HUMAN RIGHTS QUARTERLY

Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African State

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> We must go back to listening. More thought and effort must be given to enriching the human rights discourse by explicit reference to other non-Western religions and cultural traditions. By tracing the linkages between constitutional values on the one hand and the concepts, ideas, and institutions which are central to [various] traditions, the base of support for fundamental rights can be expanded and the claim to universality vindicated.
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> Mary Robinson, UN High Commissioner for Human Rights,
> *Human Rights at the Dawn of the 21st Century*[1]

I. INTRODUCTION

The polarized debate over the universality or cultural relativity of human rights seems to have given way in recent years to a broad consensus that there is indeed a set of core human rights to which all humanity aspires. The discourse has gradually moved away from whether contemporary human rights are truly universal and therefore cross-culturally applicable to whether they are, as cultural relativists argue, merely the product of Western

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1. Mary Robinson, *Human Rights at the Dawn of the 21st Century*, 15 HUM. RTS. Q. 629, 632 (1993).

individualism.[2] One reality that has strengthened the need for the universalization of human rights is the trend toward rapid globalization in almost every sphere of human endeavor. The spread of the Western model of the state to Africa and other parts of the developing world has given rise to the need for constitutional and other legal guarantees of human rights. Thus, the modern concept of human rights, admittedly a product of the West, is increasingly becoming equally relevant in other parts of the world.

The universalization of human rights, however, has not precluded attempts to temper the modern content of "universal" rights with the specific cultural experiences of various societies. In the case of Africa, this desire has led to calls for a regime of human rights founded on the basic universal human rights standards but also enriched by the African cultural experience. The challenge, therefore, is how to achieve this balance of values: how to uphold national human rights standards while resolving the apparent conflict between them and the dominant cultural traditions of the constituent communities within the state.

This article examines this dilemma that confronts many African states and explores ways in which culture, through adaptation and modification, can serve to complement rather than constrain specific national human rights aspirations. It is not enough to identify the cultural barriers and limitations to modern domestic and international human rights standards. It is even more important to understand the social basis of these cultural traditions and how they may be adapted to or integrated with national legislation to promote human rights. This article argues that such adaptation and integration must be done in a way that does not compromise the cultural integrity of peoples. In this way, the legal and policy provisions of national human rights can derive their legitimacy not only from state authority but also from the force of cultural traditions.

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2. A growing number of scholars who otherwise may be classified as cultural relativists also embrace the arguments for a core of cross-culturally applicable universal human rights principles. *See, e.g.,* Alison D. Renteln, *The Unanswered Challenge of Relativism and the Consequences for Human Rights*, 7 Hum. Rts. Q. 514–40 (1985); James W. Nickel, *Cultural Diversity and Human Rights, in* International Human Rights: Contemporary Issues 43 (Jack L. Nelson & Vera M. Green eds., 1980); Abdullahi Ahmed An-Na'im, *Toward a Cross-Cultural Approach to Defining International Standards of Human Rights, in* Human Rights in Cross-Cultural Perspectives: A Quest for Consensus (Abdullahi Ahmed An-Na'im ed., 1992); Makau Wa Mutua, *The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties*, 35 Va. J. Int'l L. 339 (1995).

II. CULTURAL LEGITIMACY AND THE HUMAN RIGHTS DISCOURSE IN AFRICA

In his evaluation of the dominant trends in African human rights discourse, Akwasi Aidoo decries the fact that "[o]riginal research in the area of human rights in Africa is scanty."[3] He notes the seeming preoccupation of African scholars with human rights discourse at the formal public sphere (where human rights violations occur as a result of dramatic political events and conflicts). This preoccupation results in the relative neglect of the sphere of civil society where cultural traditions and customs impact negatively on specific rights. Aidoo emphasizes the need for urgent research on such themes as the "cultural foundations of human rights" among others, which in his view have not been sufficiently addressed by African scholars.[4]

The point that Akwasi Aidoo makes is not peculiar to human rights discourse in Africa. Indeed, apart from the broad theoretical debate over universalism and cultural relativism, the global human rights discourse has focused less on specific empirical studies on the role of culture in the development of human rights than on other themes. One reason for this trend may lie in the simple fact that human rights discourse at the non-formal level of social and cultural relations remains shrouded in a great deal of conceptual ambiguities. For one, the concepts of "culture" and "cultural legitimacy" have been caught in a considerable amount of confusion within the context of human rights discourse, because of the diversity of their uses. Against the background of rivaling theories of culture, the point has been made repeatedly that research into the cultural legitimacy of human rights requires the articulation of very precise conceptions of culture and legitimacy. While such attention to conceptual detail may be useful in putting the discourse in perspective, it also very easily becomes an unnecessary complication of what should otherwise be simple and straightforward discourse.

Tore Lindholm has suggested that when inquiring into the cultural legitimacy of human rights, we are best served by the "commonsensical approach." In his view, to inquire into the cultural legitimacy of human rights would be quite simply to "inquire into the kinds and degrees of support for human rights standards and for their implementation in "'culture(s)'—be it 'micro-cultures' of villages or tribes, or 'subcultures' of professions and social classes, or 'national cultures,' or 'regional cultures.'"[5]

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3. Akwasi Aidoo, *Africa: Democracy Without Human Rights?*, 15 HUM. RTS. Q. 703, 713 (1993).
4. *Id.*
5. TORE LINDHOLM, THE CROSS-CULTURAL LEGITIMACY OF HUMAN RIGHTS: PROSPECTS FOR RESEARCH 4 (1990).

There are two distinct possibilities to such an inquiry. First, the inquiry may study a particular culture and ask what difference that culture makes to its carriers regarding the promotion of human rights. Second, the inquiry may focus on the doctrinal components or manifestations of cultures in order to elicit their roles and potential, whether as resources or barriers, in the fulfillment of human rights. This latter task is an inquiry into the factual support and normative validity of national and universal human rights standards in Africa. Reflecting the object of this paper, each standard's validity is examined within the context of the dominant cultural traditions inherent in each society.

