

# Vulnerability of women in Africa to extrajudicial killings

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**ABSTRACT:** Extrajudicial killing is a complex phenomenon covering various types of unlawful homicide. When women are the targeted victims, it constitutes an extreme form of gender violence. This article explores rather than describes the special factors that make women particularly vulnerable to such killings. Its working hypothesis is that such killings are fairly common, and that they thus warrant a qualitative, analytical and inductive study aimed at contributing to the literature on violence against women, particularly, and the right to life, generally. The theoretical and analytical perspectives that inform identification of vulnerability factors are jurisprudence and legal theory, gender studies, and feminist scholarship. The article argues that culture, tradition, socialisation, politico-socio-economic factors, and the law in some instances, create an environment favourable to the perception and treatment of women as subordinate to men, and also foster a social milieu that lends itself to women's vulnerability.

## TITRE ET RÉSUMÉ EN FRANÇAIS:

### Vulnérabilité des femmes aux exécutions extrajudiciaires en Afrique

**RÉSUMÉ:** L'exécution extrajudiciaire est un phénomène complexe qui englobe divers types d'homicides illégaux. Quand les femmes en sont les victimes ciblées, cela constitue une forme extrême de violence basée sur le genre. Plutôt que de décrire, cet article explore les facteurs spéciaux qui rendent les femmes particulièrement vulnérables à de telles tueries. L'hypothèse d'analyse est que de telles tueries sont assez courantes et qu'elles justifient donc une étude qualitative, analytique et inductive visant à contribuer, en particulier, à la doctrine sur la violence contre les femmes et le droit à la vie en général. Les perspectives théoriques et analytiques qui guident l'identification des facteurs de vulnérabilité sont la jurisprudence et la théorie juridique, les études de genre et la production académique féministe. L'article soutient que la culture, la tradition, la socialisation, les facteurs politico-socio-économiques et la loi, dans certains cas, créent un environnement favorable à la perception et au traitement des femmes comme subordonnées aux hommes favorisant ainsi un milieu social qui se prête à la vulnérabilité des femmes.

**KEY WORDS:** Africa, extrajudicial killing, vulnerability, women

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**1 INTRODUCTION: CONCEPT OF  
‘EXTRAJUDICIAL KILLING’**

There appears to be no internationally accepted definition of what constitutes ‘extrajudicial, summary or arbitrary killings (or executions)’. However, in international human rights law, ‘extrajudicial’ killings convey the associative meaning of ‘summary’ or ‘arbitrary’ killings. Those individual terms tend to be used conjunctively or as synonyms. The separate dictionary meaning of each says little about the wide spectrum of killings and the real nature of the issues in human rights law which the standard phrase ‘extrajudicial, summary or arbitrary’ seeks to capture. Each of those terms signifies not so much the method or nature of the killing but rather the character of its unlawfulness. The phrase as now understood in international human rights law and practice is less about the semantics of the individual terms comprised in it. It is more about capturing ‘a range of contexts in which killings have taken place in circumstances which contravene international law and ... require a response’.<sup>1</sup>

The nature of extrajudicial killing is broad and all-encompassing. ‘Extrajudicial killing’ includes ‘any killing that violates international human rights or humanitarian law’ such as ‘unlawful killing by the police, deaths in military or civilian custody, killings of civilians in armed conflict in violation of humanitarian law, and patterns of killings by private individuals which are not adequately investigated and prosecuted by the authorities’.<sup>2</sup> Any killing in these circumstances is arbitrary even in a state that retains the death penalty. The reason is that such killings offend the narrowly-circumscribed scope of application of the death penalty in relation to offences, persons and procedure. There is thus a nexus between the question of extrajudicial killings and the protection of the right to life.<sup>3</sup>

<sup>1</sup> ‘Report of the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions’ (2004), Doc. E/CN.4/2005/7, para 6.

<sup>2</sup> ‘Report of the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Mission to the USA’ (2009), Doc. A/HRC/11/2/Add.5, para 3.

<sup>3</sup> Article 3 of the Universal Declaration of Human Rights; article 6 of the International Covenant on Civil and Political Rights (ICCPR); article 4 of the African Charter on Human and Peoples’ Rights; article 5 of the African Charter on the Rights and Welfare of the Child; article 4 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.

Conceptually, extrajudicial killings of women are an extreme form of violence against women in general. Such killings result from a number of factors that predispose woman to that type of harm, a violation usually perpetrated by a family member or an intimate partner. The enabling factors of such killings include the culture of so-called 'honour' killings by male family or community members of women perceived to have brought 'dishonour' upon their natal family or their community.<sup>4</sup> They also include the ingrained suspicion, in some rural communities, that elderly women are witches and so open to mob accusation and killing in the interest of the community. Another factor is the suspect patriarchal attitude in some settings that a woman is man's 'possession' and may be killed when she 'provokes' him particularly by conduct that excites his sexual jealousy. In these cases, the factors that induce killing are female-specific, the killing is deliberate and takes place in an exclusive space. However, there is another category of extrajudicial killings of women in which death results from the perpetration of other forms of gender violence such as sexual or non-sexual assault in intimate partner relationships. Killing in those circumstances is not always understood as extrajudicial partly because in many instances it is difficult to divorce it from domestic violence. The proportion of the perpetration of each of these two categories of extrajudicial killings of women as against the other is difficult to ascertain because available homicide statistics make no such differentiation.

## **2 LEGAL ACCOUNTABILITY OF THE STATE IN THE CONTEXT OF EXTRAJUDICIAL KILLINGS**

In this section I consider in the broadest outline the standards, and the behavioural and substantive rules, which may be invoked to hold the state accountable in the context of extrajudicial killings. I also consider the circumstances of state accountability in international human rights law in the context of extrajudicial killings, a form of killing that is also a violation of the right to life guaranteed under human rights instruments. The discussion is framed around the conceptual distinction between two broad categories of perpetrators of extrajudicial killings, state and non-state actors. In the last part of this section I broach the matter of statistics on female victims of extrajudicial killings in Africa.

