

Examination of the Historical Development of Human Rights From the Traditional African Perspective

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ABSTRACT

This study analyses the history of human rights from the classical African tradition, which is the historic evolution and recognition of human rights standards in the traditional African society, which was in existence before the colonial era. The study addresses the issue of the phenomenal mis-conception that exists in the public's mind that human rights is a purely Western phenomenon, conveniently forgetting the fact that the African society has for thirty thousand years been a custodian of values and tradition that protected human dignity, equity, justice and the common good. This study aims to investigate and critique the principles of human rights inherent in old African customs and traditions, cultures and institutions, and evaluate how relevant they are to the contemporary discourse of human rights. Applying a doctrinal based and analytical research approach, this study draws on historical, anthropological, and philosophical documents to chart the evolution of human rights-like norms in traditional African settings. This study's scope involves a thematic analysis of customary laws, justice, social hierarchies, and religious ideologies through which the protection of individual and collective rights was enabled. Findings reveal that traditional African societies employed an integrated understanding of rights and duties, often prioritizing harmony, restorative justice, and communal solidarity. In conclusion, the study contends that a culturally aware approach to human rights is paramount in bridging global standards with local conditions in Africa.

ABSTRAK

Studi ini menganalisis sejarah hak asasi manusia dari tradisi Afrika klasik, yaitu evolusi historis dan pengakuan standar hak asasi manusia dalam masyarakat tradisional Afrika, yang telah ada sebelum era kolonial. Studi ini membahas masalah kesalahpahaman fenomenal yang ada di benak publik bahwa hak asasi manusia adalah fenomena Barat semata, dengan mudah melupakan fakta bahwa masyarakat Afrika selama tiga puluh ribu tahun telah menjadi penjaga nilai-nilai dan tradisi yang melindungi martabat manusia, kesetaraan, keadilan, dan kebaikan bersama. Studi ini bertujuan untuk menyelidiki dan mengkritik prinsip-prinsip hak asasi manusia yang melekat dalam adat dan tradisi, budaya, dan institusi Afrika kuno, serta mengevaluasi seberapa relevan prinsip-prinsip tersebut dengan wacana hak asasi manusia kontemporer. Dengan menerapkan pendekatan penelitian berbasis doktrin dan analitis, studi ini mengacu pada dokumen-dokumen historis, antropologis, dan filosofis untuk memetakan evolusi norma-norma yang mirip dengan hak asasi manusia dalam konteks

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tradisional Afrika. Cakupan studi ini meliputi analisis tematik hukum adat, keadilan, hierarki sosial, dan ideologi agama yang memungkinkan perlindungan hak individu dan kolektif. Temuan menunjukkan bahwa masyarakat tradisional Afrika menerapkan pemahaman terintegrasi tentang hak dan kewajiban, seringkali memprioritaskan harmoni, keadilan restoratif, dan solidaritas komunal. Kesimpulannya, studi ini berpendapat bahwa pendekatan yang peka terhadap budaya terhadap hak asasi manusia sangat penting dalam menjembatani standar global dengan kondisi lokal di Afrika.

A. INTRODUCTION

Human rights discourse has been shaped in a major part by Western philosophical, legal, and political traditions, notably those of the Enlightenment, international legal processes in the aftermath of World War II, and liberal individualism (Fagan, 2011). Human rights have generally been viewed both as natural and inalienable rights owed to any human being codified in major international documents like the Universal Declaration of Human Rights (1948), the International Covenants, and regional human rights conventions (Antai et al, 2025). This prevailing discourse, by excluding or downplaying the existence and emergence of human rights ideals in cultures outside Western society, in particular in traditional African societies, either intellectually or factually, reinforces a stereotype that identifies human rights with Westernity. Such an articulation not only overlooks cultural diversity in the production and articulation of the aforesaid rights but also under appreciates the contributions of African societies to the promotion of values favorable to human dignity, justice, and happiness in society (Chemhuru, 2018).

This study is motivated by the need to deconstruct and discredit Western-oriented human rights history through tracing their development from a traditional African perspective.

African societies centuries ago, even before colonialism and the imposition of European legal frameworks, already had mature mechanisms, and institutions reflecting the preservation of human life, regulation of social behaviour, administration of justice, and upkeep of harmony in communities (Tchoukou, 2020). Such societies were based on values that, while not cast in formal legal terms of modern human rights legislation, still played similar functions in the preservation of dignity and welfare of individuals and groups. Exploring indigenous values offers a broader and context-based understanding of human rights, and illustrates that the origin of such rights is not a preserve of any single civilization or legal tradition (Agbonika & Igonoh, 2019). The study is thus guided by an inquiry as to what extent did precolonial African societies recognize and enforce principles in tune with contemporary views of human rights, how such rights were defined, protected, and applied in precolonial African societies, what values under-gird precolonial human rights-like practice and how traditional systems complement or enrich the current human rights project in Africa. The principal concern is to explore the philosophical, cultural, and legal bases of human rights in precolonial African societies and untangle their relevance in contemporary efforts towards the construction of a culturally anchored human rights regime in the continent.

The scope of the study is broad, reaching various African societies with particular focus on shared features that characterized their traditional legal frameworks, social hierarchies, mechanisms of resolving disputes, and religious doctrine. Based on analysis of historical and anthropological documents, the study is geared towards extracting patterns and maxims compatible with modern standards of human rights such as the

right to life, protection of property, relations of men and women, communal good, and access to justice. The analysis is not aimed at romanticizing or glorifying traditional practice but at a critical appraisal of their strengths and weaknesses as well as possibilities of incorporation into current human rights frameworks. This study aims to contribute to the growing literature calling for decolonizing and diversifying human rights discourse, claiming that Africa is endowed with a rich tradition of indigenous thinking that cannot be excluded from the global discourse on human rights.

B. LITERATURE REVIEW

Conceptual and Theoretical Framework

In order to comparatively explore the development of human rights from the traditional African perspective, one first must establish a coherent conceptual framework underpinning the analysis. Human rights are commonly understood as certain inherent, inalienable, and universal entitlements that belong to every person as a consequence of their common human condition. These rights are often affirmed and protected by national, regional, and international laws and treaties covering civil, political, economic, social, and cultural rights. Yet even while congruent with the dominant Western legal and philosophical tradition, this definition is susceptible to interpretive flexibility, most notably in consideration of non-Western cultural and historical frames of reference (Antai et al, 2025).

The universalist-cultural relativist debate provides context to this study. Universalism is the school of thought that holds that human rights are global and cross-cultural and apply equally to everyone, regardless of cultural, religious, or regional diversities (Antai, 2024). This is the tone of major international human rights documents like the Universal Declaration on Human Rights that affirm equal and inalienable rights of everyone in the human family. Cultural relativism is the school of thought that holds that human rights should be interpreted in the specific cultural, social, and historical frameworks of a range of communities (Ibhawoh, 2001). Detractors of this school argue that no single culture can lay a claim to the definition of dignity and that an insistence on Western-based human rights standards in non-Western communities would likely have the consequence of devaluing local values and traditions. This challenge is compounded in the African context, where colonial pasts and post-colonial legal orders regularly transplanted foreign legal orders that ignored or devalued local norms and systems of justice. In this context, the traditional African perspective offers a culturally rooted and historically augmented understanding of human rights against a discourse of their exclusively Western origin (Ikuenobe, 2018).

The term "traditional" in African social-cultural discourse is employed in relation to precolonial institutions of power, social structure, control of law, and moral concern based on indigenous African society's beliefs, customary laws, and practice. Such traditional institutions were not monolithic or static but dynamic adaptive bodies responsive to the agenda of the society and held together by a shared ethic of responsibility, reciprocity, and respect (Mengisteab, 2019). This is undergirded by a sense of person-hood and community in this traditional African worldview that is different from the Western theory of human rights' focus on individualism. In most traditional African cultures, the self is not imagined in isolation from the collective but rather as a relational self whose well-being and existence are tied to the collective. Ubuntu philosophy, found in most Southern African societies, summarizes this in the phrase "I am because we are" (Breems, 2016). Ubuntu is a philosophy of interconnectedness, respect, and shared humanness, and of people's discovery of their

rights through their relationships with one another. Orientation towards the collective implies the existence of a regime of responsibility-based, duty-based, and concord-driven rights, in contrast to the assertion of entitlements of the self against the state or against another (Nicolaidis, 2022). Moreover, in the African traditional philosophy, person-hood is believed to be acquired by proper behaviour, membership of society, and obedience to mutual responsibility (Molefe, 2020). This parity for restorative justice, consensus decision-making, and protection of the weak within society, such as the children, women and aged, speaks to the natural balance of the values of care, justice, and comity towards our fellow humans. These values underpinned the normative standards of traditional governance and justice frameworks that protected members of society's dignity and rights, even where not in codified legalistic terms. Consequently, the theoretical framework employed in this research recognizes that while the discourse of human rights did not feature in pre-modern African societies, those societies operated according to normative ideals that protected human dignity, justice, and social good. Through an analysis of those ideals and the values upon which those ideals were based, this research makes a contribution towards a cosmopolitan and pluralistic theory of human rights that accommodates Africa's philosophical and historical contribution to the international human rights discourse.

