

# Examining the Right to Culture from Ugandan Perspectives

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## ABSTRACT

This article examines the right to culture from the Ugandan perspectives. The article revealed that the advocates of cultural rights are nowhere to be seen, this implies that very few people have prioritized cultural rights, meaning that it is a neglected sector of human rights. However, neglecting it does not mean it is not important. On this note, the article proposes the need for advocates to incorporate cultural rights in their agenda. This not only makes logical sense, it also contributes to the sustainability of their efforts, as culturally aware rights resonate with rights holders much more effectively than any externally imposed agenda. More so, specific issues could provide an advocacy focus for non-governmental organisations. These could for instance include legally prescribed aspects of cultural rights, such as those of indigenous minorities, or safeguarding a particular cultural site threatened by road construction, or non-legally binding aspects, such as ensuring that education curricula help youth access their cultural heritage. Similarly, there is need to mainstream the promotion and protection of cultural rights in national and local government development plans. Within the government structure, cultural affairs constitute one of the decentralised functions District Local Governments are responsible for. The Local Government Act provides opportunities for local cultural resources and cultural rights to be protected, promoted and developed at community levels. It also provides opportunities for cultural rights to be integrated into local government development programmes.

**Keywords:** Advocates, cultural rights, legal provisions, post-colonial period, pre-colonial period.

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## INTRODUCTION

In the pre-colonial times, traditional communities in what now is Uganda were closely knit units. Their social, political and economic organization revolved around the family, clan and / or the institution of the traditional leader [1]. The daily activities of men and women and children whether as individuals or groups were intrinsically linked to and determined by their cultures.

However, the exposure to various influences, western cultures as well as foreign rule at the end of the 19<sup>th</sup> century and the beginning of the 20<sup>th</sup> century led to the weakening of traditional socio-political set-ups [2]. Aspects of culture such as indigenous knowledge and traditional health care systems were ignored or belittled. In this way, innovativeness and the whole social fabric was undermined. In spite of this, many communities continued to attach great values to their cultures and endeavored to conserve, inculcate and sustain it. The love shown by the communities to their cultures, prompted the colonial government to effort and through information, education and community development work, it promoted culture. This was done through broadcasts in local languages in schools, and through traditional cultural festivals [3]. After independence, government established a Ministry of Culture and Community Development (MoCCD). The Department of culture therein was charged with the responsibility of ensuring the preservation, promotion and Development of Uganda's cultures[4]. The Government enacted the laws to strengthen the culture function. These included; the Historical Monuments (amendment) Decree (No. 6) of 1977[5], the Historical Monuments Act of 1967[6], the Uganda National Culture Centre 1965 Amendments Act [7], Copyright Act of 1964 [This Act has been repealed with the copyright and Neighbouring Rights Act, 2006 [8], and the Stage Plays and Public Entertainment Act of 1964. Despite the above initiatives, Uganda has not had a well-documented policy or law to guide and coordinate culture. The cultural sector is an important but neglected part of human rights, it has not been dynamic right from the onset save for a few changes and modalities, but the regulator and preserver who is the government has not adopted the modalities as of yet and has to a big extent neglected enactment of responsive legislations to govern,

promote and preserve both the traditional cultures and the modalities that have evolved. The omission necessitated the present study that onerously examined right to culture from Ugandan perspectives.

#### **Importance of cultural rights**

Cultural rights are fundamental and absolute in nature because everyone is born with and possesses them regardless of where they live, their gender or race, or their religious or ethnic background. They are as important as other categories of human rights [9]. There is however a tendency, in Uganda and elsewhere, to 'downgrade' cultural rights as an 'underdeveloped' category of rights [10]. Compared with, say, political and civil rights, cultural rights are the least developed as far as their scope, legal content and enforceability are concerned [11] and they need further elucidation, classification and strengthening. The Constitution of Uganda for instance does not provide a direct and detailed reference to cultural rights apart from the vague wording of Article 37 with its reference to "the right to culture and similar rights" (as opposed to more detailed provisions about cultural values and the roles of traditional leaders) [12]. There are several reasons for this neglect, both in Uganda and elsewhere.

