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AFRICAN CONCEPTS OF (THE RIGHT TO) EDUCATION by Andre Keet

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Introduction

African concepts of the right to education can only become intelligible as part of the broader human rights development on the continent. In general, human rights scholars have not only ignored the development of human rights on the continent, they consciously rejected any human rights roots in Africa prior to 1948.¹ It is therefore no surprise that the colonial experience of massive human rights violations imported onto the continent cannot be perceived as an author of rights, despite the vivid experience of its violation. The authority for rights enunciations remained outside the interpretive horizon of Africa, as the counter- image of the rights-awareness which the West claimed for itself. The experience of rights in Africa, and its representations, could not be other than this counter- image since it materially and ideologically supported the human rights discourse of the West.² Conceptions of rights and the right to education are historically constructed. This paper will thus first explore these developments; provide as assessment of the right to education in

regional instruments; and suggest possible ways to ‘read’ an African notion of the right to education.

The historical roots of human rights and the right to education in Africa

Human rights have a long African genealogy, historically expressed in African moral philosophy. African moral philosophy centres on compassion-based morality as the overarching interpretive scheme for modern human rights. Within this scheme the concepts of justice, love, caring and sharing all form part of a compassion-based moral framework so central to social relationships that it is safe to deduce that some form of moral education has always been fundamental to traditional African societies and communities. Such education must of necessity have a ‘content’ or ‘form’ as it’s starting point. The development of ‘personhood’ that has the attainment and “practicing a particular moral life that contributes to the well-being of one’s community”³ seem to be one such ‘form’. There is thus an individual person located within a communal existence who is the bearer of rights as responsibilities. But rights, in an African sense, are too thin to house communal values. African conceptions thus demand a thicker and richer concept of rights not so different from the originary justification of universal human rights. The idea of human rights rests heavily on the assumption that “there exists a rationally identifiable moral order” that traverses cultural, historical and other boundaries. This moral universalism has its origins in the work of Aristotle and the Stoics and was the precursor to Kant’s moral philosophy which is still residual in modern justifications of human rights.⁴ The kind of education and socialization which was integral to African traditional communities thus reflects the values that became the precursors of what have become known as human rights. The history of parts of the continent confirms such an interpretation.

The spread of the Roman Empire (27 BC-476 AD) provided the vehicle for the dissemination of the “universalising doctrine of Stoic natural law ... and the new universal faith of Christianity.”⁵ Roman law, Greek philosophy and Christian theology thus conjoin to spawn the “medieval scholastic doctrine of natural law”⁶ that formed the bedrock of the theory of natural rights of Grotius, Hobbes and Locke in the 16th and 17th century. Christianity also spread to Africa during medieval times, especially to the Axum civilization of Ethiopia which regarded biblical texts as true philosophy.⁷ The period between the 7th and 11th centuries also witnessed the expansion of the Islamic empire in Africa; the strengthening of egalitarian and democratic traditions⁸ based on Islamic principles; the incorporation of the Sahara and Sudan into the Islamic economic sphere; and the development of an Indian Ocean commercial network. In direct opposition to Donnelly⁹ who disputes the claim that pre-colonial Africa had a concept of human rights, Mutua¹⁰ provides a substantive alternative argument¹¹ on “*Human Rights and the African Fingerprint*” proving that

a brief examination of the norms governing legal, political and social structures in pre-colonial societies demonstrates that the concept of rights..., informed the notion of justice and supported a measure of individualism.¹²

Prior to and during the spread of the Roma Empire, the peoples of the African continent were locked into an intercontinental network of economic and cultural exchanges. This included the Mediterranean, Asia, the Atlantic and Indian regions.¹³ Since the European renaissance, Islamic and Christian-inspired activities on the continent increased. Despite these developments, traditional African societies continue to foster rights “not as a fence to protect the individual from the community, but rather as rules for living together.”¹⁴ This was done through indigenous education, Islamic education and Afro-Christian education in pre-colonial Africa.¹⁵ The intergenerational teaching of traditional values and rights in African societies can be regarded as a forerunner to contemporary educations that have human rights as its focus.

