

**THE EFFECT OF RELIGION AND CULTURE ON THE IMPLEMENTATION OF WOMEN'S  
RIGHTS IN AFRICA: CHALLENGES AND PROSPECTS\***

**Abstract**

Many religious faiths and cultural beliefs in Africa impede the ability of women from playing full and equal roles with men, thus creating an environment which fosters the violations of women's rights. Religious and cultural norms have been acknowledged as a source for violating women's rights, founded on the perception that women are inferior to men in the eyes of God. This belief is embedded in several African cultural practices which influence the lives of most Africans and as such, women are accorded lower status as inferior human beings. Religious and traditional leaders across Africa have hidden under the veil of their positions to subjugate women. This has resulted in several instances of oppression of women such as disenfranchisement of widows from inheritance, child marriage, rape, domestic violence, etc. While religion has been seen as a bane to the realization of women's rights, religion can also serve as a solution by assigning women leadership roles in religious circles. Research shows that even within religious circles, women are entrusted with leadership roles but still carry out the roles in a manner that reflects the inferior position of women. This is basically because of the orientation and mentality that had been imbedded in the women right from childhood coupled with religious and cultural knowledge beliefs acquired before becoming religious or traditional leaders. This paper examines the impact of religious and cultural beliefs on the realisation of women's rights in Africa in the light of Maputo protocol. In doing so, reference is made to random African countries that have adopted the Maputo Protocol. The doctrinal approach is adopted for this research by examining primary and secondary sources on impact of religion and cultural practices on women's rights in Africa. Statistics from official government and international organisations sources are relied on to validate and substantiate claims in the paper.

**Keywords:** Religion, Culture, Women's Rights, Challenges, Prospects, Africa

**1. Introduction**

Women across the world and especially in Africa have been suffering from a wide range of human rights abuses for a long time and they have a long history of marginalisation.<sup>1</sup> Several reasons have been put forward to justify these abuses including cultural practices, religion and traditions which subjugate women as inferior to men. The advocacy for the eradication of these abuses led to the adoption of several international and regional instruments which many African states are parties to. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa<sup>2</sup> was originally adopted by the Assembly of the African Union on 11 July 2013 at Maputo, Mozambique and entered into force on 25 November 2005, after being ratified by the required 15 member States.<sup>3</sup> The instrument is binding on all countries that ratify it and Member States undertook to achieve full ratification and enforcement by 2015 and domestication by 2020.<sup>4</sup> However, as at October 2019, 49 out of 55 African Union (AU) Member States<sup>5</sup> have signed and ratified the Protocol, 12 States<sup>6</sup> have signed but have not ratified while 3 member States<sup>7</sup> of the African Union had neither signed nor ratified the Protocol.<sup>8</sup> The Maputo Protocol was expected to bring about significant changes in the implementation and realisation of women's rights

---

\* **By Olanike S. ADELAKUN, LLB (Hons), LLM, MLIS, BL, PDE**, Lecturer, American University of Nigeria, Yola, Adamawa. Email: nikegolden@yahoo.com

<sup>1</sup> Rohan Khera, *et al* 'Gender bias in child care and child health: global patterns' *Archives of Diseases in Childhood* 99:4 (2014) 369; United Nation Population Fund, *Women's Economic Empowerment: Meeting the Needs of Impoverished Women*, (New York: UNFPA, New York, 2007) 38; Mariachiara Di Cesare, 'Women, marginalization, and vulnerability: introduction' 70 (2014) 3; Mandy Jollie Bako and Jawad Syed, 'Women's marginalization in Nigeria and the way forward' *Human Resource Development International* 21:5 (2018) 425, DOI: 10.1080/13678868.2018.1458567.

<sup>2</sup> Hereinafter referred to as Maputo Protocol.

<sup>3</sup> UNFPA and UNICEF, 'Ending Female Genital Mutilation: An Investment in the Future,' April 2018

<https://www.unicef.org/reports/ending-female-genital-mutilation-investment-future>, accessed 20 May 2020.

<sup>4</sup> Lucy Asuagbor, 'Status of Implementation of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' March 18, 2016, <http://www.peaceau.org/uploads/special-rapporteur-on-rights-of-women-in-africa-presentation-for-csw-implementation.pdf>.

<sup>5</sup> Algeria, Angola, Benin, Burkina Faso, Cameroon, Cape Verde, Comoros, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Eswatini, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Kenya, Lesotho, Liberia, Libya, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Nigeria, Republic of Congo, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

<sup>6</sup> Burundi, Central African Republic, Chad, Eritrea, Madagascar, Niger, Sahrawi Arab Democratic Republic, Somalia, South Sudan, Sudan.

<sup>7</sup> Botswana, Egypt and Morocco.

<sup>8</sup> 'African Commission on Human and Peoples' Rights,' Ratification Table: Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa accessed May 22, 2020 <http://www.achpr.org/instruments/women-protocol/ratification/>.

in Africa but this is not the case as full implementation has been impracticable. This is because since the adoption of the Maputo Protocol, some countries made reservations upon ratification of the agreement.<sup>9</sup>

This paper seeks to link religion and culture to rights of women in Africa and to examine these issues in the light of the Maputo Protocol. It examines the compliance of African countries to specific provisions of the Maputo Protocol.<sup>10</sup> The paper also explores the categories of member states that have successfully realised the objectives of the Maputo Protocol and the extent to which they have realised such objectives within the context of protecting and advancing women's rights. It further seeks to identify and determine the impediments to the realisation of the rights enshrined therein. While several religions are practiced across Africa, the scope of this paper is on Christianity and Islamic religions, being the most popularly religions across Africa. Reference will be made to some African traditional religions and cultural practices as the argument demands.

## 2. Influence of Religion on the Status of Women in Africa

Sudarkasa posited that status of women can be explained from two perspectives: the rights and duties ascribed to a gender or the position of women as against men in a hierarchical structure.<sup>11</sup> Many African countries have patriarchy cultural norms that enable men to be the authority figures having control over women, children and properties.<sup>12</sup> This is not to say that women in the traditional African tradition were not accorded leadership roles. Rather women operate parallel roles in some African cultures to oversee the day to day affairs of the society such as the notable Queen Amina who known to be an undefeated warrior.<sup>13</sup> Religion, as a concept, is derived from the Latin word '*religio*' which means 'ritual' and interpreted to mean 'beliefs, feelings, doctrines and practices linking a people to a sacred higher level spiritual being.'<sup>14</sup> The moral justification of what is wrong or right is rooted in one religion or the other.<sup>15</sup> Burkert notes that religion is an integral part of culture and no society has existed without religion.<sup>16</sup> Being religious is closely linked with believing in the existence of certain things which makes one to subscribe to specific propositions and accept certain norms and values.<sup>17</sup> It will therefore not be out of the way to treat religion and culture in the same category. Theoretically, most religion accord men and women as equal beings but religious messages seem to suggest that women are inferior to men. For instance, the Qur'an which regulates Islamic religion, speaks to the equality of men and women's rights and states that '...and women have rights similar to those against them in a just manner...'<sup>18</sup> Also, the bible, which regulates the Christian religion, states that 'for in Christ Jesus you are all sons of God, through faith. For as many of you as were baptized into Christ have put on Christ... there is no male and female, for you are all one in Christ Jesus.'<sup>19</sup> Even, the choice of the use of the word 'sons' to refer to human beings in equality is questionable and presupposes superiority of the male gender.<sup>20</sup> As such, many biblical feminists have rejected this argument by placing the blame on the translators of the bible and argued that the idea of 'men' or 'sons' as used in the bible do not connote

<sup>9</sup> Cameroon on African ethical and moral values; Kenya on articles 10(3) & 14(2) of Maputo Protocol; Namibia on article 6(d); South Africa on articles 1(f) 4(j) 6(d) 6(h) & 31; Uganda on articles 14(1)(a) & 14(2)(c); Rwanda on article 14(2)(c).

