DISCRIMINATORY CUSTOMARY PRACTICES AGAINST WOMEN’S RIGHTS: AN ACCOUNT OF INTERVENTION STRATEGIES BY SOUTHERN AFRICAN DEVELOPING STATES

Grace Agonda Akolokwu *
Barakat Adebisi Raji **

ABSTRACT

Discriminatory customary practices against the protection of gender rights still thrive in many Southern African developing states despite domestic and international legal regimes to prevent them. These practices were borne out of customary inclinations of the patriarchal social system in most African communities, which hold women and the girl-child in perpetual subordination to the male. In other words, the African customary systems wrongly perceive the male gender as being naturally superior to the female. More so, the loopholes in the executive and legislative efforts to combat human rights abuses as well as judicial pronouncements and governmental apathy in eradicating abuses against gender discrimination towards women in the Southern African Developing States are apparent. Consequently, discriminatory customary practices continue to thrive despite legislative framework protecting gender rights in the states. The methodology adopted in this paper is a doctrinal approach, which places reliance on legal materials that are enacted and enforced by African Developing states. The article examines international and states laws, norms, institutions, international and national publications and other international legal instruments relating to gender discrimination. Most importantly, the central attention of this study focuses on the discriminatory customary practices against women in the Southern African Developing States. The current study finds that, despite

* LL.B, BL, LLM and PhD, Senior lecturer, Department of Private and Property Law, Rivers State University, Nkpolu-Oroworukwo, Port Harcourt. Email: akolokwu.grace@gmail.com.
** LL.B, BL, LL.M and PhD (IIUM), A Lecturer in the Department of Jurisprudence and International Law, Faculty of La, University of Ilorin, Ilorin, Nigeria; E-Mail: babraj2007@gmail.com or raji.ba@unilorin.edu.ng

[Received: 7 October 2018, Accepted: 4 March 2019, Published: 30 June 2019]
identifiable discriminatory customary practices which are still practised and condoned as being the lifestyle and tradition of groups are criminalized and declared abhorrent by specific domestic legislation of nations, the human rights of the girl-child and women continue to be in chains and fetters. In conclusion, this article advocates increased advocacy, judicial activism and more proactive legislative action that protect women and the girl-child in the Southern African developing states.

**Keywords:** customary law, gender rights violations, Southern African Development Community (SADC) States, Kenya, Nigeria

---

**AMALAN-AMALAN ADAT YANG MENDISKRIMINASI HAK-HAK GENDER: PENERANGAN MENGENAI PELBAGAI STRATEGI CAMPURTANGAN OLEH NEGARA-NEGARA MEMBANGUN AFRIKA SELATAN**

**ABSTRAK**

INTRODUCTION
Gender issues are both localized and global. This can be seen in the continuous interference of particular customs and traditions peculiar to a group of people into the lives of women, especially in the area of human rights. Despite these local interferences through customary laws, it is trite that human rights are universal and inalienable for every member of the human family principally because of their humanness.

The patriarchal system usually promoted by various customary laws emphasizes descent along the father’s line and this has worsened the fate of the women who are conditioned by the society to play a second fiddle

---

role to the male.\textsuperscript{2} With an assured traditional role in the kitchen, which does not require the expertise garnered from any kind of education, the sentiments that the girl-child does not need to go to school to become a good wife and mother, with cooking, cleaning and sewing skills have persisted in the 21\textsuperscript{st} century. This confirms the notion that “women have always been discriminated against and have suffered and are suffering discrimination in silence in the hands of their men.” \textsuperscript{3} This was the position of the court in \textit{Mahdu Kishwar v State of Bihar}.\textsuperscript{4} These discriminations have been described as:

\begin{itemize}


\end{itemize}
“Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women.”

Gender issues have become a recurrent phenomenon due to the non-recognition of women’s rights and the persistence of the marginalization of women. The intensification of rights of women has led to feminism movement all over the world. This has been translated and reflected in

---


the various Conventions passed by the United Nations. This has also been corroborated in the work of Bunch who mentions:

“Human rights instruments and mechanisms provide avenues for challenging the systematic abuse of women; and that government can be made to take gender-based violations more seriously.”

This is the more reason why the issues of equality and freedom of women remain topical as aptly summed up by Janet.

