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The Right to Self-determination and Individual Rights in the Era of Decolonization in Sub-Saharan Africa: The Case of UNESCO

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This paper examines the conceptual origins of individual rights that shaped the UN and UNESCO model of human rights and the origins of group rights as they emerged in the post–colonial era to challenge inequality. It argues that the idea of rights to self determination, associated initially with decolonization in Africa based on equal statehood status in international relations, has, since decolonization, reinvigorated the promotion of group or peoples' rights as a framework for challenging poverty and inequality, including access or rights to development.

Keywords: human rights, individual rights, group rights, inequality, self-determination, decolonization

Introduction

The 1948 Universal Declaration of Human Rights and subsequent conventions enshrined in the charter of the United Nations and reflected in its programs, declarations and resolutions, were turning points in modern history. The epistemological underpinning of the Human Rights declaration originates in the concept of "natural rights" and the "Rights of Man", reflecting the notion that all individuals are equal and should universally receive fundamental freedoms without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status (Article 2). Within this conception, the very concept of 'right' denotes equal worth of human beings and equal entitlement regardless of location or situation. To say that an individual has a "right" to something suggests entitlement and that something is owed. In this sense, "right" is a legitimate political demand expressed in terms of claims and entitlements and the state has a duty to deliver or protect them.

The United Nations General Assembly adopted the non-binding Universal Declaration of Human Rights (UDHR) on December 10, 1948 and 48 states subsequently signed up to it. However, the universalism captured in the UDHR has not been uncontested. Scepticism and challenge to the concept of individual and natural rights expressed by the African states established following decolonisation in the 1950s and 1960s, shows how the particular context of African Peoples had no influence over the construction of the UDHR. Their main contention was the way in which the conceptualisation of human rights appears to glorify a "gross individualism" and provide scant regard for other cultures and philosophies that balance the rights of the individual alongside responsibilities and duties to communities. The UHDR package of rights pays little attention to the particularity of situations and their uniqueness or history, which is why since de-colonisation

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there have been frequent calls for a more contextually sensitive universalism.

This is captured in an article that was published in UNESCO's "Courier" in 1938, in which Richard Write, "the Negro Writer of 'Bright and Morning Star' and 'Native Sons'", is quoted: "In Africa, for the most part, individual will and initiative are almost unknown and are largely considered sinful. All work and endeavour is done under the guidance of traditional ceremony" (Grierson, 1948).

A central contentious issue was not disagreement about the generic values that underpin human rights, as captured in the UDHR, but the UDHR's lack of recognition of the right to self-determination for which many African countries had struggled for so many years. This mode of self-determination was considered to be a group right and one that was about determining independence and the freedom to choose social economic and political institutions without external intervention and coercion. Asserting what has become known as third generation rights, continues today to be part of a wider movement to redress the economic, social and political inequality between African and developed countries. This paper discusses how the declaration of 1948 has been criticised for its universalism mantra and for prioritising political and civil rights (the first generation of human rights) over economic, social and cultural rights (the second generation of rights). The third generation of rights are discussed in the context of Africa and Asia, where assertion of collective rights and the rights of peoples have been most prevalent.

While UNESCO adopted a universal values approach to human rights that is both individual and transnational, the organisation questioned the concept of the right to self-determination out of concern about its vagueness. To understand UNESCO's engagement with the human rights discourse in Africa, we need to consider the historical context. This paper therefore examines the conceptual origins of individual rights that shaped the UN and UNESCO model of human rights and the origins of group rights as they emerged in the post–colonial era to challenge poverty and inequality. It argues that the idea of rights to self determination, associated initially with decolonisation in Africa based on equal statehood status in international relations, has, since decolonisation, invigorated the promotion of group or peoples' rights as a framework for challenging poverty and inequality, including access or rights to development.

The Theoretical Basis of Human Rights

With the formation of the United Nations following the Second World War, the rights discourse flourished on the global stage. The UN was to take a leading role in addressing the inhumanities and abuses of World War II. To this end, the Human Rights Commission of the UN (Chaired by Eleanor Roosevelt) was formed to prepare the drafting of a Universal Bill of Human Rights that would set a clear framework for its operation. UNESCO was tasked with providing the theoretical and philosophical foundations of a Human Rights Declaration. Julian Huxley, who was appointed as president of UNESCO in 1946, was instrumental in promoting the idea of human rights and contributed greatly to the debate[1]. In 1947 the UNESCO Committee on the Theoretical Basis of Human Rights, chaired by British Diplomat and Professor of International politics Edward H Carr, was charged with the daunting task of preparing a report on Human Rights for the UN Commission of the Economic and Social Council. The objective of this committee was to scrutinise the theoretical foundations of UDHR by way of worldwide participation and consultation. The committee

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[1] According to Toye, The first years of UNESCO under Huxley as Director–General from 1946-1948 were amongst the most creative of its existence to date. Under Huxley's leadership the organisation adopted a pioneering approach to both literacy and population control, and launched an ambitious project of a History of Mankind (Toye, 2007, p. 1).

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consulted philosophers, scholars and member states by sending identified participants questionnaires on the principles underlying the Rights of Man. It is important to point out that questionnaires were sent not only to National Commissioners, but also directly to individual scholars who were asked to consider "the rational interpretation and justification of those rights of individuals which society must respect and which are desirable" (Maritain, 1948). UNESCO received 79 replies[2]. The majority shared common convictions on the whole notion of Human Rights, underpinned by universal values, morality and freedoms. However, there were some ideological and political variances, reflecting the different philosophic principles and divergent political and economic backgrounds of participants. In the words of the French philosopher Jacque Maritain, who wrote the introduction to the final report?

