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Negotiating Culture: Building Support for Human Rights

Legitimizing human rights in local cultures and religious traditions is a matter of vital importance for the survival and future development of the human rights paradigm itself.¹

The United Nations Charter (1945) included respect for human rights among its key purposes:

The purposes of the United Nations are ... to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.²

A broad consensus developed during the early days of the United Nations that, in response to “barbarous acts which have outraged the conscience of mankind”,³ a further statement was needed enumerating the fundamental rights shared by all human beings without distinction. These rights were to be more than theoretical; the aim was to put an end to the brutality and suffering seen in the 1930s and 1940s.

The subsequent Universal Declaration of Human Rights (1948) outlined the human rights paradigm:

The Universal Declaration of Human Rights underlines the rights of all human beings to life, liberty and security of person (Article 3); to freedom from slavery or servitude (Article 4); to freedom from torture or cruel, inhumane or degrading treatment or punishment (Article 5); to recognition and equality before the law (Articles 6 and 7); to effective and fair redress before the law (Articles 8-12); to freedom of movement (Article 13) and freedom to seek asylum from persecution, except where the individual is being prosecuted for non-political crimes (Article 14); to a nationality and to change nationalities (Article 15); to marry and to have a family, with free and full consent of the spouses (Article 16); to own property individually (Article 17); to freedom of thought, conscience and religion,

◀ An elderly woman discusses her treatment with a health care provider. Human rights, including the right to health, are universal and indivisible across age, gender and culture.

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to change religion or belief and to practise religion (Article 18); to freedom of opinion, expression and dissemination of ideas without interference (Article 19); to assemble peacefully (Article 20); to participate in government (Article 21); to social security and economic, social and cultural rights which are indispensable for dignity (Article 22); to work in a chosen occupation without fear of discrimination and under equal conditions (Article 23); to rest and enjoy periodic holidays with pay (Article 24); to a standard of living adequate for health and well-being (Article 25); to education, which should be free in the foundational stages (Article 26); to participation in cultural life (Article 27) and to “a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized” (Article 28).⁴

The Declaration is a “common standard of achievement for all peoples and all nations”.⁵ It has both moral and legal force. Member States of the United Nations have also ratified a wide range of instruments on specific aspects of human rights that, once they have entered into force, are binding under international law. Certain norms, including the prohibition of crimes against humanity, genocide and war crimes, apply to all States, whether they are signatories or not.

Various human rights instruments have established international legal standards. These include the conventions on genocide (1948), slavery (1956), labour rights (1966), the rights of the child (Convention on the Rights of the Child [CRC] 1989), and elimination of discrimination on grounds of race (1965) and gender (the Convention on the Elimination of All Forms of Discrimination against Women [CEDAW] 1979). The Geneva Conventions (1949) and the Refugees Convention (1951) outline humanitarian principles applicable in situations of conflict.

These treaties and conventions elaborate on the core human rights principles of universality, indivisibility, interdependence, equality and non-discrimination. In addition, the International Covenant on Economic, Social and Cultural Rights (1966) and other major consensus documents from the World Conference on Human Rights (1993), the International Conference on

Population and Development (1994) and the Fourth World Conference on Women, Beijing (1995), elaborate clear human rights principles.

Ratification of human rights instruments by a sovereign State does not necessarily indicate full compliance; neither does it mean that all the State’s citizens are convinced that the agreed principles can be applied within their particular cultural contexts. Nevertheless, States agree to be bound by the human rights instruments they have ratified. An instrument comes into force once an agreed number of Member States have ratified it.

The Debate Over Human Rights

One of the lasting controversies surrounding the Universal Declaration of Human Rights concerns the extent to which the rights referred to are in fact universal. One line of argument asserts that the human rights framework cannot present a universal position, for a number of reasons. First, the original Declaration was ratified by the select group of principally European countries represented in the United Nations in 1948 – some of the very countries that proclaimed the universality of the Declaration were still maintaining colonies at that time. Second, these countries drafted the Declaration based on their own cultural assumptions, constitutional experiences and political struggles, e.g., to separate religion and state. According to this view, the human rights framework reflects “Western” cultures and values and pays little attention to other cultures’ assumptions and experiences. For example, the emphasis on individual rights to property reflects a concept of ownership which was far from universal before the colonial period. This view holds that the framework “downplays the importance of community ... [and] seeks to impose an individual model of rights that is at odds with non-Western ways of life”.⁶ Again, many developing countries have not had the political struggle over “church and state” that occurred in Europe and the United States, and there is sometimes considerable resistance to locating religion solely in the private realm.⁷