A related point on the discourse on culture and human rights in Africa needs to be made. Some studies from the viewpoint of cultural relativism present the ideal of a relatively decentralized, nonbureaucratic, traditional communitarian societies based on groupings of extended families. In some of these studies, references to traditional African societies tend to present cultural notions, institutions, and practices as static and unchanging. References to "traditional African culture" or a "traditional Asian culture" often convey the idea of a monolithic and unchanging pre-modern state of affairs to be contrasted with modern Western traditions.[6]

This assumption tends to ignore the fact that societies are constantly in the process of change wrought by a variety of cultural, social, and economic forces. It seems an elementary but necessary point to make that so-called traditional societies—whether in Asia, Africa, or in Europe—were not culturally static but were eclectic, dynamic, and subject to significant alteration over time. Traditional cultural beliefs are also neither monolithic nor unchanging. In fact they could—and were—changed in response to different internal and external pressures. Cultural change can result from individuals being exposed to and adopting new ideas. Individuals are actors who can influence their own fate, even if their range of choice is circumscribed by the prevalent social structure or culture. In doing so, those who choose to adopt new ideas, though influenced by their own interest, initiate a process of change which may influence dominant cultural

6. *See e.g.,* Okey Martin Ejidike, *Human Rights in the Cultural Traditions and Social Practices of the Igbo of Souther-Eastern Nigeria,* 43 J. Afr. L. 71 (1999); Kwasi Wiredu, *An Akan Perspective on Human Rights, in* Human Rights in Africa: Cross-Cultural Perspectives 243 (Abdullahi Ahmed An-Na'im & Francis M. Deng eds., 1990); Francis M. Deng, *A Cultural Approach to Human Rights Among the Dinka, in* Human Rights in Africa: Cross-Cultural Perspectives, *supra,* at 261; El-Olaid Ahmed El-Obaid & Kwadwo Appiagyei-Atua, *Human Rights in Africa: A New Perspective on Linking the Past to the Present,* 41 McGill L. J. 819 (1996). Although Okey Martin Ejidike acknowledges in his essay that cultures and societies are dynamic and ever changing, the discussion of Igbo traditions that follows hardly explores this perspective. Little effort is made to actually demonstrate the flexibility of African social structures and the conflicts and contestations that have characterized their development.

traditions. Culture is thus inherently responsive to conflict between individuals and social groups.[7] It is a network of perspectives in which different groups hold different values and world views, and in which some groups have more power to present their versions as the true culture.

The significance of this is that we proceed from the assumption that certain cultural traditions inherently appearing in conflict with national and universal human rights standards may in fact have the potential of being influenced through a process of change and adaptation to meet new human rights standards. We also proceed from the assumption that because culture is not monolithic, perceptions of cultural validity and legitimacy may differ significantly among different groups within a given society.

III. THE QUEST FOR CONGRUENCE BETWEEN CULTURE AND NATIONAL HUMAN RIGHTS STANDARDS

The quest for congruence or a common meeting point between cultural traditions and modern national and international legal standards is a theme of growing interest. In his discourse on the quest for congruence between culture and the legal systems in recently liberated societies, C.G. Weeramantry draws attention to the fact that, upon the attainment of independence, newly emerged nations often need to take a considered decision whether, and to what extent, they would wish to preserve their traditional values and cultural systems. The opportunity to make that decision has been presented to more than one hundred nations released from the bondage of colonialism since the beginning of this century. All have been faced with the challenge of maintaining cultural values while forging new institutions of nationhood. Their decisions are often translated into legal terms, whether constitutional or otherwise. In any event, it becomes part of the ongoing national discussion on the questions of cultural values and nation building.

The extent to which new nations may compromise universal social and legal standards in the quest to uphold certain cultural traditions is inherent in this discussion. Some of the dominant arguments have been for more cultural consideration in the institutional choices of new nations. In his inaugural address at the Ninth World Congress on Contemporary Conceptions of Law in 1979, Gray Dorsey observed that:

> Peoples that have recently regained political independence have a special opportunity with respect to organizing and maintaining societies and legal systems. It would be a tragedy if they should choose a philosophy of society and

7. *See* RHODA HOWARD, HUMAN RIGHTS IN COMMONWEALTH AFRICA 19 (1986).

> law because of a claim of universal validity, or in order to avoid being called backward or underdeveloped.[8]

There is indeed a basis for the apprehension that Dorsey expresses. Many of the problems that postcolonial states face might have been partially avoided if due attention had been paid to this problem. With specific regard to human rights, however, there are some limitations to the arguments for absolute cultural relativism against universality. In recent years, the heavily polarized debate over the universality or cultural relativity of human rights has given way to a broad consensus that there are indeed a set of core universal human rights values to which humanity aspires. As Weeramantry puts it:

> Today, internationalism is a potent reconciler. While countries would like to retain as large a part as possible of the traditional, the fact that we are one world community makes this difficult when those traditions are inconsistent with prevailing international concepts and attitudes.[9]

It is clear, however, that the legitimacy and acceptability of the modern universal human rights regime needs to be complemented and strengthened with the specific cultural experience of various societies. In the case of Africa, this has been interpreted to mean that the content of human rights, though founded on universal principles, has to bear what Makau Wa Mutua describes as the "African cultural fingerprint" that emphasizes group, duties, social cohesion and communal solidarity as opposed to rigid individualism.[10] This is a reflection of growing calls for non-Western societies to develop national human rights regimes founded on basic universal human rights standards but also enriched by African, Asian, or other cultural experiences. The larger question in the case of Africa is how this marriage of universal rights (as expressed in national constitutions) and culture can be achieved.

IV. THE CONSTITUTIONAL AND LEGAL BASIS OF HUMAN RIGHTS IN AFRICA

One goal of the national constitutions and applicable human rights laws in many African countries has been the establishment of a regime of minimal universal human rights standards founded on the diverse cultural and religious orientations of the people. Questions remain, however, as to how best to strike the delicate balance between the individual human rights

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8. *Archiv für Rechts-und Sozialphilosophie* (ARSP) *Supplement* 3, 20, *quoted in* C.G. Weeramantry, Justice Without Frontiers: Furthering Human Rights 36 (1997).
9. C.G. Weeramantry, *supra* note 8, at 45.
10. Mutua, *supra* note 2.

standards guaranteed by the state and the collective cultural rights claimed by groups. Implicit in this is the tension and, sometimes, contradictions between the national human rights standards of state law and policies on one hand and the objective sociocultural orientations of peoples on the other. One instance of this is the tension and conflict between the constitutional guarantees of gender equality in national constitutions and the traditional status of women in many African cultures. Another is the conflict between the constitutional guarantees of children's rights and pervasive cultural attitudes which encourage early marriages, forced marriages, and child labour. Yet, a complementarity, if not an absolute congruence, of state laws and cultural norms is required if national human rights regimes are to gain grassroots acceptance.

