

Volume 1, Issue 3, November 2017

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Mary Nyangweso

Research Articles*

DOI:

10.14658/pupj-phrg-2017-3-3

How to cite:

Nyangweso M. (2017) 'Religion, Human Rights, and the African Widow', *Peace Human Rights Governance*, 1(3), 365-391.

Article first published online

November 2017

*All research articles published in PHRG undergo a rigorous double-blind review process by at least two independent, anonymous expert reviewers

Religion, Human Rights, and the African Widow

Mary Nyangweso*

Abstract

Moral actions are often difficult to comprehend since what counts as moral differ throughout the world. While differences in our moral systems ought to be respected, differences that undermine basic human rights ought to be challenged, reconstructed and adapted to affirm contemporary values. As dynamic and adaptive social phenomenon, cultural system should serve empowering values that promote human flourishing. In modern society, what is considered good is embedded in basic human rights values, values that have been described by some as universal and viewed as transcending cultural differences and unique realities that make humans different; because they centralize humanity. Drawing illustrations from the African woman's experience, this paper demonstrate how the three African religions; namely indigenous religions, Christianity and Islam, inhibit women's rights while advocating for social justice in general. In the paper, I draw from intersectionality as a framework to argue for women's rights within an evolving cultural experience of African women. While recognizing that African cultural systems have unique structural details, the similarities in experience of African women is highlighted with description of specific case studies.

Keywords: Religion, Gender Based Violence; Widows Rites; Human Rights

* J. Woolard and Helen Peel distinguished professor in Religious Studies, East Carolina University, Greenville, North Carolina, e-mail: wangilam@ecu.edu

Introduction

All seemed well for Virginia Wambui Waiyaki Otieno, a modern Kenyan woman who believed that she and her husband lived in a society that transcended cultural entanglements. Wambui Otieno, a Kikuyu woman had chosen to ignore her traditional boundaries that required her as a Kikuyu woman, not to marry a man from the Luo community. Just like her husband, Silvano Melea Otieno, Wambui believed that in a modernizing world, cultural values were no longer an issue as the society integrated and tribal lines became marred with western education, industrialization, urbanization, and multiculturalism. This conviction was soon put to test with the death of her husband in December 1986. Little did Kenyans know how this incident would challenge the values they embraced as well. Otieno was a practicing lawyer, and a former member of Kenya's parliament, who resided in Nairobi, the capital city of Kenya. Together, they purchased land and led a modern lifestyle. Wambui was an accomplished woman as well. She was also a prominent member of the National Council of Women of Kenya and a political figure who had stood for local elections. Her husband on the other hand was a member of the Luo ethnic community. According to his traditions, Otieno was considered the head of his clan- the Umira Kager clan. He presided over the affairs of his clan on a regular basis as a traditional elder, even though he did not have a home on his ancestral land as required by the Luo tradition (Cohen and Odhiambo 1992; Ray 2000, 100-102; Otieno 1988, 131-192). To Wambui, this was a modern man whose respect goes beyond cultural requirements.

Unfortunately, at his death, Otieno left no written will about his resting place. Wambui did not anticipate any problem since her husband had verbally expressed his wish to be buried on his land in Nairobi, sometimes in the presence of his brother. Among the Luo, proper burial must be in accordance with indigenous values. An individual must be buried on ancestral land. A Nairobi court overruled pleas by Wambui that her husband's verbal wishes were for him to be buried on his land in Nairobi. The Luo Umira Kager clan was granted the right to bury Otieno after intervention of the then president of Kenya- Daniel arap Moi. President Moi, not only rewarded the winning lawyer -Richard Kwach by appointing him on the court of Appeals for 'defending our culture,' he also criticized John Khaminwa- the human rights lawyer who represented Wambui Otieno's widow (Otieno 1988, 141-178). In an interview with the *Washington Post* reporter, Blaine Harden, Kwach observed:

A woman cannot be head of a family. There are things she cannot do: she cannot preside over negotiations for the marriage of her daughter.

There are traditional regalia for attending burials, which she cannot wear. She cannot sit in her husband's traditional stool. She cannot organize a beer party. Women accept this. Not a single Luo woman, I repeat, not a single Luo woman has ever gone to Court over these matters ever since the world began (Haden 1991, 95-129).

Meanwhile, in Ghana in 1990, a similar yet different incident took place. Peggy Appiah, a European woman was married to Appiah, a man she believed to have embraced modernity as well. Little did she know that at his death, she would be reminded how important culture is to an African village. Appiah who was a Christian, an attorney, and a statesman, was also Ghanaian, and a member of the Asante community. He was the head of the Abasua (the matrilineal descent clan). Unlike Otieno, he left a written will stating his burial wish. He asked to be buried without the traditional public ceremonial festivities that often accompanied most Asante funerals. The will read in part:

The exhibition of dead bodies to all and sundry prior to burial and subsequent unnecessary and elaborate funeral celebrations have always distressed me; therefore, I solemnly request that these abominable trappings be avoided at my passing away. I wish my family and friends to remember me as I was before demise and to clothe themselves in white instead of the traditional black and dark browns that portray man's inevitable transition as a gloomy specter (Appiah 1992, 184).

In the will, Appiah also instructed his wife Peggy and the church to control his funeral arrangements. Appiah's wishes were perceived by his clan as a disgrace to the Asantehene -- the King of Asante, and the Asante tradition in general. According to Asante tradition, the widow and children of the deceased have no control over funeral arrangements. Attempts to resolve the matter in the traditional court of Asantehene resulted in confrontation as Appiah's sister Victoria alongside her brother Jojo continued to demand the control of the funeral without involving the church. Appiah's son Kwame was compelled to challenge his aunt Victoria, who was the Queen of the Asante, for disrespecting his father's will. Appiah's wishes were granted; his widow and children retained the control of the funeral arrangement. The Ghanaian president at the time, Jerry Rawlings, attended the funeral unannounced reiterating in his speech the need to honor the wishes of the dead and accord the widow and children their right to property. This statement was not only a public rebuke to the Asantehene throne, it was also a challenge of traditions that violate women's rights (Appiah 1992, 181-192; Ray 2000, 98-100).