Equality is not only an independent autonomous right guaranteed in all national and international legal systems but it is also an inherent element of all human rights documents. Human rights do not make sense when they do not include entitlements for all human beings. In this way, equality is closely related to the universality of the right as asserted

---


by Van den Brink, et al. This is to say that the rights of women have not been given proper attention despite all the legal instruments put in place to eliminate the discrimination phenomenon existing between them and their male counterparts.

While adopting a doctrinal research methodology, this article interrogates the discriminatory customary practices on gender rights and looks at the various states’ intervention strategies that are happening in Southern African developing states. For the purpose of the study, the countries of Nigeria and Kenya are selected for a comparative analysis because these countries are Third World countries bogged with issues of poverty and diseases. They also have the history of great interplay of customary and statutory law.

GENDER RIGHTS
Gender rights concerns aspects of human rights that are particularly channelled towards achieving equality between the male and female gender. However, the societal treatment of the human rights of the female species is the focus of this work. In the various States that make up the Southern African Developing States, women have the same globally recognized rights enjoyed by their peers in other countries. These rights have been enunciated in various international instruments such as the Universal Declaration of Human Rights (UDHR), 1945 which is the foundation to most global treaties, Conventions and even Constitution of States. It provides that everyone, including women and girls have the right to life, liberty and the security of persons and that no one shall be held in slavery and slave trade shall be prohibited in all forms. No one shall be subjected to torture or to cruel, inhuman or degrading treatment. By the provisions of the UDHR, nobody is above

---

the law as they are, “all are equal before the law and entitled without any discrimination to equal protection of the law.”

The UDHR recognizes the fundamental rights of women to choose whoever they wish to marry and to exercise equal rights with their men regarding their unions. Articles 16 and 17 of UDHR spell out the rights of man and woman who have attained full age to get married and form a family. Men and women have the same rights when they are married, and when they are separated. These provisions have abolished gender discrimination against any woman in marriage and even when she is separated or leaves alone after marriage. The same convention permits everyone to own things or share them. Nobody should take our things from us without a good reason. Everyone, as it is used here, connotes both male and female. The convention is all-encompassing such that man and woman have an equal right to freedom of thought, expression; they both have equal right to work. They also have equal freedom to the choice of employment; right to rest and leisure. The articles also empower them the right to a standard of living adequate for health; the right to education as well as right to freely participate in the cultural life of the community.

In addition to the above provision, the International Covenant on Civil and Political Rights (ICCPR) also protects the sanctity of human life as evidenced in Article 6, thus: “Every human being which includes the girl-child has an inherent right to life; which right shall be protected

---

by law as no one shall be arbitrarily deprived of his life.\textsuperscript{15} It also provides that, “no one shall be subjected to torture, or cruel inhuman or degrading treatment or punishment and no one shall be held in slavery or servitude. Everyone has the right to liberty and security of the person. However, no one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.”\textsuperscript{16}

Furthermore, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) gives credence to the above instruments that the traditional role of men and women in society and in the family are what is required to achieve full equality between men and women. It has also been observed that the establishment of the new economic order based on equity and justice has contributed significantly towards the promotion of equality between men and women.”\textsuperscript{17} Party states to the UDHR including, Nigeria had also agreed to modify the socio-cultural patterns of conduct of men and women with a view to eliminate all discriminatory customary practices which are based on the idea of the inferiority or superiority of either of the sexes or stereotyped roles for men and women.\textsuperscript{18} Unfortunately, the practicability is yet to be

\textsuperscript{15} Article 7, International Covenant on Civil and Political Rights (ICCPR) 1966.


felt in Nigeria due to strong attachment to custom. For instance, despite the fact that CEDAW frowns against child labour, children are still allowed to roam the streets, hawking, in order to help their family members to make ends meet. Some children, especially girls, are used for trafficking as soon as they are given to uncles or aunties who normally promise to give them the right education in urban areas. Some parents still give out their daughters as housemaids to strangers who sometimes, in turn, use these girls for money rituals. These are just a few instances where the law needs to be enforced to checkmate the acts of these violators and to bring them to book in order to put an end to discriminatory practices against the female gender.

