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# Transitional Perspectives on Women's Rights

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## Women's Rights in the 21st Century

The INTERRIGHTS *Bulletin* in the spring of 1995, immediately prior to the Fourth World Conference on Women in Beijing, was devoted to the issue of Women's Human Rights. In that *Bulletin* it was claimed that women's human rights had 'recently and for the first time, come to the fore of the international

agenda'.<sup>1</sup> The World Conference on Human Rights at Vienna in 1993 had affirmed the human rights of women and the girl-child to be 'an inalienable, integral and indivisible part of universal human rights', and the following year at Cairo women's reproductive rights were guaranteed. The critical areas of concern at Beijing that addressed women's human rights, violence against women and the position of women in armed conflict largely continued this progress towards strengthening the legal guarantee of women's human rights.

Some nine years later INTERRIGHTS has returned to this theme. This suggests a need both to assess the further progress that has been made since the 1995 *Bulletin* and to consider the current problems and challenges in securing the empowerment of women through guarantee of their human rights.

was adopted in July 2003. Unlike the equality paradigm of CEDAW, the Protocol is a rights-based treaty; it covers all aspects of women's human rights and is the first international treaty to seek to protect women's reproductive rights through the authorisation of medical abortion (Article 14 (2) (c)).

### International Treaties Protecting Women's Rights

Over the past decade there has continued to be significant progress in the institutions, substance, and procedures of international human rights law as it is applied to women. This introduction briefly highlights some of the landmarks. The central place of the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) - the United Nations' 'landmark treaty in the struggle for women's rights'<sup>2</sup> - has been affirmed and with 177 states parties constituting over 90 per cent of the members of the UN it is now the second most widely ratified human rights treaty. Its enforcement mechanisms have been enhanced by the coming into force in December 2000 of the Optional Protocol, which establishes an individual complaints mechanism for violations of CEDAW and empowers the CEDAW Committee to commence an inquiry procedure where there is reliable information of 'grave or systematic violations'. In Africa the Protocol to the African Charter on Human and Peoples'

### Gender-specific Violence

The acceptance throughout the 1990s that gender specific violence against women constitutes both a direct violation of women's human rights and contributes to their inability to enjoy the full range of civil, political, economic, social and cultural rights has continued. The language of the key instruments, notably the General Assembly Declaration on the Elimination of Violence against Women, 1993 and the American Convention on the Prevention, Punishment and Eradication of Violence against Women, 1994 has been fleshed out and made concrete by the outstanding reports of the Special Rapporteur on Violence against Women and the jurisprudence of the regional human rights bodies. These have analysed sexual abuse and violence as violating human rights within the terms of their respective conventions, for example rape as amounting to torture contrary to Article 3 of the European Convention on Human Rights<sup>3</sup> and Article 5 of the Inter-American Convention on Human Rights.<sup>4</sup> The incidence of targeted violence against women in armed conflict and its manifes-

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## International Law Reports

# Transitional Perspectives in Women's Rights

Hope E. Andrews

March 8, International Women's Day, is designated as the day on which the international community applauds the achievements of women. Although celebratory, this day also serves as a reminder of the many obstacles that bedevil women's achievement of equality in a host of areas and in most countries of the globe. It is customary that events at the United Nations highlight contemporary themes of concern, and in 2002 the celebration of International Women's Day at the UN was dedicated to the women of Afghanistan. Speeches during the proceedings, including one by the first lady of the United States, Mrs Laura Bush, both praised Afghan women for their courage and determination, and exhorted the rest of the world to support Afghan women in their struggle for rights. The day was a showcase for the possibilities of political transformation linking the reconstruction of Afghanistan with the struggle for women's rights and equality in that country.

## The Role of Women in Democratic Transformation

One could not resist listening to the speeches with a tinge of scepticism. For decades various national and global solidarity movements have celebrated the contribution of women to democracy in a variety of post-colonial locations. Some may wistfully recall the victory of the women of Zimbabwe, when that country was on the brink of democracy in 1980, and when possibilities for a redistributive democracy seemed attainable. There was the toasting of the women of Mozambique in the 1970s – brave women fighting alongside men to dislodge Portuguese colonial rule. In the 1980s some hailed the women of Nicaragua; there the promises of the Sandinista government provided hope for the achievement of women's rights and equality.