Human Rights Beyond Western Liberalism: African Perspectives and Scholarly Debates

Human rights thought has long been dominated by a Western-centric explanation locating the origin and evolution of human rights in Western legal and philosophical traditions, often emphasizing the period surrounding the Enlightenment, the French and American revolutions, and the progress after World War II. Ikuenobe (2018), Bonnet (2015), Penna & Campbell (1998) are of the view that western liberalism's understanding of the universality of human rights, human rights being rational, individualistic entitlements applicable in any polity. This Western construction of human rights has dominated most of international human rights discourse and institutional structure. This explanatory framework is, however, criticized widely today in as much as it marginalizes visions of human dignity and justice based on non-Western traditions, such as those originating in Africa. Makau Mutua, Abdullahi An-Na'im, and Kwasi Wiredu have challenged the assumption that human rights are a Western creation and argued in their place that indigenous value systems and legal traditions that promoted human well-being in non-Western cultural environments be recognized. Makau Mutua (2001) critiques in particular the "savage-victim-savior" metaphor that is seen in much Western human rights discourse, seeing Africa a passive recipient of Western salvation with respect to human rights, ignoring the resources of the continent towards the values of mutual respect, justice, and dignity. Abdullahi An-Na'im (2021) articulates a case of an internal cultural legitimacy of human rights through an argument that the long-term protection of human rights in Africa requires anchoring them in local traditions and belief systems. Kwasi Wiredu's work in African moral philosophy, on the other hand, puts a focus on communalism, consensus, and harmony as intrinsic moral values contradicting the Western human rights tradition of individualistic assumptions (Eze & Metz 2015).

Anthropologists and historians have also made a contribution to this literature through recording traditional legal systems, oral traditions, and mechanisms of resolving disputes in various African societies in the interest of justice, life, and social order. Works of such scholars as Kariuki (2015), Ajayi & Buhari (2014) have illustrated how African

traditional institutions such as councils of elders, kinship, and rites of passage served crucial roles in the protection of weaker members and resolving disputes based on restorative justice rather than retributive justice. These traditional institutions were de-emphasized or dismantled under colonial occupation, and indigenous systems are thus marginalized in contemporary legal discourse and human rights discourse.

Although African scholars are becoming ever more vocal in human rights research, the most significant gap is still in systematically documenting the precolonial African societies' evolution of human rights and explaining how such societies themselves theorized and practiced values congruent with current human rights. Recent literature are either focused on Western hegemony in human rights discourse or offers philosophical conceptualizations of African values short of fully engaging historical, legal, and anthropological data to construct an indigenous human rights history. In addition, most research have not fully stressed the specificity and diversity of practice among different African people, reducing "traditional Africa" to a monolithic entity.

The purpose of this study is to fill this lacuna with an interdisciplinary in-depth analysis of the historical development of human rights from the traditional African experience. It integrates the study of doctrine in law with historical and anthropological methods in investigating how human dignity, social justice, and collective well-being were instantiated in traditional African institutions.

C. RESEARCH METHOD

This research is dominantly a library-based research and adopted a doctrinal method which is appropriate for investigating law, culture, and philosophy that is firmly entrenched in historical and normative traditions. The doctrinal aspect studies extant literature; primary and secondary data which are interpreted and analyzed to determine the evolution and manifestation of human rights values in Africa's traditional communities. It involves a systematic analysis of indigenous customary laws, oral traditions and social practices that governed human conduct and the safety of the society before the introduction of colonization and formal laws.

D. RESULTS AND DISCUSSION

Historical Overview of African Traditional Societies

Traditional African societies were based on normative structures of social organization and social government, and through which the source of the regulation of conduct, the preservation of social order, and the enhancement of human dignity predated Western models of law and colonialism (Udokang, 2014). They were based on kinship ties, clans, and ethnicity, and government was extremely decentralized and an integral part of the people's cultural and religious life. Chiefs, elders, and local meetings were central to social structure, and both moral and political authority lay in their hands. Chiefs were often custodians of customary law and were believed to exercise authority through descent from ancestors, religious blessing, and the will of the people. Chiefs oversaw issues of government, justice, and welfare in consultation with councils of elders, who advised, provided historical context, and adjudicatory wisdom (Osborn. 2020). These councils made decision-making collective and participatory, and this reflected the underlying principle of consensus in Africa, where communal harmony and avoidance of contentiousness were valued over adversary resolution. This system of governance through consensus was most crucial in resolving disputes, where restorative over retributive methods were preferred. Justice here was less about punishing the

perpetrator and more about repairing relationships, healing the community, and reintegrating the perpetrator. Restitution and reconciliation were prioritized in the theft scenario over physical punishment or imprisonment. Perpetrators were led to confess, apologize, and seek restitution through measures that reaffirmed social relationships and supported communal values. This represented a serious investment in the maintenance of human dignity in the aftermath of wrongdoing and a mature understanding of justice in keeping with models of restorative justice today (Oko Elechi, et al, 2010).

The normative orders of African traditional societies were also supported by a rich network of values, moral expectations, and traditions that controlled individuals' and groups' behavior. Those orders were based on the protection of life, property, dignity, and the family. Life was sacred, with taboos and rituals aimed at preventing injury and enhancing the well-being of everyone in the society (Mafumbate, 2019). Dignity had a strong connection with the status in society and in the family, and individuals were respected not only in terms of their own humanness but also in terms of their contribution to communal well-being. Rights in property, although most often communal as opposed to individualistic, were respected and protected by customary standards that assured equitable access to the land and resources, with a particular reference to the family and future generations (Ikuenobe, 2018). The family, being the backbone of society, was the central site of moral upbringing, socialization, and mutual support. In the kinship system, individuals had well-established responsibilities and roles that created interdependence and collective responsibility. Parents, elders, and community leaders were to provide guidance and protection, and younger members had the responsibility to provide respect, obedience, and service to society (Killsback, 2019). Sex roles, even while sometimes stratified, had complementary responsibilities that insured the existence and security of society. Women were at the center of child development, subsistence production, and peace-making, while external representation and protection were often the responsibility of men (Gillis, 2019). In Akan in Ghana, women held significant social and political power, specifically in matrilineal descent where succession and inheritance followed through a line of women. Queen mothers (ohemaa) often counseled chiefs and were custodians of public morality and social justice. Women had recognized roles in mediation of conflict and collective well-being (Owusu-Mensah et al, 2015). In South African Lovedu, women's authority had been institutionalized in the Rain Queen figure, a fertility, peace, and stability metaphor (Pim, 1944). In relation to children, in Nigeria's Igbo, the shared responsibility of society in nurturing and defending the young was acknowledged. Abuse, neglect, or exploitation of children was anathema, and guardianship might be delegated over the extended family to enable well-being (Okafor, 2003). Justice and right hearing lay at the center of traditional African societies' jurisdiction in disputes and this tended to be in the form of public, consensus-based forums. A good example is the conventional form taken by the form of the Kgotla system amongst the Tswana people in Botswana, whereby members of society, regardless of status, were free to bring cases before the chief and council. It was open, participatory, and reconciliatory rather than punitive (Werbner & Werbner, 2020). In much the same way, in the Somali clans, the xeer system was an unwritten code of law and social convention, drafted by elders and based on negotiation, compensation, and public consensus. These methods of social justice prioritized the right to be heard, proportionality in the resolution of disputes, and the restoration of criminals to society (Abdile, 2012). These roles were not strict, however, and varied in different societies, a reflection of African traditional societies' diversity and flexibility. Furthermore,

traditional African societies are characterized by an organic and harmony-based system of values that protected human dignity and promoted social justice. These systems were not so much articulating human rights in the discourse of contemporary legal documents but embedding justice, responsibility, and respect values that are understandable in the underlying ideals of human rights today. From a study of the historical traditions and institutions here analyzed, the existence of rich and complex African traditions of protection of human rights is witnessed in refutation of the myth of human rights being a Western world creation.