While these two case studies illustrate the tension between indigenous and modern values in African communities, they specifically highlight moral challenges that women in Africa face with regards to human rights claims. They remind us that moral actions are often difficult to comprehend since what counts as moral differ throughout the world. As dynamic and adaptive social phenomenon, cultural system ought to promote empowering values and human flourishing. Sometimes however, differences in moral systems can undermines basic human rights. In modern society, what is considered good is embedded in basic human rights values, values that have been described by some as universal and viewed as transcending cultural differences and unique realities that make humans different; because they centralize humanity. While in a broader sense this article sheds some light on how and why the human rights discourse triggers cultural controversy in general, my specific concern is to demonstrate how the experience of the African woman infringes upon her efforts to claim basic human rights. I argue that values central to human rights and social justice are and ought to define the individual based on common good and social justice even as cultural and communal difference is acknowledged. Drawing illustrations from the African woman's experience, this paper demonstrate how the three African religions; namely indigenous religions, Christianity and Islam, inhibit women's rights and social justice they claim to promote. I particularly intend to demonstrate how religion factors in attitudes towards the status of the African woman. In the paper, I draw from intersectionality as a framework to argue for women's rights within an evolving cultural experience of African women. While recognizing that African cultural systems have unique structural details, the similarities in experience of African women is highlighted with description of specific case studies. I also describe these challenges as they relate to human rights questions and as they allude to the African concept of the individual and the place of the African woman. This study was motivated by the fact that research into the effect of widows' mourning rites on the status of women is scant yet this is a significant area in gender based violence. I cannot but agree with Matsobane Manala when she/he observes that negligence of widows in scholarship mirrors societies' attitude towards them.

I recognize the difficult task of speaking about the experience of African women in general terms because of the risk of implying misconceived ideas that African cultures are homogeneous. While it is important to acknowledge the different and quite often unique social contexts within which African experiences are located, long cultural contacts that include conquests, migration and trade account for distinguishing features and fundamental commonalities that allow for a general analysis of African experience

as a category. While it is true that African cultural systems have unique structural details, the experience of women is similar in some specific way as will be demonstrated in two case studies to be examined below. While acknowledging that African cultures are diverse, I argue that there are many commonalities with regard to widowhood rites and practices; a fact that is acknowledged in studies that have examined women's experiences in diverse African cultures (Kotzé et al. 2012, 744; Nowye 2005, 147; Manyedi et al. 2003, 78-79).

It is for this reason that the general approach that I adopt in this paper draws from similarities in experience of African women even as I recognize the unique differences that exist in every ethnic community. This is an approach that as an insider, am comfortable to speak from.

1. Widowhood in Africa

The experience of African widows after bereavement is worth exploring in this age of human rights as it is important to highlight the dilemma they live with in efforts to ensure that they live a life full of basic rights as individuals with agency in African communities. Upon death of a male spouse in most African communities, the widow is confronted with various challenges. These challenges range from social, economic and even religious. Although the influence of modernity has enabled some widows to resist social requirements, especially those that relate to indigenous values such as indigenous funeral arrangements as discussed above, some find themselves mired in these experiences daily. Widows resist some indigenous practices such as death rites not just because they are repugnant, some are life threatening, given the risks of HIV/AIDS in our contemporary society. This is what makes widow inheritance rights a form of gender based violence as is demonstrated by expectations and experiences of Wambui Otieno and Peggy Appiah.

To grasp the tension between cultural and women's rights in Africa, it is important to understand the African concept of the individual as understood in indigenous religions of Africa; a concept that is defined within the African holistic/corporate principles popularly known as ubuntu. African indigenous morality is often based on communal/communitarian characteristics; an indigenous worldview that views everything in the world as interconnected and interdependent. These values, often indistinguishable from culture or tradition are central they permeate the African lifestyle. As a result, Africans recognize how various social factors influence behavior, and even how norms are culturally determined. At the core of this virtue is 'Ubuntu' a recognition of interconnectedness and interdependence of all human beings and actually

also non-human beings. This Africanism as alluded to by numerous African scholars beginning with Leopold S. Senghor (1964, 49), to Kwasi Wiredu (1996) is clearly explained in John S. Mbiti's statement that 'an individual does not and cannot exist alone except corporately' because s/he owes existence to other people including those of the past generation, the family and the clan, and his or her contemporaries (Mbiti 1969, 106). This notion of corporate existence which is promoted through rites of incorporation, grants one's community not only the responsibility to 'make, create or produce' an individual but also the authority to make all societal related decisions for the individual, as in the case of property ownership and women's role in society (Wangila 2010). This mindset which is embedded in the Ubuntu philosophy emphasizes care and flourishing, and also contradicts the experience of widowhood in Africa. The individual is placed in a difficult situation with regards to expectations even when they may assume they are not bound to their traditions.

While indigenous cultures and religions are a harbinger of identity and a people's heritage, indigenous requirements sometimes involved norms and rituals that promote sexism and patriarchy. The value and privilege of male over females is clearly apparent in some of the expectations for women and especially widows. In many indigenous African communities, for instance, a widow was not only expected to participate in levirate arrangements, she was also required to undergo a cleansing ritual. According to most traditions, a brother in law or other male relative to the deceased or heir nominated by his family was required to remarry the widow (Mbiti 1969, 140-141; Oduyoye 1999, 149-151). Specific communities have unique requirements as per their unique guidelines. Among the Luo of Kenya for instance, levirate marriages are commonly referred to as 'widow inheritance.' During this required ritual, the widow, her children, and property are transferred to a male relative of the deceased a few months after the death of her spouse. On the 'inheritance day,' the widow and her inheritor have to engage in a sexual ritual in order to ward off evil spirits associated with death. The inheritor who serves as the sole legitimate sexual partner of the widow is expected to protect her and her children, and to ensure that the deceased lineage is not lost. An elaborate death ritual is required of a widow among the Yoruba. Moore Ajisafe explains:

When a man dies, his wife mourns for him for three months. She must not plait her hair and if already plaited, she must lose it. She must not take a bath for three months. She must not change the clothes which she was wearing at the time of her husband's death. She must sleep on rag mats. She must stay indoors for three months, and if she cannot help going out, it must be in the evening. But such a case is very rare (Ajisafe Moore 2003, 75; Oduyoye 1999, 150).