**Discriminatory Customary Practices Against Gender Rights and State’s Intervention Strategies in the Southern African Development Community**

The Southern African Development Community (SADC) is a regional economic community consisting of fifteen (15) member states established in 1992. The community is committed to regional integration and poverty eradication within Southern Africa. The member states include; Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia, Zimbabwe. The body is aimed at creating common political values, systems and institutions; build social and cultural ties; alleviate poverty; uphold human rights and the rule of law. The following are the common cultural practices found in these states before the establishment of this body, which had greatly influenced the application of the rights of women and the girl-child in the region. For instance, in South Africa, Swaziland and Lesotho there is an orthodox belief that sexual

---

Discriminatory Customary Practices Against Women’s Rights

intercourse with a young virgin girl can cure HIV and AIDS. This has led to an increase in sexual violence against girls resulting in huge psychological scars on the victims. The traditional practices such as polygamy, payment of bride price (lobola) and child marriages are all synonymous with gender violence as they reduce women to sub-human assets belonging to men. Payment of bride price and child marriages take place in most SADC member states as part of traditional culture, ignoring changes in social contexts.²⁰

Some of the other cultural practices, which are common to the member States include female genital mutilations of various degrees, child abduction and child marriages. There is also the sale of the girl-child through the payment of bride prices and the general disinheritation of the girl-child. Although the female genital mutilations are generally practised in the SADC States but it is more prevalent in Tanzania and Malawi where the ritual is performed on young girls.²¹ Female genital mutilations (FGM) are compulsory among the ethnic groups, while it is not easy for ladies who fail to undergo this practice to get husbands.


However, in some regions, mass circumcisions are carried out openly where thousands of girls’ genitals are mutilated at the same time. For instance, in Malawi, FGM entails cutting off the tips of girls’ clitorises by a traditional nurse/counsellor using fingernails.\(^{22}\) This is followed by inserting an egg or a wooden penis the size of a soft drink bottle in the vagina to widen it to accommodate any size of the penis.\(^{23}\) This is a clear case of invasion of the girl’s privacy and can lead to serious health challenges.

Marriage by abduction is also a common practice found in some of the SADC countries and especially in Zimbabwe and South Africa. This is a situation where, a girl is abducted by a gang, on the authority of her


Another form of abduction commonly practised in the region is called the \textit{ukuthwala} custom or bride abduction especially among some rural Xhosa communities in the Transkei in South Africa. The procedure in the instant case is that the intending groom with some of his friends waylaying the proposed bride and forcibly taking her to the young man’s home. He sleeps with her like a wife and then sends a message to the girl’s home informing her family of their daughter’s safety with them. The family will, in turn, proceed to call for the bride-price called “\textit{lobolo}” (Cattle is usually accepted as pride price). Once this is done, the status of the girl is immediately elevated to that of a young wife. Girls between twelve (12) and fifteen (15) years old are usually targeted for this kind of abduction.\footnote{Chelete Monyane, "Is Ukuthwala Another Form of ‘Forced Marriage’?" \textit{South African Review of Sociology} 44, no. 3 (2013): 64-82; Kate Rice, 381-399; Lea Mwambene and Julia Sloth-Nielsen. See also W. J. Smit and Catrien Notermans. "Surviving change by changing violently: Ukuthwala in South Africa's Eastern Cape province," \textit{Anthropology Southern Africa} 38, no. 1-2 (2015): 29-46; Benard O.Itebiye, "Forced And Early Marriages: Moral Failures vs Religious Nuances," \textit{European Scientific Journal, ESJ} 12, no. 17 (2016): 305; O.O. Adeyemo, "Early and Forced Marriages in an African System: An Appraisal of the Rights of the Child in Nigeria," \textit{Nigerian Journal of Family Practice} 4, no. 2 (2013): 27-34; Laws, “Women Living Under Muslim, Child, Early and Forced Marriage: A Multi-Country Study," \textit{A Submission to the UN Office of the High Commissioner on Human Rights (OCHCR)} (2013); Sauti etu, "A Closer Look at Forced and Early Marriages in African Immigrant Communities in New York City," \textit{SautiYetu Occasional Report} 3 (2012); Anitha, Sundari, and Aisha K. Gill, "Reconceptualising Consent and Coercion within an Intersectional Understanding of Forced Marriage," \textit{Forced Marriage, Introducing A Social} (2011).}
has greatly hampered the enforcement of girl-child rights. Commenting on the adverse effects of this kind of abduction marriages, Tshabalala-Msimang has this to say,

“Child marriage is regarded as a form of gender-based violence against the girl-child. Given this, we need to acknowledge that this practice will ultimately compromise the development of the girl-child and can result in early pregnancies, increasing the chances of maternal mortality.”

