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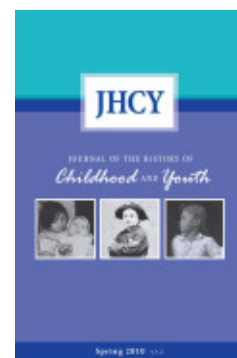
A Cultural Bridge, Not an Imposition: Legitimizing Children's Rights in the Eyes of Local Communities

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AFUA TWUM-DANSO

A CULTURAL BRIDGE, NOT AN IMPOSITION: LEGITIMIZING CHILDREN'S RIGHTS IN THE EYES OF LOCAL COMMUNITIES

*T*he Convention on the Rights of the Child, adopted unanimously by the United Nations General Assembly on 20th November 1989, is the world's most rapidly and widely ratified international convention. Adopted partly in an attempt to set international norms and establish a universal standard for the concepts of childhood and child, the Convention promotes a particular nature of childhood for children everywhere and seeks to set a universal approach for protecting all children around the world.¹ Although it was hoped that the Convention would have an enormously positive impact on the lives of all children, this has not happened in many parts of the world. In fact, to date, no country has fully realized its provisions. According to Michael Freeman, "much of the world has as much chance of implementing the Convention as sending its citizens to the moon. Unfortunately, most countries would also rather do the latter."²

While lack of political will, awareness, and resources are certainly critical in analyzing the obstacles confronting the Convention, the cultural bias inherent both in its drafting and content has led many to question its relevance to non-Western communities and is central to understanding its limited implementation. Explaining the dynamics of the debate requires an in-depth analysis of the universality and relativity dichotomy, which has underpinned the debate on children's rights and human rights for centuries. This analysis will help us to begin searching for a common ground, a compromise that will take into account the reality on the ground and enable us to develop strategies that are more contextually appropriate.

This article aims to explore the ways we can move beyond the universality/relativity debate in order to make the Convention applicable and relevant to local communities. To put it another way, this article will explore the ways in

which the Convention can be legitimized in the eyes of local communities. First, I will outline and critique the key tenets of both sides of the universality and relativity dichotomy. Second, I will explore how we can bridge the universality-relativity divide and realize that both sides of the debate are critical for the protection and development of children in our increasingly globalized world. I will consider the significance of the cultural relativity of rights for children's rights framework and how far down the line of relativism can we travel while millions of children around the world are being exploited.

OUTLINING THE UNIVERSALITY POSITION ON CHILDREN'S RIGHTS

Putting Forward the Case for Universality

The many supporters of the Convention argue that its universal nature is reflected by the fact that it has been ratified by 192 countries, making it the most widely ratified Convention in the history of the United Nations, and thus, the most universal—on paper at least. It is also the most rapidly ratified international treaty. The Convention was open for signature on 26th January 1990 and by the end of that year, sixty-two states had ratified it. According to Sarah Muscroft, a third of countries ratified the Convention in 1990, over one-fifth the following year, and nearly nine-tenths within five years of its adoption by the General Assembly.³ This leads her to conclude that “compared with other human rights treaties, this is a remarkable feat and reflects a profound common desire to achieve a better world for children.”⁴ Furthermore, for many countries, the Convention was the first international human rights treaty that they had signed. Therefore, for Muscroft:

It is now possible to talk of a common ethical and legal framework relating to children that is virtually universally accepted . . . it cannot easily be argued that the Convention is a ‘Western’ view of human rights of children, incompatible with, say, Asian or African views.⁵

The almost universal ratification of the Convention and other human rights instruments has also led Rhoda Howard to conclude that although not universal in origin, human rights are now, in principle, universally applicable because of the social evolution of the entire world towards state societies.⁶ Abdullahi An-Na'im and Jeffrey Hammond support this point when they assert that the specific origin of an idea does not prevent it from achieving universal acceptance.⁷

Commentators have put forward possible reasons for the universal acceptance of the Convention by governments over the years. Alston argues that

not only is the Convention the most detailed and comprehensive of all the existing international human rights instruments in terms of the rights recognized, as opposed to the categories of persons covered, it is also more sensitive to different approaches and perspectives than most of the principal human rights treaties adopted earlier.⁸ In fact, while the Convention leaves space for different conceptions of childhood, the definition advanced by the African Charter on the Rights and Welfare of the Child⁹ is more stringent. For example, although the Convention and the Charter both define a child as every human being below the age of eighteen, the Convention adds a condition that "... unless, under the law applicable to the child, majority is attained earlier," leaving more room for maneuver by governments. However, the unequivocal definition set out by the Charter leaves no space for local interpretations. According to Danwood Mzikenge Chirwa, the Convention's definition was motivated by the awareness of the fact that communities view durations of childhood differently.¹⁰ Implied in this statement is the viewpoint that the African Charter is not aware that the numerous communities on the continent construct childhood in various ways other than age, which contradicts the very basis on which the Charter was founded. The ironic point here is that the Charter, which prides itself on reflecting the African heritage and perspective (whatever that may be) adopts an even more Western and rigid definition of childhood than the Convention itself, a document supposedly rooted in modern Western developments and thinking about childhood. This point undermines the stance taken by relativists who seek to emphasize that it is because of the cultural bias inherent in the Convention that African governments came to adopt a Charter.

Furthermore, while Article 4 (1) of the Charter states that the best interests of the child are the primary consideration, Article 3 (1) of the Convention provides for a lower standard by stipulating that "the best interests of the child are to be given a primary consideration." According to Lloyd, this lower standard allows judges and others to consider what is in a child's best interests, but the final decision may not reflect this as it recognizes that there are other considerations that are equally important to guarantee the child's best interests. Thus, it allows for the primacy of whatever cultural norms on upbringing happen to be current.¹¹

The drafting process of the Convention is arguably partly responsible for the stance taken by the universality camp. The Working Group established for the drafting of the Convention reflects the membership structure of the UN Commission for Human Rights. However, as an open-ended group, the Working Group sought the active participation of as many States as possible in the drafting process.¹² The idea behind this was:

The more that the Convention reflects the views and participation of a wide spectrum of States, the more likely it is that the Convention will attract broad support and be ratified by a large number of States. This is, after all, one of the most important measures of success for any international convention.¹³

Importantly, UNICEF began to play an active role in the drafting of the Convention from 1986 and encouraged and facilitated the active participation of developing countries. The result of this, it is argued, is that more countries were prepared to accept the principles of the Convention, and this explains the extraordinary widespread support, which was to be accorded to the treaty in the early 1990s.¹⁴ The involvement of forty NGOs in the process from an early stage further broadened the scope of the Convention and enriched its quality.

