

# ADVOCATING POSITIVE TRADITIONAL CULTURE TO ERADICATE HARMFUL ASPECTS OF TRADITIONAL CULTURE FOR GENDER EQUALITY IN AFRICA

Norah Hashim Msuya  
*LLB LLM PhD in Law*  
*Postdoctoral Fellow, School of Law*  
*University of KwaZulu-Natal*

## SUMMARY

The struggle for equality for all and the abolition of discriminatory, harmful cultural practices affecting women has been occurring in the world for some time now. Most African countries outlaw harmful, discriminatory traditional practices, although they persist, causing the violation of domestic and international human rights laws. Outside efforts to eliminate these practices are often met with suspicion or hostility from communities, because Africans generally believe that these are their valuable, traditional practices. The aim of this article is to discuss alleviating harmful traditional practices suppressing gender equality in Africa by practically supplementing the law. The study examines African culture versus gender equality historically to pinpoint colonialism's influence in current gender equality. Colonial administration influenced lives politically, economically and socially, including culture and traditions. Efforts to eradicate harmful traditional practices are most effective when originating from within the culture, as focussing on international human rights is often perceived as culturally imperialistic in African countries.

## 1 INTRODUCTION

Societies have certain practices reflecting their beliefs and values. Negative and positive traditional cultural aspects of any society are reflected by these practices. Many African traditions promote social cohesion and unity, while others break down a specific group (such as women, who are the focus of this article) physically, economically and psychologically. These cultures receive international attention owing to their severe, negative impact on women.<sup>1</sup> Some African natives are unhappy to hear that their traditional practices, passed down by their ancestors, are frowned upon,<sup>2</sup> feeling

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<sup>1</sup> Lukale "Harmful Traditional Practices: A Great Barrier to Women's Empowerment" 2014 *Girls Globe* 1.

<sup>2</sup> Idang "African Culture and Values" 2015 16(2) *Phronimon* 97-111.

insulted because traditions and cultural practices form their identity.<sup>3</sup> Many harmful traditional practices are performed for the benefit of males<sup>4</sup> but achieving equality between the sexes cannot be attained if the fundamental human rights of the female half of a society are continually denied.<sup>5</sup> Female social, economic and political subordination inhibits the structural and attitudinal changes necessary to eliminate gender inequality.<sup>6</sup>

Numerous regional and international human rights instruments explicitly protect and promote women's rights against all harmful practices. For example, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>7</sup> obliges state parties to "pursue by all appropriate means and without delay a policy of eliminating discrimination against women."<sup>8</sup> The Convention reaffirms equality of human rights for all women and men in society and within the family. It also forces members to act against the social causes of women's inequality and eliminate laws, prejudiced stereotypes and practices impairing the well-being of women. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) defines harmful practices as "all behaviour, 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".<sup>9</sup> Fifteen years ago, the African Union adopted the Maputo Protocol to boost the protection of women.<sup>10</sup> The protocol contains several innovative provisions to curb gender inequality.<sup>11</sup>

Various traditional practices are based upon men's superior position in African culture, causing women to suffer much cultural abuse.<sup>12</sup> Practices globally identified as detrimental to women include forced marriages, female genital mutilation (FGM), child marriage, virginity testing, Wahaya (fifth wife),<sup>13</sup> witch-hunting, widow's rituals, *trokosi* (slaves to the gods),<sup>14</sup> male

<sup>3</sup> Spencer-Oatey "What is Culture? A Compilation of Quotations" 2012 <http://www.warwick.ac.uk/globalpadintercultural> (accessed 2018-12-10) 6.

<sup>4</sup> United Nations Economic and Social Council Preliminary Report submitted by the Special Rapporteur on Violence Against Women, its Causes and Consequences, in Accordance With the Commission on Human Rights Resolution 1994/45, (E/CN.4/1995/42) (22 November 1994).

<sup>5</sup> Hannum "Reinvigorating Human Rights for the Twenty-First Century" 2016 16(3) *Human Rights Law Review* 409–451.

<sup>6</sup> Makulele "Culture, Tradition, Custom, Law and Gender Equality" 2012 1 *Potchefstroom Electronic Law Journal* 1–22.

<sup>7</sup> All African states in Africa have ratified CEDAW except South Sudan.

<sup>8</sup> Article 2 of CEDAW.

<sup>9</sup> Article 1 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa 2005.

<sup>10</sup> The Protocol was adopted on 11 July 2003. Thirty-six African states have signed and ratified it so far.

<sup>11</sup> Some of its groundbreaking provisions include the prohibition of child marriage and female genital mutilation, the responsibility to punish perpetrators of violence against women, and the allocation of budgetary resources to realise women's rights.

<sup>12</sup> Msuya *Harmful Cultural and Traditional Practices: A Roadblock in the Implementation of the Convention on the Elimination of Discrimination Against Women and the Maputo Protocol on Women's Rights in Tanzania* (doctoral thesis, University of KwaZulu-Natal) 2017 30.

<sup>13</sup> Wahaya or fifth wife is predominant in Muslim societies in countries like Niger that allows polygamy. The Qur'an permits a Muslim man to have up to four wives, as long as he treats them equally (Lillie) and each wife after the first four is considered to be a Wahaya or fifth

dominance, and preference for sons. These practices persist where young girls and women have unequal access to health, education, employment and wealth.<sup>15</sup> Culturally, women's position in society is shaped by persistent abuse.<sup>16</sup> Harmful cultural practices have caused women's low status within the family and society, preventing them from escaping abuse and seeking legal protection. Domestic violence is justified as discipline, and instilled in girls from an early age.<sup>17</sup> Women are deprived of reaching their full potential, as that would threaten men's safety, freedom and autonomy.<sup>18</sup> These so-called moral practices persist and are consequently not questioned sufficiently.<sup>19</sup>

These harmful practices have enabled extensive violence against women.<sup>20</sup> African states have enacted new legislation to develop a modern economy and new practices suited to a modern democracy, but they are very slow to change their attitude to women's rights.<sup>21</sup> This hesitation occurs as African states prefer not to interfere with cultural practices.<sup>22</sup> Traditions and cultures are esteemed, promoting African identity and heritage. However, there is an important question that needs an answer: what is the source of the so-called African discriminatory culture?<sup>23</sup> Do African traditional practices stem from their ancestors or result from the interaction between Africans and colonialists?<sup>24</sup> Some scholars reveal that before colonialism, African culture and traditions valued women, treating them with great respect.<sup>25</sup>

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wife. The fifth wife is the unofficial wife who acts as a slave to the first four wives and the husband.