> "From the point of view of philosophical doctrine it may be said, without over simplification that, as regards the question of Human Rights, men are totally divided …into two antagonistic groups: those who to a greater or lesser extent explicitly accept, and those who to a greater or lesser extent explicitly reject, 'natural law' as the basis of their rights" (1948, p. 4).

Those who rejected the proposals based on the idea of natural rights were mostly of a Marxist persuasion and of the belief that "modern" ideas of rights that were formulated within Western political philosophy were apt only for a capitalist economy. And, not surprisingly, it was within mainly liberalist paradigms that they were embedded. While Marx and Marxists promoted collective rights, liberalism reflected a commitment to individual rights. We must not forget that equality for all was and is at the heart of any liberal political vision and social justice discourse. The liberal social contract theory of Locke, Rousseau, Mills and Kant was founded on the concept of rights as equality, that is to say, the idea that human beings are fundamentally equal and that individuals should therefore be treated equally. These thinkers encapsulated the dynamism of the Enlightenment in Europe, which rejected the stronghold of tradition and religious teleology, by promoting a commitment to free inquiry, rationality, reason, power of knowledge and scientific innovation.

The idea of natural rights, that underpins liberalism and liberalist rights theory, was developed on the threshold of capitalist development. Liberalist rights theory reflects a commitment to individual autonomy, equality, liberty and freedom–all concepts that were defined and constructed in a society based on a market economy and the ownership of private property[3]. What was not considered was the relevance of this to Africa where in the absence of a market economy, land in the main was not privately owned. The formation of export economies under colonial rule had required reorganisation of the economic activities of local people under the new ruling elites of the colonial state–white settlers and companies mainly from Europe. The subsequent mobilisation of labour fragmented traditional social relations and ways of life, forcing the black population to move to communal or reserved areas while white people occupied large areas of the most fertile lands.

In many African countries, tribal chiefs were given rights to land through lineage leadership and therefore controlled its allocation for homes, crop cultivation and communal usage, such as grazing land. In fact the right to occupy land depended on being accepted as part of a community, under the jurisdiction of the village

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[2] approximately 50% of the individual scholars responses was received.
[3] In a very different historical and cultural context in France, the whole notion of rights instigated a new discourse that justified the transition from a feudal society of patronage and hierarchy to one of bourgeois social relations based on property rights. Under the influence of Jean-Jacques Rousseau, the Social Contract (that was adopted in 1789 as the French declaration of "the Rights of Man") promoted the liberal mantra that "men are born and remain free and have equal rights", as a fairly direct response to Rousseau's famous remark "Man is born free, but is everywhere in chains" (Rousseau, 1968). The idea of the Rights of Man was not without its critics from the emerging capitalist class that, through economic liberalism, justified a utilitarian approach to society.

headman who allocated the community's estate. Thus individuals' rights of control were as secure as ownership could be, through the mechanism that no one had the right to dispose of land individually, and could only do so after consultation with the lineage family and the village headman. Many such customary arrangements that place land in the trust of village chiefs continue to prevail today. They do not require legal frameworks, as traditional authority and responsibility is embedded within the moral obligations of a leader. Of course in many cases this power is abused through patronage and fosters both challenge and resistance to change.

Colonial rulers constructed a rural, tribal identity for indigenous populations in Africa as a means of establishing political administrative control over customary rights. Traditional authority and forms of social organisation or customary rights have tended to be viewed as contradicting modern forms of social organisation and liberal ideas that promote individual property rights and which have been introduced in the wake of colonisation. This dualism is often judged as being a prime obstacle to development. The main contradiction seemed to be that rights principles based on individualistic land ownership could not work in areas where land is collectively managed through kinship. Concerns included the potential exclusion of women and vulnerable groups from livelihood support. The problems that we might seek to address today through the human rights discourse were not considered to be social problems before the creation of capitalist market economies and modern nation states. To some extent this view has been carried forward into the contemporary liberal tradition where we find that the legitimacy of the institution of private property is considered to be a necessary condition for individual self-preservation; frequently argued to be core to social justice (Cohen, 1995, p. 56).

To the early Liberals this shift from tradition to modernity represented the progress needed to improve the well being of the human condition. In fact natural rights, derived from reason, self-evidence, or an empirical conception of 'nature', and based on the study of how humans actually behave, were the basis upon which critiques of traditional society[4] were founded (Campbell, 2006, p. 7). Although the early liberal theory of social contract advocated that civil society involved the rule of majority, it was in itself incomplete in that, as Russell points out, it excluded women, the poor, children and indigenous people from the rights of citizenship. It also excluded those who did not own property, mainly the working class and peasants (1979, p. 607). In short the earlier classical liberals were preoccupied with civil and political rights and the objective of giving individuals freedom from abuses of the state. They were less concerned with economic, social and cultural rights or how poverty could be addressed. The desire to separate civil and political rights from social, economic, and cultural rights remains one of the main challenges of the implementation of the right to development. To this end, more recently Nozick, Rawls, Dworkin, Cohen and Sen have extended the debate that the early rights theorists started to cover a much broader spectrum of interpretations.