The transfer of the deceased property to the levir associated with widow inheritance has led to the misuse of some of the widow's property, especially during funeral rites, often widows are left in a state of economic hardship. At death, a widow may lose literally everything, from her husband's clothes to other property, including that which was acquired in marriage, and even children. The abuse of this practice has left many widows destitute after losing their property, including children to in-laws. As patriarchal communities, most African's justified the transfer of the deceased's property to the levir on the assumption that a woman is not only the property of man; she is also considered incapable of handling high-ranking affairs as property management (Cohen and Adhiambo 1989; Potash 1986). Most often, the widow has no choice in the matter regarding her consent, the man to inherit her, or how her husband's property is to be managed. Women who demand a say in the matter or resist the practice altogether are considered deviants such as in the case of Wambui Otieno. Those who resist the ritual are threatened with misfortune which often includes death of their children. Among the Luo, it is believed that a widow who defies ancestral burial requirements will be affected by *Chira* - a curse that can lead to death. Noncompliance to conjugal unions can lead to physical and sexual violence. In some cases the widow's children are abducted to coerce compliance. There are cases where widows are banished or excommunicated from their villages for refusing to fulfill burial requirements. In Tanzania, Vanessa Von Struensee observes that a widow, who refuses to comply with burial arrangements, is treated as an outcast. This social ostracization includes social rejection which includes people refusing to 'buy or sell to her' (Struensee 2004, 5). As if to add insult to injury, every misfortune that befalls the family clan or village is blamed on the widow for her deviant behavior.

In some African communities, widows and family members are expected to engage in cleansing rituals such as general washing of the hands, and the feet after burial and the sprinkling of water on the grave as with *leilane* (*Pelargonium sp.*). Among the Phokwane area of Limpopo, South Africa, Leilane (*Pelargonium sp.*) is a plant used extensively to neutralize the effect of ritual danger to ensure that the widow and the diseased family do not contaminate the community with death impurities (Pauw 1990, 79). In other communities the widows head must be shaved; a practice that is also common among the Igbo of Nigeria, the Zulus of South Africa (both in rural KwaZulu-Natal and urban Soweto), as well as the Bapedi of Phokwane (Baloyi and Makobe-Rabothata n.d., 236; Nowye 2005, 152; Pauw 1990, 79; Rosenblatt and Nkosi 2007, 78). Among the Bapedi of South Africa, when a married man dies, his widow is forbidden from arriving home after sunset, visiting neighbors, attending family and community functions (Manala 2015). She is

required to dress in black clothes, to move out of way when she meets people, and to sit at the back of a bus or taxi so as not to expose other passengers to her back and the possibility of a 'bad omen or bad luck' (Manala 2015). It is also believed that this will help protect her against suspicions of witchcraft (Rosenblatt and Nkosi 2007, 78).

Related to the widowhood situation is the often unmentioned practice of sorority found in some Africa communities. Sorority is practiced where the widower is allowed to marry one of her deceased wife's sisters in order to procreate. The practice is often justified especially where the already paid dowry cannot be returned. In some cases, a man is allowed to marry his wife's sister if his wife was believed to be barren (Mbiti 1969, 141). The rationale behind levirate and sorority relationships can only be understood in relation to the ubuntu, the holistic and corporate nature of the African communities. As Mbiti validly explains, the fathering and mothering of the children in these relationships was understood to contribute to 'the mystical link in the chain of life,' and to continue the physical and metaphysical genealogy (1969, 141). Indigenous intention of levirate and sorority marriage is undoubtedly humanitarian considering the good intentions involved in guaranteeing care for the widow and the children of the deceased. In most cases, the levir or inheritor is usually married and therefore committed elsewhere (Potash 1986, 57-58; Oduyoye 1999, 151). As such the widow may not receive the said support the society expected her to receive. As a result, most widows find themselves not only without economic and social support; they may also find themselves pregnant and deserted by their levir/'inheritor.' Among the Akan and the Yoruba, Oduyoye explains how a woman 'does not stand to inherit her deceased husband's property. The Yoruba woman benefits from the spouse's estate through her son (151).' A childless widow may lose everything to in-laws. As such, levirate arrangements have left the widow vulnerable to emotional and economic needs. Ramifications related to property inheritance and treatment of the widow raise significant moral issues especially in contemporary times. The increase in poverty and the breakup of extended family system has made it more difficult to maintain transparency in these relations. The widow is treated as a second citizen. Since participants in levirate relations reside in different residence with the widow often remaining in her deceased husband's house, the widow does not enjoy marital privileges that a married woman enjoys. In all these rites, compliance is a sign '... that a widow is grieving properly and that she respects her deceased husband' (Kotzé et al. 2012, 754; Rosenblatt & Nkosi 2007, 67). Because most of these rites are meant to cleanse the widow of perceived defilement related to the death of her husband and to neutralize

and/or counter the effects of ritual danger embedded in widowhood; most widows are left without choice but to comply.

Perceived benefits of these rites include healing effect for grief caused. As Augustine Nowye argues, 'Since death has a negative impact on the remaining persons' lives, rituals are considered to have therapeutic value that assists the griever in moving on with her life' (Nowye 2005, 153). The rites also facilitate the removal of bad luck or misfortune or *senyama* that is said to surround the widow and which makes people discriminate against her or fear her. Most widows agree to this because they view them as a way to be reintegrated into the community. Writing about positive benefits of widowhood rites, Tasié argues that 'widowhood rites in Africa were not primarily designed to de-womanize African womanhood, or impoverish and oppress women; nor are they part of the so-called male chauvinism. Rather, the widowhood rites are generally intended for the overall good of the widow' (Tasié 2013, 156). He argues further that the rites help to sever the ties between a dead husband and his living wife; thus exorcising the ghost spirit of the deceased from lurking around the homestead to haunt the living. The widow is thus equipped with the necessary courage and bravery to cope with the life of self-reliance (Tasié 2013, 160).