<sup>14</sup> Trokosi or slave to the gods is a traditional practice that is widespread in West African countries such as Ghana, Benin, Togo, and South-Western Nigeria. This tradition involves young virgin girls from the Ewe ethnic group who are sent to live as forced labourers in traditional shrines. Apart from being used as slave labourers, these young girls are also used as sex slaves by the priests residing in the shrines.

<sup>15</sup> Jayachandran "The Roots of Gender Inequality in Developing Countries" 2015 7 *Review of Economics* 63–88.

<sup>16</sup> Budoo "Next Steps to Getting Africa's Protocol on Women's Rights Implemented" (2018-01-24) *Sunday Times* 1.

<sup>17</sup> Erez "Domestic Violence and the Criminal Justice System: An Overview" 2002 7 *Online Journal of Issues in Nursing* 1–3.

<sup>18</sup> Raday *Women's Autonomy, Equality and Reproductive Health in International Human Rights: Between Recognition, Backlash and Regressive Trends* Working Group on the Issue of Discrimination against Women in Law and in Practice (October 2017) United Nations Human Rights Special Procedure.

<sup>19</sup> Msuya *Harmful Cultural and Traditional Practices* 32.

<sup>20</sup> *Ibid.*

<sup>21</sup> UN Fact Sheet No. 23 "Harmful Traditional Practices Affecting the Health of Women and Children" (1995) <https://www.ohchr.org/Documents/Publications/FactSheet23en.pdf> (accessed 2018-12-10).

<sup>22</sup> *Ibid.*

<sup>23</sup> Molefe "Personhood and Rights in an African Tradition" 2018 45(2) *South African Journal of Political Studies* 217–231.

<sup>24</sup> Manganyi and Buitendag "A Critical Analysis on African Traditional Religion and the Trinity" 2013 69(1) *Theological Studies* 1–13.

<sup>25</sup> Richard, Stephen and Steiner *Perspectives on Africa: A Reader in Culture, History and Representation* (2010).

<sup>25</sup> *Ibid.*

Mere illegalisation of harmful cultural practices has resulted in resentful resistance in Africa.<sup>26</sup> Women's rights abuse persists despite CEDAW and the Maputo Protocol's existence, suggesting that law alone cannot control human beings' harmful behaviour.<sup>27</sup> Focussing on available international human rights laws to eradicate harmful traditional cultures appears as Western pressure and is often perceived as culturally imperialistic in African countries.<sup>28</sup> The implementation of CEDAW and the Maputo Protocol can become more effective when integrated into comprehensive eradication strategies. This article aims to discuss numerous legal approaches to addressing harmful cultural practices to achieve gender equality. It explores the relationship from historical, current and future perspectives and is divided into four sections. The first section discusses the traditional concept of culture from a human rights perspective. The second section explores gender equality in Africa, before, during and after colonialism, aiming to pinpoint the effect of colonialism on current African culture regarding the equality of men and women. Possible ways of safeguarding women against harmful practices and deeper insight regarding gender equality is explored in this part of the research. Section three suggests possible ways to alleviate harmful cultural practices in Africa, followed by section four which provides the concluding remarks.

## 2 CONCEPT OF CULTURE

Gender identities and relations are critical cultural aspects that shape daily family lifestyle, workplace behaviour, and behaviour within the broader community. Gender – unlike race or ethnicity – establishes a principle for society because of cultural connotations given to being male or female. Culture is a word scholars have found difficult to define as it has numerous different meanings. In 1952, American anthropologists Kroeber and Kluckhohn reviewed 164 different definitions of culture.<sup>29</sup> In 1992, another anthropologist, Ape, stated that until 1990 no agreement on the meaning of culture could be reached by anthropologists.<sup>30</sup> Different scholars have attempted to define traditional culture from different perspectives. The United Nations Educational, Scientific and Cultural Organisation (UNESCO) (2002) defines culture “as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group that encompass, in addition to

<sup>25</sup> Van-Allen “Sitting on a Man: Colonialism and the Lost Political Institutions of Igbo Women” 2014 6(2) *Canadian Journal of African Studies* 165–81; Fredoline “Women and Development in Africa: From Marginalisation to Gender Inequality” 2002 2 *African Social Science Review* 2–3; Davidson *The African Genius: An Introduction to African Cultural and Social History* (1969) 39; Akyeampong and Fofack *The Contribution of African Women to Economic Growth and Development: Historical Perspectives and Policy Implications, Part I, The Pre-Colonial and Colonial Periods* Policy Research Working Paper No. 6051 (2012).

<sup>26</sup> *Ibid.*

<sup>27</sup> Mapadimeng *Indigenous African Cultures and Relevance to Socio- Economic Development in the Contemporary Era* Paper presented at the 2nd International Conference on African Culture and Development in Accra, Ghana (15–18 November 2009).

<sup>28</sup> Makulele 2012 *Potchefstroom Electronic Law Journal* 4.

<sup>29</sup> Spencer-Oatey <http://www.warwick.ac.uk/globalpadintercultural> 61.

