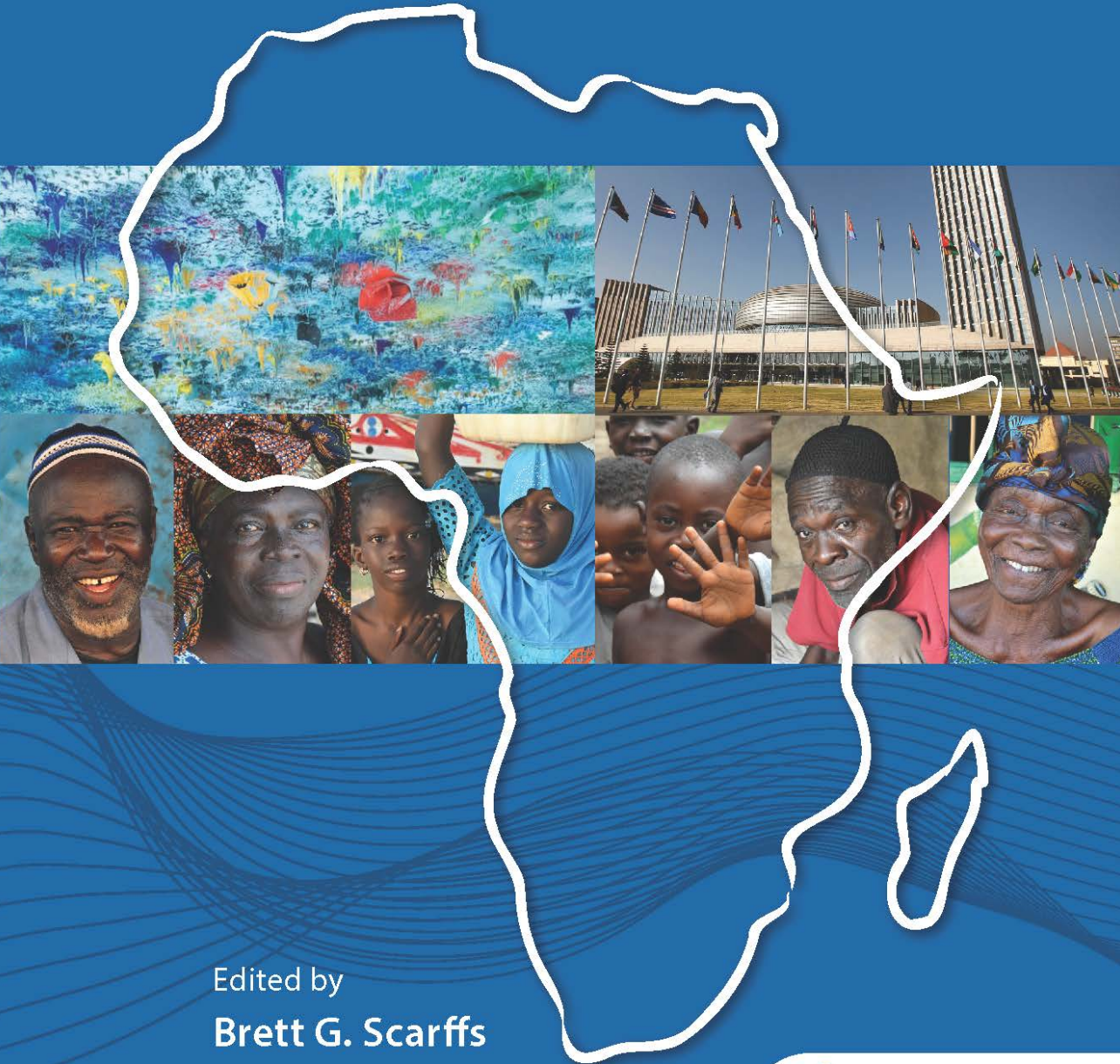


# African Conceptions of Human Dignity



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## 9 GENDER, AGE AND HUMAN DIGNITY IN AFRICA

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### INTRODUCTION

My father married my mother and both of them came from different regions in Nigeria, at a time when inter-ethnic marriage was condemned because of language barriers. Not knowing how to communicate in the local dialect into which she married, my mother's dignity was bruised and her self-esteem was affected. She questioned her identity at many points in her life. Growing up with her, I asked myself why a person's state of origin should be a basis for their treatment with such disdain. I took this up as a lawyer to ensure that the Constitution of the Federal Republic of Nigeria recognises the rights of every woman to be respected anywhere of their choice, whether they are there by marriage or by native residency and origin. The matter came up for constitutional review in 2022, but it was thrown out by the National Assembly as inconsequential. We need to redefine the laws of the land to be sensitive to issues of this nature that might appear inconsequential, but which define dignity of women and girls at various stages of life.

Human dignity is a foundational principle that is deeply rooted in international human rights instruments and jurisprudence.<sup>2</sup> It serves as the cornerstone upon which the edifice of human rights is constructed, safeguarding the inherent worth and value of every individual, irrespective of their age or gender. As societies strive

- 1 Senior Lecturer, Faculty of Law, Department of Public Law & Director Center for Human Rights, University of Lagos.
- 2 Most of the international human rights norms reference human dignity or the dignity of man, it has been adjudged the foundation upon which the universality of human rights derives its authority. This can explain why the concept is present in almost all the instruments see for example: Universal Declaration of Human Rights [UHDR], G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), preamble, arts 1 and 23; International Covenant on Civil and Political Rights [ICCPR], G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, preamble, art 10; International Covenant on Economic, Social and Cultural Rights [USESCR], G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976, preamble and art 13; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [Torture Convention], G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], *entered into force* June 26, 1987, preamble; Convention on the Elimination of All Forms of Discrimination against Women [CEDAW], G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981, preamble, African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986, preamble, arts 5; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa [Maputo Protocol], Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000); reprinted in 1 Afr. Hum. Rts. L.J. 40, *entered into force* Nov. 25, 2005, Preamble, arts 3, 4, 22, 23, 24.

for progress and justice, the recognition and protection of human dignity have emerged as non-negotiable imperatives on the global stage. This chapter delves into the intricate interplay between gender, age and human dignity, exploring how these elements intersect within the framework of international human rights and how they shape legal discourse and practice.

The relevance of international human rights instruments and jurisprudence to the concept of dignity is incontrovertible.<sup>3</sup> Over the past decades, particularly since the mid-twentieth century, a formidable body of legal principles, treaties, conventions and court decisions has crystallised to emphasise the inviolable nature of human dignity.<sup>4</sup> This legal foundation underscores the interconnectedness of all human rights, each deriving its significance from the fundamental principle of dignity. Consequently, the focus on gender and age in this context becomes particularly salient, as these attributes shape individual experiences and vulnerabilities and their intersection with human dignity necessitates in-depth examination. This chapter is concerned with the interpretation and application of the concept of human dignity as framed under international human rights law, as well as its linkage to guarantees of gender equality.

