continental integration.¹⁶⁷ The ECCAS Treaty imposes an obligation to develop “collective research by appropriate policies aimed at improving the economic, social and cultural status of women.”¹⁶⁸ Similarly to the COMESA Treaty the ECCAS Treaty has a specific provision titled *Femme et Développement* (women and development) that calls on member states to identify and define appropriate policies that improve the status of women.¹⁶⁹ This provision, however, fails to have an explicit and justiciable obligation that promotes actionable obligations for member states. Therefore, how the ECCAS or its Court of Justice will promote gender rights remains unclear.

g. East African Community (EAC)

The EAC is a union among the Republic of Burundi, the Democratic Republic of the Congo, the Republic of Kenya, the Republic of Rwanda, the Republic of South Sudan, the Republic of Uganda, and the United Republic of Tanzania.¹⁷⁰ The EAC's history dates to the colonial era of

discriminated against on the basis of their status (pregnancy) by establishing different schools with less facilities and standards while their fellow men or boys who may have impregnated them go about and enjoy regular schools with better facilities and full curriculum. Such act of segregation is indeed discriminatory.

Id. at 27–28.

164. See Annika Rudman, *A Feminist Reading of the Emerging Jurisprudence of the African and ECOWAS Courts Evaluating their Responsiveness to Victims of Sexual and Gender-Based Violence*, 31 STELLENBOSCH L. REV. 424, 454 (2020).

165. *ECCAS In Brief*, ECON. CMTY. CENT. AFR. STATES (May 28, 2023), <https://ceecac-eccas.org/en/2023/05/28/eccas-in-brief/> [<https://perma.cc/2GRL-X2VD>].

166. *Id.*

167. *Id.*

168. Treaty for the Establishment of the Economic Community of Central African States art. 77, ¶ 4(a), June 27, 2019, 23 I.L.M. 945 (Art. 77(4)(a) states “*A cet effet, ils s’engagent à . . . développer la recherche collective par des politiques appropriées, pour l’amélioration de la situation économique, sociale et culturelle des femmes des zones urbaines et rurales ainsi que leur plus grande intégration aux activités de développement.*”).

169. *Id.* art. 78.

170. *Overview of EAC*, E. AFR. CMTY., <https://www.eac.int/overview-of-eac> [<https://perma.cc/J2VM-8WPK>].

the early 1900s and it has subsequently evolved through different iterations and expansions.¹⁷¹ In its current iteration, the EAC is the result of a 1999 treaty that came into effect in 2000.¹⁷² The member states of the EAC aim to promote “the role of women in culture, social, political, economic and technological development.”¹⁷³

Similarly to other sub-regional integration schemes like COMESA, which has specific provisions dealing with the role of women in socio-economic development and business, the EAC recognizes social and economic development cannot be attained without women.¹⁷⁴ Similarly to the SADC Protocol on Gender, the EAC Treaty aims to promote women’s participation in decision-making, abolish discriminatory laws, provide civic education to change negative attitudes towards women in Africa, adopt technologies that enhance women’s workplace, and other measures that promote equality.¹⁷⁵

Like ECCAS, the EAC Treaty also establishes a Court of Justice.¹⁷⁶ States, individuals, and legal persons can bring claims before the Court.¹⁷⁷ The EAC Court of Justice is a two-chamber court.¹⁷⁸ However, the EAC Court of Justice does not have explicit jurisdiction over human rights issues, which makes the litigation of gender equality issues in the EAC unknown.¹⁷⁹

B. Conclusion

As seen in the matrix above, gender parity at the continental or sub-regional levels is either considered a trickle-down function of regional integration or is ignored in the integration architecture and lack justiciable women’s rights. Similar to the 1960s emancipation project centered on racial equality and decolonization in the regional integration project, gender equality should not result from regional integration but be at the center of Africa’s integration. That would mean that gender parity is

171. *Id.*

172. *Id.*

173. Treaty for the Establishment of the East African Community art. 5, ¶ 3(e), Nov. 30, 1999, 2144 U.N.T.S. 255 [hereinafter EAC Treaty].

174. *Id.* art. 121.

175. *Id.*

176. *Id.* arts. 26–36.

177. *Access to Court*, E. AFR. CT. JUST., https://www.eacj.org/?page_id=31 [<https://perma.cc/PW2P-LKY6>].