Indigenous African values are not the only ones that undermine the rights of the widow. Biblical and Islamic teachings contain reference that marginalize widows and or treat of them as though they were different, defiling, a man's property or prone with bad luck. For instance, in Biblical tradition, widows and divorced women were looked down upon because they were considered as the lowest classes in ancient Israel and widowhood was considered a symbol of great degradation, a fact that is referenced in Isaiah 54:4. Alongside orphans and the poor, they were seen as the most vulnerable of the Jewish population. The Old Testament does not recognize inheritance rights to them. Instead, they were treated as part of her deceased husband's property whose main function was to ensure her husband's posterity -Genesis 38. A childless widow is bequeathed to her husband's brother. If the brother is too young to marry, she has to wait until he comes of age. Should the deceased's husband's brother refuse to marry her, she is set free to marry any man of her choice. The male relatives who inherited them inherited all of the deceased husband's estate just like in most African cultures. In Genesis 38 account, we see how a childless widow is required to marry her husband's brother, even if he is already married, so he can produce offspring for his dead brother in order to ensure his brother's name will not die out. The verse says: 'Then Judah said to Onan, "Lie with your brother's wife and fulfill your duty to her as a brother-in-law to produce offspring for

your brother” (Genesis 38, 8). The widow’s consent to this marriage is not required.

Widows were looked down upon such that in the book of Leviticus instructs high priests not to marry a widow, a divorced woman or a prostitute. It says ‘The woman he (the high priest) marries must be a virgin. He must not marry a widow, a divorced woman, or a woman defiled by prostitution, but only a virgin from his own people, so he will not defile his offspring among his people.’ This biblical law is still in practice in Israel today. A descendant of the Cohen caste (the high priests of the days of the Temple) cannot marry a divorcee, a widow, or a prostitute. Also, the Jewish legislation considers a woman who has been widowed three times ‘fatal’ even if the three husbands died of natural causes and she is not allowed to marry again (Hazelton 1977, 45-49). It is no surprise that Old Testament Prophets condemned Israel for how the widows were treated (Isaiah 1, 23; 10, 1-2; Jeremiah 7, 4-16).

In pre-Islamic culture of Arabia, we see the same treatment accorded to widows. Widows were part of inheritance property that men possessed. Since women had no right to property, widows lost all property when their husbands died. Islam later corrects this situation with Prophet Muhammad granting women and widows some rights as we will see later on in the chapter. These indigenous cultural and religious values set in motion the violation of the rights of widows and as displayed in the way Wambui and Peggy were treated, the influence of Christianity and Islam has not yet overcome these practices. Modernity adds to the challenges that widows face because of the existence of sexually transmitted infections (hereafter STI) such as HIV/AIDS. Most victims of HIV/AIDS in Africa are women because cultural, social, and economic factors that including levirate relationships make them more susceptible to HIV. In the 14th International conference on HIV/AIDS and STI’s held in Africa in Abuja Nigeria, Helen Jackson, a United Nations (UN) population funds HIV/AIDS adviser for southern Africa reported that nearly 60% of infections at the time were in women, most of them young women. She explained how financial dependency hampered women’s efforts to negotiate condom use or to reject sex even when they suspect their partners to be infected (Newsroom, December 7, 2005).

2. Widows’ Rites as Gender Based Violence

The major moral concern with regards to widowhood rites is that they violate many basic principles contained in all key international human rights conventions.’ A culture that undermines one’s health, freedom of choice and general welfare is a violation of basic human rights and it should be considered problematic. Women in African are entitled to rights that are

stipulated in the United Nations declaration to protect human rights (Art 1, 7 and 16). They are protected by the convention on the elimination of all forms of discrimination against women (CEDAW) which prohibits discrimination against women (CEDAW, 2f and 5a). Although most African governments have ratified human rights and its international instruments that promote women's rights, protective measures have not been ensured to guarantee widows' security. Even where laws exist preventing the abuse of widows, ignorance of the law or cultural habits inhibit efforts to prosecute culprits.

Although the said benefits of widowhood may be comprehended from the traditional understanding of African norms, these benefits cannot be separated from the patriarchal justifications that are simply hegemonic and extensions of sexism and structural norms of gender based violence that seek to limit the woman's position to the private sphere (Gichaara 2008; Dube 192). Many of these cleansing rites do not resonate with human dignity, respect and decorum (see Kotzé et al. 2012, 758-759). As W. J. Kalu argues, these rites are as harrowing and sadistic experiences from the very social support network intended to cushion the traumatic impact of widowhood (1989, 143). Widowhood rites are characterized with 'loneliness, isolation, rejection and alienation' and they are often subjected to hostile treatment as in the case of Wambui and Peggy. To be abandoned by in-laws at the death of a spouse is cruel. It hurts, Manala argues, to know that the pain they live with is inflicted by those who are closest to her and whom she has to trust as the sources of her comfort (Manala 2015).

Most are subjected to these painful and dehumanizing practices such as being 'forced to drink the water that their husbands' corpses have been washed in' (Owen 2001, 10; Tasie 2013). Such rites are potentially life-threatening since the widows' right to good health is grossly violated. Among the Luo of Kenya, where forced guardianship and cleansing of widows occur through sexual acts by men who are either chosen to act as the widows' guardians or are so-called professional cleansers, a woman is likely to be sexually assaulted by alcohol abusers, sexual perverts and the insane (Ambasa-Shisanya 2007, 610). This practice exposes the widow and even the man involved in the sexual cleansing act to the risk of sexually transmitted infections (STI) including HIV infection. Isolation, stigmatization instils into the widows a feeling of imprisonment especially as a result of being shunned by their community in the name of cultural beliefs associated with widowhood (Manyedi et al. 2007, 78).

The requirement that the widow should remain in her husband's home after his death, whether she is remarried or not, is another inhumane expectations. Even the requirement that her deceased husband's brother should remarry her is a coercion element of the patriarchal structures in

Africa. Often, the motives for forcing the widow to remain at her husband's home is materialistic. The in-laws out of greed, wish to keep their deceased son or relative's wealth in the home (Baloyi 2013, 173). In Southern and East Africa, the phenomenon of property grabbing from widows is common. Widows are most vulnerable because after their husbands die, they have no say and no one to speak on their behalf in a culture where a woman's voice is not recognized as we see in the Ghana and Kenyan experience discussed above. Manala explains how some women become destitute and even lose their lives defending their property from in laws (2015). It is no wonder that Owen observes the following about the economic status of widows. 'Widows across a wide spectrum of cultures and religions are often among the very poorest of the poor, due to discrimination they experience in matters of inheritance, land and property rights' (Owen 2011, 618). To treat widows as carriers and transmitters of bad luck and defilement that are detrimental to the community, is not only distressing, it is discrimination, oppression and inhumane.

