

Understanding Cultural Rights in Uganda

AN IMPORTANT BUT NEGLECTED DIMENSION OF HUMAN RIGHTS



2017



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1. *About this booklet*

Few Ugandans are conversant with cultural rights. Yet these rights are as important as any others and they are provided for under national and international law.

There are several reasons for this limited knowledge. One is that cultural rights have been eclipsed in Uganda by notions of human rights that are topmost on our national agenda, such as the right to freedom of expression and other political rights, economic rights, gender rights or the rights of the child.

Another is that cultural rights are difficult to define. Given that such rights can be briefly described as the rights to access, express and enjoy one's culture, we can immediately see a challenge: culture tends to be context-specific – what might be considered culturally acceptable (even desirable) in one setting might be opposed (sometimes violently) in another. In Uganda, female circumcision provides us with a good example, where local acceptability has been widespread (and justified as "being part of our culture"), yet the practice has been designated as unlawful.

Not only can cultural rights sometimes be seen as conflicting with other rights, culture itself also informs our local notions of the law and of "human rights" – hence a second tension between the universality and the specificity of human rights: how universal should the Universal Declaration of Human Rights be?¹

In spite of these difficulties, there is an increasing appreciation throughout the world that cultural rights are important. It is now generally agreed that cultural rights concern language, cultural and artistic production, participation in cultural life, cultural heritage, intellectual property rights, and minorities' expression of their culture. In other words, cultural rights concern many of the aspects of life that we treasure and that merit protection.

This booklet has been prepared as a contribution to a better understanding of cultural rights in Uganda. We hope that human rights organisations, cultural institutions, education establishments, policy makers and implementers will find this publication useful. It is our expectation that it will also lead to the recognition that cultural rights need to be defended with all our commitment, so that our nation finds prosperity in a future informed by our rich and diverse culture.

¹ Malaysia's ex-Prime Minister Mahathir Mohamad, for example, argues that the UDHR's emphasis on an individual's rights, rather than on community responsibilities, makes it unsuited to Asia (see for instance http://www.bbc.co.uk/worldservice/people/features/ihavearightto/four_b/f_rights_4.shtml).

2. *What are cultural rights?*

Cultural rights can be defined as “human rights that aim at assuring the enjoyment of culture and its components, in conditions of equality, human dignity and non-discrimination”² and include the rights to access, to express and to enjoy one’s culture with the support (and without interference) from the State:

- The right to access and promote one’s culture includes the right to exercise one’s cultural practices; to access culturally-relevant education; to freely transmit information on one’s cultural heritage for both present and future generations; and the right to access goods and services, sites and spaces of cultural and historical significance.
- The right to express one’s culture refers to the freedom to express one’s cultural identity (alone or in community with others) and to communicate how one wishes to be recognised, so as to have one’s culture respected. This includes the human and cultural meaning that an individual and/or group attach to their existence and to their environment. It refers to common cultural points of reference which an individual or group identify with and wish to preserve and develop. The freedom to express oneself in public or in private in a language of one’s choice is an important aspect of cultural rights.
- Cultural rights therefore refer to the holistic enjoyment of - and participation in - cultural life of one’s choice, as individuals and as communities, without discrimination.

Cultural rights are the birth right of every human being, although (as we shall see below) they are sometimes wrongly interpreted as being mostly of a collective or community nature, rather than associated to individuals.

Cultural rights encompass dual freedoms: freedom from the State and freedom through the State. States are expected to ensure that everyone in the country can equally access, express and enjoy their cultural rights and to provide remedies if they are violated. States are in particular expected to:

- Respect cultural rights and refrain from interfering with the enjoyment of these rights by everyone - women and men - without discrimination;
- Protect these rights and prevent others from interfering with the enjoyment of such rights;
- Adopt measures that lead to the fulfilment of these rights by all³.

A performer of traditional music should for example be able to express her culture without undue interference from the State, while being protected by the State from interference by others and to have her rights strengthened (for instance through the implementation of measures to protect copyright).

Further, *recognising cultural rights together with the principle of non-discrimination puts the focus on the most excluded, discriminated and marginalised groups in society.*⁴ The State is therefore

2 Geneva International Centre for Justice - www.gicj.org

3 While the International Covenant on Economic, Social and Cultural Rights requires States “to take steps” to the maximum of their available resources to progressively achieve cultural rights, it imposes an immediate obligation to take measures towards this realisation, even when resources are scarce, especially in the area of elimination of discrimination.