### **2.1 Standards and rules**

The object of every treaty, including human rights treaties, is to create and impose binding obligations on states that are party to it. Parties to

<sup>4</sup> 'Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions', Doc A/71/372, 2 September 2016, para 99.

the African Charter on Human and Peoples' Rights (African Charter) assume an obligation to give effect to the rights therein enshrined. By becoming a party to that instrument a state *ipso facto* recognises the rights in it and assumes a general obligation to adopt legislative or other measures to give effect to those rights. Under article 1, State parties to the Charter 'recognise the rights, duties and freedoms enshrined in [it] and ... undertake to adopt legislative or other measures to give effect to them'.<sup>5</sup> The obligation under article 1 is complemented by another, imposed in article 25 requiring State parties 'to promote and ensure ... respect' of the rights in the Charter and 'to see to it that the ... rights are understood'. These broad obligations are absolute and immediate, encompassing an obligation to recognise, an obligation to adopt measures, and an obligation to promote and ensure respect of rights.<sup>6</sup>

Formal recognition by the State is of practical importance for effective implementation within the domestic sphere:

When a society recognises that a person has a right, it affirms, legitimates, and justifies that entitlement, and incorporates and establishes it in the society's system of values, giving it important weight in competition with other social values.<sup>7</sup>

If a State is in breach of its obligation to recognise, that in itself would be tantamount to a breach of the relevant provision of the Charter and also a violation of the foundational principle of treaty law, *pacta sunt servanda*, entitling any other State party to take action under article 47 or 49. Aggrieved individuals cannot file a complaint based only on breach of that principle since they are not party to the treaty, and may only file a complaint in those instances where the action or inaction of the state party violates any of the rights guaranteed in the Charter.<sup>8</sup>

A State party to the Charter is also under an obligation to adopt such legislative or other measures as may be necessary to give effect to the rights in the Charter. This means the State must develop and enforce a national legal system and an appropriate national human rights infrastructure that is protective of human rights and is adequate to respond to claims of violation.

## 2.2 Killings by state actors

Extrajudicial killings by state actors may be clustered into three groups,<sup>9</sup> namely, politically targeted killings, arbitrary application of

<sup>5</sup> Likewise, under article 2 of the ICCPR, each State Party to the Covenant 'undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the ... Covenant'.

<sup>6</sup> C Anyangwe 'Obligations of States Parties to the African Charter on Human and Peoples' Rights' (1998) 10 *African Journal of International and Comparative Law* 625 629.

<sup>7</sup> L Henkin *The age of rights* (1990) 44.

<sup>8</sup> Anyangwe (n 6 above) 630.

<sup>9</sup> Centre for Governance and Human Rights (CG & HR) 'Unlawful killings in Africa' (2014) 13 [www.cg-hr.polis.cam.ac.uk](http://www.cg-hr.polis.cam.ac.uk) (accessed 12 October 2016).

the death penalty,<sup>10</sup> and perpetration of killings by law enforcement officials. This last group embraces killings perpetrated by the police or by the military performing police function such as the killing of a suspect during an encounter with law enforcement officials; killing of a detainee by the police or prison guards (custodial death); and killing during law enforcement operations resulting from the disproportionate, unnecessary or excessive use of force and firearms in contravention of international standards set out particularly in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).

In international human rights law, the protection of human rights is primarily the responsibility of the State as the main actor in the international and domestic planes. Any act, such as extrajudicial killing, which violates international human rights law, is in principle imputable to the State on the sufficient reasoning that the State failed in its due diligence obligation. It does not matter whether the act is done by a public official, or by persons who use their position of authority, or by individuals acting in the capacity of an agent of the State. In all cases of killing by State actors the State is held directly responsible for the extrajudicial killing because the protection of human rights, international and municipal, is primarily the responsibility of the State as the main actor internally and externally. Under human rights law the State is not only prohibited from directly violating the right to life. It is also required to ensure the right to life and must meet its due diligence obligations by taking appropriate measures to deter, prevent, investigate, prosecute and punish perpetrators.

The State has positive obligations under international human rights law to ensure that rights of individuals are fully protected against violations by its agents. Failure to ensure the individual is not arbitrarily deprived of his life as required by article 4 of the African Charter will be tantamount to a violation of that right by the State. This is so because in such a case the State is deemed to have permitted the killing perpetrated by its agent or to have failed to take appropriate measures or exercise due diligence to prevent, punish, investigate or redress it. If any provision of a human rights treaty is broken, responsibility follows. The violation of the treaty by the State is a breach of the treaty and engages its responsibility. It is irrelevant whether the violation is by the State as national policy or by officials acting under cover of law or by persons for whose acts the State is responsible because such acts have been encouraged or condoned by it.

### **2.3 Killings by non-state actors**

The term 'non-state actors' includes corporations and non-governmental organisations.<sup>11</sup> In the context of perpetrators of

<sup>10</sup> C Anyangwe 'Emerging African jurisprudence suggesting the desirability of the abolition of capital punishment' (2015) 23 *African Journal of International and Comparative Law* 1.

<sup>11</sup> P Alston (ed) *Non-state actors and human rights* (2002).

extrajudicial killings it covers a wide range of actors clustered by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (UN Special Rapporteur) into four general groups. One group consists of private actors operating at the behest of the government or with its knowledge or acquiescence such as government-created-and-controlled paramilitary groups, vigilante groups, death squads, and private militias sometimes directed to kill political opponents or critics. The State has direct responsibility for the actions of these non-state actors. A second group consists of private contractors such as military security contractors, corporations and consultants engaged to perform core state activities such as prisons management, law enforcement, and interrogation of suspects. The State is also responsible for the actions of these non-state actors.

A third set of persons consists of armed groups that are parties to an armed conflict. The legal responsibility for any killings committed by any of these non-state actors in violation of international humanitarian law falls directly and squarely on the armed group concerned. A fourth set of persons comprises individuals in intimate relationships and individuals in organised or controlled groups such as criminal gangs, mobs, and vigilantes. These may perpetrate gang murders, vigilante murders, 'honour killings', or domestic violence killings. The responsibility of the State is engaged in circumstances where these types of killings are suggestive of a pattern and the response of the government to them is inadequate or not forthcoming.<sup>12</sup>

A simplified template proposed by another source identifies two broad categories of killings by non-state actors: 'conditioned homicide' (killings by private individuals), and 'mass actor killings' (killings by groups of persons).<sup>13</sup> 'Conditioned homicide' cases include death of an intimate partner resulting from systematic domestic violence in circumstances where the State has failed to act to remedy the situation<sup>14</sup>; ritual murders, especially of virgin girls, to harvest body parts for profit and for use in rituals that supposedly confer wealth or supernatural powers;<sup>15</sup> witchcraft, 'honour', occult, and Albino killings,<sup>16</sup> and prejudice-induced killings such as xenophobic killings, and killings of persons with a different sexual orientation or from an

<sup>12</sup> 'Report of the Special Rapporteur' (2004) (n 1 above); 'Report of the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions' (2010), Doc. A/HRC/14/24, paras 45-47.

<sup>13</sup> CG & HR (n 9 above) 12.

<sup>14</sup> B Meyersfeld *Domestic violence and international law* (2010) 111.

<sup>15</sup> *The New Age*, 2 October 2015, 25, reported the ritual murder of a 13-year old girl in Liberia, noting: '[C]ases of ritual murders have been recorded in several African countries, with body parts sometimes used in ceremonies believed to confer supernatural powers. Children are particularly sought out as targets.'