<sup>10</sup> With particular reference to the preamble and articles 3,5,6,17,20,21,25,26 of the Maputo Protocol.

<sup>11</sup> Niara Sudarkasa 'The status of women in indigenous African societies,' *Feminist Studies* 12, no 1 (1986) 91.

<sup>12</sup> Reshma Sathiparsad, Myra Taylor and Siyabonga Dlamini, 'Patriarchy and Family Life: Alternative Views of Male Youth in Rural South Africa,' 76 (2008) 6; Adeoye O Akinola, 'Women, Culture and Africa's Land Reform Agenda,' 9 (2018) 2234; Catherine Olutoyin Williams, 'Patriarchy and the Representation of Women in Africa and Asia,' *IIAS Newsletter* 83 (2019) <https://www.iias.asia/the-newsletter/article/patriarchy-and-representation-women-africa-and-asia>, accessed 19 May 2020.

<sup>13</sup> Adeyinka Abideen, 'Patriarchy and Culture: The Position of Women in a Rural Yoruba Community, Nigeria' *The Anthropologist* 3 (2001) 225; Carlene Amoah-Boampong, 'Historicising The Women's Manifesto for Ghana: A culmination of women's activism in Ghana' *Legon Journal of the Humanities* 29 (2018) 26; Toyin O. Falola, 'The Role of Nigerian Women' *Encyclopaedia Britannica* <https://www.britannica.com/topic/role-of-Nigerian-women-1360615>, accessed 19 May 2020; Bolanle Awe, ed., *Nigerian Women in Historical Perspectives* (Sankora Publishers: Nigeria, 1992) 28; Cyrelene Amoah-Boampong and Christabel Agyeiwaa, 'Women in Pre-Colonial Africa: West Africa' In Olujumoke Yacob-Haliso and Toyin Falola (eds.) *The Palgrave Handbook of African Women's Studies* (Cham: Palgrave Macmillan, 2019) [https://doi.org/10.1007/978-3-319-77030-7\\_126-1](https://doi.org/10.1007/978-3-319-77030-7_126-1).

<sup>14</sup> Ambe J Njoh, *Tradition, culture and development in Africa: Historical lessons for modern development planning* (England: Ashgate Publishing Limited, 2006), 32.

<sup>15</sup> Ambe J Njoh and Fenda A Akiwumi, 'The Impact of Religion on Women Empowerment as a Millennium Development Goal in Africa,' *Social Indicator Research* 107, no 1 (2012) 1.

<sup>16</sup> Walter Burkert, *Creation of the sacred: tracks of biology in early religions* (London: Harvard University Press, 1996) 1.

<sup>17</sup> Linda Woodhead, 'Five concepts of religion,' *International Review of Sociology*, 21 (2011) 121 DOI:10.1080/03906701.2011.544192.

<sup>18</sup> See chapter 2:228

<sup>19</sup> See Galatians 3:26-29.

<sup>20</sup> L. William Countryman, *Dirt, greed & sex: Sexual ethics in the New Testament and their implications for today*, revised ed. (Philadelphia: Fortress Press, 2007); Yolanda Dreyer, 'Gender Critique on the Narrator's Androcentric Point of View of Women in Mathew's Gospel' *HTS Theological Studies* 67 (2010) 1 DOI:10.4102/hts.v67i1.898; Vern Poythress and Wayne Grudem, *The Gender-Neutral Bible Controversy: Muting the Masculinity of God's Words* (Nashville, Tennessee: Broadman and Holman Publishers, 2000) 22.

'equal but different' but maintains that the Bible supports equal participation of men and women in church and societal activities.<sup>21</sup>

While religion, specifically Christianity and Islam, has an influence over gender relations in the African society, patriarchy likewise has its influence on expression and organisation of religion.<sup>22</sup> This is reflected in cultural practices across Africa ranging from polygamy, lack of right of women to inheritance, wife inheritance, women's restricted role to child rearing and housekeeping. Also, many religious organisations across the world and in Africa define the roles of women, their responsibilities and participation based on their domestic responsibilities and sometimes limit their roles and participation in terms of leadership.<sup>23</sup> These practices stress the dominating role of the male in the society. Over the years, religion had been interpreted to favour the male gender and has become enshrined in the African culture and thus, it is oftentimes seen as a taboo for women to take leadership roles.<sup>24</sup> Overtime, religious teachings preach women's subordination through the imposition of social codes and definition of women's roles and relationships with men.<sup>25</sup> According to Zaidi, *et al*,

In Christianity, the respect for humans in theory places women as equals of men. However, the role of the Virgin Mary on the one hand and the story of Eve's role in the fall on the other have had profound consequences for their equal status in other respects. In Judaism, women's status varies across denominations; in Islam, women have rights similar to those of men and should be respected as equals, but often suffer through inappropriate interpretation of text; Hinduism accords a high status to women, and Confucianism an inferior one.<sup>26</sup>

In the same vein, the reincarnation and karma theories of Indians suggest that before a woman can enter paradise, she must first be reborn as a man and if a man leads a wicked life, he will reincarnate into a woman in the next life.<sup>27</sup> The research by Oregbunam shows that certain societies perceive female children as dispensable using the examples of new born buried alive, a toddler starved to death and the sale of a nine year old child to a man.<sup>28</sup> In all these instances, the victims were females. While authors such as Adhiambo-Oduol<sup>29</sup> blame African traditional religions for the non-empowerment and lack of development of women, others from a feminist perspective such as Njoh<sup>30</sup> are of the view that African women have a weaker status as a result of received cultures, especially Christianity and Islam. The penetration of Islam on some African traditional practices altered the perceptions towards the affected African traditional religions and traditions. Consequently, a lot of changes were implemented which contrasted with the affected African cultures and religion. An example is the way women dressed and the assignment of specific roles to specific genders such as leading congregational prayers.<sup>31</sup> Also, according to the

---

<sup>21</sup> Susanne Scholz, 'The Christian Right's Discourse on Gender and the Bible' *Journal of Feminist Studies in Religion* 21 (2005) 81; John Piper, 'A Vision of Biblical Complementarity: Manhood and Womanhood Defined according to the Bible,' in John Piper and Wayne Grudem (eds), *Recovering Biblical Manhood and Womanhood* (Wheaton, IL: Crossway, 1991) 31.

<sup>22</sup> Carole Rakodi, 'A framework for analysing the links between religion and development' *Development in Practice* 22 (2012): 634.

<sup>23</sup> Kwadwo A. Okrah, 'The Dynamics of Gender Roles and Cultural Determinants of African Women's Desire to Participate in Modern Politics' *Global Engagement and Transformation* 2 (2018) <https://scholarworks.iu.edu/journals/index.php/foget/article/view/24395>; Nnanna U. Ugwu and Bregje de Kok Manisuli Ssenyonjo, 'Culture and the Human Rights of Women in Africa: Between Light and Shadow' *Journal of African Law* 51 (2007) 39; Rofiah Ololade Sarumi, Olumuyiwa Temitope Faluyi and Obianuju E. Okeke-Uzodike, 'Transcending Ethnic and Religious Barriers in Decision-Making: A Case of a Muslim Women Civil Organisation in Nigeria' *Frontiers in Psychology* 9 (2019) doi: 10.3389/fpsyg.2018.02693; Ambe J. Njoh and Fenda A. Akiwumi, 'The Impact of Religion on Women Empowerment as a Millennium Development Goal in Africa' *Social Indicators Research* 107 (2012) 1.

