HUMAN RIGHTS AND CULTURAL DIVERSITY IN AFRICA

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Introduction

Globalisation has raised the issue of cultural diversity to a new level. Cultural-ethnic and religious communities have become acutely aware of the threat to their identities by an engulfing, mainly western driven, economic globalisation. The question is increasingly being raised. How can we reconcile these identities and cultural practices, which diverge in many essential ways with the idea of international standards? How can we enforce such standards, especially when major powers such as the United States, literary reject the whole idea of an international law and decide unilaterally to engage in what they have decided to call ‘pre-emptive intervention’ and engage in wars that are not approved by international law?

How can institutions such as the International Criminal Court adjudicate on crimes against humanity, the highest form of human rights infringement, when such countries refuse to join and instead try to convince others to reject such institutions and laws and instead accept force to accept a national law that ignores these international standards accepted by other nations? How can such a court intervene in small ethnic conflicts such as that in Northern Uganda, and prosecute rebels such as Joseph Kony when bigger powers such as these, promote impunity on the part of their own militaries against crimes against humanity they may have committed in other countries?

These and other matters of importance, which relate to the rights of peoples to their cultures and identities, raises even deeper concerns about the present world order and its premises. There is no doubt that today’s world is greatly Euro-(western) centric and that the present traditional-international law is based on natural law precepts that are deeply rooted in religious dogma. Even the modernised version of natural law as propounded by Althusius, Grotius and Vattel, the founders of the present international law, based on a secular view of society, is also predicated within the western naturalistic understanding of reality. Grotius’s understanding of sovereignty was based on the understanding of the absolute European monarch and the relations between states based on this conception. The sovereignty was viewed more as an aspect of natural law. It is this conception of sovereignty that was inherited by the post-colonial states in Africa and that has led to so much abuse of power and concentrations of power in the presidency.

Of course since then, international law has been very much broadened by new forms of international morality. Apart from Treaties entered into between states, there are conventions and multilateral agreements as well as United Nations declarations that have brought into focus, what are called “second” and “third generation” rights. Within these contexts, it can also be shown that these later declarations that have influenced regional charters of regional organisations such as the Organisation of African Unity Charter on Peoples’ and Human Rights, have also been influenced by existing international norms some of them drawn from the old sources.

The objective of this paper is to examine the rise of human rights historically and how the weakening of the nation-state on which they were premised has undermined these rights even further. New social forces, questioning the legitimacy of nationalism and the nation-state, have raised the issue ethnicity to the force and highlighted the rights of indigenous peoples. These rights have increasingly been accepted in new declarations as well as international conventions.

This development has complicated further the sanctity of the present international law as the issue of cultural diversity has begun to pronounce itself significantly.

The other objective of this paper will be to illustrate the first objective by giving examples of how rights built within the right to cultural diversity are becoming the basis for the challenge to certain precepts of international human rights. We shall examine the issue of female circumcision or what has been called ‘female genital mutilation’ as an example and also illustrate how such challenges, including the rights of women, can be overcome through an international system that pays attention to the diversities and tolerates differences that can be overcome through dialogue and other forms of intersubjective communication.

After presenting the international human rights norms and the Universalist conception of human rights, the article will present the complexities behind the female circumcision as a human rights violation and the presentation of traditional and novel values in the cultures, conducive to those norms. Through this analysis, it will be seen that cultural survival, diversity and flourishing need not be incompatible with upholding international, universal human rights standards if this is handled through dialogue. The paper will end with a case study illustrating how the recommendation made here can be realised.

**Cultural Diversity under International Law.**

The universality of human rights has been clearly established and recognized in international law mainly through the on-going work of the United Nations Organisation. Human rights are emphasized among the aims and objectives of the United Nations as proclaimed in its Charter, which states that human rights are "for all without distinction". The Declaration adds that human rights are the natural-born rights of every human being universally and that they are not privileges.

The Charter further commits the United Nations and all Member States to promote "universal respect for, and observance of, human rights and fundamental freedoms". As the cornerstone of the International Bill of Rights, the Universal Declaration of Human Rights affirms consensus on a universal standard of human rights. In many ways, it can be stated with some conviction that the Universal Declaration represents a broader consensus on human dignity than does any single culture or tradition. It is an attempt at establishing a universally acceptable standard of rights of individuals and communities.

Universal human rights are further established by the two international covenants on human rights. These are the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights). The others are the international standard-setting instruments which address numerous concerns, including genocide, slavery, torture, racial discrimination, discrimination against women, rights of the child, minorities and religious tolerance.

