

Human Rights, Culture, and the European Union's Development Assistance Programs*

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I. EUROPEAN UNION POLICY ON HUMAN RIGHTS

The respect for human rights and fundamental freedoms is one of the core values commonly shared by Member States of the European Union (EU).¹

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1. The European Union was created under the Maastricht Treaty, which was signed on Feb. 7, 1992 and entered into force on Nov. 1, 1993. It is a political and economic community in Europe which is composed of 27 member States.

This tenet is not only reflected in European legislation but also serves as one of the objectives of their Common Foreign and Security Policy.² Human rights, as sought to be promoted worldwide by the EU, are drawn from the Universal Declaration of Human Rights (UDHR),³ the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴ and the International Covenant on Civil and Political Rights (ICCPR).⁵ The EU also subscribes to the attributes of these rights as being universal, indivisible, and interdependent.⁶

There are different mechanisms by which the EU implements its human rights policies with third countries. It can issue declarations and demarches, and call for joint actions on specific human rights issues. It can also make use of international and human rights mechanisms to address either country situations or thematic human rights issues.⁷

The focus of this Article however, is on how human rights can most effectively be integrated in the EU's development assistance programs

See generally, EUROPA, *The History of the European Union*, available at http://europa.eu/abc/history/index_en.htm (last accessed Mar. 8, 2008).

2. See generally, European Commission, *Common Foreign & Security Policy (CFSP)*, available at http://ec.europa.eu/external_relations/cfsp/intro/index.htm (last accessed Mar. 8, 2008). The Common Foreign and Security Policy was established as the second pillar of the European Union in the 1993 Treaty on European Union signed at Maastricht. It has the following objectives, as enunciated in the Amsterdam Treaty of 1999: (1) to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principle of the United Nations Charter; (2) to strengthen the security of the Union in all ways; (3) to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principle of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders; (4) to promote international co-operation; (5) to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.
3. Universal Declaration of Human Rights, U.N. G.A. Res. 217A (III), U.N. GAOR, 3d Sess., 1st plen. mtg., Res. 71, Doc. A/810 (1948), entered into force Dec. 10, 1948 [hereinafter UDHR].
4. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 3, entered into force Jan. 3, 1976 [hereinafter ICESCR].
5. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976 [hereinafter ICCPR].
6. European Union Policy on Human Rights: An Overview, European Union Human Rights Fact Sheet.
7. *Id.*

through an understanding of how culture and human rights intersect with each other.

A. The European Community's Development Policy

The European Community's (Community) objective has been to reintegrate developing countries into the world economy. It has identified poverty reduction as the central objective of its development policy. The strategies that it seeks to implement are those that would create enabling conditions through which developing countries can fight poverty themselves, participate in their development process and claim ownership of the same, utilizing sustainable development as a framework for a development approach.⁸ Thus,

[T]he Community considers development policy as a multidimensional process that covers broad-based equitable growth, social services, environment, gender issues, capacity and institutional building, private sector development, human rights and good governance. The concept of 'sustainable development' encompasses these new priorities.⁹

The concept of poverty has also been expanded by the Community to not only mean the lack of financial resources but also the deprivation of basic capabilities; the lack of access to education, health, employment, services and infrastructure, among others; and the lack of political participation, including taking into consideration risk and vulnerability. Thus, addressing poverty reduction necessarily involves examining its economic, social, political, institutional, and environmental dimensions.¹⁰ Consequently, the Community has declared that in all the priority activities for its development aid, cross-cutting principles including human rights, good governance, and the rule of law will be applied and mainstreamed.¹¹

Despite the fact that poverty reduction has been identified early on as the central objective, the Community has received criticisms that, in general, its development policy's objectives are "too numerous, too vague and not ranked in any way;"¹² its aid system is too complex and fragmented, such that "[s]trengthening should be an objective in itself;"¹³ and that the policies are guided by existing agreements or instruments rather than clearly defined

8. *Communication from the Commission to the Council and the European Parliament: The European Community's Development Policy*, at 7, COM (2000) 0212 final (Mar. 8, 2000).

9. *Id.*

10. *Id.* at 16.

11. *Id.* at 27.

12. *Id.* at 5.