Johnson also argues that the drafting process was remarkable for its convergence rather than its divergence. The Second Reading proved to be a test of the impact of cross-cultural factors in setting international human rights norms. Over the course of twenty-two meetings, differences arising from cultural, regional, religious, or socio-economic cleavages were salient in the debate over only five issue areas, which were namely freedom of religion; inter-country adoption; rights of the unborn child; traditional practices harmful to children; and the duties of children towards their parents.¹⁵ A compromise was eventually reached on these contentious areas at the Second Reading. An example of how a compromise was achieved can be seen in one particular issue area. In 1987, the Working Group decided to consider for adoption a proposal submitted by Radda Barnen (Swedish Save the Children) on behalf of the NGO Ad Hoc Group. The proposal read:

The States Parties to the present Convention shall seek to eradicate traditional practices harmful to the health of children and shall take all appropriate action including necessary legislative, administrative, social and educational measures to ensure that children are not subjected to such practices.¹⁶

At the stage when female circumcision was raised for discussion, the Senegalese delegate counseled prudence when dealing with issues that entailed differences in cultural values and emphasized the danger of forcing practices to become clandestine if they were prohibited by State legislation. Nevertheless, the delegates of the U.S., U.K. and Canada proposed alternative formulations that would refer to female circumcision to indicate that this was the type of practice targeted by the proposed provision. After some debate the final wording adopted for the provision, which was subsequently included under the article on health (Article 24 (3)) at the Second Reading was:

States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

As it did not refer to female circumcision (and thus, was not targeting Africa), there was no objection to this wording when it was considered for re-adoption at the Second Reading. The agreement on this provision represents, for many, strong evidence of converging international opinion on fundamental human rights standards in areas “highly coloured by cultural values.”¹⁷

Therefore, for some commentators, the very fact that only five issue areas were affected by factors other than strictly legal or political ones is impressive. This is especially so when one considers the size of the document outlining the Convention’s provisions—fifty-four Articles and a Preamble. Johnson has put forward two explanations for this cultural compromise. Firstly, cleavages in cultural perspectives may be less cross-national in character than rooted in socio-economic factors. Secondly, cultural differences notwithstanding, there is, after all, an irreducible core of common experience and concern in all human lives—especially if human rights are thought of in negative rather than positive terms, that is, that they attempt to curb pain and suffering. He refers to noted human rights jurist, Thomas Buergenthal, who presents this view well:

Of course there exist in various countries and regions of the world differences, distinctions and preferences in the application and definition of specific human rights and in their conceptual nuances. But when it comes to massive denials of the right to life, of the right not to be tortured, or the right to be protected against disappearance and against lengthy detention without trial, these nuances and differences are of no significance. Human tolerance for pain, suffering, hunger and oppression may be greater in one part of the world than in another, but victims of oppression and of human rights violations certainly do not enjoy their suffering any more than anyone else would.¹⁸

Critiquing the Universality Stance

Despite David Johnson’s insistence on the consensus behind the drafting process, the Working Group established to draft the Convention was very much dominated by Western countries—despite its “openness.” State interest in the Convention peaked during the Second Reading when it was reviewed in its entirety. This is due to the fact that when it became apparent that the Convention was about to be finalized, many countries that had not extensively participated in the drafting process seized the opportunity offered by the Second Reading to iron out contentious issues and propose revisions that corresponded more with their cultural and legal perspectives. Among the five regional caucuses

(West, East, Asia, Africa, and Latin America), the Western delegations showed the greatest interest in participating, comprising an average of over 40% of the states represented in the Working Group. On the other hand, sub-Saharan African states showed the least interest in attending the sessions of the group.¹⁹ This apparent lack of interest was tempered by financial constraints, as many could not afford to send a representative. Staffing levels among the permanent missions to the UN in Geneva are naturally lower for the smaller and poorer nations of the world compared to their Western counterparts. Thus, interest and financial constraints are two key factors in determining participation in the creation of international norms—and between these two factors, financial constraints undoubtedly affected the level of interest African governments demonstrated in the drafting of the Convention.

Furthermore, Muscroft and Howard may stress that, despite all the above problems, the key point is that most governments ratified the Convention, thereby reinforcing the universality of the rights of the child. However, it must be noted that due to the long history of imperialism and colonization, states may be more universal than their societies, as in many countries the gap between the state and its society is significant. Thus, just because a government is prepared to accept the Convention does not necessarily mean its subjects are—an obvious, but often overlooked point. This is critical, because when it comes to the implementation of the Convention (or any other social legislation), it is the society, the general population, who are the key to effective implementation. In fact, one can go further and say that this group can make or break the enforcement of a law. Therefore, a distinction needs to be made between governments who sign and ratify treaties at will, and their subjects who may have little or no information about the actions of their government on an international level, and who may outrightly reject the provisions of a treaty, and thus present obstacles to effective implementation.

Even in the instances where governments have ratified the Convention, one cannot easily conclude, as Muscroft does, that this signifies universality in attitudes towards children's rights. Indeed, many African governments rushed to ratify the Convention, but almost twenty years later, the fruits of ratification are yet to yield—even at the legislative and policy levels. Hence, it is necessary to examine the motivation for ratification. Alex De Waal bluntly argues that some African states are likely to have acceded to the Convention without their leaders genuinely acknowledging the commitments they were making or simply acceded in bad faith, without a real intention to deliver on their commitments. In some cases, presidents may have regarded ratifying the Convention as little more than signing on to the World Declaration and Plan of Action at the

September 1990 World Summit on Children, which, indeed, were no more than un-enforceable promises.²⁰