The relevance of human dignity as a concept to address women, children, persons with disabilities and elderly people has been mixed. On the one hand, the concept has benefited over time from the symbolism of peremptory norms of international law and this is reflected in most instruments relating to gender,<sup>5</sup> children<sup>6</sup> and disability.<sup>7</sup> On the other hand, the concepts have yet to find full expression within a defined scope that can resonate with some of the dignity issues faced by women and other gender subcategories.<sup>8</sup> The concept of human dignity is critical in the discourse of human rights; yet it has not attracted as much gender and feminist

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- 3 Levy D and Sznai N. 2004. "Institutionalization of Cosmopolitan Morality: The Holocaust and Human Rights", *Journal of Human Rights* 3(2):143-157 (cited in the unpublished work Gelaye TA "The Role and Migration of Human Dignity in African Constitutional Orders: a Comparative Study of South Africa, Kenya and Uganda", 31-32); Franke KM. 2011. "Dignifying Rights: A Comment on Jeremy Waldron's Dignity, Rights and Responsibilities", *Arizona State Law Journal* 43:1177.
  - 4 See Staffen MR and Arshakyan M. 2016. "The legal development of the notion of human dignity in the constitutional jurisprudence", *Revista de Direito* 12(2):108-126; Henry LM. 2011. "The jurisprudence of dignity", *University of Pennsylvania Law Review* 160(1):178. Rao N. 2008. "On the use and abuse of dignity in constitutional law", *Columbia Journal of European Law* 14(2):187.
  - 5 See, for example, the Maputo Protocol.
  - 6 Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990.
  - 7 International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities [Disabilities Convention], G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008.]
  - 8 While it is argued that recent instruments, such as the Protocol on the African Charter on the Rights of Women in Africa (Maputo Protocol) have used the concept to define the violations that occur against women in some of its provision, the failure to test the validity



analysis as, for example, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (the Torture Convention). Unlike the way in which jurisprudence has been built around rape as a human rights violation under the Torture Convention,<sup>9</sup> the human dignity of women and children is yet to be properly framed. Despite the usefulness of the Torture Convention in defining the violation of rape, feminist scholars argue that there are limitations to this approach. Women are treated unequally under the Torture Convention and the existing jurisprudence still subjects survivors of rape to additional layers of analysis when substantiating that rape amounts to torture.<sup>10</sup> Attempts to infuse the rights of human dignity with the discussion of rape have also not been fruitful. As feminist human rights theorist Ivana Radačić observes, “The notion of dignity in rape discourse has developed from the communitarian understanding of dignity to an individualistic conceptualization of dignity and from the concept of dignity as connoting a certain quality of an individual to expressing the inherent (and equal) value of a human being.”<sup>11</sup> Human rights law theorist Christopher McCrudden and public law scholar David Feldman have also argued for reconceptualisation of rape as a human dignity and human rights violation.<sup>12</sup>

Human dignity may offer an easier recourse because of its universality and its inherent nature. While there might be complexity in understanding its scope and limitation, there is also a need for an intersectional approach to human dignity in order to support its full guarantee of gender equality. Feminist theorist Eva Feder Kittay’s argument for the use of an equality lens to appreciate the meaning of the concept of human dignity is important. Kittay’s terminology of “equal dignity”, insists that human dignity ‘in-heres’ in each and every human being to the same degree, irrespective of whether they are, men, women, disabled or marked any other category or characteristic of identity.<sup>13</sup> Kittay argues that human dignity is relevant to “persons capable of exercising the dignity-based capacities, but also to those persons not yet capable of them – who have them only “in potentia” or those who once possessed them, but have now lost them – for example elderly persons with dementia or accident victims in a coma.”<sup>14</sup>

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of this concepts by feminist in law court has affected its understanding and relevance to women’s lived experiences.

9 Torture Convention.

10 Edwards A. 2011. *Violence Against Women under International Human Rights Law*. Cambridge: Cambridge University Press, 198-261.

11 Radačić I. 2011. “Rape”, in Kaufmann P et al (eds) *Humiliation, Degradation, Dehumanization*, Library of Ethics and Applied Philosophy, 24. Dordrecht: Springer, 119-132.

12 Feldman D. 1999. “Human dignity as a legal value – Part I” *Public Law*, 682-702. McCrudden C. 2008. “Human dignity and judicial interpretation of human rights”, *European Journal of International Law* 18(9):656-724.

13 Kittay EF. 2005. “Equality, Dignity and Disability”, in Lyons MA and Waldron F (eds). *Perspectives on Equality the Second Seamus Heaney Lectures*. Dublin: The Liffey Press

14 Kittay EF. 2005. “Equality, Dignity and Disability”.

At the core of this exploration lies the realisation that gender does not exist in isolation, but that it is one of several integral aspects of human identity. The manner in which societies perceive, treat and protect individuals based on gender and its subcategories reverberates throughout the intricate web of human rights and it is within this tapestry that the essence of human dignity is interwoven. By analysing the impact of gender and age on the preservation of human dignity, this chapter seeks to illuminate the extent to which international human rights instruments and jurisprudence not only recognise, but also actively uphold, the dignity of all individuals, regardless of their age or gender. In the following sections, we will delve into the multifaceted dimensions of gender, age and human dignity, exploring how international legal frameworks have evolved to address these aspects, the challenges that persist and the potential avenues for more effective protection.

This first section of this chapter is an introduction of the concepts of human dignity and gender as contested notions. The second section considers key international human rights norms, along with regional and national commitments, to trace how international legal frameworks have evolved to define human dignity from a gender perspective, using analysis of case laws, conventions and treaties. The third section examines the intersection of gender, age and disability in human dignity frameworks, with a focus on the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, known as the Maputo Protocol, as a guide for understanding the concept of human dignity and its meaning for African women. The fourth section further examines the challenges of addressing gender, age, disability and equality and their effects on equality, as the chapter winds to some conclusions on the way forward for African women and human dignity.

## CONTESTED NOTIONS OF DIGNITY AND GENDER

The concept of human dignity has attracted attention in global and international political arenas ever since the new global order emerged after World War II. Scholars have likened human rights to an idealistic hope, but one with potentially radical capabilities for transforming society.<sup>15</sup> Human dignity is the “agenda for improving the world bringing about a new one in which the dignity of each individual will enjoy secure international protection”.<sup>16</sup> It has been given the status of an all-encompassing moral language that connects human rights discourses and norms. It is therefore not surprising that the idea of human dignity has been described and articulated in several works and has been framed in different ways as: “status-dignity, condition-dignity, ‘dignitarian’ norms, the basis of dignity, the circumstances of dignity and dignitarian virtues”.<sup>17</sup> Dignity comes from the Latin

15 Moosa M. 2020. Mail & Guardian, 20 March 2020 “Human Rights Day reminds us of our progress and failures”, *Mail & Guardian*, 20 March.

16 Moyn S. 2010. *The Last Utopia: Human Rights in History*. Cambridge: Harvard University Press. See also “Book Review: The Last Utopia”, *Hearsay.org*, Issue 1, December 2014.