The development of a Western-educated elite in Africa as a result of missionary schooling and religious education, gave rise to Ethiopianism and an intellectual revolution in the 19th century. Resistance against humiliation because of discrimination and challenging injustices were two of the main driving forces for Ethiopianism.¹⁶ Horton, Blyden and Johnson spearheaded the intellectual revolution in West Africa “which in turn propagated ideas about the dignity of the African race.”¹⁷ Within Ethiopianism and the intellectual revolution rights were thus framed in resistance politics and the awareness of such understanding focused on such conception of rights. Martin, Gitta and Ige¹⁸ are of the opinion that the “modern international human rights movement” has its roots in the anti- slavery movement of the early 19th century which ran parallel to Ethiopianism and the West African intellectual revolution.

Following the abolishment of slavery in 1824, the scramble for Africa in the 1880s and beyond resulted in the entrenchment of colonialism from 1880-1935. The fight against injustices thus continued and resistance to colonialism was built on an ideological basis with the ideals of sovereignty and a “new moral order” as its central pillars.¹⁹ Notions of human rights were framed within this resistance framework and the fight against colonialism can thus also be perceived as a fight for sovereignty and human rights. In the aftermath of colonialism nation building was high on the agenda of African states. This nation building:

involves the acceptance of other members of the civic body as equal fellow-members of a ‘corporate’ nation – a recognition of the rights of other members to a share of common history, resources, values and other aspects of the state
– .²⁰

The formal notions of rights have thus taken shape in response to colonialism and were fundamentally framed by the experiences of liberation, state formation and nation building. More importantly for the casing of human rights, Shivji²¹ with reference to Mazrui, points out that “post-colonial Africa has a triple heritage of law ... indigenous/ customary law, Islamic law, and the legal and judicial systems which came with Western acculturation”. This observation is important since the tensions between these configurations of law and human rights standards will become a central point of controversy in the latter half of the 20th century. Education for liberation and resistance and prophetic teachings²² focused on sovereignty and the restoration of dignity which is markedly different from the ‘formal’ genesis of rights in Western countries at that time. The Second World War and the emergent decolonisation of Africa gave rise to the establishment of the United Nations in 1945 which in relation to Africa can either be perceived as “a collective imperial power ... an ally of liberation... or a partner in development.”²³ The adoption of the Universal Declaration of Human Rights (UDHR) followed three years later, followed by the frenetic over-production of human rights standards between 1950 and 2010.

The human rights discourse, despite its proclamations with regard to implementation in regional and local contexts, never came to grips with African conceptions of rights as enriching and thicker. By setting itself up as an adjudicator of culture, the rights framework screened itself off from what is perceived as ‘cultural’ interpretations of rights. By doing so, it undercut itself and contributed to the present ‘crises’ of ‘democracy’ worldwide. Democracy, based on such thin conceptions of rights, was destined to show up fundamental challenges. Rights relating to Africa are: formulated in the shadow of these challenges; constructed within the context of a massive cultural history; and adjudicated by a human rights discourse that by default is hostile to African conceptions of rights. This goes for education rights as well.

The right to education in regional instruments

The clashes between cultural understandings of rights that ensued after the adoption of the UDHR were a direct result of the process of counter-imaging on which the Western conception of rights was dependent for its self-definition. In contrast to this and taking Wiredu’s²⁴ caution into account, one should not argue for an African conception of the right to education in opposition to other notions, but rather explore how the richness of such concepts can come into play on the human rights landscape. The history of Africa, both its traditions and the permanent violence visited upon it, designed an integrated conceptual matrix for rights and duties. Following the international rights communities, Africa-specific instruments were developed to govern the Right to Education.