An incident that caused controversy in Nigeria further leads us to question a government's motivation for ratification and emphasizes the point that ratification does not mean a universality of opinion on the subject of children's rights. On 30th October 2002, the Bill seeking an "Act to provide for the rights and responsibilities of a child in Nigeria and a system of child justice administration," sponsored by the presidency, was overwhelmingly rejected by the Nigerian federal legislative lower Chamber, the House of Representatives, at Second Reading.²¹ The Bill was supposed to domesticate the Convention into the laws of the country, one of the very first to ratify it in 1991.²²

The representatives particularly centered their objections on a provision in the Bill setting eighteen years as the minimum age for marriage. This, they said, was incompatible with religious and cultural values in various parts of the country, especially the north, where women are sent into marriage before the age of sixteen.²³ According to the then MP for Benue (North Central Nigeria), Hon. Ohepo Ejiga, the Bill neglected the dynamism of the Nigerian socio-cultural background, and he was concerned that it might have a counter-effect on cultural values.²⁴ The lack of political will demonstrated by the House of Representatives caused an outrage among human and women's rights organizations in the country. The then-executive director of the Civil Liberties Organisation (CLO), the late Chima Ubani, described the claims that the Bill was not in conformity with Nigeria's diverse cultures and religions as "spurious and unacceptable," proceeding to ask this very pertinent question: "What culture or religion would support child labour, child marriage, child slavery, and all those violations that the CRC seeks to outlaw?"²⁵

The key point in this example is that although Nigeria rushed to become one of the first countries to ratify the Convention in 1991, when the time came to harmonize the Convention's standards into national law eleven years later, politicians reverted to cultural and traditional values to explain their opposition. Hence, this further highlights the argument that the universality of opinion on children's rights cannot be claimed on the basis of state ratification of a treaty alone.

The depth of the consensus underpinning the Convention is further thrown in doubt when the African Charter on the Rights and Welfare of the Child is drawn into the analysis. Despite the fact that the Charter was adopted only a year after the Convention, it took nearly ten years for the requisite fifteen African states to ratify the Charter, even though its provisions are broadly similar to the Convention. It finally came into force on 29th November 1999.

As of March 2007, only thirty-nine out of the fifty-three African Union member states have ratified the Charter, which is telling, as the remaining states that have not yet ratified the Charter have ratified the Convention.²⁶ Even in those instances where states have ratified the Charter, it is important to point out that while many of them rushed to ratify the Convention in the first few years after its adoption, they were more hesitant to ratify the Charter, of which they could claim more ownership. For example, Ghana was the first country to ratify the Convention in February 1990, but it did not ratify the Charter until June 2005.

Amanda Lloyd puts forward a number of explanations for the slow uptake of the Charter compared to the Convention. She argues that one important factor is the more stringent provisions contained in the Charter; whilst the Convention is drafted in ambiguous terms, the Charter is said to accord a higher standard and deeper obligations on African Union member states, making it more difficult to evade their obligations. Thus, "by ratifying the Children's Charter, member states are obligating themselves to a higher standard of promotion, protection and monitoring of children's rights and welfare issues."²⁷ For de Waal, the slow adoption of the Charter, compared to the Convention, is an interesting commentary on the politics of international conventions, as African states rushed to sign and ratify the Convention but took a much longer time to accede to the Charter—if at all—despite its similarities to the Convention. This not only casts doubt on the sincerity of the commitment of some African states to children's rights and its implementation, it also calls into question the very idea of Pan-Africanism, which is the basis on which the Organization of African Unity/ African Union (O.A.U./A.U).²⁸ was founded; instead of uniting to ratify the African Charter and thereby build structures to implement its provisions on the continent, a significant number of African states have kept their distance, preferring rather to ratify the international Convention on the Rights of the Child.²⁹ This state of affairs has led de Waal to ask the following questions:

Is this because signing an international convention is regarded by many as a largely symbolic act, a means of acquiring status in international fora? And do African governments care more for their status in front of the wider international community than with respect to their peers?³⁰

Therefore, it is critical that governments do not ratify a Convention if they are not going to enforce it, as signing and ratifying a Convention, in the long run, is not going to make a state look favorable in the eyes of the international community. Added to this are the severe implications of these inconsistent actions. States that ratify international conventions but have no intention of domesticating them into their national laws, or states that ratify conventions without

fully realizing the implications of that action could be at risk of endangering children within their jurisdiction. This is a concern because they are raising children's hopes in one minute and then dashing them the next, without considering the effects this will have on them in their countries. Freeman supports this perspective:

The true recognition of children's rights requires implementation, as in practice unimplemented, partially implemented or badly implemented (and this applies equally to international legislation) may actually do children more harm than good.³¹

The tendency of African governments to ratify Conventions further weakens the argument for universalists who have hitherto centered the bulk of their case on the fact that the Convention has achieved almost universal ratification. Therefore, by overlooking the politics that are at play behind the ratification of Conventions by African and other governments, the stance taken by those promoting the universality of the Convention is weakened.³²

UNDERSTANDING THE POSITION OF CULTURAL RELATIVISTS ON CHILDREN'S RIGHTS

The Persistence of Cultural Relativism

Cultural relativists continue to insist on the relevance and pertinence of their case even in, or especially because of, this so-called age of globalization that we live in. Relativists focus the bulk of their case on the argument that different societies and cultures construct childhood in different ways, which, they argue, has implications for the construction of children's rights in different societies. Therefore, Lea Dasberg and Bob Franklin have led the cultural relativist call for acknowledging the importance of difference between peoples and societies and the need to respect these differences.³³ They argue that childhood is a relative concept that changes according to historical time, geographical environment, local culture and socio-economic conditions. Hence, a definition of childhood, which is culturally and historically bound to the social preoccupations and priorities of the capitalist countries of Europe and the U.S.A., cannot easily be transferred to non-Western communities. Thus, they attack international children's rights lawyers who crystallized in international law a universal system of rights for the child based on notions of childhood that emerged and were consolidated in the West in the nineteenth century.³⁴ It can be argued that it was this domination of Western notions of childhood and child development underlying the Convention that led to proposals for an African Charter on the Rights and Welfare of the Child, which was to address the social and cultural

circumstances specific to the region, such as the importance of children having duties and the concept of the extended family.