<sup>16</sup> *The Mail & Guardian*, 15-21 May 2015, 26, writes under the caption 'Albinos fear death as polls near': 'Thought to bring luck, people with albinism are hunted in Tanzania – often by family members. ... Albino body parts are associated with good luck and, as the country gears up for elections, the demand for good luck charms goes up. ... Tanzania is thought to have one of the world's largest populations of people with albinism, a congenital disorder that robs skin, eyes and hair of pigmentation ... A complete set of albino body parts – including all four limbs, genitals, ears, tongue and nose – can fetch up to \$75 000 ...'.

ethnic minority. 'Mass actor killings' cover cases of vigilante killings; killings by consultants or private security outfits engaged in core state activities, killings by organised criminal gangs (militias, death squads, pirates and drug or human traffickers), killings by terrorist groups, and killings by rebels and insurgent groups in ungoverned spaces. It appears to be the case that responsibility for killings by terrorist, rebel and insurgent groups in ungoverned spaces is entirely that of the group concerned.

International legal interpretation and norms now clearly define the positive role and responsibility of the State in preventing abuses perpetrated by non-state actors. Gone are the days when it could have been said with confidence that human rights violations against individuals could be committed only by States. A new awareness has since developed that the individual needs to be protected against the increasingly many and powerful non-state actors as well. The concept of State responsibility has evolved to recognise that a State also has an obligation to take preventive and punitive steps where human rights violations by private actors occur. A scholar of note has pertinently observed that 'international law has achieved a major breakthrough by holding the relevant governments liable in situations in which they have not shown 'due diligence' in carrying out their own obligations to investigate, prosecute, and punish those who commit such crimes'.<sup>17</sup>

The State is of course not ordinarily responsible for human rights abuses by private actors for, in many cases, the isolated killing of a person by an individual will constitute a simple crime and not give rise to any State responsibility. However, the State is required to ensure the right to life. It must meet its due diligence obligations to take appropriate measures to deter, prevent, investigate, prosecute and punish perpetrators. The duty of the State extends to ensuring protection against the risk of human rights violation by non-state actors and to providing effective remedies to victims of violations. In *Carmichele v Minister of Safety and State Security & Another*,<sup>18</sup> the South African Constitutional Court held the State liable for the brutal attack of the appellant by the accused, an attempted-rapist who was facing trial and had been released without bail. In *Van Eerden v Minister of Safety and State Security*,<sup>19</sup> the South African Supreme Court of Appeal held the State accountable for the rape and robbery of a 19-year old girl by a known dangerous criminal who had escaped from police custody due to the negligent failure of the police to lock the security gate.

Once a pattern of killings becomes clear in which the response of the State is clearly inadequate, the State's responsibility under international human rights law becomes applicable on the good and sufficient reasoning that through its inaction it makes itself complicit and confers a degree of impunity upon the killers. Complicity by the

<sup>17</sup> P Alston 'Of witches and robots: the diverse challenges of responding to unlawful killings in the twenty-first century' (2011) 28 *Macalester International* 10.

<sup>18</sup> 2001 (4) SA 938 (CC).

<sup>19</sup> 2003 (1) SA 389 (SCA).

State is established by showing that it condones a pattern of abuse through pervasive non-action. Under these circumstances, therefore, the State would be in breach of its international human rights obligations. The act of the non-state actor being the act of a private person is initially not directly imputable to the State. However, the act does lead to international responsibility of the State under the rules of international law not because of the act itself but because the State failed in its due diligence obligation to prevent the violation or to respond to it as required by human rights law.<sup>20</sup>

In order to show that extrajudicial killing has been committed it is not necessary, as in murder under municipal criminal law, to determine the guilt of the non-state actor or his intention. Likewise, in mass-actor-killing cases, it is not necessary to identify the actual specific individual perpetrator by whose hand the victim met his death. It is sufficient simply to demonstrate that public authorities have supported or condoned or tolerated the violation of the right to life.<sup>21</sup> Thus, although an act by a private individual or a non-state actor would ordinarily not be directly imputable to the State, it can nevertheless generate responsibility of the State not because of the act itself, but either because of lack of due diligence on its part to prevent the violation, or because it did not take the necessary steps to provide the victims with reparations. That is the tenor of the ruling of the African Commission in *Aminu v Nigeria*; *Social and Economic Rights Centre v Nigeria*; and *Sudan Human Rights Organisation and Another v Sudan*.<sup>22</sup> This jurisprudence is consistent with that of the Inter-American human rights system.<sup>23</sup> It is also in line with the view articulated by the UN Human Rights Committee and the UN Special Rapporteur.<sup>24</sup>

## 2.4 Statistics

Extrajudicial killing of women is an extreme form of violence against women by men or by other women. Estimating the actual occurrence of this phenomenon is difficult in part because killings of this nature tend to be statistically subsumed under the generic legal rubric of homicide and is thus largely hidden. Potential sources of incidents involving the killing of women are self-reports by family members, reports by friends from phone-ins, records of social workers, and records of police and health services. These sources may record the number of women who have been murdered. But data from these sources would be problematic where it does not reflect gender discrepancies or differentiate between

<sup>20</sup> *Valesquez Rodriguez v Honduras* IACHR (29 July 1989) Ser C No 4.

<sup>21</sup> *Tradesmen v Colombia* IACHR (2004) Ser C No 109.

<sup>22</sup> *Aminu v Nigeria* (2000) AHRLR 258 (ACHPR 2000); *Social and Economic Rights Action Centre v Nigeria* (2001) AHRLR 60 (ACHPR 2001); *Sudan Human Rights Organisation & Another v Sudan* (2009) AHRLR 135 (ACHPR 2009).

<sup>23</sup> *Valesquez v Honduras* (n 20 above); *Tradesman v Colombia* (n 21 above).

<sup>24</sup> General Comment 31 of 26 May 2004; 'Report of the Special Rapporteur' 2004 (n 1 above) paras 72-73; 'Report of the Special Rapporteur' 2010 (n 12 above) paras 45-47; 'Report of the Special Rapporteur on Violence against Women, its Causes and Consequences' (1996), Doc. E/CN.4/1996/53, para 30-33.



deliberate extrajudicial killings and assaults resulting in unintended deaths. Reports of the UN Special Rapporteur provide useful information on the subject of extrajudicial killings generally. However, they tend not to detail the specific problem of extrajudicial killings of women.

The problem is not limited to cases of men killing women, denoted in feminist literature as 'femicide', meaning 'gender-motivated killings founded on particular patriarchal beliefs about women, such as that they are the possessions of men'.<sup>25</sup> Feminists consider femicide an extreme manifestation of male dominance and sexism as well as a form of male control over women.<sup>26</sup> The term also covers cases where women kill men or other women.<sup>27</sup> It is not possible to construct a distinct profile or prototype of either the victim or the perpetrator in the context of extrajudicial killings of women. However, anecdotal evidence and occasional media reports suggest that women rather than men are overwhelmingly the victims of gendered extrajudicial killings. In fact, a 2002 study conducted in South Africa concluded that men are four times more likely to kill their female partners than the other way around.<sup>28</sup> Continent-wide statistics on extrajudicial killings specifically are not available. Even at national level it is doubtful that law enforcement agencies keep statistics on extrajudicial killings as such.