Exposing widows to discriminative, oppressive and marginalizing practices is contrary to ubuntu philosophy. The basic *ubuntu* philosophy values humanness, caring, sharing, respect and compassion (Msila 2008, 69). The spirit of caring for each other and of respect and responsibility is central to how Africans ought to treat each other (Mangaliso 2001, 24). Compassion for others is central to building and sustaining social justice and mutual caring (Bekker 2010, 7). Rejecting to abide with the wishes of widows because a culture says so is not only sexist, it is to ignore the wishes of half of the population.

The need to protect the widow's right to property, to her children, and to her own dignity should be central to the African sense of morality, even as holistic values are preserved. It is immoral and absurd that any culture or tradition would prevent anyone from ownership and/or inheritance of the land they cultivate (Struense 2004, 5). In Kenya for instance, although the land tenure legislation allows everyone to own land, this stipulation is inhibited by the joint ownership requirement which also requires women to consult with their male relations concerning land use. Although the land control boards require, among other rules, that the consent of the wife be granted before land is sold; quite often, this requirement is usually overlooked by village elders who strongly believe in male ownership privileges. As Omosa observes, even when crops are cultivated, 'women are required to present written authority from their husbands or male relatives to be able to receive payments for proceeds from marketed cash crops' (Omosa 1995, 69). A culture that denies one fundamental rights to social justice needs serious reflection and ultimate change to better cultivate a positive influence.

The subject of the individual and human rights draws from two interrelated moral positions; moral universalism and cultural relativism. The premise of moral universalism claims that human beings are entitled to certain universal rights by virtue of being human, regardless of their cultural contexts. This claim, which is endorsed by the United Nations Universal Declaration of Human Rights, states that ‘everyone has the right to liberty, “all persons” are entitled to equal protection, “no one” shall be subjected to torture, and “everyone” has the right to an adequate standard of living’ (Steiner and Alston 1996, 192-193). Central to moral universalist claims is the importance of individual integrity, agency, choice and dignity. Human rights are considered a necessary condition for a good life because they aim at establishing and guaranteeing human development. Individual human rights are affirmed by virtue of the human being as human and not for any other reason. What is implied here is the fact that, those individuals who hold these rights claim them against the state, the community, the family and the society at large. As they claim these rights from their society, the society is consequently enjoined to allow them (Ake 1987, 94).

The cultural relativist theory on the contrary, claims that rights and rules about morality are encoded in, and dependent on socio-cultural context. Relativists believe that notions of right, wrong, and moral differ throughout the world because the cultures in which they are found differ. Therefore, no culture should impose its ideas on another culture (Steiner and Alston 1996, 192-193). The term ‘culture’ is often used in a broad and diffuse way to encompass not only indigenous or customary practices, but also political and religious ideologies and institutional structures. It is clear that this position is inconsistent with the basic human rights premise.

Cultural relativism considers a moral universalist stance absolute, arrogant, and imperialistic because it draws from the western liberal ideology and religious faith - Christianity. Given that it is informed by the western notion of the individual that is also biased, it is considered itself, ‘culture specific’ (Winter 1997, 503-504). Since the West, which embraces universalism, has the tendency to express and universalize its norms –political and religious ideology with disregard of social norms that exist elsewhere, universalism is perceived as a plan to destroy diversity of cultures and to homogenize the world. The tension between cultural and human rights discourse in Africa today, is complicated where the individual is female. In most African communities, women do not have much say even in matters of burial of their spouses. Where they are seen to participate, they often operate within the patriarchal framework of their communities.

A patriarchal system in African communities is so complex that even women participate and reinforce it consciously or unconsciously as in the

case of Queen Victoria Appiah of Asantehene. Ellen Gruenbaum explains how this system works:

...patriarchy is not simply a system of rule by males over females, but a more complex set of relationships that result in domination by older men over both younger men and females. But there is other domination and authority here as well: females over children, older women over younger women, older children over younger children, boys as they grow up increasingly asserting themselves over girls, even older sisters who used to have authority, and so on (2001, 41).

Although it is difficult to reconcile universal and relativist positions, a discussion that I explore in my other article (2010), moral positions should always be defined by a sense of morality that affirms the integrity and human worth of those involved. Women as social agents with rational abilities should be granted basic human rights entitlements they deserve as human beings.

Today, standards of any community are not only questioned in relation to the sacred nature of the values espoused but also in relation to basic human rights. Just as social context determines moral values, so does change. Social change is a fundamental factor in cultural variety because it is responsible for variation in cultural values. It determines what ought to be retained and what ought to be abandoned. Because of societal changes, the acceptance, maintenance, rejection, or abandonment of certain values often depends on prevailing normative and or other rational grounds. Once accepted these values are refined in order to adapt. Sometimes, fundamental change is brought about by foreign agents such as cultural borrowing. Social change in Africa is a significant factor in the actions and general behavior such as those displayed during the burial of S.M Otieno and Appiah. As rational beings, individuals are agents, of social change.

Although there is the misconceived assumption that cultural values often referred to as tradition are 'archaic' and therefore unchanging as in the case where some sociologists and anthropologists have defined cultural values as traditions – implying that these values are rural, agrarian, pre-scientific and resistant to change and innovation. This description of tradition is often contrasted with that of modernity, a process associated with scientific, innovative, future oriented and culturally dynamic, industrial and urbanized values. This misconception ignores the fact that any social unit must encounter change and transformations as it adapts. The assumption that traditional values are unchanging and therefore uncivilized is baseless. As Gyekye validly observes, no human culture is absolutely unchanging, whether slow or rapid. What we call modern and urban is often the

offshoot of social growth. In this sense, tradition therefore refers to a set of values passed down over the generations, enduring elements that have been inherited from the past even as others are discarded along the way. In Gyekye's words, it is that which has endured for at least three generations (Gyekye 1997, 218-219).