17 Gilabert P, 2018. “Understanding Human Dignity in Human Rights”, *Human Dignity and Human Rights*. Oxford: Oxford University Press, ch 5.

word *decus*, a noun, described variously, but in a positive light as connoting higher value, honour, ornament, distinction and glory.<sup>18</sup> All in all, humans deserve dignity not because of their lifelong achievements, but the fact they are human beings.<sup>19</sup>

The concept of human dignity, while universally acknowledged as a foundational principle, is far from monolithic in its interpretation. It encompasses a spectrum of connotations, often shaped by diverse cultural, philosophical, religious and socio-political perspectives. This ubiquity has led comparative constitutional law scholar Catherine Dupré to label the twenty-first century as “the century of human dignity”.<sup>20</sup> This section delves into the nuanced and at times contested ideas of dignity, shedding light on the multiplicity of meanings that coexist within this intricate discourse. At its core, dignity is often understood as an inherent and inviolable attribute possessed by every human being by virtue of their existence. This interpretation asserts that dignity is not contingent on external factors such as achievements, status, or characteristics. Rather, it is an intrinsic quality that confers a certain level of respect and treatment, irrespective of an individual’s background, circumstances or attributes.<sup>21</sup> This understanding aligns closely with the principles enshrined in international human rights instruments, where dignity is the foundation upon which rights are built.<sup>22</sup>

Another perspective emphasises the relational nature of dignity. Here, dignity is viewed as a dynamic interaction between individuals, society and institutions. This approach contends that dignity is cultivated through the recognition, validation and respect offered by others. In this sense, dignity is not solely an individual possession but emerges within the social fabric, necessitating a collective commitment to uphold and protect the dignity of all members of society.<sup>23</sup> Moreover, some conceptions of dignity tie it closely to autonomy and freedom. Dignity is seen as the freedom to make choices, to pursue one’s aspirations and to live in accordance with one’s values and beliefs. From this perspective, violations of dignity occur when individuals are denied agency, choice or the ability to lead a self-directed life. This interpretation often underpins discussions on reproductive rights, end-of-life decisions and personal autonomy.

18 Gilabert, “Understanding Human Dignity in Human Rights”.

19 ter Meulen R. 2010. “Dignity, Posthumanism and the Community of Values”, *The American Journal of Bioethics* 10(7):69-70.

20 Dupré C. 2015. *The Age of Dignity: Human Rights and Constitutionalism in Europe*. Oxford and Portland: Hart Publishing.

21 Dupré C. 2013. “Constructing the Meaning of Human Dignity: Four Questions”, in McCrudden C (ed), *Understanding Human Dignity*. Oxford: Oxford University Press, 113-121.

22 Donnelly J. 1982. “Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights”, *The American Political Science Review* 76(2):303-316.

23 Bird C. 2021. *Human Dignity and Political Criticism*, Cambridge: Cambridge University Press, i-ii.

Dignity can also be perceived as a marker of social worth or value. In this view, dignity is granted or withheld based on an individual's perceived contributions, status or adherence to societal norms. Such a notion can lead to complex dynamics, as judgments about worthiness may be influenced by cultural biases, economic disparities or stereotypes. Furthermore, cultural, religious and philosophical diversity gives rise to varying interpretations of dignity.<sup>24</sup> Different cultures and belief systems may prioritise distinct aspects of dignity, leading to a rich tapestry of perspectives. However, this pluralism can also result in clashes, as conflicting notions of dignity may lead to disagreements over ethical or legal matters.

The concept of dignity is often at the heart of moral and ethical debates. Controversies surrounding issues like euthanasia, abortion and assisted reproductive technologies highlight the divergent ways in which dignity is understood and applied.<sup>25</sup> These debates underscore the complex interplay between individual autonomy, societal values and the broader understanding of dignity, all of which have implications for gender equality. In essence, the multifaceted discourse on dignity reveals the complexity of human experience and the diverse lenses through which it is perceived. While these connotations may at times be contested, they collectively reinforce the notion that the recognition and protection of human dignity are paramount. The contested ideas of dignity encourage ongoing dialogue and reflection, fostering a deeper understanding of this foundational principle and its implications for human rights, justice and societal well-being.<sup>26</sup> By implication, this affirms that the value of human beings is not negotiable. Therefore, they are naturally expected to have the reasoning to act towards one another with respect, solidarity and in sisterhood of their dignity. According to Turkish human rights philosopher Ioanna Kuçuradi, is this value that propels human beings to act in a way that makes them feel the worth to be at peace with self and society, feeling dignified (*digne* in French).<sup>27</sup>

Furthermore, it has been argued that human dignity consists of philosophical and anthropological knowledge of the value of the human species and that possession of this lets an individual know that they are, first of all, a human being, whatever their other natural or contingent specificities might be.<sup>28</sup> This correlates with the assumptions of the innate nature of human rights, making human rights a practical implication of human dignity. International law scholar Andrew Clapham has described four aspects of human dignity international law as those which: (1) prohibit every forms of inhuman and degrading treatment, (2) guarantee the ability for every persons to have self-autonomy and make choice for

24 An example is the case of *Qwelane v South African Human Rights Commission and Another* (CCT 13/20) [2021] ZACC 22; 2021 (6) SA 579 (CC); 2022 (2) BCLR 129 (CC) (31 July 2021)

25 Gilabert, "Understanding Human Dignity in Human Rights".

26 Scopetti M et al. 2023. "Assisted Suicide and Euthanasia in Mental Disorders: Ethical Positions in the Debate between Proportionality, Dignity and the Right to Die", *Healthcare* 11(10):1470.

27 Kuçuradi I. 2019. "The Concept of human dignity and its implication for human rights", *Bioethics Update* 5:7-13.

28 Scopetti et al., "Assisted Suicide and Euthanasia in Mental Disorders".

their self-fulfilment and self-realisation, (3) recognise that the protection of group identity and culture may be essential for the protection of personal dignity and (4) provide an enabling environment for each individual to have their essential needs satisfied.<sup>29</sup>

The universality of human rights norms buttresses the importance and significance of human dignity. The two concepts have a long history of being connected.<sup>30</sup> Despite coming under scrutiny and criticism in some circles, human rights remain a means by which equality claims may be coherently assessed. The argument about the potency of human dignity and its connection to human rights has been used to further strengthen intersectionality and gender equality, areas where the charge of inconsistency is particularly apparent. This has resulted in the call for a more holistic, dignity-centred approach to equality, to broaden the understanding of the experiences of continued marginalisation of women, youth, children, the elderly and people with disabilities amongst other marginalised segments of the society whose dignity is continuously contested in law and practice.

Gender is no doubt a social category, thus the influence of the idea of dignity in the organisation of human societies is undeniable. Coercion and threats to human dignity vary in their specific circumstances, times and locations in ways that make the achievements of the aspiration of international human rights standards inconsistent. Thus, the hotly contested doctrine of human rights and human dignity remain open to various challenges and considerations. While human dignity and human rights are separate concepts, they are similar in their universal applicability. There is, however, a thriving argument that the concept of human dignity predates the framing of human rights.

