

Creative Incursions
*Cultural Representations of Human Rights in
Africa and the Black Diaspora*

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Beyond Culture and Constitution: Economic Marginalization, Social Exclusion, and Legitimizing Human Rights in Africa

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Introduction

In 2000, I wrote an article published in the *Human Rights Quarterly* titled “Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African State.” In that piece, I engaged the debate over the cultural relativism of human rights and the calls to legitimize universal human rights with the specific cultural experiences of various societies. With specific relation to Africa, the debate centered on calls for a regime of human rights founded on the basic universal human rights standards but also enriched by the African cultural experience. The challenge, as I framed it, were how to achieve this balance of values and how to uphold national and international human rights standards while resolving the apparent conflict between these standards and dominant cultural traditions of the constituent communities within the state. I postulated that the central tension is between culture and

constitution. It is not enough to identify the cultural barriers and limitations to domestic and international human rights standards. It is even more important to understand the social basis of these cultural traditions and how they may be adapted in national legislation to promote human rights. I argued that such adaptation and integration should ideally be done in ways that does not compromise the cultural integrity of peoples. Statutory human rights protections and policy provisions can derive their legitimacy not only from state authority but also from the force of cultural traditions. Two decades after the publication of that article, I revisit these arguments. Drawing on more recent efforts to address the cultural barriers to human rights, I examine how social and economic factors such as poverty, unemployment, and social exclusion and lack of access to education, medical care, and due process reinforce cultural barriers to constitutional human rights protection.

Cultures and Constitutions

In my 2000 article, I was primarily concerned with the ways in which culture, through adaptation and modification, can serve to complement, rather than constrain, specific national human rights aspirations. Statutory human rights provisions have not had full effect on rights conditions in African societies partly because cultural practices persist that have great limitations on constitutional human rights guarantees. Constitutional and other legal frameworks for recognizing and protecting human right manifest shortcomings that result from conflicts with "traditional" cultural definitions and practices, which ironically are also upheld in many African constitutions. Written alongside the bill of rights in most African constitutions are affirmations of collective national cultural heritage and the obligations of the state to promote cultural traditions insofar as they do not contravene human rights.

The Senegalese Constitution, for example, opens with a statement affirming the centrality of culture to national unity and the common destiny. The Constitution proclaims that "the sovereign people of Senegal are deeply attached to their fundamental cultural values which constitute the cement of national unity."¹ A similar provision in the Constitution of Cote d'Ivoire proclaims the state's duty "to safeguard and promote national values of civilization as well as cultural traditions that are not in conflict with the law or good moral standards."² The Ugandan Constitution declares that the state shall promote cultural and customary values that are consistent with fundamental rights and freedoms, human dignity, democracy, and with the Constitution.³ It goes on to prohibit laws, cultures, customs, and traditions that are "against the dignity,

welfare or interest of women or any other marginalized group."⁴ Likewise, Zambia's Constitution obligates the state to take measures to promote the practice, enjoyment, and development of culture, tradition, and custom insofar as they are not inconsistent with the Constitution.⁵

The same juxtaposition of state commitment to promoting culture and the overriding obligation to protect human rights is evident in the Kenyan Constitution, which recognizes culture as the foundation of the nation and as the "cumulative civilization of the Kenyan people and nation." The Constitution goes on, however, to also state that "[t]he State shall take measures, including affirmative action programs, to ensure that the youth are protected from harmful cultural practices and exploitation."⁶ The Zimbabwean Constitution perhaps goes the farthest in placing explicit limits on cultural traditions that are deemed inconsistent with national human rights guarantees. It states categorically that "customs, traditions and cultural practices that infringe the rights of women conferred by this Constitution are void to the extent of the infringement."⁷

This delicate balancing of human rights principles and the state's obligation to promote cultural norms is also evident in the African Charter of Human Rights, also known as the Banjul Charter, adopted by the Organisation of African Unity in 1981. The African Charter is unique among regional and international human rights treaties in that it contains not only civil and political rights but also economic, social, and cultural rights. It also contains detailed provision for collective and individual duties. It espouses the collective duty to achieve the total liberation of Africa and achieve "genuine independence."⁸ It enunciates a wide range of individual duties including the obligation to respect fellow human beings and treat them with respect and tolerance; the duty to preserve the harmonious development of the family; the duty to respect one's parents and support them in case of need; the duty to serve one's national community and not compromise state security; the duty to preserve and strengthen national solidarity and independence; and the duty to pay taxes imposed in the interest of the society.⁹ Most significant for our purpose, the Charter states that the individual has a duty to "preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialog and consultation and, in general, to contribute to the promotion of the moral wellbeing of society."¹⁰

