

Initiating the debate

On education, human rights and cosmopolitan justice in Africa

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Abstract

Today, 'human rights' are more egalitarian, less individualistic, and more internationally oriented than 18th century rights in the following ways: firstly, equality before the law involves ensuring the protection of people against discrimination; procuring equality for women in all areas of life; ensuring that political dissenters have rights to a fair trial and freedom from arbitrary arrest, torture and cruel punishments; restraining governments from perpetrating socio-economic abuses such as poverty, disproportionate illiteracy amongst women and girls; and affording people a lack of economic opportunities, social security and education; secondly, rights are considered to be less individualistic to ensure the protection of women, minorities and indigenous people against genocide; and thirdly, international inquiries and interventions are considered as justifiable to prevent large-scale violations of human rights (Nickel 2007, 12–13). Despite the fact that Africa has a 'human rights' system in place, produced by the African Union (AU) in 1981 and the African Commission on Human and Peoples' Rights, established in 1986, Africa has been confronted with enormous 'human rights' problems, exacerbated by the reluctance of several sovereign nation states to cooperate about 'human rights' violations. One of the reasons why I think a 'human rights' agenda has not been implemented successfully on the African continent is because several African leaders have scant regard for the imposition of legal sanctions (as has been the case in Zimbabwe under the leadership of Robert Mugabe) and that encouragement, consciousness raising, persuasion, and even shaming have not actually worked. For many, the 'human rights' system on the African continent seems to remain ineffectual and hypocritical, as it rarely coerces recalcitrant violators to change their practices (*ibid.*, 20). This article offers a defence of cosmopolitan justice with reference to the seminal thoughts of Judith Butler and Kwame Anthony Appiah in order to countenance 'human rights' violations on the African continent – in particular what the response of higher education ought to be.

Keywords: Education, human rights, cosmopolitan justice and Africa

INTRODUCTION

Without listing the 'human rights' abuses that continue to plague the African continent, suffice it to say that Human Rights Watch – one of the world's leading independent organisations dedicated to defending and protecting human rights – has

shown that, while many postcolonial African regimes have established Human Rights Commissions in order to secure donor support, these are largely ineffective and turn a blind eye to rights abuses (Mohan and Holland 2001, 194). In this regard, An-Na'im (1999, 22) is adamant that 'African societies appear to regard the post-colonial state with profound mistrust and have no sense of ownership of it nor [sic] expectation of protection or service from it'. In other words, the state is concurrently considered as the perpetrator of 'human rights' abuses and the institution through which grievances should be resolved. In most cases, the African state remains a significant generator of 'human rights' abuses, as well as holding the key to people's security and protection (Mohan and Holland 2001, 194). However, quite paradoxically, whereas the African state has mainly been considered as the legal protector of human rights that are said to belong to the public or civil domain, 'human rights' abuses that fall outside of the state's purview and authority in the private realm are not considered to be the state's responsibility to enforce. Further, as Mohan and Holland (*ibid.*, 195) argue, the private realm (dominated by patriarchal men) has consistently been the site of some of the worst human rights abuses, in particular gender discrimination, where 'clearly, domestic violence against women and the abuse of children are the most significant'. As acknowledged by Murray (2000), the protection of 'human rights' on the African continent has been somewhat mixed. For the purposes of this article, I shall focus on at least three anomalies that have contributed to the lack of protection of 'human rights' on the African continent.

ON 'HUMAN RIGHTS' ABUSES ON THE AFRICAN CONTINENT

The first anomaly is that, although many important strides have been made in this regard, to some extent African countries do not respect constitutionalism. Instead, they often fail to promote economic, social and cultural rights and, more importantly, have a range of means to suspend the constitution. Some of these are legal, such as during states of emergency, while others are less obvious and range from the prejudiced selection of judges through to outright intimidation (Mohan and Holland 2001, 189). For instance, the Nigerian state flagrantly abused human rights through the suspension of the constitution during General Sani Abacha's regime, suppressing Shari'a law, and stigmatising and threatening lawyers and judges (*ibid.*, 192). The problem associated with 'human rights' abuse is underscored by a dichotomous relationship between political rights, and social, economic and cultural rights. That is, the African state insists that people contribute towards building a democracy (albeit through limiting their political rights), yet the state simultaneously underemphasises the importance of alleviating extreme poverty, marginalisation and underdevelopment, as noted by Shivji (1999, 260) – a matter of restricting people's social, cultural and economic rights. The point is, 'human rights' abuses flourish as a result of states dichotomising between the political rights of people, and their social, cultural and economic rights. Hence, there is a clear separation between the 'economic' and the 'political', which allows states and agencies to focus on one

