

THE PLACE OF CULTURE IN HUMAN RIGHTS AND DEVELOPMENT: FOCUS ON BRIDE PRICE AND OTHER HARMFUL TRADITIONAL PRACTICES

A PRESENTATION AT THE INTERNATIONAL CONFERENCE ON BRIDE PRICE AND
DEVELOPMENT, MAKERERE UNIVERSITY, UGANDA

Held on 16th- 18th February, 2004- Kampala

BY: ANN. W. NJOGU, EXECUTIVE DIRECTOR, CREAW

WHAT IS CULTURE?

Culture can be defined as that complex whole that distinguishes people of one community from another. It binds community members together, giving them a sense of belonging, identity, dignity, security and continuity. A community's cultural heritage consists of its traditions, beliefs, attitudes, practices, norms, morals, artefacts, folklore, literature, music, customs and more.

Some of the cultural aspects are supportive and nurturing while others are harmful and discriminate certain sections of society. Many communities in Africa, for instance have used culture to justify discrimination and various forms of violence against women. Some have actually dehumanized women, stifling their talents and aspirations and in some cases have threatened their very survival.

Most of these cultural practices have been used by communities as marks of their way of life. These could be observed in relation to birth, naming systems, feeding habits, passage from childhood to adulthood, marriage, death etc. While in some communities women who do not undergo these rituals suffer from psychological trauma, fear and stress. In some extreme cases they have been ostracized or isolated by the community. The following story is a clear example of how culture has been used to trample upon women and even sign their death sentences especially in this era of HIV/AIDS.

Exactly a year after we had moved into our new house Onyango my wedded husband of fifteen years, died in a motor accident on his way back from our farm.

According to our tradition his body had to be taken to our ancestral home for burial. During the first seven days after my husband had been laid to rest, I mourned his death. The ordeal included isolation- I would not visit friends or relatives, nor would I carry anybody's baby. My hair was shaved clean, and I had to wear a black dress. At night I would sit on a stool with older women to make sure I did not lie down. On the eighth-day my late husband's relatives summoned for me to a "family meeting". There was need to arrange their brother's house after his death. I also had to undergo the final cleansing. They wanted to know among other things:

- *What had been left behind by their brother - bankbook, house plan, title deed etc.*
- *Whom among them I was choosing as my husband (the man I would choose would sleep with me that night so that I could be 'cleansed')*

I stood my ground and refused to give them any document. I also told them that it was my intention to

remarry. This was the beginning of my struggle. While I was still in the village my brothers-in-law went to our house in the city and cleared everything, from the kitchen utensils to furniture and clothing. That very night a 'raura' (mad man) was sent into my bedroom where he raped me to "cleanse me." In shame and agony, I fled to my parent's village with my two children.

It has been one year since I returned to the city so that my children can finish school. I can't go to our farm in my husband's village. Last month, after two weeks of illness, I decided to go for an HIV test. I tested positive.

The situation is made worse by the fact that many cultural practices are perceived as natural and unchangeable.

Women are more highly affected by poverty because of their maternal roles and responsibilities and their positions and condition in society, which are also culturally biased. It is women for example who are expected to feed their families and care for their children, the elderly and the sick. This has put a greater burden on women's ability to meet household needs. In order to make ends meet; most women have had to resort to desperate measures such as prostitution, thereby putting their health and that of their children at risk. In order to have a clear picture of how culture negatively brings about poverty prevalence among women, we must address certain issues i.e. culture and women's access to resources and culture and women's education. Such areas are key in empowerment of women and the reduction of the rate of poverty among women.

The rights to use and or control over land, forest and other natural resources are central to lives of women. The distribution of these resources is thus a major determinant of poverty and social status of women. The recognition of women's rights over these resources is more crucial. Cultural prejudices have played a vital role in preventing women to have control over resources.

Women remain alienated from land even when the state grants them full rights to inherit, purchase and own land – because of the patriarchal pressures against exercising these rights, because of the prevalence of the customary marriage, because of culture and customs supporting a patrilinear mode of inheritance prevail based on the myth of dowry as pre-mortem inheritance, because of the manipulation of the meaning of land tenure terms and because women experience highly constrained access to labour and other inputs necessary to sustain agricultural production. This brings about the gender gap in terms of ownership of resources thus women are left poorer than men are. This situation is more prevalent among women who are widowed or divorced or worse still the single mothers.