There is an assumption that insofar as national human rights standards enshrined in national constitutions reflect the collective national conscience, they present a higher order of human aspirations with a more effective mechanism for promotion and enforcement. They also provide a higher set of standards by which the various cultural traditions can be judged. For this reason it is understandable that national human rights laws take precedence over customary or cultural practices, at least in theory. The principle of the supremacy of national constitutions ensures that in legal interpretation national human rights guarantees take precedence over any other laws or customary rules. This position is made clear in the South African Constitution, which provides expressly that "no law, whether as a rule of common law, customary law or legislation, shall limit any right entrenched in [the Constitution]."[11] Similar provisions of constitutional supremacy exist in other African constitutions.[12]

The reality, however, is not quite as simple. According to T.W. Bennett, sometimes the constitution gives no indication whether fundamental rights supercede customary law or vice versa. He notes, for instance, that the Constitutions of Zimbabwe, Swaziland, and Botswana provide that the application of African customary law is not subject to the prohibition on discrimination contained in the constitution.[13] Thus, ambiguities remain over how to uphold national human rights standards in practice against the

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11. S. Afr. Const. ch. 2, § 36.
12. *See, e.g.*, "Supremacy of the Constitution," Nig. Const. ch. 1, pt. I; Uganda Const. ch. 1, § 2. The latter states: "This constitution is the supreme law of Uganda . . . [i]f any other law or custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void."
13. *See* Zimb. Const. ch. 3, art. 23, cl. 3(b).; Zambia Const. pt. III, art. 23, cl. 4(d); Swaz. Const. ch. 2, art. 15, cl. 4(b); Bots. Const. *See also* T. W. Bennett, Human Rights and African Customary Law Under the South African Constitution 28 (1995).

background of the prevalence and dominance of customary practices which conflict with these standards.

National human rights provisions have not had full effect on African society because cultural practices persist that have great limitations on constitutional human rights guarantees. Constitutional and legal forms for recognizing and protecting human rights manifest shortcomings that result from the continuing conflicts with "traditional" cultural definitions and practices. One possible explanation for this may be that the development of national human rights regimes in Africa have not often been grounded on cultural traditions. Therefore, we must seek further explanations in the continent's history.

To understand the social and political dynamics of the human rights experience in Africa, it is necessary to begin in the colonial setting. It is within the colonial setting that the contemporary idea of legal rights as entitlement, which individuals hold in relation to the state, first emerged. In his study of human rights in Africa, Claude Welch argues that a number of political constraints on the exercise of human rights, which currently manifest in African states, can be attributed directly to the imposition of external rule. He identifies three main features of colonial rule that tended to hinder human rights. First, the basic shapes of the states themselves were the consequence of European administrative convenience or imperial competition. Colonialism created states in which the promotion of self-government was, at most, a minor priority for the ruling powers until the last years of the colonial interlude. Little opportunity existed even after independence for redrawing the boundaries, helping to set the stage for political conflicts and later attempts at secession. Second, an authoritarian framework for local administration was installed, reducing most indigenous rulers to relatively minor cogs in the administrative machinery and leaving until the terminal days of colonialism the creation of a veneer of democratization. Third, European law codes were introduced and widely applied, notably in the urban areas, while traditional legal precepts were incompletely codified, relegated to an inferior position in civil law, and applied particularly in the rural areas.[14]

Legal recognition and protection of rights in the colonial states of Africa was belated and inadequate, with constitutions hastily created at independence being in many cases the first significant expression of them. Specific provisions dealing with human rights tended more or less to be an importation of Western European models with scant attention paid to the need to focus on local initiative and input. In many African states, initial

14. *See* Claude E. Welch, Jr., *Human Rights as a Problem in Contemporary Africa, in* HUMAN RIGHTS AND DEVELOPMENT IN AFRICA 11, 13 (Claude Welch & Ronald Meltzer eds., 1984).

constitutional provisions were drawn overwhelmingly from patterns familiar to the departing colonial power, hence reflecting assumptions far more common in the metropole than in particular African societies. Being externally imposed, some of these constitutions lacked popular support and legitimacy.

Based on all these factors, some writers have suggested that the roots of the dismal human rights records of contemporary African states, particularly at the formal public level, should be sought partly in their colonial experiences. Critics argue that the imposition of colonial rule and the authoritarianism that characterized it, abridged the recognition and protection of human rights in traditional African societies.[15] On the other hand, some have also suggested that the European colonial powers introduced new and more appropriate human rights norms, which suited the transition from the old feudal order to modern multi-ethnic nation states.[16] While these contentions remain subject to debate, it is helpful to note that the framework of law and rights brought by colonialism reflected Western liberal assumptions that often conflicted with traditional cultural orientations, such as those about the responsibilities of chiefs and the nature of judicial settlement. In many cases, these conflicts between colonial standards and local expectations were further amplified by the sheer diversity of the cultural orientations of the constituent ethnic nationalities being lumped together under single administrative units.

Since independence, many African countries have attempted to reverse these trends. Old colonial-engineered constitutions have been revised and, in some cases, entirely new ones drawn up to meet new national realities. Particular attention has been given to human rights. The human rights provisions in these constitutions are often a reflection of the Universal Declaration of Human Rights, the African Charter on Human and Peoples'

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15. *See, e.g.*, Latif O. Adegbite, *African Attitudes to the International Protection of Human Rights, in* INTERNATIONAL PROTECTION OF HUMAN RIGHTS 69 (Asbjørn Eide & August Schou eds., 1968); Dunstan M. Wai, *Human Rights in Sub-Saharan Africa, in* HUMAN RIGHTS: CULTURAL AND IDEOLOGICAL PERSPECTIVES 115–44 (Adamantia Pollis & Peter Schwab eds., 1979).
16. Some writers have emphasized the role of the colonial state in inaugurating new notions and regimes of rights and civil liberties in African societies. These regimes were often more reflective of the libertarian legal traditions of the colonial powers than local traditions. B.O. Nwabueze, commenting on rights within the colonial legal system in Nigeria, argues that "civil liberties up to the time of internal self-government was no less ample [in the colony] than Britain itself." B.O. NWABUEZE, CONSTITUTIONAL HISTORY OF NIGERIA 117 (1982). This position has, however, been disputed by other writers who argue that in practice, rights and civil liberties in colonial Nigeria fell dismally short of English common law provisions, which in principle were to be extended to colony. *See* Bonny Ibhawoh, Stronger than the Maxim Gun: Law, Human Rights and the promotion of British Colonial Hegemony in Nigeria, Presentation at Proceedings of the Stanford-Berkeley Symposium on Law and Colonialism in Africa (May 7–8, 1999).

