



**UNIVERSITY of the
WESTERN CAPE**

Risks and benefits of the eradication of African customs by modernity

**Mini-thesis submitted in partial fulfilment of
requirements for the Master of Laws at the University of Western Cape**

By

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Dedication

This work is dedicated to my father whom I love, Mr Leonard Karikoga Zhakata. Thank you, dad, for your prayers and making me realise that hard work has a reward to it. To my mother whom I cherish, Ruth Mercy Zhakata. Your love and brutal honesty have helped reach this far.

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The process of writing my dissertation was never simple. However, the Lord continued to strengthen me till the end. Lord, I thank you.

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Lastly, I would like to thank my friend, Cynthia Mukomberi, for being the kind person that she is and encouraging me to pursue my master's degree.

Declaration

I, Petula Peukai Zhakata, declare that the mini-thesis titled '**Risks and benefits of the eradication of African customs by modernity**' is my own work and has not been submitted for a degree or examination at any university, college or institution of higher learning. All the sources I have used or quoted have been indicated and acknowledged by complete references.

Student: Petula Pepukai Zhakata

Signed: 

Supervisor: Professor Anthony Diala

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ABSTRACT

African customs define the African people. Despite their varying cultures, Africans possess similar features which make it easy for them to identify each other. Before colonisation, African tribes sometimes fought amongst themselves. However, they still preserved their customs. The colonial era affected Africans by bringing them under the influence of foreigners who were unaware of the significance of indigenous customs. The colonial experience initiated the eradication of African customs, which is continued by modernity/globalisation. This mini thesis examines the risks and the benefits that modernity/globalization poses to the survival or eradication of indigenous African laws. It argues that there is a link between colonialism, globalisation, and modernity, and their effects on the African continent, specifically on African customs. Modern Western ideals have both positive and negative effects on social and emotional wellness, with some advancing economic progress while others slow it down. The thesis finds that most natives who mindlessly adopted Western ideas are currently experiencing a cultural identity crisis. It suggests that because culture is unique and profitable for communities to progress from a particular stage of advancement to the next, positive aspects of culture such as communal welfare should be protected by African governments.

KEYWORDS

Results

Globalisation/modernity

Risks

Benefits

Elimination

African Culture

Traditional Customs

CHAPTER 1: BACKGROUND TO THE STUDY

1. Introduction

The relationship between modernity and African traditions is one of the concerning aspects of postcolonial Africa.¹ Culture is what marks people out distinctively from other human societies in the family of humanity.² As it is typically understood, culture includes all of a people's unique characteristics and features that set them apart from other peoples or communities. The people's language, attire, music, work, arts, religion, dancing, and other peculiarities are added to this list. Here, values are to be understood as beliefs about what is important in life.³ The history of globalization and the advent of modernity is extensive.⁴ According to Giddens, capitalism, military power, surveillance systems, and industrialization define modernity.⁵ The activities of these contemporary institutions not only undermine traditional practices and norms all over the world, but it also intrudes into the most private and public facets of human life.⁶

The concept of modernity evokes the rise of capitalism and industrialisation, as well as the formation of nation states and the widening of regional disparities in the global system.⁷ During Europe's industrial revolution, the colonial agenda spread to the African continent, resulting in the spread and destruction of cultures by Western European countries in their search for raw materials and slaves. This was the rise of globalization, which is also referred to as the enslavement of Africans by Western powers.⁸ However, globalization viewed raw materials, cheap human labour, and markets as tools for the development of European nations and the underdevelopment of Africa.⁹ Western merchants purchased Africa's most valuable resources at lower costs, including able-bodied men, women, and children from African slave traders.

¹ Ndofirepi AP 'Tradition and Modernization: Siting Philosophy for Children Within the African Outlook' (2016) 47 *Michael Cross Interchange* p15.

² Idang GE 'African culture and values' (2015) 16(2) *Phronimon* p97.

³ Idang GE 'African culture and values' (2015) 16(2) *Phronimon* p98.

⁴ Powell JL 'Globalization and Modernity Faculty of Health & Life Sciences' (2014) 28 *International Letters of Social and Humanistic Sciences* p3.

⁵ Bitrus IS 'Globalizing Impact of Modernity in Africa' (2017) 8(2) *Journal of Globalization Studies* p68.

⁶ Bitrus IS 'Globalizing Impact of Modernity in Africa' (2017) 8(2) *Journal of Globalization Studies* p68.

⁷ Powell JL 'Globalization and Modernity Faculty of Health & Life Sciences' (2014) 28 *International Letters of Social and Humanistic Sciences* p3.

⁸ Abdullah L & Mikail IK 'The Impact of Globalization on African Culture and Politics' (2017) 13 *Journal of International Studies* p2.

⁹ Abdullah L & Mikail IK 'The Impact of Globalization on African Culture and Politics' (2017) 13 *Journal of International Studies* p2.

More than twelve million slaves were taken to the western world and thousands of Africans perished in the process.¹⁰

Furthermore, the colonization of Africa was presented as a civilising mission such as spreading Christianity and formal education.¹¹ After missionary work, coercion followed, and Africans were used as cheap labour and were exploited.¹² Thus, in a nutshell, European values, which were promoted by European trade, spread through empire, and concealed under the guise of civilizing missions, were the driving forces behind international law and its legal order.¹³

Although one should understand the futility of using violence as a form of persuasion, it could be argued that imperialistic conflicts mocked the veracity of European values. Importantly, these conflicts called into question the morality of European cultural exports and warned of the perils of imperialism.¹⁴ Yet, they eventually ushered in the idea of a United Nations Organization. Significantly, the imperial conflicts in Europe had a significant impact on legal systems around the world, particularly in sub-Saharan Africa.¹⁵ The United Nations was created with the intention of putting an end to empire and establishing a just and equitable global legal system. The post-World War II rise of non-Western European nations put colonial empires under threat, and it sought safety inside a human rights framework.¹⁶

The Universal Declaration of Human Rights and the countless documents and judicial institutions created around the world serve as illustrative examples of this framework.¹⁷ In effect, African customs are at risk of extinction due to globalisation/modernity. Most of these customs are being invalidated because they are considered as violations of human rights. There is a major debate between human rights activists and traditionalists, which is centred on whether customary norms are compatible with human rights laws contained in international

¹⁰ Abdullah L & Mikail IK 'The Impact of Globalization on African Culture and Politics' (2017) 13 *Journal of International Studies* p2.

¹¹ Diala A 'Our laws are better than yours: the future of legal pluralism in South Africa' (2019) 26 *Revista General de Derecho Público Comparado* p6.

¹² Okia O 'Forced Labor in colonial development in Africa' 2012 *Communal Labor in Colonial Kenya* p1. Also see Makambe EP 'The Exploitation and Abuse of African Labour in the Colonial Economy of Zimbabwe, 1903-1930: A Lopsided Struggle between Labour and Capital' (1994) 23 *Trans-African Journal of History* p90.

¹³ Diala A 'Our laws are better than yours: the future of legal pluralism in South Africa' (2019) 26 *Revista General de Derecho Público Comparado* p6.

¹⁴ Diala A 'Our laws are better than yours: the future of legal pluralism in South Africa' (2019) 26 *Revista General de Derecho Público Comparado* p6.

¹⁵ Diala A 'Our laws are better than yours: the future of legal pluralism in South Africa' (2019) 26 *Revista General de Derecho Público Comparado* p6.

¹⁶ Diala A 'Our laws are better than yours: the future of legal pluralism in South Africa' (2019) 26 *Revista General de Derecho Público Comparado* p7.

¹⁷ Diala A 'Our laws are better than yours: the future of legal pluralism in South Africa' (2019) 26 *Revista General de Derecho Público Comparado* p7.

conventions and bills of rights in national constitutions.¹⁸ Adapting indigenous customs to the modern system has diluted their original meaning.¹⁹ These customs were defined by the Constitutional Court in the *Alexkor* case as “laws known to the community, practiced, and transmitted from generation to generation.”²⁰ In other words, customary law is a system of laws that is based on values and norms unique to the community. Throughout its history, it has developed and changed to meet the changing needs of the community. It will continue to do so within the context of its values and norms in accordance with the human rights laws and the constitution.²¹ Indigenous people have adapted to socio-economic changes which led to the existence of customary laws because of modernity. Thus, customary law is an acceptable system of rules that is adaptable to the circumstances of the case.²²

Due to the versatility of customary law, it has been divided into two categories. They are official customary law, which is found in statutes, case law or textbooks, and living customary law, which are the actual practices or customs of the indigenous community whose customary law is under consideration.²³ African customs have been labelled as patriarchal,²⁴ which suppresses women as their sexuality is directed towards reproduction and child-rearing, and children’s rights as they are needed for their present or future labour power.²⁵ The declaration of invalidity of certain customs however seemed to benefit certain vulnerable groups. For instance, the *ukuthwala* custom which was heard in the *Jezile* case was regarded as an infringement of women’s rights in society.²⁶

It is important to note, however, that not all customs ruin individual rights, and that proper knowledge should be passed on to future generations. This is because some customs are being abused due to ignorance, which makes them prone to invalidation. For example, with the *ukuthwala* custom in the *Jezile* case, the court mentioned that *Jezile* had misapplied the custom in an aberrant form.²⁷ Some African customs are generally intended to instil Western manners

¹⁸ Ndulo M ‘*African Customary Law, Customs, and Women's Rights*’ (2011) 18 *Indiana Journal of Global Legal Studies* p89.

¹⁹ *Alexkor Ltd and Another v Richtersveld Community and Others* 2004 (5) SA 460 (CC) para 53.

²⁰ *Alexkor Ltd and Another v Richtersveld Community and Others* 2004 (5) SA 460 (CC) para 53.

²¹ *Alexkor Ltd and Another v Richtersveld Community and Others* 2004 (5) SA 460 (CC) para 53.

²² Amoah J *Constructing Equality: Developing an Intersectionality Analysis to Achieve Equality for The Girl Child Subject to South African Customary Law* (published thesis, University of Cape Town, 2016) p84.

²³ Himonga C & Nhlapo T *African Customary Law in South Africa. Post-Apartheid and Living Law Perspectives* (2015) Cape Town: Oxford University Press Southern Africa p26-27.

²⁴ Siyabulela MW *Discrimination against Women under Customary Law in South Africa with Reference to Inheritance and Succession* (Mini-Dissertation, University of Fort Hare, 2012) p41.

²⁵ Coetzee D ‘South African education and the ideology of patriarchy Department of Philosophy and Policy Studies in Education’ (2001) 21(4) *South African Journal of Education* p302.

²⁶ *Jezile v State and Others* 2015 (2) SACR 452 (WCC).

²⁷ *Jezile v State and Others* 2015 (2) SACR 452 (WCC) para 76.

in the behaviour of Africans.²⁸ European-Western modernity and rationality are also by the procedure of authority restructuring in nation-states, capitalism, and urban social relations, as well as in the colonization of other parts of the world.²⁹ It is without a doubt, colonialism sparked both beneficial and detrimental transformations in Africa³⁰ Additionally, the emergence of concepts like tough individualism, corruption, capitalism, and oppression during the colonial era was an imposition that dealt a fatal blow to African culture. Colonialism upended the established framework of morality and customs. Through a systematic dehumanization of the African and a paganization of its ideals, the process of moral inculcation became vitiated and led to the abandoning of traditional norms and values.³¹ Although it is no longer present on our continent, its impact is visible through coloniality.³²

Due to their superior technology and the belief that God is white, African natives feared the white men and viewed them as superior to the blacks.³³ Arguably, this was the reason why it was easier for African laws to be overlooked while allowing foreign laws to be implemented on our continent. Foreign laws became part of our African societies through legal transplants.³⁴ These transplants led to legal pluralism, which is the co-existence of two or more legal systems at the same time.³⁵

1.2. Research Question

The overarching research question therefore is this: In what ways have globalisation/modernity affected African indigenous norms and practices?

1.3. Aims of Research

This thesis aims to highlight the benefits and dangers posed by modernity/globalisation to African customs. Globalization may be defined as an accelerated rate of development in which

²⁸ Idang GE 'African culture and values' (2015) 16(2) *Phronimon* p4.

²⁹ Quijano A 'Coloniality and modernity/rationality' (2007) 21(2-3) *Cultural studies* pg175.

³⁰ Igboin BO 'Colonialism and African cultural values' (2011) 3(6) *African Journal of History and Culture* p101.

³¹ Igboin BO 'Colonialism and African cultural values' (2011) 3(6) *African Journal of History and Culture* p101.

³² Poesche J 'Coloniality in sub-Saharan Africa and the Americas' (2019) 35 *Journal of Developing Societies* p368.

³³ AC Diala 'Curriculum decolonisation and revisionist pedagogy of African customary law' (2019) 22 *Potchefstroom Electronic Law Journal* p8.

³⁴ Diala A 'Our laws are better than yours: the future of legal pluralism in South Africa' (2019) 26 *Revista General de Derecho Público Comparado* p2.

³⁵ Swenson G 'Legal pluralism in theory and practice' (2018) 20(3) *International Studies Review* p438.

modern ways of production, organizations, consumption patterns, and worldviews are spreading across the globe.³⁶ The dissemination of not only consumer goods but also political ideas and principles, along with socio-cultural symbols and images in new contexts, contributes to the formation of globalisation.³⁷ On the other hand, modernity is seen as destructive, that is, a permanent alteration of traditional spaces.³⁸

Generally, modernity is perceived as a cultural disorder deriving from a process of modernization through which the social world is under the dominion of self-denial, of secularism, of the universalistic claims of instrumental rationality, of the differentiation of the different spheres of the world of life, of the bureaucratization of the economy, political and military practices and the increasing monetization of values.³⁹ The historical process by which agrarian societies transformed into industrialized societies is the subject of research for modernisation theory. In the past, modernization was divided into two categories. The first is the broad sense, which refers to modernization as the inevitable transition of human history from an agricultural to an industrialized society. The second category is the more specific sense which refers to modernization as the process by which underdeveloped nations use all available resources, including foreign aid, to catch up to or even surpass developed countries.⁴⁰

While globalization theory lays more emphasis on the interrelationships among nations and the process through which these nations, to some extent unite, modernization theory emphasizes the growth of a country or region. The idea of globalization also considers how global concerns evolve and change, as well as how these changes affect various nations and areas.⁴¹ Thus, in this paper the aim is to focus on the negative and positive effects of connecting with other countries on an international level, and eventually adapting to the foreign cultures that would have been adopted through interrelations, colonialism or international trade. The discussion

³⁶ Abdullah L & Mikail IK 'The Impact of Globalization on African Culture and Politics' (2017) 13 *Journal of International Studies* p3.

³⁷ Abdullah L & Mikail IK 'The Impact of Globalization on African Culture and Politics' (2017) 13 *Journal of International Studies* p3.

³⁸ Roudmetof, V 'Globalization or modernity?' (1994) 31 *Comparative Civilizations Review* p3.

³⁹ Turner BS 'Periodization and politics in the Postmodern' 1990 *Theories of Modernity and Postmodernity* p6.

⁴⁰ Jiafeng W 'Some Reflections on Modernization Theory and Globalization Theory' (2009) 43 *Chinese Studies in History* p73.

⁴¹ Jiafeng W 'Some Reflections on Modernization Theory and Globalization Theory' (2009) 43 *Chinese Studies in History* p74.

will include the benefits of adapting to societal changes and the risks associated with this adaptation.⁴²

In addition to this, many pre-colonial practices lost their distinctive indigenous flavour because of the revolutionary pace of change ushered in by colonial rule.⁴³ The inherently globalizing nature of modernity has consequences that are fundamentally unstable, and the reflexivity of modernity has produced an environment in which danger and risk have taken on a new global dimension. Modernity's global tendencies have interconnected local and global social affairs, thereby complicating the functions of nation-states.⁴⁴

The paper will also address the extent of damage inflicted by modernity and whether Africans can thrive without it in spite of the immense suffering. Additionally, this paper explores the concepts of Africanization and decolonization. According to Poesche, decolonisation means the replacement of the colonial rulers by local elites allied with certain occidental interests.⁴⁵ Although globalisation has a strong impact on the well-being of African people, it is important to note that, as Poesche points out, colonialism has not ended in most parts of Africa.⁴⁶ Thus African states are still indirectly governed by other developed states through international treaties and sanctions. The aim is to also discuss how this tacit control is detrimental or beneficial to the rights of African people, their cultures and their future.

1.4. Literature Review

There are several sources of information on the effects of modernity in Africa. Diala, who has written several papers on the influence of colonisation and legal pluralism on African customs, is one of the contributors to the impact of modernity on African culture. Among his publications are “Rethinking the Interface Between Customary Law and Constitutionalism in Sub-Saharan Africa,” where he and Kangwa make the case that most indigenous laws have

⁴² Abdullah L & Mikail IK ‘The Impact of Globalization on African Culture and Politics’ (2017) 13 *Journal of International Studies* p2.

⁴³ Diala AC “Legal Pluralism and the Future of Personal Family Laws in Africa” (2021) 35(1) *International Journal of Law, Policy and The Family* 8.

⁴⁴ Bitrus IS ‘Globalizing Impact of Modernity in Africa’ (2017) 8(2) *Journal of Globalization Studies* p69.

⁴⁵ Poesche J ‘Coloniality in Sub-Saharan Africa and the Americas’ (2019) 35(3) *Journal of Developing Societies* 368.

⁴⁶ Poesche J ‘Coloniality in Sub-Saharan Africa and the Americas’ (2019) 35(3) *Journal of Developing Societies* 368.

evolved into customary rules as a result of people's adjustments to changes in the law, the economy, religion, and other social domains brought on by globalization.⁴⁷

Diala emphasizes the ways customary court actors induce behavioural changes that reflect the adaptive character of normative interaction in post-colonial cultures in another work titled "A Butterfly That Thinks Itself a Bird: The Identity of Nigerian Customary Courts." It implies that a theoretical foundation for legal integration in sub-Saharan Africa can be found in the flexible interface of state laws and indigenous laws.⁴⁸ He further explains how scholars have adopted the categories of 'official' and 'living' customary law in recognition of these changes.⁴⁹ In another article titled, "Reform of the Customary Law of Inheritance in Nigeria: Lessons from South Africa: Focus: Twenty Years of the South African Constitution", Professor Diala draws comparisons between Nigeria and South Africa in terms of how the respective countries have altered their customary inheritance laws to accommodate evolving social norms.⁵⁰

Moreover, in his article "Our laws are better than yours", Diala examines the prospects for legal pluralism in South Africa using a hybrid critical-historical methodology which establishes that the neoliberalist underpinnings of South Africa's political economy fully embodies the notion of colonialism.⁵¹ In addition to this, Diala also argues legal pluralism is crucial to the development of living customary law, which is best understood as a result of people's adaptation of traditions to socioeconomic shifts in his article, 'The concept of living customary law: A critique'.⁵² Additionally, Diala's article titled 'Legal Pluralism and the Future of Personal Family Laws in Africa', presents adaptive legal pluralism as an approach for addressing state laws and native laws coexisting in sub-Saharan Africa and how globalization has affected the behaviour of those governed by indigenous rules.⁵³

Another author who has contributed to the conversation of how globalization has affected Africa is Clifford Meesua Sibani. He has also authored a publication that have added to the

⁴⁷ Diala AC & Kangwa B 'Rethinking the interface between customary law and constitutionalism in sub-Saharan Africa' 2019 52(1) *De Jure Law Journal* p189.