AN OVERVIEW

Over the past twenty years, the East African countries have signed the Universal Declaration of Human Rights, which is a common standard of achievement for all peoples and all nations. In doing so they committed themselves to promoting respect for the rights and freedoms of men, women and children, which includes taking the progressive measures, nationally and internationally, to secure the recognition and observance of these rights both among the people of member states and among the people of territories under their jurisdiction.

The countries of Kenya, Uganda, and Tanzania ratified both International and Regional Conventions including and not limited to: Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); Convention on the Rights of the Child (CRC) and African Charter on Human and Peoples' Rights; and Convention against Torture (1984). While the states are signatories of international treaties and conventions, they have yet to fulfil the commitments set out in the conventions. The states have accepted

international obligations and are willing to respect them, but they are not in a position to do so because they lack the infrastructure necessary to apply the standards contained in the relevant international instruments at the domestic level. Specifically, while the governments have provided the legal constitutional protections of basic human rights, they have hitherto not rendered those constitutional guarantees into specific substantive laws that would provide for the equality of men and women.

Unfortunately, this lack of governing infrastructures has resulted in unsafe and unequal lives for women in East African communities. The governments of Kenya, Tanzania and Uganda have failed to enact national legislations that provide effective prosecution and punishment of acts of violence and other discrimination against women. Inequitable divorce laws make it difficult for women to legally terminate their marriages and leaves them without property rights or access to sufficient resources; cultural acceptance of domestic abuse for instance perpetuates the cycles of violence in the home. The lack of affirmative action in government positions limit women's decision-making capabilities at the policy and governing levels. Unfortunately, one of the greatest challenges comes from the very fact that women's rights violations "threatens the legal boundary between the public and private realms of life"¹ For women in these communities, it is *essential* not only to promote their basic human rights, as conveyed in international treaties, but also to ensure that there are structures at the community, cultural, and governing levels to support these rights and ensure their health, well-being, and equitable access to peace and development.

By setting up national infrastructure, policies, and statutes for the protection and promotion of human rights, Kenya, Tanzania and Uganda will create a human rights culture that guarantees against the violation of those rights. These efforts can be effectively undertaken through coalitions of voluntary organisations, such as grass-roots and community-based organisations (CBOs), civil society organisations (CSOs), women's and human rights associations, research agencies, and other strategic alliances. It is through the growth of connectivity and integrated efforts between these like minded organisations that East African women can become empowered and can be guaranteed an equitable, fair, and just life.

Human Rights and Development

Women are critical members of society but more often than not, their expertise and potentials are lost because of a failure to give them access to society's resources or include them equally in decision-making process. We need greater emphasis on building health systems and developing human resources for health in Africa. While male promiscuity is endorsed by culture, the same culture does everything possible to snuff out women's potential for the fulfilment of their full sexuality through various forms of intimidation and female genital mutilation.

There are many often-conflicting ideological definitions of development. Traditional development equated with economic growth and industrialization. However overtime, it has been realized that the concept of development should encompass improvement of peoples well being through a focus on economic and social justice than economic growth per se.

"A new development paradigm is needed that puts people at the Centre of development, regards economic growth as a means not an end, protects the life opportunities of future generations as well as present generations and respect the natural systems for which life depends."²

For a long time, development plans perpetuated existing social and gender inequalities and dis-empowered women.

(ii) Due to assumptions about gender roles, male ownership of land and other property made men to be the sole beneficiaries of new trainings and technology in agriculture though agriculture is

¹ *Looking Ahead/Looking Around: Dynamics of Gender Partnership in Africa*. United Nations Development Program, June 2000, pg. 19.

² United Nations Development Programme, "An agenda for Social Summit" Human Development Report, 1995, New York

predominantly women's work.

(iii) Access to means of production greatly enhanced for men.

(iv) Women's contribution to the economy unrecognized yet in Sub Saharan Africa women are responsible for 80 % of food production for home consumption and over ½ of agricultural production. However men are the ones in control especially with cash crops.

The shift to gender and development concept holds that gender roles of men and women lead to differences in needs skills and access to resources. For women to be able to make free choices and enjoy the benefits of development, gender equality must be central and non-negotiable goal.