These examples illustrate how frequently the appellation 'woman' centres the values and aspirations of a society in transformation. During periods leading to political transformation, the female becomes the mythical figure around which the new democracy rallies, typified by

*‘The last few decades have seen concerted efforts by women activists across the globe to bring women's issues from the margins of political and legal discourse to a place where women's concerns and priorities are at least formally recognised.’*

slogans like 'mother of the nation' or 'standard-bearer of the revolution'. She is also the lynchpin for solidarity of the global human rights movement, the metaphor of the noble victim worthy of rescue.<sup>1</sup>

But notwithstanding official rhetoric and lofty sentiments about the role of women in democratic transformation, women's concerns are often relegated to a secondary place. Scouring the legacy of several post-colonial societies, one is confronted with ample evidence of this marginalisation.<sup>2</sup> This state of affairs was not lost on South African women. As the negotiations towards democracy proceeded in the early 1990s, the vigilance of women activists ensured that women's issues were not relegated to a secondary

place on the national agenda. Women activists fought successfully to ensure that women's rights were fully incorporated in the new Constitution. Indeed, it is arguable that contemporary South Africa may provide some pointers in assessing the possibilities for women's equality, as well as demarcating significant limitations in achieving such equality.

Several questions are pertinent to the enquiry about unfulfilled promises to promote and protect women's rights. First, how is the contradiction between the formal declarations of commitment to gender equality and their ambivalent and lacklustre pursuit by transitional democratic governments diminished? Second, what vision of gender equality surfaces after a brutal history of war, dislocation and dispossession, and is this vision diluted by supposedly more pressing national needs? Third, how are the foundations laid and strategies designed, particularly legal ones, to eradicate or diminish violations of women's human rights? Fourth, how does society balance the secular nature of rights enforcement within contexts of deeply entrenched religious or 'customary' norms? In sum, how does a society pursue women's rights in the face of massive economic inequalities, political ambiguities, social upheaval and cultural uncertainties?

## The Global Consensus on Women's Rights

Feminist legal scholars, particularly those focusing on international human rights law, have over the years proffered some approaches to achieving a global consensus on women's human rights. They have creatively carved out an international conversation that has challenged national and global leaders to confront national and international policies, practices and laws that continue to subordinate and

disadvantage women. Not satisfied with mere theory, feminist legal scholars working with women's activists, have generated a synergy between local and global women's activities. Organising and lobbying on all five continents, aided and abetted by the liberating possibilities of the innovative communications technology, women's voices in the political realm are no longer muted. The last few decades have seen concerted efforts by women activists across the globe to bring women's issues from the margins of political and legal discourse to a place where women's concerns and priorities are at least formally recognised.<sup>3</sup>

Women activists across the globe have developed strategies to overcome individual and structural discrimination against women. A watershed moment was the passage of the Vienna Declaration of Violence Against Women in 1993 – a monumental effort to place violence against women as central to the global women's human rights project. This Declaration vindicated the labour of women activists during the UN Decade for Women 1975–85, and was followed in 1995 by the Beijing Declaration and Platform for Action, and again by Beijing Plus 5. Well-orchestrated campaigns by women activists have also raised possibilities for generating local strategies to achieve the ends outlined in the various international documents that promote the rights of women. In all of these activities the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) remains a great resource, providing a language and a script for women, which can be indigenised to accommodate local conditions.

In pursuing transitional perspectives on women's human rights, I am interpreting the concept of 'transitional' in two ways: first, in a literal sense, meaning societies that are in some form of political transition, such as the one South Africa embarked upon in 1994 and second in a global existentialist sense – the idea that the overwhelming forces of global capitalism impact on most aspects of economic, social and political life. The consequences have resulted in fluid, dynamic and modified forms of economic, political and cultural negotiation and contestation, particularly around women's rights and the role and status of women. For women, both interpretations of transition provide tremendous opportunities, but also weighty challenges.