A 2014 general study on the subject by the Centre of Governance and Human Rights in Cambridge University (CG & HR) provides some useful data on unlawful killings taken from a number of sources, some dependable, some not.<sup>29</sup> Extrapolating from that data, one notes that an average of about 3 000 unlawful killings take place each year in Africa. There were 128 623 persons who died in Africa in 2011 as a result of interpersonal violence, compared with 486 493 persons worldwide in the same year. In Sub-Sahara Africa, 15 796 people died in 2011 of collective violence while 86 307 died worldwide in the same year.

Drawing from various data sources, CG & HR estimates the 2013 homicide rate in Africa to be 11.4 per 100 000 (slightly over 110 killed each year per one million people). That rate is double the global rate of 5.8 per 100 000. In Africa, the highest homicide rate in 2013 was in Southern Africa (about 30 per 100,000), followed by West Africa (about 16 per 100,000), East Africa (about 8 per 100,000), and North Africa (about 3 per 100,000). These figures paint an interesting broad picture of unlawful killings in Africa and give some general idea of the phenomenon of extrajudicial killing in the continent. They are however not current. More importantly, they are not disaggregated by gender

<sup>25</sup> E Bonthuys & C Albertyn (eds) *Gender, law and justice* (2007) 339.

<sup>26</sup> D Russel 'Introduction: the politics of femicide' in D Russell & R Harmes (eds) *Femicide in global perspectives*.

<sup>27</sup> S Mills 'Intimate femicide and abused women who kill: a feminist legal perspective' in Russell & Harmes (n 26 as above) 71.

<sup>28</sup> L Vetten & C Ngwane *I Love You to Destruction: Selected Preliminary Findings from Five Year Analysis of Convictions and Sentences for Spousal Killings in Three Gauteng Courts* (CSVR: Johannesburg 2003).

<sup>29</sup> CG & HR (n 9 above) 6-8.

and by categories of violent killings. They also do not deal with the specific problem of women and extrajudicial killing in Africa.

### 3 FACTORS CONTRIBUTING TO VULNERABILITY

The subject of extrajudicial killings is a worldwide and complex problem that reveals a consistent pattern of violations of human rights. In acknowledgement of this fact, the universal human rights system established the thematic procedure known as Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions in 1982. The procedure was established to undertake studies of the situation, paying special attention to cases concerning children and women. For its part, the African Commission on Human and Peoples' Rights (African Commission) in 2012 expanded the mandate of its Working Group on the Death Penalty to include a focus on the problem of extrajudicial killings in Africa. Extrajudicial killings of women undoubtedly take place. However, its form, shape and magnitude still needs to be researched. In this section I consider the factors that predispose women to extrajudicial killings in Africa. In this regard, I hypothesise that culture, tradition, socialisation, socio-economic and political contexts, and the dual or plural legal dynamics prevailing in African countries, all conspire to create an environment in which women are treated as subordinate to men. These factors constitute the backdrop and provide the social environment that make women vulnerable to extrajudicial killings.

The theoretical and analytical perspectives that inform the identification of these factors are feminist scholarship,<sup>30</sup> gender studies, and jurisprudence and legal theory which is a study of political theories with legal implications. Many feminist jurists have over the years argued that patriarchy<sup>31</sup> is at the root of the subordination of women to men and the unequal power relations between both.<sup>32</sup> They posit that gender roles are socially constructed, and that patriarchy and gender roles can therefore be socially deconstructed.<sup>33</sup> Unequal gender relations in African societies are rooted in socially-defined roles of men

<sup>30</sup> Feminism is a term coined by women's movement to signify the revolutionary changes it advocates to the status of women in society.

<sup>31</sup> Patriarchy is the term coined by feminists to describe the social structures which allow men to dominate women, that is, the pervasive dominance, in and of society, by the male hierarchy. See Bonthuys & Albertyn (n 25 above) p. 19; A van Blerk *Jurisprudence – an introduction* (1998) 171.

<sup>32</sup> K Bartlett & R Kennedy (eds) *Feminist legal theory: readings in law and gender* (1991); J Rifkin 'Toward a theory of law and patriarchy' (1988) 3 *Harvard Women's Law Journal* 3; C MacKinnon 'Difference and dominance' in C MacKinnon (ed) *Feminism unmodified: discourses on life and law* (1987) 32.

<sup>33</sup> K Bartlett 'Feminist legal methods' (1990) 103 *Harvard Law Review* 829; L Finley 'Breaking women's silence in law: the dilemma of the gendered nature of legal reasoning' (1989) 64 *Notre Dame Law Review* 886; S Okin 'Is multiculturalism bad for women?' in J Cohen, J Howard & MC Nussbaum (eds) *Is multiculturalism bad for women?* (1999); J Oloka-Onyango & S Tamale 'The personal is political, or why women's rights are

and women. Prevailing unequal power relations between both sexes constitute the backdrop that makes women vulnerable to extrajudicial killings.

In considering the factors that make women peculiarly vulnerable to extrajudicial killings I note in passing the difference between ‘factors’ and ‘causes’. ‘Cause’ is the immediate reason; ‘factor’ is the enabler. In legal parlance, cause is the *causa causans*, and factor the *causa sine qua non*. In the context of our subject, the extrajudicial killing of women encompasses killing within intimate social settings, the cause of which could, for example, be that family honour is at stake. Feminists do not only condemn violence against women in the private realm; they also link this abuse to violence against women perpetrated by the State.<sup>34</sup> Killing in these circumstances is conceptualised as the most extreme form of violence against women. Literature shows that the contributory factors to this form of violence as well as to violence against women in general, fall within three broad categories, namely, socialisation, harmful cultural practices, and inadequate legal protection.

### 3.1 Socialisation

Feminists subscribe to the view by Simone de Beauvoir that women are socialised or acculturated into becoming what society dictates.<sup>35</sup> Socialisation is a socially learnt behaviour from childhood whereby an individual internalises and deeply embeds attitudes and adopts particular roles as instructed by society. Agents of socialisation include faith based organisations which play a key role in the propagation of gender imbalances that are constructed through teachings. For example, Christian teachings on gender relations, like the teachings of African custom, advocate divinely sanctioned male headship of the family and the subordination of the wife.<sup>36</sup> These teachings help to reinforce traditional stereotypes. The Apostle Paul in 1 Timothy 2:9-14 directs Christian women to ‘wear proper clothes that show respect and self-control, not using braided hair or gold or pearls or expensive clothes’. He instructs them to ‘learn by listening quietly and being ready to cooperate in everything’. He states that he does ‘not allow a woman to teach or to have authority over a man, but to listen quietly, because Adam was formed first and then Eve. And Adam was not tricked, but the woman was tricked and became a sinner’. Islamic teachings also propagate a like doctrine of female subordination and submissiveness to men.

indeed human rights: an African perspective on international feminism’ (1995) 17 *Human Rights Quarterly* 691; C Smart ‘Feminism and law: some problems of analysis and strategy’ (1986) 14 *International Journal of the Sociology of Law* 110; C Littleton ‘Reconstructing sex and equality’ (1987) 75 *California Law Review* 1274.