⁴⁸ Diala AC 'A butterfly that thinks itself a bird: the identity of customary courts in Nigeria' 2019 51(3) *The Journal of Legal Pluralism and Unofficial Law* p381.

⁴⁹ Diala AC 'A butterfly that thinks itself a bird: the identity of customary courts in Nigeria' 2019 51(3) *The Journal of Legal Pluralism and Unofficial Law* p382.

⁵⁰ Diala AC 'Reform of the customary law of inheritance in Nigeria: lessons from South Africa: focus: twenty years of the South African Constitution' (2014) 14 *African Human Rights Law Journal* p633.

⁵¹ Diala A 'Our laws are better than yours: the future of legal pluralism in South Africa' (2019) 26 *Revista General de Derecho Público Comparado* p1.

⁵² Diala AC 'The concept of living customary law: a critique' (2017) 49(2) *The Journal of Legal Pluralism and Unofficial Law* p1.

⁵³ Diala AC 'Legal Pluralism and the Future of Personal Family Laws in Africa' (2021) 35(1) *International Journal of Law, Policy and the Family* p1.

conversation about the impacts of Western culture on African society, both positive and negative. In his paper titled "The impact of western culture on traditional African society: problems and opportunities" he emphasized on the positive and negative effects of western influences on African culture, which to a greater extent has led to the emergence of European culture in many areas of native African culture.⁵⁴

Two more authors who have written articles on the effects of globalization are Ibrahim Kawuley Mikail and Ainuddin Iskandar Lee Abdullah. In their article "The Impact of Globalization on African Culture and Politics," they make the case that integration of Africa through the globalization channel has already weakened the continent's sovereign power and infused African culture and the democratic system of government. According to them this is a major setback for Africans who are attempting to establish their developmental states in accordance with their own traditions, culture, and beliefs.⁵⁵

1.5. Methodology

This paper will primarily focus on three African countries: Zimbabwe, Nigeria, and South Africa. This is due to their similarities in cultural practices such as lobolo/bride price,⁵⁶ Female Genital Mutilation customs, levirate union customs, virginity testing, polygamy and elopement customs. Furthermore, the narratives are similar in that all the three states experienced British conquest. Their educational systems are also similar, particularly at the tertiary level. South Africa and Zimbabwe are in the southern part of Africa, while Nigeria is in the western part. These countries' political and legal systems are similar, and more details will be discussed in depth in this research.

The use of primary sources such as indigenous customs and customary laws which are the African beliefs and practices from pre, and post colonialism will be discussed.

Legislation and constitutions from the three African states will be discussed as they will show how indigenous norms are being embraced or transformed for instance, the 1996 Constitution

⁵⁴ Sibani CM 'Impact of Western culture on traditional African society: Problems and prospects' (2018) 10 *Journal of Religion and Human Relations* p57.

⁵⁵ Abdullah AIL and Mikail IK 'The Impact of Globalization on African Culture and Politics' (2017) 13 *Journal of International Studies* p12.

⁵⁶ Mwambene L and Sloth-Nielsen J 'Talking the talk and walking the walk: How can the development of customary law be understood?' (2010) 28(2) *Law in Context Journal* p4-6.

of the Republic of South Africa⁵⁷, the 1999 Constitution of the Federal Republic of Nigeria⁵⁸, and the 2013 Constitution of the Republic of Zimbabwe⁵⁹. Moreover, this paper will further make use of the marriage laws of Nigeria and Zimbabwe and the Recognition of Customary Marriages Act of South Africa⁶⁰.

Case law from the three African states will be used to show how traditional customs have evolved to suit the modern world.

International treaties and regional instruments will also be used to show how the legal systems of countries are partially harmonised and dependent on each other through international laws. Moreover, a discussion on the birth of these international treaties, their objectives, and their influence on the three African states will be included and how certain customs had to be affected for countries to cooperate internationally without limitations of human rights laws. These will include the African Charter⁶¹, the Maputo protocol, the Universal Declaration of Human Rights⁶² and the International Convention of Civil and Political Rights⁶³.

Furthermore, the paper will also make use of *secondary sources* such as journal articles from different scholars which will be examined. Desktop methodology will be explored in the form of internet sources and websites. Textbooks and Government policies of South Africa, Nigeria, and Zimbabwe will be used in this thesis.

1.6. Significance of Research

This research is significant because it illustrates the influence of modernity on the African continent, both positively and negatively. This influence is substantial because while the world is evolving with socio-economic changes that benefit several groups, little consideration is given to African traditions. Therefore, it is necessary to emphasize the changes that have occurred in African indigenous practices, along with the negative and positive effects that modernity has brought about among Africans.

It is also important to highlight that the radical changes occurring in Africa are happening at a rapid pace. This study illustrates how little consideration is given to African customs, despite

⁵⁷ Constitution of The Republic of South Africa, 1996.

⁵⁸ Constitution of the Federal Republic of Nigeria 1999.

⁵⁹ Constitution of the Republic of Zimbabwe 2013.

⁶⁰ Recognition of Customary Marriages Act 120 of 1998.

⁶¹ African Charter on Human and Peoples' Rights (Banjul Charter), 1981.

⁶² Universal Declaration of Human Rights, 1948.

⁶³ International Convention of Civil and Political Rights, 1966.

the reality that several communities benefit from the global social changes. Africans are turning a blind eye towards their own practices; hence the reasons for this orientation should be explored. In brief, this study will unpack the cultures that are common amongst Nigeria, South Africa and Zimbabwe. It will focus on the relevance of these cultures to African communities. Furthermore, the trajectory of globalisation in Africa will be investigated, as well as how African states eventually embodied modernity by accepting its rapid socio-economic changes. The effects of international standards on African customs will also be explored.

As a result, the objective of this study is to discuss the significance of protecting both international and African laws in order to strike a balance between human rights law and African customary laws. To do justice to living customary law, both judicial officers and representatives of the legal profession should be properly trained on the nature and requirements of customary law.⁶⁴ Thus, when dealing with a case involving African customs, additional evidence is required before a custom is ruled unconstitutional, this was traditionally done by calling witnesses either by the parties or the court.⁶⁵ To preserve the relevance of African traditions, state laws, international laws, and customary laws should all be unified. As a result, new legislation would be required in order to create new law from all of the old legal systems. The benefit of this strategy is that the law would apply equivalently to all, with no persisting perception of inferiority or superiority of any of the legal systems, resulting in full compliance with the ideal of equality before the law.⁶⁶

⁶⁴ Grant E 'Human Rights, Cultural Diversity and Customary Law in South Africa' (2006) 50 *Journal of African Law* p20.

⁶⁵ Grant E 'Human Rights, Cultural Diversity and Customary Law in South Africa' (2006) 50 *Journal of African Law* p20.

⁶⁶ Grant E 'Human Rights, Cultural Diversity and Customary Law in South Africa' (2006) 50 *Journal of African Law* p22.

CHAPTER 2: AFRICAN CUSTOMS AND LEGAL PLURALISM

2.1. Introduction

This chapter aims to provide a comprehensive analysis of the transformation of customs from a legal pluralist perspective, using primary and secondary sources that influence Nigerian, South African, and Zimbabwean laws. Moreover, it seeks to provide an explanation of how these laws are applied in the different ethnic groups of the above-mentioned countries.

Nigeria is home to 36 different states and 374 different ethnic groups including the three main groups – Hausa/Fulani (30%), Yoruba (21%), and Igbo (19%) – that make up around 70%.¹ South Africa's African/Bantu group make up the largest percentage of its population estimated at 79.4%, including the Venda, Swati, Xhosa, Zulu, and Ndebele.² Zimbabwe is a multicultural nation in Southern Africa with nearly 20 officially recognized ethnic groupings, including the Shona and Ndebele.³

The African groups are typically viewed as possessing a collectivistic tendency. Traditional values are prioritized; the central family unit and the community are regarded as significant.⁴ Although indigenous marriages differ across Africa, they are regarded as a crucial social building block.⁵

2.2. African customs

Traditional customs develop and shape human behaviour and produce relations across generations through customary behaviours, which have remained constant over time.⁶ With several African tribes and ethnic groups present throughout the continent, Africa has a

¹ Nwabunike C & Tenkorang E Y 'Domestic and marital violence among three ethnic groups in Nigeria' (2017) 32(18) *Journal of Interpersonal Violence* p2753.

² Adams BG, Van de Vijver FJ, & De Bruin GP 'Identity in South Africa: Examining self-descriptions across ethnic groups' (2012) 36(3) *International Journal of Intercultural Relations* p378.

³ Ndhlovu F 'The role of discourse in identity formation and the manufacture of ethnic minorities in Zimbabwe' (2007) 2(2) *Journal of Multi-cultural Discourses* p132-133.

⁴ Adams BG, Van de Vijver FJ, & De Bruin GP 'Identity in South Africa: Examining self-descriptions across ethnic groups' (2012) 36(3) *International Journal of Intercultural Relations* p378.

⁵ Pauli J & Van Dijk R 'Marriage as an end or the end of marriage? Change and continuity in Southern African marriages' (2016) 39(4) *Anthropology Southern Africa* p258.

⁶ Mawere M 'African Traditional Customs 'potentialities and Dilemmas: Conflict Over Thanksgiving to Chiefs in Zimbabwean Rural Villages' (2012) 3(3.2) *International Journal of Politics and Good Governance* p11.

cosmopolitan society.⁷ Every ethnic group has its own distinctive customs. The family unit, however, is of the utmost importance to all ethnic groups in Africa, and this is reflected in the rituals of each tribe, and the starting point would be the bride price.⁸

2.2.1. *Bride price*

The social purposes of bride price are to guarantee appropriate treatment of the wife by the husband and to legalize a customary marriage.⁹ Even if all other conditions are met, Africans in general are unable to view a partnership as a marriage if lobolo has not been provided or an agreement for its delivery has not been completed.¹⁰ In Zimbabwe a man's *roora*, according to the Shona or lobola according to the Ndebele, is a symbol of his love and a safeguard against an illegitimate divorce.¹¹ Bonds between the offspring and their maternal ancestors are strengthened by the expressing of emotions through lobola, such as through the payment of *inkomo yohlanga* (cow given to the mother of the wife).¹² In the *ZeZuru* culture, the payment of *roora* also grants a man the right to genetic inheritance as well as care of any offspring from a union.¹³

The Yoruba society gave less weight to the monetary component of the bridal price or dowry.¹⁴ The Igbo culture in South East Nigeria is however in a peculiar scenario due to the high bride price, where households place greater significance on the girl child and the wedding ritual.¹⁵ A specified bride price is listed on the list of requirements for the engagement as one of the things the potential groom should provide to the traditional wedding. The prospective groom and his family make this offer as a token of gratitude for the gift of a woman.¹⁶

⁷ 'Traditional African Customs' available at <https://www.victoriafalls-guide.net/african-customs.html> (accessed 09 September 2022)

⁸ 'Traditional African Customs' available at <https://www.victoriafalls-guide.net/african-customs.html> (accessed 09 September 2022)

⁹ Sloth-Nielsen J & Mwambene L 'Talking the talk and walking the walk: How can the development of African customary law be understood?' (2010) 28(2) *Law in Context* p30.

¹⁰ Sloth-Nielsen J & Mwambene L 'Talking the talk and walking the walk: How can the development of African customary law be understood?' (2010) 28(2) *Law in Context* p30.

¹¹ Mangena T & Ndlovu S 'Implications and complications of bride price payment among the Shona and Ndebele of Zimbabwe' (2013) 3(2) *International Journal of Asian Social Science* p473.

¹² Mangena T & Ndlovu S 'Implications and complications of bride price payment among the Shona and Ndebele of Zimbabwe' (2013) 3(2) *International Journal of Asian Social Science* p473.

¹³ Mujinga M 'The Interface of ZeZuru Marriage Custom with Modernity: An Analysis' (2020) 30 *Alternation* p93.

¹⁴ Eniola BO & Aremo JI 'Bride price and sexual and reproductive rights of women: A case study of South Africa and Nigeria' (2020) 96 *JL Pol'y & Globalization* p27.

¹⁵ Eniola BO & Aremo JI 'Bride price and sexual and reproductive rights of women: A case study of South Africa and Nigeria' (2020) 96 *JL Pol'y & Globalization* p27.

¹⁶ Eniola BO & Aremo JI 'Bride price and sexual and reproductive rights of women: A case study of South Africa and Nigeria' (2020) 96 *JL Pol'y & Globalization* p26.

The Fulani ethnic group on the other hand generally has marriages overseen and solemnized with a signal from a Muslim cleric known as "*Modibbo*."¹⁷ A young cow termed "*Sadaaki*" that is provided as the marriage price and belonging to the woman is included.¹⁸ It is typically recognized as a portion of her property and represents the legitimacy of the union. Another facet of the public flogging known as *Sharo*.¹⁹ '*Sharo*' used to be an essential component of wedding rituals, and no young man could get married without taking part. A bride is expected to congratulate her bridegroom for successfully suffering the whipping and pain during the *Sharo* test of manhood.²⁰

Ilobolo is a method of establishing a relation and connection between the families of the bride and the groom in South Africa. The exchange of "reciprocal rights and duties and prescribed connections between the two groups of relatives that remain past the death of the individual marriage partners" was considered to be what took place when people paid *ilobolo* and got married.²¹ Although it was considered an act of honour to present as many cattle as possible, the traditional Zulu society let a bridegroom contribute what he could afford.²² On the other hand the main aspect of the Venda's intricate legal and social system that governs marriage is the transfer of bride-wealth (*thakha*) from the man's family to the woman's family. Traditionally, the families do not distribute the entire number of cows at once.²³ The payment of cattle is made in instalments, with the initial payment made before the wedding and the remainder after the birth of the child, given that a permanent relationship was built.²⁴

¹⁷ Popoola OD 'Comparative Study of Cultural Attitude Towards Inter-Ethnic Marriage Among Hausa, Fulani and Kanuri Ethnic Groups in The Northern Part of Nigeria' (2016) 8 *Journal of Arts and Contemporary Society*, p6.

¹⁸ Popoola OD 'Comparative Study of Cultural Attitude Towards Inter-Ethnic Marriage Among Hausa, Fulani and Kanuri Ethnic Groups in The Northern Part of Nigeria' (2016) 8 *Journal of Arts and Contemporary Society*, p6.

¹⁹ Popoola OD 'Comparative Study of Cultural Attitude Towards Inter-Ethnic Marriage Among Hausa, Fulani and Kanuri Ethnic Groups in The Northern Part of Nigeria' (2016) 8 *Journal of Arts and Contemporary Society*, p6.

²⁰ Popoola OD 'Comparative Study of Cultural Attitude Towards Inter-Ethnic Marriage Among Hausa, Fulani and Kanuri Ethnic Groups in The Northern Part of Nigeria' (2016) 8 *Journal of Arts and Contemporary Society*, p6.

²¹ Posel D, Rudwick S, & Casale D 'Is marriage a dying institution in South Africa? Exploring changes in marriage in the context of *ilobolo* payments' (2011) 25(1) *Agenda* p106.

²² Khomari DM, Tebele C, & Nel K 'The social value of lobola: perceptions of south African college students' (2012) 22(1) *Journal of Psychology in Africa* pg143.

²³ Msweli SN *I-lobola in contemporary South Africa: perspectives and experiences of young people* (Doctoral dissertation, University of KwaZulu-Natal, 2020) p16.

²⁴ Posel D, Rudwick S, & Casale D 'Is marriage a dying institution in South Africa? Exploring changes in marriage in the context of *ilobolo* payments' (2011) 25(1) *Agenda* p106.

2.2.2. Levirate Unions

The widow is seen as the property of the former husband's family. In Nigeria, the levirate system was likely instituted to save a childless widow from embarrassment and ensure her security. However, there is no obligation on the deceased's brother to consent to this form of marriage arrangement. He has the choice to reject the arrangement for whatever reason(s) he deems appropriate.²⁵ Therefore, among the Igbo, levirate marriages are extensively practiced and it is expected that the widow will remarry a relative of her late husband following the period of mourning.²⁶ Thus, the notion of widowhood involves a widowed woman who is profoundly mourning the loss of her husband.²⁷

Similar to this, a woman in Zimbabwe is expected to remain in her late husband's home and family after he passes away so that she can be inherited together with the deceased's children and possessions. It is known as *kugarwa nhaka* in Shona.²⁸ The role of becoming the widow's new spouse is typically assigned to the deceased's brother. This arrangement is based on the notion that the departed person's family members require a father figure to take care of them.²⁹ In this instance, the widow carries on having children in the husband's memory.³⁰

When a wife loses her husband, the union that was created during their marriage does not terminate, according to South African Zulu culture. A widow may accept to live under the guardianship of her husband's brother or a male relative, after the death of the husband, known as *ukungena, or ukungenwa* in isiZulu.³¹ Levirate marriage was practiced as a selfless effort to support a widow and her children, preventing the relationship from being destroyed by death.³²

²⁵ Olanisebe SO & Oladosu OA 'Levirate marriage amongst the Hebrews and widow's inheritance amongst the Yoruba: A comparative investigation'(2014) 35(1) *Verbum et Ecclesia* p2.

²⁶ Genyi GA & George-Genyi ME 'Widowhood and Nigerian womanhood: Another context of gendered poverty in Nigeria' (2013) 3(7) *Research on Humanities and Social Sciences* p70.

²⁷ Olanisebe SO & Oladosu OA 'Levirate marriage amongst the Hebrews and widow's inheritance amongst the Yoruba: A comparative investigation'(2014) 35(1) *Verbum et Ecclesia* p5.

²⁸ Konyana EG 'Domestic Violence Legislation in Zimbabwe: Probing into The Security of Women in Rural Communities' (2018) 22 *Religion, Law and Security in Africa* p342.

²⁹ Konyana EG 'Domestic Violence Legislation in Zimbabwe: Probing into The Security of Women in Rural Communities' (2018) 22 *Religion, Law and Security in Africa* p342.