## The Constitutional Incorporation of Rights

Transitional and newly elected democratic governments provide fertile opportunities for assessing and analysing issues of women's equality. In many of these 'new' democracies, a confluence of factors have created the theoretical and practical universe for a thorough assessment of rights. Amongst these factors are internal ones, linked to the political spaces that women have carved out for themselves. The external factors are often represented by linkages of human rights and democracy. Today, global human rights endeavours have increasingly targeted the specificity of women's rights as human rights, and in particular, their substance, their universality, their recipients and the role of the state in enforcing rights.

*Transitional and newly elected democratic governments provide fertile opportunities for assessing and analysing issues of women's equality.*

South Africa's experience of legal transformation is a case in point. The South African Constitution contains the most comprehensive listing of rights in any national rights document. The drafters of the Bill of Rights were explicit about the aims of the document, namely, to generate a transformative agenda with human rights at the core. The Constitution was designed to be a key instrument in moving the country from one steeped in racialised and gendered privilege to one embracing rights for all, a symbol of the possibilities of human rights as a mode of political transformation. The human rights jurisprudence of the Constitutional Court in South Africa is increasingly providing stellar examples of the judicial enforcement of rights. With respect to violations of women's rights, the Constitutional Court has embraced international legal principles to adopt a version of equality that recognises the particular contextualised forms of these violations.<sup>4</sup>

The constitutional incorporation of human rights generates significant

possibilities for women who are encumbered by systemic subordination and individual discrimination. Bills of Rights, however, highlight several contradictions in societies burdened by economic inequalities, cultural practices that harm women, and widespread violence against women. These severely hamper the efforts to remedy violations of women's rights. For example, attempts by South African women to address the country's HIV epidemic have highlighted structural obstacles linked to a profound legacy of racism, patriarchy and sexism. Any strategy to remedy violations of women's human rights has to engage with both the possibilities and the limitations of human rights legal stratagems as an integral part of the overall political project.

## Global Activism

The global reality suggests vast economic, geographical, cultural, and social differences between women, particularly between those in the developed world and their counterparts in the developing world, but not exclusively so. Despite this, global women activists continue to insist on a collective mobilisation of women against female subordination in all its various guises.

Feminist activists, largely from the South and schooled in nationalist struggles for independence, utilised their political skills at the UN to challenge that body to pursue women's rights more vigorously. They strategically engaged the support of women from the wealthier countries in the North. The result of much of this activism has meant that despite formidable obstacles to women's equality in a vast array of economic, social, and political areas, there now exists a highly organised, politically astute, articulate, and vocal group of women activists who have committed themselves to remedying violations of women's rights, not only within their borders, but on a global scale.

But the activities of some global activists have over time begun to raise concerns, not because of disagreement with the ultimate goal that violations of women's rights ought to be eradicated, but because many women activists, especially those in the developing world, have expressed reservations concerning the tactics utilised. These concerns have surfaced after several global campaigns which appeared to be tinged by a certain evangelism, embracing the narrative of rescue: women in non-western societies

needed to be rescued from barbaric and oppressive cultural practices. This evangelism, apparent in much of the writing and the resultant activism, was most pronounced in discussions about indigenous law. It became particularly animated with regard to certain traditional practices, such as polygamy and female genital surgeries. Very often the campaigns to discard these practices failed to appreciate the totality of a particular community's traditions and laws. They largely ignored the complexities and the contradictions of the interaction of law, identity, tradition and community, and the nuanced and complex nature of an individual's engagement with these interactive processes. Nor did women activists fully appreciate how their campaigns would dovetail with nationalistic and jingoistic attitudes which surfaced in many anti-immigrant initiatives in the West.

## The Question of Culture

These tensions are not novel. But in the contemporary international women's human rights community the debate between those who advocate a universal secular approach to rights enforcement are increasingly confronting a vocal constituency of women who espouse a religious, nationalist, or cultural interpretation of rights. The global women's rights movement now finds itself having to engage with the voices of women who insist on a human rights vision that incorporates their religious, nationalist or cultural concerns and which embodies remedies and strategies that do not necessarily conform with the accepted global approach. These voices challenge global feminists continuously to confront what appears to be a particularly taxing human rights problem, namely, how human rights accommodates the claims of culture. Although culture complicates questions of rights and equality, it is ultimately the economic condition of women that determines gender roles, and how in fact culture is negotiated and experienced.