These achievements in human rights standard-setting have been done in nearly five decades of work by the United Nations General Assembly and other parts of the United Nations system. As an assembly of nearly every State in the international community, the General Assembly is a uniquely representative body authorized to address and advance the protection and promotion of human rights. As such, it serves as an excellent indicator of international consensus on human
rights. At the same time, it can be seen as a historical limitation to such consensus since the nation-state as a vehicle for such consensus has also been circumscribed by its historical span.

This consensus is embodied in the language of the Universal Declaration itself. The universal nature of human rights is literally written into the title of the Universal Declaration of Human Rights. Its Preamble proclaims the Declaration as a "common standard of achievement for all peoples and all nations". This statement is echoed in the Vienna Declaration and Programme of Action, which repeat the same language to reaffirm the status of the Universal Declaration as a "common standard" for everyone. Adopted in June 1993 by the United Nations World Conference on Human Rights in Austria, the Vienna Declaration continues to reinforce the universality of human rights, stating, "All human rights are universal, indivisible and interdependent and interrelated". This means that political, civil, cultural, economic and social human rights are to be seen in their entirety. One cannot pick and choose which rights to promote and protect. They are all supposed to be of equal value and apply to everyone equally.

The Vienna Declaration goes a step further to try to settle the matter once and for all when it states in its first paragraph that "the universal nature" of all human rights and fundamental freedoms is "beyond question." The unquestionable universality of human rights is presented in the context of the reaffirmation of the obligation of States to promote and protect human rights. It is then the States that have such legal obligations.

The legal obligation is reaffirmed for all States to promote "universal respect for, and observance and protection of, all human rights and fundamental freedoms for all". It is clearly stated that the obligation of States is to promote universal respect for, and observance of, human rights. Furthermore, the obligation is established for all States, in accordance with the Charter of the United Nations and other instruments of human rights and international law. No State is exempt from this obligation. All Member States of the United Nations have a legal obligation to promote and protect human rights, regardless of particular cultural perspectives. Universal human rights protection and promotion are asserted in the Vienna Declaration as the "first responsibility" of all Governments.

Everyone is entitled to human rights without discrimination of any kind. The non-discrimination principle is a fundamental rule of international law. This means that human rights are for all human beings, regardless of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Non-discrimination protects individuals and groups against the denial and violation of their human rights. To deny human rights on the grounds of cultural distinction is discriminatory. Human rights are intended for everyone, in every culture. Human rights are the birthright of every person. If a State dismisses universal human rights on the basis of cultural relativism, then rights would be denied to the persons living under that State's authority. Therefore, the denial or abuse of human rights is considered wrong, regardless of the violator's culture.

But these rights recently have been interpreted in the context of an emerging consensus about the need for cultural diversity of peoples to be respected. For instance under the Universal Declaration on Cultural Diversity adopted by the General Conference of the UNESCO at its thirty-first session on 2nd November 2001, the Declaration committed itself to the full implementation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized legal instruments, such as the two
International Covenants of 1966 relating respectively to civil and political rights and to economic, social and cultural rights referred to above. The Preamble to the Constitution of UNESCO affirms, "that the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern."

In this context the Declaration reaffirmed that culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs. Noting that culture is at the heart of contemporary debates about identity, social cohesion, and the development of a knowledge-based economy, the Declaration affirmed that respect for the diversity of cultures, tolerance, dialogue and cooperation, in a climate of mutual trust and understanding are among the best guarantees of international peace and security. The Declaration regards the process of globalisation, facilitated by the rapid development of new information and communication technologies, though representing a challenge for cultural diversity, as creating the conditions for renewed dialogue among cultures and civilizations.

On this basis, the Declaration proclaimed the principles of identity, diversity and pluralism to be central to the mission of the UNESCO. It declares culture to be manifested in diverse forms across time and space and embodied in the uniqueness and plurality of the identities of the groups and societies making up humankind. In article 4 of the Declaration, UNESCO sees the defence of cultural diversity as an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. It nevertheless points out that no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor limit their scope. It sets out play its standard-setting, awareness-raising and capacity-building role in the areas related to the present Declaration within its fields of competence in accordance with international law.