The historical experience of African traditional societies offers lessons in indigenous systems that maintained human dignity, regulated social conduct, and achieved justice long prior to colonialism or modern day human rights regimes. Such societies, ethnically and culturally diverse, were marked by extraordinarily homogeneous governance, social structure, and values. A decentralized form of authority lay at the center of most traditional African societies in which collective governance and participatory decision-making held sway. In the Igbo of southeast Nigeria, for instance, "Igbo democracy" focused on village meetings (*ama ala*) in which elderly men, title holders, and household heads discussed public affairs through consensus (Ezenwoko & Osagie, 2014). There existed no paramount ruler but diffused authority and decisions based on ideals of equity and collective good. In a similar fashion, the Ashanti kingdom of modern day Ghana combined a monarchical center with an assembly of household heads and elders exercising a check on the power of the Asantehene, institutionalizing a tradition of accountability based on usage and tradition (Galizzi & Abotsi, 2011). On a justice and reconciliation level, African traditional communities employed quite extensively restorative rather than punitive methods. Rwanda's Gacaca system, only recently resuscitated after genocide but pre-colonial in origin, comprised public hearings presided over by senior elders and attended by members of the populace to hear local disputes. Its purpose was not punishment but the mending of breaches in communal life through disclosure, restitution, and reconciliation (Doughty, 2015). This is not much different from the traditional Xhosa and Zulu customary concept of *indaba* in parts of Southern Africa, where open-air committees were held to air disputes and reach friendly agreements under the supervision of chiefs and senior clan members (White, 2015). Such processes had the inbuilt aspect of sustaining dignity at an individual level while enhancing collective well-being with a focus towards reintegration rather than isolation of offenders. Social organization in most African communities placed high esteem on kinship and age-grade systems that organized social tasks and guaranteed a measure of social security. In southwest Nigeria Yoruba, *omo ilu* (child of the town) referred to the collective responsibility of the town towards the well-being and moral upbringing of any child regardless of biological parentage (Moloye, 1999). Age-grade societies such as Masaba of Mali or Ekpe society in the Efik and the Ibibio of Nigeria were not only a tool of social control but a source of mutual assistance, communal labor, and moral instruction, and thus guaranteed social and economic entitlements through indigenous solidarity frameworks (Offiong, 1984).

With reference to property and economic rights, the people held the land but under usufruct rights of use, cultivate, and bequeath land in a line of descent. In the Baganda in Uganda, for instance, the land (*ebibanja*) belonged to the clan but was allocated by the Kabaka (King), with tight controls over inheritance and use that assured security of holding and prevented beggary (Shipton, 2006). This was also practiced in Shona of Zimbabwe and the Luo of Kenya, where access to the land was through elders in the descent and disputes were settled by the elders (Odenyo, 1973). Such a system, although

not in writing, was complex and based on tradition, where infringement of such an arrangement was not merely a wrong in law but a moral wrong. Social norms and entitlements were supported by moral and spiritual codes, too. Belief in a world of ancestors and in divine retribution had a fine check on abuse of power or disrespect towards social norms. In Akan society, stool power had a spiritual/political character, bridging the world of the living to ancestors and symbolizing the moral responsibility of rulers to rule justly (Ampene, 2021). Similarly, in most African cosmologies, Ma'at (in Egypt) or Rta (among the people of Mali, the Dogon) symbolized justice, order, and verity values securely rooted in governmental practice and social expectation (Ferguson & Ferguson, 2016). These examples demonstrate that African traditional societies, far from being legally codified in the Western legal sense, had in place advanced systems that assured protection of life, dignity, property, and participation. They operated in a moral world regulated by communal consent, spiritual responsibility, and inter-generational reciprocation. Far from being devoid of human values of human rights, therefore, such societies embodied them in culturally particularized expressions, grounded in their sociopolitical and spiritual institutions. History, therefore, reveals that human rights were not foreign to Africa, but in a particularized form existed in its traditions, institutions, and lived practice.

Human Rights Principles in Traditional African Societies

Traditional African communities enjoyed a rich web of norms of human rights that, while phrased in different language from modern Western legal codes, still manifested a profound preoccupation with the preservation of human dignity and public well-being. A right of life and bodily integrity was fundamental and well protected by a variety of taboos, conventions, and normative exclusions against arbitrary taking of life, injury to the person, and conduct harmful to the well-being of the self. Human life in most communities was sacred, and this regard is manifested in religious beliefs linking the world of the living and the ancestors and the cosmos (Cole, 2016). Such religious underpinnings of social norms inhibited violence and drew the collectivity in to the bodily security of the member. Where injury occurred, institutions intervened not only to compensate injury but to heal through compensation and ritual cleansing, indicating the seesaw relationship of bodily integrity and social harmony (Baines, 2010). Women and children's rights had been defined in traditional African societies in the framework of the society's social and kinship organization, where security and well-established roles assisted in adding to communal cohesion. Women were held in respect as life-givers, keepers of tradition, and central figures in social and family continuity. Women had their dignity, marriage, and social status protected by traditions and had considerable power in most societies exerted through women's age sets of women, councils, or religious roles. Children were regarded as community jewels, educated and protected by the society and the extended family (Okeke, 2000). Yet a closer look reveals that gender constraints did exist, in the sense that most of the traditional societies had patriarchally structured communities where women's rights were often truncated by authority from men and legal personality held in male kin. Though those constraints were in accord with the cultural values of the time period, recall should be taken that African traditions had been multicultural and dynamic, and some of those had accorded women a great amount of autonomy and social authority, defying oversimplified characterizations of men's and women's roles.

Justice and fairness in hearing were intrinsic values established in customary processes of resolving disputes that were transparent, participatory and reconciliatory. Disputes were settled in regular public forums in which parties were given a hearing before a council of elders or a public assembly. Stress is laid upon reconciliation of relations rather than enforcing one's rights or punishing the offender. Hearings in open air were conducted in a manner that promoted accountability and public participation and were decided in reference to canons of justice, equity, and deference to the social order. Use of restorative justice forums, like mediation, compensation, and ritual reconciliation, stressed the society's concern with social harmony and reform of offenders, thus differentiating traditional African justice from adversary models (Chukwudebelu, 2024). Social solidarity and welfare, were a characteristic of traditional African societies in the form of powerful social support networks and social safety nets. Kinship ties, age-based graded societies, and mutual assistance societies constructed orderly networks of responsibility and care so that the most vulnerable members of society, such as the aged, orphans, widows, and the disabled, were taken care of and looked after. Such networks created a sense of powerful collective responsibility and interdependence under which individuals contributed to the well-being of another and, in exchange, anticipated care in the event of need. Such a spirit of social solidarity in the community strengthened social cohesion and played a cushioning role against social and economic hardships and represented a holistic vision of human rights that integrated social, economic, and cultural concerns in life. Together, such principles illustrate that traditional African societies had developed elaborate normative norms of protection of cardinal human rights which were embedded in social structure. Differentially formulated though in terms of Western human rights discourse, they are an articulation of concerns universally held for life, dignity, justice, and social well-being and refer to the necessity of accepting Africa's indigenous contribution towards the historical development of human rights (Antai et al, 2024).

In examining human rights values in traditional African societies, it appears that despite the fact that African societies did not encapsulate rights in written legal documents like modern international human rights documents, they still advanced cardinal human rights values through internalized standards, moral values, and social responsibilities. In most African societies, most notably perhaps, the right to life and bodily integrity were a prime value that was guaranteed through taboos, spiritual sanctions, and social sanctions. In the case of the Tiv people of central Nigeria, for example, murder not only remained a criminal offense but a sacrilegious offense that disrupted the social and spiritual balance of the society. Criminals were subjected to rites of purification and restitution payments, in most cases under the watch of elders or religious controllers, with a view to re-establishing balance rather than revenge (Ortuño Aix, 2021). Similarly, in the case of the Shona people of Zimbabwe, the spilling of innocent blood provoked the wrath of the ancestral spirits, and the people demanded restitution and rites of purification to avert calamity (Magezi & Myambo, 2011). Such values were an effective deterrence against arbitrary violence and instilled respect for human life. The right to property, even in various articulation of the Western idea of private property, was guaranteed through communal and lineage-based arrangements of holding onto the soil. In most African societies, such as the Kikuyu of Kenya, the soil belonged to the clan but was allocated to individuals or households under use based on traditional entitlements (Bunche, 1941). This established a fair access to resources and protected individuals most notably widows and orphans from dispossession. Disputes over the soil were resolved in the household or by the elders, and this promoted equity without

recourse to formal court proceedings. The Guinea-Bissau Balanta, to illustrate, enjoyed usufruct rights whereby a plot of cultivation land was assured to each household so long as it remained in productive use, as a reinforcement of social solidarity and economic entitlements (Temudo, 2017).

Social solidarity and social welfare were also profound values of human rights in African communal life. In the Igbo, the age-grade system allowed members in a particular age grade to support one another in agricultural work, in the construction of their homes, and in the establishment of communal enterprises, thereby reducing the risk of exposure to injury faced by individuals (Ndukwe, 2015). In the Ethiopian Oromo social structure, the gada system organized society in age sets with rotation in governance functions and provision in social inclusion, education, and welfare. In times of famine or illness, members pooled resources to allow needy members to recover, thereby entrenching social protection through customary practice (Hinew, 2013). In sum, the illustrations here demonstrate that traditional African societies in spite of their diversity were established on pillars that protected human dignity, life, and property, guaranteed justice, and promoted social welfare. They were established not on the articulation of a language of rights but in practice supported by obligations, values, and collective responsibility. Through rediscovery and critical analysis of such indigenous social technologies, current discourse on human rights can be strengthened by models that are culturally resonant and recognize the African contribution to the international human rights tradition.

