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The Clash Between the Universal Declaration of Human Rights and Harmful Traditional Practices

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ABSTRACT

This paper has addressed the problem of harmful traditional practices in Tanzania and how such practices clash with the United Nations (UN) Universal Declaration of Human Rights (UDHR). This qualitative research has described the most persistent harmful traditional practices in Tanzania and suggested solutions to overcome the clash between UDHR and these practices. Findings reveal that child killings, son preference, and violence related to witchcraft accusations are the most persistent harmful traditional practices in Tanzania. To eliminate the harmful traditional practices problem in Tanzania, there is a need to enhance traditional justice systems within the framework of peace-building practice. For policy implication, there is a need to enhance effective policies that will act as problem-solving. Further, from time to time amendment of such established policies will help tackle emerging challenges on the problem. Lastly, a bottom-up approach should be adopted by engaging the locals in the whole process of formulating policies.

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1. INTRODUCTION

Tanzania boasts of a rich cultural diversity, with over one hundred and twenty tribes and over a hundred different dialects spoken across the country. Each of these ethnic groups has its unique language, social structure, culture, and traditions, with notable similarities among them. Ethnicity in Tanzania is also a product of the geographic area, as each tribe is concentrated in various parts of the country. Traditional practices reflect values and beliefs held by members of a community for periods often spanning generations. Every social grouping in Tanzania has specific traditional practices and beliefs, some of which are beneficial to all members, while others are harmful to a specific group, such as women, girls, and children (Ntuli, 2019).

In 1948, the UN General Assembly adopted the UDHR, which has served as a strategic guiding principle on human rights and fundamental freedoms in the constitutions and laws of many of the Member States of the UN itself. It bans all forms of discrimination based on sex and ensures the right to life, liberty, and security of a person; it recognizes equality before the law and equal protection against any discrimination (UDHR, 1948). Tanzania is amongst the countries that use and refer to the UDHR's thirty articles in case of human rights violations in addition to national laws, which guarantee and protect human rights. Henceforth, this paper has used the UDHR to demonstrate the clash with harmful traditional practices in Tanzania, which run in opposition to universal human rights standards.

There are numerous research papers regarding the harmful traditional practices carried out in Tanzania and in Africa as a whole. Such practices are continuously reported despite the Governmental and Non-Governmental Organizations' efforts to address this challenge. In this study, the researcher has, therefore, identified the harmful traditional practices in Tanzania that clash with the UDHR.

First, the researcher's view is that harmful traditional practices in Tanzania are mostly carried out by patriarchal or male-dominant societies like the Kurya. The most highly reported harmful traditional practices amongst all tribes in Tanzania are associated with the Kurya. Such practices include the beating of wives by their husbands, which is referred to as violence against women by both national and international human rights standards. Therefore, to the Kurya tribe in Tanzania, such an act refers to a sign or symbol of love and women embrace it as such. "The husband shows love through beating" which outside this specific tribe is termed and referred to as violence. Thus, the Kurya tribe considers wife battering as a "sign of love" that should be encouraged as evidenced by this statement: "If you are not yet beaten by your husband, then you do not know the joy of marriage and that means you are not yet married" (Chalya *et al.*, 2015).

Second, child marriage is a common harmful traditional practice in many African countries including Tanzania in almost all tribes, particularly in rural communities. "Child marriage" refers to a union where either spouse is below 18 years of age. "Child" is used to refer to anyone under the age of 18, consistent with usage under international law. Parents often wish to see their daughters married and to see grandchildren before they die. If a girl is not married at an early age, other members of the community may think she must be too unattractive or ill-behaved to get a husband. This attitude usually causes shame to both the girl and her family. Another reason is related to parent's greediness for money since the bride price will be paid to them. For example, UNICEF estimates that in Africa 42% of girls are married before the age of eighteen years.