13. *Id.* at 14.

objectives and priorities.¹⁴ Furthermore, there is an alleged lack of an overall Community strategy to implement the objectives.¹⁵

Thus, one of the challenges that the Community recognized is the importance of re-focusing development cooperation on shared objectives in order to increase the impact of said cooperation.¹⁶

B. The European Consensus on Development

In 2006, a joint declaration (Declaration) was adopted by the Council and the representatives of the governments of the Member States in a meeting with the Council, the European Parliament, and the Commission on European Union called "The European Consensus on Development."¹⁷ This Declaration set out the European Union's common and shared vision, policies, and priorities in development cooperation.

Accordingly, the primary and overarching objective of the EU Development Cooperation is poverty eradication that should be addressed in the context of sustainable development which includes, among others, human rights.¹⁸ This is a loftier aim than poverty reduction sought previously. The Declaration also affirmed the multi-dimensional aspects of poverty and specifically mentioned empowerment of women as "the key to all development and gender equality" such that, it should be part of all policy strategies.¹⁹

As far as common values are concerned, the Declaration reiterated its convictions that development is a shared responsibility and that values which are essential to development must be promoted by the EU with third countries through partnership and dialogue. These values are respect for human rights and fundamental freedoms, peace and democracy, good governance and the rule of law, solidarity and justice, and gender equality.²⁰

In terms of dialogue, the Declaration maintains as one of its common principles the use of in-depth political dialogue as a strategy to further its development objectives. Thus, through political dialogue, respect for human rights, democratic principles, and the rule of law is to be regularly assessed to

14. *Communication from the Commission to the Council and the European Parliament: The European Community's Development Policy*, at 14, COM (2000) 0212 final (Mar. 8, 2000).

15. *Id.* at 5.

16. *Id.* at 9.

17. European Parliament Council Commission, *The European Consensus on Development 2006 O.J. (C 46)* [hereinafter DECLARATION].

18. *Id.* ¶ 5 & 7.

19. *Id.* ¶ 11.

20. *Id.* ¶ 13.

ensure that they are upheld.²¹ Again, gender equality is also categorized as a common principle, emphasizing that the EU will include a strong gender component in its policies and practices in relation with developing countries.²²

The Community also mentions the principle of concentration in the Declaration, recognizing priority areas for action where it should concentrate its programs, after said areas have been identified through an in-depth dialogue with the partner country. These areas for action are also those which the Community considers itself at a comparative advantage. Human rights, as one of the areas for Community action, are considered integral in promoting a participatory in-country dialogue on governance. Good governance is seen to include accountability and an institutional environment that upholds human rights. Accordingly, "[a]ll people should enjoy all human rights in line with international agreements."²³ Both human rights and good governance are considered fundamental for poverty reduction and sustainable development.²⁴

C. Human Development

One subject specifically identified in the Declaration as an area for Community action in response to the needs of partner countries, is *human development*. The policy framework for the improvement of people's lives, driven by the principle of investing and valuing people, is seen within the context of the Millennium Development Goals (MDGs) which are: *eradication of extreme poverty and hunger; achievement of universal primary education; promotion of gender equality and empowerment of women; reduction of child mortality rate; improvement of maternal health; combating of HIV/AIDS, malaria and other diseases; ensuring environmental stability and development of a global partnership for development.*²⁵ The EU also considers these MDGs as part of its common objectives. Specifically, human development in the Declaration focuses on health, education, culture, and gender equality.²⁶

As cross-cutting issues, the promotion of human rights, gender equality, democracy, good governance, and the rights of children and indigenous people, to name a few, are mandated to be mainstreamed and regarded as objectives in themselves, as they demand a multi-sectoral response and are vital in sustaining cooperation. Human rights, among others, are to be systematically incorporated in all Country and Regional Strategy Papers. The

21. *Id.* ¶ 17.

22. *Id.* ¶ 19.

23. DECLARATION, ¶ 86.

24. *Id.*

25. *Id.* ¶ 6.

26. *Id.* ¶ 93.

Declaration also mentions that, "The key principle for safeguarding indigenous people's rights in development cooperation is to ensure their full participation and the free and prior informed consent of the communities concerned."²⁷

Verily, the commitment to strengthen the mainstreaming of human rights and to make the enjoyment of these rights possible is an end goal in itself, its declaration that, "[a]ll people should enjoy all human rights in line with international agreements,"²⁸ reaffirm the Community's adherence to the universality of human rights.

At the same time, the Community is also cognizant of the fact that the implementation of development cooperation programs is necessarily region- and country-specific and if it is serious in building a genuine partnership with the third countries, such programs must be based on the third countries' priorities and needs.