The complementarity of human rights and cultural traditions envisioned in the African Charter and many African constitutions belies a persistent tension between national human rights standards in state law and the prevalence of harmful traditional practices. Even though many African constitutions expressly prohibit cultural practices that conflict with national or applicable international human rights standards, the reality is that the inherent

tension between culture and constitution is not so easily resolved. One instance of this is the conflict between constitutional guarantees of nondiscrimination and gender equality on the one hand, and the persistence of harmful traditional practices such as oppressive widowhood practices and inheritance customs that discriminate against women on the other hand. Another is the conflict between the constitutional guarantees of children's rights and pervasive cultural attitudes that encourage child marriages and forced marriages.

In my original article, I concluded that the affirmation of cultural rights in national constitutions and the prohibition of harmful traditional practices have not resolved the conflict between culture and constitution. A complementarity, if not an absolute, congruence of state laws and cultural norms is required if national human rights regimes are to gain grassroots acceptance. My premise was that certain cultural traditions that may appear inherently in conflict with human rights standards might, in fact, also have the potential of being influenced through a process of change and adaptation to conform with human rights standards. If communities can find point of congruence between traditional practices and national human rights standards, I reasoned, a major part of the tension between culture and constitution would be resolved.

A related point I made in my original article was that the discourse on the cultural legitimacy of human rights in Africa in the 1990s tended to focus more on a "conservative paradigm of cultural legitimacy." These were mainly debates among dominant male elites in African communities over how to ground constitutional rights in prevailing cultural traditions. What is required, I argued, is a more "dynamic paradigm of cultural legitimacy" pushed by grassroots groups such as local women organizations and nongovernmental organizations (NGOs) working for women and minority rights. The dynamic paradigm of cultural legitimacy centers on such themes as traditional methods of conflict resolution, the centrality of the family, and the reciprocal relationship between rights and duties.

I argued the need for dialogue between weaker and stronger groups within cultural communities and the state at large. If respect for human rights is to be achieved and made sustainable, human rights must reside not only in law but also in the living and practiced culture of the people. This requires dialog among contending groups, with their diverse paradigms of cultural legitimacy, on what role culture should play in legitimizing national human rights regimes within the state.

Beyond Culture, Constitutions, and Congruence

Two decades later, I still think that the core postulations in my original article remain valid. I remain convinced that cross-paradigmatic dialog on cultural legitimacy is a useful approach to resolving the tensions between culture and constitutional human rights in the African states. However, I now recognize that my original analysis did not go far enough. I overlooked certain important dimensions of the tension between culture and constitution. For one, I did not fully consider how social exclusion and economic marginalization shape the gap between oppressive cultural traditions and constitutional rights guarantees. It is not enough to identify the cultural barriers and limitations to modern national and international human rights standards. We must also strive to understand the social basis of these cultural traditions and how they may be adapted in national legislation to promote human rights. But even understanding the social basis of cultural tradition is still not enough. The cultural barriers to human rights and the persistence of harmful traditional practices are often also rooted in systemic economic marginalization and social exclusion.

Several studies have shown that educated and gainfully employed urban-based African women are less likely to be victims of repressive patriarchal cultural traditions such as forced marriages, genital cutting, oppressive widowhood practices, and discriminatory inheritance customs. Conversely, poor, less educated rural women who lack financial independence remain the main victims of repressive customs. It stands to reason, therefore, that discussions about regulating traditional practices to conform with human rights norms cannot take place without social and economic considerations. The task of legitimizing universal human rights norms in many parts of Africa today transcends questions of culture and law (constitutional rights). While the central tension might well be *between culture and constitution*, as I postulated two decades ago, the solutions must now go *beyond culture and constitution* to address practical questions of economic marginalization and social exclusion.

In revising my earlier arguments, I have become more cognizant of the economic determinants of culture-based human rights violations and the perspectives of individuals and grassroots organizations at the frontlines of the struggle against harmful traditional practices. Those frontline activists have long recognized that sustained solutions to repressive customs and abusive cultural practices lie not simply in legislation or public awareness campaigns, but also in economic and social empowerment programs that enable vulnerable individuals and groups to resist and challenge harmful traditional practices.

