

Towards a new approach to the classification of human rights with specific reference to the African context

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Summary

Departing from the premise that human rights are those rights possessed by virtue of being human, this contribution revisits the traditional classification of human rights into three 'generations' of rights. The author criticises aspects of this division from an African perspective, such as the prioritisation of civil and political ('first generation') rights above other 'generations', as well as the inappropriate classification of the right to culture with other socio-economic ('second generation') rights and the right to development as a 'third generation' right. A proposal is then made for the reconfiguration of rights into the following four categories: civil and political rights, social and survival rights, economic, developmental and environmental rights and cultural and spiritual rights.

1 Introduction

Human rights are usually referred to by various names and phrases. These include 'fundamental' rights, 'basic' rights, 'natural' rights or sometimes even 'common' rights.¹ Although these phrases do not mean the same thing, they are usually used interchangeably and sometimes

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¹ See PS Jaswal & N Jaswal *Human rights and the law* (1996) 3.

rather confusingly. It could, however, be said that 'fundamental' or 'basic' rights are those rights which must not be taken away by any legislation or act of the state and which are often set out in the fundamental law of the country, for example in the bill of rights in a constitution. 'Natural' or 'common' rights, on the other hand, are seen as belonging to all men and women by virtue of their human nature. These are rights which all men and women should share. This perhaps explains why human rights were initially referred to as 'the rights of man' until the 1940s, when Eleanor Roosevelt promoted the use of the expression 'human rights' after discovering, through her work in the United Nations (UN), that the rights of men were not understood in some parts of the world to include the rights of women.² The term 'rights of man' had in fact replaced the original term 'natural rights', which had arisen as a result of its connections with natural law.

It would be futile to attempt a definition of human rights. In any case, there is far from universal agreement on definitional issues, let alone theorising about the definition of a concept like human rights. However, the UN has described human rights as follows:³

Human rights could be generally defined as those rights which are inherent in our nature and without which we cannot live as human beings . . . Human rights and fundamental freedoms allow us to fully develop and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual needs. They are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection.

The description further states the following:⁴

The denial of human rights and fundamental freedoms is not only an individual and personal tragedy, but also creates conditions of social and political unrest, sowing the seeds of violence and conflict within and between societies and nations. As the first sentence of the Universal Declaration of Human rights states, respect for human rights and human dignity is the foundation of freedom, justice and peace in the world.

Clearly, then, human rights are those rights one possesses by virtue of being human. One need not possess any other qualification to enjoy human rights other than the fact that he or she is a human being. It can therefore be inferred that human rights should be enjoyed by all people, regardless of their social status or their geographical or regional location. Political, economic and cultural differences cannot and should not be used as an excuse for the denial or violation of human rights. It is against this background that this article seeks to revisit the traditional classification of human rights, particularly in the African context, as the

² See VT Thamilmaran *Human rights in third world perspectives* (1992) 17.

³ United Nations *Human rights: Questions and answers* (1987) 4.

⁴ As above.

traditional approaches hardly take into account African (and other third world) aspirations and priorities.

2 Traditional categorisations of human rights

There are a number of different ways in which human rights are traditionally classified. Sometimes human rights are classified in terms of those that are fundamental or non-fundamental, those that are violable or non-violable, those that are collective or individual and those that are justiciable or non-justiciable. Some classifications even go as far as categorising human rights in terms of those which are procedural and those that are substantive. The European Community's *Human rights handbook* classifies human rights into two categories, namely, classic rights and social rights.⁵ According to this classification, classic rights include civil and political rights, which generally restrict the power of the state in respect of actions affecting the individual. By contrast, social rights include cultural and economic rights, which require the state to act in a positive, interventionist manner so as to create the necessary conditions for human development.

A classification that is more generally accepted, however, is that in terms of which human rights fall into three categories, namely; first, second and third generation rights.⁶ This classification follows the historical development of human rights.