<sup>34</sup> S McKay ‘Rape and incest in a violent male society’ (1985) *Fortnight Magazine*, 27 May 1985, 9.

<sup>35</sup> *The second sex*, 1949 (reprinted 1961).

<sup>36</sup> WLSA *Multiple jeopardy: domestic violence and women’s search for justice in Swaziland* (WLSA: Mbabane 2001) 73.

Religion thus promotes the idea that the woman must be docile, obedient, submissive and subordinate to the man 'as head of the family', and that she must avoid tempting him by exposing her body, something that makes no sense in traditional African contexts where both men and women are thinly accoutred. There are instances where the rapist's defence consists in blaming the woman for the rape perpetrated on her, arguing that she tempted him by the 'indecent' way she dressed. To 'protect' the man from such wily temptation it appears that some Islam teachings ordain that the woman must cover herself from head to toe, including her eyes since she is capable of communicating amorous messages even with her eyes.

Most socialised behaviour is institutionalised through patriarchy. For example, some women appear to have been socialised into thinking that they have to be looked after and be kept by men, even if they earn an income. Some women also appear to have been socialised to think and to believe that their proper place is at home, bearing children, doing house chores, cooking, looking after the children and the men, and being accommodative of her in-laws in all circumstances. Socialisation in a patriarchal society includes the cultural instruction that men are superior to women. This socially defined status of inferiority and subordination of women to men has ultimately been internalised by some women and is deeply embedded in their minds.

The attitude of male dominance and female submissiveness creates a situation whereby the man feels entitled to 'discipline' his 'stubborn' female partner in order to 'put her in her place'. This form of socialisation contributes to violence against women, including instances of perpetration of femicide. The unequal power relationship between men and women manifests itself in male dominance and female subordination. This provides the setting within which the man considers that he has the right, as a male, to coerce his 'stubborn, strong-headed, independent-minded and nagging' woman to submission through various violent acts, including killing in some instances.<sup>37</sup>

In a patriarchal society, patrilineal descent recognises consanguinity among males as more important than relations through affinity.<sup>38</sup> Some African societies have the matrilineal and matrilocal systems of kinship arrangements. Under such arrangements the husband is generally in a position of dependence upon his wife's family and, the children of marriages in such systems tend to look upon their maternal uncles as more important than their fathers.<sup>39</sup> But that is exceptional.

The social organisations in most African societies have a kinship system that is patrilineal and patriarchal. Under that system women move to their husbands' home upon marriage. The husband's family assumes total responsibility over her by providing for her material and emotional needs. This sounds good. But, in reality, the migration of the

<sup>37</sup> Okin (n 33 above).

<sup>38</sup> WLSA (n 36 above) 34.

<sup>39</sup> TO Elias *The nature of African customary law* (1956) 101.

woman to the man's family creates a huge problem of belonging and identity for her. Upon being given away into marriage, the woman finds herself 'caught in-between' two families, her marital family and her natal family. The paradox is that henceforth she fully belongs to neither family.

On the one hand, she is not integrated into her marital family. She is no doubt part and parcel of her nuclear family. But she is inconsequential in relation to her husband's extended family. She does not fully belong there because she is linked to that family only by mere affinity and not by blood. Precisely because of that, when her husband dies her in-laws move in and grab the household items, considered as belonging to the deceased. Female migration or patrilocality in effect transforms the woman into an 'outsider' in her matrimonial home. Her marital affairs become subject to interference by her in-laws. This often leads to misunderstandings and conflicts between husband and wife, and between wife and in-laws particularly mother-in-law and sister-in-law. These clashes often arise over attempts to control her reproductive capacity (she must have children or so many children or at least one male child), over attempts by her in-laws to have unhindered access to her home, over family finances, and over household property which sisters-in-law quickly grab upon the death of their brother.<sup>40</sup>

On the other hand, the married woman also ceases to belong fully to her natal family. Before her marriage she was in fact regarded as a temporary family member destined to marry, leave her natal family and join that of her husband. When she marries she thus becomes something of an 'outsider' in relation to her natal family. It is generally considered culturally shameful to accept her back when her marriage fails or when she seeks to escape domestic violence. Partly for this reason, and partly in the interest of the children she may have had with her husband, many women endure hardship and violence in their marriage rather than seek refuge in their natal family. This unavoidable situation in which the married woman finds herself in a patriarchal society traps her in a setting in which she may easily be killed by her own husband or become victim of 'honour killing' by a member of her own family.

### 3.2 Cultural practices

Culturally, sub-Saharan Africa is largely homogeneous although some variations exist in the practice of specific customs. Also, since the African society is by and large patriarchal, power is vested in men who, as a result, have control over women and dominate them in all spheres of life, private and public. As a consequence of these cultural dictates, women lack autonomy and cannot therefore make independent

<sup>40</sup> J Mvula-Mwenda 'Property-grabbing under African customary law: repugnant to natural justice, equity and good conscience, yet a troubling reality' (2005) 37 *George Washington International Law Review* 949; WLSA (n 36 above) 77; E Stanko *Intimate intrusions: women's experiences of male violence* (1985).

decisions or access resources such as land, movable property, and money in their own right.

In some cases, culture condones wife-beating as a disciplinary measure against an 'erring' wife. Wife-assault sometimes results in death. This very controversial culture and condoned social habit, perpetuates the problem of killing in intimate settings. There are other cultural practices which are arguably harmful under human rights law and which are considered a further manifestation of the subjugation and objectification of women. Polygamy; sororate or levirate marriages; bride price; sexual cleansing; widow inheritance; labia elongation;<sup>41</sup> female genital mutilation (FGM);<sup>42</sup> and property-grabbing<sup>43</sup> are considered forms of violence against women and a threat to their liberty and security alongside male-child preference which is informed by the notion that male children remain in their natal family and perpetuate the family name and lineage.

These cultural practices further reinforce male dominance and the treatment of women in certain instances as 'property' that could become expendable. Women's unenviable inferior status and position is compounded by the fact that in many contexts she has to acquiesce in customary practices such as sororate, levirate, widow-inheritance, sexual cleansing, and polygamy. This appears to be the case in some countries in west, middle and east Africa. A woman who finds herself in any of these situations or who is childless (even where it is not demonstrated that the fault is from her) suffers mental anguish, low self-esteem, and blames herself. She becomes vulnerable to further abuse, including killing on suspicion of being a witch who offers her children *in vitro* to or has entered into a pact with occult forces in exchange for the art of wizardry.