But the UNESCO Declaration downplays the full implications of the impact of the post-Cold War globalisation. The recognition of cultural identity requires recognition of these changes that have taken place. It means recognising the fact that globalisation in this period has meant a confluence of peoples and cultures is an increasingly global, multicultural world brimming with tension, confusion and conflict in the process of its adjustment to this widening pluralism. There is an understandable pressure to return to old conventions, traditional cultures, fundamental values, and the familiar, seemingly secure, sense of one's identity that UNESCO mentions in its Declaration. Without a secure sense of identity amidst the turmoil of transition, people tend to resort to isolationism, ethnocentrism and intolerance of other cultures. UNESCO calls for a

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dialogue of civilisations to meet these challenges, but in doing so still sticks to the standard-setting international declarations and instruments.

But this climate of change and acute vulnerability raises new challenges to the pursuit of the same universal human rights. How can these human rights be reconciled with the clash of cultures? Cultural background is one of the primary sources of identity and as such it is the source for a great deal of self-definition, expression, and sense of group belongingness. As cultures interact and intermix, cultural identities change and this creates tensions and conflicts. The process can be enriching, but disorienting. The current insecurity of cultural identity reflects fundamental changes in how we define and express who we are today.

The issue of female circumcision.

To illustrate the above dilemmas, we shall here deal with the matter of female circumcision, which many communities in Africa, including Uganda, practice. More recently, female circumcision has been referred to as female genital mutilation. It is the collective name given to traditional practices that involve the partial or total cutting away of the female external genitalia or other injury to the female genitals, whether for cultural or other non-therapeutic reasons. Since the mid-1985 when the issue of cultural relativism begun to challenge the standard-setting premises of international law, there has been a heated debate about the human rights of women over their bodies.

In Africa, this practice is widespread and is defended on cultural grounds. The practice is an ancient custom as adhered to and defended most resolutely not by men, but by its survivors, the women elders. In Uganda, especially among the Sabiny, both men and women insist vehemently on its perpetuation and defend the practice on cultural ground. Significantly, it is the women who also wield the knife. In such communities, the idea that a girl should not be "circumcised" is altogether looked upon as unthinkable. Not only would such a girl find no one who would marry her, but also it is generally believed that all sorts of evils in respect to her sexual behaviour, her health, and even more importantly in these cultures, the health of her husband and babies, would inevitably be affected. In the Sudan, the practise has been outlawed, yet it is still widely practiced, which would tend to confirm that the approval rate is far closer to 100 percent for both men and women.

The Universal Declaration of Human Rights, which is nowadays generally accepted as customary international law, prohibits in Article 5 acts of torture and inhuman treatment. Article 12 provides for a right to privacy and Article 3 reads: "Everyone has the right to life, liberty and security of person." The Convention on the Rights of the Child, in Article 19(1) provides that the States party to the Convention

"shall take all appropriate legislative, administrative, social and educational measures to protect the child against every form of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."
Article 37 provides that the States shall ensure that a child is not subjected to torture or other cruel, inhuman or degrading treatment or punishment. For present purposes, Article 24(3) of the Convention is the most important. This paragraph reads:

"States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."

In contrast to these provisions, the Charter also takes into consideration the virtues of the historical traditions and the values of African civilization, which should inspire and characterize their reflection on the concept of human and peoples' rights. It is in this context that the practices on female circumcision should be viewed. The question is how can the universal standards be made primary when the many cultures and traditions of the various communities on the African continent still regard this practice as sacrosanct?

More recently, calls to action by Western feminists and human rights activists have provoked negative reactions. African women have perceived many of these efforts as condescending and derogatory toward their culture. In the words of one infibulated Somali woman, "If Somali women change, it will be a change done by us, among us. When they order us to stop, tell us what we must do, it is offensive to the black person or the Muslim person who believes in circumcision.” Many African women regard the advice as good, but they consider that it should not be in the form of an order. In these circumstances, the best approach to the demand for international standards seems to lie in dialogue within and between different cultures rather than an imposition.

Human Rights, Women’s Rights and Dialogue: A Case Study

The analysis above reveals a complex situation arising out of the attempt to impose international standards and the right of communities to cultural diversity and identity. The analysis has led to a conclusion that the best approach to the dilemma is dialogue and accommodation aimed at bringing about change. In this part of the paper, we try to present a case study where change in the culture as achieved through dialogue rather than through imposition. The case study involves an Non-Government Organisation by the name Yiga Ng’okola [Learn As You Work] Folk Institute.

This organisation was formed in 1993 and was registered as local NGO operating in the North-East of Uganda in 1994 and based in Mbale. As its name implies, its mandate was to bring about learning through community activities and sharing of experiences arising out of those activities. The organisation drew its conceptual and operating values from the African cultures of community work and learning throughout life through human activity and interaction. By way of cross-cultural learning, the philosophy also drew some inspiration from the Danish humanistic educational philosophy advanced by Bishop Fredericks Grundtvig, which promoted education for “enlightenment” through dialogue and “education for life.”