Rights (The Banjul Charter), and other international human rights covenants.[17] In some cases, as in Burundi, the constitution goes as far as to declare that "the rights and duties proclaimed and guaranteed by the Universal Declaration of Human Rights, the International Pacts relative to human rights and the Banjul Charter shall be an integral part of the Constitution."[18]

However, the broadening of the scope of constitutional human rights guarantees has not adequately addressed the continuing tensions and conflict between these guarantees and prevalent customary practices that are inconsistent with them. On the one hand we have national human rights ideals beautifully articulated in national constitutions—sometimes in exactly the same words as the UDHR and other international human rights instruments. On the other hand we are confronted with cultural practices and notions of rights that reflect local world views (or at least those of the dominant groups within the society), which in turn conflict with national human rights standards.

V. NATIONAL CONSTITUTIONS VERSUS CULTURAL TRADITIONS

In addressing the apparent tension between cultural traditions and state human rights aspirations, one approach adopted by many African countries' constitutions has been to make express provisions guaranteeing collective cultural and family rights alongside basic individual rights. The Banjul Charter exemplifies this trend. Apart from its provisions for individual duties, one of the unique features of this Charter is its articulation of the right of peoples to their cultural development. The Charter proclaims that individuals have a duty to preserve and strengthen African cultural values in their relations with other members of the society.[19] Similar provisions exist in several African countries' constitutions. The Ethiopian Constitution

17. *See* Universal Declaration of Human Rights, *adopted* 10 Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess. (Resolutions, pt. 1), U.N. Doc. A/810 (1948), *reprinted in* 43 Am. J. Int'l L. 127 (Supp. 1949) (hereinafter UDHR); African Charter on Human and Peoples' Rights, *adopted* 27 June 1981, O.A.U. Doc. CAB/LEG/67/3 Rev. 5 (*entered into force* 21 Oct. 1986), *reprinted in* 21 I.L.M. 58 (1982).
18. Burundi const., art. 10.
19. *See* African Charter on Human and Peoples' Rights, *supra* note 17, art. 29(7). Ironically, this provision has become the basis of some of the strongest criticisms of the African Charter. It has been argued, for instance, that "[t]he African Charter [i]s characterized by a dualism of norms regarding women's rights, a contradiction between modernism and traditionalism as well as between universalism and regionalism" and that "[t]he African Charter ha[s] placed the rights of women in a 'legal coma.'" *See* Claude E. Welch, Jr., *Human Rights and African Women: A Comparison of Protection Under Two Major Treaties,* 15 Hum. Rts. Q. 549, 555 (1993) (quoting Khadija Elmadmad).

declares that the state has a responsibility to preserve the nation's cultural legacies and to support "cultures and traditions that are compatible with . . . democratic norms."[20] In Ghana and Uganda, the Constitutions guarantee that every person is entitled to enjoy, practice, profess, maintain, and promote any culture *subject to the provisions of the Constitution.*[21] In some cases, as in Ghana and Nigeria, the Constitutions further spell out the cultural objectives of the state under the ambiguous heading of "Directive Principles of State Policy."[22]

Besides guaranteeing cultural rights and duties, a related feature of many African constitutions is that they also seek to expressly prohibit cultural practices that conflict with national or applicable international human rights standards. The Ghanian Constitution makes a proviso, under the same section that guarantees the right of individuals to profess and promote their culture, that "all customary practices which dehumanise or are injurious to the physical and mental well-being of a person are prohibited."[23] This is a reflection of the ways in which some African nations have attempted to grapple with the challenge of how to find a balance between protecting collective cultural rights while still upholding national human rights standards. However, the articulation of cultural rights in national constitutions and the prohibition of some customary practices that conflict with national human rights standards has had only limited effect in actually resolving the inherent conflicts between national human rights aspirations and some dominant cultural traditions.

The conflict continues in the incidents of forced marriages and child marriages, despite national legislation that guarantee children's rights and the right to freedom of association. It manifests in the dominant cultural notions of gender roles. In particular, it appears in the different forms of cultural prejudices against women, in spite of national constitutional guarantees of gender equality and state ratifications of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the UN Declaration on Minorities.[24] Those often at the center of this

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20. ETH. CONST. arts. 41(9), 91(1).
21. *See* GHANA CONST. ch. 5, § 26(1); UGANDA CONST. ch. 4, § 37.
22. The "Directive Principles of State Policy" are not rights. They cannot be enforced in a court of law and the state is under no legal obligation to follow them. There are merely intended to direct government policies. As the Nigerian constitution itself clearly stipulates, "the obligation of the state to conform to, observe and apply the fundamental objectives and directive principles of state policy is not amenable to judicial inquiry or enforcement." *See* NIG. CONST. ch. 1, pt. II, § 6. cl. 6(c).
23. GHANA CONST. ch. 5 § 26, cl. 2.
24. Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* 18 Dec. 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/46 (1980) (*entered into force* 3 Sept. 1981), *reprinted in* 19 I.L.M. 33 (1980) (hereinafter CEDAW); Declaration on the Rights of Persons Belonging to National or

conflict are women and children, the most vulnerable groups in any society. Indeed, as the African preparatory meeting for the Beijing Women's Conference concluded in its report on the conditions of women's rights, "constitutional rights [in Africa] are abrogated by customary and/or religious laws and practices."[25] Perhaps the most prominent manifestation of this is the practice of female genital mutilation (FGM) or "female circumcision,"[26] which remains quite prevalent in many new African nations despite extensive national and international legislation against the practice.