The atrocities of the world wars touch directly on human dignity. History has shown that women, children and the elderly have suffered innumerable atrocities during the world wars and some of the experiences of women have impacted their dignity. In discussing the boundaries of human rights, feminist scholars have argued that international human rights norms have neglected the experiences of women during world wars and have failed to articulate women's experiences in the United Nations Charter of 1945 and the Bills of Rights.<sup>31</sup> This has sparked demand for further conventions to address specific marginalised groups. The Convention on the Elimination of Discrimination Against Women (CEDAW) and the Convention of the Rights of the Child (CRC) were born from this school of thought about the need for specificity and to gendered and patriarchal norms. Attention to the gender and

29 Clapham A. 2006. *Human Rights Obligation of Non-State Actors*. Oxford: Oxford University Press.

30 Kuçuradi, "The Concept of human dignity and its implication for human rights", *Bioethics Update*.

31 Gardam J and Javis M. 2001. *Women, Armed Conflict and International Law* (The Hague: Kluwer Law International. See also Gardam JG. 1993. "The Law of Armed Conflict; A Gendered Regime", in Dallmeyer DG (ed). *Reconnecting Reality: Women and International Law*. Washington, DC: American Society of International Law, 171.



age of women and girls is particularly critical, in the appraisal of human dignity, to be able to understand how relevant the concept is to women and other human subgroups. The particular challenge of considering human dignity and gender inequality together lies in the fact that discussions about gender inequalities rarely make any reference to human dignity.

Beyond the realm of international law, religious traditions also affirm the sanctity of human dignity. Philosopher Mette Lebech in her work, "What is Human Dignity?",<sup>32</sup> uses a religious analytical framework to describe the meaning of human dignity, from a Christian perspective, in which human beings are seen to have value as a result of being in the likeness of God, their creator and are expected to act in same light. In Islamic teachings, for instance, human beings are considered the pinnacle of creation, endowed with a unique blend of reason and spirituality. The Quranic injunctions explicitly recognise the inherent dignity of all individuals, irrespective of their age or gender. The intersection of these religious principles with international human rights instruments is profound. Both Christianity and Islam affirm the intrinsic worth of every person and call for the recognition and protection of their rights. This convergence underscores the universality of the concept of human dignity, transcending cultural, religious and geographical boundaries.

As we navigate the intricate interplay between gender, age and human dignity, it is imperative to recognise and draw from the common threads that run through international legal frameworks and religious traditions. The principles enshrined in the Universal Declaration of Human Rights (UDHR) and the African Charter on Human and Peoples' Rights find resonance in the teachings of Islam and Christianity, reinforcing the collective commitment to upholding the dignity of every individual.<sup>33</sup> By acknowledging these intersections, we can forge a path toward a more inclusive and just world, where the dignity of all, regardless of age or gender, is unequivocally acknowledged and safeguarded.

In most documents, the term gender and women are often used interchangeably and can be easily misunderstood.<sup>34</sup> In the analysis here, gender is a concept that is understood as a social construction, based on the role expected to be played by men and women and its influence on culture and the complex relationship between those roles. It processes the value placed on those roles by the society before its determination of individual identity. Addressing gender as a basis for unequal treatment cannot and should not be reduced to mean a focus only on women. This social positioning of women and men is affected by political, economic, cultural,

32 Lebech M. 2004. "What is Human Dignity?" *Maynooth Philosophical Papers*, 59-69.

33 Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948); African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986.

34 Smith J. 2016. "Gender as a Socially Constructed Phenomenon". Online at: <https://digitalcommons.winthrop.edu/cgi/viewcontent.cgi?article=1019&context=sewsa>

social, religious, ideological and environmental factors and it can be changed by culture, society and community.<sup>35</sup>

Gender constructions are dynamic and fluid; they change over time and can be different in different cultures. According to Committee on the Elimination of Discrimination Against Women, "Gender is defined as the social meanings given to biological sex differences. It is an ideological and cultural construct, but it is also reproduced within the realm of material practices; in turn it influences the outcomes of such practices. It affects the distribution of resources, wealth, work, decision-making and political power and enjoyment of rights and entitlements within the family as well as public life. Despite variations across cultures and over time, gender relations throughout the world entail asymmetry of power between men and women as a pervasive trait. Thus, gender is a social stratifier and in this sense it is similar to other stratifiers such as race, class, ethnicity, sexuality and age. It helps us understand the social construction of gender identities and the unequal structure of power that underlies the relationship between the sexes."<sup>36</sup>

In furtherance of the definition above, the Committee on Economic, Social and Cultural Rights (CESCR) reiterates the definition in a 2009 General Comment, which states:

Gender refers to cultural expectations and assumptions about the behaviour, attitudes, personality traits and physical and intellectual capacities of men and women, based solely on their identity as men or women. Gender-based assumptions and expectations generally place women at a disadvantage with respect to substantive enjoyment of rights, such as freedom to act and to be recognised as autonomous, fully capable adults, to participate fully in economic, social and political development and to make decisions concerning their circumstances and conditions. Gender-based assumptions about economic, social and cultural roles preclude the sharing of responsibility between men and women in all spheres that is necessary to equality.<sup>37</sup>

Power relations are important when defining gender roles, because they are the root of gender relations. Gender, in this context, is about how socially and culturally constructed roles affect the perception and application of human dignity. Gender also plays an important role in defining how human dignity and human rights play out in relation to class, race, minority grouping, age and other forms of human social stratification. Laying claim to one's dignity, regardless of one's gender, can attain the force of a critical moral act, particularly in situations where individuals are socially, culturally or politically denying the freedom of enacting a moral vision

<sup>35</sup> Smith, "Gender as a Socially Constructed Phenomenon".

<sup>36</sup> See United Nations. 1999. *World Survey on the Role of Women in Development*. New York: United Nations, ix.

<sup>37</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant)*, 11 August 2005, E/C.12/2005/4.

of themselves and the world.<sup>38</sup> Just as the full enactment and experience of one's own dignity requires social respect, social respect without self-respect remains a limited actualisation of an individual's human dignity. To the extent that it is useful to approach gender inequalities as infringements on individuals' human dignity, abolishing inequalities requires social and cultural changes alongside legal, political and economic advances.<sup>39</sup>

Another difficulty arises, as noted by philosopher of gender Annika Thiem, "from the expansiveness and variegated nature of the category of gender inequalities". Thiem further observes, "As groups, women and gender minorities still face inequalities in many areas of daily life, but the institutional, social, material and psychological aspects of these inequalities differ greatly among various geographical, economic and cultural contexts."<sup>40</sup> Women and girls, for example, suffer from harmful practices such as sex trafficking, killing, wartime sexual violence, gender pay gaps and other oppressive tactics that reduce or demean women and question their human dignity.

Gendered notions have also manifested in ways that threaten the human dignity of the elderly and people with disabilities. Women who are elderly have been called witches in some communities and have suffered gruesome murders as a result of their state of mental health, while people with disabilities have continued to suffer neglect and in some situations death as a result of their inability to protect themselves and the failure of the state to take up the responsibilities that make them enjoy their human rights and human dignity. This paper argues that while human dignity and gender inequalities have seldom been discussed in connection with each other, a gender perspective can offer a critical heuristic examination of how appealing to dignity might implicitly and deftly reinscribe norms of gender, race, class, ability, sex and sexuality for meaningful discourse.<sup>41</sup>

With this critical perspective in place, dignity as a philosophical concept, can be productive in a feminist context to foreground the relationship between social and self-respect and agency as a central focus for engagement. Yet, the global space is not short of efforts through human rights norms or global agreements and conventions to reaffirm women's rights and promote gender equality, including in the adoption of the Millennium Development Goals<sup>42</sup> and the Sustainable Development Goals.<sup>43</sup> The echoes of the need to protect gender equality has been sustained and this implies

38 Parpart JL, Connelly MP and Barriteau VE. 2002. *Theoretical Perspectives on Gender and Development*. Ottawa: International Development Research Centre (IRDC).