Influence of Religion and Spirituality

Religion and spirituality played a significant role in forming and implementing human rights norms. At the heart of this religious world-view was the cult of the ancestors, enshrining the community's values and standards in the continuing role of the ancestors in guiding and inspiring their descendants. The ancestors were not simply deceased ancestors but living, active guardians of the moral order, intercessors in the human relation to the spiritual world, and guardians of well-being in the society. Such a cult had a practical function of imposing a workable social control, inasmuch as the rights and duties of individuals were placed in a web of mutual relations, not simply people with people but vertically to ancestors and God (Mekoa, 2019). Disregard, injury, or injustice to people, was perceived to disturb the relation of the material and the spiritual, and thus to bring ill fortune from ancestors, calamity, or even communal calamity. Compliance with moral norms defending life, property, dignity, and peace in society, on the contrary, was supposed to appease ancestors and to restore cosmic equilibrium. God's law, conveyed through oral traditions, proverbs, rituals, and sacred deeds, operated in precolonial African societies as an awe-inspiring normative principle of conduct. God's law stood in place of human institutions and did not change, was equitable, and had a holistic reach. God's law underlay customary norms and made their violation a social but even a spiritual transgression punishable in terms of sanctions greater than those on earth. Illustratively, taboos against murder, theft, or adultery had a religious ritual and sanction root, and sanction took a form of ritual purgation, sacrifice, or exclusion from communal life until reconciliation. This union of religion and law yielded a legal framework where justice is administered knowing that whatever individuals did carried religious consequences, thus the protection of people's rights became a religious imperative (Nhlapo, 2017).

Moreover, in precolonial African societies, rights and duties were framed in terms of spiritual balance and cosmological balance, emphasizing interdependency of beings—

human, ancestral, natural, and supernatural. Every being found himself in a delicate web of relations that maintained not only social structure but also the cosmos. Exercise of the right, therefore, could not be separated from discharge of duties to kinship, society, and spiritual beings. Discharge of responsibility had to maintain balance and prevent chaos, disease, or calamity to be inflicted upon individuals and the people. Such a world of relations bequeathed a responsibility to be moral that went beyond legal conformity and implicated ethics of life in accordance with spiritual teachings. In this way, human rights were abstract entitlements but anchored in the practice of living together in communal life, spirituality, and respect for the sacred order. Such a deeper contribution by religion and spirituality then underlines the indivisibility of human rights from the cultural and metaphysical contexts in and through which in Africa human rights initially were codified (Antai, 2004). Such an acceptance of a spiritual root challenges Occidental-centric legalistic visions of human rights and promotes closer attention to indigenous African contributions entangling moral, social, and cosmological realms of human dignity and *communitas*. Such a vision enriches the discourse of human rights today by underlining the richness of holistic visions deferential to material and spiritual sources of human dignity and *communitas*. In traditional African societies, religion and spirituality were not divorced from everyday life but an organic part of social, civic, and juridical institutions, richly informing construction and practice of social structure and agency called the construction and practice of human rights today. Such societies were religious, believing that the act of individuals and society in general had to endure constant scrutiny and judgment by a pantheon of deities, ancestral beings, and celestial forces. Rights and duties were therefore not merely social norms but divine commands based on spiritual harmony and public morality. In the Yoruba in Nigeria, for example, the concept of *àṣẹ* (divine authority) and *orí* (spiritual inner head or destiny) emphasized the sacred nature of every human life and society's role to preserve that sacred nature. Neglect of the dignity or welfare of another human being was therefore not merely a social vice but a spiritual one that would lead to calamity upon the offender and potentially in the entire society (Lawal, 1985).

Ancestor veneration in most African communities served as a moral compass and enforcement agency of communal norms. In Baganda of Uganda, *balubaale* (ancestral beings) were reputed to ensure communal well-being and mete justice in behalf of the aggrieved. Profanation of life, of earth, or of harmony in the community amounted to a violation of ancestral desire, necessitating ritual expiation and communal restorative justice (Sekagya, 2024). In Shona of Zimbabwe, *vadzimu* (ancestors) played an active role in communal moral and spiritual life. Injustice, particularly against the weak members of society such as widows, orphans, or the elderly, or against those in a subordinate position in the social network such as slaves or hired workers, called forth the ire of the ancestors in the form of famine, pestilence, or communal warfare. Not only social justice, but abuse and exploitation too were kept in check by this system. Spirituality also supported the expectation of equilibrium and reciprocity in relations (Masaka, 2013). In Dogon of Mali, moral order was guaranteed by cosmological law of *nyama*—a principle of life whose disruption by immorality had to be purified and rebalanced. Harmony of cosmology, communal life, and human existence had to be paramount, and human conduct had to be in tune with this equilibrium (Dieterlen, 1976). Such transgressions such as theft, treachery, or foul dealing were thus a disturbance of this harmony and had to be repaired not merely by social sanction but by ritual, sacrifice, and communal healing. In Nuer of South Sudan, religious specialists and mediumship played a central role in resolving disputes, invoking the divine in conducting justice and healing. The principle of harmony

of the spiritual also found articulation in the interrelatedness of the environment, the divine, and human conduct (Hutchinson, & Pendle, 2015). Land in most African cosmologies, including Basotho cosmology in Lesotho, was considered sacred, and abuse or ill-use of it would ritually defile the society. Disputes or misuse of nature were not merely economic or political issues but religious issues that had to be solved ritually. Such religious conceptualization of property rights maintained the value of collective ownership and management and promoted sustainability and justice (Rakotsoane, 2009).

Moreover, traditional initiation rites uniformly entailed spiritual and moral teaching, imparting the bases of responsibility in society. In Kenya's and Tanzania's Maasai, initiation to manhood entailed hard work in roles in relation to the society, reverence to elders, herding cattle, and protection of the weak, mores characterized as divine obligations. Such transgressions of values by initiates incurred both social censure and religious sanctions, an indication of the religious underpinning of morality standards and law (Voshaar, 1979). The religion and spirituality in traditional African communities had the twofold function of being both the source and the warrantor of standards in human rights, but under a system quite different from the secular legal framework in the world today. Such communities had no written constitutions or decrees to ensure moral conduct; instead, omnipresent spiritual law, ancestors' vigilance, and world harmony were potent tools of protection of human dignity, justice, and cohesion of the society. Such a spiritually rooted system assured not merely willing compliance but enforcement through the collectivity, further enhancing cohesion and traditional African communities' moral fiber.

Impact of Colonialism and Western Human Rights Ideals

The colonial influence on Africa's historical construction of human rights was profound and revolutionary, including the systematic disruption of long-standing indigenous orders governing social order, justice, and human dignity. Western legal tradition and institutions were transplanted by the colonial powers, generally dismissing African customary laws, customs, and governance as primitive or illegitimate. In a number of ways, the imposition was legalistic but also profoundly cultural and ideational, reflecting a broad colonial ideology that imagined Western civilization to be superior and universal, and that excluded and devalued African epistemologies and normative orders. The indigenous orders of governance, having secured an effective control of rights through communal consensus, restorative justice, and religious authority, were replaced by transplanted models based on centralized government power, codified laws, and legal rights of individuals experienced in European societies (Antai & Aidonojie, 2024). The imposition had a tendency of ignoring social realities, values, and African priorities and alienating the people from their traditional institutions, destroying the social fabric that reproduced communal life. During the post-colonial period, most African countries had inherited constitutions and legal orders heavily influenced by colonial powers. Even if constitutions generally featured international human rights instruments and formally made guarantees of protection of rights, they proceeded largely to ignore or exclude rich human rights traditions in customary law and communal practice. Thus, a tension lay in fact at a fundamental level between transplanted Western legal orders and indigenous African legal consciousness (Antai et al, 2024). Post-colonial legal orders systematically promoted individualized rights in a manner that tended to violate communitarian values

in African societies. Such marginalization is exemplified in the failure to recognize or formally accommodate customary law in national constitutions and laws so that traditional systems laid themselves open to neglect and legal insecurity. In addition, hegemony of Western discourse on rights in politics and academe sometimes operated to encourage a misleading impression that African cultures had insufficient understanding or vision of rights, thus enforcing the cultural denigration of the colonial period. A root source of tension arising from such a process is an essential divergence of African communalism and Western individualism. Conceptions of persons and of rights in traditional Africa are relational and collective in structure, centering on responsibilities, interdependence, and the good of the collective or the entire people. Rights are imagined in terms of social roles and duties, in which individuals' good cannot be separated from that of the well-being and harmony of the family, clan, or ethnicity. Western human-right principles are made a bunch of liberal politics which concentrate the normative requirements of autonomy, personal freedom and equality before the law of socially neutral, general and transcending all circumstances norms. This disconnect has been the subject of perennial debate on the universalist and applicability of Western-styled human rights in Africa, with critics claiming that the enforcement of human rights of the liberal kind erodes social harmony, clan loyalty and incompatible with the African way of life. Others believe that the imposition of universal human rights norms is necessary in order to guarantee personal freedom and to protect oppressed groups, particularly women and minorities, in African societies (Cobbah, 1987).