The first generation consists of civil and political rights. These are the traditional rights of the individual as against the state and they reflect the *laissez-faire* doctrine of non-interference.⁷ These rights are aimed at the protection of the citizen against arbitrary actions of the state and they include the right to life, the right to liberty and security, the right to privacy, the right to a fair trial, the right to equality and the right to dignity. They also include freedom from torture and inhuman treatment, freedom from slavery and forced labour, freedom of religion, belief and opinion, freedom of expression, freedom of association and freedom of movement. Also included in this category are political rights, which guarantee individuals the right to participate in their government either directly or through elected representatives.

The second generation consists of economic, social and cultural rights. This category is, relatively, a later growth and contains rights founded on the status of an individual as a member of the society.⁸

⁵ Netherlands Ministry of Foreign Affairs *Human rights handbook* (1995) 4–7.

⁶ See eg Jaswal & Jaswal (n 1 above) who categorically state that the modern notion of human rights describes them as 'three human rights generations'. See also S Davidson *Human rights* (1993) 39–45 and C Dlamini *Human rights in Africa: Which way South Africa* (1995) 5.

⁷ DD Basu *Human rights in constitutional law* (1994) 82.

⁸ As above.

Unlike first generation rights, social, economic and cultural rights require more positive action on the part of the state to provide or at least create conditions for access to those facilities, which are considered essential for modern life.⁹ These rights include, but are not limited to, the right to work, the right to fair remuneration, the right to collective bargaining, the right to property, the right to housing, the right to education, the right to health care services, the right to social security and the right to participate in cultural life of one's choice.

The third generation rights belong to a category that is quite recent in origin.¹⁰ The emergence of this category of rights is closely associated with the rise of third world nationalism and the realisation by developing states that the existing international order is loaded against them.¹¹ Also known as solidarity rights, these rights are collective in nature and they depend upon international co-operation for their achievement.¹² Their achievement also depends on a collective effort between the government and the people. Included in this category are the right to peace, the right to development and the right to a clean environment.

3 A critique of the traditional approaches

While the above classification (according to the three generations) has proved to be a useful typology for conceptualising human rights, and has helped to extend the idea of human rights beyond a narrow western liberal construction, it is submitted that it is rather limited and inconsistent. A new approach is therefore called for, an approach that would be more conceptually consistent and one that would achieve a broader perspective on human rights. This calls for a critique of the traditional approaches.

It has to be first acknowledged, however, that any categorisation of human rights inevitably leads to some problem or other. Firstly, allocating human rights to particular categories inevitably creates artificial distinctions that tend to compartmentalise human rights. This has the effect of eroding the notions of indivisibility, universality and

⁹ Dlamini (n 6 above) 5. It should be noted, however, that some first generation rights also impose positive duties on the state. For example, the state has a duty to ensure a fair and prompt trial for anyone accused of an offence.

¹⁰ Kéba M'Baye introduced the concept of the 'right to development' (Inaugural lecture, third teaching session, International Institute of Human Rights, Strasbourg, July 1972; text in (1972) 13 *Revue des Droits de l'Homme* 505. Vasak later classified it, together with other rights, as a 'third generation of rights'; see K Vasak 'Pour une troisième génération des droits de l'homme' in C Swinarski (ed) *Studies and essays in international humanitarian law and Red Cross principles in honour of Jean Picet* (1984) 837.

¹¹ See S Davidson *Human rights* (1993) 43.

¹² As above.

interdependence of human rights, as will be explained further below. Secondly, there is a danger of perceiving different categories of human rights as static rigid definitions rather than simple divisions with permeable conceptual boundaries between them.¹³ Categories of human rights might thus be seen as representing distinct definitions of different types of rights rather than different aspects of the totality of rights.

That is not to say that classification of human rights is a bad thing. It obviously has its own merits. Not only does it encourage people to think about the breadth and complexity of the field encompassed by the idea of human rights; it is also useful in helping people to see beyond the narrow traditional civil and political conceptions of human rights, and also to think about rights from different conceptual perspectives.¹⁴ The following critique mainly focuses on the three generations classification, although it can easily apply to any classification that adopts a similar approach.