Because of their social responsibilities for production and reproduction women must be at the centre a re-conceptualisation of development. More significant is their experiences of sustaining the cohesion of their families and communities while experiencing. We need to reclaim society by constructing new models of social advancement and new processes, which respond to peoples needs. The eradication of poverty and the reduction social inequalities depend on restructuring existing economic, social and political arrangements.

Strategies to promote and protect women's Human Rights in the Economy

Beijing Platform for Action recognized education as a basic human right and essential tool for achieving more equal relations between women and men. It recommended among others,

- Equal access to education*
- Completion of primary education by at least 80% of children with specific emphasis on girls by 2000*
- Develop non- discriminatory education and training for all.*

Poverty is pervasive in most African countries and impacts negatively on the capacity of persons to use the law and to obtain the protection to which they are entitled. For example in Kenya today many women have limited access to financial resources and have negligible borrowing power.

Most African societies prefer sons against daughters and when given the choice of educating either they prefer the son. Though education does not necessarily eliminate values held by society for such values are eventually transmitted into the educational curricular, it does however offer the girl child an opportunity to be less dependent on men in later years. Lack of education opportunities makes women still be depicted as passive and domestically oriented while men are depicted as dominant and breadwinners. This notion has not only limited women's choice but has also resulted various forms of gender-based violence.

Culture, Human Rights And Law

“If it were between countries we would call it war. If it were a disease, we would call it epidemic. If it were an oil spill, we would call it a disaster. But it is happening to women and it is an everyday affair. It is violence against women. It is sexual harassment at work and sexual abuse of the young. It is the beating or the blow that millions of women suffer each day; it is rape at home or on date. It is murder”³

The persistence of traditional practices detrimental to the health and status of women have overtime been pegged on the failure of the concerned governments and international community to challenge the sinister implications of such practice which violate women's right to health, life, dignity and personal integrity. The international community remained wary about treating them countries deserving of international and national

³ Michael Kaufman, director of the international White Ribbon Campaign, on gender violence.

scrutiny and action. For a long time these were considered sensitive cultural issues falling within the spheres of women and family.

Therefore, all human societies have characteristics in common in relation to the positions and roles they ascribe to women. Most human societies are patriarchal and male centred, which implies that these societies traditionally cater for the rights of men. The Declaration on the elimination of Violence Against Women (1993) recognizes that “*Violence Against Women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men, and to the prevention of the full advancement of women, and mechanisms by which women are forced into subordinate position compared with men*”. Violations of women rights are often sanctioned by cultural practices and traditional customs.

*A culture can be force of liberation or oppression. Male dominated ideologies in Africa have tended to use culture to justify oppressive gender relations. But can also be a liberating dynamic force in African society through its various active institutions. Governments should repeal all negative stereotyped cultures that still hinder full advancement of women.*⁴

Despite their harmful nature and violation of international human rights laws, such practices persist unquestioned and take an aura of morality in society. Yet any equitable society cannot say to have attained full human rights if fundamental human rights of half the human society, women, continue to be denied and violated. Most of these cultural practices have been perpetuated for the benefit of the male counterpart. For instance female sexual control by men and the economic and political subordination of women and perpetuate the inferior status of women and inhibit structural and attitudinal changes necessary to eliminate gender inequality.

For instance, gender based violence has continued to be the greatest obstacle to women’s achievement of legal justice, hence curtailing their expression of their full potentials. Society has continued to sanction male dominance over women while the law continues to hamper women’s attainment of social, economic and legal justice. Over the years since CREAM’s inception we have witnessed women succumb to widespread forms of gender-based violence. Such violence and prejudices continue to justify gender-based violence as a form.

Many customary and statutory laws discriminate against women in area of marriage, divorce and inheritance. Polygamy is legal under customary law and although customary practices vary within the different ethnic groups, most use Bride price system previously said to constitute a bonding between families and mark of appreciation to the women’s family, the bride price has now become akin to the purchase of wives and a justification for the subjugation of women.

The customary payment of bride price now gives the husband proprietary rights over his wife, allowing him to treat her more or less like a chattel. This is especially so because it equates the woman’s status in marriage with the amount of bride wealth exchanged and not with her skills and abilities. In most cases the woman has no say even when the husband is on the wrong. Our culture also allows men to practice Polygamy as long as they are able to pay bride price this increases the chances of gender based violence as the man exercises authority to control the women.

