

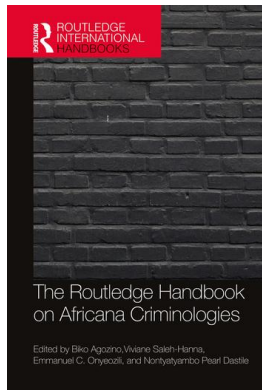
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## 8

# THE RETENTION OF COLONIAL LAWS AGAINST AFRICAN WOMEN

*Alaba Oludare*

### **Introduction**

Historically, the economics of Africa was based largely on agriculture and like exchanges. By the 15th century, Europeans began to arrive at the coast of Africa, originally to trade in goods and services, including gold, copper, iron, and slave labor. In order to gain political and sequential economic hegemony, they introduced the cash cropping system to replace the traditional agricultural economy in which both men and women participated equally. African men began to move out of traditional agricultural work to employment on plantations and in mines for cash while women stayed back to farm and feed the family. During the period when the colonialists began to create local political offices, they also established customary laws, taking into account the views of elitist men who worked with the colonialist agents who were also men. They ignored the traditional role of women as co-participants in local politics and economics. The introduction of customary laws based on European laws without the input of African women inevitably led to women being discounted and downgraded, especially on issues regarding marriage, divorce, and female sexuality. This chapter examines the impact of colonial laws on African women by utilizing a historical framework to trace the development of the role of women as wives, mothers, and public figures in the economic and political landscape in Africa from the precolonial era to the advent and retention of colonial laws in contemporary times.

In precolonial times, most African societies were governed by the laws, norms, and traditions that emanated from the day-to-day lives of the local people. These practices and principles, which were mostly unwritten, upheld the society and represented their common identity. The advent of colonialism led to the introduction of other sources of law, including the common law, civil law, statutes, and legislative enactments, as well as religious laws. The introduction of these new sets of laws in African societies impacted the people in diverse ways, including socio-economically and politically. Women in particular were grossly impacted in several ways, especially

with respect to the laws on marriage, inheritance, property ownership, sexuality, and authority within the family and society at large.

Although the discourse about women's rights, including their sexuality and socio-economic and political rights in comparison to men, is prevalent in contemporary literature, there is a scarcity of scholarship on specific laws that affect African women. Notably, colonial laws and African traditional laws are patriarchal in nature in different ways. However, most African traditional laws recognize the autonomy of women as key players in economic development, religion, and politics. Traditionally, African women were not only independent economically but also wielded customary power over kingdoms from time immemorial and were known to have done valiantly by the prowess they exhibit.

Upon arrival in Africa, the colonialists not only sought to interpret African customs in light of their Eurocentric beliefs, but also introduced a new set of customary laws and rules. The inherited colonial body of laws has not only left indelible marks on African customary laws but has also remained influential on the bodies of laws of most African nation-states through the present day. The impact of colonial laws and norms on post-independent African states, whether formal or informal, cannot be overemphasized.

While all African countries have attained political independence, their economies and autonomy are still tied to their former colonial rulers. Berinzon and Briggs (2017) imply that the effects of colonial institutions and laws on Africa's economic and political conditions are fostered not necessarily by direct retention but through transmission of informal rules and culture. This chapter will examine policies and practices including cultures, traditions, norms, and laws of colonial heritage that are still in operation against African women in contemporary times and their impacts.

### **Historical background: Traditional gender roles in the agrarian economy**

Generally, in precolonial Africa, women participated equally in the economic development of the region through the farming of crops and also provided political and spiritual leadership. Becker (2000) explained that Namibian women exercised a significant amount of power in the areas of politics, spiritual leadership, and sexual and economic life, as well as the transmission of oral history and traditions. Ugandan women wielded enormous social and political power through indirect methods, notwithstanding their physical absence in the public terrain (Tamale, 2008). In ancient Namibia, women were considered complementary to men in different spheres of communal life (Becker, 2006). In Nigeria, Nzegwu (2012) explained that the Indigenous Igbos had a gender-neutral political system supported by egalitarian ideas upon which citizenship rested. All across African nation-states, women's ability to exercise religious and political powers as well as to define their identity was not limited to gender but also extended to age and class (Becker, 2006; Elechi, 2006; Nzegwu, 2012; Ruffin, 2016). Indeed, Nzegwu (2012) convincingly presented the concept of gender as fluid and flexible in relation to societal roles. In different African regions, women and men performed complementary functions in the social, political, economic, and spiritual realms of society.