Many scholars of African customary jurisprudence have argued that the institution of 'bride price' does not signify the purchase of the bride and 'cannot be regarded in the same way as the rationalistic purchase of a commodity'.<sup>44</sup> The reality is that it is generally understood as the latter and, in practice, it tends to promote the perception and treatment of women as merchandise traded for money or money's worth, usually stock. In some settings men argue that payment of bride price means they have 'bought' their wives. They then use this argument to justify demands for wifely obedience or even

<sup>41</sup> K Mwenda 'Labia elongation under African customary law: a violation of women's rights?' (2006) 10 *International Journal of Human Rights* 341; M Gelfand 'Gross enlargement of the labia minora in an African female' (1973) 19 *Central African Journal of Medicine* 101; J Williams 'Labia elongation in the Shona' (1969) 15 *Central African Journal of Medicine* 165.

<sup>42</sup> Okin (n 33 above); M Brady 'Female genital mutilation: complications and risk of HIV transmission' (1999) 13 (12) *AIDS Patient Care and Standards* 709.

<sup>43</sup> Mvula-Mwenda (n 40 above) 1; K Mwenda 'Can secret trusts survive property-grabbing?' in KK Mwenda & DA Ailola (eds) *Frontiers of legal knowledge: business and economic law in context* (2003) 414.

<sup>44</sup> RC Thurnwald *Black and white in East Africa* (1935), cited with approval by Elias (n 39 above) 100.

domestic violence.<sup>45</sup> This social attitude compromises the woman's right to make independent decisions and to exercise control over her sexuality and her reproductive capacity. After a critical study of that institution, feminist literature is unanimous that dowry or bride price is oppressive because it positions women in an oppressive institution (dowry/bride price) and is an enabler of women's vulnerability to abuse.<sup>46</sup>

A significant negative effect of bride price is that it entrenches the inequality between men and women. Even in the context of marriage, some women enter into it as an unequal and dependent partner who is assumed to be physically weak. Another negative effect of bride price is that in some cases it reduces the woman in the eyes of the man to an object. This objectification of women predisposes them to violence by men, including killing. This is especially so when women are objectified as 'sex pets' in pornographic and prostitution settings, as sex slaves, or as subjects of human trafficking. However, it has been argued that claims of increase vulnerability because of the payment of bride price have not always been substantiated by research<sup>47</sup> and that there is no necessary correlation between domestic violence and bride price.<sup>48</sup>

### 3.3 Inadequate legal, social, political, and economic protection

To a large extent, statutory and customary law inhibit women's access to certain essential resources and to public office. It also nurtures in some ways the fertile ground for social attitudes and behaviours that are oppressive to women in many settings. Land in Africa continues to be an important resource upon which the State's agricultural and subsistence-based economy depends. But it is difficult for women in some countries, particularly under customary land law tenure systems, to access land in their own right. In Swaziland, for example, a woman can access land use only through a male relative. This is not only a major contributing factor to poverty,<sup>49</sup> especially among rural women, it also increases women's vulnerability to violence and deprivation. Lack of control over resources by women generates a culture of economic dependence on men. This situation further exposes women to poverty and to risks of fatal assault.

<sup>45</sup> T Bennet *Customary law in South Africa* (2004) 235; E Curran & E Bonthuys 'Customary law and domestic violence in rural South African communities' (2005) 21 *South African Journal on Human Rights* 607 617.

<sup>46</sup> MR Cutrufelli *Women of Africa: roots of oppression* (1983); M Hay & S Stichter (eds) *African women south of the Sahara* (1984); Okin (n 33 above).

<sup>47</sup> Bonthuys & Albertyn (n 25 above) 176.

<sup>48</sup> L Mbatha *The content and implementation of the Recognition of Customary Marriages Act 120, 1998: a social and legal analysis* (unpublished LLM dissertation: Wits University 2006) paragraph 3.5.2 cited in Bonthuys & Albertyn (n 25 above) 176.

<sup>49</sup> JC Mubangizi 'An African perspective on some gender-related cultural practices that violate human rights and perpetuate women's poverty' (2016) 47 *Journal of Social Sciences* 68-78.

In some cases, the law does not speak clearly when it comes to women's entitlement to land ownership, marital property, and succession.<sup>50</sup> Sometimes also the law leaves a lot to be desired on issues such as rape, abortion, sexual harassment in the work place, gender discrimination in recruitment and promotion, access to certain jobs and public offices, discrimination in pay, and fully paid maternity leave.<sup>51</sup> The legal system either ignores or does not adequately deal with certain types of killings such as intimate and 'honour' killings, or domestic violence in general.<sup>52</sup> The legal system appears to accept a 'defence' of custom in these cases. It thus indirectly encourages the perpetration of these extreme forms of violence against women. Establishing an adequate gender-sensitive legal environment is critical in safeguarding the rights of women, protecting them from violence, and ensuring that justice mechanisms are accessible to them and assist families whose female relatives have been killed.<sup>53</sup> The Banjul Declaration of the 59th ordinary session of the African Commission, in March 2017, under the theme 'Women's Rights: Our Collective Responsibility' recommends in paragraph 64 that 'States should review the measures in place, or that are being undertaken, to combat extrajudicial killings to include domestic violence and all other forms of violence that result in the death of women'.<sup>54</sup> The current Special Rapporteur, Agnes Callamard, recommends in her 2017 report that States should eliminate laws that support patriarchal oppression and also publish data on femicides.<sup>55</sup>

Since 2003, a number of African countries have taken legislative measures to address a number of gender-related issues.<sup>56</sup> Sierra Leone's Registration of Customary Marriage and Divorce Act 2012 and Malawi's Marriage, Divorce and Family Relations Act 2015, for example, prescribe 18 years as the minimum age for contracting any form of marriage. Additionally, Malawi's Gender Equality Act 2013 prohibits discrimination against women, outlaws sexual harassment, and prohibits harmful social, cultural or religious practices. The country's Penal Code and Domestic Violence Act 2010 criminalise sexual violence against women. Mozambique's Penal Code 2014 criminalises marital rape and removes the immunity from prosecution hitherto enjoyed by a rapist who marries his rape victim.

<sup>50</sup> Bonthuys & Albertyn (n 25 above) 201-202.

<sup>51</sup> As above 244-294.

<sup>52</sup> As above 335.

<sup>53</sup> United Nations *Strategies for confronting domestic violence: a resource manual* (New York 1993); World Health Organisation *Violence against women, family and reproductive health* (1997).

<sup>54</sup> Available at [www.achpr.org/instruments/banjul-declaration](http://www.achpr.org/instruments/banjul-declaration) (accessed 22 September 2017).

<sup>55</sup> 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (Gender-sensitive approach to arbitrary killings)' UN Doc. A/HRC/35/23, 6 June 2017.

<sup>56</sup> 'Report of the African Human Rights Commission's Special Rapporteur on the Rights of Women in Africa: Status of Implementation of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa', 66th Meeting of the Commission on the Status of Women, 18 March 2016, New York.