This holistic approach is evident in the deliberations by the UN Commission on the Status of Women, which have focused on harmful traditional practices and the impact on the human rights of women.¹¹ Participants at the sixty-second session of the commission in 2018 included young women from various countries, mainly from Africa. They identified the lack of information on sexual health and reproductive rights, challenges of culture, and traditions compounded with harmful practices, such as female genital cutting, as some of the problems that affect young women and girls especially those who live in the rural areas.¹² Significantly, many of the young African women at the session singled out lack of access to education, early drop out of schools, and child marriages as some of the key problems affecting the rights of women and girls in the continent. They canvassed a strategy for addressing harmful traditional practices that combines legislation and public awareness campaigns with sustained investments in women's education and economic empowerment that will enable women challenge and resist repressive traditional practices.¹³ Women have conveyed similar messages across Africa. In Ghana, NGOs working on women rights have received feedback from local women that they should focus more on "alleviating the terrible material and socio-economic conditions under which women live."¹⁴ Improving women's economic conditions creates the necessary conditions for fulfilling their human rights as guaranteed under domestic and international law.

Beyond Prohibition and Punishment

Despite concerted legislative and advocacy efforts made to address culture-based rights violations, harmful traditional practices persist in many parts of Africa. Prohibition, punishment, and public awareness campaigns have made some impact, but they have not been enough to create paradigmatic shifts in attitudes and practices. Apart from paying more attention to the perspectives of grassroots actors, a key consideration that informs my revisionist argument here is empirical evidence of approaches to addressing harmful traditional practices that have had the most impact. The key question is, What approaches have proven to be effective on the ground? Available evidence indicates that social and economic factors, such as access to education and gainful employment, are crucial to bridging the gap between culture and constitution.

Our first example comes from Uganda. After several years of trying to suppress the practice of female genital cutting through legislation, including the enactment of the controversial Prohibition of Female Genital Mutilation Act, it became clear that the fight against genital cutting required more than just legislation. "The fight against female genital mutilation using the law seems to

be faltering," one local newspaper report concluded. "Pegging heavily on the law to end FGM [female genital mutilation] is seemingly an uphill task."¹⁵ The dilemma of using the law to fight FGM, the report noted, arises from the fact that communities that practice "FGM" in Uganda, such as the Sabinu, do not seem to appreciate the reality that FGM is a criminal act. "FGM victims are not willing to report the crime visited upon them. How then will the law rescue them?"¹⁶

In the Ugandan case, it has also become clear that in many communities where "FGM" is practiced, elders, girls, and women remain passionate about the practice. While many elders consider FGM as a cultural procedure their daughters must undergo, the girls regard it as a critical cultural "baptism" that ushers them into respectable womanhood in their communities.¹⁷ These local realities had led grassroots activists and organizations working to end the practice of "FGM" to the conclusion that legislation and public awareness campaigns alone will not bring the desired impact. Many of them have come to recognize that changes in attitudes and conditions will come only when vulnerable girls and women in rural communities are able to improve their social and economic circumstances through education and gainful employment. As one Ugandan commentator has noted, building schools to absorb the girl child remains the most effective way to separate young girls from the hands of their "culturally inclined elders" and ending the prevalent practice of "FGM."¹⁸

Despite official rhetoric on abolishing genital cutting and legislative enactments to prevent the practice and punish practitioners, political leaders in many African countries, knowing that this is a sensitive political subject, have been reluctant to enforce legislation against the practice. In Sierra Leone, abolishing the powerful all-female secret societies, the *soweis*, that perpetuate genital cutting, known locally as *bondo*, is taboo for the political elite. The societies exist in every village and town across Sierra Leone and are a vital communications link between politicians and rural communities. When politicians want to engage with local communities, they rely on the *soweis*. This gives *soweis* great influence over the votes of women. Working with influential *soweis*, some Sierra Leonean politicians have reportedly "sponsored" the circumcision of girls and women in return for votes.¹⁹ The alliance between *soweis* women and political elites in Sierra Leone provides an example of what Alison Phillis has described in the context of Western societies as the "politics of the body." This is the curious political alliance between self-interested neoliberal economic actors and neoconservative rationalities, which has resulted in the further regulation of women's bodies.²⁰

As an analytical framework, the "politics of the body" helps us to understand the intrinsic political dimensions of supposedly cultural systems and practices.