The colonial interlude and consequent imposition of Western models of human rights thus left a complex and often contentious heritage for the development of human rights in Africa. In spite of the progress brought by international human rights law, marginalization of traditional African models of approach to rights at the expense of indigenous tradition has created tension in balancing customary and modern statutory law. This tension challenges a critical revision of human rights thinking to embrace a pluralistic and contextual model that accommodates the legitimacy and authority of indigenous African models. Mediating communal and individual rights, customary and written law, African societies can visualize human right regimes that are contextually authentic and internationally applicable, enhancing justice, dignity, and social harmony in the post-colonial world (Ibhawoh, 2023). The colonial encounter and imposition of Western models of human rights in precolonial African societies were a radical disruption of indigenous governance, law, and communal values that had, over centuries, organized African societies in terms of a unique internal logic and moral hierarchy. In addition to a disruption of political sovereignty, colonial intrusion disrupted also the spiritual and cultural processes by which African societies conceptualized justice, dignity, and communal responsibility. A prime example is the British colonization of Nigeria, where indirect rule reconfigured the traditional chiefs' status from keepers of communal harmony and moral responsibility to colonial surrogates imposing foreign administrative codes. It disrupted, in essence, the indigenous justice systems that had until then been based on restorative justice principles and spiritual accountability. Customary courts that had functioned on deliberation, consensus, and reconciliation through symbols were pushed to the periphery or usurped, as English common law replaced indigenous jurisprudence and diminished the latter to primitive or irrational status (Vaughan, 2000).

In Kenya, the imposition of colonial legal and political institutions in the colonial period also disestablished the Gikuyu age-grade rule and system of communal land tenure. Imperial ordinances expropriated vast areas of ancestral land in the name of legal acquisition and ignored the customary attachments of the land to lineage, ancestors, and

religious affiliation (Land, 2006). Dislocation physically disfranchised people but also destroyed the religious and moral nexus of the Gikuyu society. Western property law elevated individual ownership and alienability at the expense of African communal norms of long-term stewardship-based holding of the land. Institution of a court system based on codified statutes over oral tradition and communal mediation processes further worked in reducing traditional processes of resolving disputes that were context-based, cultural, and conciliatory in value. Another case in point is Belgian colonialism in Rwanda, in which colonial powers legalized and manipulated Hutu and Tutsi identities in ways that intensified social cleavages and undermined indigenous political institutions. While pre-colonial Rwandan society was stratified in any case, it contained fluidity and a sense of mutual responsibility based upon the traditional system of *ubuhake*, balancing power with responsibility, colonial rule remade those institutions through radicalized hierarchies and enforced top-down reforms in a preference for minority dominance and debilitation of traditional checks and balances (Mayersen, 2011). It remade not merely governance but also planted seeds of colossal injustice that erupted in the 1994 genocide. Rwandan people's legal and moral codes, hitherto instilled in spiritual and communal values, were replaced by bureaucracy in a world where legitimacy or cultural relevancy were withheld. In South Africa, the apartheid regime legalized an odious Western legal positivism that utterly deprived the black majority people of their humanness, dignity, and property in the soil. Pre-colonial African justice platforms and communal entitlements were forbidden or made anachronistic under a radicalized legal regime denying even menial freedoms even to non-white citizens. Dispossession of property, forced removals, and exclusion from politics occurred in the name of legality, testifying to how Western discourse on human rights were selectively mobilized to legitimize quasi-naturalized dominance rather than empowering native people. It only was with the collapse of apartheid in 1994 and the adoption of the 1996 South African Constitution—sunique in adopting Ubuntu philosophy in formulating an understanding of dignity, equality, and reconciliation—that the country set about reintroducing traditional African values to human rights discourse (Thomas, 2008).

Colonialism marginalized indigenous African philosophies and spirituality, and transplanted models of Eurocentric rights premised on the supremacy of individual liberty over responsibility to the collective. Transplanted models of colonial law were premised on written code, adversary process, and retributive justice, foreign to most African societies that valued oral cultures, social cohesion, and restoration of morality. Also transplanted were colonial legal models in most African states that bequeathed constitutions where precolonial indigenous precepts had been marginalized in favor of Western blueprints of governance and human rights. Such colonial legal reproduction, sometimes described as “legal transplant,” created a disconnect between the law and social life in African societies. Such a tug-of-war is being played out in today's challenges in applying human rights in Africa. Where international human rights law prioritizes liberty of the individual, traditional African thinking prioritizes responsibility to the collective and relational persons. Such a difference in ontology made direct transplantation of Western models of human rights contentious and sometimes ineffective in addressing the sociocultural realities in African societies. Transplantation of foreign legal norms not only delegitimized indigenous knowledge systems but also filled the vacuum with a crisis of moral authority, leading to a crisis of legal pluralism and identity in most post-colonial African states. It is not only in the physical and economic domination of African people that the colonial experience leaves a legacy but in the

epistemic violence that devalued their value system, spiritual understanding, and indigenous concept of justice and dignity. Restoration of the classical African human rights tradition thus calls not only for historical recovery but also a critical analysis of colonial legacies that continue to shape legal thinking and institutions in Africa today (Kuwali, 2014).

Contemporary Relevance and Reclaiming African Traditions

Today in Africa, there is a growing awareness of synthesizing indigenous legal principles and traditional values with modern human rights models in a bid to redress the historic marginalization of African customary institutions and secure culturally responsive justice and protection of rights models. Such synthesis appears in the codifying and adoption of the African Charter on Human and Peoples' Rights (ACHPR), whose codification and adoption, in contrast with most Western-authored human rights documents, openly acknowledges the collective aspect of the rights and the priority of community and social responsibility. The Charter embodies the essence of key African values by acknowledging not merely individuals' rights but peoples' interests, including the right to self-determination, development, and preservation of culture. Its preambular and articles reflect a realization that human dignity and human rights are based on individuals' freedom and people's solidarity and thus presents a framework that accommodates the reconciliation of international human rights standards with indigenous African sociocultural factors. Such an instrument is a deliberate effort to reclaim and institutionalize African voices in the international human rights regime in the name of an accommodative discourse that leaves room for traditional and modern constitutive models to human rights.

Parallel to legal and institutional development, renewed prominence and acknowledgment of indigenous justice mechanisms in several African countries demonstrate that traditional justice is still alive and active in solving disputes and delivering justice in terms understandable to people in their own cultures. Rwanda's Gacaca courts are an example of a massive grassroots effort to process the effects of genocide through restorative justice, reconciliation, and active participation by communities themselves. The courts drew heavily from the customary methods of resolving disputes, emphasizing public hearing, collective responsibility, and healing over punitive vengeance alone (Musengimana, 2025). Similarly, the Acholi people's Mato Oput ceremonies in Northern Uganda are examples of indigenous justice mechanisms giving prominence to reconciliation, restitution, and social solidarity over adversary-type trial. Such indigenous mechanisms are valued for their easy accessibility, legitimacy in local cultures, and efficacy in repairing broken-apart communities' trust and thereby complementing formal apparatus of the state's justice and the broader human rights regime. Such examples are indicative of the promise in tapping into traditional African remedies to complement modern-day human rights protection by means of offering effective and culturally responsive alternatives to purely Western models of justice (Turyagenda, 2009).

The recovery of indigenous justice and incorporation of customary values in modern legal orders is part of the widening discussion on cultural legitimacy and African-centric human rights. Such discussion challenges Western paradigmatic hegemonies and demands a pluralistic, contextual understanding of rights responsive to African memories, philosophies, and social formative processes. African scholars, policymakers, and activists now appreciate the need to recover indigenous knowledge and norms as a grounds or foundations supporting human dignity and justice in the continent. Some

scholars argue that human rights cannot be legislated in terms of exogenous, abstract norms but need to be rooted in experienced life and communal experience that provide meanings to the identities and values of the people. Such legitimacy is required to make protection of human rights meaningful, acceptable, and practical in African societies. It further triggers a sense of ownership over societies, increasing their zeal in exercising and defending their rights in terms understandable to their world views. In a word, the rediscovered importance of traditional African human rights principles lies in the fact that they are capable of bridging the gap in-between global human rights norms and local cultural realities, leading to holistic, communal explanations of justice and dignity. Such recoveries and resurrections of such traditions in modern human rights orders prove the dynamism and resilience of African legal cultures, and highlight the need for pluralism in human rights discourse. Through engaging their indigenous heritage, African societies are capable of promoting human rights that are at once authentically African and universally respectful, and therefore contribute towards broader, justice-based, and sustainable social orders (Chemhuru, 2018).