Political events in the past few years have catapulted the issue of religious or cultural rights to the epicentre of global politics. It has been highlighted most starkly in the conflict in Afghanistan, and to a lesser degree in Iraq. Women activists

continue to be embroiled in the often rancorous debates regarding culture and law; frequently the tensions are not just between men and women but amongst women themselves. In other words, in its most generalised form, the conflict has pitted traditionalists against feminists.

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This tension has played out at the UN in several ways. For example, the language in the Beijing Platform for Action was watered down considerably. The human rights of women were designated as a primary principle while the document recognised the 'significance of national and religious particularities and various historical cultural and religious backgrounds'. At the UN Population Conference in Cairo, 1994, the Vatican joined with several Muslim governments to counter what they considered the imposition of Western values of individualism and autonomy on the rest of the world.

In many ways there has been a global consensus on the theoretical edifice of human rights law and policy: across a range of constituencies and in multiple locations, the concept of human rights is seen as good for humanity. While it is arguable that the rhetoric of economic redistribution has been replaced by the rhetoric of human rights, there has also emerged, although to differing degrees, a growing recognition that economic, social and cultural rights deserve the equivalent primacy of civil and political rights. Indeed, the interdependence of rights has almost universally been accepted. But one of the enduring tensions within human rights law and practice persists, and has become even more pronounced: the tensions between the apparently competing claims of cultural minorities and the claims of equality and human rights.<sup>5</sup>

Almost always in regarding women's rights the question of culture, or rather cultural concerns, become crucial in discussing the appropriate status of women. Opportunistic male politicians have exploited this 'tension' between rights and culture to attack what they consider the imperialism of the global feminist movement. Often, their rendition

of culture is a static one, impervious to the notion that shifting cultural norms and their accommodation occur all the time. When these politicians appropriate the discourse of women's rights, they insist on a version of culture devoid of the resilience which has been the hallmark of culture since time immemorial.

Scholars and activists who insist on the centrality of culture in human rights also often portray culture as constant and unchanged. Although not explicitly stated, culture appears to function in an unproblematic, seemingly natural manner, unencumbered by the constraints of political, economic, social and other factors. The paradox results in the cocoon of cultural existence, shielded and isolated, depicted in direct contrast to Western culture, which is constantly evolving and dynamic at its core.<sup>6</sup> However, with regard to odious cultural practices and norms, as far as most Western feminists are concerned, the impetus is outwards. What occurs to women inside Western society, becomes immune from criticism.

What is often lacking is attention to culturally sanctioned discrimination in the developed world. Western feminists appear to be loath to focus their intellectual lenses on their own societies, where negative cultural stereotypes persist and in which privatised violence against women is widespread. An example is the range of cosmetic surgeries, including breast augmentation, face lifts and liposuction that thrive in the US cultural environment and which demand that women conform to a particular feminine stereotype.<sup>7</sup> This stereotype is perpetuated by a media saturated with demeaning depictions of women – all clothed in a liberatory language of choice, freedom and autonomy.<sup>8</sup>

The question then becomes: how do we in the human rights community have a

candid conversation about the role of culture in perpetuating stereotypes of women? How can we engage in a debate that appreciates the need to eradicate all forms of cultural discrimination against women, in a manner that is thoughtful, respectful and productive? How do we avoid the polarising impulses that perpetuate the notion of the exotic or uncivilised 'other' and the civilised or progressive 'us'? Most importantly, how do we focus on the eradication of violations of women's rights which occur through economic exploitation, limited access to economic resources, institutionalised private and public violence, and cultural impediments?

## Conclusion

In many ways those of us involved in the pursuit of women's rights have benefited tremendously from the debates that raged during the 1980s around the issues of universalism and cultural relativism, about whether human rights principles apply globally or whether their applicability is limited within particular cultural contexts. The dust has largely settled on those debates, a consequence of widespread engagement by women from the non-Western world who have mainly eschewed cultural relativism in favour of feminisms for which they have developed and fought. As the Iranian feminist, Valentine Moghadan, points out:

*'It is no longer possible to speak of a feminism for the West versus a different set of priorities for the developing world...feminist movements have proliferated in the Muslim world...and they have taken strong objections to discourses of cultural relativism...'*

So too, South African women, when they negotiated the Constitution to govern a democratic South Africa, vehemently opposed attempts by the traditional authorities to immunise customary law from the dictates of equality, the primary principle of the Constitution. These leaders and their supporters argued for the uniqueness of traditional institutions, their autonomy and authenticity. South African women appreciated the significance of these concerns but recognised the flexibility of traditional laws and customs that could accommodate the principle of equality.