³⁰ Spark-du Preez N, Zaba B, Nyamukapa C, Mlilo M, & Gregson S 'Kusvika taparadzaniswa nerufu' (Until death do us part)' (2004) 3(1) *African Journal of AIDS Research* p82.

³¹ Ntshangase SZ 'Women's agency and re-alignment of the cultural tradition of ukungena or ukungenwa in Nelisiwe Zulu's play, Isiko Nelungelo' (2022) 42(1) *South African Journal of African Languages* p39.

³² Ntshangase SZ 'Women's agency and re-alignment of the cultural tradition of ukungena or ukungenwa in Nelisiwe Zulu's play, Isiko Nelungelo' (2022) 42(1) *South African Journal of African Languages* p39.

2.2.3. Elopement

In this situation, the bride and groom conspire to escape, and the bride's family forfeits the bride price until a reconciliation is reached.³³

The Tiv tribe in Nigeria often engages in this practice as consensual escape, which is a part of their distinctive marital institutions.³⁴ The girl in question agrees to be abducted and the courting is frequently helped by acquaintances of both sides. The day of elopement is customarily the day of the village market because parents permit their wards to spend extended time away from home until the market closes at night.³⁵

The suitor's parents will approach the parents of the bride as soon as the girl falls pregnant and offer to pay her bride price in instalments with each child's birth.³⁶

This type of union is known as *ukuthwala* in South Africa, however, come in a variety of forms, such as elopement (*Ukubaleka*).³⁷ Both practices are known to the Zulu speaking people of KwaZulu-Natal and Xhosa speaking people of Eastern Cape.³⁸ Thus *ukubaleka* enables a young woman to initiate the marriage proposal by willingly going to the home of the potential groom with her friends of a similar age.³⁹ *Ukuthwala* on the other hand, entails the prospective groom and a few friends waylaying the prospective bride in the vicinity of her own home, frequently late in the day, and escorting her to groom's residence. In many cases, the woman is a voluntary

³³ Okoye CA, Joe-Akunne CO, & Bernard C 'Rational choice theory of crime: Punishment implications for kidnapping in Nigeria' (2016) 6(1) *Practicum Psychologia* p45.

³⁴ Fyanka BB 'The Evolution of Marital Practices among the Tiv: A Critical Appraisal' (2018) 2 *RUN Journal of Cultural Studies* p161.

³⁵ Fyanka BB 'The Evolution of Marital Practices among the Tiv: A Critical Appraisal' (2018) 2 *RUN Journal of Cultural Studies* p169-170.

³⁶ Fyanka BB 'The Evolution of Marital Practices among the Tiv: A Critical Appraisal' (2018) 2 *RUN Journal of Cultural Studies* p170-171.

³⁷ Nkosi M 'African indigenous knowledge systems: exploring the differences and similarities between the practices of Ukuthwala and Ukubaleka amongst the Zulus' (2016) 15(3) *Indilinga African Journal of Indigenous Knowledge Systems* p207.

³⁸ Nkosi M 'African indigenous knowledge systems: exploring the differences and similarities between the practices of Ukuthwala and Ukubaleka amongst the Zulus' (2016) 15(3) *Indilinga African Journal of Indigenous Knowledge Systems* p207.

³⁹ Nkosi M 'African indigenous knowledge systems: exploring the differences and similarities between the practices of Ukuthwala and Ukubaleka amongst the Zulus' (2016) 15(3) *Indilinga African Journal of Indigenous Knowledge Systems* p204.

participant in the *thwala* so she can acquire her own kingdom as married.⁴⁰ This kind of wedding tradition is similar to what is known as *musengabere* in Zimbabwe.⁴¹

2.2.4. Polygamy

Typically, polygyny is referred to as polygamy.⁴² It alludes to a marital situation where a man has two or more wives.⁴³ African man-to-woman marriages are frequently polygamous.⁴⁴ In Nigeria, the Yoruba permit polygamy with the goal of expanding the family in order to advance society.⁴⁵ Additionally, polygamy is favoured among the Hausa and the Igbo tribes for similar reasons.⁴⁶

In Zimbabwe, the Shona people in particular practice polygamous marriages.⁴⁷ In Shona society, a man who wants to take another wife must first gain his first wife's or wives' approval and gift them with cows upon their agreement.⁴⁸ The Shona used polygamy as a societal remedy for issues like caring for the widow or having children in the brother's honour who passed away without progeny.⁴⁹ Moreover, this custom gave unmarried women a chance to get married and helped to prevent unmarried women from preying on married men, which seems to be very widespread these days as conventional routes for quick marriage are no longer viable.⁵⁰

Polygamy is acceptable among South Africans who practice Islam along with many indigenous and Christian Bantu peoples. The first wife has the right to select the second wife and must agree to the union.⁵¹ Polygyny was a remedy to avoid divorce due to infertility because in

⁴⁰ Koyana DS & Bekker JC 'The indomitable ukuthwala custom' (2007) 40 *De Jure* p140.

⁴¹ Gumbo T *Family sanctioned child kuchaya mapoto (cohabitation) in Zimbabwe: lived experiences of young people as child cohabiters* (Doctoral dissertation, University of KwaZulu Natal, 2020) p47.

⁴² Hendricks S *Polygamy in South Africa: an exploratory study of women's experiences* (published thesis, University of Kwa-Zulu Natal, 2004) p3.

⁴³ Konyana EG 'Domestic Violence Legislation in Zimbabwe: Probing into The Security of Women in Rural Communities' (2018) 22 *Religion, Law and Security in Africa* p343.

⁴⁴ Omoteye O & Akinlade MT 'Legal Implications of Same-Sex Marriage (Prohibition) Act, 2013 on Customary Female Husband Marriage or Woman-to-Woman Marriage in Nigeria' (2016) 6 *Int'l J. Advanced Legal Stud. & Governance* p29.

⁴⁵ Ajibade SR *A comparative Study of Inter Religious Tolerance among Hausa, Igbo and Yoruba Ethnic Groups in Nigeria* (Unpublished thesis, University of Lagos, 2017) p5-6.

⁴⁶ Ajibade SR *A comparative Study of Inter Religious Tolerance among Hausa, Igbo and Yoruba Ethnic Groups in Nigeria* (Unpublished thesis, University of Lagos, 2017) p5-6.

⁴⁷ Mujinga M 'Towards redeeming marriage custom from 'triangular captivity': The missional dilemma of the Methodist Church in Zimbabwe' (2020) 41(1) *Verbum et Ecclesia* p2.

⁴⁸ Makaudze G 'Women, wealth generation and property ownership in traditional Shona culture in Zimbabwe' (2014) 30(2) *Latin American Report* p23.

⁴⁹ Tatira L 'The Shona concept of marriage with special reference to procreation and fertility' (2016) 36(1) *South African Journal of African Languages* p124.

⁵⁰ Tatira L 'The Shona concept of marriage with special reference to procreation and fertility' (2016) 36(1) *South African Journal of African Languages* p124.

⁵¹ Hendricks S *Polygamy in South Africa: an exploratory study of women's experiences* (published thesis, University of Kwa-Zulu Natal, 2004) p18.

African communities a marriage without procreation is incomplete.⁵² It was a solution to menopause as there was a cultural belief that some women may no longer engage in sexual activities but men will continue to do so.⁵³

2.2.5. Female genital mutilation

The term female genital mutilation (FGM) refers to a variety of cultural practices that include cutting all or a portion of the female genitalia.⁵⁴ FGM is widespread in Nigeria as it is practised by six largest ethnic groups, thus the Yoruba, Hausa, Fulani, Ibo, Ijaw, and Kanuri, only the Fulani do not practice any form of FGM.⁵⁵ Clitoridectomy, the least severe form of the surgery, is one of four types of FGM that are carried out in Nigeria. It entails the removal of a small portion of the clitoris.⁵⁶

FGM is not prevalent in South Africa. However, it is practiced in the Venda culture,⁵⁷ and in some areas of the Eastern Cape and KwaZulu-Natal, according to the Immigration and Refugee Board of Canada.⁵⁸ Among the Venda, while some who are circumcised are too young to provide informed consent, there are many others who do it voluntarily.⁵⁹

Only a few ethnic minorities in Zimbabwe regularly engage in FGM, most notably the Shangani tribe and the Remba ethnic community who perform infibulation, the most extreme type of FGM.⁶⁰ Female circumcision proponents assert that it lowers the risk of cervical cancer in women and the possibility of contracting some STIs. Girls are socialized and taught how to sexually satisfy men before FGM is performed among the Shangani people, thus, mutilated

⁵² Mwambene L 'What is the future of polygyny (polygamy) in Africa?' (2017) 20(1) *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* pg4-5.

⁵³ Mwambene L 'What is the future of polygyny (polygamy) in Africa?' (2017) 20(1) *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* pg4-5.

⁵⁴ Mandara MU 'Female genital mutilation in Nigeria' (2004) 84(3) *International Journal of Gynecology & Obstetrics* p291.

⁵⁵ Okeke TC, Anyaehie US, & Ezenyeaku CK 'An overview of female genital mutilation in Nigeria' (2012) 2(1) *Annals of medical and health sciences research* p71.

⁵⁶ Okeke TC, Anyaehie US, & Ezenyeaku CK 'An overview of female genital mutilation in Nigeria' (2012) 2(1) *Annals of medical and health sciences research* p71.

⁵⁷ Couzens M 'The prosecution of female genital mutilation: a discussion of its implications for South Africa in the light of a recent Australian case' (2017) 134(1) *SALJ* p120.

⁵⁸ Mubangizi JC 'A South African perspective on the clash between culture and human rights, with particular reference to gender-related cultural practices and traditions' (2012) 13(3) *Journal of International Women's Studies* p35-36.

⁵⁹ Couzens M 'The prosecution of female genital mutilation: a discussion of its implications for South Africa in the light of a recent Australian case' (2017) 134(1) *SALJ* p120.

⁶⁰ Mutanda D & Rukondo H 'The impact of FGM on Shangani women in Zimbabwe' (2016) 9(1) *International Journal of Human Rights in Healthcare* p55.

girls are thought to have more sexual control than uncircumcised women after the ceremony.⁶¹ Some young girls even went as far as to get themselves circumcised after being encouraged by the older members of society.⁶²

Additionally, a study done in Mashonaland Central, Zimbabwe, revealed that women there, are in charge of making sure that young girls and women follow the customs of labia elongation.⁶³ This practice has historically been articulated in Zimbabwe around discourses of sexual pleasure and cultural norms of appropriate Shona femininity. Labia elongation is categorized by the World Health Organization as a form of FGM.⁶⁴

2.2.6. *Virginity testing*

Virginity testing is a practice that is primarily prominent among Zulu people in South Africa, particularly in KwaZulu-Natal. The practice is used as one of the defences against the spread of HIV/AIDS. A girl is regarded as virgin only if her hymen is still present.⁶⁵ Testing processes may vary between testers communities and are typically done by elderly ladies acknowledged in the community.⁶⁶

Similar virginity tests are carried out in Zimbabwe to stop the spread of HIV/AIDS.⁶⁷ Virginity testing advocates, contend that because of its emphasis on girls abstaining completely from sexual activity, the practice is being reintroduced to identify incest and abuse, and re-instil and promote outdated cultural norms.⁶⁸

⁶¹ Mutanda D & Rukondo H 'The impact of FGM on Shangani women in Zimbabwe' (2016) 9(1) *International Journal of Human Rights in Healthcare* p55.

⁶² Mutanda D & Rukondo H 'The impact of FGM on Shangani women in Zimbabwe' (2016) 9(1) *International Journal of Human Rights in Healthcare* p56.

⁶³ Chadambuka C & Warria A 'Hurt or help? Understanding intimate partner violence in the context of social norms as practised in rural areas' (2019) 55(3) *Social Work* p303.

⁶⁴ Venganai H 'Negotiating identities through the 'cultural practice' of labia elongation among urban Shona women and men in contemporary Zimbabwe' (2016) 8(3) *Culture Unbound* p307.

⁶⁵ Mubangizi JC 'A South African perspective on the clash between culture and human rights, with particular reference to gender-related cultural practices and traditions' (2012) 13(3) *Journal of International Women's Studies* p37.

⁶⁶ Mubangizi JC 'A South African perspective on the clash between culture and human rights, with particular reference to gender-related cultural practices and traditions' (2012) 13(3) *Journal of International Women's Studies* p37.

⁶⁷ Mdhluli TD & Kugara SL 'Probing virginity testing on girl child: The case of KwaZulu-Natal, South Africa' (2017) 15(2) *Gender and Behaviour* p9250.

⁶⁸ Mdhluli TD & Kugara SL 'Probing virginity testing on girl child: The case of KwaZulu-Natal, South Africa' (2017) 15(2) *Gender and Behaviour* p9250.

Colonial experience shaped contemporary customary law by adapting indigenous laws to socioeconomic changes.⁶⁹ Indigenous Nigerian law held monopoly before colonial rule, with its challenge being Islamic Law.⁷⁰ However through colonialism the British imported the repugnancy test into Nigeria after seemingly using it effectively in India. It is founded on the dominance of the imported English law over the native laws of colonies.⁷¹ Thus, British officials allowed indigenous norms to apply alongside their imported English laws.⁷² Due to the existence of several legal frameworks, including customary rules, state laws, and international laws, this resulted in the onset of legal pluralism in Africa.⁷³

2.3. Scholarly views on traditional customs

The *lobolo* custom according to academics, has turned women into commodities that can be bought and sold.⁷⁴ For these reasons, some have argued that paying the bride price is against Christian doctrine, while others have campaigned for its elimination.⁷⁵ Academics also pointed out that bride price is being abused to mistreat women. Men frequently believe that after paying the bride price, women become their possessions.⁷⁶ Due to the notion that women have been bought and occasionally many of them are coerced into marriages, scholars claim that the bride price practice is a major factor in the rising levels of domestic violence that are observed. Thus, the woman in such a marriage could lack self-worth, respect, pride, and success.⁷⁷

Levirate unions are recognized by law because they are a traditional marriage custom. However, researchers contend that widows often feel an emptiness that often leaves them

⁶⁹ Diala AC & Kangwa B 'Rethinking the interface between customary law and constitutionalism in subSaharan Africa' (2019) 52(1) *De Jure Law Journal* p205.

⁷⁰ Diala AC 'A butterfly that thinks itself a bird: the identity of customary courts in Nigeria' (2019) 51(3) *The Journal of Legal Pluralism and Unofficial Law* p385.

⁷¹ Diala AC 'A butterfly that thinks itself a bird: the identity of customary courts in Nigeria' (2019) 51(3) *The Journal of Legal Pluralism and Unofficial Law* p394.

⁷² Diala AC 'A butterfly that thinks itself a bird: the identity of customary courts in Nigeria' (2019) 51(3) *The Journal of Legal Pluralism and Unofficial Law* p385.

⁷³ Swenson G 'Legal pluralism in theory and practice' (2018) 20(3) *International Studies Review* p438.

⁷⁴ Ademiluka SO 'Bride price and Christian marriage in Nigeria' (2021) 77(4) *HTS Theologiese Studies/Theological Studies* p1.

⁷⁵ Ademiluka SO 'Bride price and Christian marriage in Nigeria' (2021) 77(4) *HTS Theologiese Studies/Theological Studies* p2.

⁷⁶ Oniyangi SO, Tosin JA, Owo B, Babangida UI, Getso AM, & Helen S 'High bride price as determinant of marital stability among Akwa-Ibom people in Surulere Area, Lagos State, Nigeria' (2020) 11(1) *Indian Journal of Public Health Research & Development* p1344.

⁷⁷ Oniyangi SO, Tosin JA, Owo B, Babangida UI, Getso AM, & Helen S 'High bride price as determinant of marital stability among Akwa-Ibom people in Surulere Area, Lagos State, Nigeria' (2020) 11(1) *Indian Journal of Public Health Research & Development* p1344.

permanently scarred due to the stigma and terror that come with being a widow.⁷⁸ Women may be forced to accept levirate marriage as a result of such psychological harm or damage because of their constant fear of the negative effects of widowhood.⁷⁹ Additionally, academics further argue that women are viewed in certain of these social areas as possessions through levirate marriage, which in turn prevents them from asserting matrimonial property rights within the framework of this traditional philosophy.⁸⁰

Moreover, with regards to the *Jezile* case, scholars contend that the distorted cultural practice of *ukuthwala* is used as a defence against the crimes of rape, human trafficking, and assault, thereby violating domestic laws and women's rights.⁸¹

Polygamy poses a threat to women's independence, according to scholars, because spouses are viewed as both wise investments and measures of a man's social standing.⁸² It is also argued that in a polygamous marriage, the wives will almost certainly be treated differently, which would constitute unfair discrimination.⁸³

FGM is a custom that has been criticized for violating girls' human rights. The mental and psychological suffering associated with FGM is regarded as the most serious complication because the issue does not manifest externally for assistance to be provided.⁸⁴ Such girls cannot voice their complaints but instead end up resentful and distant, which causes conflict in marriages.⁸⁵ FGM has been classified as a prime example of gender inequality, with men being required to control women's sexuality in order to prevent promiscuity, maintain virginity until

⁷⁸ Ezejiofor AO 'Patriarchy, marriage and the rights of widows in Nigeria' (2011) 12(1) *UJAH: Unizik journal of arts and humanities* p153.

⁷⁹ Ezejiofor AO 'Patriarchy, marriage and the rights of widows in Nigeria' (2011) 12(1) *UJAH: Unizik journal of arts and humanities* p153.

⁸⁰ Diala AC 'The shadow of legal pluralism in matrimonial property division outside the courts in Southern Nigeria' (2018) 18(2) *African Human Rights Law Journal* p710.

⁸¹ Mabasa D 'Ukuthwala: is it all culturally relative?' (2015) 555 *De Rebus* p30.

⁸² Arthi V & Fenske J 'Polygamy and child mortality: Historical and modern evidence from Nigeria's Igbo' (2018) 16 *Review of Economics of the Household* p104.

⁸³ Mubangizi JC 'A South African perspective on the clash between culture and human rights, with particular reference to gender-related cultural practices and traditions' (2012) 13(3) *Journal of International Women's Studies* p41-43.

⁸⁴ Okeke TC, Anyachie US, & Ezenyeaku CK 'An overview of female genital mutilation in Nigeria' (2012) 2(1) *Annals of medical and health sciences research* p72.

