

# Limit of human rights in africa



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Culture, Gender, and Religion at the Limit of Human Rights in Africa.

The essay will focus on how culture, gender and religion limits human rights in Africa and how the three come into conflict which leads to discursively construct each other via cultural. It will also cover the potential and limitations of the women's rights as human rights in which, attention will be paid to Islamic law-sharia and some of its cases in Nigeria. The essay will also relate international human rights documents like the Universal Declaration of Human Rights, African Charter on human and people's rights, protocol to the African Charter on Human and people's Rights of women in Africa, and Cairo Declaration on Human Rights in Islam(sharia law) and conclusion.

### **Legal Pluralism in Human Rights Law:**

The plurality of norms and values that exist in different African cultures and societies is also reflected within the human rights system itself. The human rights system embodies both individual and communal rights. The tension relationship between the principle of a group's right to self determination and cultural identity, as embodied in the African Charter on Human and People's Rights and Article 16. 1 of the Women's convention, which puts an obligation on the states parties to eliminate discrimination against women in all matters relating to marriage and family relation. In the African context is whether the protection of group rights such as culture and religious identity of ethnic group, constitutes a justifiable reason for differential treatment of women and men in African. There has always been great argument when interpreting the convention in relation to African States parties, it should be born in mind that African and Western cultures apply different values and norm(Grannes 1994: 28) This is because the implementation of Women's

convention has proved to be particularly problematic in the area of personal and family law, where it comes into conflict with religious and customary laws and practices.

## **Human Rights in African**

Over decades now, Africa have been ranked by international Human Rights organizations like Human Right Watch, Ammesty International and International Crimenial Court as a continent where human rights violations are at it apex especially islamic countries, the violation of women's basic human rights are mostly done in the name of culture and religion.[1]After the Universal Declaration of Human Rights by the United Nations General Assembly in 1948 in which pursuit of equal rights for women through international law has been fair from reach. The principle says that everyone is free and equal in dignity and eveveryone is entitled to rights “ without distinction of any kind, such as race, colour, sex...” was started in Articles 1 and 2 of the 1948 Universal Declaration of Human Rights[2], African Charter by the Organization of African Unity (now African Unity) in 1986, Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Cairo Declaration on Human Rights in Islam by the Organization of the Islamic Conference in 1993. Anthropology as an academic discipline has embraced a predominantly ethical relativist stance toward the idea of human rights as a legitimate universal concern for all cultures. In the past years the rising prominence of women's rights as human rights has challenged this point of view. Within the context of the global women's human rights movement, feminist anthropologists are in the forefront of this challenge, striving to uphold anthropology's important focus on cultural context, while

at the same time paying deep concern for harmful practices against women, with female genital mutilation in Africa no exception, which may be argued to be morally objectionable outside of any given culture. “ Human Rights” is a very difficult phrase to define. One’s idea of humanity varies in every culture especially in African societies; discrepancies are often found even within a singular culture.

### **Gender, Culture, Religion and social Causes a Barrie to Human Rights in Africa:**

Violence continues to affect lives of millions of women in Africa in all socio-legal, economic and educational classes. This is cutting across cultural and religious barriers, which impeding women from taking full participation in societies. One of the greatest barriers to women’s economic advancement is violence they face on daily routine. Not only does such violence impede women’s ability to live full and productive lives, it also hampers their contributions to family, society and economic development. Violence against women is one of the most visible consequences of economic, social, political, legal and cultural inequalities that exist between men and women in Africa, as a result the continent is lagging behind the rest of the world[3]. Given the subordinate status of women in Africa, women are most exposed to ill treatments, physiological abuse, and physical violence, such gender violence is considered normal and enjoys social sanction.

African continent is rich in cultural relativity(culture of discrimination) and norms, as a result it has showed a vital barrier to the implementation of the universal human rights act.

A universal agreement among certain human rights provisions is not likely to occur, specifically when dealing with Islamic countries in Africa where transition to more equal rights is most problematic, where elements of Sharia law governing the behaviour of women remain active. In extreme examples in Northern Nigeria, these ancient laws still declare that adultery is a crime when only carried out by women, and makes it impossible for a man to be convicted of rape. In certain circumstances, conforming to human rights would signify a fundamental change in societies that the elite is not willing to undertake, fearing a potential change in the balance of power while the cultural norms remain unchanged.

Violence against women in Africa comes in several forms: discrimination, rape and Female Genital Mutilation (FGM), which the World Health Organization (WHO) defines as 'comprises all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons'.

The practice is mostly carried out by traditional circumcisers, who often play other central roles in communities, such as attending childbirths.