Even though feminists from non-Western societies have largely rejected the spurious claims of cultural relativism to which women's rights and equality are held hostage, there is still not a global

consensus amongst women about the place of culture or religion in pursuing women's equality, or indeed what that equality looks like. As Valentine Moghadan points out, feminist movements exist in the Muslim world, and they have largely articulated an indigenous vision of women's equality which acknowledges the role of religion and culture in their lives. The secular pursuit of human rights, as defined in most Western-style democracies, has great difficulty taking a foothold in many Muslim countries. Indeed, Haleh Afshar, another Iranian feminist, argues that Islamic women defend their faith 'as a dynamic system that has offered much to women'. They believe that in fact their faith offers them 'even more than Western-style feminism'.<sup>10</sup>

This is a wonderful moment to engage in a fruitful dialogue about the implementation and enforcement of rights for women both locally and globally. Women in some locations have made tremendous advancements and can proceed to build on those successes. But the task of changing the dismal reality of the condition of majority of the world's women remains the greatest challenge. We need to continue to raise difficult, even uncomfortable, questions - and to seek answers collectively, respectfully and productively. ■

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- 1 See, for example, Mandela, W. (1985) *A Part of My Soul Went With Him*, W.W.Norton & Co.
- 2 Maboreke, M., 'Women and Law in Post-Independence Zimbabwe', in Bazilli, S. (ed.) (1991) *Putting Women on the Agenda*, Ohio University Press, p227.
- 3 See Bazilli, S., (ed.) (1991) *Putting Women on the Agenda*, Ohio University Press; Cook, R. (ed.) (1994) *Human Rights of Women. National and International Perspectives*, University of Pennsylvania Press.
- 4 Andrews, P.E., 'The Stepchild of National Liberation: Women and Rights in South Africa', in Andrews, P.E. and Ellmann, S. (eds) (2001) *The Post-Apartheid Constitutions: Perspectives on South Africa's Basic Law*, Witwatersrand University Press Publications.
- 5 Arguably these issues have been central to the modern global human rights project. They may have been attached to different labels over time - first and third world, individualism versus communitarianism, traditional versus modern. See Buruma, I., and Margalit, A. (2004) *Occidentalism: The West in the Eyes of its Enemies*, Penguin.
- 6 Binder, G., 'Cultural Relativism and Cultural Imperialism in Human Rights Law', *Buffalo Human Rights Law Review* 5, 1994, p1053; Currie, I., 'The Future of Customary Law: Lessons from the Lobolo Debate', *Acta Juridica*, 1994, p156.
- 7 In 2003 approximately 8.3 million cosmetic procedures were performed in the US. The top five surgical procedures were liposuction, breast

augmentation, eyelid surgery, rhinoplasty and breast reduction. See Report of the American Society for Aesthetic Plastic Surgery available at <[www.my.wemmd.com/content/Article/82/97313.htm](http://www.my.wemmd.com/content/Article/82/97313.htm)>. Of course these surgeries occur elsewhere, e.g. in Brazil and China. But these countries are not attempting to impose their cultural values on the rest of the globe.

- 8 Morgan, K.P., 'Women and the Knife: Cosmetic Surgery and the Colonization of Women's Bodies', in Bushnell, D.E., (ed.) (1995) *Nagging Questions*, Rowman & Littlefield.
- 9 Moghadan, V.M., 'Patriarchy, The Taleban, and Politics of Public Space in Afghanistan', *Women's Studies*, 2002, pp.17, 27.
- 10 Afshar, H., 'Islam and Feminism: An Analysis of Political Strategies', in Yamani, M., (ed.) (1996) *Feminism and Islam: Legal and Literary Perspectives*, New York University Press.