Other contributors to the theoretical basis of human rights as defined in 1948 went so far as to suggest that the idea of 'natural rights' actually defied the nature and legitimacy of existing paradigms of power in the seventeenth and eighteenth centuries. Stammers (1995, p. 448) confirms this in suggesting that rights. As perceived by the early liberal theorists, in fact, both challenged and sustained power relations. The dichotomy

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[4] The basic tenant of the early theorists on rights was that all individuals should be treated as equals. For Locke individuals "are naturally in, …a state of perfect freedom and equality. The equality of men by nature …[is] the foundation of that obligation to mutual love amongst men." (Locke, 1952, p. 4). This reflects a fundamental understanding of what is meant by "natural" in contrast to an understanding of society based on theological beliefs and institutional explanation. The whole notion of the social contract is based on mutual advantage, in that rational people get together and decide to leave the state of nature and to govern themselves by law in civil society. The language of rights was used to challenge divine rights, absolutist power and traditional forms of power relations, such as the ascendancy of hierarchy by rank, caste or birth.

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of the private and public realm on the threshold of capitalist development did evolve into a concept of rights that recognised the threat of the state and the concept of civil society. However it also fulfilled an ideological role of reinforcing prevailing relations of power. In a similar vein, Huxley's paper(1948) on "The Right of Man and the Facts of the Human Situation" written as a contribution to the debate suggests that UN's legislative approach to human rights would not in itself address issues of inequality, poverty and power relations:

> "A constitutional Bill of rights, whose principles are applied in specific legislation, can certainly do something to protect the masses of ordinary, unprivileged men and women against the few who, through wealth or hierarchical position effectively wield power over the majority. But prevention is always better than cure. Mere paper restriction, designed to curb the abuse of a power already concentrated in a few hands, are but the mitigations of an existing evil. Personal liberty can be secure only by abolishing the evil altogether. UNESCO is engaged at present in facilitating the task of mitigation; but it is in the fortunate position of being able to proceed, if it so desires, to the incomparably more important task of prevention, of the radical removal of the present impediments to liberty" (p. 206).

In response to the UNESCO questionnaire, Tohechko, a Soviet Professor of Law, sent a paper entitled "The conception of the rights of Man in the USSR" (1949), expressing his clear view that the conception of human rights that was being promoted by the UN did not fit all societies. A similar view was reflected by Carr and other members of the committee in the conclusions that UNESCO's drew from the articles and detailed questionnaire distributed. The main issues was the hierarchy of rights, with civil and political rights or freedom of opinion and expression having priority over economic and social rights It was argued that a persistent imbalance in the articulation of economic and social rights evidences inequalities and tensions not only between the powerless and the powerful or rich and poor individuals within states, but also between states themselves. The committee therefore recommended that economic and social rights were recognised as well as individual civil and political rights that primarily relate to freedom of opinion and expression.

Scholars from the Soviet Union, who contributed to the Theoretical Basis of Human Rights debate, were explicit that the Bill of rights did not necessary serve all political and economic formations, most notably those of the Soviet Union, Africa and Asia. Some Asian States questioned the acceptance of a universal rights standard and criticised Western policy for its "double standards" in imposing "Western values" that effectively violated their sovereignty. In reality a whole range of complicating factors challenge the articulation of rights and individual agency. Mostly advocated by Western liberal states, the way that rights are institutionalized and mediated tends to focus on civil and political rights, based on the principles that states exist to protect civil society and to defend and uphold property rights. This liberalism has, nonetheless, been considered to represent "false universalisms" (Falk, 2001), promoting an equality that is merely formal rather than substantive and one that prioritizes the individual's civil and political rights over social and economic rights. In other words this accommodates the position of Western countries.

In submitting their report to the United Nations Commission in 1947, UNESCO promoted the dissemination of the debate on the different ideas that had been put forward by selected scholars, in a publication of papers together with the Committee's conclusions. The objective was to promote growth of public interest in the philosophical problem of Human Rights, perhaps with the intention of pushing the boundaries on the debate about a lack of recognition of social and economic and cultural rights. However, it was not an approach supported by the United Nations Commission, and after several meetings UNESCO was persuaded to postpone publication of the report. The Commission recommends that the report should only be distributed to the members of the Commission, and not all member states (E/CN.4/SR.26). There was also

consensus that UNESCO should not publish the report until member states had adopted the UN Universal Human rights Declaration. The UN Commission was wary of the divisive tone of the UNESCO report and to avoid upsetting any member states, the UNHRD was adopted without delay. Although the UNHRD was non-binding and many states adopted the common normative framework that it represented, others refused to do so on ideological grounds. The UNESCO report was distributed and published in 1949 entitled Human Rights, Comments and Interpretation, with an Introduction by Jacque Maritain.

Of the many philosophers and scholars to whom UNESCO sent long and detailed questionnaires to elicit their opinions, 85% were from western and eastern European countries, including the Soviet Union and the USA. Only a few were from 'Third World' Courtiers (Brazil, China and India[5] mainly). The upshot of this was that in generating the UNHRD, there was no engagement of people from Sub-Saharan Africa. In 1947 only 41 countries were members of UN, and Sub-Saharan Africa was represented by the colonial powers and empires that dominated and exploited the continent. Until 1960, there were only four members in UN General Assembly from Sub-Saharan Africa (Liberia, Ethiopia, Ghana, and Guinea) and they had no voice or influence. And yet the shared history of colossal inequalities and human rights violations that African nations suffered under colonial rule, would shape how they viewed rights as a key part of national independence. It should have been no surprise that the Universal Declaration on Human Rights of 1948, which in ascribing to the liberal principle of equality and universality gave prominence to individual rights and not to group or collective rights, would for African people and states prove to be inadequate.