⁸⁵ Okeke TC, Anyachie US, & Ezenyeaku CK 'An overview of female genital mutilation in Nigeria' (2012) 2(1) *Annals of medical and health sciences research* p72.

marriage, and then to remain faithful to her husband.⁸⁶ Additionally, some operations, such as infibulation, are thought to tighten the vagina and increase male sexual satisfaction.⁸⁷

Scholars have criticized virginity testing as a practice that dehumanizes girls.⁸⁸ Female virginity promotes patriarchal interests by elevating the status of the future husband, and there are myths in Zimbabwe that suggest virgin brides may be assured marital fidelity.⁸⁹ Moreover, in Zimbabwe's Shona culture, girls are advised to keep their virginity because if a son-in-law does not pay *mombe yechimanda*, (cow given as proof that the bride was a virgin) the family loses respect and belittled.⁹⁰ Thus, social beliefs that stress girls' virginity till marriage while putting different expectations on boys help to maintain unequal gender relations and sexual double standards.⁹¹

Critics from academics play a contribution to States eventually invalidating African customs. However, while the State ought to outlaw repressive customs, it has no business forming culture.⁹² It is undeniable that certain norms and traditions are objectionable therefore it should be known, culture is dynamic and constantly changing, and with it, so do customs and practices.⁹³ However, States regulate customs through establishing range of laws that are centered on the traditional practice in question.⁹⁴ Thus, only customs that do not conflict with the constitution are recognised by law.⁹⁵

⁸⁶ Kolawole AO & Anke VK 'A review of determinants of female genital mutilation in Nigeria' (2010) 1(11) *Journal of Medicine and Medical sciences* p514.

⁸⁷ Kolawole AO & Anke VK 'A review of determinants of female genital mutilation in Nigeria' (2010) 1(11) *Journal of Medicine and Medical sciences* p514.

⁸⁸ Maluleke MJ 'Culture, tradition, custom, law and gender equality' (2012) 15(1) *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* p8.

⁸⁹ Matswetu VS & Bhana D 'Humhandara and hujaya: virginity, culture, and gender inequalities among adolescents in Zimbabwe' (2018) 8(2) *Sage open* p2.

⁹⁰ Matswetu VS & Bhana D 'Humhandara and hujaya: virginity, culture, and gender inequalities among adolescents in Zimbabwe' (2018) 8(2) *Sage open* p2.

⁹¹ Matswetu VS & Bhana D 'Humhandara and hujaya: virginity, culture, and gender inequalities among adolescents in Zimbabwe' (2018) 8(2) *Sage open* p2.

⁹² Mujuzi JD 'Reconciling customary law and cultural practices with human rights in Uganda' (2020) 41(2) *Obiter* p247.

⁹³ Mujuzi JD 'Reconciling customary law and cultural practices with human rights in Uganda' (2020) 41(2) *Obiter* p247.

⁹⁴ Diala AC 'Understanding the relevance of African customary law in modern times' (2020) *The Conversation: academic rigour, journalistic flair* p2.

⁹⁵ Mujuzi JD 'Reconciling customary law and cultural practices with human rights in Uganda' (2020) 41(2) *Obiter* p248.

2.4. Legal Framework of African Customs

2.4.1. *Constitutions of Nigeria, Zimbabwe and South Africa*

In Nigeria, common law is similar to customary law as it is governed by the country's 1999 constitution, which is the ultimate law that supersedes all conflicting laws according to s1(3) of the constitution.⁹⁶ The State is obligated to shield, preserve and endorse the Nigerian traditions which enhance human dignity and correspond with the fundamental objectives, according to s21(a) of the constitution.⁹⁷ It is evident that customary laws can only be validated on condition that they are in line with the constitution, therefore, the constitution specifically guarantees the protection of basic human rights, such as prohibitions against gender-based prejudice, thus everyone has the right to equality in terms of s17(2)(a).⁹⁸ Hence, virginity testing infringes on women's constitutionally protected rights to equality in terms of s42(1) of the constitution, since it does not seem to apply to men.⁹⁹ Moreover, the right to dignity is also protected therefore the cultural practice of FGM violates the constitutionally guaranteed right to dignity in terms of s17(2)(b) of the constitution, since it allows women's genitals to be tempered with.¹⁰⁰

The South African constitution is supreme therefore it forbids the practice of any traditional rights in a manner inconsistent with any provision of the Bill of Rights.¹⁰¹ While s31 of the constitution establishes a group right to engage in cultural activities, s30 upholds the individual's right to participate in the culture of their choice.¹⁰² Furthermore, s15(3) allows legislators to recognize marriages consummated in accordance with any tradition.¹⁰³ Additionally, s39(2) and (3) give equal weight to common law and customary law.¹⁰⁴ Moreover, s211(1) acknowledges the establishment, authority, and function of traditional leadership, according to customary law.¹⁰⁵ Section 181(1)(c) calls for the creation of a commission for the promotion and protection of cultural rights.¹⁰⁶ Furthermore, s211(2) states

⁹⁶ S1(3) of the Constitution of Nigeria 1999.

⁹⁷ S21(a) of the Constitution of Nigeria 1999.

⁹⁸ S17(2)(a) of the Constitution of Nigeria 1999.

⁹⁹ S42(1) of the Constitution of Nigeria 1999.

¹⁰⁰ S17(2)(b) of the Constitution of Nigeria 1999.

¹⁰¹ S2 of the Constitution of South Africa, 1996.

¹⁰² S30 and s31 of the Constitution of South Africa, 1996.

¹⁰³ s15(3) of the Constitution of South Africa, 1996.

¹⁰⁴ s39(2) and (3) of the Constitution of South Africa, 1996.

¹⁰⁵ s211(1) of the Constitution of South Africa, 1996.

¹⁰⁶ 181(1)(c) of the Constitution of South Africa, 1996.

that traditional authorities, adhering to a system of customary law, can operate subject to any applicable legislation and customs.¹⁰⁷ The inclusion of African customary law in the constitution shows how the supreme law respects cultural ethics. However, although the constitution allows for traditional practices to be valued, they have to be in line with the constitution.¹⁰⁸ Therefore practices like virginity testing can be seen as a violation of women's constitutionally protected rights to privacy according to s14 of the constitution, since it allows other people to observe a woman's intimate areas.¹⁰⁹ In addition to this, the practice of levirate marriage violates the right to equality in terms of section 9 of the constitution, since it is only women that are inherited and hence treated like property, unlike men.¹¹⁰

In Zimbabwe, the constitution requires the state to preserve cultural traditions in terms of s16 of the constitution.¹¹¹ More so, the parliament is given authority to pass laws governing the nomination and removal of traditional leaders from office.¹¹² The 2013 constitution expanded upon these enactments by mandating that traditional leaders be appointed in compliance with the pertinent customs and traditions.¹¹³ The constitution of Zimbabwe is supreme hence customary laws are subject to constitutional provisions and can be invalidated when they infringe upon constitutional rights in terms of s2(1) of the constitution.¹¹⁴ Therefore, the FGM custom violates the constitutionally guaranteed rights to personal security in terms of s52(c) of the constitution, since some girls are subjected to the practice at a younger age.¹¹⁵ The constitution significantly strengthens the right to equality in terms of s56(1) thereby making the lobola custom unfair since it is only women that are married off and have a value placed on them in order to start a family.¹¹⁶

It is evident that cultural practices are protected by law on condition that they are in line with the supreme law which is the constitutions of Nigeria, Zimbabwe and South Africa. Thus, any practice that infringes on constitutionally protected rights will be invalidated regardless of the nature of the custom.

¹⁰⁷ s211(2) of the Constitution of South Africa, 1996.

¹⁰⁸ S39(2) of the Constitution of South Africa, 1996.

¹⁰⁹ S14 of the Constitution of South Africa, 1996.

¹¹⁰ S9 of the Constitution of South Africa, 1996.

¹¹¹ S16 of Zimbabwe's Constitution of 2013.

¹¹² S283(i) of Zimbabwe's Constitution of 2013.

¹¹³ S283 of Zimbabwe's Constitution of 2013.

¹¹⁴ S2(1) of Zimbabwe's Constitution of 2013.

¹¹⁵ S52(c) of Zimbabwe's Constitution of 2013.

¹¹⁶ S56(1) of Zimbabwe's Constitution of 2013. *See also* s16(1), s3(1)(g), and s26(c) of Zimbabwe's Constitution of 2013.

2.4.2. *Marriage bills of Nigeria, Zimbabwe and the RCMA*

Due to gender variations related to lobolo, regulations are being modified to protect women's rights. A suitable example would be the RCMA in South Africa, which does not require lobolo as a prerequisite to concluding customary marriages.¹¹⁷ Both parties must be at least 18 years to enter into a customary marriage.¹¹⁸ Additionally, only the consent of both parties and compliance with other legal conditions are needed for a customary marriage, according to section 16(6) of the new Marriages Act of Zimbabwe.¹¹⁹ In Nigeria, due to high bride price, the Obowo seat of the Imo State House of Assembly presented a bill to limit the cost of marriage to N180,000.¹²⁰

2.4.3. *Government Policies and Legislation*

Legislation has been created in order to safeguard young women. Thus, the Natal Code of Zulu Law, which prohibits the kidnapping of a girl against the law, has been put in place to protect victims of *ukuthwala* thereby transforming the customary law of *ukuthwala* into the common law offense of kidnapping.¹²¹ According to the Transkei Penal Code, *ukuthwala* of young females was likewise forbidden as it makes kidnapping and enticing minors into captivity illegal.¹²² Under the Domestic Violence Act, a victim of *ukuthwala* may request a protection order against members of her family who took part in her kidnapping.¹²³ Due to evidence that kidnapped brides are sexually assaulted, the Zimbabwe-Sexual-Offences-Act-2001 made rape a crime carrying a 20-year prison sentence.¹²⁴

The Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) forbids unfair discrimination based on gender, including customs that degrade women's dignity and threaten gender equality.¹²⁵ According to the Prevention and Combating of Trafficking in

¹¹⁷ Recognition of Customary Marriages Act 120 of 1998.

¹¹⁸ Section 3 of the Recognition of Customary Marriages Act 120 of 1998.

¹¹⁹ S16(6) Zimbabwe Marriages Act [Chapter 5:15].

¹²⁰ Diala JC *The interplay of structure and agency: the negotiation process of bride wealth payment in South-East Nigeria* (published thesis, University of Cape Town, 2018) p33.

¹²¹ S1 15(1)(f) of the Code published in Proclamation R151 of 1987.

¹²² The Transkei Penal Code 9 of 1983.

¹²³ Maluleke MJ 'Culture, tradition, custom, law and gender equality' (2012) 15(1) *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* p9. See also s4(4) of the Domestic Violence Act 116 of 1998.

¹²⁴ S8 of the Zimbabwe Sexual Offences Act 2001.

¹²⁵ S8(d) of the PEPUDA 4 of 2000.

Persons Act, parents, relatives, and other individuals who give a child over to a forced marriage for monetary or other types of gain are subject to criminal prosecution.¹²⁶ Additionally, the RCMA tries to prevent child marriages that are carried out in accordance with custom by saying that the marriageable age for both the bride and the bridegroom is 18 years, since *ukuthwala* was typically performed to young girls.¹²⁷ The Zimbabwe Women's Charter asks the government to pass legislation that criminalizes all types of sexual abuse against women as well as trafficking in order to end violence against women in both the public and private spheres.¹²⁸

The adoption of these statutes in the three states demonstrates how African laws have modified since they are invalidated when declared unconstitutional. Moreover, some long-standing practices are viewed as violation of human rights.

Since virginity testing is considered demeaning to women and girls, prohibited by the Children's Act for children under the age of 16,¹²⁹ the Child Rights Act of 2003 of Nigeria forbids subjecting children to degrading treatment, including virginity testing because if a girl is not a virgin, she is humiliated in front of people.¹³⁰ The Zimbabwe Women's Charter also pushes for the inclusion of clauses that forbid traditions like virginity testing that violate women's dignity.¹³¹

Despite the fact that no court cases have been documented, laws have been implemented to stop FGM. The Violence Against Person Prohibition Act (VAPP) Act of Nigeria forbids FGM. It expressly listed FGM as a criminal offence, along with other acts of gender-based violence like rape, assault, violating widowhood traditions, and more.¹³² According to the Act, anyone who conducts FGM on a person or attempts to do so is subject to a term of imprisonment not exceeding 4 years and 2 years, respectively, as well as a fine not exceeding N200,000 and N100,000 respectively.¹³³ Additionally, PEPUDA declares that female genital mutilation is an

¹²⁶ S4(2)(b) Prevention and Combating of Trafficking in Persons Act 7 of 2013.

¹²⁷ S3(a)(1) Recognition of Customary Marriages Act 120 of 1998.

¹²⁸ S9(3) Women's Charter of Zimbabwe April 2000.

¹²⁹ S12(4-5) Children's Act 38 of 2005.

¹³⁰ Child Rights Act of 2003 of Nigeria.

¹³¹ S12(2) Women's Charter 2000.

¹³² Ugwu-Somtochukwu N B 'The Law and FGM In Nigeria' available at <https://www.28toomany.org/blog/the-law-and-fgm-in-nigeria/> (accessed 26 November 2022) *see also* s6 of the VAPP Act of 2015.

¹³³ Ugwu-Somtochukwu N B 'The Law and FGM In Nigeria' available at <https://www.28toomany.org/blog/the-law-and-fgm-in-nigeria/> (accessed 26 November 2022) *see also* s6 of the VAPP Act of 2015.

unfair form of discrimination.¹³⁴ The South African Children's Act forbids the circumcision of female infants and the genital mutilation of children.¹³⁵

2.5. Case law

In Zimbabwe, the presence of the woman's guardian and lobola confirmation are no longer requirements, following the court ruling in the 1984 Zimbabwean case of *Katekwe v. Muchabaiwa*.¹³⁶ In his obiter dicta on lobola and the Legal Age of Majority Act, the Chief Justice's opinion, eliminated the father's independent legal right to lobola. A lady with majority status has the option of allowing her father to request lobola from the prospective husband if she so chooses.¹³⁷

Levirate unions have been the subject of court opinions. For example, in the *Radebe v. Mazibela* case in South Africa, the court stated that the case demonstrated an effort to exert control over women.¹³⁸ The purpose of the *ukungena* was to prevent the woman from leaving the kraal and getting married elsewhere. Additionally, the case also highlighted the issues that were starting to surface regarding precolonial social customs that were in conflict with the growing influence of Christian teaching, causing conflicts amongst the *kholwa* custom, traditionalists and Christianity.¹³⁹

In the *Jezile v. S and Others* case, the court noted that, young women are kidnapped and subjected to violence, including sexual abuse and assault, in what the court described as *ukuthwala* in its "aberrant" form.¹⁴⁰ The goal is to force them into submission, which is illegal behaviour in the form of custom.¹⁴¹

More importantly, prior to the RCMA, in *Mabena v. Letsoalo* 1998 (2) SA 1068 (T), the High Court gave effect to a living custom that permits the mother of the bride to handle the responsibility of negotiating and receiving lobolo.¹⁴² Historically, this need was satisfied if the agreement was reached by the male guardians of the bride and groom.¹⁴³

¹³⁴ S8 of the PEPUA 4 of 2000.

¹³⁵ S12(3) Children's Act 38 2005.

¹³⁶ *Katekwe v Muchabaiwa* 1984 (2) ZLR 126 (SC). 32 1992 (2) LLR 32 (SC).

¹³⁷ *Katekwe v Muchabaiwa* 1984 (2) ZLR 126 (SC). 32 1992 (2) LLR 32 (SC) at para 16.

¹³⁸ *Radebe v. Mazibela* 1937 (6) HWK.

¹³⁹ *Radebe v. Mazibela* 1937 (6) HWK.

¹⁴⁰ *Jezile v S and Others* 2016 (2) SA 62 (WCC) paras 75–76.

¹⁴¹ *Jezile v S and Others* 2016 (2) SA 62 (WCC) paras 75–76.

¹⁴² *Mabena v. Letsoalo* 1998 (2) SA 1068 (T).

¹⁴³ *Mabena v. Letsoalo* 1998 (2) SA 1068 (T).

2.6. Conclusion

African countries have cosmopolitan societies. Thus, every ethnic group has its own distinctive customs. The family unit, however, is of the utmost importance to all ethnic groups in Africa, and this is reflected in the rituals of each tribe.¹⁴⁴ Due to their deeper significance for African civilization and their resemblance in procedures, some practices are believed to endure forever.¹⁴⁵ Modernity has generally affected African customs in a negative and positive way as noted above, some scholars have highlighted how customs diminish women's integrity while some explained the benefits associated. African scholars became aware of the infringement of women's rights due to education, which came through socioeconomic changes in Africa.¹⁴⁶ Although fundamental human rights are limited and can only be exercised in ways that are consistent with the goals of the constitution, the right to culture is guaranteed by the constitution of Nigeria, South Africa and Zimbabwe.¹⁴⁷ This demonstrates the overt effects of modernity because all cultural practices, including marriage laws that date back thousands of years, are expected to conform to laws that entered Africa as a result of innovation.¹⁴⁸ Therefore, it should be highlighted that customary law is adaptable and evolves to reflect socioeconomic changes, which could lead to the adaptation of an old practice or the emergence of a new one.¹⁴⁹

¹⁴⁴ 'Traditional African Customs' available at <https://www.victoriafalls-guide.net/african-customs.html> (accessed 09 September 2022).

¹⁴⁵ 'Traditional African Customs' available at <https://www.victoriafalls-guide.net/african-customs.html> (accessed 09 September 2022).

¹⁴⁶ 'Traditional African Customs' available at <https://www.victoriafalls-guide.net/african-customs.html> (accessed 09 September 2022).

¹⁴⁷ S21(a-b) Constitution of Nigeria 1999, S31 Constitution of South Africa, 1996 and S16 Constitution of Zimbabwe 2003.

¹⁴⁸ S6 Constitution of South Africa, 1996 and S86 Constitution of Zimbabwe 2003.

¹⁴⁹ Moore E and Himonga C 'Living customary law and families in South Africa' (2018) *Children, Families and the State* p62.

CHAPTER 3: INTERNATIONAL LAWS AND AFRICAN CUSTOMS

3.1. Introduction

This chapter will focus on international and regional instruments and their impact on African cultural practices. International law provides an essential basis for maintaining stable and harmonious international relations. States establish it to further their common interests.¹ International law, together with structures of international governance, is in important respects, a product of European imperial expansions.² Given that colonial rule was coercive, the normative alterations it brought are imposed changes, thereby necessitating a differentiation between pre-colonial norms and post-colonial norms.³ The formal expression of inherent human rights is through international human rights law.⁴

The United Nations was established at the end of World War Two as an effort to settle the disputes among nations.⁵ The birth of the United Nations therefore, was supposed to end empire and usher in an egalitarian international legal order.⁶ One of the principal purposes of the United Nations, as set out in the United Nations Charter, is to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind.⁷ When empire was challenged by the post-World War II order, it sought refuge under an international human rights framework.⁸ This framework is typified by the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1996, the International Covenant on Economic, Social and Cultural Rights also of 1966, and the myriads of documents and judicial institutions these treaties spawned across the globe.⁹ International treaties are discussed as they also play a role in modifying African traditions.