<sup>30</sup> *Ibid.*

art and literature, lifestyles, ways of living together, value systems, traditions and beliefs”.<sup>31</sup>

Culture refers to the lifestyle of a specific group of people, seen in people’s behaviour, beliefs, values, customs, dress style, personal accessories like make-up and jewellery, and relationships. Traditional culture is passed down from one generation to the next and is called the lifestyle of an entire society. People are not born with traditions and culture, but learn them from their religion, family, the media, school and government.<sup>32</sup> Religious institutions, whether Christian, Muslim or others, also play a major role in introducing rituals specific to a particular culture. Nowadays, advertisements, magazines and social media guide our lives. Music and videos promote dress style, values, expressions and attitudes of teenagers and young adults, with many of them preferring slang used in pop music rather than their native language.<sup>33</sup>

Culture is therefore not static, but always changing as each generation contributes its experience of the world, discarding things that are no longer useful.<sup>34</sup> Culture is always involved with time.<sup>35</sup> Time is the basis upon which all cultures rest and around which all activities revolve.<sup>36</sup> In past centuries, time was measured in seasons, such as darkness and daylight, but it has subsequently become more complex. It depends on how culture chooses to use time which, according to Kluckhohn and Strodtbeck, includes the past, present and future.<sup>37</sup> A “present-oriented” culture pays little attention to what happened in the past or what the future holds.<sup>38</sup> This kind of culture considers the past unimportant and the future vague and unpredictable. However, “past-oriented” cultures have a strong sense of the tradition of their ancestors, family and aristocracy, attempting to maintain them in the present.<sup>39</sup> Meanwhile, “future-oriented” cultures place a lot of value on change, favouring desirable economic and social developments.

Numerous African societies live with a past-oriented cultural type, striving to maintain their ancestors’ cultures and traditions, without caring about the consequences for their fellow Africans, like women, and the development of nations as a whole.<sup>40</sup> It does not matter whether a cultural practices is positive or negative, harmful or dangerous, because of utmost importance is that the proponent’s culture needs to be preserved at all costs.<sup>41</sup> Advocates for women’s human rights have worked to emphasise the indivisibility of human rights, reasserting the common ground between cultural and

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<sup>31</sup> *Ibid.*

<sup>32</sup> Trompenaars and Hampden-Turner *Riding the Waves of Culture: Understanding Cultural Diversity in Business* 2ed (1997) 19.

<sup>33</sup> Barger *Ethnocentrism* (Lecture discussion, Indiana University Indianapolis) (2008-07-01).

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> Idang 2015 *Phronimon* 98.

<sup>37</sup> Otnes and Tuncay-Zayer *Gender, Culture and Consumer Behaviour* (2012) 23.

<sup>38</sup> Spencer-Oatey <http://www.warwick.ac.uk/globalpadintercultural> 61.

<sup>39</sup> *Ibid.*

<sup>40</sup> Otnes and Tuncay-Zayer *Gender, Culture, and Consumer Behaviour* 24.

<sup>41</sup> *Ibid.*

women's rights,<sup>42</sup> which can be mutually reinforced by building cultural practices and traditions supportive of the human rights framework.<sup>43</sup>

### **3 AFRICAN CULTURE AND GENDER EQUALITY IN AFRICA: BEFORE, DURING AND AFTER COLONIALISM**

In explaining the relationship between African culture and gender equality historically, this research aims to identify past historical factors impinging on gender equality and how cultural practices promoted gender inequality in pre-colonial, colonial and post-colonial periods.

#### **3 1 Pre-colonial era**

History reveals that before colonialism in Africa, there was no cultural discrimination against women by men.<sup>44</sup> Power was based on seniority, not gender.<sup>45</sup> Both men and women played economic and political roles in society, each having their own unique roles within the family and society. Like men, women engaged in fishing, farming, herding and commercial activities such as making clothes, pottery and handcrafted work,<sup>46</sup> and enjoyed the profits of their work. Women were not stereotyped in Africa;<sup>47</sup> rather men's and women's responsibilities complemented each other. In some societies, women possessed power, binding society together,<sup>48</sup> and were depended upon for the survival of the family and marriage.<sup>49</sup>

Women were teachers, instilling knowledge and traditional values in children,<sup>50</sup> and playing a vital role in teaching moral beliefs and traditions by caring for their families. Women were also the first teachers of trapping, hunting and fishing. Older women, drawing on experience and wisdom, trained children to be respectful, thankful and gentle with animals. Women promoted African culture through dance, music, art and clothing. The survival of communities was dependent upon women, as they had a broad knowledge of herbs and traditional medicine. Women also gathered food for their families. In some areas like Kikuyu in Kenya, women were the major food producers, choosing how to cultivate the land. The African kinship system enabled women to be economically independent. Women's

<sup>42</sup> Asomah "Cultural Rights versus Human Rights: A Critical Analysis of the *Trokosi* Practice in Ghana and the Role of Civil Society" 2015 15(1) *African Human Rights Law* 129–149.

<sup>43</sup> Talpade "Under Western Eyes: Feminist Scholarship and Colonial Discourses" in Talpade and Torres (eds) *Third World Women and the Politics of Feminism* (1991) 57.

<sup>44</sup> Richard, Stephen and Steiner *Perspectives on Africa* 18.

<sup>45</sup> *Ibid.*

<sup>46</sup> Van-Allen 2014 *Canadian Journal of African Studies* 165–181.

<sup>47</sup> Fredoline 2002 *African Social Science Review* 2–3.

<sup>48</sup> Davidson *The African Genius: An Introduction to African Cultural and Social History* 39.

<sup>49</sup> Akyeamong and Fofack Policy Research Working Paper No. 6051.

<sup>50</sup> *Ibid.*

responsibilities of managing the home and raising children meant they were seen as heads of their households.<sup>51</sup>

Women were treated with great respect,<sup>52</sup> and were considered to be closer to the Creator than men, because of their ability to give birth, and because they had been entrusted with the responsibility of nurturing the next generation.<sup>53</sup> Maternal rights and privileges were a prevalent feature, key to inheritance,<sup>54</sup> and informally influencing decisions made in the clan.<sup>55</sup> The household was the smallest administrative unit in many states; leaders of each household held frequent meetings for family discussions,<sup>56</sup> and women were given an opportunity to express their views as well.