The main problem with the three generations classification, as has already been mentioned, is that it is inconsistent with the principles of universality, indivisibility and interdependence of human rights. It has to be remembered that there is a growing international recognition of these three principles of human rights.¹⁵

The principle of universality of human rights is founded on the notion that all human rights apply uniformly and with equal force throughout the world. The principle of interdependence of all human rights holds that the full and meaningful enjoyment of a particular right is dependent on the possession of all the other rights. And the principle of the indivisibility of human rights is founded on the assumption that all human rights have the same basic characteristics and should be upheld through the medium of equally potent enforcement mechanisms. Accordingly, it has been suggested that:

Promotion of the principles of universality, interdependence and indivisibility collectively represents an attempt to invalidate sectional pretences as an excuse for the violation of certain human rights and seek to upgrade all

¹³ J Ife 'Human rights beyond the "three generations"' Paper presented at Activating Human Rights Conference, Byron Bay, Australia, July 2003.

¹⁴ As above.

¹⁵ Indeed, the UN World Conference on Human Rights held in Vienna in June 1993 emphasised the universality, interdependence and indivisibility of all human rights by adopting the following as part of the Vienna Declaration and Programme of Action (art 5): 'All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner on the same footing, and with the same emphasis. While the significance of natural peculiarities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights.'

human rights as a uniform set of equally compelling conditions for better living conditions and a human existence for all.¹⁶

The inference from the principles outlined above is that human rights are universal and should apply to all persons at all times without distinction. Categorising rights into 'generations' creates the wrong impression that some rights are available and exclusive to certain categories of people and not to others. It also tends to imply that human rights are not inter-related, a notion that ignores the universally accepted holistic approach towards the protection of human rights.

Some commentators have argued that the most obvious problem with the three generations is their labels of 'first', 'second' and 'third'. According to Jim Ife:¹⁷

The three are named in that way simply because that is the order in which they emerged in post-enlightenment western thought, and by assuming and privileging this context, the 'three generations' typology still locates the human rights discourse firmly within the modern western intellectual tradition. It thus does little to address the critiques that human rights need to be understood from other cultural traditions than the western.

Ife further argues that denoting the generations of human rights as first, second and third can be seen as to imply a priority for civil and political rights, as if they somehow come first in any consideration of human rights, and that a hierarchy is therefore assumed which reinforces the tendency to marginalise other categories of human rights.¹⁸ Attempts to resolve this 'generations' problem by labeling human rights in terms of colours (blue, red and green) hardly achieve the intended objective, as this tends to create other problems. For example, it has the effect of associating rights with particular ideologies. Blue rights can easily be associated with western liberalism, red rights with socialism or communism and green rights with third world nationalism that lays emphasis on developmental and environmental priorities.¹⁹

The question of implementation is another problem that arises from the three generations categorisation. This problem has its genesis in the drafting history of international human rights instruments. Although the Universal Declaration of Human Rights (Universal Declaration)²⁰ does not have a categorical classification of human rights, it recognises two sets of rights, namely, civil and political rights and social and economic rights. During the drafting of the Universal Declaration, some states — particularly the United States and the United Kingdom — took

¹⁶ JD van der Vyver 'The doctrine of human rights: Its historical and philosophical foundation' in D Brand *et al* (eds) *From human wrongs to human rights — Part IV* (1995) 48.

¹⁷ Ife (n 13 above).

¹⁸ As above.

¹⁹ As above.

²⁰ Adopted by the UN General Assembly on 10 December 1948.

the view that, whereas civil and political rights were immediately enforceable and justiciable, other rights depended upon positive, programmatic implementation.²¹ Those states contended that socio-economic and cultural rights, for example, were not amenable to immediate protection and were best fulfilled through a progressive reporting system.²² The drafting of the International Covenant on Civil and Political Rights (CCPR)²³ and the International Covenant on Economic, Social and Cultural Rights (CESCR),²⁴ separately dealing with the two broad categories of human rights, would seem to support the contentions of those western states.²⁵ While CCPR provides for immediate protection of the rights therein, CESCR, on the other hand, only requires the progressive realisation of the rights 'to the maximum of [the states'] available resources'.²⁶ It could be argued, therefore, that only first generation (civil and political) rights are regarded as 'real' rights, as they require immediate protection and implementation. Other categories of rights, on the other hand, may be seen as not deserving that status.