In Sierra Leone for example, female genital cutting, and the role of the *soweis* in perpetuating the practice, has become less about culture and more about maintaining political power. Attempts to outlaw genital cutting have consistently foundered on political interests. In 2007 paramount chiefs, who represent all 149 chiefdoms in Sierra Leone, insisted that a ban on FGM be removed from the Child Rights Act enacted to abolish the practice. A silver lining in the fight against genital cutting came during the Ebola epidemic crisis when the government enforced a temporary ban. It is estimated that before the Ebola outbreak, 88 percent of Sierra Leonean girls were cut, the seventh highest rate of the twenty-eight countries in Africa where genital cutting is practiced.²¹

However, even in Sierra Leone, where few local leaders actively support banning the practice, there is growing realization at grassroots levels that the most effective measures for abolishing the practice is providing alternative sources of economic and political influence for members of the powerful *soweis* female secret societies, who derive income, social relevance, and political influence from the practice. The head of the Sierra Leonean “Forum against Harmful Traditional Practices,” a coalition of sixteen women’s groups fighting “FGM,” put it correctly when she stated, “The more successful agent of change has been education.... There are people in some rural areas where they have accepted change. They have said they want to replace *bòndo* with school.”²² In Muslim-dominated countries, such as Mauritania, Senegal, Mali, Guinea, Guinea-Bissau, Gambia, and Egypt, where religious leaders have issued fatwas against the “FGM,” there is also recognition that a lasting solution lies in economic and social empowerment of vulnerable populations.²³

Where authorities have relentlessly pushed prohibition and punishment without supporting economic and social programs, legislation has only served to drive practitioners underground making the practice even more harmful to women’s health and well-being. In the Gambia, for example, public education and enlightenment campaigns has had limited impact. In spite of numerous laws and extensive public awareness campaigns aimed at stopping the practice, the prevalence of “FGM” in 2014 was still estimated at 74.9 percent.²⁴ United Nations Population Fund (UNPF) officials working to stop genital cutting in Gambia acknowledge that thousands of girls continue to undergo the practice throughout Gambia leading to “devastating health and psychological effects for some of the victims as the effect continues to haunt them throughout their lives.”²⁵

The often-ignored economic dimensions of the issue are evident in the data. Official statistics show that the prevalence of genital cutting remains highest in impoverished rural communities, where women typically are less educated with limited economic opportunities, than in urban centers were women’s ed-

ucation and employment rates are higher. In Gambia, the highest recorded level of genital cutting in 2014 was in Basse, a relatively remote easternmost town in the country, while the lowest was registered in the capital, Banjul.²⁶ This is evidence that harmful traditional practices persist in environments where women and girls have unequal access to education, wealth, health, and employment.²⁷

Beyond “FGM”: Women’s Right to Property

Besides not paying enough attention to the economic determinants of harmful traditional practices, another limitation in my original article was that it did not critically engage the notion of harmful traditional/cultural practices. Within the international human rights community, there is a growing concern with “harmful traditional practices” (HTP) that violate the human rights of women and other vulnerable groups. The concept of HTP has emerged as a way of naming and combating some of the most blatant forms of patriarchy and male domination.²⁸ Since the 1980s, HTP have become a major part of the United Nations’ agenda on women’s human rights, culminating in 1995 with a comprehensive UN Fact Sheet devoted to this issue titled “Harmful Traditional Practices Affecting the Health of Women and Children.”²⁹

Originally developed to describe female genital cutting, HTP have become a common descriptor for a wide range of practices that have some cultural legitimacy yet are harmful to women. Customs criticized as HTP include widow immolation and other oppressive widowhood rites, prenatal sex selection, and female infanticide arising from son preference, child marriage, arranged or forced marriage, polygamy, seclusion and veiling, and food taboos for women. Female genital cutting, however, remains the central issue around which the concept of harmful traditional/cultural practices has coalesced. Genital cutting has become the “prototype of a practice justified by custom and culture and redefined as an act of violence that violate women’s human rights.”³⁰ Yet, as anthropologist Sally Merry has noted, in the United States, domestic violence, rape in wartime, and stalking are not labeled as harmful cultural practices nor are forms of violence against women’s bodies such as cosmetic surgery, dieting, and the wearing of high heels.³¹