Such arguments have been heard in both developed and developing countries. In 1947, even before the Declaration could be adopted, the American Anthropological Association challenged its universality:

How can the proposed Declaration be applicable to all human beings and not be a statement of rights conceived only in terms of the values prevalent in the countries of Western Europe and America? ... Standards and values are relative to the culture from which they derive so that any attempt to formulate postulates that grow out of the beliefs and moral codes of one culture must to that extent detract from the applicability of any Declaration of Human Rights to mankind as a whole.⁸

Given these concerns, some opponents of the universalist position call for a multicultural approach to building and adapting the human rights framework, possibly including the processes required to adjudicate human rights. While the Declaration relies on formal legal State mechanisms, as in European models, some developing countries emphasize the efficiency and effectiveness of their customary norms and procedures, including religious ones. (Some legal scholars recognize the practicality of this approach, arguing that the costs of accessing the legal system are often prohibitive for ordinary men and women and that customary procedures appropriately aligned with human rights would provide more immediate access.) Others reject particular human rights provisions on cultural grounds. Some of the most acrimonious contestations over the universality of the human rights framework concern

Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world.

Yet they are the world of individual persons, the neighbourhood they live in, the school they attend, the factory, farm or office they work in. Such are the places where every man, woman or child seeks equal justice, equal opportunities, and equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere.

—Eleanor Roosevelt

conventions perceived as undermining cultural and religious norms on family and gender relations. Other reservations are based on political, legal or constitutional grounds.

The Evolving Nature of Human Rights

Analysts have described the ways in which the human rights framework has progressed over the last 60 years and the roles of cultures in promoting it. Membership in the United Nations has expanded to include as sovereign States nearly all former colonies. Since 1948, human rights have become less individualized. They have moved beyond protecting individuals within States and now include protections for the collective rights of groups, such as indigenous peoples, minorities and emerging nations. The framework now includes provisions for economic, social and cultural rights. Rights such as the right to reproductive health, and to be free from gender-based violence, have been elaborated. In 1993 – 45 years after the Universal Declaration of Human Rights was adopted, and 12 years after CEDAW entered into force – 171 nations at the World Conference on Human Rights in Vienna confirmed that women's rights were human rights. Also in 1993, the United Nations adopted the Declaration on the Elimination of Violence, which led to the inclusion of a section on gender-based violence at the 1994 International Conference on Population and Development (ICPD) held in Cairo, during which 179 governments acknowledged reproductive health as part of the overall right to health, and to the World Conference on Women at Beijing in 1995. The process demonstrates the ability of the international human rights framework to recognize cultural change as it is taking place:

Understanding culture as fixed, uniform and unchanging ignores the impacts of globalization in the present and historical transfers of cultural beliefs and practices in the past. Considering cultures as changing and interconnected, and rights as historically created and transnationally redefined by national and local actors, better describes the contemporary situation. It also describes the impossibility of drawing sharp distinctions between culture and rights or seeing relativism and universalism as diametrically opposed and incompatible situations.⁹

As the framework has evolved, the language and politics of human rights have opened space for cultural changes. People are using the language of rights to make their own claims. This is because the language of rights is the language of resistance to deprivation and oppression, which is common to all cultures. “Viewed from this perspective, human rights are both universal and particular: universal because the experience of resistance to oppression is shared among subjugated groups the world over, but also particular because resistance is shaped in response to the peculiarities of the relevant social context.”¹⁰ This reaffirms the importance of understanding rights within their contexts; in other words, the need for culturally sensitive approaches to promoting human rights.

Culturally sensitive approaches recognize that:

- People across cultures understand rights in different ways.
- People within cultures also have different perspectives on and experiences of rights.
- People within and across cultures advocate for rights in ways that suit their contexts.
- Human rights can be ingrained through “cultural legitimacy”.
- Facilitating cultural legitimacy requires cultural knowledge and engagement.