II. CONFLICT OR CONVERGENCE?

Is there a point of conflict that must be addressed by the Community in advocating for the enjoyment by all people of all human rights in line with international treaties, and at the same time standing by its commitment that development is a shared responsibility and the programs toward its attainment must be based on the specific country's own needs and priorities? Given that the overarching objective of poverty eradication within the context of sustainable development seems to find specificity in the MDGs, and that human development, as an area for action, is primarily focused on health, education, culture and gender equality, the parameters for responding to poverty eradication, policy or program-wise, seem to have already been set by the Declaration.

Admittedly, poverty eradication, even within the parameters set in the Declaration, is broad enough to accommodate various issues and concerns that must be addressed, and there is room for a dialogue and a determination of programs which are to be included and prioritized. It is also readily evident why poverty eradication is considered an obstacle to development. For not only is the latter measured in terms of the total development of a human being, but poverty itself is acknowledged to exist when human beings are deprived of basic capabilities, when they lack access to education, health, employment, among others, and when they do not have the capacity to politically participate. With these considerations, it is easily discernible why human rights, good governance, and the rule of law are among the issues to be mainstreamed if poverty is to be addressed within a sustainable

27. *Id.* ¶ 103.

28. *Id.* ¶ 86.

development framework. How this process will be concretized and what it will actually entail are the more challenging aspects of this entire project.

On the one hand, advocating human rights can be considered as a strategy and a framework for realizing human development. It can also be posited that human rights serve as major indicators to achieving human development. Furthermore, the enjoyment of human rights itself may be considered as a part of human development; and that finally, human development is a human right.

Then again, one of the challenges that the realization of human development confronts is the fact that some of the key responses identified for its achievement seem to clash with each other. This problem is exacerbated when each response claims to be grounded in human rights. For instance, culture and gender equality are both mentioned as priority areas for human development. Gender equality can be easily located within the human rights discourse, and similarly, the right to culture can be discussed as the fundamental basis or foundation for the articulation of cultural rights. However when there is an apparent clash over which right should yield to the other, human rights seem to be regarded as being more in favor of restrictions or exclusions made in the name of protecting and preserving culture.

Another clash with culture can sometimes be seen in the protection of indigenous peoples and their assertion of the right to self-determination, as against the right to preserve the environment and its ecological balance — resulting in a restriction of their traditional practices regarding the use of the land, and likewise when they are excluded from moving into other areas. Of course, in the Asian values debate, the whole question of universality of human rights was brought into fore when the Bangkok Declaration²⁹ was adopted in 1993, asserting that although “human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds.”³⁰

Thus, the interfacing of human rights and culture needs to be examined at several levels, in order to accurately assess whether, indeed, there is either conflict or convergence of the rights or both. There is further need to examine how this conflict, if ever, could be reconciled in order to achieve the maximum goal of protecting and enhancing culture within the context

29. United Nations High Commissioner for Human Rights [UNHCHR], *Report of the Regional Meeting for Asia of the World Conference on Human Rights*, available at <http://www.unhchr.ch/html/menu5/wcbangk.htm> (last accessed Mar. 8, 2008).

30. *Id.* Part I, ¶ 8.

of human development, while allowing human rights to serve their purpose, to be mainstreamed in EU's development assistance, and to be realized as an end in themselves.

III. HUMAN RIGHTS AND CULTURE

Culture is part of human life. Therefore, when one talks about human development, the promotion and protection of culture should be one of its logical components. Similarly, if it is claimed that human rights are part of human development or that human development is a human right, then human rights must likewise be protective of culture and must ensure its promotion and fulfillment. In reality, human rights and culture can be complementary to each other; but at other times, they can also be seen as conflicting. Further still, it has been opined that conceptions and perceptions of what human rights are depend on specific cultural contexts and that culture is actually implicit in the articulation of human rights.³¹ The following categorization is based on the *Banyan Tree Paradox*.³²

A. Human Rights within Culture

Although the universality of human rights has been asserted for decades, when it comes to the articulation of what a specific human right entails, an individual's understanding would necessarily be determined by his or her cultural context.³³ Hence, even though human rights are also claimed to be indivisible and interdependent, an individual's prioritization of what rights are more immediate to have or to enjoy, depends on his or her specific situation and experience.