Third, traditional faith healing and witchcraft are among the cultural beliefs that infringe on the rights of girls, women, children, and other special groups of people such as Albinos in

Tanzania. These beliefs have led to intimidation, psychological isolation, abuse, violence, and, in extreme cases, the killing of older women simply because they were accused of witchcraft when a disaster happened in the community. Some of these elderly women are burnt to death inside their houses along with other members of their families. Similarly, traditional faith healing and witchcraft are now associated with the killing and violence against albinos in Tanzania, primarily in the lake zone areas. This is common in the Mara region, which is dominated by the Kurya tribe. The killing of Albinos and taking their body parts is associated with accumulating wealth.

The researcher notes that the high increase and consistency of harmful traditional practices in Africa as a whole has contributed to a body of traditional beliefs, norms, and customs, which largely oppose human rights standards as espoused in the UDHR. As the majority of certain tribes hold that their traditions are the best, the minority in the same tribes describes such best practices as harmful such as female genital mutilation (FGM), and child marriage.

An example is from Nice Leng'ete, a Maasai girl, who overcomes and fights against FGM and calls it an old and harmful traditional practice that needs to be eliminated. Therefore, the researcher's view on this problem is that concerning each tradition on what is just and unjust, there is a need for one clear traditional justice system that should outline and explain why certain traditional practices are harmful and this should not only be concerning a specific group of people but it should be recognized internationally to demonstrated that such practices are against human rights ([Japhet, 2021](#)).

The purpose of this paper is twofold: to examine the harmful traditional practices in Tanzania that clash with the UDHR and to suggest solutions for overcoming such a clash.

This paper intends to answer the following twofold questions: First, what are the harmful traditional practices in Tanzania that clash with the UDHR? Second, what are the suggested solutions to overcome such a clash?

The researcher has explored the problem of this study, which is harmful traditional practices in Tanzania that have been carried out for ages without an end regardless of the government, non-government, and civil society organizations' efforts in giving awareness and education to ban and eliminate these practices in all tribes that practice them. For this reason, the researcher has incorporated the field of peacebuilding by engaging a rationality theory of "Whose Justice, Which Rationality" to give more insight into why such practices are still prevalent and persistent in Tanzania.

Due to ongoing harmful traditional practices carried out among different tribal communities in Tanzania, which has been and remains a problem, the researcher has decided to study what has been missing in other scholars' work and what has not been done to solve the ongoing problem. It is expected that this will contribute to the field of peace studies by suggesting the best practice model and policy implications.

In contribution of the study, the researcher has observed that the problem behind these clashes is deeper than what society thinks as it poses a threat to peace because it causes intra and inter-personal conflicts. While the majority group of people from certain tribes defends their actions as good and positive concerning these traditional practices, others in the minority in the same tribes disagree with their traditions and refer to such acts as harmful traditional practices. Therefore, to solve the prevailing problem, there is a need for a best mechanism which the researcher refers to as traditional justice systems.

2. LITERATURE REVIEW

2.1. Survey of Related Literature

This section provides a literature review of the harmful traditional practices in Tanzania. [Khalil and Hartley \(2022\)](#) argues that ‘the greatest resource for sustaining peace in the long term is always rooted in the local people and their culture.’ The researcher opines that for any society to achieve sustainable peace, there must be justice.

FGM has been recognized as a harmful traditional practice and a violation of the human rights of girls and women in Tanzania and Africa as a whole. In Tanzania, this practice differs along geographic and ethnic divides. Not all regions practice FGM. The highest rates of this practice occur in Manyara, Dodoma, Arusha, Singida, and Mara in Tanzania. Some of the ethnic groups that are mostly associated with practicing FGM are the Nyaturu, Gogo, Maasai, and Kurya. However, in some ethnic societies, FGM appears to be a positive practice to them as previous study shows that there is a belief amongst such societies that FGM can cure lawalawa, a vaginal or urinary tract infection ([Msuya, 2021](#)). This notwithstanding, FGM remains a negative practice and, therefore, clashes with the UDHR “Article 5”: which says no one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment.