The African Charter on Human and Peoples' Rights (ACHPR, also known as the "Banjul Charter") came into force on the 27 June 1981. Article 17 (1) within the charter, reads as follows:²⁵

- (1) Every individual shall have the right to education.
- (2) Every individual may freely take part in the cultural life of his community.
- (3) The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

The African Charter on the Rights and Welfare of the Child (ACRWC) was adopted on 27 July 1981 and came into force in 1985.²⁶ Article 11 of this Charter deals with the right to education in great detail.²⁷ It states that all children have the right to education. The extent of the right to education is described in Article 11(2)(a) to (h).²⁸ It explains the importance of strengthening a child within his or her personality.²⁹ Further the teaching of respect for others, cultures and resources is emphasised as well as the development of morals.³⁰ This Article includes the teaching of the primary health care of a child.³¹ Within Article 11 the importance of social freedom and tolerance is highlighted, along with the understanding of traditions and cultures.³²

Subsection 3 places a responsibility on each signatory party to make available free, compulsory basic education, promote the further participation in continuing in education³³ and where possible, within capacity, make higher education accessible.³⁴ It is further prescribed that measures be put in place to encourage the regular attendance of education amongst learners as well as to reduce the number of drop outs.³⁵ It is included in this charter that minority groups be respected and provision be made for them, included in this group are females and special needs learners.³⁶

It is prominent that respect be given to free choice of parents and guardians with the requirement that a minimum standard of education be met.³⁷ Subsection 5 deals with the discipline of a child, both at home and at school, placing a requirement that it be done with dignity and humanity.³⁸ A learner becoming pregnant before having completed her education, must be accommodated in that the charter prescribes that furthering of her education should be allowed according to the abilities of each individual learner.³⁹ All signatory governments must have plans for the complete realisation of this Article.⁴⁰

The protocol on education and training was entered into by a number of African countries on 31 July 2000.⁴¹ The purpose of the Protocol is not to deal with the right to education but rather the co-operation between member states in order to aid the facilitation and realisation of the right to education.⁴² Article 5(1) makes provision

for member states to communicate and assist each other in the implementation of primary and secondary education.⁴³ This would allow for a common curriculum, through adding for the unrestricted movement of learners and teachers within member states.⁴⁴ The Durban Statement of Commitment,⁴⁵ the outcome of a meeting of the Ministers of Education of African Member States, re-established education as a priority.⁴⁶ The conference was convened by UNESCO and was the seventh conference to be held by the Ministers.⁴⁷ In this conference the Ministers agreed that education must be accessible at an early age and reiterated that it be free and compulsory.⁴⁸ It was decided that plans must be developed to bridge the gender gap, making schooling more female accessible.⁴⁹ It was noted in the Conference, that science education needs to be promoted and plans put in place to increase this area of study within the continent.⁵⁰

The African Youth Charter (2006/ 2009) contains further developments regarding the right to education and skills development in Africa. Article 13 provides that every young person shall have the right to an education “of good quality.”⁵¹ Multiple forms of education meeting the diverse needs of young people shall be embraced⁵² and the direction of such education shall be directed to:

- (a) holistic development of the cognitive and creative emotional abilities;
- (b) fostering respect for human rights;
- (c) preparing young people for responsible lives that promote peace, understanding, dialogue and tolerance amongst other values;
- (d) the preservation of positive African morals, traditional values and cultures and the development of national and African identity;
- (e) the development of respect for the environment and natural resources; and
- (f) the development of life skills to function effectively in society including issues such as HIV/AIDS, reproductive health and cultural practices that are harmful to the health of young girls amongst others.

Furthermore, paragraph 4 places a duty on state parties to take appropriate measures with a view to achieving the full realisation of this right and shall provide free and compulsory basic education and take steps to minimise the indirect costs of education, make all forms of secondary education more readily available and accessible, take steps to encourage regular school attendance, strengthen participation in the quality of training in science and technology, make higher education equally accessible to all and ensure that girls and young women who become pregnant or married before completing their education shall have the opportunity to continue their education.