4 “Frequently asked questions on Social, Economic and Cultural Rights”, Office of the United Nations High Commissioner for

expected to put measures in place to ensure equal access to cultural rights, even for the most remote and disadvantaged individuals and communities, such as indigenous minority groups (also known as indigenous peoples or ethnic minorities).

While the State (the legislature, the executive and the judiciary) has the primary responsibility to protect and fulfil cultural rights, it is every citizen's duty to ensure that cultural rights are respected. As the 1966 UNESCO Declaration of Principles of International Cultural Co-operation states (Art.1): *"Every people has the right and the duty to develop its culture."* Civil society can also act to promote and protect cultural rights: NGOs, community-based organisations, human rights defenders, the media, trade unions, academia, religious and cultural institutions, have crucial roles to play in working with individuals and groups to promote their cultural rights, and in holding the Government accountable for realising these rights.

Finally, one should recognise that the enjoyment of all human rights is interlinked. It has been argued that *"categories of rights such as 'civil and political rights' or 'economic, social and cultural rights' make little sense"*.⁵ Indeed, because culture affects all aspects of human life, cultural rights illustrate the indivisibility and interdependence of all rights in a more comprehensive fashion than do any other rights. A people whose culture is marginalised will for instance find it difficult to exercise their political rights; a community whose access to cultural resources is restricted will find its sense of self-worth diminished and, if it is also subject to employment discrimination, its economic well-being will be threatened as well. Such linkages explain why it is often difficult to examine cultural rights in isolation from other rights⁶.

Nevertheless, over the years, cultural rights have become increasingly well defined in national, regional and global legal systems, in laws and regulations, in national constitutions, and in international treaties. We review in Chapter 4 Uganda's obligations in this respect.

Human Rights, 2008, p.3.

5 "Key concepts on ESCRs - Are economic, social and cultural rights fundamentally different from civil and political rights?" <http://www.ohchr.org/EN/Issues/ESCR>

6 As the African Charter on Human and Peoples Rights states: *"(...) civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and (...) the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights."*

3. *The importance of cultural rights*

Cultural rights are fundamental and absolute in nature because everyone is born with and possesses them regardless of where they live, their gender or race, or their religious or ethnic background. They are as important as other categories of human rights.

There is however a tendency, in Uganda and elsewhere, to ‘downgrade’ cultural rights as an ‘underdeveloped’ category of rights. Compared with, say, political and civil rights, cultural rights are the least developed as far as their scope, legal content and enforceability are concerned⁷ and they need further elucidation, classification and strengthening. The Constitution of Uganda for instance does not provide a direct and detailed reference to cultural rights apart from the vague wording of Article 37 with its reference to “the right to culture and similar rights” (as opposed to more detailed provisions about cultural values and the roles of traditional leaders).⁸

There are several reasons for this neglect, both in Uganda and elsewhere:

One stems from the history of the development of cultural rights as part of the body of human rights. It is first worth noting that, since the late 1940’s, there has been worldwide increase in rights provisions, such as those contained in many national Constitutions. This growth has included cultural rights and the rights of minorities⁹.

This increase is symptomatic of two trends that can be traced to the 1970’s and 1980’s:

1. From individual rights and the notion of “national culture” (corresponding to mono-cultural, or culturally undifferentiated nations and a strong discourse on assimilation of ethnic minorities) to the recognition of the need for minority group rights and cultural diversity.
2. From culture seen as “heritage”, “sites of universal value” and “civilisation” to a source of group cohesion and identity, with an attendant recognition of minority rights (even as defining cultural rights themselves, as that of multiple culturally-defined communities). This is reflected in international legal instruments on intellectual property rights; on the conservation of indigenous knowledge; and in UNESCO Conventions, such as the Convention on Safeguarding Intangible Heritage and the Convention on the Promotion of the Diversity of Cultural Expressions.

These trends explain the rising tensions between cultural and other human rights: if cultural diversity is increasingly seen as desirable, there is an inevitable move towards a non-universalistic application of rights. Cultural rights are then sometimes seen as residual, as inferior to other rights, or used to ‘cover up’ rights violations by errand states¹⁰.

This also strengthens an already emerging perception of cultural rights (along with social and economic rights) as fundamentally different from civil and political rights. While the Universal Declaration of Human Rights makes no fundamental difference between rights, a distinction has appeared in the context of an ideologically divided world (with more emphasis on cultural, social and economic rights, for instance, in Asian and – until recently – in Eastern European countries).

⁷ Symonides, J, 1998, “Cultural Rights: A neglected category of human rights”, *International Social Science Journal*, 158, p.559

⁸ Art. 37: “Every person has a right as applicable to belong to, enjoy, practice, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others”.