The relativist argument gains substantial support from the social constructionist paradigm, which has emerged as the dominant view of childhood in disciplines such as sociology and history. The working definition of social constructionism is as follows:

[Social constructionism is] the way in which our lives and our institutions are socially produced, that is by ourselves, rather than naturally or divinely given. . . . Childhood, then, as distinct from biological immaturity, is neither a natural nor universal feature of human groups, but appears as a specific structural and cultural component of many societies. . . . In other words, though biological immaturity may be natural and universal, what particular societies make of such immaturity differs throughout time and between cultures.³⁵

Jenks insists that all contemporary approaches to the study of childhood are clearly committed to the view that childhood is not a natural phenomenon and cannot properly be understood as such. In his view, the social transformation from child to adult does not follow directly from physical growth, and the recognition of children by adults and vice versa is not singularly contingent upon physical difference.³⁶ Thus, childhood is to be understood as a social construction, and as such it always relates to a particular cultural setting and its status is constituted in particular socially located forms of discourse.³⁷

James and Prout have played a major role in consolidating the new sociology of childhood. The title of their landmark work, *Constructing and Reconstructing Childhood*, encapsulates their views on the nature of the social institution of childhood: an actively negotiated set of social relationships within which the early years of human life are constituted.³⁸ They acknowledge that the immaturity of children is indeed a biological fact of life, but the ways in which this immaturity is understood and made meaningful is a fact of culture. These facts of culture may vary and can be said to make childhood a social institution. Hence, it is in this sense that one can talk of the social construction of childhood and also of its re-and de-construction.

In order to understand the centrality of childhood as a social and cultural construction to the argument of relativists, it is worth exploring how childhood and adulthood are constructed within African societies. The traditional African worldview of childhood (whatever that may be) and its termination sharply contrast with modern Western's society obsession with the age of eighteen as the entry into adulthood, as reflected in the Convention. In numerous African

societies, as in other non-western cultures, chronological age as an indicator for the termination of childhood is perceived as an arbitrary concept. As Welshman Ncube states,

The notion that someone by some magical wand on the stroke of a pen turns into a fully competent, mature, wise, and autonomous individual upon attaining a certain arbitrary fixed age has no scientific empirical basis in fact and reality.³⁹

Rather, the ending of childhood has little to do with achieving a particular age, and more to do with physical capacity to perform acts reserved for adults. According to Tchibinda and Mayetela (1983), childhood in Zaire (now the Democratic Republic of Congo) traditionally began at birth and continued until the child attained a degree of economic independence and fully participated in the work of adults, which was normally between the ages of seventeen and twenty.⁴⁰ Thus, rather than childhood being intertwined with the notion of age as in the modern Western conception, the landmark for the attainment of adulthood in this context was economic independence.

Marriage and the establishment of a new residence are traditionally two prime indications of adult male status in many African communities. To be classified a child means that a man has not achieved the level of economic importance that would permit him to acquire a wife, build his own compound, and become an economically viable agent. According to Murray Last, in pre-colonial northern Nigeria, boys became adults by acquiring a dependent; that is, by taking a wife whilst girls achieved adulthood on their entry into motherhood.⁴¹ Writing of the Gonja of northern Ghana, E. Goody claims that the entry into adulthood for girls involved the allocation of sexual rights and rights over children.⁴² A. B. Nsamenang, who focuses on the wider West African context, argues that an unmarried childless person is never accorded full adult status, and marriage alone just confers proto-adult status on a person.⁴³ Achieving adult status, then, requires that a person be "married with children."⁴⁴ Formal puberty rites have now been prohibited by law or modified as a result of social change in many African countries, but there remains a belief that achieving adult status is dependent on the following landmarks: independence (defined as the ability to look after yourself and your parents), marriage, and parenthood, not simply age. Without achieving these landmarks, a person may legally be an adult, but will always be seen as somewhat lacking, or incomplete. In this way, it is possible for a fourteen or fifteen-year-old adolescent to become an adult by virtue of marriage and parenthood while an unmarried, childless person twenty-four years or older, remains socially

immature and excluded from full adult status, as he has not passed the necessary rituals to achieve this status.

Clearly, then, childhood refers more to a position in the social hierarchy than to biological age. In order to become an adult, it is necessary to ascend this hierarchy.⁴⁵ However, it is important to note that in numerous societies across the continent, the majority of women (along with paupers and foreigners) would always be seen as minors, no matter their age or the number of children they have given birth to.⁴⁶ In this way, childhood is broadened to encompass all those who are dependent economically, socially or even politically on another person, normally an older adult male, whether they are under the age of eighteen or older.

The construction of childhood further determines the role assigned to children in a particular society. According to David Archard, in non-western societies, the end of childhood is associated with factors such as permission to marry, departure from the parental home, or assumptions of the responsibility to provide for oneself. He concludes that, "the adoption of one conception rather than another will reflect prevailing general beliefs, assumptions, and priorities."⁴⁷ Therefore, while childhood in modern Western society is seen as a stage of incompetence, in the non-western context it is not necessarily so. On the contrary, children are said to be seen as competent and capable. It has been suggested that this is probably because whereas in Western societies adulthood is the goal, in other societies it is a process, "a continued becoming, a never completed maturing."⁴⁸ Thus, although an individual can become more of an adult (but never a complete adult), he or she does not leave childhood altogether, even though its characteristics may decrease (or even increase) as she ages.⁴⁹ If adulthood is conceived as "a becoming" in these cultures, no obvious line can be drawn between this state and childhood. Furthermore, if adulthood is never fully achieved, then it also means that childhood is not an inferior stage, which is left behind completely at the arrival of some arbitrary age or even after passing through a rite of passage. As a result, childhood becomes a never-ending process.

This view of childhood may account for the responsibilities and duties that are assigned to the status of childhood. Archard supports this point when he argues that in non-western societies, no clear distinctions are made between work and play; the two activities go hand in hand as children are seen as having a responsibility, like adults, to contribute to the subsistence of their families and wider communities.⁵⁰ In many societies, children are required to undertake tasks such as caring for infants, fetching water and fuel, or cattle herding, depending on the gender of the child. T. W. Bennett, who argues that a particular type of economy may prove crucial in shortening or lengthening the duration of

childhood, further elaborates on this conception of childhood. If people live at subsistence level, capacities and responsibilities of adulthood begin early: "because an average life span is short and survival is a struggle, a long period of dependency as a child is a luxury that families cannot afford."⁵¹ Therefore, in these contexts, childhood may be never-ending in terms of parental authority and eternal subordination to elders, but it is also of a shorter duration in economic terms due to the need for children to contribute to the sustenance of the family, by not only participating in household chores, but also by working outside the home to generate income for the family.