VI. DIFFERING PARADIGMS: WHOSE CULTURAL LEGITIMACY?

Social anthropologists have long identified the ambivalence of cultural norms and their susceptibility to different interpretation as one of the defining features of culture.[27] Typically, dominant groups or classes within a society seek to maintain perceptions and interpretations of cultural values and norms that are supportive of their own interests, proclaiming them to be the only valid view of that culture. Such powerful groups and individuals tend to monopolize the interpretation of cultural norms and manipulate them to their advantage. In contrast, dominated groups or classes may hold, or at least be open to, different perceptions and interpretations that are helpful to their struggle for control for justice and improvements for

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Ethnic, Religious and Linguistic Minorities, *adopted* 18 Dec. 1992, G.A. Res. 47/135, U.N. GAOR, 47th Sess., Agenda Item 97(b), U.N. Doc. A/47/678/Add.2, *reprinted in* 32 I.L.M. 911 (1993).

25. U.N. Draft African Platform for Action, Fifth African Regional Conference on Women, Dakar Senegal, 16–23 Nov. 1994, Doc. E/ECA/ACW.V/EXP/WP.6/Rev.4, (1994).

26. "Female Genital Mutilation" is described as such in most human rights discourse generally. However, there exists an active group of scholars, mostly from developing countries, opposed to this description. They argue that the term "Female Genital Mutilation" implies a value judgment and biases the discussion in favor of those opposed to the practice of traditional forms of "genital surgery." They argue that the term "female circumcision" is more appropriate because the intention of its practitioners is often not to mutilate but to circumcise. Parents do not set out to mutilate their daughters; they simply want to circumcise them. *See, e.g.,* Adeline Apena, *Female Circumcision in Africa and the Problem of Cross-Cultural Perspectives,* Afr. Update (1996); Scilla McLean et al., *Female Circumcision, Excision, and Infibulation: The Facts and Proposals for Change* (Minority Rights Group eds., 1980). In deference to these arguments, I have taken the liberty of employing both terms interchangeably in this discourse.

27. In his conflict theory of culture, Ralf Dahrendorf posits the existence of more than one consensus or value system in a culture. According to his view, dissent, conflict, and change are as much a part of the essence of culture as are integration and consensus; either set of characteristics becomes dominant or more evident under certain historical conditions. Ralf Dahrendorf, Class and Class Conflict in Industrial Society 1 (1959); Joyce Aschenbrenner, *Human Rights and Culture Change, in* Human Rights: Theory and Measurement 60 (David Louis Cingranelli ed., 1988).

themselves. This type of internal struggle for control over cultural sources and symbols can be said to underline the contemporary discourse on the cultural legitimacy of human rights in Africa.

The process of lawmaking in most African states has been characterized by varied and contrasting positions on how best to uphold minimum universally accepted human rights standards while at the same time taking into consideration the cultural orientations of local peoples. In other words, this process concerns what appropriate steps should be taken in the effort to ground new national and applicable universal human rights standards on the cultural traditions of local peoples without adversely compromising either. Two contrasting perspectives to this process can be identified and each demands some elaboration.

1) On one hand, there are the male-dominated, urban-based elites whose perception of "cultural legitimacy" focuses on the idealized African traditions of collectivism, definitive gender roles, and conservative male dominance and interpretation of moral values. While they may be well disposed to the institution of the core humanistic ideals of the universal human rights regime within the state, these groups argue for the retention of more cultural initiative on issues of private social relations such as those concerning religion, the family, and morality. I will call this the "conservative paradigm" of cultural legitimacy.

2) On the other hand, there are emerging and increasing vocal groups, represented mainly by women groups and nongovernmental organizations (NGOs) working for women and minority rights, who argue the implicit individualism of human rights and whose ideas of cultural legitimacy exclude the perpetuation of culture-based gender inequalities and focus rather on themes such as traditional methods of conflict resolution, the centrality of the family, and the reciprocal relationship between rights and duties. While they subscribe to the view that universal rights be given some form of cultural interpretation, they use the global human rights debate in criticizing present cultural practices which infringe human rights. This, I will call the "dynamic paradigm" of cultural legitimacy.

The discourse on the cultural legitimacy of human rights in Africa has tended to focus more on the conservative paradigm of cultural legitimacy, involving debates among the dominant male elites in African states over how to ground constitutional rights on prevailing cultural traditions. Until very recently, little had been heard from advocates of the dynamic paradigm. The reasons for this are not far-fetched. For one, human rights discourse in Africa has generally focused more on human rights violations at

the male-dominated formal public sphere than at the informal private sphere.[28] Secondly, marginalized and submerged groups such as rural women and minority groups lack the means, organization, and power to articulate their positions in national human rights discourse. One example of the dominance of the discourse on the cultural legitimacy of human rights at the level of the conservative paradigm comes from the constitutional debates in Nigeria in 1979.

As part of the process of drafting a new constitution to replace the old independence constitution in 1978, the fifty "wise men"[29] who made up the Constitutional Drafting Committee (hereinafter CDC) were confronted with the problem of what to do with section 28 of the old Nigerian Constitution which dealt with the rights (or absence of them) of so-called "illegitimate children." By exempting from its human rights guarantees against discrimination "any customary practice in force," section 28 of the old Constitution exempted from the prohibition against discrimination in the bill of rights any law imposing disability or restriction on any person "having regard to the *special circumstances* pertaining to the persons to whom it is applied."[30] This provision effectively meant (and was interpreted by the courts to mean) a Constitutional approval of pervasive cultural traditions across the country that discriminated against children born out of wedlock, particularly with regards to inheritance rights. This was clearly in conflict with the universal principle that "all human beings are born free and equal in dignity and rights."[31]

After heated deliberations, the CDC succeeded in changing this legal position. In its report, it recommended omitting the old Constitutional proviso that allowed for discrimination under certain circumstances of birth from the new bill of rights. To avoid any ambiguities, the new Constitution expressly provided that "No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth."[32] What is interesting, however, is the effort it took the CDC to make this seemingly simple and long overdue Constitutional amendment. Explaining the rationale for its decision, the Committee stated:

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28. Since becoming independent, African leaders have demanded human rights that tend to emphasize and protect national rights rather individual rights. Rights, such as the right to self determination, were instrumental in the days of the nationalist struggle for independence. With time however, such collective rights have hardly been effective in terms of articulating individual rights within the context of the post-colonial state.
29. The Constitutional Drafting Committee comprised all men and the Nigerian press often referred to the committee as the "fifty wise men."
30. Nig. Const. §28, cl. 2(d).
31. UDHR, *supra* note 17, art. 1.
32. Nig. Const. ch. 4, §42, cl. 2.