⁹ The “right to culture” was included in half of worldwide Constitutions surveyed in 2006, up from 14% in 1946 (Deacon, H., “A comparative review of cultural rights in the Kenyan Constitution,” Open University, 2016, p.7)

¹⁰ Adapted from Deacon, op.cit.

These tensions also stifle research on the relationship between cultural and other rights and foster an interpretation of cultural rights as vague or unclear compared to civil and political rights. This however does not always stand up to scrutiny: the right to take part in the conduct of public affairs may be as difficult to define as the right to take part in cultural life.

Similarly, culture – and therefore cultural rights - is not easy to define. Since we are born as ‘cultural individuals’, unless we are exposed in some significant way to other cultures as well, we rarely develop an awareness of many of the distinctive characteristics of our own culture. They are, for us, simply “givens.” So, to think about cultural rights, we need to treat consciously something that is often largely taken for granted by most of us. In Uganda, this is aggravated by the dearth of reference materials on cultural rights.

There is also a view that fulfilling cultural rights requires heavy public investment, especially financially. While this may be true, it is also true that the realisation of cultural rights requires a State to refrain from interference and to create conditions for equal access to culture, which may not be more economically taxing than the realisation of civil and political rights.

A further problem arises when culture is linked to practices, values and beliefs we strongly cherish and which clash with other human rights. We return to this point in detail in Section 5.

Yet, are cultural rights important in themselves? The following highlight their importance, using local examples¹¹:

- The denial of cultural rights can have devastating effects for the communities and individuals concerned, as when they are denied respect by others because they belong to a minority or disparaged group. The Ik in Uganda are for instance known by their neighbours (and described in the Uganda Constitution) as the Teuso (meaning poor people).
- The denial of cultural rights can lead to the violations of other human rights. It is often harder, for example, for individuals to take part in political activity or to exercise their freedom of expression, as a result of cultural discrimination, stereotyping and exclusion. The mere fact of belonging to a culturally discriminated ethnic group may deny someone the opportunity to compete equitably for an employment opportunity.
- Denying cultural rights can affect large numbers of people. For example, entire Batwa communities were evicted from their homes in forests when these were turned into the Bwindi, Semuliki and Mgahinga National Parks. This deprived them of their ancestral way of life, of their dignity, their access to sites of worship, in addition to their right to choose where to reside.
- Gross violations of cultural rights have been among the root causes of conflicts, and failure to address systematic discrimination and inequities in the enjoyment of these rights can undermine recovery from conflict. Conflicts in the Rwenzori region can for example in part be ascribed to the unequal status claimed by different cultural groups in the region over the past decades.

¹¹ Adapted from “Frequently Asked Questions on Social, Economic and Cultural Rights”, op.cit. p.9.

4. *What has Uganda signed up to?*

Uganda has ratified a number of international instruments that guarantee cultural rights, which are also reflected in our national legislation.

- The Universal Declaration on Human Rights (1948) was the first internationally recognised instrument to provide for the protection and promotion of cultural heritage through cultural rights. The Declaration came into existence partly as a result of the desire to protect the cultural rights of people from the effects of wars. Article 27 (1) and (2) for instance state that: “Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”
- The International Covenant on Economic, Social and Cultural Rights (1966) emphasises that all peoples have the right of self-determination. By virtue of that right they freely pursue their economic, social and cultural development. Article 15 of the Covenant urges the States parties to the Covenant to recognise the right of everyone to take part in cultural life. The Covenant also urges States Parties to respect the freedom indispensable for scientific research and creative activity and to recognise the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields. The International Covenant on Civil and Political Rights (1966) stipulates “the right of minorities to enjoy their own culture, to profess and practice their own religion, or to use their own language”.
- The 2030 Agenda for Sustainable Development (2015) marks the first time that the international development agenda refers to culture within the framework of Sustainable Development Goals related to education; sustainable cities; food security; the environment; economic growth; sustainable consumption and production patterns; and peaceful and inclusive societies where (for instance), “all learners acquire (...) an appreciation of cultural diversity and of culture’s contribution to sustainable development.”
- UNESCO Conventions: The UNESCO Conventions Concerning the Protection of the World Cultural and Natural Heritage (1972) and for the Safeguarding of the Intangible Cultural Heritage (2003) provide for the protection of both natural and cultural aspects of heritage. The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) recognises the distinctive nature of cultural goods and services, and affirms in international law the right of countries to apply policies to support cultural expressions, cultural diversities, cultural industries, cultural activities, goods and services.
- The United Nations Declaration on the Rights of Indigenous Peoples (2007), though not legally binding, sets out the individual and collective rights of indigenous peoples, including their rights to culture, identity and language. It also emphasises “*the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations*”. The Declaration prohibits discrimination against indigenous peoples and protects their cultural heritage and manifestations of their cultures, including human and genetic resources.