The Ideological Dilemma-Different Cultural and Historical Interpretations of Human Rights

The committee responsible for the theoretical Bases of Human Rights welcomed the fact that the Universal Declaration of Human Rights was a 'radical departure' from the French and American Bill of human rights or what has become to be known as the first generation of rights, in that it had more emphasis on rights to education, a better protection of employers[6]. Its origin nevertheless was Eurocentric and grounded in the promotion of civil and political rights. The committee concluded that "the history of philosophic discussion of human rights, of the dignity and brotherhood of man, and of his common citizenship in the great society is long: it extends beyond the narrow limits of the Western tradition and its beginnings in the West as well as the East coincide with the beginnings of philosophy" (UNESCO, 1948, Appendix, p. 3).

As discussed above, the modern Bill of Rights that underpins the UN declarations is derived from Western political philosophy. Is this because there are no alternative philosophical, economic and political approaches to those developed in the West or an insufficient body of knowledge about them? Even though we associate the

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[5] Ghandi's response gives a flavour of how diversely rights can be interpreted. His response was brief, but supportive of the idea that human rights is not abstract and philosophical, but comes from the heart of society: "I learnt from illiterate, but wise mother that all rights to be deserved and preserved came from duty well done. Thus the very rights to live accrue to us only when we do the duty of citizenship of the world". From this one fundamental statement, perhaps it is easy enough to define the duties of man and woman and correct every rights to some corresponding duty to the first performed. Every other right can be shown to be as usurpation. Hardly worth fighting for. Yours Sincerely M. K. Ghandi (UNESCO, 1948).

[6] It was through the discourse on natural rights of the Enlightenment period that the first generation of rights' activists was born. Their activities were manifested mostly in the promotion of civil and political rights. This was first reflected through the US Declaration of Independence in 1776 or Bill of Rights and the enshrining of natural rights in the text of the Constitution. In a very different historical and cultural context in France, the whole notion of rights instigated a new discourse that justified the transition from a feudal society of patronage and hierarchy to one of bourgeois social relations based on property rights. Under the influence of Jean-Jacques Rousseau, the Social Contract (that was adopted in 1789 as the French declaration of "the Rights of Man") promoted the liberal mantra that "men are born and remain free and have equal rights", as a fairly direct response to Rouseau's famous remark "Man is born free, but is everywhere in chains" (Rousseau, 1968).

term "rights" with the European Enlightenment, its component ideas have deep roots in many other traditions (Nussbaum, 1999, p. 8). It is also evident that how rights and obligations are discharged in Western and non-Western settings can vary, and that notions of rights and social justice are historically and culturally shaped. The idea of justice and rights is not new but can be found in the philosophies of many ancient civilizations and cultures from the Greeks and the Romans through to the Persians, Indians, Chinese and Africans. In pre-capitalist or pre-modern periods, social hierarchy and the differentiation that went with it allowed rights to be wrapped up in the privileges of status, such that to view wives and slaves as property was considered to be the natural order created by God (s). Similarly the chain of command that existed during the Roman period ascribed rights through birth and citizenship. Some of these interpretations are manifested today in cultural or religious contexts, for example, the Indian caste system. During the Medieval era despite a moral obligation to treat all individuals equally in Christian or Islamic societies, discrimination persisted between believer and non-believers and between the rulers and the ruled. In all of these early contexts the behaviors of rulers were not questioned by the majority, in other words individuals did not have the natural right to question authority.

Values and rights often reflect traditions that for centuries are passed on from one generation to the next through unwritten rules, archives of cumulated experiences and oral histories, as is the case in Africa where cultural heritage and knowledge is largely oral. Nelson Mandela (1995) provides us with a nice example of how rights and social justice are embedded in tradition and passed from one generation to the next, in his case through "the wise men who retained the knowledge of tribal history and custom in their heads and whose opinion carried great weight". He describes how tribal meetings represented democracy in its purest form with all tribal members allowed to attend and speak, with decisions taken jointly: "There may have been hierarchy of importance among the speakers, but everyone was heard…People spoke without interruption and the meeting lasted for many hours. The foundation of self government was that all men were free to voice their opinions and were equal in their value as citizens…Women I am afraid were deemed second citizens…" Although these institutions and customary laws provided transparency, their hierarchical relations should not be romanticised. This conception of human rights was an essential aspect of African humanism (Asante, 1969, p. 7). There is synergy between the basic values the underlie "human rights" and the values of many traditional African societies, but there are differences in the way in which they and the practises established to implement them (Penna and Campbell, 1998; Donnally, 2003).

In 1947, the crucial point that UN and UNESCO missed was the need to recognise, what is clear to us today, that universal rights can have different cultural and historical origins. Perhaps we can understand how, in the context of 1947, the early Eurocentric ideas of liberalism of one sort or another influenced the theory and practice of UN and UNESCO, but it cannot be denied that the absence of culturally informed ideas from Africa within the human rights discourse were a significant shortcoming. The tension that existed between the Global North's conceptualisation of political and civil rights that emphasise the individual and the Global South's inclination for economic, social and cultural rights and the right for self determination, gained momentum during the era of independence. We should not forget that this was also during the period of cold war rivalry. States from the south insisted on the UN adopting a broader and more "multidimensional" understanding of rights specifically in relation to social and economic rights. In response, in 1966 the UN accepted a division between social and economic rights on the one hand and civil and political rights on the other by dividing the common normative framework of the Declaration on Human Rights into two International Covenants–one on Social and Economic and Cultural Rights and the second on Civil and Political Rights. Both Covenants in

Article 1 state that "All peoples have Rights to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".