The disproportionate focus on genital cutting in discussions on HTPs reflects Western media and feminist obsession with “FGM.” While genital cutting is an important issue with real health and human rights implication for women forced to undergo the practice, it is only one of many harmful traditions practiced

globally that affect the rights of women. The practice of adolescent and teenage male circumcision, for example, may also be framed as a harmful traditional practice and a violation of a man's human rights to health, freedom from torture, and cruel and inhuman treatment.³² Although the preoccupation with "FGM" places Africa at the center of the debate, harmful traditional practices are certainly not unique to Africa. Harmful traditional practices occur in every society, and we should pay attention to the universal character of these practices lest the discourse degenerates into objectification. Alongside criticism of feminist readings of FGM" as overly Euro-American, African activists have critiqued Western feminist approaches to "FGM" for being overreliant on Western notions of female sexuality and individual autonomy in ways that disregard the importance of the group and the value of social and communal integration.³³

On issues such as genital cutting, child marriages, forced marriage, and discriminatory inheritance customs, policy makers and human rights experts have tended to focus on customs, culture, and religions rather than economics and political conditions that might affect the way the customs function.³⁴ A wholistic approach to addressing harmful traditional practices requires that we go beyond the obsession with sociocultural practices such as "FGM" to address other harmful traditional economic practices issues such as discriminatory inheritance customs.

Several studies have shown that a major obstacle to the realization of women's human rights in Africa is the pervasive denial of a woman's right to inherit land and other properties. In many African communities, land use, tenure, and transfer are regulated by customary law, which largely excludes women from property ownership and inheritance. The denial of land rights to women contributes significantly to the feminization of poverty and the economic marginalization of women.³⁵ This in turn makes them vulnerable to harmful traditional social and cultural practices. The inability of women to own their own land in predominately agrarian communities sustains their social and economic marginalization.

Several African countries have enacted constitutional and other statutory rights provisions to protect women from culture-based disinheritance practices. For example, Ghana's 1992 Constitution addresses culture-based disinheritance with specific provisions on the property rights of spouses. The Constitution states in Article 22 that "spouses shall have equal access to property jointly acquired during marriage" and that "[a] spouse shall not be deprived of a reasonable provision out of the estate of a spouse whether or not the spouse died having made a will." However, such official efforts to remedy discriminatory inheritance customs have typically remained at the statutory level with little practical effect on most of the population who are governed by customary law

in family and personal matters. "Short-sighted legislation attempting to change the customary law, while facially progressive, is practically stillborn."³⁶ In addressing women's disinheritance and other harmful economic cultural practices, it is therefore essential to go beyond legislation.

Statutory enactments and judicial intervention have also been ineffective because of prevalent social norms. Despite the inclination of the courts to interpret laws in favor of women, seeking protection from harmful traditional practices through the legal system is not desirable for most women. In many parts of Africa, disinherited women have an aversion to the formal court system.³⁷ Much of this aversion is linked to the subordinate economic and social position of women in traditionally patriarchal societies. Women's aversion to seeking redress in the courts can be changed not only through alternative dispute resolution mechanisms as grassroots activists advocate but also by providing education and economic empowerment opportunities that position women to challenge these discriminating economic practices through the regular courts.

The impact of economic and social determinants of harmful traditional practices is not limited to women. They also impact influential practitioners whose resistance to ending harmful traditional practice arises from concerns about loss of income and influence. One study of genital cutting in Senegal, Burkina Faso, and Mali concludes that poverty is a major reason why practitioners cannot give up the practice. The strategy of encouraging traditional practitioners to stop performing genital cutting and become change agents has not been effective because so few give up the practice permanently. "The low social status and relative poverty of traditional practitioners make the recognition they gain and the livelihood they earn through performing the procedure valuable personal assets."³⁸ Since it is in the interest of community leaders to continue the practice, they are not inclined to influence the community to abandon genital cutting. Programs intended to provide them with alternative sources of income have been unsuccessful, as any alternative would also have to provide them with a level of social recognition comparable to what they enjoyed as practitioners.³⁹

Addressing Economic Marginalization and Social Exclusions

The economic dimensions of harmful traditional practices that grassroots activists have long emphasized has progressively found recognition in international human rights laws and policies. The "Nairobi Forward Looking Strategies for the Advancement of Women," which emerged from the World Conference

on the United Nations Decade for Women in 1985, identified as an important measure to address harmful traditional practices, promoting the fulfillment of women's potential through education, skill development, and employment and the elimination of poverty and illiteracy. It also calls for adopting measures to improve women's ability to earn income beyond traditional occupations.⁴⁰