Child marriage sets girls and women at greater risk of sexual and gender-based violence, and reported girls who rejected and resisted child marriage in Tanzania said their families assaulted and verbally abused or forced them to leave the house. Those unable to escape marriage said their husbands beat and raped them and did not allow them to make any decisions in their homes or about their lives. Tanzania’s Marriage Act of 1971 sets the minimum age of marriage at eighteen for boys and fifteen for girls with parental consent while it also permits both girls and boys to marry at fourteen years with a court’s permission. There is a legal gap in the national law which permits children to enter marriage before they attain the age of 18. This in itself encourages child marriage, which is termed a harmful traditional practice, hence clashing with the UDHR. Further, the Constituent Assembly, tasked with writing a new constitution in Tanzania, missed an opportunity to include a uniform minimum marriage age for males and females in its October 2014 final draft. This is also an avenue that shows a clash between UDHR and harmful traditional practices, child marriage in particular.

Albinos in Tanzania are a vulnerable group of people who are under the threat of extinction as they are being killed with impunity, based on the traditional belief that the potion made from their body parts can bring good luck, wealth, and success ([Dave-Odigie, 2010](#)). As this harmful traditional practice can be deemed by certain traditions to be right based on their belief, it violates the rights espoused in the UDHR such as Article 3 which states that: “everyone has the right to life, liberty and security of person”. Henceforth, this shows another clash between UDHR and harmful traditional practices and in particular the link between albino body parts and wealth creation.

In Tanzania, the majority of people conduct their activities following cultural and traditional practices. However, many cultural and traditional practices in Tanzania subordinate women within the family and clan and also within the community at large. Women have been overwhelmed by the burden of upholding cultural norms and values. The values that are entrenched in customary law practices are used to justify the violation of women’s human rights ([Msuya, 2021](#)). Paradoxically, the Constitution of the United Republic of Tanzania of 1977 guarantees the right of equality for all human beings as also provided in the UDHR under Article 7. Yet some traditions override this right, which is another good example of the clash between the UDHR and the harmful traditional practices in particular those that oppress women in this regard.

Therefore, from the literature review, the researcher considers that there is a need for the Government of Tanzania, with the help of Non-Governmental Organizations; Civil Society Organizations, and Human Rights Activists, to advocate against the harmful traditional practices in all regions in Tanzania regardless of how dominant such practices are in applicable tribes or regions. Furthermore, acts, laws, and regulations should be amended by including what is referred to as traditional harmful practices and why such practices should not be condoned. The researcher's emphasis is that it is of great importance that Tanzania should include traditional justice systems as it will be the best practice to deal with harmful traditional practices in Tanzania ([Haidt et al., 2007](#)).

2.2. Conceptual Framework

Regarding Clash, the literal meaning of this term is an argument between two or more people, groups, and traditions because they have very different beliefs, values, norms, and customs. In this research, the clash focuses on traditions found in Tanzania, each tradition having its uniqueness. All traditions have their own goodness and badness or positive and negative practices that are underpinned by their own beliefs. Such bad or negative practices are the cause of the clash with the UDHR. For example, the Maasai and Kurya in Tanzania are the most common tribes whose traditions favor the practice of FGM. Although this practice is seen to be good and positive among these tribes, it is also considered to be bad and negative for other tribes and society. This is why it is termed as a harmful traditional practice as it is cruel to girls and women. Under Article 5 of the UDHR, no one should be subjected to torture or cruel, inhuman, or degrading treatment or punishment.

The Universal Declaration of Human Rights is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the UDHR was proclaimed by the UN General Assembly in Paris on 10 December 1948 as a common standard of achievement for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages. The UDHR, which has thirty articles, is widely recognized as having inspired and paved the way for the adoption of more than seventy human rights treaties, applied today permanently at global and regional levels. Tanzania recognizes the UDHR and puts it into practice.

Traditions are long-established patterns of actions or behaviors, often handed down within a community over many generations. These customs are based on the beliefs and values held by members of the community. Traditions are often protected by taboos, with strong social prohibitions (or bans) relating to human activity or social customs based on moral judgment and religious beliefs. This means that traditions are not easy to change, because people adhere to these patterns, believing that they are the right things to do. Tanzania has both beneficial traditional practices and harmful traditional practices ([Msuya, 2021](#)).