The other problem associated with categorising human rights into three generations is that some rights do not adequately fit into any of the categories. Alternatively, it can be argued that some rights fall into more than one category. The right to self-determination, for instance, is classified by some as a first generation right, whereas others regard it as a third-generation right.²⁷ In fact, it could also be seen as a second-generation right as both CCPR and CESCR provide for it.²⁸ In the particular African (or developing world) context, classifying the right to development is also rather problematic. While it is generally agreed that the right falls under the third generation, it could be argued that the concept of development is usually associated with advancement in social and economic terms. Hence, the right to development could easily be classified as a socio-economic (second generation) right.

The three generations categorisation may also be seen as fuelling the debate on individualism and collectivism. It is often assumed that the first generation (civil and political) rights are individual rights, which can easily be enforced through domestic courts of law. Second and third generation rights, on the other hand, are seen as collective rights based on notions of international solidarity and therefore not justiciable in

²¹ Davidson (n 11 above) 41.

²² As above.

²³ Adopted by the UN General Assembly on 16 December 1966.

²⁴ Adopted by the UN General Assembly on 16 December 1966.

²⁵ Davidson (n 11 above) 41.

²⁶ Art 2(1).

²⁷ See Dlamini (n 9 above) 5.

²⁸ See art 1 of both Covenants.

domestic courts.²⁹ This is not necessarily correct, as has been demonstrated in South Africa where the Constitutional Court has, over the last decade, handed down several decisions which demonstrate that socio-economic rights are in fact justiciable and enforceable through domestic courts.³⁰ It would therefore be more useful to accept that all human rights can have both individual and collective dimensions instead of marginalising so-called collective rights by placing them in a separate category.

4 An 'African' typology

In view of the above critique, it is submitted that a new typology of classifying human rights is called for, particularly in the African context. As was mentioned earlier, however, no classification of human rights can claim to be flawless. Nevertheless, it can be argued that suggesting new approaches of classifying human rights can be a useful form of intellectual inquiry and can encourage critical analysis, especially in a region such as Africa, where the human rights system is more recent in origin.

The African Charter on Human and Peoples' Rights (African Charter or Charter)³¹ lies at the heart of the African human rights system. The Charter is a unique regional instrument, which differs considerably from its regional counterparts (the European and the American Conventions on Human Rights). One of the most distinguishing features of the African Charter is that it provides for several rights that are not recognised by other international human rights instruments. In addition to the usual rights laid out in those other instruments, the African Charter recognises the right to development,³² the right to peace,³³ the right to a satisfactory environment,³⁴ and the right of people to dispose of their wealth and natural resources.³⁵ It also recognises family rights,³⁶ the rights of women and children,³⁷ and the rights of the aged and the disabled.³⁸

²⁹ See the discussion on the justiciability of socio-economic rights in J de Waal *et al* *The Bill of Rights handbook* (2000) 400–404.

³⁰ See eg *First Certification Judgment* 1996 4 SA 744 (CC); *Government of the Republic of South Africa v Grootboom & Others* 2001 1 SA 46 (CC); and *Minister of Health & Others v Treatment Action Campaign & Others* 2002 5 703 (CC).

³¹ Adopted by the 18th Assembly of Heads of State and Government of the Organisation of African Unity on 17 June 1981 and came into force on 21 October 1986.

³² Art 22.

³³ Art 23.

³⁴ Art 24.

³⁵ Art 21.

³⁶ Arts 18(1) & (2).

³⁷ Art 18(3).

³⁸ Art 18(4).