Beyond justice institutions, traditional African values are finding a place in national constitutions and governance models. In the South African Constitution of 1996, the principle of Ubuntu, recognized as a constitutive moral ethic, embodies the belief in human dignity, compassion, and collective obligation. The architect of this is Archbishop Desmond Tutu who was the chairperson of the Truth and Reconciliation Commission (TRC) with Ubuntu as the dominant ethic. Instead of retributive justice, the TRC went for truth and reconciliation, it proposed to grant amnesty if the perpetrators of crimes confessed in public and vowed to rebuild the moral fabric of the society and mend the relations of the people instead of incarcerating ordinary criminals. It was heavily influenced by traditional African values, which are about the restoration of social harmony, not the perpetuation of cycles of revenge (Thomas, 2008).

In Botswana, the long-lasting relevance of the Kgotla system - a traditional gathering of people from a community to discuss matters of collective importance - also shows how traditional institutions can be harmonized with modern democratic standards. . Based on values of inclusion, consensus, and deference to age, decision-making in the Kgotla is through collective deliberation. It is still in use not only in the settlement of disputes but in local politics and government too, and it demonstrates the practical coexistence of contemporary state institutions and traditional values (Osei-Hwedie, B.Z. (2010). These examples are part of a broader phenomenon throughout Africa of a re-appropriation of indigenous traditions not in a wistful mood of grasping the past but in a dynamic sense of a living system responsive to contemporary human rights discourse. Greater focus on models of development based in cultures, non-European models of justice, and welfare systems based in communities is further evidence of a similar dynamic. It is also international organizations such as the African Union and the Pan-African Parliament that have actively supported recognition and incorporation of traditional knowledge systems in addressing issues of governance, development, and human rights. The utility of African traditions in contemporary times, therefore, is not in opposition to global human rights norms but in their enrichment through localized, culturally intelligible frames of thinking responsive to African experience. Recovery of the traditions affirms the legitimacy of African world understandings and makes human rights practice in Africa not merely legally proper but socially applicable and ethically sound. This dynamic synthesis of tradition and modernity offers a model that is attractive to internationalists in an age of globalization.

Challenges and Critiques

Notwithstanding the richness of human rights values in traditional African society, serious challenges and criticisms confront their implementation in modern human rights discourse. Some of the most contentious issues are patriarchal and gender inequality in much of traditional practice and norms. While African communal values prioritize social cohesion, respect, and responsibility, traditional social institutions historically marginalized women and their voices and rights in household and community life. Traditionally allocated roles consistently relegated women to a lower place in decision-making, entitlement to property, and access to justice, entrenching systematic inequalities on grounds of gender. Inheritance laws, child marriage, and segregation of labor according to sex are blamed for entrenching inequality and denying women full enjoyment of their human rights (Bouchama et al, 2018). This creates an ongoing controversy surrounding a balance to be found between respect for cultural tradition on the one hand and the need to ensure international standards of equality of the sexes in international human rights instruments. Critics argue that an unreflective adoption of traditional norms threatens to entrench undesirable practice, while reformists want culturally sensitive but progressive reform designed to empower women without repudiating wholesale African identity. Another intrinsic weakness is a lack of formal codification and writing down of customary human rights norms, even when generally passed on orally and crystallized in practice, but perhaps unclear, incoherent, and not enforceable in line with contemporary standards of law. Flexibility and incoherence of customary laws in different social communities and territories may result in vagueness and multiple meanings, leaving room for abuse and manipulation by power holders in the communities. In the lack of codified rules, enforcement of traditional norms becomes much dependent on the will of elders or local chiefs, leading to arbitrary decisions, discrimination, or injustices, particularly to marginalized communities such as women, children, and minorities. This lack of formal legal protection is an obstacle to codifying in tandem with statutory law and international human rights commitments, concerning issues of protection and control mechanisms. Moreover, the informality of most indigenous justice bodies may be unsuitable compared to modern state legal systems necessitating openness, procedural justice, and guaranteed assurance of rights, so that it is hard to institutionalize and legitimize traditional methods at national and international levels (Pimentel, 2010).

It is these practical difficulties that reflect the wider tensions between universality of human rights and relativism, which is at the center of the current dilemma in the enforcement of human rights in Africa, as well as elsewhere. Universalism has the position that human rights are, and ought to be, up to the same set of inalienable natural rights or a supreme law that is valid everywhere; as opposed to relativism, which denies this. Such concepts include rights that are considered to be automatically universal such as birth rights, and contrasts with other forms of rights, such as human rights, natural rights, common law, positive law, or objective law. Cultural relativism, conversely, holds that human rights must be interpreted and applied in the context of a particular culture, honoring plural social norms, values, and historical experience. It comes to a point of acute tension where African non-Western values and practice appear to deviate from or even violate internationally developed standards of human rights, notably in such contentious areas as a woman's autonomy, freedom of speech, or sexual orientation (Agyeman & Momodu, 2019). Detractors of relativism warn against exploitation or manipulation to justify retention or continue discriminatory or repressive practice, but

relativists respond that monolithic schemes of human rights must necessarily be culturally translatable to particularities or else constitute neocolonial impositions. Mediating this complex dynamic demands sensitive balancing so that cultural legitimacy is not an alibi or rationalization for violation of fundamental human dignity and human rights are not experienced or perceived as foreign or impositions. Overall, then, while indigenous African human rights systems are an endogenous model full of insight and resources for protection, their incorporation into contemporary schemes poses overarching challenges. Overcoming the sexual inequality of women, clarifying responsibility within traditional norms, and resolving the relativist-universalist dilemma continue to be the principal challenges. These challenges underscore the imperative of continuing dialogue, transformation and innovation towards the creation of human rights models which are truly African and at the same time consistent with the principles of justice, equality and dignity that underpin human rights everywhere ((Agyeman & Momodu, 2019)).

The African customary system of human rights, as rich as it is in social harmony, communal values, and moral obligations, by no means is deficient in highly contested issues and criticisms, especially when placed under the scrutiny of contemporary human rights norms. Most persistently criticized, arguably, is the embedding of gender inequality and patriarchal domination within the majority of African customary regimes. For example, in traditional societies, for example among the Igbo of Nigeria and the Kikuyu of Kenya, women have second-class citizenship in governance systems and even in systems of inheriting properties. Even though they played vital food production and childcare roles, women were not included in decision-making bodies like the village assembly or council of elders. Under most traditional laws in place from Western Europe to Asia, women did not have the right to inherit land or property, so they were conditioned to having finances made available to them by a male relative. The Nigerian precedent of *Mojekwu v. Mojekwu* (1997) is one such classic case of this issue. The Nigerian Court of Appeal in this case held the "Oli-Ekpe" custom, which prohibited female inheritance under Igbo customary law, to be discriminatory and incompatible with the current standards of human rights. This judicial encroachment illustrates the conflict between cultural continuity and the universality of gender equality.

Another problem is a lack of codification and formal written legal recording of customary values and norms, rendering them vulnerable to manipulation, inconsistency, and selective enforcement. Unlike written case law or statutes in modern legal frameworks, traditional African law is predominantly oral and highly diversified among communities. This adaptability, while beneficial in certain situations, has the potential for abuse, especially where standardized procedural protection is lacking. For instance, in customary arbitration or local mediation, force is usually on the side of elders or chiefs who may make decisions at their whim, occasionally compromising the right to justice of the individual for the sake of social harmony. In Sudan and Ethiopia, for instance, the traditional institutions such as *Judiaa* or *Shimglina* have been called into question for promoting influential members of a given community to dominate processes of conflict resolution in ways that end up injuring women, minorities, or socially marginalized communities. Also, the communal nature of traditional African societies sometimes clashes with the contemporary human rights emphasis on autonomy and independence of individuals. The prescriptive hierarchy of the collective over the individual in the majority of African societies is bound to lead to repression of dissent or non-conformity (Hameretibeb, 2024). At times, cultural values have been used to justify exclusion or

punishment of individuals whose identity or belief does not conform to the anticipated norms. An apt example is the manner in which LGBTQ+ individuals have been treated in cultural contexts, where traditional beliefs are prone to perceiving non-heteronormative sexualities as taboo. In Uganda, to name one example, cultural and political rhetoric has invoked conventional societal values to dole out legal and social discrimination on the grounds of LGBTQ+ people and result in the Anti-Homosexuality Act. Although behind such discrimination lie complex and also motivated by colonial law and religious conservatism, conventional values have been commandeered to oppose human rights protection on grounds of sexual orientation and gender identity (Antai, 2024).