The New Partnership for Africa's Development (NEPAD) is working towards the Education for All (EFA) initiative in Africa. This Programme aims to (a) ensure that all children are in primary schools by 2015 (in line with the Millennium Development Goals), (b) promote gender equality in schools, (c) keep children and teachers HIV/AIDS free, (d) promote open and distance education for teacher development and (e) modernise education and reconstruct education infrastructure⁵³ Further, the African Commission on Human and Peoples' Rights; (ACHPR) Pretoria Declaration on Economic, Social and Cultural Rights in Africa, 2004, recalls and elaborates on the right to education in the African Charter. These include, the provision of free and compulsory basic education, addressing social, economic and cultural practices that hinder access to education by girls and other principles.⁵⁴

The discussion between human rights and traditional values and morals within human rights instruments related to Africa, highlights a few important points:

First, 'human rights' are seen as important and central to Africa's development and as such there is a substantive synergy between the conceptions of the 'right to education' between all the major international and regional instruments. Second, there is a clear emphasis on moral and values in an African conception of education, *and* the right to education. Third, this emphasis has deep historical roots and points to a shift from *right-based justice* to *compassion-based justice*. It, in fact, provides a thicker and deeper conception of justice that still needs to be explored.

Is there a particular African conceptual understanding of education?

This question is not so different from: is there something like African Philosophy? The reason is that the conceptual frames are intrinsically linked to philosophical orientations and cultural capitals. Here the debate between Gyeke and Wiredu (1995) is worth noting. Though African thinkers will take different sides in this debate, what is more or less established beyond doubt is that Africa has a certain kind of social and moral philosophy that provides a different flavour to rights understandings.

Odinkalu,⁵⁵ weaving through provisions, court cases, African case studies and the work of the African Commission for Human and People's rights, came to the conclusion that the "analysis above indicates the outlines of an interesting philosophy for implementing economic, social, and cultural rights under the African Charter. Taking its bearing from the integrated normative framework that the Charter embodies, the Commission is inclined to see human rights as an interconnected set of obligation". The 'right to dignity' in the African context became for Odinkalu the main interpretive tool that separate African conceptions of social, economic and

cultural rights from others. One can argue whether this logic is sustainable or not. However, there are clear links between African moral philosophy and attempts to have an integrated legal conception of rights. The African concept of 'ubuntu' in relation to law and rights has been studied substantively. There are also indications that one can read African philosophy and human rights as complimentary frames in the fields of individual and collective rights, and conceptions of 'justice'.

Bell's *Rethinking Justice*⁵⁶ from an African perspective is an instructive contribution. Honneth's (2008) reading of Derrida's conception of justice imports the 'care of the other' which is rooted in African self-understandings. 'Care of the other' invokes the 'right to human dignity' to provide a legal pathway for this kind of thinking to enter our understanding of law and human rights. Thus, there are African conceptions of 'education' that revolve around the notions of 'personhood', 'personal identity', 'culture', 'socialization' and communalism which is different from other understanding around education. These African conceptions do not have a cultural relativism in mind, but should rather be viewed as enriching frames to think through the challenges of education.

Endnotes

- ¹ Jack Donnelly, Human Rights as an issue in world politics. In Bruce Mazlish and Akira Iriye (Eds.). *The Global History Reader*. New York: Routledge, 2003.
- ² Edward Said, Orientalism, 1978, In Moustafa Bayoumi, and Andrew Rubin (Eds.). *The Edward Said Reader*. New York: Vintage Books, 2000.
- ³ Weil as discussed in Bell, 2002: 67, 66, 62.
- ⁴ Fagan, 2003: 1-5
- ⁵ Lloyd, 1991, 78.
- ⁶ *Ibidem*, 78.
- ⁷ G. Mokhtar (Ed.), *General History of Africa. II Ancient Civilizations of Africa*. Cape Town: ABC Press, 2003, 235.
- ⁸ Ivan Hrbek (Ed.), *General History of Africa. III Africa from the Seventh to the Eleventh Century*. Cape Town: ABC Press, 2003, 4.
- ⁹ Jack Donnelly, *Universal Human Rights in Theory and Practice*. New York: Cornell University Press, 2003.
- ¹⁰ Makau Mutua, Hope and Despair for a New South Africa: The Limits of Rights Discourse, *Harvard Human Rights Journal* 10, 1997, 63-114; and Makau Mutua, *Human Rights. A Political and Cultural Critique*. Philadelphia: University of Pennsylvania Press, 2002, 74-81
- ¹¹ See also Bennett (199: 1-10) whose analysis in *Human Rights and African Customary Law* concluded that traditional African societal arrangements provided for a system of ethics that serves the goal of human dignity in the same way in which human rights tries to serve the goal of human dignity.
- ¹² *Ibidem*, 75.
- ¹³ See Joseph Ki-Zerbo and DjiBril Tamsir Niane (Eds.), *General History of Africa. IV Africa from the Twelfth to the Sixteenth Century*. Cape Town: ABC Press, 2003, 254-261.
- ¹⁴ J. Paul Martin, Cosmas Gitta. and Tokunbo Ige, Promoting Human Rights Education in a Marginalised Africa in George J. Andreapoulous and Richard Pierre