Essentially decolonization and the rise of liberation movements radically altered the political realities facing the institutions of global governance the late 1950s. As an institution, UNESCO had to confront the discourse on cultural rights and the question of reconciling the idea of 'united culture' and 'unity in variety', as advocated by Huxley in his inaugural paper of 1946, with the right to self determination. Huxley's evolutionary humanist perspective of a 'universal culture' permeated thinking on the links between culture and human rights within UNESCO:

> "Attention should consequently be given by UNESCO to the problem of constructing a unified pool of tradition for the human species as a whole. This, as indicated elsewhere, must include the unity-in-variety of the world's art and culture as well as the promotion of one single pool of scientific knowledge. But it must also eventually include a unified common outlook and a common set of purposes. This will be the latest part of the task of unifying the world mind; but UNESCO must not neglect it while engaged on the easier jobs, like that of promoting a single pool of scientific knowledge and effort" (Huxley, 1949, p. 21).

During UNESCO's early period "culture" was "employed as a structuring concept to guide the development of artistic production in member states". In an Article published in the Courier in September 1949 entitled Change and Decay, Huxley provides a good description of this in the context of Africa:

> "I was deeply impressed by the range and variety of its traditional art, and above all by the vigour and high quality. West Africa gives us the bronzes and terracotta of Ife, whose classical style, unique in black Africa, poses fascinating historical questions…..; It gives us the delightful gold weights of Ashanti; the rich costumes of hundreds of native rituals; the bronzes of Benin in which barbarism touches the heights of splendour; wood-carvings with the natural strength and sense the form after which modern Western sculpture is striving; masks in endless variety, some of what we are accustomed to think of as pure negro type, others recalling the style of the Far East, others reminiscent of Red Indians or of sophisticated night-clubs in New York, comic masks with hinged jaws looking like Charlie Maoarthy, horrifying masks (If the gods of disease, ivory masks with the tragic thing. however, is that in West Africa, as almost everywhere else, this primitive art is rapidly disappearing. …." (Huxley, 1949, p. 21)

His reference to 'primitive art' does not mean crude or poor art, but rather describes the traditional art of peoples have not reached the technical levels of organization that the sociologists call civilization. In this early period for UNESCO "Culture" denoted cultural *productions*–works of art and letters, architecture, cuisine and cultural activities including the preservation and protection of art, heritage, and artists (Stenou et al., 2004, p. 7). It did not refer to particular social relations with unique traditions, language, religion, identity and ways of life. One should not presume that Huxely was wrong or right in his understanding, as these ideas are contextual and time-related. The issue more generally relates to processes of knowledge production and transformation (Long, 2004, p. 25). This lies at the heat of understanding how ideas travel, or are relocated and reconstituted to acquire new meanings and in response to the changing needs of different societies.

There appeared to be tension within UNESCO on the trade-off between unity and difference and this generated both theoretical and practical problems in the organization (UNESCO, 2000, p. 5). This was at a time when people from Africa and other developing countries were demanding their rights to development. Culture, identities and particularism were being incorporated into the political discourse of African liberation movements articulating peoples' rights to self determination and self government.

UNESCO's response, reflecting an understanding of the direct relevance of peoples' rights to cultural identity and educational practice, was to adopt a broader and more "multidimensional" understanding of culture in the Declaration on the Principles of International Cultural Cooperation in 1960. Article 1 clearly specifies

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that "Each culture has a dignity and value which must be respected and preserved" moreover "every people has the right and duty to develop its culture". The UN's recognition of peoples' rights to their own culture established an initial link between human rights, human dignity and culture. This was an important step in bringing culture into the political mainstream of international relations, and allowed the idea to emerge that cultural diversity could serve as a basis for endogenous development. In 1982 this was captured in a significant epistemological shift in UNESCO with a broadening of the definition of culture in the context of human rights:

"The set of distinctive spiritual, material, intellectual, and emotional features of society or a social group. In addition to art and literature, it encompasses lifestyles, basic human rights, value systems, traditions, and beliefs."

This was followed in 2001 with the Universal Declaration on Cultural Diversity:

"This diversity is embodied in the uniqueness and plurality of the identities of the groups and societies making up humankind. As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature. In this sense, it is the common heritage of humanity and should be recognized and affirmed for the benefit of present and future generations" (Article 1).

In linking cultural identity to the general goals and means of development for the newly independent and developing countries, meant that they demanded both appreciation and respect as a set of political and economic choices.

Rights to self-determination-the African Charter of Human Rights

The critical point in this debate was the structure of the new global order that emerged post-colonialism, a global order based on the socialist model of development on the one hand and a market economy under the political hegemony of a few powerful states, not least the USA, on the other. This transition was not smooth however, not least because the colonial powers did not prepare indigenous populations for independence and therefore it is no surprise that their retreat happened before organized indigenous political movements emerged. The legacy of colonial rule had in many cases exacerbated African problems, as O'Sullivan points out, "leaving behind legacies of arbitrary borders, underdeveloped infrastructure, economic exploitation, ethnic and racial divisions, and overdependence on the production of raw materials". In the post-colonial political vacuum, superpower interest in Africa compounded the already 'difficult process of decolonization and state building' (O'Sollivan, 2005, p. 105).