Increasingly, however, FGM is being performed by health care providers and constitutes an extreme form of discrimination against women. It is nearly always carried out on minors and is a violation of the rights of children. The practice also violates a person's rights to health, security and physical integrity, the right to be free from torture and cruel, inhuman or degrading treatment, and the right to life when the procedure results in death.

Despite global efforts by World Health Organization (WHO), United Nations Children's Fund (UNICEF) and United Nations Population Fund (UNFPA) to combat the wild spread of FGM, it still remains dominant in Africa as a cultural practice, which lives about 92 million girls age 10 years and above are estimated to have undergone FGM and three million girls are at risk annually[4].

The reasons behind female genital mutilation in Africa include a mix of cultural, religious and social factors within families and communities. In most African countries where FGM is a social convention, the social pressure to conform to what others do and have been doing is a strong motivation to perpetuate the practice. Traditions in Africa believe that FGM is often considered a necessary part of raising up process for girl(s), and a way to prepare them for adulthood and marriage life, it often motivated by beliefs about what is considered proper sexual behaviour, linking procedures to premarital virginity and marital fidelity and is also associated with cultural ideals of femininity and modesty, which include the notion that girls are clean and beautiful after removal of body parts that are considered male or unclean. The Africa Traditional Religions (ATRs) is the only religion that fully support to the practice, practitioners often believe the practice has religious support, other religious leaders take active positions with regard to FGM: some still promote it, some consider it unimportant to religion, and others are still kicking against the idea.

## **Potential and Limitations of Women's Rights as Human Rights**

Social and economic indicators for African countries consistently show that women bear the greatest brunt of hardship because of discriminatory laws against them, efforts to modernise this discriminatory laws have been frustrated by deep-rooted cultural barriers that runs in opposite direction with developments . Women in Africa contribute in numerous ways to the national development of every country. They are responsible for nearly all household duties , starting from food productions and processing exercises. Often, women tend to be viewed not as individuals, but as part of the male-headed household with some unique needs of their own related to their preceived roles, if given the rights they can be at the front line of major global issues.

Women organizations in Africa and around world such as Formum for African Women Educationalist (FAWE) and the United Nations Development Fund for Women (UNIFEM) have been actively involve in using different approaches in seeing the the rights of women as stated in various international human rights docuents be met, their efforts are far from reach in Africa.

### **Sharai Law:**

The word sharia means “ the path to a watering hole”. It denotes an Islamic way of life that is more than a system of criminal justice. Sharia is a religious code for living, in the same way that the Bible offers a moral system for Christians. It is adopted by most Muslims to a greater or lesser degree as a matter of personal conscience, but it can also be formally instituted as law by certain states and enforced by the courts. Many Islamic countries have

adopted elements of sharia law, governing areas such as inheritance, banking and contract law.

### **Sharai Law in Nigeria -Case One:**

Safiya Hussaini, age 35, was sentenced to death by stoning in October 2002 for allegedly having a child with a married neighbour. She had the child after her divorce, but maintained the father was her former husband and that they were married when the child was conceived. The court convicted her, but Hussaini won an appeal, this time alleging that she had sex out of wedlock before sharia law took effect.

### **Sharai Law in Nigeria – Case Two:**

In 2001, a teenage single mother was given 100 lashes for adultery, even though she argued she was raped by three men. The court said Bariya Ibrahim Magazu could not prove that the men forced her to have sex. Sexual discrimination is transparent in this case, The Sharai law failed to bring the three men to book for raping, insisted all the blame was put on the woman alone.

Sharai Law in Nigeria -Case Three: In 2002, Adama Unusua, who was 19 and pregnant, was recently sentenced to 100 lashes in public for having sex with her fiance.[5]

### **International Human Rights Documents and Sharia Law in Africa:**

The African continent ratified international and regional human rights protection instruments, human rights violations such as discrimination against women persists widely both in law and practice. The international



committee remains particularly concerned by the currently violations of human rights in Africa especially the ones currently going on in North Africa and West Africa (Ivory Coast). The persistence of discriminatory laws; lack of perfect harmonisation between statutory and customary laws and the application of Sharia laws constantly increase violence against women, including widowhood rites; and obstacles to access top employment opportunities leads to no right in decision-making that even affects them. The Sharia goes in opposite direction with all international and regional human rights documents, except in the Cairo Declaration on Human Rights in Islam by the Organization of the Islamic Conference in May 1993, which made provision in Article 2[6]

### **Conclusion:**

Increase in the violation of human rights in Africa is at its apex point, both the international and regional committee need to pay much attention to this issues, especially the violation of fundamental rights which are clearly spelled in all human rights documents with exception to Article 2(c) p 4 of the Cairo Declaration of Human Rights. Women's rights must be respected by eliminating all form of discrimination against them, so that they can see themselves as partners in development in Africa.