The practice of widow inheritance whereby men inherit the wives of their deceased brothers is widespread. Customary law disregard women’s rights and because bride price was paid they are community property and

⁴ African Platform for Action adopted by the Fifth Regional Conference on Women, Dakar, Nov, 1994

can be inherited by anyone in the family with or without consent. Their refusal to be inherited has resulted in disinheritance and/or physical violence. The inequalities in marital status and property ownership maintain women's economic dependency, a factor that increases their vulnerability to abuse in their homes and can become lethal where HIV/AIDS is involved. The continued failure of the governments to address such inequalities will undermine efforts to provide women with constitutional protections, greater political representation and improved access to justice.

The cultural and psychosocial connections between culture and violence, and the various systems of power in place affect male-female relationships and interactions. Among most cultures, there is a prevailing notion of women as caretakers of the family: they are responsible for reproducing children, preparing food and basic needs, and responding to the sexual needs of their husbands.⁵ Complementing these views is men's own perception of themselves as sole providers for their families: they must defend, provide for and sustain their families. This role is one filled with the expectation of authority, power and responsibility.⁶ This breeds a male-based society where men assume power and domination while females accept submissive and dependent roles in the family and society.

“Every woman has the right to be free from violence in both the public and private spheres” – Article 3, Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 1994

“The full and complete development of a country...require[s] the maximum participation of women on equal terms with men in all fields” – Preamble, Convention on the Elimination of Discrimination Against Women, 1979

“Governments ‘shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage, and at its dissolution” – Article 23(3), International Covenant on Civil and Political Rights, 1966⁷

The committee on the Rights of the Child in light of Article 2 of the Convention on the Right of the Child has called upon states to recognize the principles of equality before the law and forbid gender discrimination including adopting legislative measures to prohibit harmful traditional practices.

Girls have suffered tremendously in the guise of early marriages and bride price. The practice of giving away girls for marriage at the early ages of 11,12,13 years after which they must produce children is quite prevalent amongst most African ethnic groups, the principal reasons being the girl's virginity and bride price. It is argued that young girls are likely to be virgins upon marriage a condition that is alleged to raise family status as well as the dowry to be paid by the husband. In some cases virginity has to be certified by female relatives before marriage.

The dowry price of a woman is her exchange value in cash, kind or any other agreed form such as period of employment. This value is determined by the family of the bride and her future husband. The woman's in-laws “gain” a pair of hands and children while her family get payment, which translates to greater economic security for other relatives. The price is higher if her virginity has been preserved notably though FGM.

Failed Action – States without Infrastructures

There is need for the East African Community to take appropriate measures to address abuses from social and cultural norms, which are one source of women rights abuses. CEDAW obligates states to modify the cultural patterns of conduct of men and women, with the view to achieving the elimination of prejudices and customary practices which are based on the idea of inferiority or the superiority of either sex or on stereotyped roles for men and women. The African Charter on Human Rights obligates countries that have

⁵ Tony Johnson, *Kenyan Men: Violence and Abuse*. Population Communication Africa, May 2002, p. 29.

⁶ *Men against Gender Based Violence: A Report from a Regional Constitution...in Nairobi*, FEMNET, December 2001, p. 42

⁷ *Free and equal? Women's rights as human rights*. The British Council, 2000.

ratified it to write a progress report on the measures the governments have taken to implement the charter and the difficulties they experience. Unfortunately, while Kenya ratified the Charter in 1992 it has not written a single report to the Commission; Uganda and Tanzania have each written only one report. This elaborates the fact that the states have not made the implementation of the Charter's guidelines a national priority despite the critical need for more protection of basic human rights in their countries.

A discriminatory legal framework is one obstacle to ensuring women's human rights, especially when individual women are trying to escape abusive relationships. Women remain without adequate recourse to state protection whether in the form of the police courts (i.e. the governments have yet to criminalize marital rape). In addition, they have to face the social stigma of their experiences when at the same time attempting to prosecute their abusers. Biased officials convolute legal processes and the imposition of official and unofficial "fees" hinder women at every step. Few women have the resources and persistence to follow their complaints through to their conclusion; only the most exceptional violence against women cases make it to prosecution. There are also serious failings in the collection of evidence, lack of forensic resources in terms of equipment and personnel and few viable alternative shelters for battered women. Strong working network will be forged for all round assistance of poor women. In addition, Bills and recommendations on laws of marriage, divorce, children and inheritance are pending in parliaments and have not been passed; for example, the Domestic Abuse (Family Protection) Bill is pending review in Kenya, and the "Kalema Commission" findings are pending review in Uganda. Focused lobbying and advocacy will be essential to push for the passing of the bills into law and enactment of the same.