- The African Charter on Human and Peoples' Rights or "Banjul Charter" (1986) is the main African human rights' instrument. It established the African Commission on Human Rights. It links human rights to the promotion of African culture and stipulates that *"All peoples shall have the right to their (...) cultural development with due regard to their freedom and identity"* and that it is the duty of every citizen *"to preserve and strengthen positive African cultural values (...) in the spirit of tolerance, dialogue and consultation"*. *"The promotion and protection of morals and traditional values recognised by the community shall be the duty of the State"*.
- The Treaty for the Establishment of the East African Community (1999) obliges the relevant States to promote *"cultural activities, including the fine arts, literature, music, the performing arts (...) and the conservation, safeguarding and development of their cultural heritage..."*
- The 1995 Constitution of Uganda (amended in 2005) spells out the State's commitment to ensure the social and cultural well-being of the people. Under the State's cultural objectives (Objectives XXIV and XXV), the Constitution stipulates that the State and the citizens shall promote and preserve the cultural heritage, values and practices that enhance the dignity of Ugandans; and encourages the development, preservation and enrichment of Ugandan languages. Article 37 stipulates that *"every person has a right as applicable to belong to, enjoy, practice, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others."* Article 246 addresses the specific issue of traditional or cultural leaders: *"(...) the institution of traditional leader or cultural leader may exist in any area of Uganda in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies"*. Article 246 also states that *"...the institution of traditional leader or cultural leader may exist in any area of Uganda in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies"*.
- The National Culture Policy (2006) is the first comprehensive instrument taking into account the diversity of Ugandan cultures. It recognises the importance of culture in development processes, the need to promote it, the need for social inclusion and to respect cultural diversity¹².
- The Education Language Policy fosters cultural rights as it stipulates that mother tongue be used as a medium of instruction in education up to Primary Four and that some area languages (e.g. Luganda, Luo) be examinable in PLE. It establishes a National Language Advisory Board to assist in the development of Ugandan languages.
- Acts of Parliament: a number of Acts of Parliament relate to cultural rights. These include:
 - The Uganda National Cultural Centre Act (1959 – under review) is meant to encourage and develop cultural and artistic activities, through district arts committees.
 - The Historical Monuments Act (1967 – under review) provides for the preservation, protection and promotion of historical monuments, sites and objects.
 - The Institution of Traditional or Cultural Leaders Act (2011) provides for the existence of traditional or cultural leaders and stipulates that a traditional or cultural leader shall *"promote and preserve the cultural values, norms and practices which enhance the dignity and well-being of the people where he or she is recognised as such"* (and The Traditional

¹² Other relevant national policies include the 2015 National Museums and Monuments Policy and the 2015 National Tourism Policy and the forthcoming National Family Policy.

Rulers' Restitution of Assets and Properties Act provides for the return of their properties confiscated in 1967).

- The Local Government Act (1997) (last amended in 2008) lists cultural affairs as one of the decentralised services, activities and functions of District authorities. This Act provides opportunities for local cultural resources to be protected, promoted and developed at local community levels.
- The National Environment Management Act (1998) provides for the conservation of the cultural heritage and use of the environment and natural resources of Uganda for the benefit of both present and future generations.
- The Copyright and Neighbouring Rights Act (2006) provides for the protection of patent rights of artists, poets or playwrights from individuals and organisations who have been infringing their rights by pirating, duplicating and playing their music without permission.
- The Prohibition of Female Genital Mutilation Act (2010) criminalises this practice. It specifies the punishment of the offenders and makes provisions for the protection of victims.
- The Uganda Human Rights Commission Act (1997) mandates the Commission to promote and protect human rights and freedoms (including the right to culture) in Uganda
- The Equal Opportunities Commission Act (2007) sets up this Commission to help eliminate discrimination and inequalities affecting individuals or groups, on account of their sex, race, ethnicity, age, religion, health status, political opinion, etc. and to take affirmative action in favour of marginalised groups.
- Other Acts include the Traditional Rulers (Restitution of Assets and Properties) Act (1993); the Land Act (1998), which recognises customary tenure as one of the tenure systems in Uganda; the National Environment Management Act (1998) with its stipulation to conserve cultural heritage and use the environment to achieve cultural integrity; the Public Finance Management Act (2015) which provides for cultural institutions to receive 1% of the oil and gas royalties in the relevant regions; and the Plant Variety Protection Act (2013) which in part protects the rights of plant breeders.