The tendency to perceive modernity as the opposite of tradition is not only key to the conflict in matters such as those pertaining to human rights, it is also indicative of western dichotomized mentality that tend to overlook significant dynamics in the process of social change. As Gyekye rightly reminds us, instead of envisaging modernity as a rejection of the past, we ought to see every society and cultural values in modern society as 'traditional' since every society is in the process of changing thus it seeks to maintain cherished values, practices, outlooks, institutions bequeathed by previous generations. In this process, inadequacies, shortcomings and imperfections of a tradition are identified, and these inadequacies are often attributed to the limitations of the human intelligence, foresight and experience.

In Africa, ethical norms are often targeted because of the authoritative role the community possesses over the individual. This African concept warrants examination as it contributes significantly to challenges women experience in efforts to claim basic human rights. While social relationships emphasized in African community are essential given the common values, roles, obligations and meaning intended by this attitude, there is more to society and community than just social roles. As Gyekye observes, to emphasize one role and to negate other roles of either the community or the individual is to ignore reality. While as participants in society, individuals are enmeshed in the communal web, they at some point may find some aspects of their cultures irrelevant, undignified and may thoughtfully want to question and reevaluate them.

African communities, like any other community, have encountered social change resulting from the infiltration of foreign cultures and religions due to migrations and other historical events. This encounter can be explained by the history of this continent, as well as the history of foreign religions on this continent leading. When European explorers conquered and divided the African continent centuries ago for commercial purposes, they paved way for colonization, exploitation, and conversion of inhabitants. Consequently, Africans were not only influenced by languages, and cultures, Africans south of the Sahara desert were particularly introduced to foreign religions like Islam and Christianity. Christian mission schools and hospitals became centers of civilization and modernization. Islamic Mosques and *madrasa* schools promoted the conversion and the cultivation of Islamic religions,

cultures and Arabic language among Africans. These centers, introduced to Africans, western Judeo-Christian and Islamic concepts of the individual that remains central to the human rights discourse. It is here that social transformation was enacted as Africans were taught to shun collective indigenous rights and to embrace Christianity, Islam, and other western concepts that they considered civilized.

3. The Liberating Role of Religion

While it is often difficult to reconcile universal and relativist arguments, the most difficult to reconcile are positions that find legitimacy in religious values. These positions are difficult to reconcile because they are grounded in the sacred ideology; an ideology that is beyond human meaning. By referencing the supernatural - God, divinities and ancestors, - religion endows upon society fear, awe and reverence that cultivates unwavering authority from its members (Berger, 1990 32-33). As an ideology, religion becomes an external divine agent that legitimates social action, in some cases coercing its people to carry out social dictates. Religion is a significant factor in attitudes toward widows in Africa.

The influence of religion on Africans and their religious life is significant in understanding the place of human rights in the experience of women. It is estimated that 46% of all Africans are Christians while 41% are Muslim with 12% professing indigenous religion. A few Africans follow minority religions like Hinduism, Bahai, and Judaism. Important to remember is the fact that while Africans have been influenced by religions like Christianity and Islam; African indigenous religions remain significant in most Africans lifestyle. While some Africans insist on maintaining indigenous values, others have embraced western and other values that have been introduced to the continent. Although African indigenous religions are yet to be analyzed to clearly articulate sources of human rights, as African feminists like Mercy Oduyoye and Musimbi Kanyoro aptly observe, by utilizing a feminist critical hermeneutics rooted in the African experience, one can reflect upon examples of basic rights embedded in this belief system. A feminist social critique seeks to deconstruct the society by dismantling sexist systems and other forms of social injustice in order to make apparent universal values such as truths, freedom of choice, egalitarianism and other values embodied in human rights values. This technique recognizes sexism as an invisible paradigm that accounts for men's ascendancy to professional, executive and governmental positions and the subjugation of women with intentions to bring about social equality. African feminists have argued for a cultural

hermeneutics that interrogates social dynamics of a given community including the examination of the role of religion.

African theologians, Oduyoye and Kanyoro, argue that any effective social critique should be specific and contextualized in order to formulate specific goals and strategies that can promote the rights of women. This means that an effective analysis of African women's religious experience must seek to employ a tool that is particular to their situation. Critical analysis that draws from African women's experiences must seek to reflect upon these women's situations in light of religious and other social dynamics. In her critique of feminist analyses that do not interrogate specific social contexts, a Kenyan feminist theologian Kanyoro explains how hermeneutics of empowerment that fault men as the oppressor are mistakenly derived. This approach, she argues, is a 'nonstarter' in Africa because while African women acknowledge men's role in sexist behavior, they do not appreciate a method of resisting this behavior by 'throwing stones' at the oppressor. She reasons that this would pose a major threat to women's security and solidarity since most women depend on these men in a number of things (2001, 106). Kanyoro cites an example where African women have shown difficulty in reaching a consensus in matters such as rituals and initiation practices due to cultural loyalty. While this lack of consensus is often misconceived as a 'lack of courage or inability to confront issues,' Kanyoro explains how this is simply a strategy of survival. African women prefer to "count the cost" and to take stock of the gains and losses' in every action they take. She explains further: 'Some African women reason that they want a future in which men are friends. Building that future does not begin by attacking men, but by finding methods of bringing change together with them. This is a tall order, but it is the reality of the lived experience of African women' (106-107). It is therefore important to employ an African-feminist hermeneutics to evaluate, applicability and negotiability of human rights in Africa. Utilizing this hermeneutics, one is able to bring to the limelight the 'insider's' perspective to the experience of the African woman and to reflect upon their social situations. As Kanyoro aptly explains, women will come to a realization of the need to 'break the vicious circle of women violating other women in the name of culture' (Kanyoro 2001, 107).