39 Thiem A. 2015. "Human Dignity and Gender Inequalities", in Duwell M, Braarvig J, Brownsword R and Mieth D (eds). *Handbook of Human Dignity*. Cambridge: Cambridge University Press, 498-504.

40 Thiem, "Human Dignity and Gender Inequalities".

41 Edwards, "Violence Against Women Under International Human Rights Law".

42 United Nations. 2011. *The Millennium Development Goals Report 2011*, June.

43 UN General Assembly. 2015. "Transforming our world: the 2030 Agenda for Sustainable Development", 21 October 2015, A/RES/70/1].

the need to protect and respect the dignity of persons to live and be accorded the expected recognition.

## GENDER AND DIGNITY UNDER INTERNATIONAL HUMAN RIGHTS LAW

National constitutions have adopted aspirations from international instruments and human dignity is a value that is fully enshrined in most of these constitutions. Graded amongst the most significant human rights norms and a *jus cogens* norm of customary international law is the Universal Declaration of Human Rights (UDHR) which serves as a global framework and a standard manual available to develop regional and national norms. This has trickled down to most constitutions around the world. Human dignity as a concept has also found expression in national laws, jurisprudence and cases. The preamble of the UDHR explicitly refers to “fundamental human rights, human dignity and worth, beliefs that affirm the equal rights of men and women and nations, large and small”.<sup>44</sup> The framing above legitimises a non-discriminatory approach that clearly recognises the importance of dignity not as what can be earned or given, but rather as innate to being, when it declares in Article 1 that “All human beings are born free and equal in dignity and rights”,<sup>45</sup> thereby removing the connotation of exclusive advantage to a gender, age, class and race to determine the enjoyment of human dignity. Human rights naturally spring from dignity.

The emphasis on equality through these texts laid the foundation for the constitutionalisation of dignity for men and women. The concept of human dignity is closely linked to gender equality, which promotes equal rights, opportunities and treatment for all individuals, regardless of their gender. Gender equality acknowledges that men and women have equal worth and should be able to enjoy the same rights and freedoms. It recognises that discrimination based on gender is a violation of human dignity and human rights.

This prohibition of discrimination is replicated in both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), which emphasise that all human rights originate from the inherent dignity of every individual.<sup>46</sup> The ICCPR supports the principle of human dignity, without discrimination and equality for everyone, regardless of sex. In this context, the ICCPR recognises and protects the human dignity of women, as it does for all human beings. It establishes rights and freedoms, such as the right to life, the right to speak, the right to practise religion and the right to participate

<sup>44</sup> UDHR, preamble.

<sup>45</sup> UDHR, art 1.

<sup>46</sup> See International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976. art 2(2); International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976. art 26.



in public activities. These rights apply to both men and women, with the aim of ensuring equal protection and non-discrimination based on gender.<sup>47</sup>

As General Recommendation 36 to Article 6 of the ICCPR, interpreting the right to life, states: "The right to life is a right which should not be interpreted narrowly. It concerns the entitlement of individuals to be free from acts and omissions intended or expected to cause their unnatural or premature death, as well as to enjoy a life with dignity."<sup>48</sup> Article 6 guarantees this right for all human beings, without distinction of any kind, including for persons suspected or convicted of even the most serious crimes. The extension of the right to life to women prisoners, particularly those who are pregnant or nursing mothers, represents the peculiarity and sensitivity of this right and its relationship to dignity.

Similarly, the African Charter on Human and Peoples' Rights, adopted by the Organisation of African Unity (now the African Union) in 1981,<sup>49</sup> articulates the inseparable link between human dignity and the enjoyment of rights. The preamble of the African Charter emphasises the necessity of recognising and promoting fundamental freedoms, human rights and the dignity inherent in every individual. Through its provisions, the African Charter addresses various aspects of human dignity, including the right to personal integrity (Article 5) and the right to participate in government (Article 13). The African Charter approach to community and solidarity also provides an understanding that human dignity can be expressed as a communal right.

Gender equality and the empowerment of women have emerged as critical focal points within the landscape of international human rights law. The recognition of the inherent dignity of women and their entitlement to equal rights and opportunities stands at the core of global efforts to eliminate discrimination and promote social justice. While international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) underscore these principles, their realisation has been particularly emphasised in the context of African human rights jurisprudence through the Protocol to the African Charter on Human and People's Rights.

CEDAW is a comprehensive international treaty that addresses gender discrimination and promotes gender equality.<sup>50</sup> It recognises that gender-based discrimination is a violation of human dignity and aims to eliminate such discrimination in all its forms. In its preamble, CEDAW adopts the human dignity concepts of the UN Charter and "reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and

47 See Edwards, *Violence Against Women under International Human Rights Law*, 150-151. See also ICCPR 2 and 26. See ICCPR art 26.

48 UN Commission on Civil and Political Rights. 2019. "General comment No. 36 on article 6: right to life", CCPR/C/GC/36, 3 September, I, 3.

49 See African Charter.

50 "Women's Rights and Gender Equality", The Amber Rose (blog). Online at: <https://www.theamberrose.org/womens-rights-and-gender-equality>

women", that human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex. In its preamble, CEDAW recognises "that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity."<sup>51</sup> In General Recommendation 19, the Committee on the Elimination of Discrimination Against Women recommends the state to give adequate protection to all women and respect their integrity and dignity".<sup>52</sup>

In the light of the above, reconceptualising the language of human dignity and linking same with equality can inform the way in which equality is framed under international law. As noted by feminist legal theorist Catharine MacKinnon, human dignity as a concept brings to the fore "ideas of fairness, justice, social respect, integrity, disadvantage, prejudice, stereotyping and autonomy".<sup>53</sup> Human rights lawyer Fareda Banda has noted both the importance of human dignity as part of African jurisprudence and certain limitations in the understanding of the concept in the continent. According to Banda, "Dignity can thus be seen as enhancing existing rights, rather than limiting or prescribing different treatment for men and women".<sup>54</sup> Banda posits that the concept is viewed from different perspectives and can be interpreted to suit different circumstances, for example, the framing in the Cairo Declaration was used in a way to limit the enjoyment of human dignity for women.

It is the contention of this chapter and the present author that the African human rights system has demonstrated a profound commitment to addressing gender-based discrimination and promoting the dignity of women. The African Charter on Human and Peoples' Rights has paved the way toward a comprehensive framework that underscores the significance of gender equality in safeguarding human dignity. The African Charter, in Article 18, explicitly recognises the rights

51 See Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981, preamble.

52 Committee on the Elimination of Discrimination Against Women. 1992. CEDAW General Recommendation No. 19: Violence against women, adopted at the Eleventh Session, contained in Document A/47/38.

53 Mackinnon CA. 2006. "Equality Remade: Violence Against Women", in *Are Women Human? And Other International Dialogues*. Cambridge, MA: Harvard University Press, 105.