¹ Slaughter AM 'Leading through law' *The Wilson Quarterly* (1976-) (2003) 27(4) p37.

² Diala AC 'Our Laws Are Better Than Yours: The Future of Legal Pluralism in South Africa' (2019) 26 *Revista General de Derecho Público Comparado* p5.

³ Diala AC & Kangwa B 'Rethinking the interface between customary law and constitutionalism in subSaharan Africa' (2019) 52(1) *De Jure Law Journal* p191.

⁴ Diala AC 'Our Laws Are Better Than Yours: The Future of Legal Pluralism in South Africa' (2019) 26 *Revista General de Derecho Público Comparado* p7.

⁵ Weiss TG 'The United Nations: before, during and after 1945' (2015) 91(6) *International Affairs* p1221.

⁶ Diala AC 'Our Laws Are Better Than Yours: The Future of Legal Pluralism in South Africa' (2019) 26 *Revista General de Derecho Público Comparado* p7.

⁷ 'UN Office of the High Commissioner for Human Rights (OHCHR)' *Human Rights: A Basic Handbook for UN Staff*, 2000, available at <https://www.refworld.org/docid/483eac7b2.html> (accessed 14 February 2023), p1.

⁸ Diala AC 'Our Laws Are Better Than Yours: The Future of Legal Pluralism in South Africa' (2019) 26 *Revista General de Derecho Público Comparado* p7.

⁹ Diala AC 'Our Laws Are Better Than Yours: The Future of Legal Pluralism in South Africa' (2019) 26 *Revista General de Derecho Público Comparado* p7.

3.2. International Law Standards

States and private sectors establish standards to formulate the general expectation of society as to how individuals will act in the course of their undertakings.¹⁰ In this context, an international law standard is a document that comprises rules, guidelines, processes, or characteristics that allow users to achieve the same outcome. An example is the Universal Declaration of Human Rights, which is discussed below.¹¹

3.2.1. Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) was approved in 1948. It consists of a Preamble and 30 articles, setting out the human rights and fundamental freedoms to which all men and women are entitled, without distinction of any kind.¹² The UDHR recognizes fundamental rights of every human being including, inter alia, the right to life, liberty and security of person; the right to education; and the right to freedom from torture and degrading treatment. Today, the Universal Declaration of Human Rights is widely regarded as forming part of customary international law.¹³

3.2.2. International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) was ratified by 35 nations and became effective in 1976. It addresses the State's traditional responsibilities for administering justice and maintaining the rule of law.¹⁴ Many of the provisions in the Covenant address the relationship between the individual and the State. In discharging these responsibilities, States must ensure that human rights are respected, not only those of the victim but also those of the accused.¹⁵

¹⁰ Abbott KW & Snidal D 'International standards and international governance' (2001) 8(3) *Journal of European Public Policy* p345.

¹¹ 'International standard (IS)' available at <https://www.iec.ch/publications/international-standards#:~:text=An%20international%20standard%20is%20a,outcome%20time%20and%20time%20again> (accessed 14 February 2023).

¹² Universal Declaration of Human Rights, 1948.

¹³ 'UN Office of the High Commissioner for Human Rights (OHCHR)' *Human Rights: A Basic Handbook for UN Staff*, 2000, available at <https://www.refworld.org/docid/483eac7b2.html> (accessed 14 February 2023) p10-11.

¹⁴ International Covenant on Civil and Political Rights, 1966.

¹⁵ 'UN Office of the High Commissioner for Human Rights (OHCHR)' *Human Rights: A Basic Handbook for UN Staff*, 2000, available at <https://www.refworld.org/docid/483eac7b2.html> (accessed 14 February 2023) p12.

3.2.3. *The Convention on the Elimination of All Forms of Discrimination against Women*

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) came into force in 1981. Despite the existence of international instruments which affirm the rights of women within the framework of all human rights, a separate treaty was considered necessary to combat the continuing evident discrimination against women in all parts of the world.¹⁶ In addition to addressing the major issues, the Convention also identifies a number of specific areas where discrimination against women has been flagrant, specifically with regard to participation in public life, marriage, family life and sexual exploitation.¹⁷

3.2.4. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was ratified by 20 States and came into effect in 1987. The overall objectives of the Convention are to prevent acts of torture and other acts prohibited under the Convention and to ensure that effective remedies are available to victims when such acts occur.¹⁸ More specifically, the Convention requires States parties to take preventive action against torture such as the establishment of laws and regulations to promote respect for human rights among its public servants, for both the alleged victim and the accused.¹⁹

3.3. Regional Instruments

The creation of the United Nations provided an ideal forum for the development and adoption of international human rights instruments. Other instruments have been adopted at a regional level reflecting the particular human rights concerns of the region of Africa.²⁰

¹⁶ Convention on the Elimination of All Forms of Discrimination against Women 1979.

¹⁷ 'UN Office of the High Commissioner for Human Rights (OHCHR)' *Human Rights: A Basic Handbook for UN Staff*, 2000, available at <https://www.refworld.org/docid/483eac7b2.html> (accessed 14 February 2023) p14.

¹⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987.

¹⁹ 'UN Office of the High Commissioner for Human Rights (OHCHR)' *Human Rights: A Basic Handbook for UN Staff*, 2000, available at <https://www.refworld.org/docid/483eac7b2.html> (accessed 14 February 2023) p15-16.

²⁰ 'UN Office of the High Commissioner for Human Rights (OHCHR)' *Human Rights: A Basic Handbook for UN Staff*, 2000, available at <https://www.refworld.org/docid/483eac7b2.html> (accessed 14 February 2023) p3-4.

3.3.1. African Charter of Human and People's Rights

The African Charter of Human and People's Rights ("African Charter") came into effect in 1986 and it represents an African conception of human rights.²¹ The African Charter represents Africa's outlook and the drafters purposefully created the document on human rights that takes into account African legal philosophy and African needs.²² Apart from its provisions for individual duties, one of the unique features of this Charter is its articulation of the right of peoples to their cultural development. The Charter proclaims that individuals have a duty to preserve and strengthen African cultural values in their relations with other members of the society. Similar provisions exist in several African countries' constitutions.²³

3.3.2. Maputo Protocol of 2003

Adopted in 2003, the Maputo Protocol is an African human rights instrument that seeks to protect African women and girls from the negative effects of cultural woes. Hence, this Protocol has been hailed as an African solution to African problems. However, although the Protocol is de-written as far-reaching, because it treats areas that have not been covered by other human Rights instruments such as women's reproductive health issues, protection against HIV and AIDS, domestic abuse and marital rape, its scope is somehow limited.²⁴

3.3.3. International Laws and African Customs

The coexistence of traditional laws that originated in agrarian settings with state laws and international laws that developed in industrial settings is a prominent part of Africa's challenge with its colonial past which was, basically, the pathway to modernity.²⁵ Therefore, disputes between them are common due to the disparity in their origins, as well as between traditionalists and change agents.²⁶

²¹ Motala Z 'Human rights in Africa: cultural, ideological, and legal examination' (1989) 12(2) *Hastings International and Comparative Law Review* p374.

²² Motala Z 'Human rights in Africa: cultural, ideological, and legal examination' (1989) 12(2) *Hastings International and Comparative Law Review* p397.

²³ Ibhawoh B 'Between culture and constitution: evaluating the cultural legitimacy of human rights in the African state' (2000) 22(3) *Human Rights Quarterly* p847.

²⁴ Danpullo RI 'The Maputo Protocol and the Eradication of the Cultural Woes of African Women: A Critical Analysis' (2017) 20(1) *RiA Recht in Afrika | Law in Africa | Droit en Afrique* p93.

²⁵ Diala AC 'Legal Pluralism and the Future of Personal Family Laws in Africa' (2021) 35(1) *International Journal of Law, Policy and the Family* p1.

²⁶ Diala AC 'Legal Pluralism and the Future of Personal Family Laws in Africa' (2021) 35(1) *International Journal of Law, Policy and the Family* p1.

According to Article 2 of the UDHR, everyone has the rights listed in the Declaration, without exception of any type, including sex.²⁷ Women are granted the same human rights as men under this clause, including those outlined in Article 5 of the UDHR, Article 7 of the ICCPR and Article 16 of the CAT, which specifically condemns torture or cruel, inhuman, or degrading treatment.²⁸ Being forced to do physically intrusive virginity tests is degrading. Furthermore, arbitrary invasions of one's privacy and insults to one's dignity and reputation are forbidden by Article 12 of the UDHR. Virginity testing is viewed as a violation of Article 12 since it significantly invades women's privacy and is performed in a manner that casts doubt on their honour and reputation.²⁹ Thus, according to Article 7 of the ICCPR, no one may be the subject of medical or scientific experiments without his or her full consent.³⁰

The purpose of Article 7 of the ICCPR is clearly stated in General Comment 20, which elaborates on the meaning of the provision thus to protect both the dignity and the physical and mental integrity of the individual. State Parties are required, according to General Comment 20, to afford everyone protection through legislative or other measures as may be necessary against the acts prohibited in Article 5 of the UDHR, Article 7 of the ICCPR and Article 16 of the CAT, whether perpetrated by people acting in their official capacity, outside of their official capacity, or in a private capacity.³¹ States parties are required to inform the Committee of all administrative, judicial, legislative, and other steps they take to outlaw torture and other forms of cruel, inhuman, and degrading treatment on any of their territories.³²

Although virginity testing may not technically be considered torture, the CAT strongly forbids it as brutal and demeaning punishment.³³ Discrimination against women is illegal, and it is defined in Article 1 of CEDAW as any distinction made on the basis of sex that achieves the effect of hindering pleasure by women, irrespective of their marital status, on the basis of

²⁷ Article 2 of the Universal Declaration of Human Rights, 1948.

²⁸ Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987.

²⁹ Lasco C 'Virginity testing in Turkey: a violation of women's human rights' (2002) 9(3) *Human Rights Brief* p11-12.

³⁰ Article 7 of the International Covenant on Economic, Social and Cultural Rights 1966.

³¹ General Comment 20 of the General Comments adopted by the Human Rights Committee, 1992.

³² Lasco C 'Virginity testing in Turkey: a violation of women's human rights' (2002) 9(3) *Human Rights Brief* p12.

³³ Lasco C 'Virginity testing in Turkey: a violation of women's human rights' (2002) 9(3) *Human Rights Brief* p12.

equality between men and women, of basic fundamental liberties of any field. The existence of the procedure is discriminatory because men are not subjected to virginity tests. In addition, the Committee expressed disapproval of the classification of violence against women as a "crime against public decency and public order," claiming that it went against the letter of CEDAW.³⁴

Several international human rights norms stipulate that both partners must be treated equally at the time of marriage. Article 16(2) of the UDHR guarantees men and women of full age marital rights with the free and full consent of the intending parties.³⁵ Article 1 of the 1964 Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages, states, in addition to the UDHR, that no marriage should be permitted without the mutual, unrestricted permission of the parties.³⁶ Therefore, the distorted version of *ukuthwala*, has a significant potential to breach international human rights standards, particularly when it leads to forced marriage.³⁷ Additionally, Article 16 of the CEDAW advocates for parties to eliminate discrimination against women in all matters relating to marriage and family relations ensuring equality between men and women.³⁸ In addition, the CEDAW Committee proposed that the minimum age for marriage for both boys and girls should be 18 in a General Recommendation on Equality and Family Relations.³⁹ This means when one of the parties is not old enough to make a mature decision, the right to free and full consent to marriage, as recognized by international human rights standards, cannot be achieved. This viewpoint is applicable to *ukuthwala* incidents, where it has been stated that girls as young as 12 years were married. The Women's Protocol also established the age of 18 as the minimum for both boys and girls who are considering marriage.⁴⁰

The African Women's Protocol provides further protection for women and children who are the victims of discriminatory cultural practices in Africa.⁴¹ Thus, men and women must have equal rights at the time of marriage, according to equality principles. There is little doubt that some *ukuthwala* practices violate this right. According to the Women's Protocol, state parties

³⁴ Lasco C 'Virginity testing in Turkey: a violation of women's human rights' (2002) 9(3) *Human Rights Brief* p12-13.

³⁵ Article 16(2) of the Universal Declaration of Human Rights, 1948.

³⁶ Article 1 of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964.

³⁷ *Jezile v S and Others* 2016 (2) SA 62 (WCC), para56.

³⁸ Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, 1979.

³⁹ Committee on the Elimination of Discrimination against Women, General Recommendation No.21 of 1994.

⁴⁰ Article 6 of the Maputo Protocol adopted of 2003.

⁴¹ Article 2 of the Maputo Protocol adopted of 2003.

must take suitable national legislative measures to ensure, among other things, that both parties can freely and voluntarily consent to marriage.⁴² In this instance, when consent is obtained through coercion, it is blatantly against international standards that call for both parties to freely provide their consent.

Levirate unions and *lobolo* customs are connected, this is because when a wife loses her husband, the union that was created during their marriage does not terminate.⁴³ Therefore, the widow carries on having children in the husband's memory.⁴⁴ In this instance, the widow may not have a choice with regards to her reproduction rights. This is because widows may be shareable components of the deceased person's inheritance.⁴⁵ Therefore, they are obliged to obey the cultural norms. Different international treaties have been put in place to protect women's reproductive health rights.

3.3.4. Universal Declaration of Human Rights (UDHR) 1948

The UDHR was adopted to give meaning to the human rights and fundamental freedoms envisioned in the charter. Therefore, women's reproductive health rights were not specifically considered or included, given its historical context and existing clauses. However, certain laws protect the individual's right to autonomy with regard to their body. Article 1 of the UDHR asserts that everyone is born free and equal in their dignity and rights.⁴⁶ Therefore, nobody has the right to force their will on someone else in an effort to control such an individual.

In the same vein, Article 2 of the UDHR expresses that no one is entitled to more rights and freedoms than the other in exercising them.⁴⁷ Since the right to life, security, and liberty are essential for ensuring reproductive autonomy, Article 3 guarantees the universal right to life, liberty, and security of persons and takes into account the rights of women to reproductive health.⁴⁸ An individual's right to life may be affected by having children and raising them, thus they must be able to make their own decisions in this area. The UDHR's Articles 12 and 16

⁴² Article 6 of the Maputo Protocol adopted of 2003.

⁴³ Ntshangase SZ 'Women's agency and re-alignment of the cultural tradition of ukungena or ukungenwa in Nelisiwe Zulu's play, *Isiko Nelungelo*' (2022) 42(1) *South African Journal of African Languages* p39.

⁴⁴ Spark-du Preez N, Zaba B, Nyamukapa C, Mlilo M, & Gregson S 'Kusvika taparadzaniswa nerufu' (Until death do us part)' (2004) 3(1) *African Journal of AIDS Research* p82.

⁴⁵ Olanisebe SO & Oladosu OA 'Levirate marriage amongst the Hebrews and widow's inheritance amongst the Yoruba: A comparative investigation' (2014) 35(1) *Verbum et Ecclesia* pg5.

⁴⁶ Article 1 of the Universal Declaration of Human Rights, 1948.

⁴⁷ Article 2 of the Universal Declaration of Human Rights, 1948.

⁴⁸ Article 3 of the Universal Declaration of Human Rights, 1948.

also protect women's right to reproductive health and the right to privacy, which is crucial to the rights to reproductive health.⁴⁹

When there is intervention on one's body, reproductive autonomy cannot be established. In accordance with Article 16, men and women enjoy equal rights in marriage, which is very essential to reproductive health rights. Thus, neither one has a higher right over the other; just as a man is free to make judgments about his body, so is a woman.⁵⁰ The UDHR out-laws marital coercion in any manner, and the Article states that society must support a successful partnership. Only through the many rules and conventions relating to marriage that are in existence can society fulfil this job. Even if it was not the intention of the UDHR, given the provisions that came before it, several of the rights upheld by the Declaration take into account women's reproductive autonomy.⁵¹

3.3.5. The International Covenant on Economic, Social, and Cultural Rights

The ICCPR and the ICESCR were both ratified by the UN General Assembly in 1966. Both became effective in 1976. The ICESCR, which is a hybrid of the UDHR, has six parts with a total of 31 articles. Although they were not taken into account when the Covenant was being written, certain of the rights acknowledged therein have a direct or indirect impact on women's reproductive health rights. These include the rights to family stability, health, and access to culture and education. State parties are required by Article 10 to make sure that the family is given the widest possible protection and assistance.⁵²

According to the Covenant, the family is the foundation of every community and must be safeguarded at all costs. As a result, Article 10 prohibits forced marriage. The focus of Article 10(2) is on women's reproductive health rights, with a particular focus on the rights of expectant workers.⁵³ Article 12 affirms the right to the greatest possible quality of bodily and mental health and enumerates the numerous facets of physical health as well as the actions that governments should take to ensure its effectiveness.⁵⁴ Additional freedoms are included in the right to health since they are prerequisites for its enjoyment, such as access to clean, safe

⁴⁹ Article 12 of the Universal Declaration of Human Rights, 1948.

⁵⁰ Article 16 of the Universal Declaration of Human Rights, 1948.

⁵¹ Oluwakemi EB & Cantius MJ 'The Legal Frameworks for the Protection of Women's Reproductive Health Rights in South Africa and Nigeria: Some Comparative Lessons' (2017) 5(2) *Journal of Social Welfare and Human Rights* p2.

⁵² Article 10 of the International Covenant on Economic, Social and Cultural Rights, 1966.

⁵³ Article 10(2) of the International Covenant on Economic, Social and Cultural Rights, 1966.