*How can one aspire to achieve progress and prosperity while women, who make up half the society, experience a long-standing neglect of their interests and the rights granted to them by our religion that put them on the same footing with men? These rights voice women's noble mission and grant them justice over the inequity and violence that may befall them, despite the fact that they have made equal achievements to men, in both education and employment.”*¹¹

Go to the people. Live with them. Learn from them. Love them. Start with what they know. Build with what they love. With the best leaders, when the work is done, the task accomplished, the people will say:

“We have done this ourselves!”¹²

Culture absolutely does not sit still. Any presumption of immutability – explicit or implicit – can be disastrously deceptive. To talk of, say, the Hindu culture, or for that matter the Indian culture, taken to be well-defined and historically unaltered, not only overlooks the great variations within each of these categories, but also ignores their evolution and their large variations over time.¹³

Building Cultural Legitimacy for Human Rights

Culturally sensitive approaches are action-oriented. They can provide effective tools for understanding the interrelationships between human rights and cultures, as well as for tackling oppression within cultures. Culturally sensitive approaches recognize that “people are more likely to observe normative propositions if they believe them to be sanctioned by their own cultural traditions” and that “observance of human rights standards [relies] on cultural legitimacy”.¹⁴ However, the processes for encouraging this cultural legitimacy require important safeguards:

- *The approach to engaging with culture must itself be guided by human rights principles of non-discrimination, equality and accountability.* Taken seriously, these principles can improve the prospect that people will be treated with respect and dignity. Human rights principles put a check on the rigid ethnocentricity that regard all “other” cultures as inferior and as having little or nothing to contribute to development thinking and processes. The danger of imposing particular interpretations of rights is that such interpretations undermine cultural ownership and can culminate in resistance and resentment: “Even though outsiders may sympathize with and wish to support the dominated and oppressed groups or classes, their claiming to know ... the valid view of the culture of that society will



▲ A strong civil society is important for promoting human rights. Young women in training as health aides with help from an NGO.

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not accomplish this effectively....”¹⁷ This does not mean that all cultural norms and practices should be accepted and tolerated. However, culturally sensitive approaches encourage “cross-cultural moral judgment and action” and also point to “the best ways of formu-

*In intercultural relations, morality and knowledge cannot be the exclusive product of some cultures but not of others.*¹⁵

lating judgment and of undertaking action”.¹⁸

- *The practical starting point to building the rights and freedoms necessary for human development is not to avoid the struggles over the meanings of rights, but to acknowledge them; that is, to find out where they are located and the perspectives and roles of different actors.* Culturally sensitive approaches must then locate their conversations within those contexts. UNFPA, United Nations Population Fund, has learned the importance of identifying and working with local actors committed to change in order to support locally owned initiatives for advancing human rights. The organization has developed partnerships with parliamentarians, media and civil society organizations (including those that address

human rights and women’s issues), influential faith- and inter-faith-based organizations, and local power structures such as community leaders. However, it also acknowledges the need for caution. It is keen to ensure that its partnerships do not obstruct cultural change nor prevent collective action among less organized and less powerful actors. In Benin, for example, UNFPA has been supporting Islamic institutions committed to improving women’s rights. In the Occupied Palestinian Territory, it has been working with the Department of Family Counselling and Reconciliation in Shari’a Courts in order to address gender inequalities, gender-based violence and reproductive health and rights. In Tajikistan, UNFPA works with the Islamic University of Tajikistan, the Government’s Religious Committee and the non-governmental organization Safe Motherhood on issues such as reproductive health and rights and gender equality. In Jamaica, UNFPA

*The world over, people generally think that they perceive reality and approach problem-solving in a way that is objective, accurate and value- or culture-free. In fact, the way in which we interpret evidence depends very much on our own individual cultural context.*¹⁶

In our work around the world, we have found that building alliances with and involving members of religious traditions can actually determine a programme's success or failure..."

works with the United Theological School of the West Indies to deal with issues including gender-based violence and HIV prevention and treatment. Regardless of location, UNFPA develops partnerships with institutions that have substantial influence within communities and are able to reach people and encourage change.²⁰

- *Culturally sensitive approaches should contribute to policies by taking local norms and practices seriously into account.* This means working with and building on norms and practices that are supportive of core goals such as human rights, and subjecting those that are not to scrutiny and debate. "The practice of human rights risks losing relevance and legitimacy if it does not concern itself with what goes on at the local level."²¹

For example, in addressing what appears to be cultural legitimization of gender inequalities, some analysts argue that women's human rights activists should abandon approaches that "simply call for an end to cultural practices that contravene human rights principles". The contention is that such "abolitionist" approaches fail to understand the real contexts for these cultural attitudes and assume that women have no possibilities, avenues or resources to realize their rights. These approaches start from the position that the only viable solutions are those proposed in formal national and international human rights legislations.