or the other, despite the supposed ‘indivisibility’ of rights. As stated by Sengupta (in Mohan and Holland 2001, 188), ‘the human rights discourse has privileged the political over the economic with some going further to suggest that this is because the recognition of political freedoms is relatively costless compared to economic rights which promise tangible material inputs such as housing and health care’. Without being too facetious, the ‘human rights’ discourse on the African continent seems to be determined by the promise that the democratic election of the dominant party will ensure housing and employment for the masses. However, this is usually not the case, as can be witnessed in several countries in Africa that have undergone postcolonial political change, yet struggle to meet people’s social and economic expectations in the form of employment opportunities, adequate housing and health care.

The second anomaly with the ‘human rights’ discourse in Africa relates to the recognition of customary law within the formal legal system. Despite claiming to recognise Africa’s uniqueness and diversity, and hence the legitimacy of its customary legal practices, these often either conflict with ‘universal’ principles or are simply not taken seriously by constitutional lawyers (in part because they are not codified) (ibid., 184). In African countries, citizenship is increasingly becoming equated with suppression and exclusionary practices, often resulting in treating African cultural difference as lacking any relevance for Eurocentric, ‘universal’ values (Penna and Campbell 1998, 9). Consequently, unscrupulous African regimes and/or people have used traditional customary practices to resist external scrutiny and persist with inhumane behaviour. In Africa, this tension has been brought to the fore over such matters as female genital mutilation, and the relationship between customary law and common law, where the latter usually prevails (Murray 2000).

As to the third anomaly, it seems as if international organisations that support the promotion of human rights on the ground, such as the African Commission on Human and Peoples’ Rights, are elitist, lack clear reporting structures, and have unclear authority to enforce decisions or condemn violations of human rights (ibid. 2000). Similarly, many of the international non-governmental organisations (NGOs) that have been major supporters of human rights causes, operate in elitist ways (e.g., organising urban-based workshops for lawyers) and tend to impose, through funding conditionality, their own agendas on local NGOs. Now, if ‘human rights’ violations are identified clearly by international ‘human rights’ NGOs, and the latter lack the authority to enforce decisions and condemn violations, it does not augur well for the prevention of ‘human rights’ abuses on the continent.

What follows from the aforementioned is that ‘human rights’ abuses on the African continent will continue to be perpetrated with impunity, as several of the postcolonial regimes are still considered by their peoples as the powers that have liberated them from oppression and exclusion at the hands of the colonisers. The majority of Africans are eternally indebted to the previous ‘liberation fighters’ who now rule them (people), because the latter have been emancipated from inhumane suffering, indignity and humiliation at the hands of repressive colonial powers. After assuming political leadership, the like of Idi Amin (Uganda), Robert Mugabe

(Zimbabwe) and Theodore Obiang Mbasogo (Equatorial Guinea) have used unlawful killings by security forces, government-sanctioned kidnappings, systematic torture of prisoners and detainees by security forces, life-threatening conditions in prisons and detention facilities, arbitrary arrest, and detention, including incommunicado detention, to consolidate their political power and even have made people believe they were politically 'free', but have shown scant regard for socio-economic and even cultural development, as is evident from the precarious living conditions under which many Africans continue to suffer. Such autocrats have used their political authority and state power to initiate human atrocities against both those who supported the liberation struggle, and those whom they had to remove from power. And all this was possible because political freedom was privileged and regarded as separate from socio-economic freedom – a dichotomous view of freedom that certainly has accelerated 'human rights' abuses on the African continent.