⁵⁴ Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966.

drinking water, adequate sanitation, and health-related education and information, such as knowledge on sexual and reproductive health.⁵⁵

3.3.6. *Convention on the Elimination of All Forms of Discrimination against Women*

The prejudice against women is addressed for the first time in a human rights treaty. The term is defined in Article 1 that, discrimination against women refers to a broad range of practices that discriminate against women.⁵⁶ According to the text, equality between men and women is necessary to accomplish non-discrimination. Women shouldn't be denied the same basic human rights as men because of their biological differences. The Article also condemns prejudice, even when it is unintentional. It is also acknowledged that discrimination can happen in both public and private realms.⁵⁷

The Convention's rights may be exercised regardless of one's marital status, according to the article. It states that a woman's intimate interactions with men have no bearing on equality. State parties are required by Article 2 to denounce discrimination against women in all of its manifestations and to use every means at their disposal to enact laws that do away with it.⁵⁸ This extensive clause explains the numerous actions state parties are required to take to end discrimination against women. The equality concept ought to be enshrined in the constitutions of all state parties, and they should pass legislation that make discrimination against women against the law.⁵⁹ States are also urged to work for the equality principle's actualization in practice. Legislation and other measures must be passed by the state to outlaw discrimination against women. States are additionally required to provide the legal protection of women's rights through national courts and other public agencies in order to further achieve the complete eradication of discrimination against women.⁶⁰

The article further calls on state parties to refrain from any behaviour that can be seen as gender discrimination and to guarantee that all public authorities and institutions uphold this

⁵⁵ Oluwakemi EB & Cantius MJ 'The Legal Frameworks for the Protection of Women's Reproductive Health Rights in South Africa and Nigeria: Some Comparative Lessons' (2017) 5(2) *Journal of Social Welfare and Human Rights* p2-3.

⁵⁶ Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women, 1979.

⁵⁷ The Convention on the Elimination of All Forms of Discrimination against Women, 1979.

⁵⁸ Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 1979.

⁵⁹ Article 2(a) of the Convention on the Elimination of All Forms of Discrimination against Women, 1979.

⁶⁰ Article 2(f) of the Convention on the Elimination of All Forms of Discrimination against Women, 1979.

commitment.⁶¹ The article further asserts that everyone should have equal access to family planning services and other health care options.⁶²

Regarding women's reproductive health, Article 12(2) calls on states to provide appropriate nutrition throughout pregnancy and breastfeeding as well as to offer free prenatal and postnatal medical care, if needed.⁶³ The rights to marry, the freedom to choose one's partner, some obligations during marriage and after its dissolution, guardianship, adoption, ownership, and the acquisition of property are all covered by Article 16.⁶⁴ Equal rights for a couple to choose the number and spacing of their children as well as access to information, education, and the resources necessary to exercise these rights are of particular relevance. Child marriage is forbidden by Article 16 (2).⁶⁵

On the other hand, international laws encourage respect and protection of African customs. Article 27 of the UDHR is strongly related to articles 22 and 29, as they all seem to utilize the protection of diversity in stating that cultural rights are essential for maintaining human dignity and fostering the development of the human personality.⁶⁶ Article 27 of the ICCPR together with the preamble of CEDAW also prohibit denying individuals the freedom to practice their own culture.⁶⁷ Certain customs, respected by many though rejected by a few, are protected by international laws, these include customs like *lobolo*. Although it has been criticised, majority of African women are in full support of being married after lobolo payment, because it signifies love and motivates the woman to deliver a child for the groom.⁶⁸ Traditional cultural activities include the *Domba*, an initiation school for young men and women of the Venda community.⁶⁹ In this case, learners are stripped naked, encased in a long chain, and circle the courtyard clockwise as a representation of the reproductive process.⁷⁰

⁶¹ Article 2(d) of the Convention on the Elimination of All Forms of Discrimination against Women, 1979.

⁶² Article 10(h), Article 12(1), and Article 14(2)(b) of the Convention on the Elimination of All Forms of Discrimination against Women, 1979.

⁶³ Article 12(2) of the Convention on the Elimination of All Forms of Discrimination against Women, 1979.

⁶⁴ Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, 1979.

⁶⁵ Oluwakemi EB & Cantius MJ 'The Legal Frameworks for the Protection of Women's Reproductive Health Rights in South Africa and Nigeria: Some Comparative Lessons' (2017) 5(2) *Journal of Social Welfare and Human Rights* p3.

⁶⁶ Article 27 of the Universal Declaration of Human Rights, 1948.

⁶⁷ Article 27 of the International Covenant on Economic, Social and Cultural Rights, 1966 *see also* Preamble of the Convention on the Elimination of All Forms of Discrimination against Women, 1979.

⁶⁸ Ansell N 'Because it's Our Culture!' (Re) negotiating the Meaning of Lobola in Southern African Secondary Schools' (2001) 27(4) *Journal of Southern African Studies* p701 and 706.

⁶⁹ Mulaudzi PA 'The Domba variety: an initiation language for adulthood' (2001) 21(1) *South African Journal of African Languages* p9.

⁷⁰ Anareily S 'The ethnographic enterprise: Venda girls' initiation schools revisited' (1998) 7(1) *British Journal of Ethnomusicology* p52 and 55.

3.4. Analysis

The inclusion of international laws in African laws is a benefit as it allows protection of all individuals on an international level. However, to a greater extent, cultures are now modified and filtered in order to meet international standards. Scholars from different dimensions of the world have the power to criticize some African customs thereby creating a leeway for indigenous people to condemn their cultures. This is also due to the human rights enlightenment that came through education, intermarriages and immigration. This has motivated individuals to criticise customs that had meaning like polygamy, lobolo and levirate unions.

3.5. Conclusion

From the above, it is evident that besides guaranteeing cultural rights and duties, a related feature of many African constitutions is that they also seek to expressly prohibit cultural practices that conflict with applicable international human rights standards.⁷¹ While countries would like to retain a part large as possible of their traditional practices, the fact that we are one world community makes this difficult when those traditions are inconsistent with prevailing international concepts and attitudes.⁷² Most states have also adopted constitutions and other laws which formally protect basic human rights.⁷³ Often the language used by States is drawn directly from the international human rights instruments.⁷⁴ Nations including former colonies hurriedly adopted these cultural values as universal human rights, through universal principles of equality, fairness and freedom.⁷⁵ “Whenever the indigenous values of these states conflicted with universalism, the latter prevailed, even though the cultural contexts of indigenous values did not exactly resonate with universalism.”⁷⁶

The socio-economic changes brought by colonial rule were accompanied by, or in some cases, implemented under the infamous indirect rule policy. This policy, alongside other political factors, entrenched the transplanted European laws, not the African indigenous laws, as state

⁷¹ Ibhawoh B ‘Between culture and constitution: evaluating the cultural legitimacy of human rights in the African state’ (2000) 22(3) *Human Rights Quarterly* p850.

⁷² Ibhawoh B ‘Between culture and constitution: evaluating the cultural legitimacy of human rights in the African state’ (2000) 22(3) *Human Rights Quarterly* p843.

⁷³ S34 of the Constitution of Zimbabwe 2013, S19(d) of the Constitution of Nigeria 1999, S39(1)(b) of the Constitution of The Republic of South Africa, 1996.

⁷⁴ UN Office of the High Commissioner for Human Rights (OHCHR) ‘*Human Rights: A Basic Handbook for UN Staff*, 2000, available at <https://www.refworld.org/docid/483eac7b2.html> (accessed 14 February 2023) p3-4.

⁷⁵ Preamble of the Constitution of Nigeria 1999, s7(1) of the Constitution of The Republic of South Africa, 1996, and Preamble of the Constitution of Zimbabwe 2013.

⁷⁶ Diala AC ‘Our Laws Are Better Than Yours: The Future of Legal Pluralism in South Africa’ (2019) 26 *Revista General de Derecho Público Comparado* p7.

laws.⁷⁷ However, in addressing the apparent tension between cultural traditions and human rights aspirations, one has to understand that every cultural tradition has some institutions and practices that uphold certain human rights, as well as some that are incompatible with or problematic for other human rights.⁷⁸ For this reason, international conventions set specific guidelines for how people may be treated with the intention of protecting people and their identities.⁷⁹ The resurgence of cultural traditions and customs is a component of the new global and national identity. Therefore, it is necessary to balance culture, tradition, and customs within the framework of international laws.⁸⁰ The next chapter examines this balancing act after analysing the impact of globalisation in Africa.

⁷⁷ Diala AC 'The concept of living customary law: a critique' (2017) 49(2) *The Journal of Legal Pluralism and Unofficial Law* p145.

⁷⁸ Ibhawoh B 'Between culture and constitution: evaluating the cultural legitimacy of human rights in the African state' (2000) 22(3) *Human Rights Quarterly* p859.

⁷⁹ Tesón FR 'International human rights and cultural relativism' (1984) 25 *Virginia Journal of International Law* p898.

⁸⁰ Maluleke MJ 'Culture, tradition, custom, law and gender equality' (2012) 15(1) *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* p18.

CHAPTER 4: IMPACT OF GLOBALISATION/MODERNITY IN AFRICA

4.1. Introduction

The impact of globalization/modernity on African customs is a complex and multifaceted phenomenon that has evolved over several centuries. The purpose of this chapter is to discuss the historical significance of modernity/globalization and to show how the two concepts are interrelated. In addition, their contribution to the dilution of African cultures and the associated advantages and disadvantages will be analysed. Furthermore, throughout the chapter, the terms modernity and globalization will be used interchangeably.

4.2. Trajectory of globalization/modernity

From the period of 1870 to 1914, three major phases of globalization took place: during the end of the 19th century and before the First World War, colonization and colonial domination were taking place in most African, Asian, and Latin American countries. It provided a platform for promoting Western culture and usurping the colonies' political and economic power to build the European economy.¹ In order to provide labour for the booming industries in these continents, native Africans were transported from Africa into Latin America, North America and Europe. During this process, which led to a long-lasting economic depression in Africa, about 20 million people of working age lost their jobs.²

The second phase was from 1945 to 1980, from the end of World War II through decolonisation in the last decades of the 60s and 70s. This is indicative of a postcolonial era and the development of neo-colonialism in developing countries.³ Finally, a period of the second wave of democratization has been defined by the third phase of 1980 to date. Most of the nation-states changed their tectonic system of governance to Western liberal democracy.⁴ This is why, since time immemorial, globalization has been in place. It has involved the transfer of ideas into other regions or continents, which accelerated their development to a greater extent than

¹ Mikail IK & Abdullah AL 'The Impact of Globalization on African Culture and Politics', (2017) 13 *Journal of International Studies* p2-3.

² Nova M 'Globalization-its influences & impacts on specific regions of Africa' (2020) 74 *SHS Web of Conferences* EDP Sciences p3.

³ Mikail IK & Abdullah AL 'The Impact of Globalization on African Culture and Politics', (2017) 13 *Journal of International Studies* p2-3.

⁴ Mikail IK & Abdullah AL 'The Impact of Globalization on African Culture and Politics', (2017) 13 *Journal of International Studies* p2-3.

the normal pace of social change.⁵ Global relations were based on ancient diplomacy, war, expansion of empires and religious revivalisms. The practice was furthered by later colonial explorers, who changed it into the current objective of modernizing and westernizing Africans.⁶ Currently, the spread of information, communication, and technology (ICT) serves as a conduit for standardising the world and creating a global village.⁷ Thus, technology solidifies the foundation for global governance. This process has accelerated the transformation of the political structures, sociocultural landscapes, educational systems, and psychological landscapes of African countries into the web of modernity, as well as their integration into the whims of western capitalists.⁸

4.3. Manifestations of Globalization and Modernity

The emergence of modernity is closely related to the history of globalization. The Atlantic Slave Trade and its accompanying systems of slavery, as well as European colonialism of Africa, Asia, and Latin America, have all contributed to the birth of modernity.⁹ The concept of modernity conjures up the rise of capitalism and industrialization, the creation of nation-states, as well as the widening of regional imbalances within the global economy.¹⁰ Significantly, throughout the period of imperialism, racial classifications developed as two key axes along which individuals were exploited and civilizations were stratified. The globalization of Europe and the emergence of an American/European cultural hegemony are characteristics of modernity.¹¹ Integration and power are intimately associated with modernization and globalization. In this sense, globalization and modernization are intertwined.

⁵ Mikail IK & Abdullah AL 'The Impact of Globalization on African Culture and Politics', (2017) 13 *Journal of International Studies* p2-3.

⁶ Mikail IK & Abdullah AL 'The Impact of Globalization on African Culture and Politics', (2017) 13 *Journal of International Studies* p2-3.

⁷ Mikail IK & Abdullah AL 'The Impact of Globalization on African Culture and Politics', (2017) 13 *Journal of International Studies* p2-3.

⁸ Mikail IK & Abdullah AL 'The Impact of Globalization on African Culture and Politics', (2017) 13 *Journal of International Studies* p2-3.

⁹ Powell JL 'Globalization and modernity' (2014) 17 *International Letters of Social and Humanistic Sciences* p3.

¹⁰ Powell JL 'Globalization and modernity' (2014) 17 *International Letters of Social and Humanistic Sciences* p3.

¹¹ Powell JL 'Globalization and modernity' (2014) 17 *International Letters of Social and Humanistic Sciences* p3.

Modernity in general is by its very nature worldwide.¹² Thus, it is fuelled by the advancements in communication and technology that characterize modern civilizations.¹³ Modernity and globalization have changed many aspects of human life, including cultures, economies, politics, interpersonal relationships, and worldviews. Their link is profound and intricate since they have co-evolved and had an impact on one another over time.¹⁴

In sociological ideas about globalization, modernity serves as a central theme. Modernity offers periodicity and structure alongside globalization. Additionally, modernity and globalization come pre-packaged together because both focus on the development of the world; both are facilitated by communication between countries and societies; both have led to changes and developments in the world, and both focus on connection between countries and societies.¹⁵ Since modernity closely reflects the prior, widely accepted notion of globalization, it is referred to as ready-made.¹⁶ In a way modernisation leads to globalisation and vice versa, so they are partially interdependent.¹⁷

4.4. Effects of Globalization/Modernity in Africa

The effects of modernity/globalization are contentious. Some scholars see their benefits as trade, freedom, and growth, while others regard them as a threat to national cultures, social cohesion, and stable economies.¹⁸ The impacts of Africa's contact with European conquerors have persisted. Every facet of African society, including politics, the economy, religion, family life, and moral principles, is impacted by this experience.¹⁹ Thus, the benefits and drawbacks of globalization are felt in economic, technological, social, political, and cultural aspects.²⁰ I will therefore analyse whether such experiences affected Africans in a beneficial or harmful way.²¹

¹² Hanseth O, Ciborra CU, & Braa K 'The control devolution: ERP and the side effects of globalization' (2001) 32(4) *ACM SIGMIS Database: The DATABASE for Advances in Information Systems* p37.

¹³ Powell JL 'Globalization and modernity' (2014) 17 *International Letters of Social and Humanistic Sciences* p3.

¹⁴ Powell JL 'Globalization and modernity' (2014) 17 *International Letters of Social and Humanistic Sciences* p3.

¹⁵ Hanseth O, Ciborra CU, & Braa K 'The control devolution: ERP and the side effects of globalization' (2001) 32(4) *ACM SIGMIS Database: The DATABASE for Advances in Information Systems* p37.

¹⁶ Pieterse J 'Globalization as Hybridization/Jan Nederveen Pieterse' (2000) 9 p2.

¹⁷ Pieterse J 'Globalization as Hybridization/Jan Nederveen Pieterse' (2000) 9 p2.

¹⁸ Berggren N & Nilsson T 'Globalization and the transmission of social values: The case of tolerance' (2015) 43(2) *Journal of Comparative Economics* p371.

¹⁹ Nwobodo RE 'Africa and The Challenges of Modernity' (2022) 2(1) *Nnadiabube Journal of Philosophy* p8.

²⁰ Nwobodo RE 'Africa and The Challenges of Modernity' (2022) 2(1) *Nnadiabube Journal of Philosophy* p8.

²¹ Nwobodo RE 'Africa and The Challenges of Modernity' (2022) 2(1) *Nnadiabube Journal of Philosophy* p8.

4.5. Positive Effects of Globalization/Modernity

International trade has grown as a result of modern technologies such as quick and straightforward bank transfers abroad and more affordable, accessible transportation. Thus, prospects for facilitating development and speeding economic progress are provided through international trade, which includes opening up new markets, lowering trade barriers, and enabling local entrepreneurs to export.²² Direct foreign investments can then stimulate local scientific and research endeavours. Modern communication technologies, which symbolize technical advancement, are a key component of the world's connection, uniting both people and nations. As a result, the world becomes a "global village".²³ Users of mobile phones who are employed overseas can send money to their family members via services like M-payments. In South Africa and Nigeria, criminal assaults can be reported via mobile phones and established hotlines that can be accessed with them.²⁴ Regarding Internet connectivity, around 1.4 billion Africans used the Internet in 2017, a figure that has risen considerably since then.²⁵

Globalization is a critical step towards a more stable world and improved human conditions. As a result of, or in furtherance of globalization, international institutions such as the United Nations, the International Labour Organization (ILO), the World Health Organization (WHO), and other international intergovernmental institutions have in essence refocused their attention on improving the health sector and health conditions as well as maintaining peace and ensuring stability.²⁶ They have significantly aided the international community in this area through foreign aid, technical support, and multilateral support of global agencies.²⁷

Globalization has also been connected to tradition in an effort to improve and increase the relations of people and nations around the world. From a different angle, globalization is seen as a social integration process that progresses from the individual to ethnic groups to nation

²² Nova M 'Globalization-its influences & impacts on specific regions of Africa' (2020) 74 *SHS Web of Conferences* EDP Sciences p4.

²³ Nova M 'Globalization-its influences & impacts on specific regions of Africa' (2020) 74 *SHS Web of Conferences* EDP Sciences p4.

²⁴ 'Nigeria: information for victims of rape and sexual assault' available at <https://www.gov.uk/government/publications/nigeria-information-for-victims-of-rape-and-sexual-assault/nigeria-information-for-victims-of-rape-and-sexual-assault> (accessed 01 August 2023).

²⁵ Nova M 'Globalization-its influences & impacts on specific regions of Africa' (2020) 74 *SHS Web of Conferences* EDP Sciences p4.

²⁶ Mikail IK & Abdullah AL 'The Impact of Globalization on African Culture and Politics', (2017) 13 *Journal of International Studies* p6.

²⁷ Mikail IK & Abdullah AL 'The Impact of Globalization on African Culture and Politics', (2017) 13 *Journal of International Studies* p6.

states to larger blocs to an international state society.²⁸ According to this viewpoint, customs have been simplified without consideration for each culture's guiding notions.²⁹

Although the impact of globalization on people's national identities actually affects their culture and distinctiveness in a broad sense,³⁰ it also makes people think about their conceptions of human ideas, practices, and principles of enjoyment of freedom of thought and privacy. The direction for creating a worldwide cultural value is the current concern.³¹

4.5.1. Economic benefits

As the world has become more interconnected, trade among nations has become easier than at any time in the history of humanity. A Chinese company can manufacture goods in Nigeria and sell them in Zimbabwe.³² Multinational corporations have branches worldwide that deliver foreign goods to locals (or expand local products to foreigners). In this sense, therefore, globalisation promotes trade.³³

Economic globalization encompasses both actual economic activity (such as trade, capital flows, and investments) alongside the institutions and rules that govern these activities. The more activities there are and the more lenient the restrictions are, the greater the degree of globalization.³⁴ Increased economic openness, foreign direct investment, and technology transfer are some of the ways that economic globalization presents opportunities for economic growth. All nations benefit from competitive trade because it expands the options available to the customer as well as product quality.³⁵ The practice of economic interaction and commerce

²⁸ Njeru V 'Globalization and Modernization An overview of the Impacts on the African Culture' (2017) 5(2) *International Journal of Social Science and Humanities Studies* p63.