In addition, the universality-relativism debate poses a theoretical challenge to the incorporation of traditional African values into the worldwide human rights system. Critics, however, argue that it is potentially dangerous to concentrate on cultural localities as one runs the danger of endorsing practices that contradict universally agreed-upon human rights. Female genital mutilation (FGM) is practised in some areas in West, North and East Africa and is often justified on cultural grounds, despite widespread international condemnation of it as an abuse of the rights of girls and women. Efforts to stop such activities are often met with refusal from communities that consider them part of the required facets of cultural identity and cohesion (Slack, 1988). In Senegal, community programs facilitated by Tostan have been effective in reducing FGM by combining human rights education with respect for local custom. At the same time, however, these efforts highlight the tension between promoting rights and being culturally acceptable (Diop & Askew, 2009). These tensions underscore the value of critical dialogue with conventional African systems rather than pie-in-the-sky romanticism. While these systems provide us valuable information regarding precolonial African views of justice, dignity, and social responsibility, they must be challenged and redefined to meet the demands of contemporary human rights. The absence of codified protections, deeply ingrained gender hierarchies, and community-inclined tendencies must be transcended to avoid perpetuating injustice in the interest of cultural authenticity. To reconcile these tensions requires a subtle reply that does not reject traditional values in principle nor accept all of their elements uncritically. Instead, a context-sensitive human rights approach which draws on the African traditions' strengths while adapting their weaknesses can advance more inclusive, more just, and more culturally responsive rights discourse on the continent.

E. CONCLUSION

The history of the development of human rights, as understood through the classical African paradigm, finds that long before the advent of Western legal traditions and international covenants, there were in African societies deeply rooted values upholding human dignity, social justice, and communal responsibility. Contrary to the popular myth of human rights as a Western creation, ancient African cultures retained sophisticated systems of organization, social control, and moral codes that emphasized respect for life, property, justice, and care for each other. These ideals were not necessarily formalized in the technical terminology of rights but were expressed through practices such as restorative justice, communal solidarity, family responsibility, and consensus leadership. The African philosophical concepts of community and person-hood, particularly as filtered through Ubuntu show that human beings were not isolated individuals but were inextricably bound together with others, where rights and obligations emanated from this union. Such a world founded on mutuality and human interdependence necessarily promoted the welfare and dignity of human beings, albeit in the context of collective

solidarity. The research reveals the fact that even while modes and articulations of rights in precolonial Africa differ from the codified, individualistic emphasis of modern international human rights law, they share universal commonalities in their inherent purposes: protecting life, dignifying, advancing justice, and preserving communal peace. This discovery supports the goal for complementarity and not contradiction between traditional African values and modern human rights norms. It asserts that African systems can as sources of rich cultural reservoirs contribute to human rights discourse, providing indigenous forms of understanding justice, reconciliation, and social welfare not found in dominant models of human rights. In a recognition of such systems as authentic and historically rooted expressions of human rights, Africa is able to claim its agency as a co-shaper of a human rights agenda that captures the richness of its specific histories, realities, and aspirations. Rather than wholesale importation of foreign norms, African societies may choose to borrow relevant elements of modern human rights law and synthesize these with their own culture to create a more universal and authentic rights system.

As a result, there exists an urgent need for context-specific, locally based human rights practices in Africa that eschew transplanting Western norms but actively engage African socio-cultural realities. Such practices must include critically examining the weaknesses and strong points of the conventional systems just as much as the need to overhaul those aspects that have perpetuated exclusion or inequality over time, particularly regarding women and marginalized groups. Legal pluralism which recognizes and includes traditional systems along with statutory systems must be pursued, provided with accountability, non-discrimination, and protection of inherent rights. Likewise, human rights education and activism in Africa need to be localized within the languages, idioms, and cultural references of the community so as to facilitate greater acceptance and internalization. As a recommendation, this study proposes that traditional African justice systems be given institutional recognition within national legal orders, as long as they meet basic human rights standards. Policy reforms need to target codification of positive customary practices, investment in capacity development among locals, and promotion of community engagement in the delivery of justice. In addition, pan-regional human rights agencies, such as the African Commission on Human and Peoples' Rights, must provide African-centred human rights discourses that validate indigenous philosophies and experiences. Scholarship and policy debate must also engage further with the interfaces of tradition and modernity so that Africa's human rights narrative is not merely one of past truth but is changing and forward-looking. Finally, reclaiming and revitalizing Africa's human rights heritage is essential to building a more just, culturally relevant, and sustainable human rights system in Africa.

REFERENCES

- Abdile, M. (2012). Customary Dispute Resolution in Somalia. *African Conflict & Peacebuilding Review*, 2, 110 - 87.
- Agbonika, J.A., & Igonoh, J. (2019). Universal Human Rights, Indigenous Values and the Concept of Relativism. *International Journal of Innovative Research and Development*.
- Agyeman, N.K., & Momodu, A. (2019). Universal Human Rights 'Versus' Cultural Relativism: the Mediating Role of Constitutional Rights. *African Journal of Legal Studies*, 12, 23-46.

- Ajayi, A., & Buhari, L.O. (2014). Methods of Conflict Resolution in African Traditional Society. *African Research Review*, 8, 138-157.
- Ampene, K. (2021). Power and Responsibility: Royalty and the Performing Arts in Asante-Ghana. *African Studies Review*, 64, 523 - 546.
- An-Naim AA. Evolution of Founding Vision. In: *Decolonizing Human Rights*. Cambridge University Press; 2021:1-25.
- Antai, G. O, Ashibi, J. E, Ogu, L, Iheanacho, L., & Okpong, D. E (2024). Appraisal of the use of Mediation and Negotiation in Conflict Resolution during Armed Conflicts in East Africa. *IDOSR JOURNAL OF ARTS AND MANAGEMENT* 9(3):31-46. <https://doi.org/10.59298/IDOSRJAM/2024/9.3.3146>
- Antai, G. O, Ekpenisi, C, Okonji, C. I, Kolo, E. A, Okpong, D. E (2025) Balancing National Security and Human Rights: A Critical Analysis of Nigeria's Anti Terrorism Laws. *NIU Journal of Social Science*11 (1), 287-299
- Antai, G. O, Obisesan, O. O, Umo, M. E, Hassan, I, Okpong, D. E (2025) Press Freedom and National Security: The Place of Human Rights in Nigeria's Cybercrime Laws. *NIU Journal of Social Science*11 (1), 301-313
- Antai, G. O. & Aidonojie, P. A. (2024). An examination of the rationale for the law against international crimes. *KIU Interdisciplinary Journal of Humanities and Social Sciences*, 5(2), 212 – 227.
- Antai, G. O. (2024) An Appraisal of the Historical Development of the African Response to Extradition. *Newport International Journal of Current Research in Humanities and Social Sciences*, 4(3). 27-35. Retrieved from <<https://doi.org/10.59298/NIJCRHSS/2024/4.3.2735>>.
- Antai, G. O. (2024). Universality versus Cultural relativism in International Human Rights: A Case Study of the Anti-Homosexuality Act of Uganda 2023. *IAA Journal of Management* 11(2):1-14. <https://doi.org/10.59298/IAAJAM/2024/112.11400.00>
- Antai, G. O., Mulegi, T., Barongo, E. K., Ekpenisi C., Kisubi, E.C., & Okonji, I. C. (2024). Exploring Mechanisms for Enforcing Human Rights within the Context of International Law: Issues and Challenges. *NIU Journal of Legal Studies*, 10(1), 59-70. Retrieved from <<https://ijhumas.com/ojs/index.php/NIUJLS/article/view/1943>>
- Baines, E. (2010). Spirits and social reconstruction after mass violence: rethinking transitional justice. *African affairs*, 109 436, 409-30 .
- Bonnet, S. (2015). Overcoming Eurocentrism in Human Rights: Postcolonial Critiques – Islamic Answers? *Muslim World Journal of Human Rights*, 12, 1 - 24.
- Bouchama, N., Ferrant, G., Fuiet, L., Meneses, A., & Thim, A. (2018). Gender Inequality in West African Social Institutions.
- Breems, B. (2016). Relational Being as Icon or Communal Freedom: Southern Africa's Ubuntu.
- Bunche, Ralph J., (1941) "The Irua Ceremony Among The Kikuyu Of Kiambu District, Kenya" . Political Science Faculty Publications. 2. https://dh.howard.edu/polisci_fac/2
- Chemhuru, M. (2018). African Communitarianism and Human Rights. *Theoria*.
- Chukwudebelu, I.A. (2024). Reconciling Cultural Values with Legal Principles: Traditional African Justice Systems in Contemporary Context. *June-July 2024*.