54 See Banda F. 2005. *Women, Law and Human Rights: African Perspectives*. Oxford: Hart Publishing, 5. For a clearer explanation, see the Cairo Declaration on Human Rights in Islam. Nineteenth Islamic Conference of Foreign Ministers (Session of Peace, Interdependence and Development), held in Cairo, Arab Republic of Egypt, from 9-14 Muharram 1411H (31 July to 5 August 1990), Annex to Res. N. 49/19-P, art 6(a) ("Women is Equal to Man in human dignity.") See also the clawback of human dignity for women in Cairo Declaration, arts 24 and 25.

of women to equal protection under the law and the elimination of discrimination. Court decisions taken under the jurisprudence originating from the African Charter have emphasised the importance of dignity for the enjoyment of women's rights.

In the South African cases of *Dawood v Minister of Home Affairs*<sup>55</sup> and *President of the Republic of South Africa v Hugo*,<sup>56</sup> the South African Constitutional Court examined the constitutional rights of spouses to cohabit, holding that a central aspect of marriage is cohabitation and the right and duty to live together and any legislation that impairs this right constitutes a limitation to right to dignity. The South African decisions on gender equality have broadened the understanding of its relationship with human dignity. In the *Hugo* case, the majority of the court concluded that the reference to non-discrimination and gender equality in the Constitution of the Republic of South Africa, 1996, recognised that "all human beings will be accorded equal dignity and respect regardless of their membership of particular group". One noteworthy example is the groundbreaking case of *Dorothy Njemanze and ors v Federal Government of Nigeria*,<sup>57</sup> where the ECOWAS Court held that the arrest of the plaintiffs was unlawful and violated the right to freedom of liberty and "branding the women prostitutes constituted verbal abuse, which violated the right of these women to dignity". The Court found that there were multiple violations of Articles 1, 2, 3 and 18 (3) of the African Charter on Human and Peoples' Rights and Articles 2, 3, 4, 5, 8 and 25 of the Maputo Protocol, among others.

## THE MAPUTO PROTOCOL AND THE HUMAN DIGNITY OF WOMEN

Despite significant progress, challenges persist in realizing the dignity of women in Africa. Gender-based violence, limited access to education and healthcare and discriminatory legal frameworks continue to hinder the advancement of women's rights. However, African human rights mechanisms have shown a commendable commitment to addressing these challenges and framing human dignity broadly to encompass women's experiences. The addition of the Protocol to the African Charter on Human and Peoples' Rights on the Women in Africa, known as the Maputo Protocol, or sometimes simply as the Women's Protocol, is an example of this evolution.

The Maputo Protocol stands particularly as a groundbreaking and comprehensive instrument dedicated to promoting and safeguarding the rights of women across the African continent. Within its framework lies a resolute commitment to upholding the dignity of women, recognising their inherent worth and striving to eliminate all forms of discrimination, violence and marginalisation that impede

55 *Dawood v Minister of Home Affairs* 2000 (3) SA 936 para 35.

56 *President of the Republic of South Africa v Hugo* 1997 6 B Constitution LR 708 (S Africa Const. Court) (SAFLILL) (HUGO).

57 *Dorothy Njemanze and ors v Federal Government of Nigeria* SUIT NO: ECW/CCJ/APP/17/14.

the realisation of dignity.<sup>58</sup> The Maputo Protocol explicitly brings attention to the intrinsic value and dignity of women in Africa. It includes strong provisions for the enjoyment of human rights and women's rights to live in dignity, free from violence and discrimination. Reflecting global concern and attention to harmful traditional practices, the Maputo Protocol states: "'Harmful Practices' means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls such as their rights to life, health, dignity, education and physical integrity."<sup>59</sup> With this provision, the Maputo Protocol treats harmful traditional practices as a violation against human dignity and it is the first regional instrument to describe such practices in this way.

The Maputo Protocol establishes a pivotal connection between the concept of dignity and the protection of women's rights. It reflects the innateness of the concept of human dignity, when it states that "every woman shall have the right to dignity inherent in a human being".<sup>60</sup> The Maputo Protocol's emphasis on eliminating discrimination against women directly addresses the preservation of their dignity. Its existence and endorsement by numerous African states signifies a collective commitment to elevate women's status, thereby elevating their dignity. It stands as a testament to the recognition of women's dignity as a non-negotiable principle. Its provisions echo the inherent worth of women and their entitlement to a life free from discrimination and violence. By addressing a wide spectrum of women's rights, the Maputo Protocol reinforces the profound interconnection between dignity, equality and justice. In doing so, it bolsters the foundation for a future where women in Africa can thrive, empowered by their rights and the unwavering recognition of their inherent dignity.<sup>61</sup>

The Maputo Protocol delves into the area of reproductive rights, further illustrating its dedication to upholding the dignity of women. It recognises that women have the right to make decisions concerning their reproductive health, free from coercion, discrimination and violence.<sup>62</sup> This acknowledgment of autonomy in reproductive matters aligns with the broader concept of dignity, as it respects women's agency over their bodies and life choices. The substantive guarantees of the Maputo Protocol cover issues pertinent to elimination of all forms of discrimination against women. These include the prohibition of discrimination against elderly women "based on age" and women with disabilities "based on disability".<sup>63</sup> They also require States

58 Akiyode-Afolabi and Amadi S. 2007. "Examination of the Provision of the Women's Protocol to the African Charter and its Relationship to the CEDAW Convention as well as interpretation and implementation of the Protocol in other countries", in Imam A (ed). *Adopting Women's Human Rights Legislation in Nigeria – A Synthesis Analysis and Report*, Lagos Info Vision Limited, 38, 79; Banda, *Women, Law and Human Rights*.

59 Maputo Protocol, art 1.

60 Maputo Protocol, art 3(1).

61 See Akiyode and Amadi, "Examination of the Provision of the Women's Protocol to the African Charter".

62 Maputo Protocol, art 14.

63 Maputo Protocol, art 22(b) and 23(b).

Parties to provide appropriate remedies for women whose rights and freedoms are violated.<sup>64</sup>

The Maputo Protocol provides a good example of framing human dignity from the experiences of women, linking dignity to enjoyment and freedom from gender-based discrimination. The protocol reinforces the principle that women's rights are an integral component of human rights, inherently tied to the preservation of human dignity. The Maputo Protocol, for instance, not only recognises the rights of women but also obligates states to take proactive measures to eliminate discrimination and empower women. This includes provisions for access to education, healthcare and economic opportunities. As noted by rights proponents, a life of dignity requires an adequate standard of living. Rights must be enjoyed in practice through appropriate state implementation of human rights as public goods of society as a whole. The right to adequate standard of living is linked to UDHR Article 22, which makes it indispensable "for the enjoyment of their dignity and the free development of their personality and guarantees for their right to social security".<sup>65</sup>

Significantly, women in Africa have been adjudged as the poorer sex as a result of neglect and marginalisation traced to cultural practices and traditions that radiate subjugation. Statistics in many countries show that women are conduit to food security in the continent. Less than 15% of them own land; however, they represent the highest number of small holder women farmers.<sup>66</sup> The recognition of women's rights as human rights reinforces the principle that the dignity of women is inseparable from the broader tapestry of human dignity. As nations and societies work towards a more just and equitable future, the realisation of women's rights stands as a testament to the shared commitment to upholding the dignity and worth of every individual, regardless of gender. This is particularly the case when issues of gender intersect with age and disability, to which we now turn.