<sup>24</sup> Emeka Okafor and Monica Ewomazino Akokuwebe, 'Women and Leadership in Nigeria: Challenges and Prospects' *Developing Country Studies* 5 (2015) 1; E.R. Mathipa and E.M. Tsoka, 'Possible Barriers to the Advancement of Women to Leadership Positions in the Education Profession' *South African Journal of Education* 21 (2001) 324.

<sup>25</sup> Bridget Walker, 'Christianity, development, and women's liberation' *Gender & Development* 7, no 1 (1999) 15.

<sup>26</sup> Shahida Zaidi *et al*, 'Sexual rights and gender roles in a religious context' *International Journal of Gynecology and Obstetrics* 106, no 2 (2009) 151.

<sup>27</sup> Karl H Peschke, *Christian ethics: Moral theology in light of Vatican II* vol 2 (Bangalore: Theological Publication, 1994) 404, cited in Ikenga KE Oraegbunam, 'Women empowerment and participation in politics: An important index for Nigeria democracy' 1, no 3 (2002) 1:3 *Koinonia* 38.

<sup>28</sup> Ikenga KE Oraegbunam, 'Women empowerment and participation in politics: An important index for Nigeria democracy' 1, no 3 (2002) 1:3 *Koinonia* 38.

<sup>29</sup> Jacqueline Adhiambo-Oduol, 'Transforming tradition as a vehicle for women's empowerment: A critical dimension for poverty eradication' Presentation at the Expert Group Meeting on *Empowerment of women throughout the life cycle as a transformative strategy for poverty eradication* EGM/POV/2001/EP.7 (26 – 29 November 2001) New Delhi, India <http://www.un.org/womenwatch/daw/csw/empower/documents/Adhiambo-EP7>, accessed 20 May 2020.

<sup>30</sup> Njoh, *Tradition*, 3.

<sup>31</sup> Ali Mazrui, 'Islam and acculturation in East Africa's experience' Lecture delivered at National Defense College of Kenya (July 27, 2004) [http://www.binghamton.edu/igcs\\_site/dirton20.htm](http://www.binghamton.edu/igcs_site/dirton20.htm).

interpretation of the Qur'an by Usman Dan Fodio of the Sokoto Caliphate of Northern Nigeria,<sup>32</sup> a married woman was obligated to comply with her husband's sexual demands unless made impossible on medical grounds. She was permitted to stay in seclusion and only permitted to go out to the mosque, for pilgrimage, in search of knowledge, or for burial or marriage ceremonies.<sup>33</sup> Thus, while Islam accords women more rights than African cultures, it affords women lesser roles which may be construed as negative in assessing the status of women.<sup>34</sup> The Qur'an says '...Wives have the same rights as the husbands have on them in accordance with the generally known principles. Of course, men are a degree above them in status...'<sup>35</sup> It further states that in issues of inheritance, a male heir gets twice the share of a female heir.<sup>36</sup> In terms of testimony, a woman's testimony counts as half of a man's testimony; '...and let two men from among you bear witness to all such documents [contracts of loans without interest]. But if two men be not available, there should be one man and two women to bear witness so that if one of the women forgets (anything), the other may remind her.'<sup>37</sup> This suggests that the mind of the woman is weak. Arguably, some Muslim men and clerics hide under these Quranic texts to justify domestic violence. For example, the text in chapter 4:34 states that '...if you fear highhandedness from your wives, remind them [of the teaching of God], then ignore them when you go to bed, then hit them. If they obey you, then you have no right to act against them.' Scholars have however argued that the chapter has been misconstrued as promoting domestic violence because it is always read out of context of what the Qur'an says about intimate partner violence.<sup>38</sup> Ibrahim and Abdalla posit that religious texts are often misinterpreted by perpetrators of violence to justify their actions and they tend towards inducing shame and guilt in their victims<sup>39</sup> despite the contrary religious scholars' teaching on the need to differentiate societal gender roles from placing one gender above the other.<sup>40</sup> Pyles claimed that religious leaders are to be blamed in some societies because they are reluctant to deal with issues of domestic violence in their communities especially where the perpetrators are prominent members of the communities.<sup>41</sup> Ibrahim and Abdalla thus submitted that chapter 4:34 cannot be read in isolation but must be read with other relevant chapters of the Qur'an, the Sunnah and the Islamic legal jurisprudence such as chapter 2:187 that speaks about marital relationship by stating '...they (your wives) are your garment and you are a garment for them...'<sup>42</sup> This argument thus puts in view the resistance of some Muslim based societies, such as Egypt, in their efforts to promote international standards for human rights due to the misplaced perception that human rights are anti-Islamic.<sup>43</sup> This further stresses the conservative ideologies of religious prescriptions of gender relations such that Islamic rules have been (mis)interpreted not to accommodate the woman but rather to work against her rights.

European colonialism brought Christianity into the African continent. The mission of the colonist was to civilise the 'dark continent' with black converts required to denounce their African traditional religions<sup>44</sup> and for a long time, conversion was a condition to access formal education.<sup>45</sup> Biblical stories such as the story of Adam and Eve were interpreted in a manner that stressed the inferior roles of women which led to the acceptance of women's inferiority to men and the oppression that followed.<sup>46</sup> Often, girls were denied access to formal education at the early period and it was immaterial that their parents had converted and renounced their traditional beliefs and

<sup>32</sup> 1804 to 1817 AD.

<sup>33</sup> Njoh and Akiwumi 'The impact of religion,' 6.

<sup>34</sup> Njoh and Akiwumi 'The impact of religion,' 5.

<sup>35</sup> Qur'an 2:228.

<sup>36</sup> Qur'an 4:11.

<sup>37</sup> Qur'an 2:282.

<sup>38</sup> Nada Ibrahim and Mohamad Abdalla, 'A Critical Examination of Qur'an 4:34 and its Relevance to Intimate Partner Violence in Muslim Families' *Journal of Muslim Mental Health* 5 (2010) 327.

<sup>39</sup> Ibrahim and Abdalla 'A critical examination' 335.

<sup>40</sup> Suleman Dangor, 'Historical Perspective, Current Literature, and an Opinion Survey among Muslim Women in Contemporary South Africa: A case study' *Journal of Muslim Minority Affairs* 21 (2001) 109.

<sup>41</sup> Loretta Pyles, 'The Complexities of the Religious Response to Domestic Violence: Implications for Faith-Based Initiatives' *Affilia: Journal of Women and Social Work* 22 (2007) 281.

<sup>42</sup> Qur'an 2:187; the authors further relied on Qur'anic paradigm in which marriage is represented as a means of tranquility, protection, encouragement, peace, kindness, comfort, justice, mercy, and love in Qur'an 2:187, 2:229-237, 4:19, 4:25, 9:71 and 30:21; Ibrahim and Abdalla, 'A critical examination' 337.

<sup>43</sup> Lisa Hajjar, 'Religion, state power, and domestic violence in Muslim societies: A framework for comparative Analysis,' *Law and Social Enquiry* 29, no 1 (2004) 1; Maja Janmyr, 'Human Rights and Nubian Mobilisation in Egypt: Towards Recognition of Indigeneity' *Third World Quarterly* 38 (2017) 717;

<sup>44</sup> Edward Wilmot Blyden, *Christianity, Islam and the Negro Race* (Edinburgh: University Press, 1967) 80.

<sup>45</sup> Njoh and Akiwumi, 'The impact of religion,' 5.