Violence against women has also come under the radar of a number of countries. Benin's Prevention and Repression of Violence against Women Act 2011 gives women protection against domestic violence, FGM, forced marriages and other traditional harmful practices against women. In Guinea Bissau and Angola, the Domestic Violence Act 2011 criminalises domestic violence as a public offence reportable to the police by anyone. Liberia's Rape Amendment Act raises the age of statutory rape to 18 years and expands the definition of rape to include sodomy rape and rape by instrumentality, thereby making rape gender-neutral so that a woman can also be criminally liable for perpetrating rape upon a man or another woman. Namibia's Combating of Domestic Violence Act 2003 broadly defines domestic violence to embrace physical, sexual, economic, verbal, emotional and psychological violence, intimidation and harassment. The Act defines rape as the intentional commission of a sexual act under coercive circumstances, and removes marriage or other relationship as a defence to a rape charge.

In 2011 Guinea Bissau passed a law banning FGM. Ghana's Criminal Code Amendment Law 2012 punishes perpetrator and accomplice of female circumcision. In 2015 The Gambia enacted a law criminalising female genital circumcision. Malawi's Deceased Estates (Wills, Inheritance and Protection) Act 2011 repeals the earlier contentious law on the subject and addresses the predicament of widows and children regarding the administration of deceased estates.

These legislative measures taken in the several countries appear to be based on the belief that fear of prosecution and imprisonment would deter some forms of violence against women. But it is doubtful that these measures in and by themselves sufficiently address the issue of extrajudicial killings of women in the context of intimate partner relations. Further, domestic violence statutes deal with only aspects of domestic violence and, arguably, problems of extrajudicial killings that are merely consequential to other forms of violence. The statutes are likely to be of little help in cases of purposive extrajudicial killings of women. In South Africa, at least, feminists argue that the law has not made the link between the law's protection of women and the court's treatment of perpetrators of gender violence. They contend that femicide is usually the tragic fate of an abused woman who has been trapped in a dangerous relationship and whom the law was unable to protect, and that the courts often treat such killings leniently.<sup>57</sup>

Most African countries have at least two systems of law, statutory and customary (defined in some countries as including Muslim law). Problems, especially in personal law matters, often emerge due to the co-existence and operation side by side of both systems.<sup>58</sup> Conflicts and

<sup>57</sup> J Fedler *et al* 'Beyond the facelift: the legal system's need for a change of heart' in Y Park *et al* (eds) *Reclaiming women's spaces: new perspectives on violence against women and sheltering in South Africa* (NISAA Institute for Women's Development: Johannesburg 2000) 135.

<sup>58</sup> C Anyangwe 'The withering away of African indigenous law and judicial system' (1998) *Zambia Law Journal, Special Edition* 46; J Stewart & A Armstrong (eds) *The legal situation of women in Southern Africa* (University of Zimbabwe: Harare 1990).

contradictions often occur between the two laws, posing a big challenge when seeking justice. In some countries, a valid marriage can be contracted either under the received law (civil marriage) or under customary law (customary marriage). A civil marriage is monogamous; a customary marriage is potentially polygamous. Under either system, marital power is exercised by the husband. In the case of a customary marriage that power is additionally exercised by the wife's in-laws.

Some African couples tend to contract two forms of marriage, one under the civil system, and another under the customary system<sup>59</sup> which is seen as situating them culturally and identity-wise. A dual marriage complicates matters. It impacts negatively on the rights of the woman as it makes it difficult to determine which law governs the marriage or aspects of it. Besides, the protection afforded by one type of marriage is likely to be compromised by the other. The existence of a multiple or plural legal system (statutory law, common law, different versions of customary law, and religious law) is a further complicating factor because of the existence of recognised parallel adjudicating structures. For example, in a number of West African communities the 'family meeting' or so-called 'family court' plays a critical role in the resolution of family disputes. The 'meeting' or 'court' may decree its own norms to be obeyed with sanctions in the event of transgression. The usual sanctions for transgression include denial of access to economic resources, denial of moral and spiritual support and, in extreme cases, ostracism or death. It follows that owing to their disempowered status women are unlikely to disobey their marital family and run the risk of forfeiting access to essential resources for survival or the risk of ostracism or death.<sup>60</sup>

Since patriarchal culture socialises men to be dominant and women to be submissive, the extrajudicial killing of a woman may be consequential to other forms of violence such as multiple or gang rape, 'rape by instrumentality' or physical assault. Criminal law regards the intentional killing of another as the most serious crime against the person because such deprivation of life violates the sanctity of human life protected by law. The penalty for murder, depending on the circumstances of the deed, may range from a long term of imprisonment to life imprisonment, and even the death sentence in States that still retain the death penalty. However, a person prosecuted for murder can be found guilty of manslaughter (culpable homicide) if he had no intention to kill or if he successfully pleads provocation. Case law shows that the murder of a woman by her intimate partner tends to be treated leniently. Sentences are often light and not reflective of the gravity of the crime committed.

In the much televised South African case of *S v Oscar Pistorius*,<sup>61</sup> the accused was convicted of the murder of his girlfriend with whom he was living. But he got off with only six years' imprisonment, and was

<sup>59</sup> C Himonga *et al* (eds) *African customary law* (2014) 83.

<sup>60</sup> WLSA (n 36 above) 39.

<sup>61</sup> Unreported. Trial began in March 2014, was concluded in 2015 but the appeal had still not been finally disposed of as of July 2017.

eligible for parole after serving only three years in jail. In another South African case, *S v Shrien Dewani*,<sup>62</sup> the newly married wife of a British businessman, the accused, was murdered in Kayelisha Township in Cape Town by confessed killers who testified in court that they had been hired by the accused to do the job. This testimony notwithstanding, the court ruled that there was lack of positive evidence linking the accused to the murder and accordingly acquitted him. Interestingly, *Pistorius* and *Dewani* were decided by female High Court Judges. The older cases betray a similar judicial leniency.<sup>63</sup> In *S v Ramontoedi*,<sup>64</sup> the accused shot his wife in the courtroom where she had gone to seek child maintenance. The judge accepted his plea of provocation based on his wife's alleged infidelity and sentenced him to three years' correctional supervision. In *S v Arnold*,<sup>65</sup> the 41 year old accused who was infatuated with his 21 year old attractive wife shot and killed her and pleaded provocation. The provoking act was that the deceased bent forward displaying her bare breasts to him and indicated that she wished to return to her work as a stripper. The trial judge acquitted him on the grounds of temporary non-pathological criminal incapacity caused by severe emotional stress and provocation. In *S v di Blasi*,<sup>66</sup> the accused sought out his wife and shot and killed her following her decision to divorce him after he had assaulted her several times and also attempted to kill her. The lower court gave him four years, holding that the accused's criminal capacity was diminished as a result of his feelings of anger, humiliation and bitterness. The appellate court found the sentence to be inappropriate and increased the sentence to 15 years.