In determining a suitable 'African' human rights typology, regard has to be had to the philosophy underpinning the African Charter. According to the Organisation of African Unity, the drafting of the Charter was predicated upon the following principles:³⁹

- the specificity of African problems with regard to human rights;
- the importance of economic, cultural and social rights in developing countries;
- the total liberation of Africa from foreign domination;
- the need to eradicate apartheid;
- the link between human and peoples' rights; and
- the need for a new economic order, particularly the right to self-determination.

A typology that takes into account the above principles and all the rights in the African Charter with its aspirations and objectives, would therefore see the rights falling into four reconfigured categories, rather than the traditional three. These are:

- civil and political rights;
- social and survival rights;
- economic, developmental and environmental rights; and
- cultural and spiritual rights.

4.1 Civil and political rights

The rights under this category would be fairly obvious. However, not all rights that are traditionally known as civil and political rights would be included. Some would be more appropriately placed in other categories. To begin with, articles 2 and 3 of the African Charter respectively provide for non-discrimination and equality before the law. These rights would naturally fall into the civil and political category. So would the right to life and the right to inherent dignity respectively provided for under articles 4 and 5 of the Charter. Another important right under this category is the right to freedom of expression. Provided for under article 9 of the Charter, the importance of this right in the African context cannot be over-emphasised. In keeping with the Charter principles mentioned above, 'the basic functions that this right serves in a democratic society underlie the intimate relationship between the concepts of human rights and democracy'.⁴⁰ Other civil rights that would fall into this category include the right to free association,⁴¹ the

³⁹ Rapporteur's Report OAU Doc CM/1149 (XXXVII) Annex 1. See also KA Acheampong 'Reforming the substance of the African Charter on Human and Peoples' Rights: Civil and political rights and socio-economic rights' (2001) 1 *African Human Rights Law Journal* 186.

⁴⁰ Acheampong (n 39 above) 198.

⁴¹ Art 10.

right to assemble,⁴² the right to freedom of movement⁴³ and other article 12 rights, which include the right to leave and return to one's country, the right to asylum and the prohibition of mass expulsion of non-nationals. Also included in this category would be security and due process rights. Article 6 of the African Charter guarantees every individual the right to liberty and to the security of his person. Due process rights are provided for under article 7.

Political rights naturally form the other brand of rights that fall into the civil and political category. Under article 13 of the African Charter, every citizen has the right to participate freely in the government of his country. This obviously goes beyond the mere right to vote or to run for political office. It goes to the very heart of democracy, an ideal that has lately been cherished and emphasised by the new African Union (AU). Without democracy there can be no political freedom. That is why, it is submitted, the right to self-determination should also fall under this category. Article 20 does not only guarantee the right to self-determination; it also calls upon 'all peoples' to freely determine their political status and to free themselves from the bonds of colonial domination and oppression. It will be remembered that the total liberation of Africa from foreign domination was mentioned earlier as one of the principles that predicated the drafting of the African Charter. So too was the right to self-determination.

4.2 Social and survival rights

First of all, there is no rational reason why social rights should have been originally banded together with economic and cultural rights, as they have very little in common. The concept of social rights is founded on the status of the individual as a member of the society.⁴⁴ Social rights thrive on the positive contribution of the society 'particularly because they represent an ever-growing ideal of a decent living for man as a social being'.⁴⁵ This ideal is clearly brought out in article 11(1) of CESC, wherein one can also find the definition of social rights. It states:

The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. . . .

This provision echoes article 25(1) of the Universal Declaration, which states as follows:

⁴² Art 11.

⁴³ Art 12(1).

⁴⁴ See Basu (n 7 above) 82.

⁴⁵ As above.

Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services. . . .

Through these two articles, one can clearly recognise a distinctive call for the protection of social rights, not only for survival but also for an adequate standard of living.

While social rights deal with social and survival needs, which is why the term social and survival rights is deemed appropriate, economic rights deal with economic needs. While the object of social rights is human needs such as food, shelter and health, the object of economic rights is economic needs such as land, labour and capital. One could even say that social rights relate to present entitlements (for lack of a better word), while economic rights relate to future wealth.