<sup>46</sup> Genesis 3:16; 1 Corinthians 11:3-10; 1 Corinthians 14:34-35; Ephesians 5:22; Colossians 3:18; Titus 2:5; 1 Peter 3:1; Rose Uchem, 'Overcoming women's subordination in the Igbo African culture and in the Catholic Church,' *Critical Half: Annual Journal of Women for Women International* I, no. 1 (2003) 27.

faith.<sup>47</sup> When eventually girls were admitted to study, they were confined to trainings that would prepare them for their domestic roles – another practice that worked against the recognition of women as bearers of rights.<sup>48</sup>

Patriarchy is often fostered in Christianity by the image projection of God as a male in the Bible as well as Biblical prayers which adopts the use of words like King, Father, Lord coupled with the male projection of Jesus.<sup>49</sup> Augustine, in a struggle to project women as the image of God, was of the opinion that while women are not the image of God in themselves, they are through their husbands.<sup>50</sup> The bible also states that ‘...the head of every man is Christ; and the head of the woman is the man...’<sup>51</sup> There was a strong message on the need for a woman to submit to the man in the bible. In Ephesians 5:22-23, 33, it was stated that ‘wives, submit to your own husbands, as to the Lord. For the husband is the head of the wife...’<sup>52</sup> indirectly, Christianity attributes weakness to the woman when the bible states that ‘let a woman learn quietly with all submissiveness. I do not permit a woman to teach or to exercise authority over a man; rather, she is to remain quiet; for Adam was formed first then Eve, and Adam was not deceived, but the woman was deceived and became a transgressor. Yet she will be saved through childbearing—if they continue in faith and love and holiness, with self-control.’<sup>53</sup> This has often been interpreted to mean that a woman has a weak mind and can be easily influenced. Christianity had been used by some leaders to suppress women from taking leadership roles. Speaking in church is seen as inappropriate for women. In 1 Corinthians 14:34-35, women were instructed to keep quiet in church and if they have anything to learn, they should ask their husbands at home for it is shameful for a woman to speak in church, rather, they should be in submission. However, the past few decades have witnessed a significant increase in women’s participation in leadership roles both at the church and in other aspects of life in Africa.<sup>54</sup> Christianity had been used as a tool to deny women the right over their bodies by prohibition of abortion even where the pregnancy was due to sexual abuse on the teaching that God prohibits shedding innocent blood.<sup>55</sup> The preaching was that a woman that had been raped had a duty to bear the child conceived.<sup>56</sup> This tradition shaped the legislations enacted in some countries of the world that subjugated women and allowed for oppression.<sup>57</sup> While many Western nations had given women enforceable rights over her body, most African countries, despite the ratification and domestication of many human rights instruments, still have their reservations on the woman’s right to make a decision as it affects her in this regard.

It is noteworthy that most of the cultural and religious practices that have clashed with human rights principles are geared towards preserving patriarchy at the expense of women’s rights. Prominent among the practices are FGM, domestic violence, child marriage, restrictive dressing, preference for education of the male child, witch hunting and seclusion of women as housewives among others. Overtime, there were advocacy groups, such as Association for Women’s Rights in Development, African Women’s Development Fund, PLAN International and so on, which emerged to advocate for equality between men and women.<sup>58</sup> With time, their ideologies influenced the adoption of several international and national instruments which recognised women as bearers of rights.<sup>59</sup> The inferior status of women had affected the rate of growth and development of the African woman in terms of skill acquisition, empowerment/self-development and leadership roles. At times, it becomes difficult to distinguish between religion and culture which is seen as a set of practices and values that determines the way of life of the people. As time progresses and laws emerge to protect women, Africa was not left behind in taking legislative steps to ensure that the gender gap is bridged. Since the adoption of Universal Declaration of Human Rights in

---

<sup>47</sup> Njoh, *Tradition*; Felix Meier zu Selhausen, ‘Missions, Education and Conversion in Colonial Africa’ African Economic History Working Paper Series 48 (2019) 14 [https://doi.org/10.1007/978-3-030-25417-9\\_2](https://doi.org/10.1007/978-3-030-25417-9_2).

<sup>48</sup> Njoh, *Tradition* 8; Deborah Gaitskell, ‘Race, Gender and Imperialism: A Century of Black Girls’ Education in South Africa’ *African Studies Seminar Series* (1988) 9.

<sup>49</sup> S Rakoczy ‘Religion and violence: The suffering of women,’ *Agenda: Empowering Women for Gender Equity* 18, no. 61 (2004) 29.

<sup>50</sup> Rakoczy, ‘Religion ad Violence,’ 31.

<sup>51</sup> 1 Corinthians 11:3.

<sup>52</sup> This was further stressed in Colossians 3:18 and 1 Peter 3:1-2.

<sup>53</sup> 1 Timothy 2:11-15.

<sup>54</sup> Kasomo Daniel, ‘The Role of Women in the Church in Africa’ *International Journal of Sociology and Anthropology* 2:6 (2010) 126; Victor Agadjanian, ‘Women’s Religious Authority in a Sub-Saharan Setting: Dialectics of Empowerment and Dependency’ 29:6 (2015) 982.

<sup>55</sup> Exodus 20:13; Proverbs 6:16-19; Numbers 31:15-17; Exodus 21:22-25; Psalm 127:3;

<sup>56</sup> David F. Kelly, *Contemporary Catholic Health Care Ethics* (USA: Georgetown University Press 2004) 112; John Connery, *Abortion: The Development of the Roman Catholic Perspective* (USA: Loyola University Press, 1997); Aruna Gnanadason, *No Longer a Secret: The Church and Violence against Women* (Geneva: WCC Press, 1997).

<sup>57</sup> Walker, ‘Christianity,’ 17.

<sup>58</sup> Kristy Evans, ‘A Guide to Feminist Advocacy’ *Gender and Development* 13:3 (2005) 10; Jessica Horn *Gender and Social Movement: Overview Report* (England: IDS, 2013) 10.

<sup>59</sup> Such as Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) 1979.

1948, the issue of human rights and particularly women's rights have generated a lot of discourse. Having to recognise and identify women as bearers of rights was not immediately acceptable in the African society, especially with the requirement of according them with equal rights with men. Thus, violation of human rights in most developing countries still persists, especially against vulnerable members of the societies such as women, children and persons with disabilities.