Courts are generally perceived, at least by women, to be insensitive when adjudicating cases involving deadly assault on women. A 2003 report sketches some of the pertinent issues:

Women who suffer abuse at the hands of the deceased are severely disempowered by the deceased. They are fearful of the abuser, knowing he is capable of harming them at will. The sheer size of differential between the woman and her abuser and the socialisation differences between them impact on her fear of her abuser and her feelings of helplessness. All of these factors keep many women from acting in the heat of passion that typically mitigates men's sentences. Yet, the courts are only willing to understand what are typically men's responses to emotional stress and provocation. ... Women who kill their abusers in non-confrontational situations have great difficulty accessing criminal defences to murder. These findings suggest that courts do not understand women's experiences with violence and the effect of abuse on them.<sup>67</sup>

It is believed that in cases of that nature judges tend to convict and sentence for mere assault rather than for the very serious crime of murder. It is also believed that judges tend to refrain from passing the fully-deserved sentence against convicted males who kill their female partners presumably because judges have been socialised to believe

<sup>62</sup> CC 15/2014) [2014] ZAWCHC 188 (8 December 2014).

<sup>63</sup> Bronthuys & Albertyn (n 25 above) 340-341.

<sup>64</sup> 1996 WLD Case No. 199/96, unreported.

<sup>65</sup> 1985 3 SA 256 (C).

<sup>66</sup> 1996 1 SACR1 (SCA).

<sup>67</sup> H Ludsin 'South African criminal law and battered women who kill: discussion document 2' (CSVR: Johannesburg 2003) 61 [www.csvr.org.za/docs/gender/southafricancriminal2.pdf](http://www.csvr.org.za/docs/gender/southafricancriminal2.pdf) (accessed 13 October 2017).

that the man has the cultural right to chastise his female partner. Judges are also criticised for betraying 'gender bias, stereotypes of men as emotional victims of women's sexual prowess'.<sup>68</sup> In some countries, a man who rapes a woman is granted immunity from prosecution if he marries the rape victim. This adds to the woman's tribulations because she submits to the rape-induced marriage because of the shame and reproach of rape and has to endure the company of the man who violated her in the first place.

Some other countries still exempt rape within marriage from the ambit of the criminal law. Matrimonial rape often occurs when a man forcefully demands 'conjugal right to sex'. In some cases, refusal of sex provides an excuse for the man to assault or even kill the woman. If she declines sex and he forcibly tries to get it and she reacts by assaulting him in self-defence, killing him, if necessary, the court of law and of public opinion tend to ignore the plea of self-defence and to show her little mercy. Sometimes killing of the woman happens when the woman claims her 'conjugal right to sex' from her man. A woman who shows that she desires or enjoys sex is considered not a model wife or partner. She is called a prostitute and accused of infidelity. In some instances, she could be battered and even killed on that account.

Politically, women still do not feature very prominently in the public domain. Women have limited access to public office and limited political representation at all levels of governance. What this means is that women are still not in a position to significantly influence important legislation and State policy in their favour. Business-wise, women are also not many in the boardrooms.

It is a sociological fact that generally, women continue to have limited access to capital and economic opportunities. The economic circumstances in which a woman finds herself could result in domestic conflicts, leading to assault and even murder by her partner. Cases are known where an economically independent and assertive woman is verbally, emotionally or physically abused by her partner because the man feels that her financial independence 'disempowers' him. Such a woman is easily accused by her partner of being insolent, arrogant, disrespectful and domineering. Ironically, a woman who, career-wise and economically, is in a more powerful position than her partner, is more likely to be physically abused by him. This is done supposedly 'to put the woman in her place' and to make it clear that he is the man of the house or in the relationship. Interestingly, the collective perception of a man married to a strong woman is that he is a henpecked husband, is controlled by her, and is hanging on her apron string. This 'deflation' of the man's ego leads to insecurity and to an inferiority complex, driving him to become aggressive. Some men tend to marry down precisely for fear of 'disempowered' by a professionally and economically stronger woman. In the same way, most women tend to marry upwards because they have been socialised to view the man as the 'master' and bread-winner in the home.

<sup>68</sup> Bonthuys & Albertyn (n 25 above) 340.

In the area of formal employment, because of gender imbalances, women are more disadvantaged than their male counterparts because they constitute, generally speaking, a minority of the workforce. Since women face multiple hurdles to formal employment, they dominate the challenging informal sector as street or market vendors. The earnings of women are generally lower than those of their male counterparts owing to the nature of the jobs that they do. These jobs offer no income security. As a result, women generally tend to be economically dependent on their partners who, invariably, seem to be in more secure employment. Problems faced by women in the labour sector include wage discrimination; access to largely low-income earning positions such as cleaners, maids, secretaries, waitresses, receptionists, and so on; non-payment of full maternity leave pay; and the unceremonious replacement of women who take maternity leave beyond a certain number of weeks.

## 4 CONCLUSION

Women are victims of gender based violence, including in some cases extrajudicial killings, due to several contributing factors, the overriding ones being socialisation and patriarchy. Certain cultural practices as well as the social, economic and political make-up of the African society serve to entrench the subordination of women to the power and authority of men, rendering women vulnerable to violence. The coexistence of two or more systems of law, sometimes with incompatible norms and philosophies of law, produces enormous challenges in certain instances. The justice system is not always an adequate and enabling environment that is sensitive to the protection of women against all forms of violence. Changes in attitudes and in the law would certainly improve the problem of vulnerability of women to extrajudicial killings.

Tackling this problem requires first and foremost political will on the part of African governments. It requires that men and women develop the willingness to address the problem. The key lies in educating and empowering women to be independent, to be responsible for their own lives and to take the lead in their own 'emancipation' by deconstructing narratives, customs, practices, laws and institutions that lead to the subordination of women and that facilitate violence of any kind against women. It is crucial to have the active involvement of socialisation agents (families, schools, media, faith organisations, and traditional structures) in deconstructing every harmful and socialisation narrative.

There are credible measures that governments in Africa can adopt to address the problem under consideration. These include: adopting best practices from countries that have dealt decisively with the problem; fostering a climate of non-discriminatory legal accountability for all killings; identifying and abolishing through law and other measures all harmful cultural practices; encouraging women to take the lead in the fight against gender based violence; initiating educational

and socio-economic advancement programmes designed to educate and uplift especially people in communities where this evil is prevalent.

Accompanying legislative measures should aim at strengthening existing laws on violence against women by: providing appropriate and appropriately applied penalties for perpetrators; protecting and empowering women; identifying and removing all forms of discrimination against women; amending the criminal law and procedure by removing gender bias embedded in the law; ensuring access to the courts, fairness and justice to the parties; giving families of victims effective access to counselling, restitution, reparation and other forms of just and equitable remedies. On the whole, the State and other relevant actors should undertake educational activities and programmes to prevent the perpetration of gender violence, including its extreme form, extrajudicial killing of women.