Evidence suggests women participated in political meetings alongside men, as political power was diffused at that time,<sup>57</sup> with no special offices or political bodies. The village assembly was the main political institution, and included all adults in the village who chose to attend.<sup>58</sup> Any member wishing to speak was given the opportunity, as long as she or he had something worthwhile to contribute.<sup>59</sup> Decisions were reached by consensus and enforced by individuals and groups. A good example of female leadership comes from the Igbo women of southern Nigeria who played a significant role in traditional and political life.<sup>60</sup> Women and men had equal leadership opportunities, as long as they possessed wealth, wisdom, generosity and eloquence.<sup>61</sup>

Another excellent example of a woman with great political power is the widow of the Nguni king of Mozambique, the priestess in charge of the shrine in the burial place of her deceased husband.<sup>62</sup> She was even consulted by the reigning king on important matters. Other women occupied positions as heads of state. In West Africa, there was a female member of the *Alaafin's* council, a chieftainess called the *Iyalode* in Yoruba.<sup>63</sup> She was the spokesperson at the *Alaafin's* meetings, responsible for women's rights. By the 19th century in Sierra Leone, women were selected as heads of towns and sub-regions among the *Mende* and *Sherbro* people, one of them being Madame Yoko.<sup>64</sup>

<sup>51</sup> Hakansson "The Detachability of Women: Gender and Kinship in Processes of Socio-Economic Change Among the Gusii of Kenya" 1994 21(3) *American Ethnologist* 516–538.

<sup>52</sup> Msuya *Harmful Cultural and Traditional Practices* 32.

<sup>53</sup> Meintjes "The Women's Suffrage Movement: The Politics of Gender, Race and Class. History of Women's Struggle in South Africa" 1996 30 *Transformation* 47–64.

<sup>54</sup> Msuya *Harmful Cultural and Traditional Practices* 33.

<sup>55</sup> *Ibid.*

<sup>56</sup> Ogbomo *When Men and Women Mattered: A History of Gender Relations Among the Owan of Nigeria* (1997) 18.

<sup>57</sup> *Ibid.*

<sup>58</sup> Van-Allen 2014 *Canadian Journal of African Studies* 166.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> Harris "The Position of Women in Nigerian Society" 1940 2(5) *Translation of the Network Academy of Sciences, Series II* 141–181.

<sup>62</sup> *Ibid.*

<sup>63</sup> Magbaily *Introduction to the History of African Civilisation: Pre-Colonial Africa* (1999) 23.

<sup>64</sup> Day "The Evolution of Female Chieftainship during the Early Nineteenth-Century War of the Mende" 1994 27 *The International Journal of African Historical Studies* 3.

A woman like the Rain Queen or Modjadji of the Balobdu of the old Transvaal had both political and religious power.<sup>65</sup> The most memorable roles of women with political power are that of Queen Mother or Queen Sister, the post occupied by a female member of royal blood who was the mother, sister or aunt of the king in places like Mali, Asante and Buganda.<sup>66</sup> These societies were aware of the influence of the Queen and, on certain occasions, the Queen Mother wielded the power, with the King a mere puppet.<sup>67</sup>

Although patriarchy existed before colonialism, there is no proof thereof, as stated by Sudarikasha as follows:

“[F]rom my own reading of Africa and my research it appears that except for the highly Islamized societies in Sub-Sahara Africa, in other parts women were conspicuous in high places, they were Queen Mothers, Queen Sisters, Princesses, Chiefs, holders of other offices in towns and villages, occasionally warriors and in other societies like the Lovedu the Supreme Monarch.”<sup>68</sup>

Writers like Paulme also confirmed that gender was a foreign concept to the pre-colonial world, not playing a meaningful role.<sup>69</sup> Other scholars confirmed there were elements of patriarchy in pre-colonial Africa, but generally women were allowed to manage their affairs without interference by men; there was also evidence of dual political systems in some instances.<sup>70</sup>

### 3 2 During colonialism

The main responsibilities of women in pre-colonial times were to find water, till, sow seeds, harvest, manage the home, and care for animals. These activities were badly interrupted when colonialists claimed the land that was previously cultivated by women.<sup>71</sup> Land defined women and their role in African societies, but colonialists alienated it.<sup>72</sup> The land alienation movement negatively impacted women economically, causing them to be more dependent on men.<sup>73</sup> Women consequently had limited access to food, available terrain, and less diversity concerning available soil types and crops that could be cultivated. This resulted in social, physical and emotional male supremacy and dominance and a loss of female identity.<sup>74</sup>

<sup>65</sup> Harris 1940 *Translation of the Network Academy of Sciences* 148.

<sup>66</sup> *Ibid.*

<sup>67</sup> Sudarikasa “Status of Women in Indigenous Africa Society” 1986 12(1) *Feminist Studies* 91–103.

<sup>68</sup> *Ibid.*

<sup>69</sup> Brokensha “Women of Tropical Africa” 1964 2(1) *The Journal of Modern African Studies* 145–146.

<sup>70</sup> Pearce *Gender and Governance in Africa: A Conceptual Framework for Research and Policy Analysis and Monitoring*. A Draft Issues Paper presented at the African Knowledge Networks Forum Preparatory Workshop Addis Ababa, Ethiopia (17–18 August 2000).

<sup>71</sup> Nduye *Tilling and Keeping the Earth in an Unjust Economic Order: Towards an African Eco-Theological Framework* (Master of Theology, University of KwaZulu-Natal) 2011 18.

<sup>72</sup> *Ibid.*

<sup>73</sup> Keet “African Women and Colonialism” (2013-05-25) *Fantastic Africa* 1.

<sup>74</sup> Rodgers *Representations of Women, Identity and Education in the Novels of Tsitsi Dangarembga and Kopano Matlwa* (Master of English, Stellenbosch University) 2013 21.