Despite global efforts in protecting the rights of women, several violations such as discrimination which further exposes women to vulnerability, injustice and violence is rampant in several African societies. Young girls are subjects of sex trade, sexual violence and forced marriages.<sup>60</sup> Also, women are largely unable to make decisions that affect them directly and several forms of cultural practices. A common justification of perpetrators of these practices is that the principles of human rights as promoted by Western advocates conflicts with their traditional cultures and personal religious beliefs. Accordingly, human rights are perceived as a tool of western imperialism<sup>61</sup> and should be rejected. The argument is that it is morally wrong to have a universal standard to guarantee human rights<sup>62</sup> considering the diversity in the world cultures. Mutua argues for example, that the notion of a universal standard for recognition of human rights is an imposition of Western culture on states considered inferior to them and thus a strategy to advance their interests.<sup>63</sup> However, human rights cannot be totally ascribed to a single religion or a particular cultural orientation.<sup>64</sup> Attention should rather be given to the overall purpose of human rights advocacy which is to serve the interest of humanity as a whole. These arguments cannot be sustained per se since there are a plethora of international and regional instruments that promote and recognise the right to cultural heritage and rights provided such cultural rights will not violate the human right of another person. For example, the Universal Declaration of Human Rights provides for the freedom of thought, conscience and religion.<sup>65</sup> The right to freedom of thought, conscience and religion has been incorporated into the constitution of many African countries as enforceable rights. The African Charter on Human and Peoples' Rights (ACHPR) confers on every individual the entitlement to enjoy the rights recognised by the Charter without any form of discrimination based on 'race, ethnic group, colour, sex, language, religion, political or any other opinion, national, and social origin, fortune, birth or other status.'<sup>66</sup> Articles 60 and 61 of the African Charter recognizes regional and international human rights instruments and African practices compatible with international norms regarding human and peoples' rights. The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a very important instrument on cultural rights. Article 3 enjoins State Parties to ensure the equal rights of men and women to the enjoyment of all economic, social and cultural as contained in the Covenant. The Covenant recognises the right of every person to take part in cultural life and enjoy the benefits of scientific progress and its application.<sup>67</sup> The Convention on the Protection and Promotion of the Diversity of Cultural Expressions also seeks to preserve culture and promote cultural diversity. The Maputo Protocol also gives women the right to live in positive cultural context and participate in cultural policies.<sup>68</sup> Where there is a clash between principles of social and cultural and provisions of Convention on all forms of Discrimination against Women (CEDAW), the Convention impose a duty on State parties to modify such social and cultural practices.<sup>69</sup> Where the social and cultural practices discriminate against women, State parties are to abolish the social and cultural practice.<sup>70</sup> Also, the International Covenant on Civil and Political Rights (ICCPR) places a limitation on the right to manifest one's religion to protect public safety, order, health, morals and fundamental rights and freedom of others.<sup>71</sup> In this light, it will be a clear violation of human rights to hide under religious freedom to perpetuate practices against women and their rights. The preamble of the Maputo Protocol recognised that despite several international instruments on recognition and protection of women's rights, implementation of the instruments has not been achieved, hence the need for the Protocol to ensure implementation of women's rights across Africa.

---

<sup>60</sup> Olanike Adelakun-Odewale, 'Right to Inclusive Development of the Girl Child in Africa' in A.C. Onuora-Oguno, W.O. Egbewole and T.E. Kleven (eds) *Education Law, Strategic Policy and Sustainable Development in Africa: Agenda 2063* (Switzerland: Springer, 2017) 6.

<sup>61</sup> Joseph Yaw Asomah, 'Cultural rights versus human rights: A critical analysis of the *trokosi* practice in Ghana and the role of civil society,' *African Human Rights Law Journal* 15, no. 1, (2015) 129.

<sup>62</sup> Asomah, 'Cultural rights,' 132.

<sup>63</sup> Makau Mutua, 'Savages, victims, and saviours: The metaphor of human rights,' *Harvard International Law Journal* 42, no. 1 (2001) 201.

<sup>64</sup> Asomah, 'Cultural rights,' 133.

<sup>65</sup> Article 18.

<sup>66</sup> Art 2 ACHPR.

<sup>67</sup> Art 15.

<sup>68</sup> Art 17.

<sup>69</sup> Art 5(a) CEDAW.

<sup>70</sup> Art 2(f) CEDAW.

<sup>71</sup> Art 18(3) ICCPR.

### 3. Appraising the effectiveness of the Maputo Protocol on the Rights of Women in Africa

Article 3 of the Maputo Protocol gives every woman the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights. She shall have the right to respect and develop her personality. State Parties are under obligation to ensure appropriate measures to prohibit exploitation and degradation of women and to protect them from sexual and verbal violence.<sup>72</sup> Since the global campaign for the recognition and protection of women's rights, virtually all Constitutions in the world made provision for the right of human dignity. For example, the Namibian constitution states that the general rules of public international law and international agreements binding upon Namibia shall form part of the law of Namibia.<sup>73</sup> This means that the provisions of the Maputo Protocol can be directly enforced in Namibian courts. Also, article 15 of the Constitution of Rwanda 2008 amended in 2015<sup>74</sup> guarantees gender equality. Article 16 provides for freedom from discrimination. Article 48 further provides for a duty to participate in the development of the country through their dedication to work, safeguarding peace, democracy, equality and social justice. The National Gender Machinery Institutions, under the umbrella of Ministry of Gender and Family Protection, sees to the protection of rights of women.<sup>75</sup> The Nigerian Violence against Persons' (Prohibition) Act 2015 (VAPPA) seeks to protect this right by criminalising any verbal, emotional, psychological abuse against another person,<sup>76</sup> though not particularly worded in a gender specific manner. The Act generally was passed to protect persons in Nigeria against several forms of violence.<sup>77</sup> However, some cultural practices directly affect the dignity of humans when measured against the acceptable minimum international standards which have been embedded in national constitutions and international conventions. While some of these practices bring about physical pains, others are humiliating and degrading. Among such cultural practices that affect the dignity of women are child marriage,<sup>78</sup> marriage by abduction,<sup>79</sup> virginity test,<sup>80</sup> fish for sex practice in Kenya and Malawi,<sup>81</sup> honour killing<sup>82</sup> and witch hunting.<sup>83</sup> Article 5 of the Maputo Protocol guarantees elimination of harmful practices against women. There is a clear obligation on States Parties to prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and that are contrary to recognized international standards. States Parties are enjoined to take all necessary legislative and other measures to eliminate such practices.<sup>84</sup> Harmful practices had been defined by article 1 of Maputo Protocol to mean 'all behaviours, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity'. The subsequent sections examine specific customs in relation to the Maputo Protocol.

#### Female Genital Mutilation (FGM)

FGM is specifically classified as a harmful practice and it is pertinent to note that the Maputo Protocol is the first human right treaty to explicitly call for eradication of female genital mutilation (FGM).<sup>85</sup> FGM is the process of removing partially or completely the external female genitalia or other non-medical injury to the female genital areas.<sup>86</sup> FGM comes in different forms and with different degrees of health hazards. A common justification for

---

<sup>72</sup> Article 4 of Maputo Protocol.

<sup>73</sup> Article 144 Namibia Constitution 1990.

<sup>74</sup> Official Gazette n° Special of 24/12/2015.

<sup>75</sup> Ministry of Gender and Family Promotion <http://197.243.22.137/migeprof/index.php?id=3>, accessed 25 may 2020.

<sup>76</sup> Section 14.

<sup>77</sup> VAPPA 2015.

<sup>78</sup> Adalakun-Odewale, 'Inclusive Development' 7.

<sup>79</sup> Kathleen Rice, 'Understanding *Ukuthwala*: Bride abduction in the Rural Eastern Cape, South Africa' *African Studies* 77:3 (2018) 394 DOI: 10.1080/00020184.2018.1464752.

<sup>80</sup> Ebenezer Durojaye, 'The human rights implications of virginity testing in South Africa' *International Journal of Discrimination and the Law* 16:4 (2016) 228 <https://doi.org/10.1177/1358229116641242>; Louise Vincent, 'Virginity Testing in South Africa: Re-Traditioning the Postcolony' *Cult Health Sex* 8:1 (2006) 17 doi:10.1080/13691050500404225.

<sup>81</sup> Christophe Bene and Sonja Merten, 'Women and Fish-for-Sex: Transactional Sex, HIV/AIDS and Gender in African Fisheries' *World Development* 36:5 (2008) 875; Zachary A Kwena, *et al*, 'Transactional sex in the fishing communities along Lake Victoria, Kenya: A Catalyst for the Spread of HIV' *African Journal of AIDS Research* 11:1 (2012) 9 DOI: 10.2989/16085906.2012.671267.