Moreover, a lack of integration between the common law and customary practices of people has often resulted in political regimes bringing these dichotomous ways of rule into serious conflict. On the one hand, in order to avoid accountability to universal values of respect for the other (as this has obviously not been the case in several postcolonial countries), autocratic regimes misused customary practices and brought them into conflict with other ('universal') ways of doing, not only to keep integration at bay, but also to assume the moral ground on their part to continue with an abuse of cultural traditions that can cause further humiliation and suffering to many people. The continuation, for example, of female genital mutilation, is nothing more than showing support for indigenous customs at the expense of having to be held accountable by the 'universal' values of showing dignity and respect for women. In this way, such regimes can equally dismiss 'imperial' intervention in all other 'customary' matters by 'modern' external forces, even though it means doing continuous harm to people. I cannot imagine that 'medicine murder',¹ for instance, is continued and legally allowed, or that public 'necklace'² hangings continue, just because some African regimes want to avoid 'modernisation' and to keep the 'West' from interfering with internal African political matters. The point is, customary practices seem to be abused not only to perpetrate 'human rights' violations, as is the case with female genital mutilation and 'me murders', but also to continuously bring the continent into conflict with its previous colonial powers – a situation that also resulted in further 'human rights abuses', as is evident in Zimbabwe with the Mugabe regime's confiscation of white farmers' properties. Using customary rights to reclaim lands and expel people in a violent and uncompromising way has certainly contributed further to 'human rights' violations on the continent.

Human Rights Watch in Africa reveals the most staggering information about human rights' abuses that have been reported but gone unheeded: for decades, the police in Kenya have failed to investigate politicians who may be implicated in serious crimes against humanity;³ the long government inaction in Uganda on the killings of people when, in September 2009, the police used lethal force, without clear justification, in the face of people's protests;⁴ and reports of rebels in the Democratic

Republic of the Congo having committed war crimes, summary executions, rapes and forced recruitments of boys into the rebel M23 army.⁵

Now, if ‘human rights’ abuses are reported by Human Rights Watch in Africa, then there is little chance that perpetrators of human rights abuses would not be held accountable for their crimes. Also, if Human Rights Watch has worked tenaciously for more than 30 years to lay the legal and moral groundwork for deep-rooted change and to bring greater justice and security to people around the world, it seems very unlikely that any meaningful change would actually occur in preventing, minimising and eradicating ‘human rights’ violations in Africa. Based on the aforementioned considerations, I shall now focus on a discussion of cosmopolitan justice vis-à-vis (higher) education to find a way in which the problem about current discourses on ‘human rights’ can be addressed.

IN DEFENCE OF COSMOPOLITAN JUSTICE

Recognising people’s humanity towards others; engaging others hospitably; and enacting people’s responsibility towards others in their differences are actions of a cosmopolitan kind that can go far in addressing the ‘human rights’ injustices people encounter on the African continent. In this section I want to explore this notion of cosmopolitan justice in further detail, with reference to the ideas of Judith Butler⁶ and Kwame Anthony Appiah⁷ in order to come up with a more plausible conception that would contribute towards tackling the ‘human rights’ abuses that have become endemic to African society.

Firstly, Butler, like all feminist cosmopolitans such as Martha Nussbaum, Seyla Benhabib and others, articulates a notion of cosmopolitan justice that revolves around the recognition of humanity; respect for human rights as experienced by all communities of difference; and the enactment of responsibility towards all humans. Butler’s most significant contribution to cosmopolitan justice involves an understanding of recognising the other as a way of expressing and living our humanity. This is evident in her books, *Undoing gender*, *Prekarious life* and *Frames of war* – all cosmopolitan projects that seek to uncover what it means to be human. For Butler (2004a, 22), cosmopolitan justice is about establishing recognisable relationships with others through political community (interdependent relationships) and ethical responsibility on the one hand, and through recognising that human interdependent relations are nurtured on the basis of understanding one another’s encounter with grief on the other hand. Thus, for her, when people experience and recognise one another’s grief or loss, not only are those relationships intertwined but they are also directed to an acknowledgement of what it means to be and act humanely (ibid., 23). In other words, if people fail to recognise one another’s difficult lived experiences, they remain unknowable to others in ways that might enhance the potential for human rights violations such as discrimination, oppression and marginalisation, and violence. That is, if people do not know of one another’s sense of grief and loss, the possibility that abuses might be perpetrated without any opposition could

be enhanced. Butler's compelling notion of the 'recognisability' of others and their differences is connected to the idea of 'grievability', such as that other people can experience loss, trepidation and difficulty that deserve their acknowledgement. Also, through the recognition of a shared sense of grief that all humans experience or might experience, not only will people's understanding of what it means to be human be expanded, but their responsibility towards others as interdependent members of a global community will be enacted.