WAY FORWARD

Fighting for the human rights of girls and women requires long-term strategies aimed at challenging prevailing culture and structures, and building accountability of governments to the people for their decisions through among others:-

- ❑ Applying pressure through public opinion and public actions such as boycotts and marches designed to raise awareness and attract media attention on the problem so as to elicit debates and action.
- ❑ Initiating lawsuits and pushing for change through diplomatic and political means.
- ❑ Cooperation - Networking and building alliances with Unions, CBOS, International, Regional, Local NGO's and government bodies to assess the situation, jointly develop viable plans of action, follow implementation and ensuring adequate monitoring of progress e.g. strengthening domestic laws on culture, push for more women to occupy decision making positions in governments, international trade and economic bodies
- ❑ Strengthen international conventions and instruments within national and regional governments through creating synergy for lobbying and advocating. This has shifted the interaction of NGO'S and the government from one of confrontation to one of negotiation where women have articulated their human rights needs.
- ❑ There is need to rethink masculinity and its manifestations as well as their self-perceived social responsibilities through involvement of men as partners. This also includes changing our cultural approach in dealing with cultural stereotypes that perpetuate insubordination of women in society. With increased self-awareness and active participation, Civil Societies have the ability to help change our culture to take an active role in ending the gender violence that plagues our country.
- ❑ These efforts can be effectively undertaken through coalitions of voluntary organisations, such as grass-roots and community-based organisations (CBOs), civil society organisations (CSOs), women's and human rights associations, research agencies, and other strategic alliances. It is through the growth of connectivity and integrated efforts between these like-minded organisations that East African women can become empowered and can be guaranteed an equitable, fair, and just life.
- ❑ CREAM recognizes that women's rights violations and gender-biased treatment runs throughout East Africa societies, both in its governance and in its cultural practices and social norms. Therefore, CREAM feels that a collaborative, cross-regional effort will be instrumental in affecting change for

women throughout the region.

- ❑ Advocacy efforts are usually difficult to implement and are even more difficult to sustain after the first push. Given the political climate of corruption, the limited funding and government resources to support new or extended courses of action, community acceptance of women's inequality, and the ongoing change of the government actors and constitutions, it is important to build a united front to support each other and present a strong and clear voice that demands change.
- ❑ Through cross-regional efforts, lessons and experiences learned by one partner can be shared and implemented in other states. This is important in ensuring efficient and effective work and guaranteeing against the duplication of work; CREAW does not want to "reinvent the wheel" but utilize collective knowledge to implement best practices throughout the three-state region.
- ❑ An integrated Civil Society of like-minded organizations has proven to play a key role in the *process of change* because it is able to generate the energy, resources, manpower, and monitoring abilities that can be lacking at more institutional levels of the government, legislatures, and others. Indeed, UN-NADAF states that, unlike a state-centred approach, a network of NGOs has the advantage of flexibility, sensitivity to severe economic and political crises, close links to local people and therefore more direct knowledge of needs and opportunities, and the ability to foster grass-roots contacts. The "participatory" approach taken by groups of NGOs is also less impeded by bureaucracies and hierarchies, and is critical to effectively serving areas where funding and resources are limited.
- ❑ Silence or silencing, ignoring, sanctioning and cultural biases and violations against women will thus not change the situation. There is need for victims to cry out, there is need for institutions to cry out, and there is need for society to cry out about this vice. The crying out should be responded to, by hearkening and listening and taking action to prevent continuation and institutionalization of the vice.
- ❑ Change will come about when the question- what have you done, or what are you doing has been responded to by victim survivors, the perpetrators, those in authority, including the church and the society in general.
- ❑ Establish or encourage the formation of support groups for victims of violence and discrimination.
- ❑ Law enforcement procedures to be followed to enable women seek legal redress and devise community based mechanisms for preventing such forms of abuse.