The member groups that embraced Yiga Ng’okola Resource Centre were women’s CBOs. They belonged to a wide variety of groups promoting women’s rights by engaging in income
generation activities to empower themselves in their communities. Some were religious groups working for the same objectives but through a Mothers’ Union umbrella. Others were interested in raising credit for their members to engage in different kinds of income generating activities; yet others were members of ‘burial societies’ combining community solidarity and creation of credit for their activities. Through their own experiences, they discovered that there was too much attention given to women’s groups in their communities while donor funding was ignoring their men. They complained that this did not promote good family cohesion because their men were becoming disempowered and tending to revert to drinking out of frustration. On the other hand, they complained of their men not participating in family activities because of this frustration.

Through a series of dialogues conducted by themselves at their own bases with the facilitation of the Yiga Ng’okola Folk Institute, all the then 36 member groups went through a process of dialogues with their husbands on this issue. This self-enquiry took six months and produced very interesting results of gender relations. The dialogue produced very interesting exchanges between them such as the women complaining that their husbands did not help them in the home and the husbands retorting that the women made it difficult for them to help giving examples such if they went to the kitchen the women would feel possessive of the space or if a man carried water on his head from the village well, it would other women laughing at them. Many of the mean admitted that they had to drink so they could interact with their fellow men, and the women were also spending too much time in their groups where they were being given money by foreigners (meaning donors.)

However, both women and men agreed in almost all the groups that there had to be change of attitude in both directions. In one group in Bugiri district, which had 24 women members, the group managed to bring together the same number of men-mainly their husbands or the husband’s brothers. At this particular group, both groups agreed on division of labour according to the current needs of the family such as who would be responsible for the children during certain times, who would buy certain requirements in the kitchen, bed-room and sitting room. In one group where no man turned up, the women nevertheless discussed the issues among themselves and strategised how they could get their men to cooperate. What was further interesting was that at the following General Assembly they reviewed and carried out some kind of self-evaluation after one year.

All the groups reported that they men had changed their attitudes about the rights of women in the home, even the group where their husbands had refused to come. Asked how they could change their attitudes when they did not engage in dialogue with them, the group chairperson reported that there had been some boys listening through the windows when they discussed and that they had reported to their fathers and the fathers had taken the debate at their drinking places! The group that had intense debate about men helping them fetching water reported that the women had after the men had left engaged in ‘internal self-criticism’ about attitudes to mean carrying water and that many husbands were now using their boda boda bicycles to fetch water for the family.

This experience demonstrated that the strategy of dialogue when applied to community problems of different kinds could result in positive results in changes of behaviour and attitudes. This was without any external pressure and lectures being given about “human rights” or “gender equality” in the villages. True such “seminars” and “workshops” were held by the government
and nationally-based NGOs. True, these had resulted in “empowering” women. But the critical phase was the level where the women themselves became concerned not so much about their “rights” as women but, more importantly, their concern about their men being marginalised and being left out of the donor funding. They felt a burden, which they felt could only be relieved if they men joined them. This was achieved by dialogues, which were generated by their own experiences to maintain family cohesion by bringing their men into their organisations. Soon the numbers of men attending the General Assembly of what was predominantly a women’s organisation was vibrating with men, again threatening to disturb the balance. Through their own cultural experience they were able to transform the relations in their families.

This experience seemed to prove that the issue of human rights demanded as development concern by donors and the States as well as international human rights activists has to be handled carefully in the communities. It demonstrated that rural communities tend to take into account other norms and values based on their cultures. In this case, the issue of human rights and the concern for gender equality, which the donor community had pushed with “boiler plate concern” as the need for “Women and Development-WAD” and “Women in Development-WID” had produced a counter-reaction amongst the women on whom the donors had concentrated in their funding in a rather one sided manner.

The women came to the conclusion out of their own experiences that this was splitting the family and making their men resort to drinking and thus increasingly becoming more alienated from the family. The norm they seemed to place in the forefront at this stage was the overriding importance of keeping the family together by bringing back men in the family fold and maintaining complementarity in gender roles. In this case, the women embraced some of the values of the human rights discourse, while at the same time maintaining their traditional values of family cohesion through complementary roles with their men. They did not accept the western values and norms based on feminist confrontation with their men. They placed premium on the solidarity and solidarity of the family than their individual rights as women. Can this not be a model for developing an integrative approach to norms and values of different cultures into international norms based on consensus through dialogue?