Furthermore, young girls suffer from social isolation, with little or no education and poor vocational training. They are made responsible for household chores to take care of family members at a younger age, which increases their vulnerabilities to domestic violence. This simply reinforces the gendered nature of poverty.”

This goes to say that child marriages of various forms, which are recognized in the SADC region are nothing but a violation of human rights whether it happens to a girl or a boy. This is a pure representation of one of the most prevalent forms of sexual abuse and exploitation of girls.


28 Adeniyi, Olayinka Oluwakemi, "Legal Protection of the Girl Child against Child Marriage (AureYarinya) in Nigeria," (PhD diss., University of Pretoria, 2016); Martin, Patricia, and Buyi Mbambo, "An Exploratory Study on the
According to Wadesango et al, child marriages are practised in Zimbabwe.\textsuperscript{29} It takes the form of parents luring a male tenant on an estate who is hard working and has shown high prospects in his financial pursuit, into marrying their teenage daughter by using her as payment for work done as they would claim lack of capacity to pay for his services. Whilst, the practice in some parts of Tanzania especially among pastoral groups is that parents send girls as young as nine (9) years old to stay with rich men with the understanding that the rich man will come later to pay the bride price either in money or in cattle.\textsuperscript{30} In some parts of Zimbabwe, Malawi, Zambia, Lesotho and South Africa the younger sister or niece of his wife is given to the husband as a bonus (second) wife; whilst in Malawi and Zimbabwe, infant girls may be married off
for monetary gain or repayment of family debts or as a compensation for pledging.\textsuperscript{31}

Another identifiable traditional practice, which violates women and the girl-child rights’ to the dignity of the human person and equality is the virginity test approved by traditional rulers in most of the SADC States. According to Kaarsholm, “virginity test is another cultural practice which violates the rights of women, especially girls. This practice was common in African societies in the nineteenth century and is now enjoying contemporary revival and popularity after a long period of dormancy.”\textsuperscript{32} Virginity tests, according to Chirau, were used to bargain for a high bride price by parents. This practice, however, exposes the girl-child to certain indignities of inspection of her private parts, in addition to possible ridicule and stigmatization in the event that she failed the virginity test. As Le Roux states:

“The female participants’ right to equality is infringed by this practice being predominantly applicable to women only. This unfairly places the responsibility of being sexually active on women. Failing virginity tests leads to stigmatization and mocking by other participants as well as the community.”\textsuperscript{33}

This is undignified as the girls are humiliated in the process. The pressure by the community to take part in this ritual also infringes the


participant’s right to bodily integrity. This right to bodily integrity is provided under the South African domestic legislation.\textsuperscript{34} In South Africa however, virginity testing is generally prohibited by law except in certain conditions;\textsuperscript{35} while in Zimbabwe, there is no law that prohibits virginity testing although sexual abuse and exploitation of children are covered under the Criminal Law (Codification) Act 257.\textsuperscript{36} However, with the coming together of these states, the governments of each of the SADC States have taken legislative and other measures to outlaw these traditional and cultural practices which violate the rights of women and the girl–child in the region, though the effectiveness of these measures is still debatable. For instance, in Tanzania, economic empowerment was introduced to improve women’s social status. According to Mariam Mwaffisi,\textsuperscript{37} Tanzania is committed to attaining gender equality and

\textsuperscript{34} S. 12(2) Chapter Two, Constitution of South Africa 1997 which contains the Bill of Rights provides for the right to bodily and psychological integrity which includes the right to make decisions concerning reproduction, to security in and control over their body; and not to be subjected to medical or scientific experiments without their informed consent.

\textsuperscript{35} S. 12(4) Children’s Act of South Africa 2005 which prohibits virginity testing of children under the age of 16, although S.12 (5) allows virginity testing provided the following conditions are met, namely: (a) if the child has given consent to the testing in the prescribed manner;(b) after proper counselling of the Child; and (a) in the manner prescribed. Section 12 (6) emphasize that disclosure of the results of virginity testing may not be made known without the consent of the affected child while section 12 (7) outlaws marking of the body of the child who has undergone such testing. See also Ebenezer Durojaye, "The Human Rights Implications of Virginity Testing in South Africa," \textit{International Journal of Discrimination and the Law} 16, no. 4 (2016): 228-246; Jabulile Favourite Mbulu, "Exploring the Experience of Virginity Testing by Female Adolescents in the uThungulu District of KwaZulu-Natal," (PhD diss., University of South Africa, 2016), 17-22; Anette Wickström, "Virginity Testing as A Local Public Health Initiative: A ‘Preventive Ritual’ More Than a ‘Diagnostic Measure,’" \textit{Journal of the Royal Anthropological Institute} 16, no. 3 (2010): 532-550.