For instance, a woman who lives in a community where job opportunities for women are scarce might not exactly be eager to advocate for more humane conditions in the workplace, or the right to strike or the right to unionize, because her experience in so far as the right to work is generally one of exclusion. At the moment, she may just be contented with getting a job and contributing to the financial resources of the family; and this for her is the concretization of the right to work. She may also value the status and self-respect she gains as an income-earning member of the community more than the perception as a trouble-maker who would risk industrial peace in order to fight for some other worker's rights. In this particular example, even though she believes that there is a human right to work, she views it in its bare minimum and does not, at the moment, realize

31. International Human Rights Internship Program, *The Banyan Tree Paradox: Culture and Human Rights Activism*, at 40 (2006).

32. *Id.*

33. *Id.* at 41.

that the right entails the guarantee of some standards of employment that must be met.

Therefore, it is important to understand that even when there is a consensus that human rights exist for all, there is no single perception of what these rights mean. There will always be a variance in expectation depending on the cultural context of the individual invoking such rights. This will be determined by the person's level of education, rights awareness, experience of inclusion or exclusion, religion, and perception on how said right would alter his or her relationship with the family and the community.

In Afghanistan, the women have suffered severe and institutionalized discrimination in the hands of the Taliban. The Asian Development Bank (ADB) has noted the difficulty of mainstreaming gender in the country. Nevertheless, institutional capacity building has started with its assistance to the Ministry of Women's Affairs. Accordingly, to mainstream gender, "one must be proactive and receptive at the same time."³⁴ There is a realization that even though there may have been some changes in gender relations in urban centers, in the rural areas, nothing much has changed — traditional gender roles where women are relegated to the domestic sphere while the men are in the public sphere persist. There is also an acknowledgment that gender roles are further differentiated by factors such as "age, education, class, wealth and ethnicity."³⁵

If one tries to venture on how these rural women perceive the significance of the right to or freedom of association, one may say that they probably have little expectation of what it means to enjoy such right. In fact, as one researcher has related, interviewing Afghan women cannot be accomplished without a woman interviewer because men are not allowed to do the same.³⁶ Thus, it is not difficult to assume that their right to association, if the same is based on their experience in the last few years, will not include the right to associate with men who are not their relatives.

The same is true for the rural women of Tojicon, Tajikistan. With most of the men in the village migrating for work, women are left to tend the children and their lives revolve around the home. There is little to do outside of their household chores and girls are expected to marry at the age of 14.³⁷ Generally, the impoverished state of the villages, which forces men to be absent most of the time in their homes, has more or less defined what the roles of married women should be and there is little space for greater expectation on shared child rearing and parenting between spouses.

34. Eric Van Zant, *Balancing Traditions*, ADB REV., Dec. 2005, at 8.

35. *Id.* at 9.

36. Eric Van Zant, *Lighting Up Afghanistan*, ADB REV., Dec. 2005, at 25.

37. *Villages Without Men*, ADB REV., Oct. 2005, at 35.

B. Culture within Human Rights

When human rights are articulated and made specific, one has to take into consideration how the beneficiary of such rights will exercise and enjoy them, based on the existing conditions and circumstances within which he or she is situated. For instance, when the right to food is invoked, the acceptability and familiarity of the very food one eats should be taken into consideration. Also, the manner by which food is grown and harvested may also affect the right. Furthermore, even the fact of who the food is eaten with, or when one can actually partake of a meal can be important.³⁸ These are all indicative of the cultural dimension of rights which must be factored in when deciding the most effective way of enabling a person to enjoy such right.

Even the General Comments issued by the Committee of the International Covenant of Economic, Social and Cultural Rights are replete with declarations that the rights must be realized within the appropriate cultural setting. Hence, General Comment No. 13³⁹ on the right to education provides:

Article 13 (2): The right to receive an education - some general remarks

6. While the precise and appropriate application of the terms will depend upon the conditions prevailing in a particular State party, education in all its forms and at all levels shall exhibit the following interrelated and essential features:

(c) Acceptability - the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, *culturally appropriate* and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the State (see art. 13 (3) and (4));

(d) Adaptability - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students *within their diverse social and cultural settings*.⁴⁰

In the Comment, the above standards are reiterated for primary, secondary, and technical and vocational education.