One way in which indigenous sources have promoted basic rights of women is through the emulation of African women's role models. To counter stories of subordination, for instance, African women can draw from indigenous heritage about women stories of successful women to promote basic values of truth, freedom and social justice. In Kenya for instance, stories of Kenyan nationalists such as Mary Muthoni Nyanjiri (who led the Mau Mau warriors during the political movement in Kenya) and Me Katilili

(who led her people against the colonialists in the Giriama community of Kenya) can be significant sources of empowerment. Their courageous acts of participating in liberation struggles against colonial masters were rewarded by the political independence of their country. Even those courageous women, who undertook basic tasks usually considered insignificant, such as carrying food into the forests to their warriors or hiding firearms and messages in their skirts, can serve as great role models for social justice and basic human rights of women. As their roles are affirmed, they become inspirational for reclaiming basic human rights and social justice.

While indigenous religions tend to offer an African form of justice that validates, pressure, force, and conforms to the needs of the community, it tends to stifle the agency and identity of the individual. Furthermore, the holistic view of the community inhibits ethical autonomy and independence that are significant to human dignity. For instance, the agency of Otieno and Appiah is seriously compromised when those who embrace tradition choose to disregard their burial wishes and lifestyles as modern and Christian Africans. The claim that Otieno's widow, Wambui and Appiah's widow Peggy have no say in burial arrangements of their husbands is not only sexist, it is simply a violation of basic rights of these women as human beings. To deny them the right to bury their husbands as they choose, and to inherit their husbands property is not only immoral, it is a communal infringement of these women's rights. Ultimately, the vulnerable children suffer as well.

A closer examination of Biblical and Islamic teachings will also reveal that basic human rights are embedded in their central message. The Old Testament God is depicted as defending widows, the orphans and the poor (Deut 10, 18; 24, 17; 27, 19; Exodus 22, 21-24; 23, 6). Justice among people was measured in part by the way widows were treated. (Isaiah 1, 17). The book of Job describes an evil man as one who oppresses the widow, orphan and the poor (Job 14, 1-4, 14, 21). Christianity originated as a revolutionary movement that set out to promote the human worth of all and to stomp incidences of human abuse. God's compassion for widows became the covenant community's responsibility which the early church naturally took up (Acts 6, 1; Jas 1, 27). Timothy is instructed by Paul to address the issue of community support for widows in I Timothy, 5:3. Paul outlines guidelines for taking care of widows including reminding the relatives to ensure that widows are properly taken care of (I Timothy, 5, 3-16). In Acts 9:39, we see care of widows demonstrated in the miraculous resurrection of Dorcas also known as Tabitha. Dorcas was a member of the Church of Joppa who also financed a charity project that supported widows. When Apostle Peter visited the church, Dorcas had died. All the widows stood surrounding Peter mourning and showed him the robes and clothes that Dorcas had made for them and how sad they were that their

support had died. Feeling mercy for them, Peter prayed and miraculously resurrected Dorcas back to life.

While the expression 'human rights' may not be found in the Bible, essential components of human rights – freedom, justice and peace are. The original idea of human rights which embodies a Christian notion of the human person is rooted in the biblical tradition. The recognition of a human person as an individual possessing human worth identical to the image of God is a recognition of the special being this species is. The individual is recognized as a rational agent with the ability to make decisions for himself or herself and about himself or herself. It is based on this recognition that individuals as entities are called to convert as agents in themselves, agents that do and should not depend on their communities for salvation. As an agent expecting to enter the Kingdom of God by himself or herself, a Christian is called to exercise his/her freedom of conscience as an individual with the ability to make independent choices.

Although it can be argued that the relationship between Christianity and human rights are somehow ambiguous given the history of Christian missionaries, especially where it was used to sanction slavery, racism and including religious intolerance, the concept of human rights is originally embedded in this religion's ethical trajectory. The Bible demonstrates that safeguarding basic human rights such as the right to equal treatment, and fair treatment before the law, freedom of thought, conscience and protection from torture and slavery is central to the Christian message. For instance, in the early New Testament teachings, of the church, the notion of human dignity is implicit in verses such as John 10, which state that Christ's gift is the fullness (abundance) of life. In the book of Galatia, 5, 1, Paul speaks of freedom for Christ and how this has set all Christians free, not to live as slaves to anyone. Individualism is also emphasized in teachings such as Proverbs 20, 27, Psalms, 82, 1-4, Acts 4, 13-22. The emphasis on the autonomous aspect of the individual that culminates with renaissance was also a reaction to religious authoritarianism; catholic authoritarianism at the time. The need for the individual to be emancipated from the Christian dogmatism is similar to efforts we seek today to emancipate the individual from cultural authoritarianism.

Human rights were later strengthened within the protestant reformation movement with Martin Luther's emphasis on the need for each individual to personally respond to God's grace. This teaching which opened the way for each individual to interpret for himself/herself what is right in a given situation has been of significant influence to Africans. Luther's teachings on justification by faith, the freedom of the Christian and the priesthood of all believers was seen within the church as a basis for the struggle for

social and economic rights. Together with the teachings of other reformers such as John Calvin and Ulrich Zwingli, the church embraced a mission of promoting basic human rights of all individuals. The Christian contribution to human rights is clearly articulated by ethicist, Reinhold Niebuhr when he explains:

The heightened sense of individuality in Protestantism is expressed theologically in the Reformation principle of the 'priesthood of all believers.' The emphasis lays not so much upon the individual's capacity to know the truth as upon his indivisible responsibility to God, and upon assurance of mercy for his sins which no institution can mediate, if individual faith is wanting (1996, 60) (sic).

The Christian commitment to human rights is manifest in the numerous Christian organizations and documents including the World Council of Churches (WCC) commitment against racism movement held in Amsterdam in 1948, the Nairobi Assembly of World Council of Churches commitment to human rights in the ecumenical movements in 1975, the Roman Catholic Church initiative through Pope John XIII's encyclical *Pacem in Terris* in 1962 and the Pastoral constitution of the Second Vatican Council *Guadium et Spes*, the message Concerning Human Rights and Reconciliation by the Roman Synod of Bishops in 1974, the 1975 Papal Commission *Justitia et Pax* document entitled 'The Church and Human Rights.' All reiterating the original Christian message of promoting basic human rights as encoded in the human worth and dignity of every individual. The production of documents such as the Cottlesloe Statement of the *Nederduitse Gereformeerde Kerk* (Dutch Reformed Church) in 1961, and the *Kairos* Document in 1985 as protest against apartheid and violation of human rights especially in South Africa is indicative of Africans embracing human rights not just as Christians but as individuals seeking social justice (Villa and Vicencio 1999-2000, 580-592).