Colonial rule introduced various values like rugged individualism, corruption, capitalism and the oppression of culture.<sup>75</sup> Colonialism caused disruption of traditional moral homogeneity and practice. Colonialism diminished moral inculcation, resulting in the dereliction of traditions and cultures through a systematic depersonalisation.<sup>76</sup> It tampered with value systems like communalism which defined African life. Colonialists imposed their religious and economic values onto Africa, evident in the economic exploitation and socio-religious verification during the colonial period.<sup>77</sup> Colonialist beliefs were achieved by establishing schools with curriculums designed to achieve colonialist goals. Missionary projects worked well, vitrifying the religious concept to the colonised. Colonialism created two classes, the subjugator and the subordinator, with an administrative structure intentionally favouring the former, resulting in the destruction of the culture, values and religion of the subordinates.<sup>78</sup>

The colonial administration in Africa excluded women from mining and the construction of roads and houses,<sup>79</sup> leading to the gradual displacement of women in production activities, and resulting in men controlling the cultivation of cash crops. Due to land alienation, women became dependent upon men,<sup>80</sup> whereas previously they were more economically active than men. Land alienation also reduced women's contributions to meeting their families' needs.<sup>81</sup> Colonial authorities exclusively considered men when establishing local political offices, disregarding women's pre-colonial political activity.<sup>82</sup> The development of legal colonialist systems established customary laws on issues of marriage and divorce, based on the testimony given by men, which led to the large number of discriminatory customary laws in post-colonial Africa.<sup>83</sup>

Colonialists used women and children as the main source of casual labour on their plantations,<sup>84</sup> which caused the destruction of the traditional family as women and children were forced to leave their daily activities.<sup>85</sup> Casual labour was also accompanied by sexual and physical abuse, which reduced women's productive abilities.<sup>86</sup> Men were also forced to migrate to jobs away from their traditional labour activities, so women had to perform these

<sup>75</sup> Pels "The Anthropology of Colonialism: Culture, History, and the Emergence of Western Governmentality" 1997 26 *Annual Review Anthropologist* 163–182.

<sup>76</sup> Idang 2015 *Phronimon* 98.

<sup>77</sup> *Ibid.*

<sup>78</sup> Global Black History "History and Outcomes of Colonial Education in Africa" (2016-07-28) <https://www.globalblackhistory.com/2016/07/history-outcomes-colonial-education-africa.html> (accessed 2018-12-10).

<sup>79</sup> Chanock *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (1989) 19.

<sup>80</sup> *Ibid.*

<sup>81</sup> Mbilinyi "The Changing Position of Women in the African Labour Force" in Shaw and Aluko (eds) *Africa Projected From Recession to Renaissance by the Year 2000?* (1984) 175.

<sup>82</sup> Sheldon *Women and Colonialism* (2017) 1.

<sup>83</sup> Ndulo "African Customary Law, Customs, and Women's Rights" 2011 *Cornell Law Faculty Publications* 187.

<sup>84</sup> Amediume *Daughters of the Goddess, Daughters of Imperialism: African Women, Culture, Power and Democracy* (2000) 78.

<sup>85</sup> *Ibid.*

<sup>86</sup> Mbilinyi in Shaw and Aluko (eds) *Africa Projected from Recession to Renaissance* 42.

traditionally male duties, causing ever-increasing responsibilities for women and the destruction of families.<sup>87</sup> Men were also forced to abandon traditional family practices such as ceremonies, rites and rituals.<sup>88</sup>

The migration of men from rural areas led to African patriarchy as women also started migrating to urban areas due to the heavy workload left to them and the deterioration of urban areas.<sup>89</sup> Men became patriarchal, concerned with controlling women's movements, in order to retain the purity of their clan, control moral decline and discipline women.<sup>90</sup> The colonial regime supported men in controlling women's sexuality.<sup>91</sup> The colonialists' concern was to resolve domestic problems as some men left their employment early owing to domestic problems arising from accusations of adultery and cases of women leaving their partners for other men.<sup>92</sup> Various laws were passed to assist men in controlling their women. For instance, Zimbabwe passed the Native Affairs Act of 1929, which applied to prostitutes, and the Adultery Ordinance of 1926, which applied to married women.<sup>93</sup> Colonialists thus destroyed women's social freedom and all the activities, such as trade, which they had previously engaged in.<sup>94</sup>

The male migrant movement changed the African tradition of the dowry being paid with livestock to cash, resulting in the inflation of bride-wealth and women being judged by their dowries, instead of the dowry affirming women's wealth.<sup>95</sup> Previously, the dowry was regarded as a symbolic exchanging of gifts between the bride and groom's families to show mutual respect and to prove that the groom was capable of providing for the daughter.<sup>96</sup> In some societies, brides had controlled their own dowries, so becoming economically powerful.<sup>97</sup> However, heavy, colonialist-imposed taxes caused men to suffer financial constraints, causing them to exert control over the dowry as a source of income.<sup>98</sup>

Women were also discriminated against in colonial education, with men given priority and women denied the right to study.<sup>99</sup> Colonial laws, customs and religion prevented women from participating in social, economic and

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<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

<sup>89</sup> Becker "We Want Women to be Given Equal Chance: Post-Independence Rural Politics" in Meintjes, Pillay and Turshen (eds) *The Aftermath: Women in Post-Conflict Transformation* (2002) 118.

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> Barnes "The Fight for Control of African Women's Mobility in Colonial Zimbabwe 1900–1939" 1992 17(3) *Signs* 586–608.

<sup>93</sup> *Ibid.*

<sup>94</sup> Mupanduki "Gender Inequality vs Economic and Political Power under Pre-Colonial, Colonial and Post-Colonial Patriarchal State in Africa" (2 September 2007) <http://politicaleconomicandsocialissues.blogspot.com> (accessed 2018-12-10).

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> Mbilinyi in Shaw and Aluko (eds) *Africa Projected From Recession to Renaissance* 42.