Claude (Eds.), *Human rights education for the 21st century*. Philadelphia: University of Pennsylvania Press, 1997, 442.

¹⁵ Aklilu Habte and Teshome Wagaw, Education and Social Change. In Ali A. Mazrui (Ed.), *General History of Africa. VIII Africa since 1935*. Cape Town: ABC Press, 2003, 678.

¹⁶ see J. F. Ade Ajayi (Ed.), *General History of Africa. VI Africa in the Nineteenth century until the 1880s*. Cape Town: ABC Press, 2003, 22.

¹⁷ *Ibidem*, 22.

¹⁸ *Ibidem*, 440.

¹⁹ Albert Adu Boahen (Ed.), *General History of Africa. VII Africa under Colonial Domination 1880-1935*. Cape Town: ABC Press, 2003, 32.

²⁰ Elaigwu and Mazrui, 2003: 439

²¹ I.G. Shivji, Contradictory perspectives on rights and justice in the context of land tenure reform in Tanzania. In Mahmood Mamdani, *Beyond Rights Talk and Culture Talk*. Cape Town: David Philip Publishers, 2000, 38.

²² Albert Adu Boahen (Ed.), *General History of Africa. VII Africa under Colonial Domination 1880-1935*. Cape Town: ABC Press, 2003, 25-32.

²³ Edmond Kwam Kouassi, Africa and the United Nations since 1945. In Ali A. Mazrui (Ed.), *General History of Africa. VIII Africa since 1935*. Cape Town: ABC, 2003, 872.

²⁴ 1995, 159.

²⁵ African Charter on Human and Peoples' Rights, adopted 27 June 1981, enforced 21 October 1986: Article 17(1).

²⁶ African Charter on the Rights and Welfare of the Child, adopted 27 July 1981, enforced 29 November 1999.

²⁷ *Ibid.*, Article 11.

²⁸ *Ibid.*

²⁹ *Ibid.*, Article 11(2)(a).

³⁰ *Ibid.*, Article 11(2)(b),(c) and (g).

³¹ Ibid., Article 11(2)(h).

³² Ibid., Article 11(2)(d).

³³ Ibid., Article 11(3)(a) and (b).

³⁴ Ibid., Article 11(3)(c).

³⁵ Ibid., Article 11(3)(d).

³⁶ Ibid., Article 11(3)(e).

³⁷ Ibid., Article 11(4).

³⁸ Ibid., Article 11(5).

³⁹ Ibid., Article 11(6).

⁴⁰ Ibid., Article 11(3).

⁴¹ SADC Protocol on Education, adopted 8 September 1997.

⁴² SADC Protocol on Education, adopted 8 September 1997, enforced 31 July 2000.

⁴³ SADC Protocol on Education, adopted 8 September 1997, enforced 31 July 2000.

⁴⁴ Forere 2011:594.

⁴⁵ The Durban Statement of Commitment, adopted 24 April 1998.

⁴⁶ The Durban Statement of Commitment, adopted 24 April 1998.; and see Round Table on Constitutional and Legal Bases of the Right to Education as a Fundamental Human Right discussion paper: 4.

⁴⁷ Ibid.

⁴⁸ Ibid., point 5.

⁴⁹ Ibid., point 6.

⁵⁰ Ibid., point 7.

⁵¹ Article 13, paragraph 1 of the African Youth Charter.

⁵² Article 13, paragraph 2 of the African Youth Charter.