Similar emphasis on women's economic empowerment is evident in the Maputo Protocol, an African charter of women's rights adopted by the African Union in 2003. The protocol calls for the elimination of harmful practices, including female genital cutting. It reinforces the status of women's rights that have been established in other international and regional instruments but is also the first instrument in international law to call for the legal prohibition of female genital mutilation.⁴¹ It acknowledges the important economic and social rights dimensions of harmful traditional practices, "which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity."⁴² State parties to the Maputo Protocol commit to modifying the social and cultural patterns of conduct of women and men through public education with a view to eliminating harmful cultural practices and all other practices that are based on the notion of the inferiority or the superiority of either of the sexes or on stereotyped roles for women and men. Specifically, state parties commit to prohibiting and condemning all forms of harmful practices, which negatively affect the human rights of women. The protocol also enjoins state signatories to take all necessary legislative steps to eliminate harmful traditional practices against women, and prohibit through legislative measures backed by sanctions, all forms of "female genital mutilation."⁴³

Significantly, the Maputo Protocol recognizes that measures for addressing harmful traditional practices cannot be limited to legislative enactments and advocacy campaigns. It makes elaborate provisions for the "Right to Education and Training" (Article 12) as well as "Economic and Social Welfare Rights" (Article 13) that are framed as necessary policy measures required to eliminate harmful traditional practices. Under the "Right to Education and Training" article, state parties commit to take appropriate measures to eliminate all forms of discrimination against women and guarantee equal opportunity and access in the spheres of education and to integrate gender sensitization and human rights education. State parties also pledge to promote literacy among women, education, training (for women at all levels) and enrollment and retention of girls in schools. They also pledge to organize retention programs for women who leave school prematurely.⁴⁴

Under the Economic and Social Welfare Rights Article, the protocol enjoins states to adopt and enforce legislative and other policy measures to guarantee women equal opportunities in work and career advancement. In this respect,

states are obligated to promote equality of access to employment, the right to equal remuneration for men and women for jobs of equal value, and protect women from exploitation by their employers.⁴⁵ With regard to the protection of children from harmful traditional practices, the protocol calls on African states to prohibit, combat, and punish all forms of exploitation of children, especially the girl child.

These commitments were reiterated at the Pan African Conference on Celebrating Courage and Overcoming Harmful Traditional Practices held in Addis Ababa, Ethiopia in 2011.⁴⁶ There, delegates discussed aspects of African culture, customs, and traditions, which hinder development in general and impede the advancement of women and children in particular. A key goal of the conference was to identify and share best practices from across the continent on eliminating harmful traditional practices. The main outcome document of the conference was "A Commitment for Action to the Elimination of Harmful Traditional Practices," in which participants called for holistic and integrated strategies founded on recognition of the social and economic determinants of harmful traditional practices.⁴⁷ They resolved that "the focus must not only be on political and civil rights but also on economic, social and cultural rights [since] Africa's main challenges are poverty and ill health."⁴⁸ On "FGM," participants advocated a multi-pronged approach that combined education with holistic development and general human rights advocacy, health, education, economic empowerment, and development.⁴⁹

To be sure, these regional instruments and policy statements provide no guarantees that states will cultivate the political will and capacity to live up to their human rights commitments. They also do not guarantee, on the practical level, attitudinal and social changes in traditionally patriarchal societies where the reach of the state is limited or nonexistent. However, these instruments and policy statements point to an emerging consensus that the central tension between culture and constitution in Africa cannot be resolved without attending to the underlying social and economic inequities within the state and the broader international community.

Conclusion

My argument for prioritizing economic empowerment in the efforts to remedy harmful traditional practices is not an argument against legislation and public advocacy. Legislation and public awareness campaigns have certainly had some impact. In some communities, progress has been made through human rights education and public awareness campaigns led by government

agencies and civil society groups. In Guinea-Bissau for example, concerted public enlightenment campaigns against harmful traditional practices resulted in villages making declarations to end genital cutting. The community declarations followed several years of education and discussion in families, villages, and wider communities about people's rights, specifically the rights of women and girls, and what they mean for individual and communal wellbeing.⁵⁰ However, to sustain these gains, measures to end harmful traditional practices must also address structural issues of economic and social exclusion of women and other marginalized groups.