<sup>98</sup> *Ibid.*

<sup>99</sup> Sheldon "Women and Colonialism" in Jean, Geiger and Musisi (eds) *Women in African Colonial Histories* (2013) 45.

political activities.<sup>100</sup> Colonial officers and missionaries failed to see the political power women possessed, thus resulting in women's strength being destroyed,<sup>101</sup> as women were prevented from any political participation. For instance, the *Igbo* women's organisation died, becoming invisible under British colonial rule.<sup>102</sup> The colonialists' viewpoint was that politics was a male concern, which resulted in women becoming oppressed by men. Women were also exploited by men through polygamous marriages designed to capture the labour power of women.<sup>103</sup>

In family dynamics, African women were more influential in the home than colonialists had anticipated,<sup>104</sup> whereas white colonial women had no rights, in accordance with white men's beliefs.<sup>105</sup> Colonialists could not allow the "inferior native races" to grant rights to women, when these were denied to white women.<sup>106</sup> Colonialists encouraged men to feel superior to women, something not previously prevalent in Africa.<sup>107</sup> The perception that women were subordinate to men, having less important roles because they were confined to the family unit, therefore became a Western-imposed value.<sup>108</sup> It did not arise from the roots and practices of African ancestry; rather, it was imposed by Europeans during colonialism and became an invented tradition developed by colonial rules and norms.<sup>109</sup>

Despite all this abuse, women remained strong and powerful, mobilising themselves and resisting colonial discriminatory movements. These women included Dona Beatrice, who led a rebellion against pre-Portuguese Congo leadership, Queen Amina of Zaria, who was a prominent warrior, and the women in Eastern Nigeria who led the *Aba* revolt against British colonialists for inhuman taxation in the 1920s.<sup>110</sup> The protest of Mekatilili Wa Menza also forced British colonialists to create a number of positions for women in the colonial set-up. Queen Sarraounia of Azna led another powerful movement of women in 1899, managing to defend her nation from French invaders.<sup>111</sup> Women also succeeded in forming anti-colonial organisations such as the British West African Ladies Club of 1929, formed by a woman called

<sup>100</sup> Iris "African Women's History: Themes and Perspectives" 2003 4 *Journal of Colonialism and Colonial History* 1.

<sup>101</sup> *Ibid.*

<sup>102</sup> Van-Allen 2014 *Canadian Journal of African Studies* 166.

<sup>103</sup> *Ibid.*

<sup>104</sup> Strobel "African Women" 1982 8(1) *Signs* 109–131.

<sup>105</sup> Commission of Canada *Honoring the Truth, Reconciling for the Future* Summary of the Final Report of the Truth and Reconciliation Commission of Canada (2015).

<sup>106</sup> McGrath and Stevenson "Gender, Race and Policy: Aboriginal Women and the State in Canada and Australia" 1996 71 *Labour History* 37–53.

<sup>107</sup> Hunt "Placing African Women's History and Locating Gender" 1989 14(3) *Social History* 359–379.

<sup>108</sup> Okpala *Redefining the African Woman in Contemporary African Literature: A Study of Adichie's Purple Hibiscus, Half of a Yellow Sun, and Americanah* (Master of Arts, North-West University) 2016 28.

<sup>109</sup> Tilley "Ethics, Medicine, Empires and Ethics in Colonial Africa" 2016 18(7) *American Medical Association Journal of Ethics* 743–753.

<sup>110</sup> Mbilinyi in Shaw and Aluko (eds) *Africa Projected From Recession to Renaissance* 42.

<sup>111</sup> *Ibid.*

Oyinkan Abayomi. Numerous African women participated in the liberation struggle.<sup>112</sup>

Another example of the colonialist miscalculation of women's role within African society is the Lagos Market Women's Association, which began in the mid-1920s and focused on promoting and protecting women's rights in colonial Nigeria.<sup>113</sup> Madam Alimotu Pelewura, a fish trader in Lagos, Nigeria, was the leader of this association. In addition, the *Ereko* market, the most prosperous meat market in Nigeria, was headed by a woman named Alaga.<sup>114</sup> These examples prove that women not only acted in leadership during colonialism, but were capable of organising and controlling their affairs.

### 3 3 Gender equality in the post-colonial era

Africa used given laws in the post-colonial era,<sup>115</sup> one being the general or common law. Various other laws were based on the customs and practices of many groups inhabiting the continent. Customary norms imposed during colonial times were also constructed from the different religious perspectives of Christianity, Judaism, Hinduism and Islam.<sup>116</sup> One scholar of customary law attempted to define African customary law as nothing more than the selective presentation of claims by African male elders and the selective understanding of these claims by male colonial officials.<sup>117</sup> Customary law was articulated in metropolitan state law, preventing women from ascertaining their rights, while men referred to the law they found most beneficial.<sup>118</sup>

During the post-independence period, most African states started correcting past gender discrimination by changing colonialist-imposed laws. Numerous African states changed their constitutions to include a provision prohibiting discrimination based upon sex and gender.<sup>119</sup> African societies were transformed from hunting and gathering communities to agricultural communities where people produced food. Before colonialism, numerous African societies either herded livestock like cattle, sheep or goats, or grew crops like millet and maize, or combined herding and agriculture to varying degrees. As a result, various African cultures and traditions now held so dear are not traditionally African in nature.<sup>120</sup> Colonialism interrupted and

<sup>112</sup> *Ibid.*

<sup>113</sup> Cheryl "Grass Roots Organising: Women in Anti-Colonial Activity in South-Western Nigeria" 1982 25(2/3) *African Studies Review* 137.

<sup>114</sup> Morgan "Women, Work and Consciousness in the Mid-Nineteenth Century English Cotton Industry" 1992 17(1) *Social History* 23–41.

<sup>115</sup> Igboin "Colonialism and African Cultural Values" 2011 3(6) *African Journal of History and Culture* 96–103.

<sup>116</sup> *Ibid.*

<sup>117</sup> Chanock "Neither Customary nor Legal: Africa Customary Law in an Era of Family Law Reform" 1989 7 *International Journal of Law and Family* 72–88.

<sup>118</sup> *Ibid.*

<sup>119</sup> Mbilinyi in Shaw and Aluko (eds) *Africa Projected From Recession to Renaissance* 42.