38. Human Rights Internship Program, *The Banyan Tree Paradox: Culture and Human Rights Activism*, at 43 (2006).

39. United Nations Economic and Social Council [ECOSOC], General Comment No. 13: The right to education, available at [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.1999.10.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.1999.10.En?OpenDocument) (last accessed Mar. 8, 2008).

40. *Id.* (emphasis supplied).

The same mandate can be found as regards the provision of service and facilities for the Right to Health in General Comment No. 14⁴¹ and the Right to Water in General Comment No. 15,⁴² thus, underscoring the importance of the cultural dimensions of these rights.

In Nepal, for instance, one of the participants in a multi-sector consultation with stakeholders on the improvement of education conducted by the ADB cited an experience with landless peasants, where the latter were given land without the corresponding education or training in basic farming skills. Accordingly, the peasants ended up selling their land at the first opportunity. Therefore, the consultation for the intervention in education saw to it that the voices of the stakeholders were really heard through the regional workshops that were conducted. From this process, it was overwhelmingly stressed by the participants that political instability and poor security are the main obstacles in the effective implementation of the projects.⁴³ It was clear that these factors were part of their risk perception that would necessarily affect the extent of their participation in the project.

A good example of housing, that is culturally appropriate, is the Development of Poor Urban Communities project in the Philippines wherein the community was asked what kind of homes the members wanted. This is a far cry from previous government-led mass housing where accordingly, the stakeholders were just told to be happy for the relocation site allocated to them. Often, the dwellings provided without consultations were high-rise and flat, very small, and far from their workplace and family ties. With this project, since the stakeholders liked what they were getting, it was more valuable to them. The project emphasized the importance of "responding to people's housing needs and their sense of belonging to a community."⁴⁴

Likewise in India, the success of the reconstruction and relocation program involving communities from four municipal towns of Kutch, district of Gujarat, was attributed to the people's participation in all stages of the program, including the town planning.⁴⁵ Accordingly, the government

41. United Nations Economic and Social Council [ECOSOC], General Comment No. 14: The right to the highest attainable standard of health, available at [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En). (last accessed Mar. 8, 2008).

42. ECOSOC, General Comment No. 15 (2002): The right to water, available at <http://www.tradeobservatory.org/library.cfm?refid=97741> (last accessed Mar. 8, 2008).

43. Eric Van Zant, *Voices From the Field*, ADB REV., June 2005, at 18.

44. Floyd Whaley, *A House of Their Own*, ADB REV., Apr.-May 2006, at 8.

45. Usha Tankha, *Transforming Misfortune into Opportunity*, ADB REV., Apr.-May 2006, at 30.

opted for an owner-driven reconstruction plan instead of merely contracting out the entire housing program, which "would have resulted in stereotype houses that do not cater to individual needs and aspirations of the people."⁴⁶

C. Human Rights versus Culture

As stated before, the area where the conflict between human rights and culture is most pronounced is in the field of women's rights. This becomes very relevant to the EU not only because it aims to mainstream human rights, which include women's rights, but also gender equality in its development programs.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁴⁷ recognizes the problem that culture poses on women's rights in article 5 (a) of the treaty.

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of 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 women⁴⁸

Given that gender roles and gender relations are based on social constructs which are built upon the norms and culture of a society, it is inevitable that a conflict arises when these gender roles place women in a subordinate, inferior or unequal position to that of men, and results in their exclusion from, or in the limitation or restriction of, what are claimed to be their rights as human beings. Thus, culture is seen as problematic in the assertion of women's human rights.

That the above-quoted article mandates State-Parties to the treaty to eliminate socio-cultural practices that discriminate against women is testament enough that there is, indeed, a conflict between some cultural practices and women's equality rights. This is the reason why in article 2, the CEDAW mandates not only the laws and other measures to prohibit discrimination against women, but also to "abolish existing laws, regulations, customs and practices which constitute discrimination against women."⁴⁹

46. *Id.* at 31.

47. Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) 193, U.N. Doc. A/34/46, (Sep. 3, 1981) [hereinafter CEDAW].

48. *Id.* art. 5 (a).

49. *Id.* art. 2 (f). ("[t]o take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;").

Both the Philippines⁵⁰ and Vietnam⁵¹ enacted new laws improving the status of women in family relations. However, it remains true that the most reserved articles in the CEDAW are articles 5 and 16, the latter dealing with the rights of women in the family. Some countries invoke culture and religion as the bases for their reservations. Thus,

India -

(i) With regard to articles 5 (a) and 16 (1) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent.