During colonial times, the status accorded to women in the territories generally reduced drastically. Men occupied high positions in religion, economics, and politics while women were subdued. Women were considered to be the weaker sex and, therefore, unequal in status to men. A woman could not vote unless she had a man's permission. By virtue of colonial norms, when a woman married, her legal existence was suspended because marriage made her one being with her husband (Arezki and Mahmoudi, 2013). Women were considered as substandard, less intelligent, less moral, less competent human beings. They were seen as small-bodied beings with less spiritual and physical ability and of small mind, psyche, and character (Ruth, 1990). The campaigns of slave trade abolitionists against the cruel treatment of women in the Western world did not improve the condition of women as they continued to be subjected to greater humiliation, hardships, and oppression. Although women sometimes had legal and economic rights, their incomes, inheritances, clothing, children, and bodies belonged to their husbands during the colonial period (Klepp, 2009). Similar laws with patriarchal connotations were introduced into Africa upon colonization of the various countries of the continent.

Traditionally, African women were co-producers of farm goods with their men; they had socio-economic and political powers and were recognized as stakeholders in the political arena of their societies. Yoruba women in the Southwest, Berom women in the North, and Igbo women in the Southeastern parts of Nigeria in West Africa played a complementary role and exercised authority before colonialism (Alahira, 2015; Oluwole, 1993; Elechi, 2006). Although the status accorded to African women in precolonial times varied across societies, a major impact of colonialism was to diminish their status basically, and women were treated less favorably than in the olden days. In sub-Saharan African societies, women were chiefs and political leaders. However, with the introduction of colonialism, these women gradually lost their positions to the male-dominated system of administration favored by the colonialists (Sheldon, 2017). Urbanization, modernization, and the rise of the nuclear family have further diminished the opportunities for less-privileged African women to bind together for demonstrations in women organizations (Anunobi, 2002).

Socially and politically, women's organizations lost their erstwhile prestige and members due to the introduction of Christianity and orthodox medicine, which replaced rituals and sacrifices conducted by women for communal well-being. Further, the customary practice of sitting on erring men was banned, and the communal system of land ownership was replaced by crown grants, which allowed men to purchase and own land but restricted women's land rights to farming access only as they were expected to stay within the home. European goods were imported, thereby distorting the traditional pricing system controlled by women (Achebe et al., 2018). Local customs were conveyed through either male tribal leaders or colonialists, who deprived women of the decision-making rights they had prior to colonialism (Tamale, 2008). Although African men also lost some rights, being more dependent on the colonial government and subjected to subordination by the Western cultural and economic imperialism, they took out their frustration on the women through violence in private life (Reddock, 2007). Comparatively, men were employed in the newly introduced commercial economy and involved in decision making and policy

formulation processes while the women were left behind to cater to the children and tend the farms in the similitude of the European way of life. This shift in gender roles from the traditional to an extensively patrilineal setup created a change in gender dynamics, leading to a big gap in the relationship between men and women and in the way women were treated and perceived themselves (Anunobi, 2002). The adoption of patriarchal rules influenced women's attitudes and perceptions about rights, privileges, and responsibilities, including the treatment meted out to them. Society developed gender schemes or stereotypical perceptions of women that culminated in self-concepts and restrictions that were often oppressive (Taylor, 2010; Valian, 1998).

### **Customary laws and African women in the era of colonialism**

Laws do not operate in vacuum; therefore, a thorough understanding of the laws of any society requires a consideration of the people's ways and communal conscience. A minimum of two different sets of law were administered in the African colonies. The customary laws were given credence but applied alongside other colonial laws concerning the African people while others were governed through European-sourced laws. The prevailing legal system neglected gender as a factor to be reckoned with. Women's rights were often trapped between formal law and local culture, and they were denied the opportunity to contribute to the lawmaking process (Tamale, 2008). The colonial imposition of norms without the due consideration of the entirety of the people's beliefs, experiences, and systems created different problems (Dobkin, 1968).