Harmful Traditional Practices reflect values and beliefs held by members of a community for periods often spanning generations. Every social grouping in the world has specific traditional practices and beliefs, some of which are beneficial to all members, while others are harmful to a specific group, such as women. These harmful traditional practices include FGM; child marriage and son preference, among others. Despite their harmful nature and their violation of international human rights law, such practices persist because they are not questioned and take on an aura of morality in the eyes of those practicing them.

As early as the 1950s, UN specialized agencies and human rights bodies began considering the question of harmful traditional practices affecting women, in particular FGM. However, these issues have not received consistent broader consideration. In addition, action to bring

about any substantial change has been slow or superficial. Several reasons are given for the persistence of traditional practices detrimental to the health and status of women, including the fact that, in the past, neither the Governments concerned nor the international community challenged the sinister implications of such practices, which violate the rights to life, dignity, and personal integrity. The international community remained wary about treating these issues as a deserving subject for international and national scrutiny. This is because harmful practices such as FGM were considered sensitive cultural issues falling within the spheres of women and the family.

For a long time, Governments and the international community had not expressed sympathy and understanding for women who, due to ignorance or unawareness of their rights, endured pain, suffering, and even death inflicted on themselves and their female children. Despite the apparent slowness of action to challenge and eliminate harmful traditional practices, the activities of human rights bodies in this field have, in recent years, resulted in noticeable progress. Traditional practices have become a recognized issue concerning the status and human rights of women and female children. The slogan "Women's Rights are Human Rights", adopted at the World Conference on Human Rights in Vienna in 1993, as well as the Convention on the Elimination of Violence against Women, adopted by the UN General Assembly, captured the reality of the status accorded to women.

Tanzania is the case study used for this paper. Therefore, the researcher defines Tanzania as a country situated in the eastern part of Africa with a total of thirty-one regions both in the mainland being twenty-six and Island Zanzibar being five. The country has five sub-regions which are the Northern, Southern, Eastern, Western, and Central parts of Tanzania ([Japhet, 2022](#)).

Regarding Peacebuilding, the researcher has incorporated peacebuilding simply because there is the use of a peace theory that guides this study but also the researcher has drawn a contribution to this study by giving a model that will act as best practice towards the problem which is harmful traditional practices. Peacebuilding is a structural mechanism that involves a wide range of efforts by diverse actors in government and civil society at the community, national, and international levels to address the immediate impacts and root causes of conflict before, during, and after violent conflict occurs ([Theros and Turkmani, 2022](#)).

2.3. Theoretical Framework

The researcher has incorporated the following theory: [Msuya \(2019\)](#) "Whose Justice? Which Rationality? As much as this theory is relevant, it will also guide the whole study for the reason that MacIntyre writes about traditions and justice and explains what is just by incorporating philosophers' ideas such as Aristotle and Plato. In this research, the clash between the UDHR and traditional practices in Tanzania is justified by the society that appears to define what is to be just and what is not. It should be noted that the clash happens because the majority of the concerned tradition find that the practices held are not harmful while the minority define such practices as unjust and harmful, hence the contradiction. For example, a story of a Maasai eight-year-old girl, Nice Leng'ete, who was reported to fight against FGM and child marriage, calls such practices odd and harmful, thereby saving thousands more young girls in Maasai society from such practices.

3. METHODS

This paper is a descriptive type of research study. The researcher has described the harmful traditional practices done in Tanzania and elaborated on how they clash with the UDHR. This paper has used a qualitative technique approach to analyze the findings of the study. The

study design is a case study because the research has only concentrated on one geographical area which is Tanzania. The source of data used is secondary. Tools of data used are published journals, articles, documents, and reported news. Importantly, the latest news on harmful traditional practices in Tanzania, within two years from when this study was conducted, is reflected in this paper.