<sup>82</sup> Andrzej Kulczycki and Sarah Windle, 'Honor Killings in the Middle East and North Africa: A Systematic Review of the Literature' *Violence Against Women* 17:11 (2011) 1442 <https://doi.org/10.1177/1077801211434127>.

<sup>83</sup> Jeffrey Kahn, 'Policing 'Evil': State-Sponsored Witch-Hunting in the People's Republic of Benin.' *Journal of Religion in Africa* 41:1 (2011) 4; Adam Ashforth, 'Witchcraft, Justice and Human Rights in Africa: Cases from Malawi' *African Studies Review* 58 (2015) 5 doi:10.1017/asr.2015.2.

<sup>84</sup> Article 2 Maputo Protocol. The measures include legislative prohibition and protection of women on certain cultural practices including female genital mutilation, awareness creation and provision of support to victims of these practices.

<sup>85</sup> Muthoni Muriithi, 'An analysis of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa,' in Brenda Combo, Rainatou Sow and Faiza Jama Mohamed (eds) *Journey to Equality: 10 Years of the Protocol on the Rights of Women in Africa* (Equality Now, 2013), 44.

<sup>86</sup> Grace Uwizeye and Efua Dorkenoo, 'Ending Female Genital Mutilation in Africa' in Africa,' in Brenda Combo, Rainatou Sow and Faiza Jama Mohamed (eds) *Journey to Equality: 10 Years of the Protocol on the Rights of Women in Africa* (Equality Now, 2013), 55.

the preservation and continued practice of FGM is the need to preserve cultural identity as well as the necessity to control women's sexuality. In fact, so much importance is attached to the practice of FGM such that any woman who refuses to submit herself for FGM is considered an outcast<sup>87</sup> in many societies that practice it and therefore not eligible for marriage. Campaigns against the continued practice of FGM were twofold – the health-based approach and the human rights approach. Proponents of the health based approach argue that the eradication of the practice can be achieved through the promotion of awareness of the negative impacts of FGM on women's health.<sup>88</sup> Rather than eradicate or reduce the practice, campaign against FGM on health grounds only succeeded in encouraging parents to practice the culture in a more hygienic way by consulting medical professionals to cut off their daughters' clitoris using sterilised equipment.<sup>89</sup> Despite the health effects of FGM on the victims which includes haemorrhage, infection and in some cases death as well as emotional, psychological and physical trauma, medicalisation of FGM promoted and encouraged the practice. Medicalisation of FGM was thus prohibited in 1976 by World Health Organisation followed by increasing support for the prohibition of medicalisation of FGM.<sup>90</sup> On the other hand, the rights-based approach led by women's rights activists, aimed at creating awareness about the harmful effects of the practice on the rights of women.<sup>91</sup> The rights-based approach used the health effect of FGM to drive home the point of the intensity of the gender base abuse of the practice. Uwizeye and Dorkenoo report that most African countries where FGM was prevalent have laws against the practice<sup>92</sup> but implementation was lacking. While the cultural practice of FGM was stressed in the Maputo Protocol, it is noteworthy that FGM is just one of many cultural practices that are harmful to women and girls. In Ghana and some other African countries,<sup>93</sup> there is a practice that requires virgin girls to be taken to shrines to serve permanently in order to repatriate for the crimes of their family members.<sup>94</sup> These girls are often exposed to health hazards as well as sexual abuse. These cultural practices and others necessitated the Maputo Protocol.

The Women's Act 2010 of The Gambia had been criticised on the refusal to incorporate article 5 of the Protocol despite incorporating all other provisions. Section 19 of the Children's Act of Gambia however prohibits all harmful traditional practices on children under the age of 18. Success was however recorded when FGM was expressly criminalized in The Gambia in December 2015 with a fine of \$1250-or -three years imprisonment for perpetrators of this act.<sup>95</sup> Also, the Penal Code of Tanzania<sup>96</sup> criminalises FGM by providing that:

Any person who, having the custody, charge or care of any person under eighteen years of age, ill-treats, neglects or abandons that person or causes female genital mutilation or carries or causes to be carried out female genital mutilation or procures that person to be assaulted, ill-treated, neglected or abandoned in a manner likely to cause him suffering or injury to health, including injury to, or loss of, sight or hearing, or limb or organ of the body or any mental derangement, commits the offence of cruelty to children.<sup>97</sup>

Yusuf and Feesha argue that the neglect on the part of Tanzanian government to criminalise the perpetuation of the act on a woman above 18 years encourages continuance of the practice.<sup>98</sup> This only shows that an adult who willingly subjects herself to FGM may not have committed any crime. By contrast, Uganda prohibits FGM in the Prohibition of Female Genital Mutilation Act 5 of 2010, which states that consent is not a valid defence to FGM and where a woman willingly carries out FGM on herself, she will still be criminally liable for the act.<sup>99</sup> In Nigeria, the Violence against Persons (Prohibition) Act (VAPPA) prohibits inter alia FGM,<sup>100</sup> and other forms of violence. The perpetrator or accomplice is liable on conviction to a term of imprisonment of not more than 4 years or to a fine not exceeding N200,000<sup>101</sup> or both. A person that attempts to commit the offence or incites the offence is

<sup>87</sup> Lulu Imelda Urrio, Koshuma Mtegeti, Emmanuel Jackson and Grace Mghamba, *The voices of the child brides and mothers in Tanzania: A peer report on child marriage* (UK: Children's Dignity Forum, May 2009) 12.

<sup>88</sup> Clifford Bob, *The international struggle for new human rights* (Pennsylvania: University of Pennsylvania Press, 2009) 95.

<sup>89</sup> Chi Mgabako, *et al*, 'Penetrating the silence in Sierra Leone: The blueprint for the eradication of female genital mutilation,' *Harvard Human Rights Journal* 23 (2010) 3.

<sup>90</sup> Yusuf and Fessha, 'Female genital mutilation,' 362.

<sup>91</sup> Yusuf and Fessha, 'Female genital mutilation,' 364.

<sup>92</sup> Uwizeye and Dorkenoo, 'Ending female genital mutilation,' 58.

<sup>93</sup> Such as Nigeria and Benin.

<sup>94</sup> Elizabeth A Archampong, 'Reconciliation of women's rights and cultural practices: Polygamy in Ghana' *Commonwealth Law Bulletin* 36, no. 2, (2010) 325.

<sup>95</sup> Lisa Asuagbor, 'Inter-session Activity Report of Special Rapporteur on the Rights of Women in Africa' 58th Ordinary Session of the African Commission on Human and Peoples' Rights (6-20 April 2016), [http://www.achpr.org/files/sessions/58th/inter-act-reps/254/58os\\_inter\\_session\\_report\\_asuagbor\\_eng.pdf](http://www.achpr.org/files/sessions/58th/inter-act-reps/254/58os_inter_session_report_asuagbor_eng.pdf).

<sup>96</sup> Penal Code ch 16 Laws of Tanzania 2002.

<sup>97</sup> Section 169A(1) Penal Code ch 16 Laws of Tanzania 2002.

<sup>98</sup> Yusuf and Fessha, 'Female genital mutilation,' 377.

<sup>99</sup> Section 4 Prohibition of Female Genital Mutilation Act 5 of 2010.

<sup>100</sup> Section 6 VAPPA 2015.

<sup>101</sup> Equivalent of \$556 as at May 2019.



liable on conviction to a maximum term of 2 years' imprisonment or a fine of N100,000 or both. Also, section 20 of the Act provides that 'a person who carries out harmful traditional practices on another person commits an offence and is liable on conviction to a term of imprisonment not exceeding 4 years or to a fine not exceeding N500,000.00 or both.' It appears that the punishments for these offences are too mild to deter prospective offenders. Offences such as this should not have an option of fine in lieu of imprisonment if it is to be effective in remedying the mischief it was enacted to correct.