Policy implementation

In conclusion, we can see that these many instruments provide a comprehensive legal framework for the respect and promotion of cultural rights¹³. Often, however, their stipulations are not fully complied with, if at all. The National Culture Policy, for instance, has yet to be translated into a funded plan. Some of the legislation is out-dated and some obligations are disregarded, such as those related to indigenous minorities¹⁴ and to the protection of our heritage, currently often at risk¹⁵.

This is despite the existence of several institutions, both governmental and non-governmental, dealing with human rights issues:

- The Uganda Human Rights Commission is mandated under the 1995 Constitution of Uganda Article 51 (1) *"to promote and protect human rights and freedoms in the country in recog-*

13 Instruments which have not been ratified by Uganda include the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) and its two protocols; the UNESCO 1970 Convention on the Means of Prohibition and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; and the 1989 ILO Convention on Indigenous and Tribal Peoples.

14 See, for instance, "Alternative report to the fifth periodic report of the Republic of Uganda" presented at the 56th Ordinary session of the African Commission on Human and Peoples' Rights, 2015.

15 The fine for destroying a historical site or building currently stands at Shs. 2,000/= ! (less than 1 US \$)

tion of Uganda's violent and turbulent history". Its reports however do not specifically deal with the observance of cultural rights, although some community consultations on this topic have been held.

- Civil society organisations, such as the Foundation for Human Rights Initiative, the Human Rights Network-Uganda, and the Centre for Human Rights are involved in advocating for the observance and promotion of human rights – women's rights, press freedom, land rights, etc. but here again, cultural rights rarely feature as an area of preoccupation¹⁶.

Government institutions and civil society organisations are required to prepare and submit periodic reports on the situation of human rights to the United Nations Council on Human Rights, but these rarely cover cultural rights.

This neglect is also evidenced in the progress reports presented by Government as a State party to the International Covenant on Economic, Social and Cultural Rights on its implementation. The attention paid to cultural rights provided for in Article 15 is minimal. The Committee has for instance noted with concern *"the limited scope for the exercise of cultural rights by indigenous peoples and ethnic minorities [and especially] the information that the Batwa culture is at risk of extinction."*¹⁷ It therefore recommended that Uganda pay particular attention to the promotion and preservation of the cultural rights of indigenous peoples and ethnic minorities.

The Committee has also encouraged Government *"to consider allocating adequate resources to culture, including to local bodies in order to promote cultural activities and ensure protection of traditional knowledge and skills, in particular for women"*. It also recommended that Uganda consider accession to the ILO Indigenous and Tribal Peoples Convention, 1989 and pay attention to developing *"comprehensive anti-discrimination legislation that encompasses all prohibited grounds of discrimination, and about the prevalence of societal stigma and discrimination on the grounds of sexual orientation, gender identity, sex, ethnicity and disability. It also regrets the lack of information on the mandate and the actual functioning of the Equal Opportunities Commission."*

¹⁶ None of the 66 members of the Human Rights Network (HURINET) is directly engaged in the promotion of cultural rights (except the Cross-Cultural Foundation of Uganda).

¹⁷ Concluding observations, 2015, Economic and Social Council, GE.15 - 11217(E)*1511217*

5. *Rights and cultural controversies*

We noted above that cultural rights are occasionally in a state of tension or conflict with 'mainstream' human rights and that this at times explains the complexity of addressing cultural rights. Five areas of tension can be identified:

- **Cultural practices vs. civil rights:** Controversies (and even conflicts) can arise when culture is linked to practices, values and beliefs we treasure, yet are considered unlawful under State legislation. Children's rights provide a good example of this: Ugandan parents often expect children to work in the fields, scaring birds, or tending animals, yet primary schooling is compulsory and access to education is a child's right. Controversies can even challenge the law courts: the legality of the refund of bride price (see below) took years to determine and was finally only settled by the Supreme Court.
- **Cultural relativism vs. universalism:** cultural norms and practices are not uniform across the globe, yet human rights are meant to apply to all, without discrimination. What might be considered culturally acceptable in one community or country might however not be so elsewhere. Some Ugandans might for instance dispute women's rights to leadership and property ownership (especially land), citing "tradition" or "culture", while gender rights promotes equality for both sexes. Some advocates of cultural relativism also argue that permitting international human rights norms to override the dictates of culture and religion is a violation of state sovereignty. Some Governments have contended that the Universal Declaration on Human Rights amounts to an imposition of Western values on other societies.
- **Communalism vs. individualism:** 'Culture' and 'human rights' are also often seen as contradictory, when the former places much emphasis on the collective and the latter on individual rights. Consider the issue of customary land rights in Uganda, where the rights of the family or clan are considered paramount (and where access to cultural sites may be more open than if situated on individually-titled land). Cultural rights, like other human rights, however are the birth right of every human being: while these rights can affect many people and may require collective/public action, they are also individual rights.
- **A single, written law vs. often unwritten customary practice:** For many communities in the East African region, customary laws and principles guide how local communities are managed. Customary law is however often seen as 'below' statutory law (as subjective, oral, particularistic), although ideally legal frameworks and rights should be inspired by the cultural context. In some cases, customary laws and principles are not written (yet known to the community and their leaders), and enforced through sanctions; while in other cases they are written and used as effective reference material to resolve disputes and to manage community challenges.
- **Inalienability of human rights vs. cultural dynamism:** the inalienability of human rights can lead to a static understanding. As activists argue, "once a right, always a right". Yet these rights are applied in a cultural context that is inherently changing. Consider gender equity rights in Uganda: what is now seen as desirable – indeed mandatory – at least among certain sections of the population (such as a wife's sexual rights within marriage and the notion of marital rape) would have been considered a "no-go" area 10 or 20 years ago. As cultural norms change, a new context emerges, lessening or heightening tension.

6 *Fulfilling cultural rights – examples of current efforts and challenges*

In spite of these controversies, Government and other actors have been able to promote the adherence to cultural rights in several areas, while falling short in many respects:

- a. Legal and policy framework.** As noted above, Uganda has shown an appreciation of the importance of cultural rights by ratifying a number of international treaties and developing national legislation. Practical results have ensued: signing up to the UNESCO Conventions has for instance led to the international recognition of elements of our tangible and intangible heritage (such as Kasubi Tombs, Bark-cloth - a ‘Masterpiece of Human Creativity’; the empako naming practice from western Uganda and the male-child cleansing ceremony of the Langi). Such recognition leads to enhanced safeguarding.

There is more to do, however: adherence to cultural rights is still seen as a “minority” interest of limited importance. Whereas the Constitution charges the State with a responsibility to “*promote and preserve the cultural values and practices that enhance the dignity of Ugandans*”, little is currently being done in this respect. There is, for instance, no Ministry of Culture, the budget for cultural affairs is almost non-existent and the National Culture Policy is a document that remains largely unimplemented. The Uganda National Museum is still under threat of demolition. The Uganda National Cultural Centre (also endangered) is meant to promote access to culture nationwide; a task it has not been facilitated to perform, beyond some of the activities of the National Theatre in Kampala.

- b. Education and access to language.** Language constitutes a defining aspect of one’s cultural heritage. Accessing one’s language is therefore an important cultural right. In 2007, the Government introduced the “thematic curriculum” in primary schools, where children learn about their culture and are taught in their language from P1 to P3 classes. A new curriculum for lower secondary school classes has also been developed and incorporates the hitherto absent element of culture. These initiatives can be seen as important steps in fulfilling cultural rights.

The thematic curriculum has however met with some resistance: parents (especially in urban centres) decry the “loss of English” and the choice of the language of instruction has been problematic in communities where several languages are in use.

While the quality and access to education have generally remained a challenge for some years, the rights of access to one’s language are still entirely unfulfilled for indigenous peoples, whose children have to learn in other local languages, as instructional materials and teachers are lacking to deliver the thematic curriculum for such minorities. In many urban primary schools, English also remains the medium of instruction.

- c. The rights of indigenous peoples.** The 1995 Constitution of Uganda recognises the importance of cultural identity and the existence of 65 indigenous communities, out of which 33 are small ethnic groups, with fewer than 100,000 people. According to the 2014 Census, 17 ethnic groups have fewer than 25,000 people¹⁸. If we include communities with fewer than 100,000, these represent more than 1 million fellow Ugandans.

¹⁸ The Aliba, Bahehe, Banyabindi, Banyabutumbi, Basongora, Batwa, Gimara, Ik, Lendu, Mening, Mvuba, Ngikutio, Nyangia, Reli, Shana, Tepeth and Vonoma

There has been a gradual awakening that the cultural rights of indigenous peoples must be respected. Some (such as the Batwa) are now allowed regulated access to their ancestral homes in Bwindi forest to collect forest products. Other minorities - the Ik and the Tepeth- have seen their political representation enhanced by the recent creation of parliamentary constituencies.