In British colonies, the colonial governors set up native courts for the administration of customary laws, but these courts were set up structurally to resemble European courts applicable to the African people. The native courts set up by the colonial governors were subject to review by the district courts. The governor also had the power to appoint, suspend, or terminate judges of the native courts. The procedure and practice in the native courts gradually led to the adulteration of African customary laws or a new form of colonial laws. Human rights protections were frowned on as the basic essence of colonization is opposed to human rights principles (Achebe et al., 2018). The paraphernalia of common law diffused into the African customary law exists to this day, producing diverse negative results for the African people, particularly women.

In Malawi and Zimbabwe, European policies seriously condemned the status and moral standards of African women Chanock (1985). For example, the colonialists described the Lomwe women of Central Africa as women with low morals who did not regard adultery as wrong and the Mang'anja women as being of questionable chastity. In the African nation of Bechuanaland, lying in between the borders of Botswana and South Africa, the so-called process of moralization after the colonial invasion required African women to dress up in the Victorian style (Omer, 2018). The traditional style was portrayed as medieval and inferior. In particular, the prejudices expressed against women were in line with the European belief that a woman's place was in the home and that women were frail minded and incapable of making serious decisions or dealing with masculine issues.

In Francophone Africa, the colonialists were much intrigued and failed to adequately understand the role that the women played in African society in comparison

with the French societal norms. The French colonialists' claim that the women were treated as entities belonging to their husbands and subject to inheritance by his next of kin after death (Maunier, 1939) is obviously a biased representation of the dogmatism in the way Africans were perceived and treated when the predominant culture in Europe at the time was even more patriarchist. For most African nations, marriage was a family affair, an occasion to acquire conjugal and related rights for the expansion of the family lineage. A bride was seen as being married not only to her husband but into an extended family. Marriage was not a contractual legally binding agreement to be solemnized in court of law by the two people involved but essentially a family affair (Dobkin, 1968). The French colonists did not understand this culture. Armed with their religion and attitude of moral and racial superiority, they zealously proceeded to promulgate laws that left a long-lasting impact on women. The French colonialists propagated decrees to address women's right to consent in marriage, regulate the price of a bride, and set a minimum age for marriage. The reasonableness of African customs as the peculiar needs of a society was disregarded. The formalized outward expression of a society's needs and values was not considered by the French, who attempted to modify African traditional systems of law to conform to the Western system (Dobkin, 1968). An inherent ethnocentrism – a belief that their inherited Roman laws were superior to the laws of the pagan societies – led to their misconception of the realities of the African customs and traditions (Rheinstein, 1963). The Europeans' condemnation of African marriages and depiction of the women's status as abject were definitely lopsided and biased, considering their patriarchal culture.

Similar trends have continued in most African and Asian nations. Government policies and programs provide modern technologies, credits, and other assistance exclusively to men, and foreign aid programs are often administered in a gender-biased way. During the period immediately after colonization, the enrollment of females in educational institutions in Zimbabwe palled considerably (Gordon, 1994). In Nigeria, the church and the school were fused together, providing opportunity for boys to receive missionary education in vocations considered male oriented, such as carpentry and printing, while the few girls who attended the missionary schools were restricted to learning domestic skills for Christian homemaking, such as sewing, cooking, child care, and cleaning (Achebe et al., 2018). All this created further gaps in the roles and status of women and men, in both public and private spheres (Klepp, 2009).

### **Socio-economic and political rights of African women in the post-colonial era**

The introduction of colonial laws led to the gradual waning of customary norms on land ownership that preserved the right of African women to possess land. In addition to the reduced access of women to customary land ownership, women are pressured by governments to refrain from making sexual strife through petition for right to ownership of land. However, women in sub-Saharan Africa continue to query the system of male dominance, disagreeing with colonial laws. The intimidation of women knowingly or unknowingly incorporated into contemporary law serves to

ensure that African women remain perpetually disadvantaged in terms of land ownership as well as to ensure that most of the family wealth and inheritance remain with the men (Rebouche, 2006).