As a result of the social construction of childhood illustrated above, relativists argue that the Convention is at odds with these definitions of childhood in Africa. They are further concerned about the legal implications this universalization of the definition of childhood contained in the Convention has for children and their traditional roles in their societies. Ncube, for example, argues that, "the perception of children [in the Convention] as physically weak and mentally immature has far-reaching implications for the societal roles assigned to them and for the legal construction of childhood."⁵²

The Limitations of Cultural Relativism

Although the cultural relativism position is very persuasive, it comprises several key limitations. The very concept of culture and what it is, is one such limitation. An-Na'im and Hammond explain that one function of culture is to establish a more-or-less homogenous set of beliefs and assumptions by which everyone can project their perceptions and expectations onto other people without thinking about it. This provides the sense of security that comes with predictability.⁵³ However, this paper maintains that culture cannot easily be used to refer to distinct geographical areas with homogenous populations sharing a unique culture that has been passed on from ancestors over generations and remains unchanged. Culture is not given *a priori*. It is not a static entity descended from our ancestors. Rather, it is a man-made, dynamic construct. As a result, powerful individuals and groups are able to monopolize the interpretation of cultural norms and manipulate them to their own advantage. Those who seek to preserve, as well as those who seek to change, customs may be seeking their individual or group self-interest. Even when articulating the interests of the group, such spokesmen are likely to stress, in their articulation of group values, the particular values that are most to their own advantage.⁵⁴ Thus, it is possible that in a given society, a large proportion of the population may not have been included in the current construction of that culture, and may, in fact, not subscribe to it.

As a result, far from being unquestioned, the concept of culture in a given society is often contested and debated. In fact, An-Na'im and Hammond argue that the different, and sometimes conflicting, features of culture are subject to many different interpretations by both members of a society and outsiders; and that the extent to which a particular culture provides value and meaning to the lives of the people who participate in it may vary and may itself be the subject of different interpretations.⁵⁵ Hence, as a result, culture is "full of tension, diversity, and differentiation, rather than compact and singular as it is sometimes made out to be."⁵⁶

As An-na'im and Hammond assert, all cultures are influenced, directly and indirectly, by other cultures; members of one culture may be exposed to, or have access to, other cultures, and even participate as members in one or more other cultures.⁵⁷ Therefore, it is important to emphasize that cultures can, and do, change. Related to this is the argument that through mission education, colonization, and globalization, European values were exported to Africa (and elsewhere) and have had an impact on the way groups articulate their culture. Although an argument can be made that these values remain largely on paper, it cannot be denied that they have managed to seep through into society and have been imbibed by certain sectors of the population. This rapidly growing group works hard to preserve these values while scorning more local beliefs or whose outlook incorporates both local and westernized values, picking and choosing which cultural heritage to adopt, and which to flout, at any one time. Rhoda Howard supports this point when she asserts that, "people are quite adept at being cultural accommodationists; they are able implicitly to choose which aspects of a 'new' culture they wish to adopt and which aspects of the 'old' they wish to retain."⁵⁸ This is so, especially in Africa where colonialism has led to European and traditional values existing side by side, supplemented by Islam in what Mazrui (1986) has termed Africa's "triple heritage."⁵⁹

Therefore, with particular regards to children's rights, it is important to question the assumption that there exist clearly distinct cultural regions, each constructing childhood and conditions for the lives of children in their own right. As Stephens asks, "Where do we find regions free of influence from global modernity and the processes of global capitalism or regions free from the processes that are currently reshaping these constructions?"⁶⁰ She adds that this is not to argue that there are not profoundly important regional and local cultural differences, but we must also not lose sight of the ways these are, and will increasingly come to be, globally articulated.⁶¹

The cultural relativist argument is further weakened by the fact that there are those governments, which would like, for various, often selfish and culturally

manipulative reasons, to discredit the human rights concept. In fact, a number of governments have become firm supporters of the cultural relativist tradition, which they find as the most useful available ideology to justify their manipulative, abusive, and exploitative practices and policies. Hence, the relativist path is a journey full of pitfalls. Elvin Hatch (1983) has claimed that "cultural relativism has been charged with neutralizing moral judgment and thereby impairing action against injustice."⁶²

Similar concerns have been raised by child rights commentators about the social and political implications of the relativism implied by the social constructionist literature in the face of the political, social, and economic maltreatment ventured against children on an international scale.⁶³ In light of this, Sharon Stephens has asked how far it is wise to travel along the road of relativism while millions of children around the world are being exploited, abused, and misused as result of their very vulnerability and subordination as children.⁶⁴

To hammer the point underlying this question home, a recent case in which culture was used as a defense for what is firmly-labelled as child abuse in the Western country in which it occurred is noteworthy. In November 2006, Festus Oguhebe, a Nigerian professor living and working in Mississippi, U.S.A., was convicted of child abuse and sentenced to five years in prison with three years suspended. Oguhebe, a single father of six children, was accused of abusing his eleven-year-old son by placing him in a bathtub, then putting hot pepper juice in his eyes, on his penis and buttocks, and also by tying his hands behind his back and covering his body with ants. He was further accused of abusing his son by whipping and striking the child in such a manner as to cause serious bodily injury and leaving him in need of hospital treatment (which he delayed in getting for him). According to records filed by the Hinds District Attorney, Jacqueline Purnell, he also punished his children for offences such as incomplete homework and attempting to steal food in their own home during enforced religious fasts. In trying to explain his abuse of his child, Oguhebe claimed that the kind of discipline he inflicted upon his children was a custom in his native land, Nigeria.⁶⁵

Oguhebe's case led to a great deal of debate amongst Nigerians, both on the continent and in the Diaspora. In October 2006, Reuben Abati, writing for the Nigerian *Guardian*, used culture to defend Oguhebe's treatment of his son:

The thing to note is that Oguhebe is unrepentant, even if he has pleaded guilty. Here is an African cultural activist living in America in the wrong century. He reportedly told journalists that he believes that children must be spanked at all times. "If you whip your child and he gets a bruise, does that become a crime? Go to the Iboland of Africa and you don't see kids

behave in this way." What Oguhebe is up against is a clash of cultures. He lives in America, but he remains attached to his roots as an African. He affirms that he is an Ibo man, the product of a culture and world view where it is believed that the rod is an important tool for bringing up a child, a vehicle of socialization, to ensure that a child develops into a useful member of the community. In the African world view, to whip a child is not considered a crime; what is considered punishment or brutality or child abuse by Western societies is regarded in African communities as a social process. This is borne out of the conviction that it is only when a child is brought up to experience pain, that he would appreciate the value of pleasure and that young persons must be made early enough to appreciate the need to be responsible.⁶⁶

Views of other Nigerians reacting to Oguhebe's case and the above newspaper article were shared on an online discussion forum called Nigeria Village Square.com. One which is particularly noteworthy was sent by a user called "African Queen:"

I read the Oguhebe saga and thought *here we go again* . . . Another Nigerian man (supposedly educated) defending a crime/bad behaviour in the name of "culture" . . . What sort of Igbo "culture" involves pouring hot pepper on the genitals of a boy, tying him up and covering his body with ants . . . This is not an America vs. Africa issue. It's wrong anywhere.⁶⁷

These statements illustrate two distinct points. The first statement highlights how culture can be used to defend certain actions or neutralize judgment even on issues where judgment is arguably required. The second statement shows how culture is impatiently put aside in order to allow criticism and judgement. Hence, we can see how cultural relativity prevents us from making moral judgements and, for some commentators, we cannot allow it to undermine global standards. They further argue that whatever the cultural or economic circumstances, when the best interests of children are at stake, global norms should prevail.⁶⁸ For example, Thomas Hammarburg, a champion of children's rights internationally and a former member of the Committee on the Rights of the Child, once remarked: "When there is a clash between cultural practices (like female circumcision in Sudan) and the rights of the child, we defend the latter."⁶⁹ Therefore, culture is not allowed to prevent or neutralize moral judgement.

This is certainly valid, but what impact will such human rights defenders make on the ground, unless of course the people of Sudan who practice female circumcision become convinced of their standpoint? And herein lies the thrust of this paper. How do you legitimize universal standards in the eyes of local

people who are, in effect, critical for the success of the implementation of any legislation? One suggestion being put forward by this article is that we should engage such local communities in dialogue, listen to their views, their definitions of childhood, and their constructions and reconstructions of children's entitlements. Thus, it is necessary to explore how these statements, declarations and conventions made and ratified at the international, and even national level, can become relevant and applicable to local groups who view this practice as part of their culture, and thus, part of their very being.

BRIDGING THE UNIVERSALITY VS. RELATIVITY DIVIDE

The suggestion here is that the Convention should not be seen as an end in itself. It is necessary to understand it as an evolving process, and as such the focus has to be on how we can make children's rights work for different and disparate communities, and thereby legitimize it in the eyes of local communities in different parts of the world. The importance of this strategy has been repeatedly underscored by Abdullahi An-na'im, a Sudanese human rights academic, who has devoted a large part of his career to searching for a cultural legitimization of human rights within both African and Islamic contexts. He argues that efforts to promote respect for international human rights standards are often likely to remain superficial and ineffectual until such time as they relate directly to, and where possible are promoted through, local cultural, religious and other traditional communities.⁷⁰ Specifically, he claims that human rights stand a better chance of implementation if they are perceived to be legitimate within the various cultural traditions of the world.⁷¹ This further emphasizes the fact that it is not enough to claim universality simply because governments have ratified relevant instruments.

As a result of this stand, An-na'im proposes an approach, which seeks to broaden consensus by exploring cultural reinterpretation and reconstruction through internal cultural discourse and cross-cultural dialogue, as a means to enhancing the universal legitimacy of human rights.⁷² In his view, there may be "room for changing a cultural position from within, through *internal discourse* about the fundamental values of the culture and the rationale for these values."⁷³ He suggests that this should be done by engaging the public and raising their awareness through intellectual and scholarly debate, artistic literary expression of alternative views on these issues, and political and social action furthering these views. Furthermore, since cultures are constantly changing and evolving internally, as well as through interaction with other cultures, it may be possible to influence the direction of that change and evolution from outside through cross-cultural dialogue.⁷⁴ However, he adds that this process:

Must be both mutual between cultures and sensitive to the needs of internal authenticity and legitimacy . . . Those of one cultural tradition who wish to induce a change in attitudes must also be respectful of the integrity of the other culture . . . They must never even appear to be imposing external values in support of the human rights standards they seek to legitimize within the framework of the other culture.⁷⁵

By advocating such an approach, An-na'im is not seeking to repudiate existing international standards, but rather aims to strengthen their implementation by legitimizing them in the eyes of those who will be most affected by them: the local communities. This theoretical approach is based on the belief that, despite their apparent peculiarities and diversity, human beings and societies share certain fundamental interests, concerns, qualities, traits, and values that can be identified and articulated as the framework for a common culture of universal human rights.⁷⁶

The benefits of legitimizing human rights, and specifically children's rights in the eyes of local communities, cannot be dismissed. As An-Na'im and Hammond assert, "local acceptance enriches the universal idea by giving it meaning and relevance to people's lives."⁷⁷ The logic of this new approach makes it possible to revise and reformulate existing standards through a process of cross-cultural dialogue and analysis. Mutua Makau further supports this viewpoint when he claims that:

The construction and definition of human rights norms are dynamic and continuous processes. Human rights are not the monopoly or the sole prerogative of any one culture or people . . . The process of the construction of universal human rights is analogous to the proverbial description of the elephant by blind people: each, based on their sense of feeling, offers a differing account. However, all the accounts paint a complete picture when put together. As a dynamic process, the creation of a valid concept of human rights must be universal. That is, the cultures and traditions of the world must, in effect, compare notes, negotiate positions and come to an agreement over what constitutes human rights. Even after agreement, the doors must remain open for further inquiry, reformulation, or revision.⁷⁸

CONCLUSION

In conclusion, then, the Convention, like all international human rights instruments, should be seen as work-in-progress. It cannot, and should not, be seen as an end in itself. Rather, it provides a foundation on which further blocks can be built in such a way as to meet international standards as well as take into account local contexts. According to Bennett, because human rights standards

lay down only minimum standards of behavior and are stated in the broadest possible terms, each act of application requires modification and adjustment.⁷⁹ In fact, the Convention takes cognizance of this as the next step after ratification is the domestication of the Convention into national legislation, such as Children's Acts and Children's Codes, which enable governments to not only meet international standards, but also gives them the opportunity to ensure that national laws take into account the particular social and cultural features of the given country. Crucial to this process is engaging communities in discussions to elicit their understanding of childhood and children's rights.