\textsuperscript{37} Mariam Mwaffisi was a permanent Secretary in the Ministry of Community Development, Gender and Children in Tanzania. She was involved in the child rights. She made this statement in her capacity as a state official. She also took
women empowerment; and its achievements in this regard included gender parity in education enrolment and the formation of science camps for the girls.\textsuperscript{38}

The government has also surpassed the thirty percent (30\%) threshold for women in public service and parliament and is now reaching fifty percent (50\%). To curtail violence against women and the girl-child, the government has established a National Action Plan on the prevention and eradication of violence against women and children through a campaign tagged “Say NO to violence against women,” in Tanzania. The government has also taken steps to improve the status of women by actively promoting savings and credit societies in both rural and urban areas, introducing a Social Action Fund and a Woman’s Bank to provide women with required training and credit for businesses. The Tanzanian government has also enacted relevant laws to ensure access and ownership of land by women.

In this relation, most of the States of the SADC have also ratified the CEDAW and the Convention on the Rights of the Child (CRC). Article 2 of the CRC has urged states to prohibit gender discrimination and recognize the principle of equality.\textsuperscript{39} The same convention has also

\begin{itemize}
\item part in the third Global Forum, The 10/90 Report on Health Research 2001-2002, focuses on the crucial role of health and health research in the fight against poverty; progress in the definition of priorities for health research; the development of partnerships and networks in key research areas; and the application of a new tool for developing the priority research agenda. The Report covers progress in helping correct the 10/90 gap in health research over the past two years and outlines plans for the coming years. The report is available at http://www.globalforumhealth.org/pages/index.asp took part in the Health research.
identified some grey areas and communicated these to the states for reforms to be made both in civil and penal legislation including the minimum age for marriage. Its argument is that where a girl gets matured earlier than the age stipulated for marriage; this must not be interpreted to mean maturity (adult) nor must she be deprived of the protection as provided under the CRC. Hence, every state has been advised to fix the minimum age for marriage in accordance with the provisions of the Convention. The marriageable age in most of these countries is eighteen years old while in Madagascar and Tanzania is sixteen years old.\textsuperscript{40}

There are however differences in minimum ages of marriage for boys and girls in Madagascar, Malawi, Mozambique, South Africa, Tanzania and Zimbabwe. There are also age differences under the marriage laws and under customary law.\textsuperscript{41} According to Jonas, these differences in law exist in Tanzania by virtue of section 13 of the Law of

\begin{flushright}


Marriage Act which has fixed the age of marriage for eighteen (18) years and above. Whilst girls can be married at the age of fifteen (15) with the consent of the father.\textsuperscript{42} This duty (consent) shifts to the mother when a father dies, although the marriage of girls below fifteen years but not below fourteen years is permitted by court order. This position to Jonas is discriminatory towards girl-child and a violation of the rights of the child.\textsuperscript{43} It is apparent from the foregoing that eventhough appropriate laws have been made, they are still not consistent and effectual nor sufficiently protecting children especially the girl-child from early marriages.

In another region within these states, it is the parents and not the child’s consent that is required to give validity to the marriage. It is thus clear that children do not receive the required protection of the law because some of their parents still push for early marriages in order to


acquire wealth.\textsuperscript{44} This situation calls for more work by these States in the area of strategizing for the effective enforcement and protection of the rights of women and children in this region. Hence this paper tends to look at some of these states where customary practices still prevalent despite the adoption of CEDAW and other conventions which kick against gender discrimination.

**Discriminatory Customary Practices on Gender Rights and State’s Intervention Strategies in Kenya**

Various forms of discriminations of the girl-child's rights emanating from customary practices also exist among different communities and tribes in Kenya. For instance, among the Masai people, the girl-child is forced to marry early to provide wealth to the natal family. This practice discourages investment of parents into the education and training of the girl-child, who, according to custom would soon belong to another family who will then enjoy the benefits of her training. They are also subjected to the indignities of female genital mutilations (FGM) and discriminatory inheritance rights. Another tribe known as Luo in Kenya give their girls as compensation in a murder case. According to Thandabantu, the customary law of the Luo people permits restitution in homicide cases where the clan of a murderer is required to “provide a girl to bear progeny in the name of the deceased.” This means that the girl-child’s will is “sold” or surrendered” to the family of the murdered victim for the purpose of procreation as a replacement of the dead. Also

among the *Gusii*, girls are required to marry early before attaining 15 years of age.