It is for these reasons that social and economic rights should be desegregated. So too should cultural rights which, as will be seen further below, deal with culture. Culture, it will be seen, has its own significance and should belong to a different category of human rights.

The term 'survival rights' is used alongside social rights because some social rights are necessary for human survival, for example the right to food, water and shelter. Some would not categorise these as rights, but rather as basic human needs.⁴⁶ However, it all depends on which part of the world you are living in. In the so-called developed world (for example Europe and North America), such things are taken for granted, while in Africa and other third world underdeveloped countries, they are not only basic needs, but sometimes luxuries. In the African context, therefore, the classification of social and survival rights is even more appropriate.

Under the African Charter, most social and survival rights are notable by their absence. Only a few are mentioned. They include article 16, which provides for 'the right to enjoy the best attainable state of physical and mental health', article 17(1), which provides for the right to education, and articles 18(1) and (2), which provide for family rights. The absence of rights to food, housing, clothing, medical care and other amenities necessary for an adequate standard of living is out of keeping with other international human rights instruments.⁴⁷ One would have hoped that Africa would strive to attain a higher standard of living for its peoples by ensuring the protection of such rights. However, factors such as availability of resources seem to have dictated otherwise.

⁴⁶ See eg L Doyal & I Gough *A theory of human need* (1991) (generally).

⁴⁷ See, however, the African Commission on Human and Peoples' Rights' finding in Communication 155/96, *SERAC & Another v Nigeria*, Fifteenth Annual Activity Report, in which the Commission holds that the African Charter implicitly guarantees the right to housing and food (paras 59 & 64).

4.3 Economic, development and environmental rights

Although article 22(1) of the African Charter views development as a comprehensive economic, social and cultural process,⁴⁸ it can be argued that any type of development largely depends on the economic resources of a particular community. The goal of development is to create an environment that enables people to exercise a range of choices that enable the expansion of human functioning and capabilities.⁴⁹ Such choices, it is submitted, cannot be exercised in an environment of limited economic resources. That is why economic and development rights should be classified together, as the two categories are inevitably tied to each other.

As mentioned earlier, the object of economic rights is economic need such as land, labour and capital. In that sense, and in the context of the relationship between economic resources and development, a number of rights in the African Charter would conveniently fall into this category. Article 11, guaranteeing the right to property, is one such right. Article 15, providing for the right to work under equitable and satisfactory conditions and the right to equal pay for equal work, is another example. Both property and work are two important aspects that contribute not only to an individual's economic status, but also to his or her development and that of the community he or she lives in. Article 21, providing for peoples' rights to freely dispose of their wealth and natural resources, would also fall into this category. So too would article 22 mentioned earlier, in particular article 22(2) which obliges state parties to the Charter to ensure the exercise of the right to development.

Another right that would fall into this category is the right to a sustainable and healthy environment. The relationship between the environment and development was most aptly expressed by one commentator in his thoughts about meeting the challenge of worldwide concern for the environment:⁵⁰

It is an awesome challenge, requiring us to find and keep a sensible balance between development and environmental protection, in order to achieve both sustainable development and quality of the environment in a world comprising some rich and technologically advanced nations, but many poor nations claiming for development.

⁴⁸ Art 21(c) of the African Charter provides that '[a]ll people shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind'.

⁴⁹ See *Human Development Report 2000*, United Nations Development Programme 19.

⁵⁰ See DV Cowen 'Towards distinctive principles of South African environmental law: Some jurisprudential perspectives and a case for legislation' (1989) 52 *Journal for Contemporary Roman-Dutch Law* 4.

The relationship between the environment and development is also emphasised by the fact that many natural resources needed for economic development, such as petroleum and other minerals, timber, sources of hydro-electric and geothermal energy, and land for agricultural expansion are often located in areas that are especially valuable for conservation of biological diversity and that are also inhabited by resource dependent communities.⁵¹ This is particularly pertinent in Africa and other third world economies.

