A South African Perspective on the Clash between Culture and Human Rights, with Particular Reference to Gender-Related Cultural Practices and Traditions

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Abstract

South Africa is infamous for its history of disenfranchising most of its population under the dehumanizing policy of apartheid. A country of almost 50 million people, South Africa has a diverse array of languages, races, religions and ethnic communities, and has faced significant challenges - political, cultural and socio-economic – since the advent of democracy in 1994. The writers of the 1996 Constitution faced the unenviable task of accommodating the diverse viewpoints that inevitably derived from South Africa’s fractured history and society. The Constitution is one of the most progressive in the world, and notably includes a Bill of Rights, which in addition to including civil and political rights typically protected by international human rights instruments, includes protection of socio-economic and cultural rights. Cultural rights are protected in Sections 30 and 31 of the Constitution, although such protection is not without limitation. This highly complex interplay and "competition" between human rights and culture is the golden thread that traces through the paper, which focuses on several cultural practices and traditions which, it is suggested, violate certain human rights norms in South Africa. These practices and traditions, all of which relate to women, are reviewed – together with the sections of the South African Constitution that they are considered to violate. Using the example of curbing the practice of female genital mutilation (FGM) in other African countries through the NGO Tostan, it is emphasized that the law is only one component of a multidisciplinary approach, and that civil society, government and other role-players are all needed to change perceptions and attitudes. In conclusion, general recommendations are made about reducing the conflict between culture and human rights in South Africa. These include the use of human rights education, human rights advocacy on gender issues, legislative measures, and developing customary law to ensure compatibility with the South African Constitution.

Note on the Author

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This particular way of understanding culture may permeate not only traditional folk festivals but also other ones which, according to well-intentioned multiculturalist perspectives, are organized more and more in Western Europe. To speak of folk culture also involves speaking about tradition. The idea of tradition alludes to the factor of time and, therefore, implies a certain continuity of determined cultural elements through history. In fact, tradition is something more than custom. Festivals and celebrations offer possibilities for human interaction which we do not find in day to day life. It is evident that festive practices provide an indication of the vital pulse of every society. Local African culture was oppressed for many years by white South Africans, who find their cultural roots in western countries. Western cultures tend to be more individualistic and focused on individual achievements and personal interests.
whereas African cultures are collectivistic, group-oriented, and concerned with the welfare of their community. The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women (Protocol to the African Charter), 13 article 2(1)(b) provides that state parties must enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination, particularly those harmful practices which endanger the health and general wellbeing of women.