### **Marriage, Widows and Inheritance**

Article 6 of the Maputo Protocol covers women's rights in respect to marriage and related rights. The minimum age for women to validly enter into a marriage contract is 18 years and full consent of both parties to the marriage. Monogamy is encouraged and there is a requirement to register all marriages. A woman shall have the right to retain her maiden name and her nationality and shall have equal rights on the nationality of the children of the marriage. A huge success was recorded in Zimbabwe in the landmark case of *Loveness Mudzuru and Ravimbo Tsopodzi v Minister of Legal and Parliamentary Affairs and others*<sup>102</sup> when the Zimbabwe Constitutional Court struck down Section 22 (1) of the Marriages Act (Chapter 5:11) which allows children of 16 years to marry, saying it was unconstitutional and declared that Section 78(1) of the Constitution sets 18 years as the minimum age of marriage and that any law to the contrary was unconstitutional. This position took effect from 20 January 2016. The Child's Rights Act of Nigeria stipulates that the marriageable age shall be 18.<sup>103</sup> However, this law is only applicable in the Federal Capital Territory based on the fact that child welfare issues fall under the concurrent list of the Constitution and as such, each State of the Federation must enact her version of the law.<sup>104</sup> For instance, Kwara State stipulates 16 as the marriageable age.<sup>105</sup> While this goes against the provisions of the UN Convention on the Rights of the Child and the Nigerian Child's Rights Act, there is nothing that can be done until the law is changed or there is a judicial pronouncement to invalidate the law. Under the Protocol, women shall enjoy the same rights on divorce, separation or annulment of the marriage.<sup>106</sup> Furthermore, 'a widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house.'<sup>107</sup> Where the widow remarries, she shall retain her right if the house belongs to her or she has inherited it. The right to inheritance shall be on equal basis in respect to parents' properties.<sup>108</sup> Burkina Faso had complied with the marriage provision of the Protocol by enshrining in her Constitution that there is freedom to marry as of choice and to recognise any marriage, it must be performed in the presence of a Civil Registrar and equality in marriage is guaranteed.<sup>109</sup> However, polygamy is an option in the country which is against the practice of monogamy as preferred by the protocol. In the amended Constitution of Rwanda, the only recognised marriage is a civil monogamous marriage. Full consent of both parties to a marriage is a prerequisite and spouses have guaranteed equal rights at the time of the marriage, during the marriage and at the time of divorce.<sup>110</sup> During marriage, a woman shall have the right to acquire her own property and to administer it and manage it freely.<sup>111</sup> In reality, women married under the customary law in most African countries have no right to the property acquired during the marriage, even when she had contributed towards the acquisition of such property. In the Nigerian Supreme Court landmark decision of *Ukeje v Ukeje*,<sup>112</sup> the Igbo traditional custom that prevented a female from inheriting her father's estate was voided. The court held that the custom that prevents a female child from inheriting her father's properties violates section 42 of the Nigerian Constitution.

Egypt being a predominant Islamic State has a pre-existing law in accordance with Islam which gives women the right to retain her maiden name after marriage and the right to own property independently whether as a single, married or divorced woman.<sup>113</sup> This right is exclusive to the female without any control from a family member.<sup>114</sup> The women in Egypt also have the right of inheritance though this is usually violated based on the cultural belief that the world of money belongs to men as a result of which husbands may take over the property which is the subject matter of inheritance as a result of which women are usually cut off from inheritance or given a smaller

---

<sup>102</sup> CCZ 12/2015, *Loveness Mudzuru and Ravimbo Tsopodzi v Minister of Legal and Parliamentary Affairs and others* Unreported.

<sup>103</sup> Section 21 of Child's Rights Act 2003.

<sup>104</sup> Section 4, Second Schedule of Nigerian Constitution 1999 (as amended).

<sup>105</sup> Section 21 Child's Rights Law of Kwara State 2007.

<sup>106</sup> Article 7.

<sup>107</sup> Article 21(a).

<sup>108</sup> Article 21(b).

<sup>109</sup> Article 23 Burkina Faso Constitution 1991 (with Amendments).

<sup>110</sup> Art 17 Rwanda Constitution.

<sup>111</sup> Art 6(j).

<sup>112</sup> *Ukeje v Ukeje* (2014) LPELR-22724(SC).

<sup>113</sup> Personal Status Laws 25 of 1920; 25 of 1929; 77 of 1943; 260 of 1960, 100 of 1985, amended on 27 January 2000.

<sup>114</sup> Madiha El-Safty, 'Women in Egypt: Islamic rights versus cultural practice,' *Sex Roles* 51, no. 5-6 (2004) 273.

share than they deserve so as to preserve the family heritage.<sup>115</sup> Likewise, it had been argued that though sections 34-44 of the Gambia Constitution fully incorporates the provisions of CEDAW and Maputo Protocol as relates to marriage and widow's rights, however, sections 43 and 44 of the same Constitution as regards widow's rights and inheritance rights are largely based on personal laws<sup>116</sup> thus not giving full effect to the intention of Maputo Protocol. Nigeria makes provision for the protection of widows by criminalising any form of harmful traditional practices against widows with a maximum imprisonment term of 2 years or N500,000 or both upon conviction.<sup>117</sup> The law did not however give any hint as to what qualifies as harmful traditional practice. Practices that dehumanise widows in Nigeria include hair shaving, drinking of corpse water, widow inheritance, etc. Widows are subjected to widow's rites in Uganda. However, this is more prominent in the rural areas compared to the urban areas of Uganda. Widow's rites in Uganda ranges from sleeping on banana leaves to tying black clothes around the waist to indicate new status, prohibition from bathing, eating or shaving the hair for three days, bathing in the river, wearing the late husband's clothes, having a medicine man rub the widow's private parts with certain leaves and brushing a thorny plant on the forehead of the widow, widow inheritance.<sup>118</sup> The practice however varies among ethnic groups. In Malawi,<sup>119</sup> it is believed that a widow becomes unclean after the burial ceremony of the husband and thus there is the need for cleansing rituals which involves the widow having sex with a man identified by the elders of the community. It is believed that the widow will be purified by the semen of the chosen man entering her body.<sup>120</sup>

### Positive Cultural Life

Article 17 is to the effect that women have the right to live in positive cultural context and participate at all levels in the determination of cultural policies. While cultural rights guarantee that members of a community are guaranteed the access to participate in the culture of their choice, the culture must however be in a positive context in order to enjoy the protection and promotion offered by law. While certain cultural practices like medicine, cosmetics, dance, songs, costumes, arts, agriculture and food preservation have great commercial and development value, some practices like witch hunting, widow cleansing, and FGM are harmful practices. Proponents<sup>121</sup> of African Renaissance are of the view that whether perceived as good or bad, African culture should not be eroded by Western values and the solution to African problems should be Africanized.<sup>122</sup> The point is that to condemn a culture as bad and get it to extinction at the promotion of cultures that seems appropriate to the Western world is like making a case for universality of culture. It is noteworthy, that the right to cultural heritage is recognised and protected internationally and regionally.<sup>123</sup> The aspiration of the African Union is to use culture as a tool of social and economic development and while 'cultural practices are not the target, harmful practices are'.<sup>124</sup>

### Enforcement Procedure of Maputo Protocol

Article 26 of the Protocol places the obligation on State Parties to ensure the implementation of the Protocol at national levels and to submit periodic reports which will indicate the legislative and other measures taken to ensure the full implementation of the rights recognised in the Protocol. Generally, in terms of enforcement procedures and practices, Mozambique<sup>125</sup> and Zimbabwe<sup>126</sup> established Women's Rights Commission to assess the effectiveness of their laws.<sup>127</sup> While Malawi passed the Gender Equality Law in 2003, Gambia enacted the

<sup>115</sup> El-Safty, 'Women in Egypt,' 275.