Despite the traditional role of African women as key participants in the economy, the introduction of policies of economic liberalization, including privatization, deregulation, free trade, austerity (Goldstein, 2011), and cutbacks in government spending in order to increase the role of the private sector in the economy and society (Springer et al., 2016) has resulted in the exclusion of African women from the debate on the way forward. African nations have faced structural adjustment programs, including the removal of trade barriers, local industry protection, reduction in social spending, subsidies, and the opening up of local markets to international investments, trade, and media at the expense of agriculture and local industry. For instance, in Zimbabwe, elimination of food subsidizations caused a 45 percent increase in living expenses for lower-income families mainly headed by women, and in Zambia, elimination of subsidizations under structural adjustment programs caused a 50 percent increase in the price of maize (Ezeonu and Emmanuel, 2008).

In the area of marriage, the Nigerian police force and similar organizations retained a marriage permit law against female police officers until recently. Regulation 124 pursuant to the Police Act (CAP P19) Laws of the Federation of Nigeria states that

A woman Police Officer who is desirous of marrying must first apply in writing to the Commissioner of Police for the State Command in which she is serving, requesting permission to marry and giving name, address and occupation of the husband she intends to marry. Permission will be granted for the marriage if the intended husband is of good character and the woman police officer has served in the force for a period of not less than three years.

By virtue of this law, there is a three-year minimum waiting period for women to get married or become pregnant after commencing employment. If a woman were to get married or become pregnant before the expiration of the three years prohibition, she would be subjected to disciplinary proceedings and her appointment subject to termination. The law did not apply to men of similar standing or rank in the organization. If the woman and the man she married or got pregnant by were both employees, only the woman's appointment was affected while the man was safe. Male officers did not have to obtain approval before contracting marriage. Basically, a man could marry a female officer, and she would get fired; he could then divorce her, turn around and marry another female officer, and the circle would continue. Ironically, the argument was that the drafters of the marriage permit law intended to protect female officers from marrying men of questionable character; however, what the law essentially did was to take away the freedom of choice from women as to when and who to marry.

This law applied not only to women officers in the Nigerian police force but also to women officers across other military and paramilitary organizations in the country. The Federal Road Safety Corps, which was considered a division under the auspices of the inspector general of police, was one of the organizations that perpetuated this

law against women. I was a victim of this law, having joined the Federal Road Safety Commission as a legal officer on Public Service Grade Level 9 in March 1996. Since I was considered a senior officer of the corps, the waiting period for contracting marriage and becoming pregnant was a year. The waiting period was much longer for junior officers. I was required to wait for a minimum period of one calendar year before contracting marriage. It was mandatory to obtain the permission of the corps marshal and chief executive officer after the expiration of the one-year restrictive period. I had to submit the personal information of my intended spouse, including name, address, occupation, and other personal information with a long argument in writing on why I should be granted permission to enter into a marriage contract. By the same token, female officers, whether junior or senior, were not allowed to get pregnant outside wedlock. If a female officer became pregnant outside marriage or married before the end of the restrictive period, she was liable to be subjected to a rigorous disciplinary procedure, and her appointment would be terminated.

A similar law to the marriage permit law was the law that forbade intermarriage between a junior officer and a senior officer. Many low-ranking female officers who got married to senior male officers had their appointments terminated while the men were allowed to continue to work. A female member of the corps, Commander Mrs. Lawson (not her real name), became pregnant during the waiting period and had to conceal her pregnancy by adorning herself in multiple layers of big clothing. Other female officers who were not as canny were immediately subjected to paramilitary court trial and dismissed. Women were afraid to get married or become pregnant, but the men did not cease making passes at them. Besides, those within the organization in positions of authority to grant the permission to women were men.