²⁹ Njeru V 'Globalization and Modernization: An overview of the Impacts on the African Culture' (2017) 5(2) *International Journal of Social Science and Humanities Studies* p63.

³⁰ Mikail IK & Abdullah AL 'The Impact of Globalization on African Culture and Politics', (2017) 13 *Journal of International Studies* p6.

³¹ Mikail IK & Abdullah AL 'The Impact of Globalization on African Culture and Politics', (2017) 13 *Journal of International Studies* p6.

³² Oyekola IA *Culture and globalisation* (2018) ch6 p85-86.

³³ Oyekola IA *Culture and globalisation* (2018) ch6 p85-86.

³⁴ Berggren N & Nilsson T 'Globalization and the transmission of social values: The case of tolerance' (2015) 43(2) *Journal of Comparative Economics* p373.

³⁵ 'Globalisation and the Role of The State' available at <https://repository.up.ac.za/bitstream/handle/2263/24284/02chapters4-5.pdf?sequence=3&isAllowed=y> (accessed 20 July 2023) pg69.

encourages people to comprehend others and to not view them as threatening.³⁶ More tolerance might be the outcome in a society that encounters this phenomenon more frequently.³⁷

Financial globalization has created new markets for developing nations, opening doors for export, and drawing in foreign investment that advances development.³⁸ Globalisation has enabled nations to specialize more in products that can be produced at lower costs: this is known as comparative cost advantage.³⁹ For example, if Nigeria is capable of manufacturing rice at a lower cost than imported rice, she should specialize in other product(s) that can be produced at a lower cost rather than bringing in rice. This act is only achievable because of globalization. Thus, globalisation promotes comparative cost advantage.⁴⁰

4.5.2. Social benefits

Furthermore, personal interactions in general, information exchange, and cultural proximity are all aspects of social globalization.⁴¹ People will absorb new impressions, be exposed to values, and access information from many new sources to a greater extent as social globalization progresses, as this type of "cultural" interaction intensifies through the media, the internet, travel, migration, and the presence of various foreign companies.⁴² Meetings and experiences, not to mention other aspects of life, can directly promote tolerance if people can learn to value what those who are different have to offer.⁴³

Furthermore, if the dominant concepts and influences are largely liberal in nature, a tolerant viewpoint may also become more plausible as a result.⁴⁴ Globalization promotes cultural integration and the removal not only of cultural barriers but also of many of the negative

³⁶ Berggren N & Nilsson T 'Globalization and the transmission of social values: The case of tolerance' (2015) 43(2) *Journal of Comparative Economics* p373.

³⁷ Berggren N & Nilsson T 'Globalization and the transmission of social values: The case of tolerance' (2015) 43(2) *Journal of Comparative Economics* p373.

³⁸ 'Globalisation and the Role of The State' available at <https://repository.up.ac.za/bitstream/handle/2263/24284/02chapters4-5.pdf?sequence=3&isAllowed=y> (accessed 20 July 2023) pg69.

³⁹ Oyekola IA *Culture and globalisation* (2018) ch6 p85-86.

⁴⁰ Oyekola IA *Culture and globalisation* (2018) ch6 p85-86.

⁴¹ Berggren N & Nilsson T 'Globalization and the transmission of social values: The case of tolerance' (2015) 43(2) *Journal of Comparative Economics* p374.

⁴² Berggren N & Nilsson T 'Globalization and the transmission of social values: The case of tolerance' (2015) 43(2) *Journal of Comparative Economics* p374.

⁴³ Berggren N & Nilsson T 'Globalization and the transmission of social values: The case of tolerance' (2015) 43(2) *Journal of Comparative Economics* p374.

⁴⁴ Berggren N & Nilsson T 'Globalization and the transmission of social values: The case of tolerance' (2015) 43(2) *Journal of Comparative Economics* p374.

dimensions of culture.⁴⁵ Social globalization has raised public awareness of fraud, child labour injustices, and infringements on human rights.⁴⁶ As previously stated, people now have new means of disseminating knowledge on human rights, democracy, poverty reduction, and honesty thanks to the Internet, as well as decrease in transportation and communication costs.⁴⁷ This privilege has lowered the degree of isolation among emerging nations and opened up access to knowledge that was once only available to the richest nations.⁴⁸ Therefore, the competing causes for the spread of globalization comprised technological advancement, international economic systems, empire expansion, and religious revivalism.⁴⁹

4.5.3. Political benefits

The acceptance of international treaties, membership in international organizations, political exchange through foreign representation, and participation in international missions are only a few of the national-level implications of political globalization.⁵⁰ Since the people who participate in this kind of globalization are the ones who are most likely to be affected, and since there aren't many of them everywhere in the world, the impact on tolerance may be less significant.⁵¹ However, there might also be a result from a nation's population feeling as though their nation is a member of the global political community.⁵² Self-interest considerations (because of the numerous international political ties and exchanges, people might benefit from open attitudes toward others) and internalization (since it then feels more natural to sympathize with people of different backgrounds) could both have a positive effect.⁵³

⁴⁵ Mikail IK & Abdullah AL 'The Impact of Globalization on African Culture and Politics', (2017) 13 *Journal of International Studies* p9-10.

⁴⁶ 'Globalisation and the Role of The State' available at <https://repository.up.ac.za/bitstream/handle/2263/24284/02chapters4-5.pdf?sequence=3&isAllowed=y> (accessed 20 July 2023) pg69.

⁴⁷ 'Globalisation and the Role of The State' available at <https://repository.up.ac.za/bitstream/handle/2263/24284/02chapters4-5.pdf?sequence=3&isAllowed=y> (accessed 20 July 2023) pg69.

⁴⁸ Mikail IK & Abdullah AL 'The Impact of Globalization on African Culture and Politics', (2017) 13 *Journal of International Studies* p5.

⁴⁹ Mikail IK & Abdullah AL 'The Impact of Globalization on African Culture and Politics', (2017) 13 *Journal of International Studies* p5.

⁵⁰ Berggren N & Nilsson T 'Globalization and the transmission of social values: The case of tolerance' (2015) 43(2) *Journal of Comparative Economics* p374.

⁵¹ Berggren N & Nilsson T 'Globalization and the transmission of social values: The case of tolerance' (2015) 43(2) *Journal of Comparative Economics* p374.

⁵² Berggren N & Nilsson T 'Globalization and the transmission of social values: The case of tolerance' (2015) 43(2) *Journal of Comparative Economics* p374.

⁵³ Berggren N & Nilsson T 'Globalization and the transmission of social values: The case of tolerance' (2015) 43(2) *Journal of Comparative Economics* p374.

4.6. Negative Effects of Globalization/Modernity

Some scholars claim that modernity has destroyed familial ties and institutions.⁵⁴ Africans typically have large extended families where all members of the bloodline have varying rights and advantages that reach all the way to the village.⁵⁵ However, due to migration, people tend to build homes individually, which led to the dominance of the nuclear family consisting of the mother, father, and their biological children.⁵⁶ This erosion of the extended family has essentially ruined the core customs that African culture holds dear. Specifically, it has interfered with the transmission of familial customs, including the aunt's role in her brothers' offspring, particularly with regard to sexuality and the sanctity of the body.⁵⁷

Although the world economy advances as a result of globalization because of better communication and technology, it also creates new and different societal issues since cultural objects are being commercialized. When viewed through the lens of Western imperialism, globalization aligns with considerably more political and troublesome roles.⁵⁸ As shown in this dissertation, wide range of views contend that migration and globalization worsen issues like human trafficking and the sale of illegal drugs. As a result, a worldwide political system may lead to an ideological clash.⁵⁹ Some views contend that direct cross-border investments and international trade are simply tools used to take advantage of the unskilled labour that is still readily available in emerging nations.⁶⁰

4.6.1. Cultural distortions

The lust for wealth and tendency of Africans towards individualism has led to distortion and commercializing of customs like *ukuthwala*. For example, in the *Jezele* case, Judge Nhlapo

⁵⁴ 'Impact of Modernization on African Tradition' available at <https://tremhost.com/blog/impact-of-modernization-on-african-tradition/> (accessed 4 August 2023).

⁵⁵ Anyanwu C 'Traditional Values Versus Modernity: Towards A Resolution of The Dilemma of Culture Conflict in African Society' (2015) 3(4) *International Journal of African Society, Cultures and Traditions* p14.

⁵⁶ 'Impact of Modernization on African Tradition' available at <https://tremhost.com/blog/impact-of-modernization-on-african-tradition/> (accessed 4 August 2023).

⁵⁷ 'Impact of Modernization on African Tradition' available at <https://tremhost.com/blog/impact-of-modernization-on-african-tradition/> (accessed 4 August 2023).

⁵⁸ Öztürk AN 'An Overview on Globalization Discussions Through the Concept of Culture' (2021) 1(1) *Culture and Civilization* p10.

⁵⁹ Nova M 'Globalization-its influences & impacts on specific regions of Africa' (2020) 74 *SHS Web of Conferences* EDP Sciences p4.

⁶⁰ Nova M 'Globalization-its influences & impacts on specific regions of Africa' (2020) 74 *SHS Web of Conferences* EDP Sciences p3.

observed that the girl's parents and family are typically from low-income families who are caught in a cycle of impoverishment, and that the funds or livestock obtained from kidnapping the female child for marriage is very frequently appealing.⁶¹ Moreover, elopement is becoming prevalent. In Nigeria, this is primarily as a result of the dire economic circumstances, especially in Tiv-land's rural areas. The likelihood that low-income rural residents will fulfil bride price commitments is decreased as a result of parents who take advantage of the bride price factor to profit themselves.⁶² Consequently, their range of choices is reduced, making elopement a more alluring choice.⁶³ Commercializing practices undermines their intended meaning and ultimately results in the distortion of cultural traditions.⁶⁴ This ultimately opens the door for the adoption of foreign laws. For instance, commercializing lobola may cause a sharp decline in marriages, opening the door for cohabitation.⁶⁵ All of these changes are the consequence of modernity/globalization, which were brought about by the system of Western education established in the colonial era.⁶⁶

Furthermore, the growth of monogamous marriages through Christianity is facilitated by the pace of globalization.⁶⁷ As a result, unmarried women tend to prey on married men, thereby destroying other women's homes, since polygamy, which is a conventional route for quick marriage, is affected.⁶⁸

In keeping with the concept of cultural dilution, Africans have started to accept several cultural customs that were formerly viewed as vices in the past.⁶⁹ Examples of these include abortions, which were once illegal under African traditional law but are now permitted in South Africa

⁶¹ *Jezile v S and Others* 2016 (2) SA 62 (WCC) para 76.

⁶² Fyanka BB 'The Evolution of Marital Practices among the Tiv: A Critical Appraisal' (2018) 2 *RUN Journal of Cultural Studies* p170-171.

⁶³ Fyanka BB 'The Evolution of Marital Practices among the Tiv: A Critical Appraisal' (2018) 2 *RUN Journal of Cultural Studies* p170-171.

⁶⁴ Özün ŞO & Başkale N 'The Distortion of Cultural Identity in Chinua Achebe's *Things Fall Apart*' (2019) 9(18) *Trakya Üniversitesi Edebiyat Fakültesi Dergisi* p88.

⁶⁵ Montle ME & Moleke H 'EXPLORING THE COMMERCIALISATION OF LOBOLA IN SOUTH AFRICA' (2021) 18(17) *PalArch's Journal of Archaeology of Egypt/Egyptology* p588.

⁶⁶ Chulu J *Africa is largely influenced by foreign culture especially western culture. Has Africa now sacrificed her own culture on the altar of expediency? Has Africa now sacrificed her own culture on the altar of expediency* (Published PhD thesis, Copperstone University, 2015) p15.

⁶⁷ Njeru V 'Globalization and Modernization An overview of the Impacts on the African Culture' (2017) 5(2) *International Journal of Social Science and Humanities Studies* p67.

⁶⁸ Tatira L 'The Shona concept of marriage with special reference to procreation and fertility' (2016) 36(1) *South African Journal of African Languages* p124.

⁶⁹ 'Impact of Modernization on African Tradition' available at <https://tremhost.com/blog/impact-of-modernization-on-african-tradition/> (accessed 4 August 2023).

through the Termination of Pregnancy Act.⁷⁰ This is only a small illustration of the alarmingly high percentage of cultural disorientation that occurs in several African nations.⁷¹

Moreover, having multiple jobs throughout the day can cause parents to work late hours, which limits their opportunity to spend time with their children, thereby failing to teach their children fundamental principles of life.⁷² For most children, their teacher is the internet. A child will probably understand that anything they discover on the internet is how one ought to live, embracing morals that were not present in the African traditional society, and so on. These qualities include things like having children outside of marriage.⁷³ Historically, Africans transmitted their ideals through myths, tales, oral histories, and stories. A council of elders, who were regarded as being extremely skilled and knowledgeable, would settle disputes that arose among family members. Families are strained when members migrate abroad in quest of employment because they must part ways. It might compel women to abandon their kids so that friends, relatives, or even the elderly might raise them.⁷⁴

Another negative effect of globalization on African culture is that the exquisite craftsmanship of hand-woven garments is being lost. Sagging jeans is an effect of globalization on African culture. Provocative dressing that reveals erogenous parts is foreign to us in Africa.⁷⁵

4.6.2. Loss of identity

The primary threat of globalization is the loss of a sense of culture, as well as one's national identity. Globalization has the tendency to obliterate national and cultural identities.⁷⁶ A number of European countries, for instance, were reluctant to abandon their national currencies

⁷⁰ S2(1)(a) of the Choice on Termination of Pregnancy Act 92 of 1996.

⁷¹ 'Impact of Modernization on African Tradition' available at <https://tremhost.com/blog/impact-of-modernization-on-african-tradition/> (accessed 4 August 2023).

⁷² Njeru V 'Globalization and Modernization An overview of the Impacts on the African Culture' (2017) 5(2) *International Journal of Social Science and Humanities Studies* p67.

⁷³ Njeru V 'Globalization and Modernization An overview of the Impacts on the African Culture' (2017) 5(2) *International Journal of Social Science and Humanities Studies* p67.

⁷⁴ Njeru V 'Globalization and Modernization An overview of the Impacts on the African Culture' (2017) 5(2) *International Journal of Social Science and Humanities Studies* p67.

⁷⁵ Adefarasin VO and Adefarasin VA 'Impact of Globalization on African Culture' (2023) 6(2) *Philosophy International Journal (PhIJ)* p8.

⁷⁶ Adefarasin VO and Adefarasin VA 'Impact of Globalization on African Culture' (2023) 6(2) *Philosophy International Journal (PhIJ)* p8.

in favour of the Euro, the common European currency. They are clinging to their own currency as it represents their national identity.⁷⁷

Furthermore, customs have been twisted in Africa due to modernity because the point in life at which a woman weds today is considerably different from the past.⁷⁸ African women appear to put more emphasis on their professional development and pursuing positions within the state's governing bodies, delaying or possibly forgoing marriage altogether.⁷⁹ Globalization has contributed to the increase in interdependence among nations and cultures.⁸⁰

There is also the risk of losing one's personal identity, of becoming lost in the anonymity of the crowd, dragged along by the force of globalization.⁸¹ As part of losing self-identity by dipping oneself in the unidentified crowd of globalization, the individual starts leading a fictitious life, for example some people feel pressured to appear rich and use filters to enhance their skin tones on social media.⁸² Thus, people are compelled to accept the cultures that are portrayed as favourable by television, the internet, and other media. As certain countries with specific cultural qualities succeed while others with other traits do not, global disparity expands.⁸³ The problem with globalization is not just that it imposes foreign cultural norms on local ones; it also carries the financial price of the disruptions.⁸⁴ The process is more advantageous to Western nations than the Africans.⁸⁵ Global wealth is more beneficial to previously developed nations than less developed ones. The idea of interdependence and reliance on other nations is

⁷⁷ Adefarasin VO and Adefarasin VA 'Impact of Globalization on African Culture' (2023) 6(2) *Philosophy International Journal (PhIJ)* p8.

⁷⁸ Njeru V 'Globalization and Modernization An overview of the Impacts on the African Culture' (2017) 5(2) *International Journal of Social Science and Humanities Studies* p67.

⁷⁹ Njeru V 'Globalization and Modernization An overview of the Impacts on the African Culture' (2017) 5(2) *International Journal of Social Science and Humanities Studies* p67.

⁸⁰ Njeru V 'Globalization and Modernization An overview of the Impacts on the African Culture' (2017) 5(2) *International Journal of Social Science and Humanities Studies* p67.

⁸¹ Adefarasin VO and Adefarasin VA 'Impact of Globalization on African Culture' (2023) 6(2) *Philosophy International Journal (PhIJ)* p8.

⁸² Adefarasin VO and Adefarasin VA 'Impact of Globalization on African Culture' (2023) 6(2) *Philosophy International Journal (PhIJ)* p8.

⁸³ Tsanwani A, Mulaudzi TP, & Raselekoane NR 'Culture and globalisation: an analysis of cultural globalisation in modern era' 2017 *International Conference on Public Administration and Development Alternatives (IPADA)* p141-142.

⁸⁴ Tsanwani A, Mulaudzi TP, & Raselekoane NR 'Culture and globalisation: an analysis of cultural globalisation in modern era' 2017 *International Conference on Public Administration and Development Alternatives (IPADA)* p141-142.

⁸⁵ Tsanwani A, Mulaudzi TP, & Raselekoane NR 'Culture and globalisation: an analysis of cultural globalisation in modern era' 2017 *International Conference on Public Administration and Development Alternatives (IPADA)* p141-142.

something that globalization teaches emerging nations.⁸⁶ The urge for deference to leadership and the upholding of customary principles and customs are badly impacted by globalization.⁸⁷

In the hopes of securing a brighter future, young women in developing nations have turned to the internet to find males, regardless of their age or their outward appearance. This has played a significant role in the increasing number of international marriages.⁸⁸ Dating websites are used in the marriage trade. Others have utilized dating sites like these to sell young girls in the hopes that they will marry wealthy white men, but when they arrive, the girls serve as sex workers, unpaid household workers, and slaves in sweatshops⁸⁹

4.6.3. Promotion of neo-colonialism

Another risk of globalization is that it could morph into an indirect kind of neo-colonization. This is done by means of the investments made by multinational businesses. These investments help to cultivate developing nations as sources of inexpensive labour and raw resources. International financial institutions like the World Bank and the International Monetary Fund are also frequently accused of engaging in neo-colonialism through granting loans and other forms of economic assistance that make it contingent on recipient nations to adopt policies that benefit those represented by the international institutions while harming their own economies. African countries are attempting to democratize their social, political, and economic spheres in an effort to conform with global standards.⁹⁰ Due to its trend toward greater social mobility, globalization erodes political allegiance and class unity. It has an impact on the country's ability to construct a solid social identity.⁹¹ Thus, globalization is recolonizing states in the interim,

⁸⁶ Tsanwani A, Mulaudzi TP, & Raselekoane NR 'Culture and globalisation: an analysis of cultural globalisation in modern era' 2017 *International Conference on Public Administration and Development Alternatives (IPADA)* p141-142.