Butler's emphasis on recognising others in an interdependent global community and experiencing them with their differences and grief is at the heart of cosmopolitan justice. A lack of recognising others for who they are and what they encounter should be given due acknowledgement, as failing to do so might undo people's interrelatedness. For instance, Africans who suffer persecution and expulsion should be recognised by all others (wherever they might live) as people who face inhumane and grotesque treatment. Comparing Africans' plight with the distress suffered by others elsewhere in the world is tantamount to trivialising the suffering they encounter as humans and, hence, might result in their situation being regarded as less urgent or important to address. It is often heard that Africans are not alone in suffering heinous crimes and that atrocities are also committed in other parts of the world – as if the perpetration of such acts elsewhere is more relevant and in need of being combated first. As noted by Butler (2004b, 131–132), to recognise others in their otherness and difference is to become 'engaged when subject and Other understand themselves to be reflected in one another, but where this reflection does not result in a collapse of one into the Other'. Put differently, through people's shared experience of loss, the other's loss should not become less important to address. Yet the potential for this to happen is rife when people collapse their own experiences into those of others (ibid., 132). Likewise, she attributes large-scale prosecution, such as by the Nazis in Germany and the genocide of Tutsis by Hutus in Rwanda, to the problem of not thinking of recognisability in terms of community. In Butler's (2009, 5) words,

if we claim that recognizability is a universal potential and that it belongs to all persons as persons [in political community], then, in a way the problem before us is already solved. We have decided that some particular notion of "personhood" will determine the scope and meaning of recognizability.

Butler (ibid., 21) intertwines her elucidation of 'recognisability' and 'grievability' with an exposition of the dilemmas of life itself and avers the following: 'To say that life is precarious is to say that the possibility of being sustained relies fundamentally on social and political conditions, and not only on a postulated internal drive to live'. Following Butler, it is the social and political conditions in Africa that will have to change in order for cosmopolitan justice to happen, that is, people must recognise their human interrelationship as a global community of difference. Furthermore, they must recognise that the experience of grief has a real chance of being minimised and even eradicated if recognition is given to the different encounters with grief

that exist everywhere and that demand a universal yet particular response. Butler (ibid., 5) urges that contextualisation be taken seriously when she states: 'If we ask how recognizability is constituted, we have through the very question taken up a perspective suggesting that these fields are variably and historically constituted.' Butler's view of cosmopolitan justice will not only contribute towards the political hardships, turmoil and 'human rights' abuse of Africans (who are often unseen) being heard, but also to them actually receiving the recognition they deserve for their struggles. In the words of Butler (2009, 21), 'human rights' abuses, as texts of the 'liveable' experiences of many Africans, require 'support and enabling conditions'.

Secondly, cosmopolitan justice, as framed in the seminal thoughts of Kwame Appiah (2006, xix), relates to his book *Cosmopolitanism: Ethics in a world of strangers*, wherein he argues for a position of *kosmopolites* as a human community constituted by habits of coexistence, of 'living together' in conversation. Through association, Appiah posits, humans can combat privileged views about the 'thoroughgoing ignorance about the ways of others' (ibid., xvii). Following Appiah, cosmopolitan justice can be regarded as a cross-cultural conversation that can avoid the colonising and exclusionary tendencies that have plagued (African) society for too long. What interests me about Appiah's notion of living together without being ignorant of the ways of others is his emphasis on others. In my view, these others cannot exclude those who perpetrate acts of violence, from whom people therefore should not be disconnected, but rather engaged in a conversation about what counts as values for a just and humane living. The point is that even those whom people might resent because of atrocities perpetrated against them should not be alienated from such a conversation, otherwise they might not find constructive ways to end violent 'human rights' abuses against people in African society, for example. I concur with Appiah (ibid., 78) when he states that, when people acknowledge and describe difference they do so in conversations that will enable them to 'get used to one another', and hence approach differing and conflicting values without fear or hatred. One of the problems with the 'human rights' discourse in Africa is exactly the unwillingness of those who often are the 'victims' of violations to engage with the 'perpetrators', who are often regarded as unworthy of recognition and engagement. If a blind eye is turned to the recognition of the perpetrator of 'human rights' abuses, there might be little opportunity for the violence to subside or even dissipate. In order to enlarge people's perspectives in combating 'human rights' violations, the victims and perpetrators have to engage with one another about the problem at hand. Therefore, I agree with Appiah (ibid., 30) when he states that opening up the texts of people's lives (even if contradictory, I would argue) will undoubtedly 'reveal to us values we had not previously recognized or undermine our commitment to values that we had settled into'. Certainly, for those perpetrators of genocide and war crimes on the African continent, undermining values of 'human rights' abuses they have 'settled into' would then become just an opportunity for cosmopolitan justice to enter its initial stages (without of course discounting that the course of law has to be implemented). If forgiveness does not follow in the course of finding out the