It is only recently that an attorney, Mrs. Funmi Falana, the executive director of the Women Empowerment and Legal Aid Initiative (WELA) challenged the constitutionality of Regulation 124 of the Police Act (Cap P19) Laws of the Federation of Nigeria before the federal high court in Lagos, Nigeria. The government attorney, Mr. B.R. Ashiru, argued that Regulation 124 was designed to protect female officers from falling victim to criminals, and the three-year waiting period was to guard against women getting pregnant during the required rigorous training that officers are subjected to after employment. The presiding judge rejected the government argument and entered judgment for the plaintiff, ruling that Regulation 124 was unconstitutional.

There was an aphorism among the military, paramilitary, and other security-oriented organizations that there were no women in the force. Both men and women were addressed as “sir” in official communications and apportionment of duties and responsibilities. Professionally, within the Nigerian Bar Association, the locution was commonly used that “there are no ladies at the Bar,” so female judges were referred to as “my lord,” “your lordship,” and “sir”; female attorneys were also addressed as “sir.” All this was because women were considered to be weak and feeble-minded, inadvertently perpetrating the idea of women inferiority. In Uganda, the president signed the Anti-Pornography Act into law in 2014, signaling a return to the misuse of women’s bodies as instruments of cultural moral conflict and the development of a new frontline for the sexual-political turmoil in that country (Tamale, 2015). The



point is that a woman should reserve the right to decide how she would like to dress and be addressed.

Further, in relation to the area of women's bodies and health, some of the most serious violations against women's rights occur within the privacy of the family and reflect the enshrined customary laws and practices of the colonial era. For example, victims of domestic violence often experience harm to their health, emotion, finance, and politics. In Togo, about 75 percent of women reported having been raped or beaten by a family member; only 45 percent have a Western education, compared to 72 percent of men, while women are legally obligated to hand over their earnings to their husbands or male relatives (Moore, 2008).

In Nigeria and across the countries in Africa, uninformed and unemployed women who do not have money or property are dependent on men who control them through sexual and other violence, sometimes resulting in HIV and other sexually transmitted diseases, with the young women facing more risk of being infected with HIV than the young men. The lesser control that women have over sexual relations in terms of who, when, and under what conditions they have sex causes them to be more vulnerable than men to being infected (Stewart, 2006). Besides, women bear the brunt of caring for the infected sick by virtue of their position as primary caregivers, so women are at a disadvantage in any case.

The dilemma created in the aftermath of colonialism; a weak, male-dominated system of governance, and economic underdevelopment has made it particularly difficult to redress human rights violations against women in Africa. Across the region, women are faced with high rates of sexual discrimination, domestic violence, political ostracism, and economic hardship. In South Africa, for instance, a woman is more likely to be raped than to be formally educated (Dempster, 2002); in Niger Republic, 70 percent of women are beaten or raped by men in their lives, such as a father, husband, or brother (UNOCHA, 2007); about half the people are poor, with 80 percent of the population being women; and the maternal mortality rate is incomparable globally, with a 20 percent birth rate and a 40 percent mortality rate. The prevalence of this precarious condition for women has been blamed on their marginalization and underrepresentation in the nation-states responsible for protecting human rights. In sub-Saharan Africa, women account for only 6 percent of the seats in legislative assemblies, 10 percent in local politics, and 2 percent in national cabinets (UNFPA, 2008).

## **Conclusion**

The colonial invasion of Africa heralded the era of modernization characterized by industrialization and a shift from an agricultural to a capitalist, industrial economy. The colonialists portrayed this era as more progressive and acceptable than the pre-colonial traditional era. They engaged the instruments of religion and politics to exert control and take over the government, including the land of the people, militantly, without due regard for the inhabitants. Due to the existing sociopolitical environment of colonialism, Africans were coerced into adopting Western ways, religion, and styles of dressing.

In most of Africa today, the idea of women's inferiority remains in the scheme of things. The impact of colonialization on African communities has brought changes that affected politics and socio-economic as well as gender roles in profound ways. It is interesting to note that long after colonialism ended, colonial laws are still retained against African women in many societies. In present-day sub-Saharan Africa, women are still experiencing unequalled human rights violations.

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