Premarital intercourse is also rampant; where a girl had intercourse before marriage her bridewealth shall be deducted. Furthermore, a *Gusii* husband has control of the wife after the payment of the bride price. He is also by tradition allowed to shave the hair of his wife. He must keep the shaved hair to enable him to retain the wife. The essence of this shaving is to put the public on notice that she is under a man. However, if she leaves the husband in this situation, she is regarded as a disobedient wife and a suspected adulteress.

This process, of course, stigmatizes the girl-child and also a violation of her right to dignity of the human person. The *Nandi* culture, on the other hand, permitted elderly women who were childless to marry other women to bear children for them in a woman to woman marriage system. Daughters are generally regarded as non-permanent members.


47. Monica Wanjiru Kareithi, "A Historical-Legal Analysis of Woman-to-Woman Marriage in Kenya," (PhD diss., University of Pretoria, 2018); Hephzibah Egede, "The Social Stigmatisation of Involuntary Childless Women in Sub-Saharan Africa: the Gender Empowerment and Justice Case for Cheaper Access to Assisted Reproductive Technologies?" (PhD diss., Cardiff University, 2015); Elizabeth Cooper, "Women and Inheritance in 5 Sub-Saharan African Countries: Opportunities and Challenges for Policy and
of their natal families and so are excluded from the inheritance of land and property. In fact according to Harrington and Chopra, “daughters have great difficulty accessing land through inheritance since marriage would transfer the lands outside the natal holdings and into their husband’s hands.” The government of Kenya has tried to curtail these cultural violations of the rights of the girl-child through legislation and by the ratification of international human rights instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976, the UN Convention on the Rights of the Child (CRC) in 1990, International Convention on Civil and Political Rights (ICCPR), UN Convention against Torture (CAT), the African Charter on Human and Peoples Rights, the African Union Solemn Declaration on Gender and Equality (2004).

The Kenyan Constitution also provides that any treaty or Convention ratified by the government shall form part of the laws of Kenya. The Constitution recognizes customary law but invalidates it to the extent that it conflicts with the provisions of the Constitution. On
issues bordering on the enforcement of the rights of women and children in Kenya, the old 1969 Kenyan Constitution harboured some discriminatory laws, which were not supportive of women and girl-child rights. For example, the Constitution’s guarantee of non-discrimination does not apply with respect to personal laws, in particular in the areas of marriage, divorce, adoption, burial and succession. It also did not provide equal citizenship rights for women and it recognized the application of customary laws in Kenya in cases related to marriage, divorce, death and inheritance issues. In addition, the Matrimonial Property Bill and the Equal Opportunities Bill is proposed to further promote women’s rights, eradicate female genital mutilations permitted by customary law while the enactment of the Domestic Violence (Family Protection) Bill has been pending since 2002.

Legislative changes with regard to gender issues have been impeded by the fact that there have been a lot of delays in parliament regarding some key gender-related bills which, if passed, would go a long way within cultural contexts in addressing some of the discriminatory issues affecting women with regard to matrimonial issues, property rights and inheritance although the amendment of the 1969 Constitution, which gave birth to a new Constitution which attempted to address some of these issues.

However, there is no statutory definition as to what could amount to discrimination against women in the Kenyan Constitution as well as in any other local legislation. A general/working definition of torture is also lacking in all Kenyan statutes. This is as good as failing to provide a basis for tackling issues of discrimination in all spheres. For instance, the constitution and law prohibits torture while the legal code does not define torture and provides no sentencing guidelines for violating the constitutional and legal prohibitions.51 However, the current Kenyan


51 Eugene Lubale Lubulellah, "College Of Humanities and Social Sciences School of Law," (PhD diss., University of Nairobi, 2017), 153-154; Malose Langa, "Analysis of Existing Data on Torture in South Africa with Specific Focus on Annual Reports Published by IPID and JICS," (Cape Town: IPID and JICS, 2014): 33-40; Akmal Niyazmatov, "Evidence Obtained by Cruel, Inhuman or Degrading Treatment: Why the Convention against Torture’s
Constitution of 2010 shows a strong commitment to principles of equality and non-discrimination. It specifically provided that every person is equal before the law.