### *Age and human dignity*

Avery specific gender subgroup comes with age, a fundamental aspect of human identity that is intrinsically tied to the concept of dignity. The relationship between age and dignity becomes particularly pronounced in the context of human rights, as discrimination based on age can have profound implications for individuals' well-being and self-worth. This section examines the intersection of age and dignity, drawing upon human rights instruments and jurisprudence that address age-related discrimination.

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<sup>64</sup> Maputo Protocol, art 25.

<sup>65</sup> Moeckli D, Shah S and Sivakumaran S (eds). 2010. *International Human Rights Law*. Oxford: Oxford University Press, 195.

<sup>66</sup> National Population Commission [Nigeria] and ICF International. 2014. *Gender in Nigeria: Data from the 2013 Nigeria Demographic and Health Survey (NDHS)*. Rockville, Maryland, USA: National Population Commission and ICF International.



Age discrimination, while often less conspicuous than other forms of discrimination, can be equally pernicious. International human rights instruments such as the UDHR and the International Covenant on Civil and Political Rights (ICCPR) affirm that all individuals, regardless of age, are entitled to the same inherent dignity and rights. Discrimination based on age can manifest in various contexts, including employment, education, healthcare and access to social services. The denial of opportunities or unequal treatment based on age can erode an individual's sense of dignity and self-worth. For example, the Convention on the Rights of the Child (CRC), a human rights treaty adopted by the United Nations in 1989, sets out the civil, political, economic, social, health and cultural rights of children under the age of 18. While the CRC does not explicitly address the "human dignity of women or girls" as a separate concept, it does recognise the equal dignity and rights of all children, regardless of their gender, with some areas of inequality relating to the girl child, in particular.

The CRC acknowledges that girls and boys should enjoy their rights and freedoms on an equal basis. It promotes gender equality and strives to eliminate discrimination based on gender. Several articles in the CRC are particularly relevant to addressing the rights and dignity of the girl child, Articles 2, 6, 12, 14, 16 and 34 on the protection from all forms of sexual exploitation and abuse, addressing the specific vulnerabilities faced by girls. The CRC emphasises that children have the right to be treated with dignity and respect and their best interests should be a primary consideration in all actions concerning them.<sup>67</sup> The CRC recognises that children are entitled to enjoy their rights without discrimination, since age-based discrimination undermines their dignity and well-being. By promoting gender equality and recognising the equal rights and dignity of all children, regardless of their gender, the CRC aims to create a world where girls and boys can thrive and develop to their full potential. It calls for measures to eliminate harmful practices, stereotypes and discrimination that may affect girls, ensuring they enjoy their rights on an equal basis with boys. The CRC represents a pivotal instrument in addressing the nexus of age and dignity.

While not explicitly framed as a document solely focused on dignity, the CRC inherently recognises the inseparability of children's rights from their dignity as human beings. The Convention upholds the principle that children have the right to special protection, opportunities and support to ensure their holistic development and well-being. The CRC's guiding principles, such as non-discrimination (Article 2) and the best interests of the child (Article 3), underpin the protection of children's dignity. Article 12, which emphasises the right of the child to express their views in matters affecting them, reflects a recognition of children's autonomy and the importance of treating them with respect and consideration. Despite these advancements, challenges persist. Age-related stereotypes and biases can hinder the realisation of children's rights and dignity. Discrimination against adolescents, for

<sup>67</sup> Human Rights Watch. 2021. "Enforced Misery: The Degrading Treatment of Migrant Children and Adults in Northern France", HRW.org, 7 October.

instance, can limit their access to comprehensive sexuality education or healthcare services. Similarly, children in marginalised or vulnerable situations, such as those in conflict zones or living in poverty, are often disproportionately affected by age-related discrimination.

The CRC, along with regional instruments like the African Charter on the Rights and Welfare of the Child, has contributed to significant progress in understanding age-related discrimination, particularly as concerns the girl child.<sup>68</sup> The intersection of age and dignity is a realm imbued with complexity, enriched by human rights instruments and jurisprudence that collectively advocate for the recognition and protection of the inherent worth of individuals across the spectrum of life.

### *Disability rights and human dignity*

In Africa, the rights of disabled persons have gained significant attention, reflecting an evolving understanding of human dignity. The African Charter affirms the rights and dignity of disabled persons. Article 18 underscores the need for disabled individuals to enjoy special measures of protection in keeping with their physical or moral needs, while Article 2 emphasises the principle of non-discrimination, irrespective of an individual's physical or mental condition.<sup>69</sup> The African Charter on the Rights and Welfare of the Child also acknowledges the rights of disabled children, reinforcing the interconnectedness of dignity and the rights of vulnerable populations. Article 23 underscores the importance of ensuring that disabled children are provided with special treatment, education and care to ensure their dignity and development.<sup>70</sup> Moreover, the United Nations Convention on the Rights of Persons with Disabilities (CRPD) provides a robust framework for the protection of the rights and dignity of disabled individuals.<sup>71</sup> While not specific to Africa, this convention aligns with the regional efforts and reinforces the principle that disability should not hinder the full participation, inclusion and dignity of individuals in society.

Although the Convention on the Rights of Persons with Disabilities highlights the link between disability and gender. Article 6 of the CRPD addresses women with disabilities and recognises that they often face various forms of discrimination.<sup>72</sup> It calls for measures to ensure equal access for women with disabilities to healthcare, rehabilitation, employment, education and social services. The CRPD seeks to protect the dignity and rights of all persons with disabilities, including women and strives to eliminate any discrimination they may face in a society, while recognising

68 African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

69 African Charter, arts 2 and 18.

70 African Charter on the Rights and Welfare of the Child, art 23.

71 International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008.

72 CRPD, art 6.

their unique challenges and needs. Similarly, the protection of human dignity is crucial concerning older persons. The United Nations Principles for Older Persons emphasises that older individuals should be treated with respect and dignity, with full enjoyment of their rights and freedoms.<sup>73</sup> Age-based discrimination or neglect of older persons undermines their dignity and violates their human rights.

The African Charter also extensively includes provisions that address the dignity and rights of individuals, regardless of age and gender. Article 2 prohibits discrimination of any kind, including discrimination based on sex, race, ethnicity, language, religion, or political or social origin, ensuring that people are treated with respect and dignity regardless of their behaviour.<sup>74</sup> The African Charter's comprehensive approach to non-discrimination, protection from harm and promotion of equal rights seeks to uphold the dignity and well-being of all individuals across the African continent, regardless of their age, gender or other characteristics. Article 3 states that every individual has the right to equal protection under the law, reaffirming the principle of non-discrimination and recognising the equal dignity and rights of all people, while Article 18 safeguarding the dignity and physical integrity of all individuals and recognises the right to family and protects the rights of women and children, ensuring their dignity and well-being within the family context.<sup>75</sup> Additionally, Article 22 of the Maputo Protocol protects the rights of elderly people to special measures of protection, ensuring their dignity and well-being in their older age, while Article 23 protects the rights of all disadvantaged and marginalised individuals, particularly the disabled, ensuring their equal dignity and opportunities for development.<sup>76</sup>

## ADDRESSING GENDER AND HUMAN DIGNITY IN AFRICA

Despite extensive global and national norms protecting rights of women and recognising their right to human dignity, instances of gender inequality, violence and abuse of marginalised people persist around the world. Women and girls, particularly those with disabilities continue to face discrimination based on religious and cultural practices. For example, female genital mutilation has been outlawed in most countries;<sup>77</sup> yet a huge population of women, particularly girls, are faced

73 United Nations Principles for Older Persons, G.A. res. 46/91, Annex, U.N. Doc. A/RES/46/91 (1991). See also UN General Assembly, *Implementation of the International Plan of Action on Ageing and related activities: resolution adopted by the General Assembly*, 16 December 1991, A/RES/46/91.