Unfortunately many international human rights instruments, including CCPR, CESC and the Universal Declaration, barely mention the relationship between environmental protection and human rights. The first major international law instrument to link human rights and environmental protection was the Stockholm Declaration of 1992. Its Principle 1 states as follows:

Man has the fundamental rights to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being, and he bears solemn responsibility to protect and improve the environment, for present and future generations.

The African Charter was the first regional human rights instrument to recognise the link between environmental protection and human rights. Article 24 provides for 'the right to a general satisfactory environmental favourable to . . . development'. The link between the environment and development is well articulated.

4.4 Cultural and spiritual rights

The scope of cultural rights depends on the understanding of the very term 'culture'. Culture has been defined as 'the whole complex of distinctive spiritual, material, intellectual and emotional features that characterise a society or social group'.⁵² From this definition, the nexus between culture and spirituality is clear. So too is the relationship between cultural rights and spiritual rights.

As a starting point, spiritual rights would ordinarily include freedom of religion, belief, conscience, thought and opinion. It is not as easy, however, to give a definitive list of cultural rights, although both the Universal Declaration and CESC recognise the following as cultural rights:⁵³

- (a) the right to take part in one's cultural life;
- (b) the right to enjoy the arts and to share in the benefits of scientific advancement; and

⁵¹ See G Maggio & OJ Lynch 'Human rights, environment and economic development: Existing and emerging standards in international law and global society' <<http://www.ciel.org/Publications/olp3i.html>> (accessed 31 March 2004).

⁵² World Conference on Cultural Policies (1982).

⁵³ Art 27 Universal Declaration and art 15 CESC.

- (c) the right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which one is the author.

Language rights, it is submitted, may also be added to this list.

The inclusion of cultural rights with economic and social rights in a single category seems to have little conceptual justification. This is why a new category that incorporates cultural and spiritual rights is more appropriate. The relationship between cultural rights and spiritual rights is properly conceptualised in the wording of article 27 of CCPR, which stipulates that persons belonging to ethnic, religious or linguistic minorities 'shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their religion, or to use their own language'.

The African Charter formulates both the right of every individual to freely take part in the culture of his community,⁵⁴ and it also provides for the rights of all peoples to their cultural development, with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.⁵⁵ Freedom of conscience and the profession and free practice of religion are guaranteed under article 8.

Clearly there are certain cultural aspects to the experience and expression of spirituality. Certain cultural practices, such as music, poetry and art, can be a profound expression of spirituality.⁵⁶ And although spirituality is a deeply personal and individual matter, the simple experience of human community and connectedness with others is essentially spiritual.⁵⁷ As the African Charter emphasises community values and the promotion of the moral well-being of society, it is submitted that cultural and spiritual rights should be subsumed together.

5 Conclusion

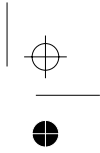
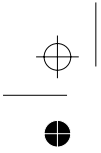
It was earlier acknowledged that any sort of classification of human rights inevitably leads to problems, including the fact that it is inconsistent with the principles of indivisibility, universality and interdependence of human rights. It was also mentioned, however, that classifying human rights could be a useful tool that encourages critical analysis in the intellectual inquiry of the meaning and purpose of human rights.

⁵⁴ Art 17(2).

⁵⁵ Art 22(1).

⁵⁶ See *Ife* (n 13 above).

⁵⁷ As above.



Compared to the other two established human rights systems, the African regional human rights system is unique and more recent. The African Charter, around which the African system revolves, differs considerably from its other regional counterparts, both in the types of rights protected and in the means of implementation and protection. It is the argument of this contribution that since the African human rights system is more recent in origin, the rights under the African Charter should be classified differently, as the Charter contains certain distinctive rights that were not envisaged by the earlier international and other regional human rights instruments. The classification suggested is by no means flawless. If anything, it is meant to serve as a motivation for further debate and an encouragement for people to think about the uniqueness and complexity of human rights, particularly under the African regional human rights system.