Ethnic minorities nevertheless assert that their cultural rights are poorly respected: for a start, they are often stereotyped by their neighbours and known by derogative names (the Tepeth in Karamoja, for instance, are known as the So - meaning "poor"; the Paluo are named in the Constitution as *Chope* - meaning "the weak, who do not have men"). Their cultural heritage is also at risk and poorly safeguarded; their political representation is still limited, usually to the local, as opposed to the district or national levels; and, in several cases, access to cultural sites (such as within national parks) is still restricted. Further, they are often at risk of having their culture assimilated by more numerous neighbouring groups.

- d. **Respect of intellectual property rights and censorship.** Ugandans have much freedom to express their culture through music, dance, theatre, film, television and the arts, although instances of censorship have taken place and recent legislation has constrained media freedom. Many radio stations promote local languages and culture. The intellectual property rights of the artists concerned have been protected since 2006, when the Copyright and Neighbouring Rights Act became law; its provisions are however rarely enforced, in part due to resource constraints and limited awareness of the public.
- e. **Sexual and reproductive rights.** Although sexuality is considered a private affair and the Constitution of Uganda provides for the right to personal privacy, the legislature and the courts have recently been involved in the contentious areas of sexual and reproductive rights, areas that have strong cultural connotations. The Prohibition of Female Genital Mutilation Act was for instance passed in 2010 and bans the practice. It was recently reported¹⁹ however that FGM is on the rise in Karamoja and Sebei, sometimes by Ugandans who cross the border to Kenya for that purpose, exposing the strength of the cultural norms (mostly associated with initiation rites for girls to pass into womanhood) that accompany the practice.
- f. **Marital rights.** A long legal battle challenging the constitutionality of the practice of refunding the bride-price at the dissolution of customary marriages ended in 2015 with the Supreme Court declaring the practice unconstitutional, as it ignores the contributions that the woman makes during the life of the marriage (such as domestic labour and child rearing); and could lead to a situation where the woman would be stuck in a broken and/or abusive marriage if the refund is beyond the means of her family. In addition, the Court stated that marriage is a union between the husband and the wife, and it is wrong to make its dissolution conditional on the performance of an action by a third party.
- g. **Restoration of cultural institutions.** Traditional cultural institutions and their leaders were restored by Government in 1993, to promote and preserve cultural values, norms and practices. This restoration has generally been welcome by Ugandans as a way of re-affirming an important dimension of their identity. Cultural leaders have in turn used their status and influence to champion the promotion of cultural rights. The Queen of Buganda's "ekisaakaate"

¹⁹ *The New Vision*, 18th January 2015

initiative²⁰ is an example of this, as is the Ker Kwonga museum established by a cultural leader near Pakwach in Nebbi district.

The “non-political” status of such institutions remains an issue of contention, however, as does their legitimacy in areas where they have been established (or not) without a long-standing tradition. In some parts of the country, such as in the Rwenzori region, cultural institutions lack legitimacy in the eyes of some local residents and may compete with each other - sometimes violently – for their allegiance.

- h. Preservation of cultural heritage.** Legislation with regard to the preservation of cultural heritage exists and/or is currently being updated. Efforts are being made to protect important heritage sites, such as Kasubi Tombs (under re-construction) or Bwindi Forest. The Uganda Wildlife Authority has piloted the integration of local cultural values into the design and management of two national parks to demonstrate how integrating values of local importance, rather than emphasizing economic and scientific values, can reduce conflicts and increase interest in and support for protected areas.

Access to culture through museums and cultural centres is improving for many Ugandans. In addition to the National Museum, there are now 20-odd community museums throughout the country²¹ - initiatives by individuals, families or groups to preserve and display artefacts that highlight the wealth and history of local cultures. The emergence of these museums in different parts of the country also points to the desire and need to promote access and expression of our diverse cultures. Community Museums however remain under-utilised, under-funded and isolated. They currently receive only minimal State support.

In the drive to “modernity”, cultural heritage in all its forms is however increasingly at risk – cultural sites are desecrated when new roads or oil installations are built; genetically-modified organisms replace indigenous seeds and local knowledge is being lost.