However, state and local institutions do influence cultural change; local institutions are sometimes the most accessible and affordable recourse for people who live in rural areas, and customary systems can recognize claims not cited in formal laws. While it is true that cultural institutions can present substantial obstacles – particularly where there is a lack of knowledge of options, where gender roles are firmly entrenched within families and where women's participation in decision-making is circumscribed – there are variations within cultures.

4 INDIA: ADDRESSING THE SEX-RATIO BALANCE

There are substantial family and social pressures to produce sons in India and there is widespread discrimination against girls. Some regions continue to practice female infanticide, but new technologies for sex selection may now be making the more substantial contribution to declining sex ratios.

In 1986, following intense advocacy from health and human rights activists, the Indian State of Maharashtra passed laws to ban the use of prenatal diagnostic techniques for sex selection. Later, campaigns at the national level resulted in the 1994 Prenatal Diagnostics Techniques (Regulation and Prevention of Misuse) Act. However, sex selection continued, so, in 2000, health activists went to the Supreme Court to demand enforcement of the legislation. Meanwhile, various United Nations organizations, including UNFPA, UNICEF and WHO, were working with international non-governmental organizations (NGOs) and India's Ministry of Health and Family Welfare to engage the media, build networks and provide training and support for local groups, including faith-based organizations, committed to ending sex selection. This comprehensive approach has begun to change perceptions and attitudes. While the practice has not been entirely eradicated, there has been notable progress. Changing harmful practices requires more than legal action; it depends on collaboration and integrated actions across a broad range of actors at national and local levels.

Source: Adapted from http://www.unfpa.org/culture/case_studies/india_study.htm. Accessed March 2008

- *Culturally sensitive approaches must not only explore and engage with local systems of meanings but also understand cultures at national and international levels and recognize the interrelationships among them.* An intimate understanding of the ongoing conversations among national, local and international actors and agencies can reveal both the paths and obstacles to action, as well as the appropriate methods and strategies for engagement. UNFPA, the United Nations Children's Fund (UNICEF) and the World Health Organization (WHO) found that this multi-pronged strategy was important for working with international, national and local human rights advocates in tackling sex selection in India (see Box 4).

- *Culturally sensitive approaches must be gendered.* Gender analysis is important for understanding how different categories of men and women, boys and girls experience rights.

A gendered approach to rights fundamentally shifts the way that rights are understood. It requires understanding rights not merely as legal entitlements but also as a political tool in social change strategies. Combining gender and rights provides a way to examine values, behaviours, assumptions, policies and programme decisions to determine how they play a role in excluding or discriminating against some people and favouring others; and looking at different kinds of subordination, based on gender as well as class, ethnicity, caste, age and other factors. Essentially, a gendered analysis of rights reminds us that rights do not apply to some neutral individual, but rather the application and enjoyment of rights differs according to a person's power and position in society and the roles that are attributed to her or him.²²

With this understanding, culturally sensitive approaches are important for building support for human rights and gender equality deep within local and national contexts. Culturally sensitive approaches focus on the intimate, core areas where human rights are rooted, recognizing that in order for human rights to be sustained, they have to be internalized.

The objective is to build ownership of the human rights agenda within communities. The goal is the achievement of human rights and gender equality. The strategy is to work from within communities and cultures to build a broad base for human rights and gender equality. For UNFPA, the human rights-based approach, gender mainstreaming and culturally sensitive approaches go hand in hand to maximize the chance of success.²³

In order to build cultural legitimacy for human rights, culturally sensitive approaches must include all societies and reach into communities. This process should over time build ownership for human rights. Culturally sensitive

Contrary to what some may claim or fear, such an engagement with culture does not erode or deform local culture but rather challenges its discriminatory and oppressive aspects. This of course may provoke resistance from those who have a vested interest in preserving the status quo. Negotiating culture with human rights concerns inherently questions, [delegitimizes], destabilizes, ruptures and, in the long run, destroys oppressive hierarchies. It also contributes to harnessing the positive elements of local culture to advance human rights and gender equality, a process that also revalidates the culture itself...²⁴

approaches must go beyond this and reach marginalized groups within communities so that these groups will have a determining voice in their own cultures and be able fully to exercise their human rights. In many communities, the most marginalized and oppressed groups are women and children. Certain categories – particular classes, ethnic groups, religions, cultures – can suffer worse forms of discrimination and oppression.

Culturally sensitive approaches cannot promise immediate and predictable results. Development is complex, and cultural issues are among the most sensitive to tackle. Yet, changes fundamental to human development, which require full realization of human rights, invariably depend on serious and respectful engagement with cultures.