facts about, say a genocide, then it might perhaps reduce the legitimate suffering or consequences of the ‘victims’. Hence, in South Africa, the Truth and Reconciliation Commission (TRC) served as such an institution that set out to investigate crimes that transpired during the apartheid era. Yet, according to Appiah (2006, 31), the point is that, ‘if we cannot learn from one another what is right to think and feel and do, then conversation between us will be pointless. Relativism of this sort isn’t a way to encourage conversation; it’s just a reason to fall silent.’

CONCLUSION

Appiah raises the issue of going beyond mere talking of truth to urging people to find ways to implement values worth living by. Surely people do not have to remind others that ‘human rights’ abuses are not worth living by. But this is also the problem. Perpetrators of ‘human rights’ violations do in fact embark on such actions, otherwise these actions would not exist. Appiah (2006, 144) reminds readers that attempts to initiate cosmopolitan justice cannot happen without recourse to fallibilism, that is, the sense that people’s knowledge and imperfections of what constitute human life are provisional and can be revised in the context of new evidences. As far as cosmopolitan justice is concerned, addressing problems relating to ‘human rights’ abuses cannot rely only on the imposition of existing truths about what lives worth living entail. So, in a fallibilist way (through trial and error), those who engage in conversations about the demerits of ‘human rights’ abuses invariably search for new ways to eradicate the societal ills that have had catastrophic ramifications for life in general in several parts of the African continent, as mentioned previously. The point is, they might just come up with answers never thought of before. In the quest to find solutions for Africa’s ‘human rights’, engaging with difference, as Appiah (*ibid.*, xv) reminds readers of doing, will open doors to ‘take seriously the value of not just human life, but particular human lives [albeit instigated by violence], which means taking an interest in the practices and beliefs that lend them significance’, that is, the ‘significance’ of reasons for ‘human rights’ abuses. Perhaps a solution to Africa’s problems might be found by affording people the opportunity to do the unexpected and to deal with the unexpected through fallibilism.

NOTES

1. ‘Medicine murders’ involve killing human beings in order to use some body parts as ‘traditional’ medicine.
2. Perpetrators of crimes are publicly lynched and killed by placing a burning tyre around their upper bodies.
3. Kenyan authorities failed to investigate and prosecute those responsible for violence in the Coast Region during September 2012, when more than 110 people were killed and 6 000 displaced. On 12 September, Dhadho Godhana, a Member of Parliament, was arrested in connection with the violence, but recent Human Rights Watch research suggests that at least three other politicians may have been involved. The investigations