⁸⁷ Tsanwani A, Mulaudzi TP, & Raselekoane NR 'Culture and globalisation: an analysis of cultural globalisation in modern era' 2017 *International Conference on Public Administration and Development Alternatives (IPADA)* p141-142.

⁸⁸ Njeru V 'Globalization and Modernization An overview of the Impacts on the African Culture' (2017) 5(2) *International Journal of Social Science and Humanities Studies* p67.

⁸⁹ Njeru V 'Globalization and Modernization An overview of the Impacts on the African Culture' (2017) 5(2) *International Journal of Social Science and Humanities Studies* p67.

⁹⁰ Tsanwani A, Mulaudzi TP, & Raselekoane NR 'Culture and globalisation: an analysis of cultural globalisation in modern era' 2017 *International Conference on Public Administration and Development Alternatives (IPADA)* p141-142.

⁹¹ Tsanwani A, Mulaudzi TP, & Raselekoane NR 'Culture and globalisation: an analysis of cultural globalisation in modern era' 2017 *International Conference on Public Administration and Development Alternatives (IPADA)* p141-142.

especially those in Africa. Some traditionalists worry that their sense of morality, convictions, and religion may be compromised in the name of universal necessity.⁹²

In addition to this, African traditional leaders and religious kingdoms' levels of sovereignty have been hampered by globalization to the point where they are no longer able to rule their societies.⁹³ Colonization, which decreased their influence and pushed them into the background through the phenomenon of direct and indirect authority, is anathema to traditional African leadership.⁹⁴ Nevertheless, through regional and national vocational training institutions, the Shona people of Zimbabwe have made an attempt to organize their young people and equip them with knowledge of diverse cultural heritage issues.⁹⁵ However, these institutions face challenges due to inappropriate curricula, lack of experienced trainers, and inadequate learning and teaching resources. Contrarily, trained culture workers who received training in methods common in Western nations, behave like administrators when it comes to local community cultural events.⁹⁶ Their familiarity with and connection to the local African cultural institutions is yet unclear, as their education and employment are primarily tailored to urban Western environments.⁹⁷ As discussed in this thesis, European colonialism played a huge role.

For example, Apartheid existed in South Africa from the 1950s to the 1980s and collapsed in the 1990s, and there were assimilations in the French colonies of Africa.⁹⁸ Due to this idea, the colonial rulers gained the right to oppose the traditional political structure of the African people. During the French colonization, King Alu Babba of Kano and Sultan Attahiru of Sokoto were killed and leaders such as the Kosoko of Lagos and Jaja of Opobo in Nigeria were exiled or acceded to colonial orders and became submissive.⁹⁹ These malicious deeds reduced

⁹² Tsanwani A, Mulaudzi TP, & Raselekoane NR 'Culture and globalisation: an analysis of cultural globalisation in modern era' 2017 *International Conference on Public Administration and Development Alternatives (IPADA)* p141-142.

⁹³ Mikail IK & Abdullah AL 'The Impact of Globalization on African Culture and Politics', (2017) 13 *Journal of International Studies* p6.

⁹⁴ Diala AC 'A butterfly that thinks itself a bird: the identity of customary courts in Nigeria' (2019) 51(3) *The Journal of Legal Pluralism and Unofficial Law* p385.

⁹⁵ Masoga MA & Kaya HO 'Globalisation and African cultural heritage erosion: implications for policy' (2008) 7(2) *Indilinga African Journal of Indigenous Knowledge Systems* p148-149.

⁹⁶ Masoga MA & Kaya HO 'Globalisation and African cultural heritage erosion: implications for policy' (2008) 7(2) *Indilinga African Journal of Indigenous Knowledge Systems* p148-149.

⁹⁷ Masoga MA & Kaya HO 'Globalisation and African cultural heritage erosion: implications for policy' (2008) 7(2) *Indilinga African Journal of Indigenous Knowledge Systems* p148-149.

⁹⁸ Moodley K & Adam H 'Race and nation in post-apartheid South Africa' (2000) 48 *Current Sociology* p51.

⁹⁹ Tedheke MEU *A political economy explanation of the Nigerian civil war* (Unpublished PhD Thesis, Ahmadu Bello University, 2007) p115-117.

the sovereign authority of traditional African leaders, making them susceptible to white men's influence both at the time and even into the post-colonial era.¹⁰⁰

Finally, there is no strategy that balances the effects of globalization with the preservation of traditional values. People ought to be free to determine independently which elements of globalization are beneficial, detrimental, or truly oblivious to cultures around the globe.¹⁰¹ Cultural issues related to globalization in terms of divergent beliefs should be taken into consideration.¹⁰² Americanization is the term used to describe the widespread impact of American businesses, goods, and culture in African nations.¹⁰³ There appears to be less cultural diversity as a result of American culture's control over the entire globe, which could result in a monocultural form of neo-colonialism.¹⁰⁴ When cultural identities are destroyed and replaced by a homogenized, westernized consumer culture, cultural diversity comes to an end.

4.6.4. Diminished human security

People are moving from rural to urban areas more frequently, and the expansion of cities, particularly in developing nations, is associated with living conditions that are often below average for many.¹⁰⁵ There is a rise in social and domestic violence, as well as family discord. There are worries that the increased competition brought about by globalization is making societies more individualistic. Multinational corporations are leading the charge in establishing themselves and building a significant presence in almost every region of the world in a

¹⁰⁰ Mikail IK & Abdullah AL 'The Impact of Globalization on African Culture and Politics', (2017) 13 *Journal of International Studies* p8.

¹⁰¹ Tsanwani A, Mulaudzi TP, & Raselekoane NR 'Culture and globalisation: an analysis of cultural globalisation in modern era' 2017 *International Conference on Public Administration and Development Alternatives (IPADA)* p141-142.

¹⁰² Tsanwani A, Mulaudzi TP, & Raselekoane NR 'Culture and globalisation: an analysis of cultural globalisation in modern era' 2017 *International Conference on Public Administration and Development Alternatives (IPADA)* p141-142.

¹⁰³ Tsanwani A, Mulaudzi TP, & Raselekoane NR 'Culture and globalisation: an analysis of cultural globalisation in modern era' 2017 *International Conference on Public Administration and Development Alternatives (IPADA)* p141-142.

¹⁰⁴ Tsanwani A, Mulaudzi TP, & Raselekoane NR 'Culture and globalisation: an analysis of cultural globalisation in modern era' 2017 *International Conference on Public Administration and Development Alternatives (IPADA)* p141-142.

¹⁰⁵ Wani HA 'Impact of globalization on world culture' (2011) 2(2) *Research Journal of Humanities and Social Sciences* p37-38.

capitalistic market.¹⁰⁶ Also, the media is central in promoting the advantages of foreign goods and services as more profitable and preferable than those available in the local market.¹⁰⁷

As much as globalization has made it possible for people to obtain occupations outside of their borders, scammers who pose as middlemen have over the years duped many gullible individuals.¹⁰⁸ Additionally, globalization opens doors for the trafficking of women and children who wind up being trapped in other nations.¹⁰⁹

Significantly, the West supports lesbian, gay, bisexual, and transgender (LGBT) rights, whereas certain African nations are categorically opposed to it. For instance, Zimbabwe approved a legislation requiring anyone engaging in the conduct to be arrested and prosecuted.¹¹⁰ In a speech, former President Robert Mugabe cautioned Africa against assimilating Western principles that are inconsistent with African culture. However, gay rights are recognised in South Africa.¹¹¹

Furthermore, the educational system of the West drove many Africans into low-paying jobs. Africans were deterred from agrarian activities by the literary emphasis on western education.¹¹² Meanwhile, the curriculum that Africans adopted was a Western creation that only occasionally recognized their traditional values. Instead of letting Africa develop its own indigenous social sciences, they told the continent's people to adopt western sciences.¹¹³ Thus, due to the fact that "imperialism of western powers is our social sciences", African social sciences were neither promoted nor included in mainstream literature. Due to this problem, Africans were unable to create curricula that reflects their traditions, dialects, and customs. This situation made it easier to indoctrinate Africans with western beliefs.¹¹⁴

¹⁰⁶ Wani HA 'Impact of globalization on world culture' (2011) 2(2) *Research Journal of Humanities and Social Sciences* p37-38.

¹⁰⁷ Wani HA 'Impact of globalization on world culture' (2011) 2(2) *Research Journal of Humanities and Social Sciences* p37-38.

¹⁰⁸ Njeru V 'Globalization and Modernization An overview of the Impacts on the African Culture' (2017) 5(2) *International Journal of Social Science and Humanities Studies* p67.

¹⁰⁹ Njeru V 'Globalization and Modernization An overview of the Impacts on the African Culture' (2017) 5(2) *International Journal of Social Science and Humanities Studies* p67.

¹¹⁰ Njeru V 'Globalization and Modernization An overview of the Impacts on the African Culture' (2017) 5(2) *International Journal of Social Science and Humanities Studies* p67.

¹¹¹ Section 6 of the Civil Union Act 17 of 2006.

¹¹² Masoga MA & Kaya HO 'Globalisation and African cultural heritage erosion: implications for policy' (2008) 7(2) *Indilinga African Journal of Indigenous Knowledge Systems* p148-149.

¹¹³ Masoga MA & Kaya HO 'Globalisation and African cultural heritage erosion: implications for policy' (2008) 7(2) *Indilinga African Journal of Indigenous Knowledge Systems* p148-149.

¹¹⁴ Mikail IK & Abdullah AL 'The Impact of Globalization on African Culture and Politics', (2017) 13 *Journal of International Studies* p12.

Although Africa was incorporated into the global capitalist economic system as a result of globalization, the region experienced poverty and inequality. Local businesses quickly deteriorated and were replaced by international ones.¹¹⁵ Large corporations from the industrialized world were able to invest in less developed nations in Africa as a result of the demise of local industries. The African economy suffered from this new trend of economic globalization, which made them dependent on the developed world and obedient to it.¹¹⁶

In addition, trade liberalization made it harder for local industries to operate as efficiently as they could have. This opened the door for the importation of finished commodities that Africans were able to manufacture locally.¹¹⁷ In fact, the aforementioned complications hindered Africa's manufacturing cultures, forcing several African republics like Zimbabwe and South Africa to import even table water.¹¹⁸

4.7. Conclusion

Modernity's effects on tradition are unavoidable. According to Giddens, '...modern family and social life is characterized by an increasingly reflexive self and a focus on pure relationship'.¹¹⁹ Modernization or globalization is an essential component of human development or progress. Since modernity and development have the same goal of improving the human condition, it is essential for scholars and policymakers to conceptualize modernity correctly.¹²⁰ With emphasis on Nigeria, South Africa, and Zimbabwe, one would conclude that globalisation embedded in the co-existence of two or more legal orders has hampered Africa's political development.¹²¹

On the one hand, pre-colonial traditional institutions are deeply ingrained in Africa and their continued existence goes beyond the colonial legacy. Millions of ordinary Africans still heavily rely on these traditional organizations.¹²² On the other hand, after Africa gained political

¹¹⁵ Mikail IK & Abdullah AL 'The Impact of Globalization on African Culture and Politics', (2017) 13 *Journal of International Studies* p10-11.

¹¹⁶ Mikail IK & Abdullah AL 'The Impact of Globalization on African Culture and Politics', (2017) 13 *Journal of International Studies* p10-11.

¹¹⁷ Mikail IK & Abdullah AL 'The Impact of Globalization on African Culture and Politics', (2017) 13 *Journal of International Studies* p10-11.

¹¹⁸ Staff 'Zimbabwe to export water to South Africa' available at

<https://furtherafrica.com/2021/04/16/zimbabwe-to-export-water-to-south-africa/> (accessed 01 August 2023).

¹¹⁹ Bitrus IS 'Globalizing Impact of Modernity in Africa' (2017) 8(2) *Journal of Globalization Studies* p82.

¹²⁰ Nwobodo RE 'Africa and The Challenges of Modernity' (2022) 2(1) *Nnadiesube Journal of Philosophy* p15.

¹²¹ Abebe SG 'The relevance of African culture in building modern institutions and the quest for legal pluralism' (2013) 57(2) *Saint Louis University Law Journal* p446.

¹²² Abebe SG 'The relevance of African culture in building modern institutions and the quest for legal pluralism' (2013) 57(2) *Saint Louis University Law Journal* p446.

freedom from colonial domination, its elites resorted to copying the constitutional designs of their former oppressors.¹²³ Thus, after independence, Africa faced the challenge of developing a new culture that is undeniably African in origin.¹²⁴ Moreover, although many African elites have adopted Western institutions, they oppose the growth of a democratic system of government on the grounds that it is at odds with the egalitarian traditional system of administration in their countries.¹²⁵ This is a paradox.

Nevertheless, tradition essentially determines a people's sense of self. It is thus a vital component of culture, since people's beliefs set them apart from other groups of people.¹²⁶ Modern Western ideals have both positive and negative effects on African people's social and emotional wellness, with some advancing our economic progress which is connected to our traditions, while others slow it down.¹²⁷ However, it does seem that culture makes an effort to preserve the beliefs that are essential to people's existence. Thus, Africans still largely adhere to their traditional ideas, which values people and human life over personal interest and material gains.¹²⁸ They contend that the Christian faith and Western tradition are compatible with these traditional values.¹²⁹ In this regard, one can observe that close kinship ties are highly valued among Africans.¹³⁰

In any case, the evolution of tradition has liberated people to choose who they want to be, without being constrained by external beliefs, values or kinship. Moreover, people may freely choose to doubt, and rebuild their traditions in the West.¹³¹ Modernity's globalizing effects have also changed how 'Africans' live their traditional lifestyles and interact with others. The traditional family structure is evolving into a monogamous, individualized way of life as a result of modernity.¹³² Therefore, one should bear in mind that the modernity ideology has potential to have a strong influence on traditional practices, but only if people are aware of its limitations and abilities to transform certain identities.¹³³

¹²³ Abebe SG 'The relevance of African culture in building modern institutions and the quest for legal pluralism' (2013) 57(2) *Saint Louis University Law Journal* p446.

¹²⁴ Nwobodo RE 'Africa and The Challenges of Modernity' (2022) 2(1) *Nnadiesube Journal of Philosophy* p15.

¹²⁵ Abebe SG 'The relevance of African culture in building modern institutions and the quest for legal pluralism' (2013) 57(2) *Saint Louis University Law Journal* p446.

¹²⁶ Idang GE 'African culture and values' (2015) 16(2) *Phronimon* p108.

¹²⁷ Nwobodo RE 'Africa and The Challenges of Modernity' (2022) 2(1) *Nnadiesube Journal of Philosophy* p15.

¹²⁸ Bitrus IS 'Globalizing Impact of Modernity in Africa' (2017) 8(2) *Journal of Globalization Studies* p82.

¹²⁹ Bitrus IS 'Globalizing Impact of Modernity in Africa' (2017) 8(2) *Journal of Globalization Studies* p82.

¹³⁰ Idang GE 'African culture and values' (2015) 16(2) *Phronimon* p108.

¹³¹ Bitrus IS 'Globalizing Impact of Modernity in Africa' (2017) 8(2) *Journal of Globalization Studies* p82.

¹³² Bitrus IS 'Globalizing Impact of Modernity in Africa' (2017) 8(2) *Journal of Globalization Studies* p82.

¹³³ Kumar RA 'Tradition and modernity in Africa: a reflection on influence of European ideology' (2006) 1 *Boleswa Occasional Papers in Theology and Religion* p42.

In conclusion, modernity or globalisation receives criticism because the cooperative structure of traditional society, which enables individuals to construct homes and work on farms together, is in stark contrast with the individualistic paradigm of Western lifestyle.¹³⁴ Moreover, African values and culture are now seen as inferior to Western values and culture due to the trend of cultural westernization that has become very pervasive on the continent.¹³⁵ The majority of natives who mindlessly adopted contemporary Western ideas are currently experiencing personal and cultural identity crises.¹³⁶ The influence of Western civilisation on Africa has led to a discontinuity in ways of living across the whole continent, similar to other countries and cultures in the so-called Third World or developing countries.¹³⁷

One can argue that eventually, there are often conflicts at every level of individual and community setting in the African experience of modernity.¹³⁸ As long as social engagements occur, there will always be people or circumstances that alter how one views the world.¹³⁹ In light of the fact that culture is a dynamic system in which values serve a crucial role in providing a society with distinctiveness, it is imperative that detrimental and adverse cultural traditions that dehumanize people and depict them as unimproved, impoverished individuals with no future be abandoned.¹⁴⁰ Taking into account that culture should be effectively unique and enable communities to progress from a particular stage of advancement to the next, positive aspects of African culture such as Ubuntu and communal welfare should be promoted.¹⁴¹

¹³⁴ Idang GE 'African culture and values' (2015) 16(2) *Phronimon* p108.

¹³⁵ Nwobodo RE 'Africa and The Challenges of Modernity' (2022) 2(1) *Nnadiesube Journal of Philosophy* p15.

¹³⁶ Bitrus IS 'Globalizing Impact of Modernity in Africa' (2017) 8(2) *Journal of Globalization Studies* p82.

¹³⁷ Nwobodo RE 'Africa and The Challenges of Modernity' (2022) 2(1) *Nnadiesube Journal of Philosophy* p15.

¹³⁸ Nwobodo RE 'Africa and The Challenges of Modernity' (2022) 2(1) *Nnadiesube Journal of Philosophy* p15.

¹³⁹ Kumar RA 'Tradition and modernity in Africa: a reflection on influence of European ideology' (2006) 1 *Boleswa Occasional Papers in Theology and Religion* p42.

¹⁴⁰ Idang GE 'African culture and values' (2015) 16(2) *Phronimon* p108-109.

¹⁴¹ Idang GE 'African culture and values' (2015) 16(2) *Phronimon* p108-109.

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