Thus, it is necessary to involve local communities in the interpretation and implementation of the Convention and domestic legislation by initiating dialogue about children's rights through local, cultural, and religious belief systems and understandings. This will ensure that laws that emerge as a result of harmonizing national legislation with the Convention are not simply imitative of its provisions, but also take into account the peculiarities and features of a given society. An encouraging factor is that unlike the binary debate relating to the universality and relativity of children's rights, the reality of people's lives illustrates that there is, indeed, a middle ground—a grey area in which people live their lives—that presents an entry point for dialogue. Therefore, it is necessary to devise ways to access this middle ground and find a compromise. This would mean that while the end goal is the protection of children, the strategy developed would be appropriately contextualized and supported by local communities.

NOTES

1. The Convention defines a child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." United Nations Convention on the Rights of the Child, 1989. Available at <http://www2.ohchr.org/english/law/crc.htm>. Accessed on June 24, 2008.
2. Michael Freeman, "The Limits of Children's Rights" in *The Ideologies of Children's Rights*, eds. Michael Freeman and Philip Veerman (Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1992), 40—41.
3. Sarah Muscroft, *Children's Rights: Reality or Rhetoric: The United Nations Convention on the Rights of the Child: The First 10 years* (London: The International Save the Children Alliance, 1999), 21. In fact, more than half of the early signatories were African.
4. Muscroft, *Children's Rights*, 21.
5. Muscroft, *Children's Rights*, 22.
6. Rhoda E. Howard, "Dignity, Community, and Human Rights," in *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*, ed. Abdullahi An-Na'im (Philadelphia: University of Pennsylvania Press, 1992), 81.

7. Abdullahi An-Na'im and Jeffery Hammond, "Cultural Transformation and Human Rights in African Societies" in *Cultural Transformation and Human Rights in Africa*, ed. Abdullahi A. An-Na'im (London/New York: Zed Books, 2002), 17.
8. Philip Alston, "The Best Interest Principle: Towards a Reconciliation of Culture and Human Rights," in *The Best Interests of the Child: Reconciling Culture and Human Rights*, ed. Philip Alston (Oxford: Clarendon Press, 1994), 7.
9. The African Charter on the Rights and Welfare of the Child and was adopted on 11th July 1990 by the 26th Ordinary Session of the Assembly of Heads of State and Government in Addis Ababa, Ethiopia. It was drafted because of the recognition that there was a need "to take all appropriate measures to promote and protect the children in Africa." Amanda Lloyd, "Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: Raising the Gauntlet," *The International Journal of Children's Rights* 10 (2002): 1.
10. Danwood Mzikenge Chirwa, "The Merits and Demerits of the African Charter on the Rights and Welfare of the Child," *The International Journal of Children's Rights* 10 (2002), 158.
11. Lloyd, "Evolution of the African Charter," 183.
12. David Johnson, "Cultural and Regional Pluralism in the Drafting of the UN Convention on the Rights of the Child," in *The Ideologies of Children's Rights*, eds. Michael Freeman and Philip Veerman (Dordrecht, Boston, London: Martinus Nijhoff Publishers, 1992), 96.
13. Johnson, "Cultural and Regional Pluralism."
14. Alston, "The Best Interest Principle," 7.
15. Johnson, "Cultural and Regional Pluralism," 95.
16. Johnson, "Cultural and Regional Pluralism," 109–110.
17. Johnson, "Cultural and Regional Pluralism," 110.
18. Quoted in Johnson, "Cultural and Regional Pluralism," 112–13.
19. Johnson, "Cultural and Regional Pluralism," 97.
20. Alex de Waal, "Realising Child Rights in Africa: Children, Young People and Leadership," in *Young Africa: Realising the Rights of Children and Youth*, eds. Alex de Waal and Nicolas Argenti (Trenton NJ/Asmara: Africa World Press, 2002), 4.
21. *The Nigerian Guardian: Special Report*, 17th November 2002.
22. The Bill was later passed by the Federal government in 2003, but it has still not been passed by all state governments.
23. This practice of early marriage has resulted in a large number of cases of vesico-vaginal fistula, a condition caused by giving birth when the cervix is not fully developed. Victims of fistula are often ostracized and abandoned as the uncontrollable trickle of urine makes these women un-hygienic and physically offensive to their families who abandon them. One of the aims of the establishment of eighteen years as a minimum age for marriage in the Act was to reduce this occurrence.
24. *The Nigerian Guardian: Special Report*, 17th November 2002.
25. *IRIN*, 12th November 2002.