74 See African Charter, art 2. See also Taylor L. 2022. "Human Rights and Access to Justice Issues", malcolmmackillop.com [Accessed 18 September 2023.]

75 African Charter, arts 3 and 18.

76 Maputo Protocol, arts 22 and 23.

77 See Nigeria's Violence Against Persons (Prohibition) Act, 2015 (VAPP) [Nigeria]. This law has been currently domesticated in 32 states across the country and it outlaws female genital mutilation (FGM). See also Sierra Leone's Act No. 20 of 2007, The Domestic Violence Act, 2007, which outlaws domestic violence.

with these harmful practices. Even where national laws exist, implementation has been slow and institutions are too weak to respond to practices and social norms. Community acquiescence to these practices continues to make it impossible for targeted group to escape from these conduct that undermines their dignity. Furthermore, women are still treated as minors and sometimes as second-class citizens in some parts of Africa/.<sup>78</sup> The tradition of patriarchy undermines women's basic human rights and dignity as people who can make choices about their bodies and can achieve self-realisation.

Cultural practices such as child marriage, female genital mutilation and son favouritism in inheritance not only demean women, but also perpetuate gender inequality and prevent the enjoyment of human dignity. Another way that women's dignity has been compromised in Africa is through widowhood practices. Different ceremonies are performed in different parts of Africa are demeaning, such as rituals upon becoming widowed. In some cases, the nature and form of these rituals vary by culture and belief, but they can include practices such as compulsory mourning periods between three to seven months, which are not applicable to men who are widowers. Women are thereby isolated from communities and their freedom of movement is curtailed, thereby affecting their opportunities for interacting with the society.

In the Nigerian case of *Onwo v Oko*,<sup>79</sup> the applicant, a widow, was forced to shave her hair according to the practices of her community in South Eastern Nigeria and she pursued a claim of damages against the respondent, for assaulting and locking her up as incidents of mourning for her late husband. In this case, they woman was a member of the Assemblies of God, a church that forbids such traditional practices, as offensive to their religious beliefs. Although the trial court dismissed her application, the Court of Appeal allowed her appeal on the ground that the conduct of the respondent offended her right to freedom of religion and her right human dignity and rights to be free from torture and other forms of inhuman and degrading treatment. Cases of inheritance inequality also abound.<sup>80</sup> A key case in this area for the promotion of women's dignity is *Anekwe v Nweke*. That applicant in that case challenged the customary law of the Awka people, which prohibited a married woman without a male child from partaking in the sharing of her husband's inheritance.<sup>81</sup>

Despite the adoption of the Maputo Protocol and the outlawing of harmful traditional practices as human dignity violations, discrimination against women remains prevalent in Africa. Implementation has been poor and enforcement has been weak.

78 Tamale S. 2004. "Gender Trauma in Africa; Enhancing Women's Access to Resources", *Journal of African Law* 48(1):50.

79 *Theresa Nwafor Onwo v. Oko* (1996) 6 N.W.L.R. (pt. 456) 584 at 587.

80 *Mojekwu v Mojekwu* (1997) 7NWLR (PT 512 283); *Muojekwo and others v Ejimeke and others* (2000) 5NWLR 402; *Nzekwu v Nzekwu* 1989 2NWLR 373.

81 *Anekwe v Nweke* (2014) 9 NWLR (PT 1412) 393; Chukwuemeka ES. 2019. "Anekwe v Nweke: Facts, Issues and Decision of the Court", bscholarly.com, 15 November.

The implication of this is that women's health and well-being are threatened and this can have serious implications for women's empowerment and development. Gender power relations are one of the main causes of gender inequality and one of the most influential social determinants of health. Respecting human dignity in the context of women's health means recognising and safeguarding women's rights to bodily integrity, autonomy and decision-making regarding their own health and well-being. It involves ensuring access to comprehensive healthcare services that meet women's specific needs, including reproductive healthcare, family planning, prenatal care, safe childbirth and support for sexual and reproductive rights.

From a human dignity perspective, promoting women's health also requires addressing gender inequalities, discrimination and societal factors that can impact women's access to healthcare and contribute to health disparities. It involves addressing social determinants of health, such as poverty, education, employment and social norms that affect women's health outcomes. Furthermore, respecting human dignity in the context of women's health calls for the elimination of all forms of gender-based violence, including domestic violence, sexual assault and harmful practices such as female genital mutilation and child marriage. These violations undermine women's health, well-being and dignity and efforts should be made to prevent and address such abuses.

## CONCLUSION

Human dignity is a historically complex concept and has often been used as a placeholder in morality. No doubt human dignity is a foundation for human rights but it remains an extremely indeterminate concept.<sup>82</sup> Human dignity is necessarily to be considered in connection with gender and age discourse, given the importance of equality in the perception of human dignity and the different ways that gender and age are connected to the concept of human dignity, as referenced in international, regional and national human rights norms. There remain significant deficits in the enjoyment of these critical rights for women, children, the elderly, the disabled and people of other marginalised and vulnerable categories despite the extensive provisions of the right to human dignity for all persons. It has established that human dignity affects people differently and there have been attempts by several international and regional agreements to give expression to this fact. The Maputo Protocol to the African Charter defines human dignity in ways that resonate with the experiences of African women and provides a useful context for future work in this area.

As the UDHR 75 anniversary is being celebrated, it is important to think critically about how the rights to human dignity can be fully enjoyed, both *de jure* and *de facto*. This is a discussion that must be taken with utmost seriousness. The reference in the UDHR to people "equal in dignity and rights" underscores the fact that differences must be taken into consideration. If this is not done, it can lead to human rights

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82 Moeckli, Shah and Sivakumaran, *International Human Rights Law*, 46.



violations, perpetuation of stereotypes and exclusion of women from political and economic participation. It must be borne in mind that gender inequality not only leads to human rights violations but can also affect the development of nations.<sup>83</sup> Recognising the importance of gender equality in socioeconomic development, the international community agreed in the Millennium Declaration to abolish gender inequality in all aspects of human activity by 2015. The Sustainable Development Goals also reaffirm this and serve to bolster the enjoyment of dignity by women. If the dreams and aspiration of these goals are met by 2030, a life of dignity for women and men will be redefined. But it's still a long road and a torturous journey!

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<sup>83</sup> Mukasa S. 2007. "Challenges of Domestication of the Women's Rights Protocol in Women UN Reports Network", in Burnett P, Karmali S and Manji R. *Africa – Grace, Tenacity and Eloquence – The struggle for Women's Rights*. Oxford: Pambazuka Press.