- i. Non-governmental organisations and culture.** Some NGOs are directly concerned with cultural rights. Engabu za Tooro has for instance spearheaded the recognition by UNESCO of the empaako as an important element of our intangible cultural heritage. Other NGOs are active in promoting the expressive arts (Bayimba Foundation, Ndere Troupe and Cultural Centre). CCFU introduced a Heritage Education Programme in 2011 to engage the young generation through school heritage clubs. These have been established in close to 100 secondary schools throughout the country and provide spaces for young people to express and enjoy their culture.

NGOs active in promoting cultural rights in Uganda are however still few and they often suffer from a chronic shortage of funds, as donor priorities lie elsewhere.

²⁰ A regular holiday camp for youth to promote cultural values and norms of behaviour, inspired by the enclosure (*ekisaakaate*) where this was traditionally done in Buganda.

²¹ See www.ucoma.or.ug.

7. *Promoting cultural rights: what can we do?*

The observance of cultural rights remains a challenge in Uganda. Possible intervention areas could include the following:

- a. **Mainstream the promotion and protection of cultural rights in other categories of human rights.** Given the centrality of culture in defining rights, and the importance of cultural rights within the overall body of human rights, rights advocates could incorporate cultural rights in their agenda. This not only makes logical sense, it also contributes to the sustainability of their efforts, as culturally-aware rights resonate with rights holders much more effectively than any externally-imposed agenda.
- b. **Advocate for the observance of cultural rights in particular circumstances.** Specific issues could provide an advocacy focus for non-governmental organisations. These could for instance include legally prescribed aspects of cultural rights, such as those of indigenous minorities, or safeguarding a particular cultural site threatened by road construction, or non-legally binding aspects, such as ensuring that education curricula help youth access their cultural heritage.
- c. **Mainstream the promotion and protection of cultural rights in national and local government development plans.** Within the government structure, cultural affairs constitute one of the decentralised functions District Local Governments are responsible for. The Local Government Act provides opportunities for local cultural resources and cultural rights to be protected, promoted and developed at community levels. It also provides opportunities for cultural rights to be integrated into local government development programmes.
- d. **Deepen the understanding and appreciation of cultural rights among Ugandan communities.** Rights are unlikely to be more fully observed if public pressure to do so is absent. The general public, human rights defenders, cultural institutions and state as well as other non-state actors need to be better informed about the nature of such rights, about the current level of compliance and about the many cases where cultural rights are flouted.
- e. **Domesticate international legal instruments.** Uganda is a State Party to a number of international legal instruments that define and promote cultural rights, but too little has been done to ensure that their provisions apply to our local context. There is a need to 'domesticate' these international provisions, ensuring that local legislation reflects the undertakings that Uganda has made. This will require awareness and information provision to policy makers and implementers, as well as lobbying, for instance Members of Parliament.
- f. **Build the capacity of cultural institutions.** Cultural leaders are meant to play an important role in influencing community perspectives, attitudes and responses to changes, using their influence as custodians of cultural values and traditions. Cultural institutions are however not often fully equipped to play this role, in the 'modern' context. There is a need to enhance cultural leaders' appreciation and understanding of cultural rights, and of their responsibility in making sure that their subjects are free to access, express and enjoy their culture.
- g. **Stimulate cultural rights defenders.** Ultimately, the responsibility to protect and promote cultural rights rests with us, the citizens. Individually and collectively, we need to act to promote or protect cultural rights. The primary role of all cultural rights defenders should be to address issues related to cultural rights on behalf of individuals or groups in a given community or region/institution, whose cultural rights need to be better protected or are being threatened.

8. *About the Cross–Cultural Foundation of Uganda and its work on cultural rights*

The Cross-Cultural Foundation of Uganda’s work is based on the conviction that the positive aspects of culture can be harnessed to bring about social and economic transformation.

As part of its mandate, CCFU has actively promoted cultural rights and an understanding of governance and managing diversity, taking into account the strengths of the local cultural contexts. The Foundation focuses on promoting the cultural rights of all Ugandans, including those of indigenous minority groups. This has involved initiatives to support heritage education for the youth, assisting people’s initiatives to preserve culture through community museums and cultural centres, and preserving sites and buildings of historical and cultural significance.

In 2012, the Foundation initiated a long term programme to enhance the cultural rights of Ugandans through heritage promotion.

It has in this context supported the promotion and development of cultural heritage through projects in Rakai and Kibaale Districts and in the Madi sub-region, where cultural sites, traditional skills and community museums have been established and supported to enhance access and enjoyment of culture.

Support has also been provided to safeguard the cultural assets of indigenous peoples, by promoting their language and literature, showcasing their heritage through small museums and engaging different authorities both at local government and national levels to recognise their cultural rights.