<sup>120</sup> Murunga "Africa's Progress on Gender Equality and Women's Empowerment is Notable but Gender Inequality Persists" *African Up Close* (2016-12-21) <https://africaupclose.wilsoncenter.org/africas-progress-on-gender-equality-and-womens-empowerment-is-notable-but-gender-inequality-persists/> (accessed 2018-12-10).

prevented Africans from passing on the cultures that existed before colonialism. Modern Africans are obliged to practise what is passed on to them by elders who have lived a colonialist lifestyle, as they can only pass on the lifestyle developed and lived during colonialism. African states, therefore, have no choice but to include colonialist norms in their laws.<sup>121</sup>

African state leaders, on the one hand, confirm to international institutions that they are keen to effect change in gender relations, evident in the ratification of human rights treaties and the creation of women's departments and ministries but, on the other hand, back off from implementing change because of insurmountable opposition from their people.<sup>122</sup> They inform their people back home that they are being pressurised into making legal and other changes by outsiders and that their hands are tied because foreigners will otherwise not fund the development of their countries.<sup>123</sup> Africans therefore believe that Westerners are interfering with their traditions and values, believing that the abolition of harmful traditional cultural practices and discrimination against women is a Western ideology, which they resist strongly to ensure that they do not find themselves under the rule of neo-colonialism.<sup>124</sup>

#### 4 POSSIBLE WAYS TO ALLEVIATE HARMFUL CULTURAL PRACTICES IN AFRICA

The formation of gender equality in Africa has been perceived as an interference in African cultures for quite some time. Scholars who are proponents of cultural relativism believe that permitting human rights to override cultural dictates violates sovereignty.<sup>125</sup> These scholars interpret efforts to reform customary law as imposing Western values on African societies. One of these scholars, Cobbah, in defence of customary law, states that:

"It is my contention that to correct injustices within different cultural systems of the world, it is not necessary to turn all people into Westerners. Western liberalism with its prescription of human rights has had a worthwhile effect not only on Westerners but on many peoples of this world. It is, however, by no means the only rational way of living human life. ... Instead of imposing the Western philosophy of human rights on all cultures one's effort should be directed to searching out homeomorphic equivalents in different cultures. In other words, we should understand that homeomorphism is not the same as equivalence and strive to discover peculiar functional equivalence in different cultures."<sup>126</sup>

The disruptive influence of colonialism on African culture and numerous other cultural structures in the world certainly supports the arguments in favour of cultural relativism. Customary law, however, like any other living

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

<sup>123</sup> Mbilinyi in Shaw and Aluko (eds) *Africa Projected From Recession to Renaissance* 42.

<sup>124</sup> *Ibid.*

<sup>125</sup> Awolowo *Culture, Gender and Development* A report submitted to the African Institute for Economic Development and Planning (IDEP) Dakar, Senegal (October 2001).

<sup>126</sup> Cobbah "African Values and Human Rights Debate: An African Perspective" 1987 9(3) *Human Rights Quarterly* 309–331.

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law is not meant to be static; it is a constantly changing aspect of a country's life and social fabric. Regardless of colonial influence, Africa needs to review harmful traditional cultural practices, not to comply with international regulations and the laws of the universe, but because they are hindering Africa's progress and the benefits of living in an independent state, which has been fought for since colonialism.

Africa has successfully and independently fought for political, social and economic freedom. There is thus no reason to believe it cannot also independently fight for freedom from harmful and discriminatory traditional practices. This is mainly because the most of the harmful practices did not originate in pre-colonial Africa, but are a direct result of colonial intervention in traditional lifestyles. Traditionally and culturally, many women are presently still subjugated and abused in the name of tradition and culture. However, Africa is independent and needs to break free from colonial thinking and practices,<sup>127</sup> and re-establish the balance and harmony that existed before colonialism, where equal value and importance were given to roles played by both men and women.

Africa can effectively restore the position of traditional African women as it existed before colonialism. It is evident that African states impose change when it suits them in public and in political spheres, but seem cautious regarding women's rights. It was aptly stated, by the feminist activist Farida Banda, that justice in Africa is applicable to men only, and that, when referring to justice, they mean "just us" because women are still living under colonialism.<sup>128</sup> Women have merely changed their masters from Europeans and Arabs in the nineteenth century to African culture and traditions in the twentieth century. There is a huge crevasse in Africa between those who support a return to traditional culture and those who actually live the culture that is supported.<sup>129</sup>

Although minimal research has been published on the positive aspects of African culture, it is believed that all societies have both negative and positive cultural aspects. All societies require a solid cultural foundation recognising the value of its members. Africans have many positive values like solidarity, tolerance, and respect for elders, caring for the needy, sharing, negotiating, discussing and mediating. These positive African cultural aspects can be used to reclaim, restore, rediscover, and reconnect with African identity and pan-Africanism to reflect African values and beliefs. An African cultural renaissance can embrace Africa's traditions and spiritual inheritance, with no need to wait for society to naturally return to the pre-colonial culture of valuing women. African traditional cultural methods can be used to eliminate harmful traditional cultural practices. It is therefore crucial to supplement the law with the practical methods discussed below.

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<sup>127</sup> Sudarikasa 1986 *Feminist Studies* 91–103.

<sup>128</sup> Banda *Women Law and Human Rights: An African Perspective* (2005) 95.

<sup>129</sup> *Ibid.*

## 4 1 Involvement of community leaders

The emphasis on international human rights instruments to eliminate harmful cultural practices in Africa may appear as Western pressure for change. The West is often criticised for being heavy-handed and insensitive, and is sometimes culturally perceived as imperialistic in African communities.<sup>130</sup> Efforts to change harmful practices are most effective when they originate from within the culture practising them. Skirmishes to eradicate or modify harmful cultures therefore require teamwork and the involvement of local community leaders, policy-makers and people who have experienced hardships caused by harmful practices within the community. These people can assist in promoting reputable conduct and respect for human dignity. Religious and traditional leaders in Africa greatly influence customs and practices and are, therefore, vital in changing the attitudes within society. They often voice their opinions concerning community lifestyle and governance, thereby empowering local traditional leaders to eradicate harmful traditional cultural practices, and can thus lead to effective change.