> Our decision was based on the grounds that it is unjust to accord an inferior status to persons who were not in anyway responsible for the situation in which they found themselves. Some members were highly critical of this decision . . . They pointed out that under Islamic law, a *bastard* [sic] has no right to the estate of his deceased putative father. They argued that the present draft contains a provision which is *repugnant to morality and that nothing of the sort can be found in the laws or constitution of any other state*. The majority of members however did not agree that Section 35(3) is in anyway immoral and they were satisfied that it is in accordance with equity and natural justice.[33]

Twenty years later, discrimination against children on the basis of cultural and religious traditions persists across the country, a testimony to the fact that the objections made by some of the "wise men," hard as they are to justify, were not misplaced.[34] For them, the cultural legitimacy of constitutional rights clearly means the perpetuation of traditional conservative notions of morality even if, as in this case, it compromises individual rights.

This kind of conservative and male-dominated paradigm of cultural legitimacy is also evident in the position of some African states in relation to the CEDAW, which has the dishonor of being the convention with the greatest number of reservations by state signatories. In the African context, the reservations are intimately linked with compromises and accommodation made by the states regarding cultural traditions on the one hand and women's sexual rights on the other. Article 5 of the Convention provides that state parties shall take all appropriate measures to "modify the social and cultural patterns of the conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."[35] As of 1992, only Angola, Zambia, and Zimbabwe had ratified the CEDAW, although since then more African countries have ratified the convention.[36] However, some of them have submitted reservations to the convention and rejected some of its requirements. Malawi, for example, rejected some provisions with the explanation that:

> Owing to the deep-rooted nature of some traditional customs and practices of Malawians, the Government of the Republic of Malawi shall not, for the time

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33. 1 Nigerian Federal Ministry of Information, Report of the Constitution Drafting Committee xvii (1976) (emphasis added).
34. The conflict between cultural traditions and the provisions of successive Nigerian Constitutions is the subject of a new study. *See* Bonny Ibhawoh, Between Culture and Constitution: The Cultural Legitimacy of Human Rights in Nigeria (1999).
35. CEDAW, *supra* note 24, art. 5.
36. *See* Rebecca J. Cook, *Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, 30 Va. J. Int'l L. 643–716 (1990).

being, consider itself bound by such of the provisions of the Convention as require immediate eradication of such traditional customs and practices.[37]

This conservative paradigm of cultural legitimacy stands in contrast to the more dynamic paradigm of cultural legitimacy, a situation that is itself a reflection of the fundamental conflict between the implicit individualism of human rights and the importance of collectivism and definitive gender roles in most African cultures. However, for the marginalized groups at the receiving end of culture-based inequalities (as are many African women), cultural legitimacy is conceived in a different sense. Women's groups in Africa, while campaigning against such cultural practices as female genital mutilation, degrading widowhood rites and discriminatory customary rules of inheritance, have emphasized the need for human rights work to focus more on traditional systems of support for women in the family. Additionally, they assert that human rights work should consider the reciprocal relationship between rights and social responsibilities and traditional methods of conflict resolution that emphasizes more of reconciliation than retribution.

Across Africa, many women's NGOs seem to have arisen primarily from this need to respond more effectively to the new demands caused by the breakdown or unresponsiveness of traditional structures. NGOs working for women's rights—whether in the form of church councils as in Swaziland, Kenya, and Namibia or as groups of women lawyers in Ghana, Uganda, and Nigeria—have focused on a dynamic, critical, and selective interpretation of cultural legitimacy. In Ghana, for example, the national federation of women lawyers (FIDA) has consistently argued that customary legislation and practices in areas such as inheritance and maintenance of children no longer safeguard women in present-day urbanized African societies. In its view, change is urgently needed in this culture-based legislation. Yet in its counseling and promotional activities FIDA-Ghana canvasses the employment of traditional methods of conflict resolution based on securing consensus.[38] In Swaziland, one of the dominant women's rights NGOs, the Council of Swaziland Churches (CSC), pushes for critical debate and uses the global human rights debate to criticize cultural practices which no longer safeguard women. However, the organization is always "careful to avoid bias against traditional systems."[39] For these groups, cultural legitimacy of human rights is conceived more in terms of providing traditional economic security and support for women and families rather than recognizing culture-based gender roles in national human rights legislation.

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37. Marianne Jensen & Karin Poulsen, Human Rights and Cultural Change: Women in Africa 6 (1993).
38. *See id.* 16–17.
39. *Id.*

Indeed, at the core of this apparent conflict between the paradigms of cultural legitimacy is the fact that the realities of present day African societies, particularly in the urban areas, are characterized by the destabilisation and breakdown (without effective alternatives) of traditional models of rights and support in the family. As Sakah Mahmud argues:

> The traditional family structure which forms the link between the individual and the community has lost such a bond in the wider structure of the modern [African] state. Therefore it is only self-serving for political leaders to continue to invoke the concept of African communal values as human rights. With changes in those circumstances, especially increasing population growth and urbanization, and size of the African state, much of the traditional African community no longer functions in the old ways.[40]

While traditional notions and institutions survive in appearance and prestige, and thus provide a basis for the continued calls for African states to ground human rights on them, they are largely emptied of their former economic and social content. The dilemma of the African state today is that the community and extended family are no longer able to play their social welfare roles, while the state is not yet able to replace them in doing this. Put differently, cultures are no longer able and constitutions are not yet able. Under such circumstances of change and need, groups and individuals are beginning to apply different interpretations and strategies of cultural legitimacy depending on their interests and relative power. Thus while cultural relativists and the male-dominated groups of African elites have sought to maintain cultural legitimacy by tempering the modern content of human rights (as enshrined in national constitutions with a broad range of cultural norms and values), other less-prominent groups have been more critical and selective.