4. RESULTS AND DISCUSSION

4.1. Harmful Traditional Practices in Tanzania that Clash with the Universal Declaration of Human Rights

In February 2019, the Speaker of the Parliament of Tanzania, Job Ndugai, when holding his parliamentary sessions, discussed the sudden and rapid increase of child killings that were occurring in Njombe. It was also evidently reported by Renata Mzingi, a Chief Police Officer in Njombe, that the news regarding the sudden and rapid increase of children killings below ten years with the removal of their body parts had been intense. The killings of children were associated with superstition or witchcraft, which has been more common among African countries and Tanzania in particular. This is a harmful traditional practice that is dominant in all regional parts of Tanzania. This practice clashes with the UDHR as it violates Article 3 which provides that “everyone has the right to life, liberty and security of person.” Thus, child killings under the banner of superstition or witchcraft conflict with the UDHR.

Son preference is a powerful traditional belief prevailing in numerous tribes in Tanzania. It is tied to inheritance and has remained inviolable because of the desire for a son to carry on the family name and guarantee its lineage. Females are generally viewed as inferior and subordinate to males. For example, this practice is most common in Kurya and Maasai tribes where male dominance takes a stronger feature. Son preference over girls by parents and communities often results in the neglect of the basic rights of girls, including their health, nutrition, and education. On a more extreme level, son preference may lead to pre-natal sex selection and the abortion of female fetuses, as well as female infanticide, or feticide, which may occur deliberately or through forms of neglect, such as starvation. This harmful traditional practice clashes with the UDHR as it violates Article 7 which focuses on equality before the law.

Violence related to witchcraft accusations, especially the older women who mostly suffer violations of their rights in the form of physical violence and abuse is another area worth pointing out. For example, in 2019, the Regional Commissioner of Tabora reported that the region of Tabora has the highest number of violent cases related to witchcraft and he attributed this to ignorance. While belief in witchcraft is widespread in Tanzania, the situation in Sukumaland, located in the northeastern part of the country, is particularly grave. Belief in witchcraft tends to result in isolation, rebuke, physical attack and killings of older women alleged to be witches in violation of their right to life. Older women are targeted because of red eyes which are associated with being superstitious. This is a harmful traditional practice that clashes with the UDHR as it violates Article 3 which provides that everyone has the right to life, liberty, and security of person as well as Article 2 which bans discrimination.

4.2. Solutions to Overcome the Clash Between the Universal Declaration of Human Rights and Harmful Traditional Practices in Tanzania

To curb the problem and to provide a solution, the researcher suggests that the fight against harmful traditional practices in Tanzania is not only for the government, non-governmental and civil society organizations. It should be the role of every individual to fight against bad and harmful traditional practices. The researcher opines that with every

individual's effort, there is successful accomplishment of a set goal which in this study is to eliminate harmful traditional practices in Tanzania. This also plays a role in effective peace-building.

The researcher is aware of the enhancement of international laws such as UDHR along with other national acts, laws, and regulations that are used to cite and fight against harmful traditional practices in Tanzania. However, this is not enough if such laws do not identify and define what constitutes these harmful traditional practices. Therefore, this research suggests the best practice in peacebuilding, which should be in the form of traditional justice systems.

To enhance effective implementation towards fighting against harmful traditional practices, there is a need to engage the local people in each tribal community in Tanzania. This is to listen to their point of view to understand why they consider that such practices are good for their traditions. This should provide the opportunity to spread awareness and educate them that despite their support for such practices, such traditions are harmful to the people and community. For example, FGM is harmful to girls' and women's reproductive health.

5. CONCLUSION

Whose Justice, Which Rationality theory by MacIntyre was applied to reflect this study of harmful traditional practices in Tanzania. This theory has been reflected in Maasai and Kurya's harmful traditional practices which are carried out in their societies. While the majority in such traditions define harmful traditional practices like FGM as healthy due to their norms and culture, the minority in the same traditions such as "girls and women" have been noticed to oppose what is still defined as just in their traditions. Such women and girls differ in opinion because the practice poses a threat to their health.