Malaysia -

The Government of Malaysia declares that Malaysia's accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia' law and the Federal Constitution of Malaysia. With regards thereto, further, the Government of Malaysia does not consider itself bound by the provisions of articles 2 (f), 5 (a), 7 (b), 9 and 16 of the aforesaid Convention.

Singapore -

(i) In the context of Singapore's multi-racial and multi-religious society and the need to respect the freedom of minorities to practise their religious and personal laws, the Republic of Singapore reserves the right not to apply the provisions of articles 2 and 16 where compliance with these provisions would be contrary to their religious or personal laws.⁵²

However, caution should be taken when attributing the violation of women's human rights to culture. First, one must be certain that the source of the violation is really culture. As Celestine Nyamu in her article states, "[i]n the plural legal setting that characterizes most Third World societies, gender hierarchy can neither be understood nor explained by attributing

50. The Family Code of the Philippines [FAMILY CODE], Executive Order 209 (1988).

51. The Revised Marriage and Family Law of 2000, available at http://www.unescap.org/esid/psis/population/database/law_viet/vi_033.htm (last accessed Mar. 8, 2008).

52. See generally, United Nations, Division for the Advancement of Women, Reservations to CEDAW, available at <http://www.un.org/womenwatch/daw/cedaw/reservations.htm> (last accessed Mar. 8, 2008).

women's disadvantages to a vague notion of culture."⁵³ This concern is echoed by Ratna Kapur, in what she calls "Cultural Essentialism."⁵⁴

Taking the example of dowry murders in India, Kapur explains that it has been a popular perception, albeit inaccurate, that when women are burned to death, the same finds legitimacy in an ancient Hindu practice — a cultural practice which is barbaric and uncivilized. According to her, what has not been pointed out is that while dowry itself has been part of the culture of some Indian communities, the growth of consumerism in the 1970s has resulted in the phenomenon of dowry bargaining in a number of communities. This, in turn, has produced expectations on the part of the groom's family to receive consumer goods at the time of the marriage from the bride's family, which is consequently pressured to provide large dowries. If these expectations are not met through demands made which may be manifested through threats, intimidation or violence, the bride is considered expendable.⁵⁵

Citing Narayan, Kapur states that "there is a failure to understand that dowry violence is a part of domestic violence and that dowry murders are the most extreme form of violence that a situation of domestic violence can take in India (where the method of killing more often than not is by fire)."⁵⁶ She further states that in third-world countries, culture is frequently invoked to explain violence against women, though it is not invoked in a similar way in the Western contexts.⁵⁷

Second, even assuming that the violation of women's rights or gender discrimination is rooted in one's culture, it is still a fallacy to assume that the proper solution is always the immediate abolition of such cultural practice. As Nyamu points out:

Some critics have pointed out that these abolitionist responses create the impression that women's rights do not exist in custom or local practice, and the solution therefore lies in substituting custom and local practice with alternatives offered by national legislation or the international human rights

53. Celestine I. Nyamu, *How Should Human Rights and Development Respond to Cultural Legitimation of Gender Hierarchy in Developing Countries?*, 41 HARV. INT'L L.J. 381 (2000).

54. Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics*, 15 HARV. HUM. RTS. J. 1 (2002).

55. *Id.* at 13-14.

56. *Id.* at 14 (citing UMA NARAYAN, *DISLOCATING CULTURES: IDENTITIES, TRADITIONS, AND THIRD WORLD FEMINISM* 82, 102 (1997)).

57. *Id.* at 14.

regime... The abolitionist approach has also suffered counter-accusations of cultural imperialism from interested Third World states.⁵⁸

Scholars point to the abolitionists' treatment of culture as a theoretical construct and their failure to grasp the meaning and daily existential experience of culture. Third World critics view abolitionist proposals as decontextualized, hegemonic, and counterproductive for gender equality in practice.⁵⁹

Indeed, although a practice in one's culture may be considered a manifestation of gender discrimination, the same practice may also be the source of benefit for other women. For instance, many simply assume that wearing the veil, especially the *burkha*, has been forced on Muslim women and that it is one concrete sign of women's oppression. In reality, however, women have had various reasons for wearing the veil. The article by Homa Hoodfar,⁶⁰ describes how different people, including both veiled and non-veiled women in different historical and cultural contexts, have regarded its use. The assumption that the veil has the same significance for all women who wear it, or who have stopped wearing it, is debunked in the article by showing that women have used it for different purposes.