VII. MAKING COMPROMISES: RECONCILING CULTURE AND CONSTITUTION

Dominant groups or classes within society will continue to maintain perceptions and interpretations of cultural values and norms that are supportive of their own interests, proclaiming them to be the only valid view of that culture. Dominated groups, on the other hand, may hold, or at least be more open to, different perceptions and interpretations that are helpful to their struggle to achieve justice for themselves. This is typical of the internal

40. Sakah Mahmud, *The State and Human Rights in Africa in the 1990s: Perspectives and Prospects*, 15 HUM. RTS. Q. 485, 491 (1993).

struggle for control over the cultural sources and symbols of power within any society.[41]

In spite of these realities, there is a real and urgent need to seek acceptable ways of ensuring the cultural legitimacy of national human rights regimes. In doing so, it is important to secure the agreement and cooperation of the proponents of cultural legitimacy's counter position in choosing and implementing national human rights standards. To harness the power of cultural legitimacy in support of national human rights standards, African states need to develop techniques for internal cultural discourse and cross-cultural dialogue. In addition, they must work toward establishing general conditions conducive to constructive discourse and dialogue. This approach assumes and relies on the existence of internal struggles for cultural power within society. Further, it encompasses the realization that certain dominant classes or groups would normally hold the cultural advantage and proclaim their view of culture as valid, while others will challenge this view, or at least desire to do so.[42]

Thus, it is important to create dialogue between weaker and stronger groups within the cultural community and society at large. Women and minority groups must be able to dialogue over interpretations of cultural values with politicians, officials, traditional leaders, and family heads in both the rural and urban areas. If respect for human rights is to be achieved and made sustainable, human rights must reside not only in law but in the living and practiced culture of the people. There is a need, therefore, for dialogue among groups with different paradigms of cultural legitimacy on what role culture should play in legitimizing national human rights regimes within African states. What is advocated is some form of "cross-paradigmatic" approach to the quest for national consensus on the ways to enhance cultural legitimacy. The object of such internal cross-paradigmatic dialogue would be to agree on a range of cultural support for national human rights, in spite of disagreements on the justification of those beliefs. While total agreement on cultural interpretation and application to human rights may not always be achieved, it is essential to keep the avenues for dialogue open.

In addressing the conflicts between national human rights standards and dominant cultural orientations, it is useful to bear in mind that national constitutional human rights provisions are not meant to regulate every aspect of human action within the society. They do not mandate specific social attitudes. Rather, they represent broad standards, ideally arrived at by consensus on which rights are considered fundamental within the state.

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41. *See* An-Na'im, *supra* note 2, at 20.
42. *See id.* at 37.

Thus, national human rights provisions should still give room for cultural expression. In some cases, cultural communities within the state should still retain some latitude over how to implement these rights. For example, the constitutional right to freedom from discrimination on the grounds of gender may be fundamental, but there remains a margin of cultural interpretation of what constitutes gender discrimination. The tradition in many African societies that stipulates that women may not hold certain traditional titles and offices or chieftaincy positions is no more an expression of gender discrimination than the rule among Catholic Christians which bars women from becoming priests.

The point here is that to be effective, national human rights guarantees must allow for some form of cultural expression and initiative. Indeed, the same analogy can be made between national human rights provisions and international agreements. International human rights agreements are not meant to resolve controversial clashes over rights within individual societies nor do they mandate specific policies. They are merely widespread agreements about what rights are fundamental and countries retain great latitude over how to put these rights into practice.

In the same way, rather than seeking to prescribe new rules for social relations within cultural communities, national human rights laws should aim at successfully promoting human rights within the prevailing cultural attitudes and institutions. The challenge is to seek ways in which culture through change, adaptation, and modification can be made to serve as a complement rather than a constraint to specific national human rights aspirations. In doing this, it is not enough to identify the cultural barriers and limitations to modern domestic and international human rights standards and to reject them wholesale. It is also not enough to attempt to uphold national human rights standards over these cultural traditions merely by legislative or executive fiats. It is more important to adopt a holistic and sensitive approach that seeks to understand the social basis of these cultural traditions and how cultural attitudes may be changed and adapted to complement human rights. Such change and integration must be done with local initiative and involvement in a way that does not compromise the cultural integrity of the people. Local people and cultural communities must feel a sense of ownership of the process of change and adaptation.

Unfortunately, such processes of cultural change through local initiatives have not been common. In many African nations, human rights have merely been decreed from above though constitutional and other legal provisions, while cultural orientations and attitudes have been expected to conform by legislative fiat with these new human rights standards. Culture evolves, however, rather than transforms and the process of evolution is painstakingly gradual and complex. Culture, being a reflection of collective social strength, acts as a framework by which self-interest is defined and

realized within each community. Therefore, the cultural legitimacy of rights cannot be deduced or assumed from the mere fact that existing formal documents officially recognize the claim as a human right.

VIII. "ALTERNATIVE CIRCUMCISION RITES": A MODEL FOR ACTION

Many African states have demonstrated a willingness to introduce legislation holding national human rights above customs and cultural traditions where conflicts arise. However, their experiences show that formal legislative enactments alone cannot change pervasive cultural attitudes. Moreover, formal legislation alone cannot resolve the conflict between cultural traditions and national human rights standards. In the case of FGM, legislation has proven effective only where it has been integrated into other aspects of a comprehensive eradication strategy.

In several African countries where FGM legislation exists, it is not enforced for fear of alienating certain power bases or exacerbating tensions between practicing and non-practicing communities. No African country that has banned FGM, including Senegal, Egypt, Ghana and Burkina Faso, dares enforce the law. In Guinea, FGM carries the death penalty but it has never been applied.[43] Early attempts to enforce legislation against FGM in Sudan caused such popular outcries that enforcement was subsequently abandoned. In Burkina Faso, which has incorporated a prohibition of FGM into its Draft Constitution and has prosecuted practitioners in connection with the deaths of young girls during female circumcision ceremonies, it has become clear that criminalizing practitioners and families has only succeeded in driving the practice underground and creating an obstacle to outreach and education.[44] These experiences and others elsewhere have shown that in order for legislation to be effective it must be accompanied by a broad and inclusive strategy for community-based education and awareness-raising. Conflicts between cultural traditions and national human rights standards as exemplified in the case of FGM need to be addressed from a holistic and coherent stand point, which locates the problem both within a public health and human rights framework. To be effective, such programs must necessarily involve local communities as changes in cultural attitudes

43. *Female Genital Mutilation—Is it Crime or Culture?*, ECONOMIST, 13 Feb. 1999, at 45.
44. *See* Heid Jones et al., *Female Genital Cutting Practices in Burkina Faso and Mali and Their Negative Health Outcomes*, 30 STUD. IN FAM. PLAN. 219 (1999). A study conducted for the World Health Organization estimates the prevalence of female genital mutilation in Burkina Faso at 70 percent—one of the highest in Africa. NAHID TOUBIA & SUSAN IZETT, FEMALE GENITAL MUTILATION: AN OVERVIEW (1998); *see also* OLAYINKA KOSO-THOMAS, THE CIRCUMCISION OF WOMEN: A STRATEGY FOR ERADICATION (1992); EFUA DORKENOO & SCILLA ELWORTHY, FEMALE GENITAL MUTILATION: PROPOSALS FOR CHANGE (1997).

and orientations can only be meaningful and sustainable if they come from within these local communities.