This is the basis on which they campaign against the harmful traditional practices by indicating that such practices are old and need to be eliminated because they are at odds with the spirit of the UDHR. This statement can be seen and proved in the "Story Told by Nice Leng'ete" aged eight years old. She was destined to undergo FGM, leave school, and be married off to an older man, according to Maasai tradition. She did not only fight against FGM for herself but also, through her bravery and persistence, she helped overturn this centuries-old practice for thousands of Maasai girls in Tanzania.

Therefore, we suggest traditional justice systems as a peace-building model to be used as a best practice towards eliminating the harmful traditional practices in Tanzania (see **Figure 1**).

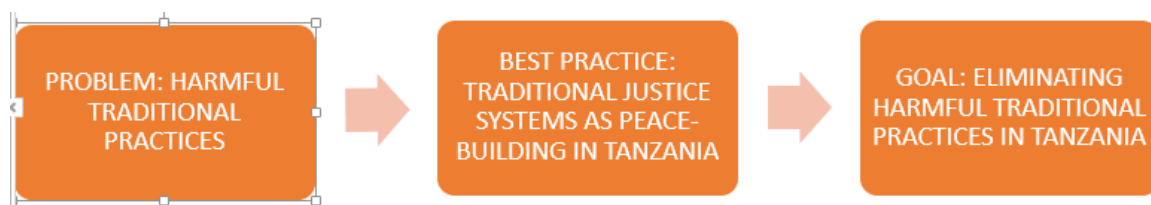


Figure 1. Japhet's model of harmful traditional practices and traditional justice systems as peacebuilding best practice in Tanzania.

5.2. Policy Implication

The examples below indicate some weak policies in Tanzania related to the discussed problem. To begin with, several laws have a negative impact on women's rights and are still enforced in Tanzania. Intentions to amend these laws and to remove discriminatory provisions have been met with strong resistance, thereby hindering any reforms. There are

several examples of discriminatory laws in Tanzania. For instance, family law (Law of Marriage Act, of 1971 CAP 29 [R.E. 2012]) expressly provides a different legal minimum age of marriage for males and females. Section 13 of this Act stipulates that the legal minimum age for marriage is fifteen years for girls while it is eighteen years for boys. In addition, the Tanzanian Penal Code also allows the marriage of girls under fifteen, provided that the marriage is not consummated before the age of fifteen. Moreover, the Law of Marriage Act of 1971 allows a marriage contract to be concluded without the consent of the bride based on an arrangement reached between the father of the bride and the groom. Henceforth, it is due to this reason that there are still child marriages in most tribes like Maasai in Tanzania ([Msuya, 2021](#)).

Another discriminatory law is the Law of Persons Act of Tanzania which allows for payment of a bride price upon which the husband and his family feel that they own the wife. Therefore, when the husband dies, the wife is 'inherited' by another relative within the husband's family. For example, in the Kurya tribe, this custom is widely practiced. Payment of a bride price also makes it very difficult for a woman to seek a divorce if she is living in unhappy or unsafe circumstances for fear that her parents would be required to pay back the bride price which they would have already spent. In addition, the beating of a wife in the Kurya tribe, as much as it is believed that this portrays love and just behavior, is oppressive to women ([Mubangizi, and Tlale, 2023](#)).

For the policy implication; first, the researcher suggests that to eliminate the persistence of harmful traditional practices in Tanzania, the country's related laws and policies such as the Law of Marriage Act should include consent from the bride and the age limit should be clear in all policies. Otherwise, this will continue to create confusion in applicability. Second, a bottom-up approach should be adopted by engaging the locals in the whole process of formulating laws. This will also help make them aware that if such defined harmful practices are still carried out, then such practices will be met with lawful punishment. Third, there is a need to enhance the best-related policies and make sure they are effectively implemented to avoid emptiness and failure in overcoming the current problem. Fourth, from time to time, amendments to such established policies are required to address emerging needs in the quest of fighting against these harmful practices. This will make the policies effective and able to tackle the recent problems.

6. AUTHORS' NOTE

The authors declare that there is no conflict of interest regarding the publication of this article. The authors confirmed that the paper was free of plagiarism.

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