- should include the role of these politicians, as well as government officials and police, who failed to act to prevent the violence, despite warnings that it was imminent. The deaths of at least 110 people, including nine policemen, in Tana River County began with an attack on the village of Riketa on 22 August. That attack led to revenge attacks on 7, 10 and 11 September. The Human Rights Watch researchers found that several local politicians may have been involved in organising the violence and that the police and local administration in Tana River failed to respond to reports from residents, made over a period of six months, that violence could be imminent. Police are failing to provide adequate security, as revenge attacks continue and communities continue to arm themselves. The violence in August and September 2012 was the culmination of smaller-scale attacks, cattle raids and counterattacks between the ethnic Pokomo and Orma communities since January. Both communities lost lives and livestock, but police either failed to respond to the attacks, or arrested people and then released them without investigations (<http://www.hrw.org/news/2012/09/13/kenya-investigate-all-politicians-tana-river-violence>, accessed 14 September 2012).
4. In Kampala, authorities failed to investigate meaningfully the deaths of at least 40 people during two days of rioting in Uganda in; using the phrasing, ‘three years ago’, ‘dates’ the information. The families of some of the victims told Human Rights Watch that they still hoped for justice. The government made numerous promises to investigate the deaths during the so-called ‘Kayunga riots’, but a parliamentary committee mandated to examine the incident stalled, failing to call any witnesses. No police or military members have been held accountable for the violence (<http://www.hrw.org/news/2012/09/10/uganda-3-years-no-justice-riot-victims>, accessed 14 September 2012).
 5. In Goma, 33 of those executed were young men and boys who tried to escape the rebels’ ranks. Rwandan officials may be complicit in war crimes through their continued military assistance to M23 forces. The Rwandan army has deployed its troops to eastern Congo to provide direct support to the M23 rebels in military operations. The M23 rebels are committing a horrific trail of new atrocities in eastern Congo. The M23 armed group consists of soldiers who participated in a mutiny against the Congolese national army in April and May 2012. The group’s senior commanders have a well-known history of serious abuses against civilians. In June 2012, the United Nations high commissioner for human rights, Navi Pillay, identified five of the M23’s leaders as ‘among the worst perpetrators of human rights violations in the DRC, or in the world’. Local leaders, customary chiefs, journalists, human rights activists and others who spoke out against the M23’s abuses or are known to have denounced the rebel commanders’ previous abuses have been targeted. Many received death threats and have fled to government-controlled areas (<http://www.hrw.org/news/2012/09/11/dr-congo-m23-rebels-committing-war-crimes>, accessed 14 September 2012).
 6. Judith Butler, professor in the Rhetoric and Comparative Literature departments at the University of California, Berkeley, was awarded the prestigious Theodor W. Adorno Prize, which recognises outstanding achievement in philosophy, theatre, music or film in Frankfurt on 11 September 2012. On receiving the award, Butler was immediately attacked by some Jewish leaders, Israeli politicians and Israel defence and advocacy organisations, who argued that it was wrong to give such a prize in Germany to an outspoken critic of Israel’s occupation of Palestinian land. What interested me about

- Butler, and her ideas on cosmopolitan justice in particular, was the dignified manner in which she responded to the unjustified attacks on her integrity.
7. Kwame Anthony Appiah is a Ghanaian-Anglo-Saxon philosopher, cultural theorist and novelist who has been influenced by the cosmopolitanist philosophical tradition, which stretches from German philosophers such as Georg Hegel through W.E.B. Du Bois and others. It is Appiah's idea of combining universality and difference in a conception of cosmopolitanism that attracts me to his work.

REFERENCES

- An-Na'im, A. 1999. Possibilities and constraints of the legal protection of human rights under the constitutions of African countries. In *Universal rights, local remedies: Implementing human rights in the legal systems of Africa*, ed. A. An-Na'im, 22–24. London: Interights.
- Appiah, K. A. 2000. Ethnophilosophy and its critics. In *Philosophy from Africa: A text with readings*, eds. P. H. Coetzee and A. P. J. Roux, 109–133. Oxford: Oxford University Press.
- _____. 2006. *Cosmopolitanism: Ethics in a world of strangers*. New York and London: Routledge.
- Butler, J. 2004a. *Precarious life: The powers of mourning and violence*. London: Verso.
- _____. 2004b. *Undoing gender*. New York: Routledge.
- _____. 2009. *Frames of war: When is life grievable?* London: Verso.
- Mohan, G. and J. Holland. 2001. Human rights and development in Africa: Moral intrusion or empowering opportunity? *Review of African Political Economy* 28(88): 177–196.
- Murray, R. 2000. *The African Commission on Human and Peoples' Rights and International Law*. Oxford: Hart.
- Nickel, W. A. 2007. *Making sense of human rights*. London: Blackwell.
- Penna, D. and P. Campbell. 1998. Human rights and culture: beyond universality and relativism. *Third World Quarterly* 19(1): 7–27.
- Shivji, I. 1999. Constructing a new rights regime: Promises, problems and prospects. *Social and Legal Studies* 8(2): 253–276.