<sup>116</sup> Janet Sallah Njie, 'The Women's Act 2010 of the Gambia' in Brenda Combo, Rainatou Sow and Faiza Jama Mohamed (eds) *Journey to Equality: 10 Years of the Protocol on the Rights of Women in Africa* (Equality Now, 2013), 108.

<sup>117</sup> Section 15 Violence against Persons (Prohibition) Act 2015.

<sup>118</sup> Leda Hasila Limann, 'Widowhood rites and rights of women in Africa the Ugandan experience' (Unpublished LLM dissertation, Makerere University, 2003), 26-29.

<sup>119</sup> This practice is also documented to be in operation in Kenya, Zambia and Botswana.

<sup>120</sup> Emma Day and Allan Maleche, 'Traditional Cultural Practices and HIV: Reconciling Culture and Human Rights' Working Paper for the Third Meeting of the Technical Advisory Group of the Global Commission on HIV and the Law (2011) 3 <https://hivlawcommission.org/>.

<sup>121</sup> With the Afro-optimism school of thought taking the lead while the Afro-realism is in between Afro-optimism and Afro-pessimism.

<sup>122</sup> Jose Cossa, 'African Renaissance and Globalization: A Conceptual Analysis' *Ufahamu: A Journal of African Studies* 36:1 (2009) 1; Donald Okeke, *Integrated Productivity in Urban Africa: Introducing the Neo-Mercantile Planning Theory* (Switzerland: Springer, 2016) 173.

<sup>123</sup> African Cultural Charter 1976, Charter for the Cultural Renaissance of Africa 2006 which complements the African Cultural Charter.

<sup>124</sup> Brittany Kuhn, 'Universal Human Rights vs. Traditional Rights' *Topical Review Digest: Human Rights in Sub-Saharan Africa* <http://www.du.edu/korbel/hrhw/researchdigest/africa/UniversalHumanRights.pdf>.

<sup>125</sup> Ministry for Women and Coordination of Social Action, <http://www.mgcas.gov.mz/st/site/frontoffice/default.aspx?idsecao=3#> accessed 25 May 2020.

<sup>126</sup> Ministry of Women Affairs, Community, Small and Medium Enterprises Develop.

<sup>127</sup> Centre for Human Rights, 'Domestication and Implementation of the Protocol (Articles 2,6,8,14,21)' in Africa' in Brenda Combo, Rainatou Sow and Faiza Jama Mohamed (eds) *Journey to Equality: 10 Years of the Protocol on the Rights of Women in Africa* (Equality Now, 2013), 50.

Women's Act in 2010 which incorporates all the provisions of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the Maputo Protocol. Also, Benin enacted the Family Code in 2004 which seeks to promote gender equality and children's equal access to rights. The country also adopted the Sexual Harassment Act 2006, and passed a law to criminalise violence against women in 2012.<sup>128</sup> The South African Constitution seems to be more elaborate in protecting the rights of women than the Maputo Protocol.<sup>129</sup> Accordingly, the Protocol may not offer much to South Africa in terms of the country's legislative and policy framework on the protection and advancement of women's rights.<sup>130</sup> South Africa also has the Promotion of Equality and Prevention of Unfair Discrimination Act passed in 2000 to further guarantee equal treatment. The country also established independent institutions such as the South African Human Rights Commission, Commission for Gender Equality and Equality Courts within the judiciary. Asuagbor observes that despite ratifying the Maputo Protocol, most State Parties have not given effect to the provisions therein by domesticating the instrument.<sup>131</sup> Those that have domesticated the Protocol, find assessment difficult in terms of implementation due to limited availability of records and ineffective strategies in ensuring implementation of the domesticated Protocol.<sup>132</sup> Generally, the major impediments to the implementation of the Maputo Protocol lies in the political will of African governments as well as the challenges in implementation strategies such as ensuring the inauguration and functionality of appropriate human rights institutions that will enforce and monitor the realisation of women rights, especially vulnerable women. The problem of reliable data<sup>133</sup> on the progress recorded in the implementation of Maputo Protocol is common to all African countries as a result of which the exact success of the Maputo Protocol cannot be determined.

#### **4. Conclusion and Recommendations**

This article examined the effect of religion and culture on the effectiveness and realisation of women's rights as guaranteed by the Maputo Protocol. While the will power had been identified on the part of some African countries to give effect to the provisions of the Protocol, many African countries, such as Egypt, Botswana and Morocco, still hide under religion and culture to avoid a meaningful implementation of the Protocol. For some countries that have domesticated the Protocol, the domesticated version is inadequate in that the mechanisms to monitor its effectiveness is either not in place or insufficient. Most countries have jail terms as punishments for perpetrators of acts declared as criminal with the option of fines. Considering the global economic situation, the value attached to the fines is grossly inadequate in most cases and not enough to deter subsequent offenders of these acts. The Protocol enjoins State Parties to provide for appropriate remedies for women whose rights have been violated and this shall be determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by law. It is clear from most laws that incorporated the provisions of the Maputo protocol that there is more focus on punishing the offender without equal attention to providing adequate and effective remedies for the victims. In few cases where remedies have been provided, they are more of declarations of the illegality of the acts than compensation for the victims. Countries like South African and Rwanda had recorded success in terms of implementation of the Protocol, though violations still occur in these jurisdictions. While there is the need to respect cultural diversity and preserve African cultures, it is paramount to ensure that the existence of minimum standards in guaranteeing that members of a society are not made vulnerable to arbitrary powers in the name of culture.

In the light of preceding discussion and observations, the following steps are recommended to ensure the full enjoyment of the rights enshrined in the Maputo Protocol.

- \* Establish appropriate institutions to monitor and enforce the rights of women and children.
- \* Harmonise national laws to incorporate and give effect to the provisions of the Maputo Protocol.
- \* Ensure effective and affordable means of access to justice where rights have been violated including gender specific tribunals.
- \* Religious bodies and organisations should employ the use of inclusive words and avoid preaching that denigrates the dignity and societal status of women.
- \* Sensitisation of religious and traditional leaders on the rights of women and need to inculcate same in their teachings.

---

<sup>128</sup> Act on the Prevention and Punishment of Violence against Women, Act No 2011-26 of 9 January 2012.

<sup>129</sup> By virtue of chapter 1 of the Constitution, the democratic state is founded on the values of human dignity, achievement of equality and advancement of human rights and freedom, and non-racism and non-sexism.

<sup>130</sup> N Sibanda 'Domestication and Implementation of the Protocol in South Africa' in Brenda Combo, Rainatou Sow and Faiza Jama Mohamed (eds) *Journey to Equality: 10 Years of the Protocol on the Rights of Women in Africa* (Equality Now, 2013), 95.

<sup>131</sup> Asuagbor, 'Intersession activity report,' 12.

<sup>132</sup> Centre for Human Rights University of Pretoria, *The Impact of the Protocol on the Rights of Women in Africa on Violence Against Women in Six Selected Southern African Countries: An Advocacy Tool* (South Africa: Centre for Human Rights, 2009).

<sup>133</sup> Asuagbor, 'Intersession activity report,' 14.

- \* Need to pay more attention to remedies for victims of human rights violation.
- \* Education of children from early stage on the need to respect the rights of women.