My argument here, therefore, is for a holistic approach to addressing the tension between culture and constitution—one that does not simply seek to balance culture and constitution but goes beyond this framework to also address systemic issues of social exclusion and economic marginalization. In short, the economic determinants of harmful traditional practices should drive the quest for sustainable solutions. This approach considers the connections between culture-based human rights violations (as “FGM” is often framed) and economic marginalization. Such holistic approach is required because economic marginalization and repressive socio-cultural traditions are often mutually reinforcing. For example, the custom of early marriages creates a vicious cycle of poverty and social exclusion by reducing a girl's lifetime economic opportunities, which in turn limits her ability to escape or resist other harmful traditional practices. The economic determinants of culture-based rights violations also extend to children. Studies have shown that improvement of other aspects of women's lives through greater education, autonomy, respect, and economic security allows women the freedom to choose whether to circumcise their children by alleviating the fear that lack of circumcision would threaten their marriageability, livelihoods, honor, and social security.⁵¹

Academic and policy debates on harmful traditional practices need to focus more on questions of poverty, economic marginalization, and social exclusion that relegate many individuals and communities in Africa to the fringes of society. Structural inequities sustain culture-based human rights violations. Individuals systematically denied access to resources and opportunities available to other members of society are often the most vulnerable victims of harmful traditional practices. Therefore, those who are obsessed with ending “FGM” in Africa will do well to broaden their advocacy focus to also address the systemic domestic and international factors that sustain the cycle of economic marginalization, social exclusion, and culture-based human rights violations.

Notes

1. Preamble to the Constitution of the Republic of Senegal, 2001.
2. Constitution of the Republic of Cote d'Ivoire, 2000, section 7.
3. Constitution of the Republic of Uganda, 2006, section 24
4. Constitution of the Republic of Uganda, 2006, section 32 (2).
5. The Constitution of Zambia Act, section 112 (G)
6. The Constitution of Kenya, 2010, section 11 (1), 55 (d).
7. Constitution of Zimbabwe Amendment Act (No. 20) 2013, section 56 (3)
8. Preamble, African Charter on Human and People's Rights.
9. Articles 28–29, African Charter on Human and People's Rights.
10. Article 29, African Charter on Human and People's Rights.
11. UN Women, “62nd Session of the UN Commission on the Status of Women,” <http://www.unwomen.org/en/news/events/2018/03/62nd-session-of-the-commission-on-the-status-of-women>.
12. I have chosen to use the term female genital cutting, rather than female genital mutilation (FGM), in line with the preference of many grassroots women's rights activists who correctly object to the terms “female genital mutilation” because it implies families were deliberately setting out to harm their daughters rather than carrying out circumcision or a rite of passage. I have retained “FGM” in original quote and to provide discursive contexts.
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24. Rohey Jadama, “FGM Prevalence in the Gambia Is 74.9 Percent Says UNFPA Resident Representative,” *Foroyaa* (Gambia), December 9, 2014.
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28. Bronwyn Winter, Denise Thompson, and Sheila Jeffreys, “The UN Approach to Harmful Traditional Practices,” *International Feminist Journal of Politics* 4, no. 1 (2002): 72.
29. United Nations, “Fact Sheet No.23, Harmful Traditional Practices Affecting the

Health of Women and Children." August 1995. <https://www.ohchr.org/Documents/Publications/FactSheet23en.pdf>.

30. Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2009), 27.

31. Merry, *Human Rights and Gender Violence*, 27.

32. Corinne Packer, *Using Human Rights to Change Tradition: Traditional Practices Harmful to Women's Reproductive Health in Sub-Saharan Africa* (Antwerpen: Intersentia, 2002), 164.

33. Marion Hulverscheidt, "Health Right or Human Rights? Changing Tides in the International Discussion of Female Genital Mutilation, 1970–2010," in *Assembling Health Rights in Global Context: Genealogies and Anthropologies*, eds. Alex Mold and David Reubi (New York: Routledge, 2013), 105.

34. Merry, *Human Rights and Gender Violence*, 5.

35. Abby Morrow Richardson, "Women's Inheritance Rights in Africa: The Need to Integrate Cultural Understanding and Legal Reform," *Human Rights Brief* 11, no. 2 (2004): 19–22.

36. Richardson, "Women's Inheritance Rights in Africa," 22.

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