important reforms in the area of citizenship by ending gender discrimination in relation to the right of a woman to pass citizenship to her children or spouse, and that parties to a marriage have equal rights at the point of marriage, during the marriage and at the dissolution.\textsuperscript{54}

In order to tackle violations of the rights of women and children in Kenya, the government has created a Ministry of Gender for Children and Social Development. A National Commission of Gender Development has been established in order to see to implementation on the National Policy on gender in the country. ‘Gender officers’ are also appointed in ministries and state corporations. The government has also set out a strategy to increase opportunities for women’s participation in economic, social and political decision making through a specialized programme tagged as Vision 2030. The government also establishes a Women’s Enterprise Fund to provide women access to financial services and enacted a Succession Act targeted at countering cultural attitudes promoting discriminations against women and the girl-child.\textsuperscript{55}

This Act specially provides for the right of females to inherit property that was hitherto inaccessible under customary law. The government has also made efforts through the legislative process to fight violence against women through the promotion of a Family Protection Bill and a Sexual Offences Act; in addition to partnering with civil societies and community-based organizations to re-orientate citizens and change attitudes that encourage abuse of girl-child rights as well as


correct the inequalities between men and women. Female victims of violence are encouraged by the Ministry to seek legal recourse through a witness protection scheme where protection is provided for witnesses who fear reprisals.

In Kenya, some specialized non-governmental organizations promote campaigns to showcase and discourage violence against women and the girl-child. An example of such an organization is the Coalition on Violence Against Women – Kenya (COVAW-K), which is a registered, non-partisan and non-profit making national women’s human rights non-governmental organization working to promote and advance women’s human rights in a society free from all forms of violence against women. COVAW-K was established in 1995 as a result of a workshop organized by Women in Law and Development in Africa, (WILDAF) which sought to strengthen the networking capacities of women’s organizations in Kenya. COVAW-K as an organized body sought to encourage victims of violence to speak out and report such acts of violations; be committed to breaking the silence concerning violence against women and girls in Kenyan communities, and work towards building capacities of individuals, communities and the entire nation to recognize violence against women as an abuse of human rights and also be encouraged to take appropriate measures to stop it by punishing perpetrators fittingly. Since its inception, COVAW-K has continued to be instrumental in labelling and treating violence against women as a crime and a human rights violation, whether perpetrated in private or in the public domain. Its overall aim is to reduce the incidence of violence against women and in cases where they occur to improve the management of violence against women.

Meanwhile, the African Network for the Prevention and Protection Against Child Abuse and Neglect (ANPPCAN) is an African child-rights organization cutting across many countries in Africa and currently has chapters in 17 African countries. In Kenya, ANPPCAN is a charitable, non-profit organization registered as a non-governmental organization in 1995. It operates as a national resource centre on child abuse, child neglect and a promoter of children's rights. It provides information and technical expertise on child protection and child rights issues; carries out research on emerging children's issues; and when necessary lobbies governments, donors, other NGOs and communities on behalf of children.
Aside from that, there is also the Legal Resources Foundation (LRF) which was established in 1994 as an autonomous project of the Kenyan Human Rights Commission was in the year 2000 registered as a trust and became an independent entity. Since then LRF has developed innovative methods to raise legal and human rights awareness among the young, underprivileged and undereducated classes in Kenya. Its programmes consist of community-based paralegal training, theatre for civic education, legal and human rights education for secondary schools, production of educational radio programmes and publication of materials to be used in its own and similar educational projects.

According to Otedo, the challenges to the application of girl-child rights in Kenya are varied but that the Kenyan government has put the following educational programmes in place to tackle girl-child education namely:

(i) Innovative Women Teachers (IWT) programme which is an empowerment programme for women teachers and the girl-child to build capacity of the teachers especially in ICT;

(ii) Partners in Learning (PIL);

(iii) Innovative Schools;

(iv) Innovative Students.

(v) To Young, the Constitution passed in 2010 provides powerful opportunities for women from minority and indigenous communities to capitalize on the new legal and political framework.

---


ahead to provide that all State organs and public officers have the duty to address the needs of vulnerable groups within the society including women, older members of the society etc.