One stems from the history of the development of cultural rights as part of the body of human rights. It is first worth noting that, since the late 1940's, there has been worldwide increase in rights provisions, such as those contained in many national Constitutions. This growth has included cultural rights and the rights of minorities [13]. This increase is symptomatic of two trends that can be traced to the 1970's and 1980's. From individual rights and the notion of "national culture" (corresponding to mono cultural, or culturally undifferentiated nations and a strong discourse on assimilation of ethnic minorities) to the recognition of the need for minority group rights and cultural diversity [14]. From culture seen as "heritage", "sites of universal value" and "civilisation" to a source of group cohesion and identity, with an attendant recognition of minority rights (even as defining cultural rights themselves, as that of multiple culturally defined communities) [15]. This is reflected in international legal instruments on intellectual property rights; on the conservation of indigenous knowledge; and in UNESCO Conventions, such as the Convention on Safeguarding Intangible Heritage and the Convention on the Promotion of the Diversity of Cultural Expressions [16]. These trends explain the rising tensions between cultural and other human rights: if cultural diversity is increasingly seen as desirable, there is an inevitable move towards a non-universalistic application of rights. Cultural rights are then sometimes seen as residual, as inferior to other rights, or used to 'cover up' rights violations by errand states [17]. This also strengthens an already emerging perception of cultural rights (along with social and economic rights) as fundamentally different from civil and political rights. While the Universal Declaration of Human Rights makes no fundamental difference between rights, a distinction has appeared in the context of an ideologically divided world (with more emphasis on cultural, social and economic rights, for instance, in Asian and - until recently - in Eastern European countries) [13]. These tensions also stifle research on the relationship between cultural and other rights and foster an interpretation of cultural rights as vague or unclear compared to civil and political rights. This however does not always stand up to scrutiny, the right to take part in the conduct of public affairs may be as difficult to define as the right to take part in cultural life. Similarly, culture - and therefore cultural rights - is not easy to define. Since we are born as 'cultural individuals', unless we are exposed in some significant way to other cultures as well, we rarely develop an awareness of many of the distinctive characteristics of our own culture. They are, for us, simply "givens." So, to think about cultural rights, we need to treat consciously something that is often largely taken for granted by most of us [18]. In Uganda, this is aggravated by the dearth of reference materials on cultural rights. There is also a view that fulfilling cultural rights requires heavy public investment, especially financially. While this may be true, it is also true that the realisation of cultural rights requires a State to refrain from interference and to create conditions for equal access to culture, which may not be more economically taxing than the realisation of civil and political rights. A further problem arises when culture is linked to practices, values and beliefs we strongly cherish and which clash with other human rights. The denial of cultural rights can lead to the violations of other human rights. It is often harder, for example, for individuals to take part in political activity or to exercise their freedom of expression, as a result of cultural discrimination, stereotyping and exclusion. The mere fact of belonging to a culturally discriminated ethnic group may deny someone the opportunity to compete equitably for an employment opportunity [19].

#### **How culture strengthens education**

Article 37 of the constitution [20] provides for the right to culture and Article 30 of the same provides for the right to education. The connection between culture and education arises if only the education ministry considers it fit for students and pupils to study in their local languages. It will always be easy for a child to understand properly in their local languages over the foreign languages. A number of members of parliament have advocated for this but all in vain and the recent MP to talk about it was Hon. Robert Kyagulanyi Ssentamu as the new vision paper indicates [21-23]. This is one of the importance of cultural rights that you cannot jump your eyes. Denial of cultural rights can lead to a destabilized country. In 1966, a

heated war/ battle/crisis of Buganda sparked off following the Obote new regime forcing the then president and Kabaka Muteesa II to exile and the sudden abolishment of kingdoms. This led to loss of lives both for the regime and the Baganda thus a destabilized country that spent almost one year. Denial of cultural rights will lead to unnecessary incests. In Uganda and in Baganda particularly, the case of Bruno Kiwuuwa vs Juliet Namazzi and Another [24]. Is to the effect that people of the same clan in Buganda are brothers and sisters and therefore cannot marry each other.

#### **Rights and cultural controversies**

We noted above that cultural rights are occasionally in a state of tension or conflict with 'mainstream' human rights and that this at times explains the complexity of addressing cultural rights. Five basic areas of tension can be identified: Cultural practices vs. civil rights: Controversies (and even conflicts) can arise when culture is linked to practices, values and beliefs we treasure, yet are considered unlawful under State legislation. Children's rights provide a good example of this. Ugandan parents often expect children to work in the fields, scaring birds, or tending animals, yet primary schooling is compulsory and access to education is a child's right. Cultural relativism vs. universalism: cultural norms and practices are not uniform across the globe, yet human rights are meant to apply to all, without discrimination. What might be considered culturally acceptable in one community or country might however not be so elsewhere. Some Ugandans might for instance dispute women's rights to leadership and property ownership (especially land), citing "tradition" or "culture", while gender rights promotes equality for both sexes. Some advocates of cultural relativism also argue that permitting international human rights norms to override the dictates of culture and religion is a violation of state sovereignty. Some Governments have contended that the Universal Declaration on Human Rights amounts to an imposition of Western values on other societies [25]. Communalism vs. individualism: 'Culture' and 'human rights' are also often seen as contradictory, when the former places much emphasis on the collective and the latter on individual rights. Consider the issue of customary land rights in Uganda, where the rights of the family or clan are considered paramount (and where access to cultural sites may be more open than if situated on individually-titled land). Cultural rights, like other human rights, however are the birth right of every human being: while these rights can affect many people and may require collective/public action, they are also individual rights [26].