Thus, while some women in Iran felt that the veil was an essential part of their clothing during the de-veiling in the 1930s, others in a different time period have used "de-veiling" as a means to either insult men or force them to engage in radical political action during the Tobacco movement. Yet, what dominate as the veil's symbolisms are oppression and subordination and not the possibility that women wear it as a matter of free and intelligent choice. It is also not seen as contributing to empowerment, despite the fact that, according to the article, it has facilitated women's mobility and economic empowerment.⁶¹ It is interesting to note that during the Parliamentary elections in Afghanistan on 18 September 2005, even as the women formed lines along the sidewalks waiting to vote, they were clad in *burkha*.⁶²

Thus, the conflict between culture and human rights, such as in the case of women's rights must be carefully examined and analyzed especially in trying to come up with a workable solution to gender inequality. A

58. Nyamu, *supra* note 53, at 393.

59. *Id.* at 394.

60. Homa Hoodfar, *The Veil in their Minds and on our Heads: the Persistence of Colonial Images of Muslim Women*, 22 RESOURCES FOR FEMINIST RESEARCH, Nos. 3 & 4, Fall/Winter (1993).

61. *Id.*

62. Eric Van Zant, *Balancing Traditions*, ADB REV., Dec. 2005, at 8.

program's response should be sensitive to the cultural context of women, and most importantly, it must hear the voices of the women and be respectful of the latter's decision on the matter.

D. Human Rights and Culture

As aforesaid, human rights and culture complement each other. On the one hand, the protection of culture and the right of the people to assert their cultural identity and to take part in their cultural life have been couched in human rights language and framework. This can be seen in the various provisions of international human rights instruments: article 27 of the UDHR⁶³ and article 15 of the ICESCR — the right to freely participate and take part in the cultural life;⁶⁴ and article 27 of the ICCPR — the right of minorities "in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."⁶⁵

63. UDHR, art. 27.

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

64. ICESCR, art. 15.

- (1) The States Parties to the present Covenant recognize the right of everyone:
 - (a) To take part in cultural life;
 - (b) To enjoy the benefits of scientific progress and its applications;
 - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

- (2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

- (3) The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

- (4) The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

65. ICCPR, art. 27.

On the other hand, values within a culture can also support and validate human rights claims. For instance, in some justice, peace and human rights trainings in Bangladesh, the religious and cultural values have been invoked to promote the universality of non-violence, reconciliation, love and justice.⁶⁶ It can, therefore, help in emphasizing complementarity — if other values which have been already framed in the human rights language are related and identified with values based on the stakeholders' culture, religion, and other traditions that predate the articulation of human rights in the international instruments. This will foster stronger legitimacy on the rights advocated since their roots can be located within the local context, despite the fact that the formal international instruments articulating them as rights may have originated in the West.

IV. CONCLUSION AND RECOMMENDATIONS

In sum, this Article has shown the different interfacing of human rights and culture. It is clear that how a right is perceived and the extent of its enjoyment or exercise are affected by one's socio-cultural location. Conversely, the normative content of a human right is determined taking into consideration the cultural context of the person claiming it. In principle, there is universality of human rights and there is a consensus on what these rights are, as evidenced by the international human rights instruments. However, when it comes to the specificities by which these rights must be promoted, protected, and fulfilled, the appropriateness of the response demands that a consideration of the culture where these rights are going to be exercised be taken into account.

The EU has taken the right direction in its development policy — in adopting a sustainable development framework and strategies that would create enabling conditions so that developing countries, especially in Asia, are able to fight poverty themselves, participate in the development process, and claim ownership of the programs. Through this Article, it has been shown how culture, as an essential aspect of human life, must necessarily be part of the discourse involving human development. Human rights, for that matter, are also crucial in the discussion of human development — whether they are considered as essential components of human development, a strategy to achieving human development, indicators in measuring human

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

66. Fr. R.W. Timm, *Role of Culture and Religion in Grassroots Development, in INITIATING HUMAN RIGHTS EDUCATION AT THE GRASSROOTS: ASIAN EXPERIENCES* 348 (Clarence J. Dias, ed. 1992).

development, or whether human development itself is one of the rights claimed as human rights. No matter what approach is taken, it is important to appreciate the interfacing of human rights and culture in formulating policies and programs for development assistance. Hence, the following recommendations are forwarded in this paper:

(1) *Deepen understanding of different interfacing of culture and human rights*, especially the inherence of one in the other. For development programs to be sustainable, stakeholders must be able to claim them as their own; but people will only feel a true sense of ownership if the same are in accordance with the norms, values and customs they adhere and are used to. For instance, in the Cordillera region in the Philippines, although training was conducted on how to grow vegetable and what crops to plant based on which rice variety had a higher yield, the farmers did not favor the substitute variety because there was difference in taste, post-harvest characteristics, in its usefulness as food and in cultural traditions.⁶⁷

(2) *Where there is an apparent conflict between human rights and culture, care should be taken in putting blame or viewing one in a negative manner over the other.* The following factors must be examined: (a.) Do the cultural norms claimed as being transgressed by human rights advocacy, or component of the program, reflect the actual social practice by the community?; (b.) Who are the voices of the community? Are they representative of the members or are they just the powerful few who use culture to preserve their own interests?⁶⁸ (c.) Are there values within the community comparable or analogous to human rights that can serve as the basis for introducing the latter?

(3) *Engage the community and find appropriate openings in its cultural and religious traditions where human rights may be introduced or where the implementation of specific rights can accommodate cultural or religious beliefs*, even though the goals set out for the project may not be totally met. An example would be the Environment and Public Health Organization (ENPHO) in Nepal which introduced the Ecosan toilets in efforts to improve sanitation — target 10 of the MDGs. End-users were finally spared of the indignity of having to use the garbage dump site for relieving themselves. The Ecosan is waterless and people are supposed to empty the contents of the dry and wet compartments and use them as organic fertilizer once a year. However, this latter requirement is not really given as a strict condition before receiving the unit, since some users believe, for instance, that flowers are for the gods such that they do not deserve to be watered with urine. The director of ENPHO has admitted that, “[t]here will always be cultural factors that even the best

67. Rita Festin, *Charm Offense*, ADB REV., Apr.-May 2006, at 5.

68. Nyamu, *supra* note 53.

technology can't get around,"⁶⁹ but at least, because there is an accommodation of their beliefs, the people from Thimi, Kathmandu are able to benefit from this project which is meant to provide them access to sanitation.

(4) *Be respectful of the decisions of the community intended to be benefited by the development program and make certain that their voices are heard*, and not just the powerful ones. As previously stated, to have a genuine partnership and sustainable program, the cultural appropriateness of the process and end-results must be ensured; and to guarantee this happening, the participation of the stakeholders in all stages of the program from conceptualization to implementation and monitoring must be secured.

(5) *Adopt a Rights-Based Approach to Development*. If proponents of development programs genuinely wish to have the stakeholders as equal partners, then, they should consider adopting a rights-based approach to development. In concrete terms, from the planning stage where stakeholders are gathered to participate in the consultation, to the monitoring of the project implementation and its sustainability, they are treated as rights-bearers rather than recipients of charity. Therefore, they are asked to participate in the consultation process because it is their right to be consulted; they are involved and they meaningfully participate in the choice of the project, the design, activities, among others; they are given access to information needed in order for them to arrive at an informed decision; they are heard and allowed to determine their own path of development.⁷⁰ In a rights-based approach to development, the overarching theme of non-discrimination must form an integral part of the project and the project selection must favor those most deprived of their rights, especially the people who are discriminated the most. Success indicators for the project should also be based on the broader objective of promoting human rights.⁷¹ A rights-based approach explains the importance of the stakeholders' participation and involvement as a matter of right — something that they must claim, and not as a matter of accommodation that depends on the generosity of the donors.

It is crucial for the EU to maintain a genuine partnership and meaningful dialogue with the stakeholders in its development programs. If it is bent on mainstreaming human rights, then it is crucial for it to engage in consensus building around values and rights — what are important to the stakeholders — to ensure that the indicators for its program's success can truly be claimed as such by both the EU and the stakeholders.

69. Melissa Howell Alipalo, *Viable Alternatives*, ADB REV., Apr.-May 2006, at 35.

70. ANITA CHERIE & DR. SRIPRAPHA PETCHARAMESREE EDWIN, A HUMAN RIGHTS APPROACH TO DEVELOPMENT 36-37, 119 (2004).

71. *Id.* at 34-35, 120-21.

Arguing for the Relistment of Postinor and the Right to Emergency Contraception

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