Like Christianity, Islam acknowledges the human worth of the individual. Islamic teachings about the individual are not de-similar from the Judeo-Christian ones since these religions have a lot in common. The concept of the human as creation of God, created in God's own image, is Islamic. The teachings of the Prophet Muhammad in the early development of Islam were shaped by the need to respect the human worth of every individual in the Muslim community. The prophet was driven by empathy towards the individual and the need for social justice to condemn numerous practices that violated the dignity of women, slave and others who lived on the margin in the Arabian community. The prophet himself bought and freed numerous slaves on this basis. As a revolutionary prophet, Muhammad challenged the way women and widows were treated in Arabia. He defended the rights

of women and married widows in order to provide physical, economic and shelter to widows. The following *Qur'an sura* illustrates his message regarding caring of widows:

‘Those of you who die and leave widows should bequeath for their widows a year’s maintenance and residence. But if they [the widows] leave (the residence) there is no blame on you for what they justly do with themselves’ (Quran 2, 240).

An Na'im has validly argued that numerous verses within the *Qur'an* speak of honor and dignity for humankind and children of Adam, without distinction of race, color, gender or religion. Other verses provide for freedom of choice and non-compulsion in religious beliefs and conscience such as *Qur'an* 2:256, and 18:29 which say ‘Let there be no compulsion in religion: Truth stands out clear from error’ ‘say ”the truth is from your Lord.” Let him who believe and let him who will, reject it,’ (An Na'im 1996, 216). As Chandra Muzaffar validly observes, Islam came as a liberator to all sorts of people suffering from oppression and persecution. The promise of justice, equality and freedom enhanced by the compassion and tolerance of others played a major role in the diffusion of Islam as a faith, an ideology and a way of life. ‘It was primarily because of what it did for human dignity and social justice that Islam flourished as a great world civilization between the 8th and 14th centuries’ (Muzaffar 2002, 233).

With competing notions of social right, wrong and moral, it is apparent that Africans are embracing western ideas like the concept of the individual, even if these values affirm or contradict traditional values. For instance, it is becoming difficult to disregard the reality that Africans are claiming new notions of the individual as seen in the case of Appiah and Otieno, a reality that is also responsible for the resistance to death rites as seen in the Otieno and Appiah's case, and as I found in my other study, for girls running away from their homes to hide in bushes and churches in order to avoid culturally legitimate practices such as arranged marriages and circumcision (Kipchumba 2003, Wangila 2007).

In a community where Christian, Islamic and modern values are embraced as much as indigenous lifestyle, the need to respect diverse views is critical. In an attempt to identify with culture, what is often forgotten is the dialectical relationship that exists between the individual as a social agent, and a community as a social structure and hence between agency and culture as a social construct. Humans as agents respond to cultural systems differently. As sociologist Margaret Archer observes, this response depends on the effects of culture on humans and how humans affect it (1988, 143). As social agents, human beings have the ability to reinforce a cultural system

or resist its influence when it is perceived to inhibit their wellbeing. Even though culture acts on humans, what is most important to remember is the fact that it is also a product of humans (Archer 1988, 77-78, Berger 1990, 32-33). If social reality is a human construction, by no means is it bound to have human error, which explains social resistance to cultural values in all communities. To address human error, a critical view of the values we embrace is necessary. The objective should be geared toward promoting human flourishing.

Conclusion

In this article, I have explored challenges that African women encounter in effort to claim their basic human rights. I have indicated that fundamental to understanding this challenge is the need to understand how the African corporate sense of the individual ubuntu defines general behavior. Yet, as I illustrate in my argument, culture as a set of interpretive understandings and aggregate consciousness, is not only composed of sacred elements that render it authoritative, it is also always under construction. As it evolves, so too humans evolve, making human's conceptions or original rationale about what is right and good or wrong and bad a changing process. As humans adapt to new values both secular and religious, they find themselves in an inevitable socio-cultural discourse. In a world where human rights values have become the norm of operation, efforts to contextualize these norms should be a priority in promoting the dignity of all in various communities. Resistance to valuable social scrutiny and change, or obstruction of such interrogation in the name of culture is unrealistic in a changing social world. Consequently, while cultural practices such as burial rites and levirate relations should be interrogated in their specific social cultural context to discern ethnic philosophies on which they are based, it is important that cultural criticism is incorporated in the evaluation of the moral implications of such practices. Instead of simply dismissing criticism as alien or 'western,' it is important that Africans pay attention to the facts of social justice and change within modern and indigenous values systems.

Reconciliation attempts should seek a transcultural interpretation of human rights in order to promote social justice that is stipulated in the human rights without necessarily abandoning virtuous cultural values. For instance ubuntu, the corporate nature of African communities is a value that ought to be preserved due to the stability and harmony it seeks to promote. The holistic approach in these communities promotes relatedness and interdependence of humans as social beings; a virtue direly needed in modern Africa, and even globally as we seek to acknowledge the relationship

between human and the ecosystem. It is based on these indigenous values of African communities that the welfare of widows and their children were protected in African communities at the time. What was wrong with the system was the denial of the widow a say in matters regarding her welfare such as the choice of who should inherit her, and who should take care of her husband's property, a fact that is made right by human rights values. This is a value that Africans should embrace without question.

Although indigenous practices and attitudes are culturally legitimate and meaningful in social units in which they are found, it is imperative that moral principles remain a fundamental responsibility of Africans. Recognizing that some of what is upheld, as culture is incompatible with the welfare of significant members of African communities, ought to be central to efforts to promote human rights in Africa. It is particularly important that the rights of women be centralized in moral discourse of African virtues. If common good and human flourishing in general is central to African values, Africans should not hesitate to problematize any aspect of their culture that inhibits social justice. It is time that Africans moved beyond focusing on cultural legitimacy to embracing a moral uprightness in their communities. A morality that is centered on human and specifically women's welfare is central to my argument in this article. The need to operate on a moral standard that transcends African unique cultural lifestyles is not only central to human rights discourse; it is also central to general welfare of women in contemporary Africa.

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