178. EAC Treaty, *supra* note 173, art. 23(2) (“The Court shall consist of a First Instance Division and an Appellate Division.”).

179. See generally James Thuo Gathii, *Variation in the Use of Subregional Integration Courts between Business and Human Rights Actors: The Case of the East African Court of Justice*, 79 LAW & CONTEMP. PROBS. 37 (2016); *East African Court Of Justice*, INT’L JUST. RES. CTR., <https://ijrcenter.org/regional-communities/east-african-court-of-justice/> [<https://perma.cc/BJ5R-ES42>].

connected to integration, not as a long-term aspiration or mystical goal. If this correlation is accepted, then it would not be difficult to conclude that regional integration as emancipation is not outside the grasp of the ordinary African. From the smallest sub-regional integration scheme to the continental integration scheme, every question of gender parity must have a definable answer outlined in an achievable timeline.

Inequality and lack of recognition of women are unnatural, and it is a construct of patriarchal, religious, and social authority. The question that remains in the post-independence period is whether inequality and lack of gender parity also became a construct of the post-colonial independent African states. Indeed, inequality could seem like a deceptively simple concept. Centering gender in African continental integration, although a noble endeavor, fails to factor its operationalization as a function of time. If centering gender is the key to gender parity in African integration initiatives, it would be relevant to have a timeline or stackable positive and negative measures to lead to full gender parity in the continent. Indeed, implementing negative measures—for instance, eliminating discriminatory practices be it social, religious, economic, legal, or political—would be harder than implementing positive measures for gender parity. For that reason, having a defined timeline is critical to materializing positive gender parity measures—for instance, a fifty percent quota for representation in all elected and appointed positions at the member state and regional body level. Without a timeline, the realization of gender parity in African integration initiatives, at least in the coming decades, seems to be moot, or at best rhetorical.

The difference between the status of women in the colonial era, the post-independence era, and the future ought not to be a stubborn illusion. Understanding and recognizing practical measures for gender parity contributes to the ideal of equality of all humans under the sun. It would be imperative to propose a sequence of achievable steps to realize continental integration rooted in recognition and post-neoliberal developmentalism. Rhetorical regurgitation of gender parity often without visible deliverables makes women's concerns rote memorization. Women deserve a fifty percent quota in continental and sub-regional integration initiatives, which is not an artificial formula or arbitrary decision but rather is grounded in reason. Since women make up more than fifty percent of the African population, the fifty percent quota is nothing but an empirical observation and demand.

IV. CONCLUSIONS: RETHINKING THE URGENCY OF GENDER IN AFRICA'S INTEGRATION

The above sections show that 1960s African thinkers had a limited conception of emancipation as decolonization and ending white racial domination. The question then remains: did African thinkers intend to

exclude from their conception of emancipation other forms of emancipatory movements that were ongoing then and are currently active? The central argument of this section is that by reconceptualizing integration as emancipation, the question of women's rights, ethnic minority movements, and other emancipatory movements would be at the core of Africa's integration project. In other words, emancipation would be the goal and not the spill-over effect of Africa's integration.

During Nigeria's decolonization movements, the experiences of the Abeokuta women show that women actively engaged in the decolonization movement.¹⁸⁰ Likewise, in Eritrea, women accounted for one-third of the guerrilla armed force that won the independence war. Similarly, in South Africa, women were not passive in the anti-apartheid movement. In all the three countries mentioned, women sacrificed, led, and fought for a broader conception of emancipation that they hoped would end social subjugation.

In the formative years of African integration, African thinkers, for instance, Julius Nyerere, boldly criticized capitalist structures as contrary to African values and the root cause of economic inequality. For Nyerere, "[c]apitalism fosters excessive individualism; promotes the competitive rather than the cooperative instinct in man; exploits the weak; divides the society into hostile groups and generally promotes inequality in the society."¹⁸¹ However, Nyerere's focus on economic inequality and African values of collectivist policies failed to question African values that degrade and dehumanize Africans. The emphasis on collectivist policies sacrificed individual rights for the benefit of the larger group. The question, however, is whose individual rights were being trampled to advance the collective good. Nyerere, for his part, refused to include a bill of rights in the constitution of Tanzania for more than two decades.¹⁸² Nyerere's collectivist policies intensified women's workload without removing the patriarchal land tenure system that denied women access to

180. See Byfield, *supra* note 7.

181. See Thenjiwe Major & Thalia M. Mulvihill, *Julius Nyerere (1922–1999), An African Philosopher, Re-envisioning Teacher Education to Escape Colonialism*, 3 J. MARXISM & INTERDISC. INQUIRY 15, 16 (2009).