As a source of collective identity, the right to self-determination provided a framework for establishing the credibility of national determination and independence and for challenging post-colonial inequality. This was clearly aimed at the elimination of obstacles to development in the newly emerged countries, many of which aspired, somewhat ambitiously, to 'catch up' with western modernisation. These 'Third World' states maintained that political independence required equality with other nations and those economic, social and cultural rights would empower the marginal states and their people to realise their independence and political liberty. Increasingly as African people asserted their demands for equality and autonomy on the world stage, they pressed the international legal order for recognition of group rights. For example the right of self-determination in international law is a component of the "Law of People" (Campbell, 2006).

In June 1981, the African Charter of Human Rights and Peoples' Rights was adopted by the organisation of African Unity consisting of 54 states. It was subsequently ratified by 53 States and entered into force for implementation on October 1986 through the African Commission on Human and People's rights based in

Banjul, the Gambia. The Charter stipulates self-determination, group rights, the right to development and minority rights (Organisation of African Unity, 1981). Article 20 specifies that:

> "All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen."

Some scholars from Africa argue vehemently that the African conception of Society is embedded in the African Charter, as it indicates that the individual in society does not live in isolation and independent from the community. In African social relations, the individual is considered to largely exist through and by their relationship with the group of their birth (Kiwanuka, 1988; Mutuwa, 1995).

The former director of the Division of Human Rights and Peace of UNESCO, Kark Vasak, endorsed the Charter by referring to it as capturing the "third generation of human rights". According to Vasak, the idea of third generation of human rights resonate the French Revolution of 1789 which was based on the Principe of fraternity, solidarity and collective rights and he associate the second generation of rights to equality and the first generation to liberty and the third generation based on the principle of solidarity rights and fraternity including the right to development, right to environment, and minority rights. These are collective or group rights and not individual rights and there were incorporated in the African Charter of People's Rights. This mode of self determination is part of wider view of development that redresses the economic and political inequity between developing and developed countries.

Interestingly as early as 1948, the committee on Theoretical Foundation of Human Rights was cautious about the concept of self-determination and groups rights and raised this in their report to UN Commission on Human Rights (see above) because of the issue of implementation:

> "The end of the first world War saw an early attempt at a general formulation of the rights of groups, in the shape of the principle of national self-determination; but its incompleteness and vagueness were speedily realised when the results of efforts to put it into practical operation were appraised. To the last few decades also belong the attempt to formulate the rights of nations and similar groups in relations to the rights of international or supra–national groupings-attempts which are still continuing" (UNESCO, 1948, Appendix I, p. 3).

Criticism of the Universal Declaration on Human Rights (1948) has been taken up by not only nation states and particularly fervently by some Asian States[7], but also by groups that believed they were excluded from society as a whole and through the global division of labour. Feminists, for example, were critical of UNHRD demand for not recognising social groups, arguing that women's marginalisation and oppression requires a critical explanation. Young identifies women as a distinctive social group that suffers systematic forms of injustice and argues convincingly for social justice to conceptualise group identity and associated rights as well as individual ones. Otherwise we risk a narrow conception of justice that has as its central goal

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[7] Since the 1980s the rights debate has moved into one about cultural relativism. Asian states for example have asserted the view that controlling personal freedoms under strong state leadership is acceptable to "secure public order, greater economic growth and preservation of religious and social values" (Chang, 2004). Whether the Asian values thesis is in fact genuine or is political expediency for authoritarianism and repressive regime is of course debatable. While cultures may differentially conceptualise duties and responsibilities, critiques of this version of the Asian position have argued that States employ the concept of individual "duty" to the wider community for political ends to maintain their powerbase, brush aside their human rights violation, and silence the opposition (Sen, 1999; Cox, 2002). In fact Asian leaders have rejected the use of Western human rights as an instrument of political and economic conditionality and legitimate humanitarian intervention, stressing the importance of national sovereignty and the principles of non-intervention in domestic affairs. When the economic development of some Asian states, such as China, has been criticised for being at the expense of civil and political rights, they have countered argued that their social and economic stability and success was founded on Asian values, culture and traditions that emphasized community and duty rather than individualism. Within this context the Universal Rights agenda is branded as the "cultural imperialism" of the West.

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the self-development of one's human capacities. Defining racial and gender justice in terms of the distribution of privileged positions among individuals, according to Young, fails to question decision-making power and structural power within institutional organisations and fails to acknowledge different causes of oppression, such as status, hierarchy, domination, exploitation, and cultural imperialism (Young, 1990, p. 193). Such unequal social relations generate, and are often thought to justify inequalities, in the distribution of freedoms, resources, and welfare.

For UNESCO the challenge has been how to empower both individuals and groups to articulate their rights, while understanding which group rights would take precedence. This is the crux of the issues that UNESCO has been critically engaged with since late 1980s and subject to debate by a panel of international experts who met at UNESCO headquarters in 1989. Even though the experts supported the idea of peoples' rights as universally recognised in conventions, there was a continuing and legitimate debate about the meaning of rights to self–determination and the balance between individual and peoples' rights, as it was pointed out in their report:

> "Unfortunately, some of language used in some contributions to the debate on peoples' rights, over the past ten years has given rise, perhaps unwittingly, to confusion. Thus, the image of the 'third generation' human rights, as including people's rights, is liable to be misunderstanding as suggesting that earlier generations of rights–such as the first generation of civil and political rights, might now be discarded. Nothing could be further from the truth. The notion of peoples' and human rights are distinct. Although each is an aspect of the international 'rights' debate, and each ultimately impinges on individual human beings, the two concepts should not be confused" (UNESCO, 1989, p. 5).