It is strongly argued that if local leaders support the abolition of harmful practices, community members will follow suit,<sup>131</sup> effectively dissipating myths concerning ongoing discriminatory cultural practices, especially those affecting women and young girls. Other countries like South Africa have progressed well by enacting law that involves traditional leaders in the governance of several community matters.<sup>132</sup> Although the law is silent on harmful traditional practices, it specifically addresses the role of traditional leadership in the promotion of gender equality and the equal representation of women in traditional institutions.<sup>133</sup>

## 4 2 The use of traditional as opposed to contemporary methods

Maintaining and promoting positive traditional values, while discouraging and eliminating discriminatory ones, is another possible tool to consider in combatting harmful practices. With a better understanding of local social realities, positive traditional cultural methods can be used to abolish harmful ones. Traditional dances (*Ngoma*) and rituals can be used to discourage harmful cultural practices, thereby eradicating discrimination against women.<sup>134</sup> The “culture lens” approach needs to be employed in dialogues regarding human rights in different traditional systems comprising various cultures and religions, thereby exposing negative African cultural aspects within communities. Numerous native languages can also be used to strongly and positively address harmful practices and gender discrimination within African countries. Native languages can be used as an asset to

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<sup>130</sup> Sudarikasa 1986 *Feminist Studies* 91–103.

<sup>131</sup> *Ibid.*

<sup>132</sup> The Traditional Leadership and Governance Framework Act 23 of 2009.

<sup>133</sup> S 16(3), 17(2)(c) Traditional Leadership and Governance Framework Act, 2003 demands an equal gender representation in the houses of traditional leaders, i.e. “sufficient number of women”. Provincial legislation was to provide for implementation mechanisms.

<sup>134</sup> *Ibid.*

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communicate clearly the need to eliminate biased, cultural practices.<sup>135</sup> This approach is an analytical indoctrination tool that assists development practitioners and policy-makers to understand and re-assess cultural values in order to diminish resistance to change.

Useful traditional practices customarily protecting women and girls should be highlighted when designing programmes to eradicate harmful cultural practices and to address gender inequality. Girls should be given the opportunity to undergo initiation if they wish to, but without involving any harmful practices. The perpetuation of human rights must be conducted in such a manner that African societies do not feel that the integrity of their culture is being compromised. Parents and society as a whole should therefore not feel they are losing their heritage, but rather that rights to gender equality are being preserved. It is significant for societies to believe that their traditions and customs are not disregarded. The community needs to be included in the process when enlightening society about harmful traditional cultures, and the focus needs to be on their negative consequences, rather than on human rights or legal aspects. Society will then be more likely to accept what they are being taught.

### **4 3 Empowerment of victims and at a young age**

Because harmful traditional practices persist where women and girls have unequal access to education, health, wealth and employment, and are unaware of their basic rights, women need to be educated and empowered at a very young age to prevent them from becoming victims. Women are raised to believe that these harmful practices are part of the natural order of things within their societies, and thus women find it difficult to resist such practices because of their subordinate status within society. Their “emancipation” can therefore be realised by including human rights education in the junior school syllabus, which should focus deeply on women’s rights. Eliminating obstacles to girls’ education is also essential.<sup>136</sup> This can be achieved by adopting methods to retain girls in school and awareness-raising programmes to overcome stereotypes and harmful traditional attitudes. Parents need to be encouraged to ensure a comprehensive and equal education for both girls and boys.

Furthermore, African governments need to take effective measures to ensure that females have access to and control of economic resources like land, credit and employment, in order to promote self-esteem among women, which will in turn transform their social status within communities and their families. It will enable women to recuperate from oppression, and challenge them to overcome harmful practices. Young girls must be empowered to become strong women, thereby protecting future generations from harmful traditions. Empowered girls will be enabled to make their own fearless decisions about their bodies. Additionally, male household tasks within family life must be included within children’s education from a very young age, which will entail a review of curricula and textbooks.

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<sup>135</sup> Scorgie *African Studies* (2002) 55.

<sup>136</sup> Msuya *Harmful Cultural and Traditional Practices* 32.

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#### **4 4 Involvement of both men and women**

Systematic encouragement and support of women is needed. Traditional practices excluding women from the articulation, development, implementation and enforcement of basic rights have made gender issues invisible, consequently shielding gender-based violations. A collective women's voice is essential to effect the reformulation of rights. The realisation of gender equality must include changes in both men's and women's perceptions, knowledge, attitudes and behaviour. Struggles to end harmful cultural practices impacting women must involve and address men, especially as most of the harmful traditions pinpointed are conducted for the benefit of men. In African societies, men play various roles as community leaders, heads of families and providers. It is therefore important to engage them as they are in the best position to abolish harmful practices.

Men must be involved at grassroots level regarding programmes aimed at empowering women. Men should engage in peer-to-peer learning with women to assist in reducing cultural masculine superiority that discriminates against women. It is also essential to improve communication between men and women on issues of reproductive health, sexuality and an understanding of their joint responsibilities, so both can be equal partners in private and public life. Changes need to be effected regarding the responsibilities of fathers to their female children and parents need to be educated to value a daughter. Specific public educational campaigns focusing on redefining female and male roles within the family should be considered because the family is the base from which gender biases emanate. Governments must also value the diversity of women's conditions, appreciating that some women face certain barriers to empowerment, resulting from a patriarchal order that is deeply rooted in numerous social, economic, political and ideological foundations. Programmes promoting dialogue among men and women to challenge intimate-partner violence as an acceptable expression of masculinity should also be initiated.

#### **5 CONCLUSION**

Women participated in Africa's struggle for liberation and therefore deserve to know that freedom was not achieved in vain. International and national laws have set standards important for change within African societies, but their implementation is impossible if Africa perceives women stereotypically and discriminates against them culturally. Just as African men are pleased to be free of colonialism, women will feel the same elation once they are free from harmful and discriminatory African traditional practices. Women need to be free and counted as part of the people of the African continent, instead of living in the shadow of practices and traditions preventing the development of Africa as a whole. Africa should stop insisting that women's rights are a Western-imposed ideology. The abolition of harmful, traditional, cultural practices should be viewed as being for the benefit of Africa and its development. Africa's political independence has no meaning without the social and cultural independence of women and, therefore, women's rights cannot be treated separately from other African developmental goals. Because Africa is capable of managing its own land, wealth, lives and

development, women must be freed, because it is impossible to advocate for the independence of African development while excluding women. Embracing positive pre-colonial African traditions in proactive government and community programmes will better support the achievement of gender equality in Africa than allowing the West to drive and impose its human rights agenda on African culture.