182. Helen Kijo-Bisimba & Chris Maina Peter, *Mwalimu Nyerere and the Challenge of Human Rights*, reprinted in *AFRICA'S LIBERATION – THE LEGACY OF NYERERE* 149, 151 (Chambi Chachage & Annar Cassam eds., 2010) ("It was under Mwalimu that the nationalists negotiating for the independence of Tanganyika in London and Dar es Salaam rejected the inclusion of a bill of rights in the independence constitution of 1961. The same position was repeated during the Republican Constitution of 1962, the Interim Constitution of 1965 and the Permanent Constitution of the United Republic of Tanzania of 1977. The Bill of Rights was eventually incorporated in the constitution in 1984 due to pressure from the people.").

land even though they were the primary food producers in Tanzanian society.¹⁸³

In most African countries, the increase in post-colonial participation of women in the workforce was seen as a positive trait of women's independence from the male provider and emancipation in general. However, most perspectives of women's participation in the workforce focused on static measures and failed to account for discrimination, sexism, and exclusion of women from certain occupations. For instance, in Eritrea, women not only participated in the independence struggle, but at times even led battalions against the Ethiopian Army, then the biggest army in Africa. However, post-independence, the state demobilized women from the army and provided training and employment opportunities in occupations traditionally considered appropriate for women.¹⁸⁴ Conversely, their male counterparts, including those who might have served under them, were honored with military ranks and given leadership positions in the newly established defense ministry and in other government positions.¹⁸⁵

Understanding gender parity and inclusion in regional integration studies is also about understanding different generational lenses and a quest for understanding respect and inclusion. It is about historicizing the lack of inclusion in Africa's integration projects and projecting a future where inclusion is one of the metrics of successful integration in the continent. Instead of passing protocols and laws with no significant effect on the demarginalization of women, African countries should focus on practical measures. Despite sub-regional or continental commitments to demarginalize women, several African countries have laws that police women's bodies and choices of clothing. This Article's emphasis on

183. Louise Fortmann, *Women's Work in a Communal Setting: The Tanzanian Policy of Ujamaa*, in *WOMEN AND WORK IN AFRICA* 191, 191–207 (Edna G. Bay ed., 1982) (“In every area of the country, women are responsible for feeding their family and hence are the major producers of food crops. Among the various ethnic groups, Zaramo women have total responsibility for rice production; Chagga women have main responsibility for farm work, growing bananas and other food crops; Gogo women grow grain; Meru and Iraq women do most farm work; Haya women have nearly total responsibility for food crops. Some pastoralists have taken to marrying an agriculturalist woman as a second wife in order to procure food crops for their households.”).

184. Amanuel Mehreteab, *Evaluation Of The Demobilisation And Reintegration Programs Of Ex-Fighters In Eritrea* 26–27, 31 (Sept. 1997) (Masters dissertation, University of Leeds), <http://harep.org/THESEDES/asmara.pdf> (discussing how from 1993 to 1995 around 13,500 female ex-fighters of the independence struggle were demobilized from the army and given financial compensation ranging from 1,000-10,000 Ethiopian Birr, of which 67.1% of female ex-fighters were unhappy with their demobilization); see also Eva-Maria Bruchhaus & Amanuel Mehreteab, *‘Leaving the Warm House’: the Impact of Demobilization in Eritrea*, in *DEMOBILIZATION IN SUB-SAHARAN AFRICA* 95–131 (Kees Kingma ed., 2000) (discussing the unsuccessful traditionally female trainings provided to female ex-fighters and how they failed to lead to economic independence).

185. Telephone Interview with Justice Habteab Okbay (Nov. 15, 2021).

gender equality or lack thereof is not a premise or a hypothesis rooted in an assumption that questions of equality affect only women. Nevertheless, the arguments of this Article are proposed with the understanding and hope that future scholars will expand the theoretical framework of this Article to other movements.