However to qualify as a 'people' requires a common historical tradition; racial or ethnic identity; cultural homogeneity linguistic unity; religious or ideological affinity; territorial connection; and a common economic life. UNESCO concedes that "the group as a whole must have the will to be identified as a people or the consciousness of being a people". It has been crucial for UNESCO to take a firm position as the debate challenges hegemonic states such as USA. Following UNESCO's endorsement of 'the rights of people for self determination' in 1984 the United States under President Ronald Reagan withdrew membership from UNESCO on the grounds that "UNESCO has no respect for individual rights" and anti–western bias[8]. According to US state department:

> "UNESCO has been pressured, particularly, by African States (encouraged by Soviet Block), to give equal or greater attention to 'to rights of people'. …This stress on collective rights tends to strengthen the prerogative of non-democratic state, at the expense of the human rights of individuals" (US department of state's policy, 1984, p. 2).

The real issue for the UNESCO Expert Panel was not that the categories of peoples' rights and individual rights should not be seen as closely linked to the defence of the human person, but that the idea of "peoples" rights represented genuine intellectual difference of opinion (Ibid:8). Countries from the South, including Sub-Saharan Africa, articulated a clear view that a rights-based claim to development would be a major step forward in addressing imbalanced relations between countries, linking their claim to years of colonial exploitation and domination of their resources that left them socially and economically excluded in the global order. Article 22 of the African Charter points out that:

> "(1) All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. (2) States shall have the duty,

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[8] In December 1985 The United Kingdom too pulled out its support for UNESCO for its "inefficient management, meaningless studies and excessive expenditure." As a result, UNESCO lost 30 percent of its budget.

individually or collectively, to ensure the exercise of the right to development".

The demand for rights of nations to self-determination and recognition of collective rights is a key driver of the right to development and the linking of development with human rights. The idea that social and economic development would only be achieved if new nations were in an equal relationship with other nation states was pivotal to their engagement in a globalised economy. The UN's response in 1986 was the Declaration on the Right to Development. This was ratified by over 100 countries[9] and was the result of many years of international campaigns centred on addressing inequalities between states and promoting the social, economic and political rights of the self governing state. It promoted a new international economic order based on equality between nations, interdependence, mutual interest and co-operation among all states (Article 3). It also presented an attempt to synthesise how civil and political rights intersect with other rights, including social, economic, and cultural rights and how national self-determination and collective rights also promote individual human rights. This was clearly specified in Article 1 and 2 of Right to Development:

Article 1 (1). The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised.

Ariticle 1 (2). The human right to development also implies the full realization of the right of people to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

The Right to Development adopts a normative understanding of international human rights, as framed in the UN Declaration of Human Rights 1948. The phrase "every human person and all peoples are entitled to ... enjoy ...development" implies that the right to development has both individual and collective relevance. The claim that individuals and groups have "rights to" development implies strong normative concerns and moral force. In other words the noun "right" as in "rights to" development denotes entitlements on an equal basis for both individuals, and the collective. It is within this context that rights do not only benefit the rights' holders but more importantly they empower them. In view of this, "rights" are a legitimate political demand expressed in terms of claims and entitlement that the state has a duty to deliver or protect. Protection is the social contract through which the state provides goods and services to citizens to meet basic rights' entitlements and to support livelihood survival. In essence, the state provides the institutional structure to promote social justice and to forge the links between civil and political rights and social and economic and cultural rights, with the authority for example to distribute resources as appropriate to those in need (poor, unemployed etc.). However, in practice not all nation states are capable of fulfilling their responsibility as the protector of rights or have the choice to do so. Some states and leaders, for example, do not act as a vehicle for social justice. This includes widely condemned leaders, such as Mugabe in Zimbabwe who have abused the rights of their own citizens and Sudanese leaders whose atrocities in Darfur have resulted in the deaths of thousands of people and the displacement of millions.

Article 5. States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from apartheid, all forms of

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[9] Although the right to development has no legal status on its own, its reference to the two international Covenants on Human Rights is considered to give legal force to the obligation to respect civil and political rights and social, economic and cultural rights (Sengupta, Negi, Basu, 2006, p. 77).

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racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination.