This approach to the problem of FGM would appear to have worked quite well in Kenya where some local communities have successfully introduced "alternative circumcision rites" to replace old traditions. Under the new procedure arrived at through communal dialogue and consensus, the people within these communities agreed to do away with the physical mutilation of the woman's body during the traditional female circumcision rites while retaining other harmless aspects of the circumcision rites.[45]

This new direction was the result of meetings among some Kenyan mothers seeking alternative ways to usher their daughters into womanhood without subjecting them to the ordeal and hazards of "facing the knife." The new rite of passage is known as *Ntanira na Mugambo*, or "circumcision through words." It uses a week-long program of counseling capped by community celebration and affirmation in place of the former practice. During the celebrations, which still include the traditional period of seclusion, the adolescent girls are taught the basic concepts of sexual and reproductive health and are counseled on gender issues and other customary norms. As a way of legitimizing the new procedure, the girls receive certificates certifying that they have undergone the traditional rites into womanhood.[46] These innovations have produced hopeful results where previous efforts have failed. In one of the communities where the alternative circumcision rites were introduced and where about 95 percent of the girls

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45. In 1998, the Sabiny Elders Association in Uganda was awarded the 1998 UN Population Award for its work in combating female circumcision among the Sabiny people in Eastern Uganda's Kapchorwa District. Established in 1992, the Association drew elders from throughout the district and represented 161 Sabiny clans. The elders' goal was to document local history and preserve the rich cultural heritage of Sabiny society while promoting changes in various cultural traditions that were inconsistent with modern ways of living. "'When I was a young man growing, still young, I used to support circumcision of girls very much," admitted Mr. William Cheborian, the Association Chairmen. 'When I grew up, became a teacher, I found out that circumcision was a wrong practice.'" *See* Elaine Eliah, *In Uganda, Elders Work with the UN to Safeguard Women's Health*, 36 UN CHRONICLE 31–33 (1999). Similar developments have occurred in Kenya and have been extensively reported in the local press. *See* Jemimah Mwakisha, *Alternatives to FGM that are Working*, DAILY NATION (Kenya), 14 Apr. 1991. A copy of this article may be procured at: http://library.northernlight.com/FD19990413530000116.html?cb=0&sc=0#doc.

46. The idea of "circumcision through words" as an alternative to the practice of FGM grew out of collaborations between rural families and the Kenyan national women's group, Maendeleo ya Wanawake (MYWO), which is committed to ending FGM in Kenya. It follows years of research and discussion with villagers by MYWO field workers with the close cooperation of some NGOs which have served as technical facilitators to the MYWO program. The important thing about this development in Kenya is that the initiative came from members of the community. *See* Malik Stan Reaves, *Alternative Rite to Female Circumcision Spreading in Kenya*, AFR. NEWS ONLINE, 19 Nov. 1997.

previously had to undergo circumcision, the rate of FGM is estimated to have gone down to 70 percent.[47]

A similar ritual by which the girl is declared a woman without being maimed is now carried out in parts of Uganda. The case of Uganda is particularly interesting because the new ritual was promoted not only by the women themselves but also by male elders in the clan who formed an Elders Association for the purpose of discussing changes to this and other cultural traditions.[48] This is an example of the "cross-paradigmatic" consensus of both the conservative and dynamic paradigms of cultural legitimacy being used to resolve the conflicts between cultural traditions and national human rights standards. Such cross-paradigmatic consensuses can be further explored in addressing other culture based human rights violations in traditional widowhood rites and mourning taboos, child betrothals, and forced marriages.

Although the alternative circumcision rites initiative in Kenya and Uganda still faces some opposition, it is an example of the process of community involvement in advocacy, information, education, legislation, and policy formulation. This community involvement offers the best prospects for a culturally sensitive solution to resolving the conflict between national human rights and cultural traditions. Such initiatives may not always offer concrete results or guarantees of success, but they represent a creative and promising approach to resolving real and serious human rights issues.

IX. CONCLUSION

The efforts at ensuring the cultural legitimacy of human rights in the African state must begin with a proper understanding of both the general nature of the tension between national human rights regimes and cultural traditions and the internal tensions between contending paradigms of cultural legitimacy. Every cultural tradition contains some norms and institutions that are supportive of some human rights, as well as norms and institutions that are antithetical or problematic in relation to other human rights. Because respect for human rights is fostered by reason as well as by experience, a constructive approach to promoting human rights is to seek ways of enhancing the supportive elements of culture while redressing the antithetical or problematic elements in ways that are consistent with the cultural

47. *See* Judith Achieng, *Ending the Nightmare Passage to Womanhood*, (published online Jan. 6 1998) (visited Apr. 5, 2000) <http://www.woza.co.za/africa/womano.htm>.
48. *See* Ceser Chelala, *New Rite Is Alternative to Female Circumcision*, S.F. CHRON., 16 Sept. 1998, at A23.

integrity of the tradition in question and the contending groups within it. It would be counterproductive to attempt to enhance the awareness of human rights within any culture in ways that are unlikely to be accepted as legitimate by that culture or significant groups within it.

Therefore, the promotion of national human rights standards against the background of the dominant cultural and social traditions in the state should be done with due respect to meritorious cultural values and traditions of local communities. The interplay between national human rights standards on one hand and local cultural orientations on the other should be a dynamic process of give and take, ideally through persuasion and dialogue, with legislation serving only to complement this process. Thus, what is advocated here is a two-way system of cross-fertilization in which cultural systems continually fertilize, and are fertilized by, national and universal social and legal standards. In this way, the gap between national human rights provisions and cultural orientations can be narrowed and constitutional rights can derive their legitimacy not only from state authority but also from the force of cultural traditions.