26. These countries include the Central African Republic, Côte D'Ivoire, Djibouti, the Democratic Republic of Congo, Gabon, Guinea-Bissau, Liberia, Sao Tome & Principe, Sudan, Swaziland, Tunisia and Zambia. Somalia is the only country that has not ratified either.
27. Lloyd, "Evolution of the African Charter," 182.
28. The O.A.U, which was established in 1963, was officially replaced by the African Union in July 2002.
29. During my ten-month stay in Ghana for my Ph.D. field work, I became aware of this hierarchy in international conventions. While the Convention on the Rights of the Child and the Children's Act of Ghana were talked about as if they go hand-in-hand, the African Charter, which Ghana has only recently ratified, was hardly mentioned—not in private meetings nor larger fora. On the few occasions it was mentioned, it was more as an afterthought than as something that should be accorded equal weight to the Convention and the Children's Act.
30. de Waal, "Realising Child Rights," 4–5.
31. Freeman "The Limits of Children's Rights," 41.
32. However, this trend by African governments does not necessarily enhance the argument of relativists either, because what is at play here is not allegiance to the cultural values of a given country, but the politics of international conventions, which means that African governments are keen to gain the favor of their Western counterparts who control the flow of aid and trade.
33. Bob Franklin, ed., *The Rights of Children* (Oxford: Basil Blackwell Ltd, 1986); Bob Franklin, "The Case for Children's Rights: A Progress Report," in *The Handbook of Children's Rights: Comparative Policy and Practice*, ed. Bob Franklin (London: Routledge, 1995).
34. Jo Boyden, "Childhood and the Policy Makers: A Comparative Perspective on the Globalization of Childhood," in *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood*, Second Edition, eds. Allison James and Alan Prout (New York: Routledge Falmer, 1997), 197.
35. Harry Hendrick, *Children, Childhood and English Society 1880–1990* (Cambridge: Cambridge University Press, 1997), 9–10.
36. Chris Jenks, *Childhood* (New York: Routledge, 1996), 7.
37. Jenks, *Childhood*, 29.
38. James and Prout, eds., *Constructing and Reconstructing Childhood*, 7.
39. Welshman Ncube, "The African Cultural Fingerprint? The Changing Concept of Childhood," in Welshman Ncube (ed.), *Law, Culture, Tradition and Children's Rights in Eastern and Southern Africa* (Aldershot: Dartmouth Publishing Company Ltd, 1998), 20.
40. Quoted in Jenny Kuper, *International Law Concerning Child Civilians in Armed Conflict* (Oxford: Clarendon Press, 1997), 16–17.
41. Murray Last, "Towards a Political History of Youth in Muslim Northern Nigeria 1750–2000," Paper presented at the conference on Youth and the Politics of Inter-Generational Conflict in Africa, The African Studies Centre, University of Leiden, The Netherlands, 24–25 April 2003, 3.

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42. E. Goody, *Parenthood and Social Reproduction: Fostering and Occupational Roles in West Africa* (Cambridge: Cambridge University Press, 1982), 147.
43. A. B. Nsamenang, *Human Development in a Cultural Context: A Third World Perspective* (Newbury Park, CA: Sage, 1992), 84.
44. Nsamenang, *Human Development in a Cultural Context*, 84–85.
45. Nicolas Argenti, “Youth in Africa: A Major Resource for Change,” in *Young Africa: Realising the Rights of Children and Youth*, eds. Alex de Waal and Nicolas Argenti (Trenton NJ/Asmara: Africa World Press, 2002), 125.
46. de Waal, “Realising Child Rights,” 14.
47. David Archard, *Children: Rights and Childhood* (Routledge, London & New York, 1993), 27.
48. Archard, *Children*, 36; See also C. K. Omari and D. A. S. Mbilinyi, *African Values and Child Rights: Some Cases from Tanzania* (Dar es Salaam: Dar es Salaam University Press, 1997).
49. Archard, *Children*, 36.
50. Archard, *Children*, 30.
51. T. W. Bennett, *Using Children in Armed Conflict: A Legitimate African Tradition? Criminalizing Recruitment of Child Soldiers*, No. 32, ISS Monograph Series, (Pretoria: ISS, December 1998), 19.
52. Ncube, “The African Cultural Fingerprint?,” 14.
53. An-Na’im and Hammond, “Cultural Transformation,” 22.
54. Rhoda E. Howard, *Human Rights in Commonwealth Africa* (Totowa, New Jersey: Rowman and Littlefield Publishers, 1986), 33.
55. An-Na’im and Hammond, “Cultural Transformation,” 35.
56. An-Na’im and Hammond, “Cultural Transformation,” 23. This cleavage within members of a group was apparent during the row that ensued in Nigeria in 2002 after the children’s rights Bill was rejected by the majority of the federal legislative lower Chamber of the government.
57. An-Na’im and Hammond “Cultural Transformation,” 35.
58. Howard, *Human Rights in Commonwealth Africa*, 23.
59. In A. B. Nsamenang, *Cultures of Human Development and Education: Challenge to Growing Up African* (New York: Nova Science Publishers Inc, 2004), 83.
60. Sharon Stephens, “Children and the Politics of Culture in ‘Late Capitalism’” in Sharon Stephens (ed.), *Children and the Politics of Culture* (Princeton, NJ: Princeton University Press, 1995), 40.
61. Stephens, “*Children and the Politics of Culture.*”
62. In Abdullahi An-Na’im, “Towards a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment,” in *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*, ed. Abdullahi A. An-Na’im (Philadelphia: University of Pennsylvania Press, 1992), 24.

63. See Alison James and Alan Prout (eds.), "Introduction," *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood* (Basingstoke: The Falmer Press, 1997).
64. Stephens, "Children and the Politics of Culture."
65. *The Clarion-Ledger*, 21st November 2006.
66. *Nigerian Guardian*, Friday, 26th October 2006.
67. Nigerian Village Square (<http://www.nigeriavillagesquare.com/index.php/content/view/4142/46>). Accessed on 12 March 2007.
68. See Boyden, "Childhood and the Policy Makers," 218.
69. Quoted in Boyden, "Childhood and the Policy Makers," 219.
70. See An-Na'im, "Towards a Cross-Cultural Approach," in An-Na'im, ed., *Cultural Transformation*.
71. An-Na'im, "Towards a Cross-Cultural Approach," 3.
72. An-Na'im, "Towards a Cross-Cultural Approach."
73. An-Na'im, "Towards a Cross-Cultural Approach," 4.
74. An-Na'im, "Towards a Cross-Cultural Approach."
75. An-Na'im, "Towards a Cross-Cultural Approach," 5.
76. An-Na'im, "Towards a Cross-Cultural Approach," 21.
77. An-Na'im (ed.), *Cultural Transformation*, 16.
78. Mutua Makau, "The Banjul Charter: The Case for an African Cultural Fingerprint" in *Cultural Transformation and Human Rights in Africa*, ed. Abdullahi A. An-Na'im (London/New York: Zed Books, 2002), 71–72.
79. T. W. Bennett, *Human Rights and African Customary Law under the South African Constitution* (Cape Town: Juta and Co. Ltd, 1999), 10.