Critiques of Rights to Self Determination and Rights to Development

The United States has voiced concerns about "group rights", "peoples' rights" and "collective rights" and more importantly to the Declaration of The Right to Development from its inception in 1981, when a draft was submitted to the Council of the UN. This opposition was such that the US voted against a legally binding declaration on the Right to Development, conceding only later when it was agreed that it would be non-binding. Effectively the United States opposed the UN Commission, but was comfortable to continue to use a human rights agenda to justify actions and interventions that the United States was already engaged in through the major development institutions (the World Trade Organization (WTO), the World Bank (WB), the International Monetary Fund (IMF), regional development banks, the Organization for Economic Cooperation and Development (OECD), and regional forums such as the Asia-Pacific Economic Cooperation (APEC) summit). More importantly the focal point of the Right to Development is the state as the primary agent of development, which is at variance with the neo-liberalism market economy model that has dominated development practises in many countries since 1980. Three ideological reasons underpin the US position. The first is concern that as the initiator of the right to development, the UN would be used to shape or influence sovereign decisions about aid and the transfer of resources under the banner of human rights, effectively allowing the UN to regulate state behaviour (Marks, 2004, p. 143). Secondly, the declaration promotes development that gives equal attention and consideration to the implementation and protection of civil, political, economic, social and cultural rights, as specified in Article 6 (2) of the declaration. This provoked major opposition, as voiced by Novak the then UN US representative, who refused to accept that civil and political rights could not be fully accorded until an ideal economic order was established (Marks, 2004, p. 135). Novak asserted that an ideological commitment to freedom and democracy also encourages nation states and individuals to use their own initiative in the market and gives all an equal right to compete. The third reason for opposition to the Right to Development was linked to the USA's own use of the human rights agenda as a pragmatic instrument for foreign and security policies. Simply the United States did not want to encourage this to be subject to UN scrutiny. The rhetoric of human rights has long been integrated into US foreign policy as Madeleine Albright, the Secretary of State in the 1990s, made clear:

> Support for human rights is not just some kind of international social work. It is vital to our security and well being; for governments that disregard the rights of their own citizens are not likely to respect the rights of anyone else. In this century, virtually every major act of international aggression has been perpetuated by a regime that represents political rights. Such regimes are also more likely to spark unrest by persecuting minorities, sheltering terrorists, running drugs, or secretly building weapons of mass destruction (Albright, 1998).

UNESCO's expert panel on rights to self-determination points out that these rights acknowledge representations of peoples. Conceptually this is fine as far as concerns representations of peoples in the shape of national liberation movements struggling against colonisation, apartheid or foreign domination. It becomes much more problematic when representations are within states and refer to indigenous people and minorities or people with different ethnic and religious origins. Understandings of diversity tend to be oversimplified into relativism and generalisations about "Western Civilisation", "Asian Values", "African Cultures", and they are

often associated with the state and those who govern, whether religious leaders, elected members or military junta. Sen draws our attention to the fact that these "leaders" who represent their countries in international gatherings and organisations (such as World Bank, IMF, WTO) do not necessarily have a monopoly in their country, so that "an adequate approach to development cannot really be so centred only on those in power" (Sen, 1999, p. 247). A UNESCO meeting of experts in Barcelona in 1998 focused on this issue:

> "A concept of self-determination which is much broader and more flexible and complex than a definition which limits self-determination to separation. Understood this way, self-determination need not threaten the territorial integrity of states and can be quite compatible with its preservation. The major obstacles to an understanding and acceptance of this concept of self-determination are attachment to the dogmatic concept of the nation state, the extreme notion of sovereignty as an exclusive attribute of independent statehood, and territorial fixation" (UNESCO, 1998).

What is important here is recognition of the rights of people and the operation of the democratic system within the state. In the context of recent campaigns for democracy across the Middle East and Africa, we have been reminded of the role of UN and UNESCO, and its conventions and declarations, in creating a global sense of shared responsibility and accountability for human rights protection. However, the reality is that despite the fact that human rights laws and conventions have been adopted in Africa since 1960s, the human rights record of many states is poor. There are many examples where states have failed to protect individual and groups rights and where instead of acting as a primary agent of justice, some states exploit their own citizens (such as Zimbabwe's blood diamond trade or the Sudanese Government's attacks on civilians etc.) Some states are not able to advance justice, but rule through injustice and corrupt institutions and practices or lack the capability for good governance. The reasons for this are many and varied and not to be debated here.

The practical application of rights to self determination and Rights to Development has been difficult, not least because its language is at times imprecise and vague and because it is not legally binding and does not require legislation or institutional enforcement. In fact "the challenge right from the start has been to translate the hopeful but ambiguous language of the Right to Development into concepts that are meaningful for economists and useful for the rethinking of the development process" (Marks, 2005, p. 37). Some, including human rights lawyers, have argued however that since group rights and the Right to Development have no legal status from a legal positivist position, it is not possible to effect or implement the declarations articles and they cannot therefore be considered as human rights on the grounds that only rights that are reducible to individuals can be "human" rights (Donnelly 2003; Campbell, 2006). A key legal distinction is made between "ought" to be and "is" in that laws are empirically observable and can be used to prevent individuals and nations from doing harm to others, because they are integral to the judicial system or incorporated into an act of parliament or and enshrined in national and international human rights law. In this sense, this standard contrasts with natural law theory, which holds that what counts as law is determined by moral values that lie beyond the opinions of any particular human beings. In short legal positivism considers that citizens 'and courts should be able to know what the law that binds them is without having to make moral judgments in order to do so' (Campbell, 2006, p. 190).

Conclusion

This paper has examined the history of the human rights discourse, from the conceptual origins that are manifested in the early UN and UNESCO declarations through to more recent debates about the origins of group rights as they emerged in the post–colonial era to challenge poverty and inequality. The idea of rights to

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self determination, are founded in the period of decolonisation, when political movements in Africa found a voice in international forums for the first time since the 1948 Declaration. With particular focus on the experiences of African nations, it is apparent that a more contextually and culturally sensitive understanding of universalism is needed to fully capture the different cultural and historical origins of rights. As it stands, the right to self-determination provides a foundation for the promotion of group or peoples' rights as a challenge to poverty and inequality not just between but within nations. But it is universally accepted that the right to self determination belongs to individuals and as well as peoples and not to states or government.

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