A single, written law vs. often unwritten customary practice: For many communities in the East African region, customary laws and principles guide how local communities are managed. Customary law is however often seen as 'below' statutory law (as subjective, oral, particularistic), although ideally legal frameworks and rights should be inspired by the cultural context. In some cases, customary laws and principles are not written (yet known to the community and their leaders), and enforced through sanctions; while in other cases they are written and used as effective reference material to resolve disputes and to manage community challenges [27]. Given the nature of customary principles, not being written, it makes it hard for people to interpret and respect it. Customary law is not respected since it's been sanctions for its violation. This is evidenced under Art. 28 (1) of the Constitution [12] that, "Except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law". Nevertheless, in the case of Bruno Kiwuuwa vs Juliet Namazzi & Another [24] court relied on experts of Ndigga clan to determine the case. However, challenges may chip-in when the experts mislead court, therefore, making it difficult to interpret customary law. Inalienability of human rights vs. cultural dynamism: the inalienability of human rights can lead to a static understanding. As activists argue "Once a right, always a right". Yet these rights are applied in a cultural context that is inherently changing. Consider gender equity rights in Uganda; what is now seen as desirable - indeed mandatory - at least among certain sections of the population (such as a wife's sexual rights within marriage and the notion of marital rape) would have been considered a no-go" area 10 or 20 years ago. As cultural norms change, a new context emerges, lessening or heightening tension.

#### **Political interference on culture**

Politics is one of the vices that has eaten up all institutions in Uganda including the Human Rights commission, the ministry of Gender, labour and social development where culture falls, cultural institutions among others. Politics has interfered with culture in a number of ways. Kingdoms or cultural institutions existed even before got her independence in 1962. On the day Uganda got her independence, the Kabaka of Buganda then Edward Mutesa [28].

From this period (1962) to 1966, sectarianism and tribalism characterized the day-to-day events which Dr. Milton Obote was always disagreeing with. In 1966, Dr. Milton Obote through the commander-in-chief then colonel Idi Amin Dada raided the Kabaka's palace at Mengo which oversaw the king running into exile and Dr. Milton Obote capturing power [28].

According to Kibirige [29], It was on September 1967 when Obote abolished the kingdoms of Ankole,

Buganda, Bunyoro, in addition to the Chiefdom of Busoga among others. This status quo was maintained by president Obote, his successor president Amin and until 1993 when president Museveni (the incumbent) restored the kingdoms and in 2011 passing the Traditional Institutions Statute [30], but he vehemently blocked the restoration of the Ankole kingship contending that the people of Ankole had to decide. The above information alludes to the extent of how much "politics has interfered on culture as well as cultural rights". Turning back to the abolition in 1967, it left many kingdoms in a state of slumber that they could not even revive anymore. For example the Bamba, Ankole among others [28]. The restoration of the kingdoms in 1993 by president Museveni was only intended to gain popular support of the president from the disgruntled locals who believed in their cultural institutions. President Museveni speaking at the 24<sup>th</sup> Coronation Anniversary of Kabaka Ronald Muwenda Mutebi that took place on August, 1, 2017 said that: the restoration of kingdoms was one of the biggest achievements of him and his NRM government [29]. The above message of the president is generally to hoodwink Ugandans since Museveni was looking for popularity in order to edge over Dr. Paul Kawanga Ssemwogerere in the 1996 general elections [31]. To date, political actors are using culture as a tool to foster their way to the different political offices. In 2016, the NRM government/parliament created a constituency for a member of parliament from "IKE" tradition. This MP is Hilary Lokwang, an NRM cadre, unknowingly, he was used by president Museveni to gain popularity and support from the Ike area [32]. Similarly, the current people power vehicle is largely dominated by Buganda which most of the people have come out to brand it was a "Tribal political Group.

#### Law Vs Culture

Most times law deals with individualism whereas culture most times deals with the community or group of people. Sometimes, if not most times, the two (Law and culture) clashes. Up to now, Ugandan believes in the Order-in-Council [25] that was imposed by the British which under section 20 was the interpretation of Repugnancy clauses; which stated that a custom that is inconsistent with the British law (codified laws) was to be null and void to the extent of the inconsistency.

#### CONCLUSION

The advocates of cultural rights are nowhere to be seen, this implies that very few people have prioritized cultural rights, meaning that it is a neglected sector of human rights. However, neglecting it does not mean it is not important. On this note, the article proposes the need for advocates to incorporate cultural rights in their agenda. This not only makes logical sense, it also contributes to the sustainability of their efforts, as culturally aware rights resonate with rights holders much more effectively than any externally imposed agenda. More so, specific issues could provide an advocacy focus for non-governmental organisations. These could for instance include legally prescribed aspects of cultural rights, such as those of indigenous minorities, or safeguarding a particular cultural site threatened by road construction, or non-legally binding aspects, such as ensuring that education curricula help youth access their cultural heritage. Similarly, there is need to mainstream the promotion and protection of cultural rights in national and local government development plans. Within the government structure, cultural affairs constitute one of the decentralised functions District Local Governments are responsible for. The Local Government Act provides opportunities for local cultural resources and cultural rights to be protected, promoted and developed at community levels. It also provides opportunities for cultural rights to be integrated into local government development programmes. Finally, there is need to deepen the understanding and appreciation of cultural rights among Ugandan communities. Rights are unlikely to be more fully observed if public pressure to do so is absent. The general public, human rights defenders, cultural institutions and state as well as other non-state actors need to be better informed about the nature of such rights, about the current level of compliance and about the many cases where cultural rights are flouted.

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