⁵³ www.actionaid.org.uk (accessed on 18 September 2012). NEPAD: Human Development. Education and Training. <http://www.nepad.org/humancapitaldevelopment/education> (accessed 20 September 2012)

⁵⁴ ACHPR Pretoria Declaration on Economic, Social and Cultural Rights in Africa, 2004: paragraph 8.

⁵⁵ Chidi Anselm Odinkalu, Analysis of Paralysis or Paralysis by Analysis? Implementing Economic, Social, and Cultural Rights Under the African Charter on Human and People's Rights. *Human Rights Quarterly Review*, 2001, 23 (2), pp 327-369.

⁵⁶ Richard H. Bell, *Rethinking Justice*. Plymouth: Lexington, 2007.

References

African Commission on Human and People's Rights. (1993). Resolution on Human and People's Rights Education.

Ajayi, J.F.A. (Ed) (2003). *General History of Africa. VI Africa in the Nineteenth century until the 1880s*. Cape Town: ABC Press.

Bell, R.H. (2002). *Understanding African Philosophy*. London: Routledge.

Bell, R.H. (2007). *Rethinking Justice*. Plymouth: Lexington.

Boahen, A.A. (Ed) (2003). *General History of Africa. VII Africa under Colonial Domination 1880-1935*. Cape Town: ABC Press.

Callinicos (1996). The multiple worlds of South Africa's historiography. In Lessem, R. and Nussbaum, B. (Eds). (1996). *Sawubona Africa. Embracing four worlds in South African management*. Sandton: Zebra Press.

Donnelly, J. (2003). Human Rights as an issue in world politics. In Mazlish, B. and Iriye, A. (Eds). *The Global History Reader*. New York: Routledge.

Donnelly, J. (2003). *Universal Human Rights in Theory and Practice*. New York: Cornell University Press.

Habte, A. and Wagaw T. (2003). Education and Social Change. In Mazrui, A. A. (Ed). *General History of Africa. VIII Africa since 1935*. Cape Town: ABC Press.

Hrbek, I. (Ed) (2003). *General History of Africa. III Africa from the Seventh to the Eleventh Century*. Cape Town: ABC Press.

Ki-Zerbo, J. and Niane, D.T. (Eds) (2003). *General History of Africa. IV Africa from the Twelfth to the Sixteenth Century*. Cape Town: ABC Press.

Kouassi, K. (2003). Africa and the United Nations since 1945. In Mazrui, A.A. (Ed). *General History of Africa. VIII Africa since 1935*. Cape Town: ABC.

Martin, J., Gitta, C. and Inge, T. (1997). Promoting Human Rights Education in a Marginalised Africa in Andreapoulous, G.J. and Claude, R.P. (Eds). *Human rights education for the 21st century*. Philadelphia: University of Pennsylvania Press.

Mokhtar, G. (Ed) (2003). *General History of Africa. II Ancient Civilizations of Africa*. Cape Town: ABC Press.

Mutua, M. (1997). Hope and Despair for a New South Africa: The Limits of Rights Discourse, *Harvard Human Rights Journal* 10, 63-114.

Mutua, M. (2002). *Human Rights. A Political and Cultural Critique*. Philadelphia: University of Pennsylvania Press.

Odinkalu, A.C. (2001). Analysis of Paralysis or Paralysis by Analysis? Implementing Economic, Social, and Cultural Rights Under the African Charter on Human and People's Rights. *Human Rights Quarterly Review*, 23 (2), pp 327-369.

Said, E. (1978). Orientalism. In Bayoumi, M. and Rubin, A. (2000) (Eds). *The Edward Said Reader*. New York: Vintage Books.

Shivji, I.G. (2000). Contradictory perspectives on rights and justice in the context of land tenure reform in Tanzania. In Mamdani, M. *Beyond Rights Talk and Culture Talk*. Cape Town: David Philip Publishers.

Shivji, I.G. (2003). Law's Empire and Empire's Lawlessness: Beyond the Anglo-American Law. <http://elj.warwick.ac.uk/global/issue/2003-1/shivji.htm>. [accessed 23 February 2004].