**Similarities and Differences in the Chosen Countries.**

Angola has ratified a number of international conventions condemning FGM. Among these is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the UN Convention on the Rights of the Child (CRC), and the African Charter on the Rights and Welfare of the Child. The Maputo Protocol on the Rights of Women in Africa, a protocol to the African Charter on Human and People’s Rights, which explicitly opposes FGM and other harmful practices such as giving out girl-children in marriage in exchange for bridewealth, has been signed but awaiting ratification. Reproductive health legislation that makes all forms of violence against women punishable by law, including FGM, has been on the books since 2002.

The national committee against harmful traditional practices has not been active in seeking an end to genital mutilation. Practically less has been done to ensure that the new laws, policies and institutions meet the requirements of the Convention. Hence, it is suggests that Angola and Mozambique learn from Kenya in order to record a positive impact on gender equality. In South Africa, apart from cases of FGM, child abduction, early marriage, the practice of torture and cruel, inhumane and degrading treatment (CIDT) remains a major human rights violation in post-apartheid. Despite the South African Constitution prohibiting torture and cruel, inhumane and degrading treatment, the country’s ratification of the United Nations Convention Against Torture (UNCAT) and its signing of the Optional Protocol to the Convention Against Torture (OPCAT) and other international instruments outlawing

torture.\textsuperscript{58} There is an urgent need to ratify Optional Protocol to the Convention against Torture in order to prevent torture and cruel, inhumane and degrading treatment and the establishment of correctional centres, police cells, psychiatric facilities, repatriation centres and places of safety for children and juvenile with regular visits.\textsuperscript{59}

In Namibia, among the positive remarks the CRC made was the institution of an Ombudsman, which had the mandate to deal with complaints about human rights violations, including those relating to children.\textsuperscript{60} The community leaders were charged with responsibility particularly with respect to overcoming the negative influences of certain traditions and customs which has contributed to discrimination against the girl-child, children suffering from disabilities and children born out of wedlock.\textsuperscript{61} Numerous efforts have been made in terms of the law,


policy reform, and child related initiatives and activities. It is expected that the situation with regard to compliance with the provisions of the CRC will improve considerably.

In order to address all aspects of trafficking in persons, the Namibia government had adopted the use of the Protocol to deal with trafficking in persons. Particular attention has been paid to women and children, to protect and assist the victims of such trafficking and to promote cooperation among States Parties in order to meet those objectives. The Child Care and Protection Bill is currently in the process of being finalized. This will address the issue of child trafficking. The envisaged Act makes child trafficking a criminal offence, and provides for extraterritorial jurisdiction to address trafficking by citizens or permanent residents of Namibia outside Namibia’s borders.

Furthermore, the state has addressed this obligation by enacting the Prevention of Organised Crime Act as part of laws coming into force soon. It evident that among all the Southern Africa community states, only Kenya has put all machinery in motion to combat all forms of discriminatory practices challenging the equal participation of women and girl-child's rights. Hence this study advocates and suggests to other states to learn from Kenya as well.

CONCLUSION

From the preceding discussions, it is evident that issues of gender rights especially the rights of women and the girl-child in some States in the Southern African Developing states still remain muzzled by discriminatory customary practices. It is also trite that the relevant governments have taken legislative, judicial and executive steps to confront this perennial monster that keeps working against the liberty and freedom of women to the extent that they depersonalize and inhibit developmental efforts aimed towards enhancing women’s rights. The achievement of women of their full potentials as human beings continue to be hampered by these discriminatory customary practices. The way

out of this vicious circle can only be achieved through the instrumentality of the law and a shift in the developmental policies of the relevant governments.

It is true that most of the States of the SADC have ratified the CEDAW and the Convention on the Rights of the Child (CRC). Beyond ratification of relevant laws, these States should take all appropriate measures to implement the provisions of these laws as well as enact specific local legislation to outlaw these discriminatory practices that are antithetical to the protection of rights of women and the girl-child. Kenya has made tremendous constitutional efforts to fight gender imbalance and protect the human rights of women and the girl-child. However, the enforcement of these laws and the continuity of government policies remain a challenge to be surmounted. Increased advocacy and the creation of greater public awareness of rights by both the government and other agencies would entrench the better values of gender equality and the protection of human rights. Conclusively, there is no doubt that there is a need to give more attention to the implementation of the laws on discriminatory customary practices in these countries so as to save both the women and girl-child from the daily torture and harassment. They must be given their rights and positions in the society for a better society. Hence, the government of these countries should learn from their counterparts for effective implementation of the legal instruments that overcome discriminatory customary practices that goes against women’s rights.