- Cobbah, J.A. (1987). African Values and the Human Rights Debate: An African Perspective. *Human Rights Quarterly*, 9, 309.
- Cole, W.M. (2016). Human Rights and the Individual: Cross-Cultural Variation in Human Rights Scores, 1980 to 2010. *Social Forces*, 95, 721 - 752.
- Dieterlen, G. (1976). Introduction à de nouvelles recherches sur le sacrifice chez les Dogon.
- Diop, N., & Askew, I. (2009). The effectiveness of a community-based education program on abandoning female genital mutilation/cutting in Senegal. *Studies in family planning*, 40 4, 307-18 .
- Doughty, K.C. (2015). Law and the architecture of social repair: gacaca days in post-genocide Rwanda. *Journal of the Royal Anthropological Institute*, 21, 419-437.
- Eze, M.O., & Metz, T. (2015). Emergent Issues in African Philosophy: A Dialogue with Kwasi Wiredu. *Philosophia Africana*.
- Ezenwoko, F.A., & Osagie, J.I. (2014). Conflict and Conflict Resolution in Pre-Colonial Igbo Society of Nigeria. *Journal of Studies in Social Sciences*, 9.
- Fagan, A. (2011). Philosophical foundations of human rights.
- Ferguson, J., & Ferguson, B.D. (2016). The ancient Egyptian concept of Maat: Reflections on social justice and natural order.
- Galizzi, P., & Abotsi, E.K. (2011). Traditional Institutions and Governance in Modern African Democracies.
- Gillis, M. (2019). Women, peace and security. *Rebuilding Afghanistan in Times of Crisis*.
- Hameretibeb, B. (2024). *Harmony in dispute: The role of Anywaa's traditional institutions in conflict resolution*. *Frontiers*, 4(3),
- Hinew, D. (2013). History of Oromo Social Organization: Gadaa Grades Based Roles and Responsibilities. *Science, Technology and Arts Research Journal*, 1, 88-96.
- Hutchinson, S.E., & Pendle, N. (2015). Violence, legitimacy, and prophecy: Nuer struggles with uncertainty in South Sudan. *American Ethnologist*, 42, 415-430.
- Ibhawoh, B. (2001). Cultural Relativism and Human Rights: Reconsidering the Africanist Discourse. *Netherlands Quarterly of Human Rights*, 19, 43 - 62.
- Ibhawoh, B. (2023). Inalienable Dignity: Writing Counterhegemonic Universal Human Rights Histories. *Ethnohistory*.
- Ikuenobe, P. (2018). Human rights, personhood, dignity, and African communalism. *Journal of Human Rights*, 17, 589 - 604.
- Ikuenobe, P. (2018). Human rights, personhood, dignity, and African communalism. *Journal of Human Rights*, 17, 589 - 604.
- Kariuki, F.W. (2015). Conflict Resolution by Elders in Africa : Successes , Challenges and Opportunities.
- Killsback, L. K. (2019). A nation of families: traditional indigenous kinship, the foundation for Cheyenne sovereignty. *AlterNative: An International Journal of Indigenous Peoples*, 15(1), 34-43. <https://doi.org/10.1177/1177180118822833> (Original work published 2019)
- Kuwali, D. (2014). Decoding Afrocentrism: Decolonizing Legal Theory.
- Land, K. (2006). RIGHTING THE WRONGS: HISTORICAL INJUSTICES AND LAND REFORMS IN KENYA.

- Lawal, B. (1985). Orí: The Significance of the Head in Yoruba Sculpture. *Journal of Anthropological Research*, 41, 91 - 103.
- Mafumbate, R. (2019). The Undiluted African Community: Values, The Family, Orphanage and Wellness in Traditional Africa. *Information and Knowledge Management*, 9, 7-13.
- Magezi, V., & Myambo, T. (2011). Pastoral challenges and responses to fear of avenging spirits (ngozi) in Africa: a biblical evaluation and response - a case of the Shona people.
- Masaka, D., & Makahamadze, T. (2013). The Proverb: A Preserver of Shona Traditional Religion and Ethical Code. *The Journal of Pan-African Studies*, 6, 132.
- Mayersen, D. (2011). A political monopoly held by one race: The politicisation of ethnicity in Colonial Rwanda.
- Mekoa, I. (2019). Ancestors as guardians of morality in African traditional religious thought. *African Journal of Religion, Philosophy and Culture*.
- Mengisteab, K. (2019). Traditional Institutions of Governance in Africa. *Oxford Research Encyclopedia of Politics*.
- Mojekwu v. Mojekwu (1997) 7 NWLR (Pt. 512) 283
- Moloye, O. (1999). The Philosophy of Upgradeable Cosmos: The Essences of "Omo" (Children) in Yoruba Ethno-Cosmology. *Western journal of black studies*, 23, 58.
- Motsamai Molefe (2020) Personhood and a meaningful life in African philosophy, South African Journal of Philosophy, 39:2, 194-207
- Musengimana, J. (2025). Restorative Justice and Post-Genocide Reconciliation: Ethical Implications and Community Healing in Rwanda. *Journal of Ethics in Higher Education*, (5), 241–261. <https://doi.org/10.26034/fr.jehe.2024.6897>
- Mutua, M.W. (2001). Savages, Victims, and Saviors: The Metaphor of Human Rights. *Harvard International Law Journal*, 42, 201-246.
- Ndukwe, C. (2015). Changes and Continuity in Age Grade Practices in Nigeria : A Study of the Igbo Traditional and Modern Administrative System. *Journal of Policy and Development Studies*, 9, 176-184.
- Nhlapo, T.R. (2017). Homicide in traditional African societies : customary law and the question of accountability. *African Human Rights Law Journal*, 17, 1-34.
- Nicolaides, A. (2022). Duty, Human Rights and Wrongs and the Notion of Ubuntu as Humanist Philosophy and Metaphysical Connection. *Athens Journal of Law*.
- Odenyo, A.O. (1973). Conquest, Clientage, and Land Law Among the Luo of Kenya. *Law & Society Review*, 7, 767-778.
- Offiong, D.A. (1984). The Functions of the Ekpo Society of the Ibibio of Nigeria. *African Studies Review*, 27, 77 - 92.
- Okafor, C.B. (2003). Child Rearing Practices in Eastern Nigeria: Implications for Social Work in the United States.
- Okeke, P.E. (2000). Reconfiguring Tradition: Women's Rights and Social Status in Contemporary Nigeria. *Africa Today*, 47, 48 - 63.
- Oko Elechi, O., Morris, S.V., & Schauer, E.J. (2010). Restoring Justice (Ubuntu): An African Perspective. *International Criminal Justice Review*, 20, 73 - 85.
- Ortuño Aix, J.M. (2021). Vindictory Justice and the Colonial Encounter. *Vindictory Justice*.

- Osborn, M. (2020). Chiefs, elders, and traditional authority.
- Osei-Hwedie, B.Z. (2010). Botswana : Indigenous Institutions, Civil Society and Government in Peace Building in Southern Africa.
- Owusu-Mensah, I., Asante, W.K., & Osew, W.K. (2015). Queen Mothers: The Unseen Hands in Chieftaincy Conflicts Among the Akan in Ghana: Myth or Reality? *The Journal of Pan-African Studies*, 8, 1.
- Penna, D.R., & Campbell, P.J. (1998). Human rights and culture: Beyond universality and relativism. *Third World Quarterly*, 19, 7-27.
- Pim, A.W. (1944). The Realm of the Rain-Queen. A Study of the Pattern of Lovedu Society.
- Pimentel, D. (2010). Rule of Law Reform Without Cultural Imperialism? Reinforcing Customary Justice Through Collateral Review in Southern Sudan. *Hague Journal on the Rule of Law*, 2, 1-28.
- Rakotsoane, F.L. (2009). Uncovering the spiritual dimension of the Basotho objection to resettlement. *Journal for the Study of Religion*, 22, 5-16.
- Sekagya, Y. H. K., Muchunguzi, C., Payyappallimana, U., & Mulogo, E. M. (2024). A grounded theory study of beliefs underlying use of ancestral spirits for healing among Baganda traditional spiritual healers in Central Uganda.medRxiv 1-43
- Shipton, P.M. (2006). Landed Obligation: The Practice of Power in Buganda. *International Journal of African Historical Studies*, 39, 193.
- Slack, A. (1988). Female circumcision: a critical appraisal. *Human Rights Quarterly*, 10, 437-486.
- Tchoukou, J.Y. (2020). A Conceptual Framework for Regulating Customary Law within Pluralistic African States: Reassessing Justice Sector Reforms for Reconciling Legal Traditions.
- Temudo, M.P. (2017). Men wielding the plough: Changing patterns of production and reproduction among the Balanta of Guinea-Bissau. *Journal of Agrarian Change*, 18, 267-280.
- Thomas, C.G. (2008). Ubuntu. The missing link in the rights discourse in post-apartheid transformation in South Africa. *International Journal of African Renaissance Studies - Multi-, Inter- and Transdisciplinarity*, 3, 39 - 62.
- Turyagenda, M.S. (2009). Justice is in the eyes of the beholders : restorative and retributive justice in Northern Uganda.
- Udokang, E.J. (2014). Traditional Ethics and Social Order: A Study in African Philosophy.
- Vaughan, O. (2000). Nigerian Chiefs: Traditional Power in Modern Politics, 1890s-1990s.
- Voshaar, J.H. (1979). Tracing God's Walking Stick in Maa: A Study of Maasai Society, Culture and Religion, a Missionary's Approach.
- Werbner, P., & Werbner, R. (2020). A case of inheritance: from citizens' forum to magisterial justice in Botswana's customary courts. *Anthropology Southern Africa*, 43, 15 - 31.
- White, H. (2015). Custom, Normativity and Authority in South Africa. *Journal of Southern African Studies*, 41, 1005 - 1017.