UNIVERSAL RIGHTS, NON-UNIVERSAL PROCESS: CONFRONTING CULTURALLY GROUNDED HUMAN RIGHTS ABUSES

RUSHI RAMAKRISHNA

1. INTRODUCTION

2. THE POLITICAL AND JUDICIAL BENEFITS AND COSTS OF USING INTERNATIONAL HUMAN RIGHTS LAW TO COMBAT CULTURALLY GROUNDED HUMAN RIGHTS ABUSES
   2.1. Benefits Enjoyed by Political Actors
   2.2. Costs Facing Political Actors
   2.3. Benefits Enjoyed by Judicial Actors
   2.4. Costs Facing Judges
   2.5. Summary

3. HONOR KILLINGS AND HONOR SUICIDES IN TURKEY: A CASE FOR AN INTERNATIONAL HUMAN RIGHTS APPROACH
   3.1. Honor Killings and Honor Suicides
   3.2. Honor Killings and Honor Suicides: Implications in International Human Rights Law

---

J.D. Candidate, 2009, University of Pennsylvania Law School; M.A., 2006, The Johns Hopkins School of Advanced International Studies; B.A., 2003, The Johns Hopkins University. The author would like to thank Professor Stephen Burbank, Professor William Burke-White, Professor Tobie Meyer-Fong, Professor Ruth Wedgwood, and Professor William Zartman for their guidance and inspiration; Erin Argueta and Erin Valentine for their feedback on earlier drafts; the University of Pennsylvania Journal of International Law for their final polishing of this Comment; and the Ramakrishnas and the Bhaskarans for their support along the way. All errors are the author's.
3.3. The Political and Judicial Advantages of an International Human Rights Approach to Combat Honor Killings and Honor Suicides in Turkey

3.3.1. Political Benefits Outweigh the Political Costs of Combating Honor Killings and Honor Suicides in Turkey

3.3.2. Judicial Benefits Outweigh the Judicial Costs of Combating Honor Killings and Honor Suicides in Turkey

3.4. Summary

4. FEMALE CIRCUMCISION IN LIBERIA: A CASE AGAINST AN INTERNATIONAL HUMAN RIGHTS APPROACH

4.1. Female Circumcision

4.2. Female Circumcision: Implications in International Human Rights Law

4.3. The International Human Rights Approach to Combat Female Circumcision in Liberia: A Politically and Judicially Costly Endeavor

4.3.1. Politics Cost Outweigh Political Benefits in Combating Female Circumcision in Liberia

4.3.2. Judicial Costs Outweigh the Judicial Benefits of Combating Female Circumcision in Liberia

4.4. Other Potential Avenues to Successfully Combat Female Circumcision in Liberia

4.5. Summary

5. CONCLUSION

1. INTRODUCTION

The use of international human rights law has developed rigorously since the adoption of the Universal Declaration of Human Rights. While several institutions of a purely international character have normatively advanced and enforced principles of international human rights law, domestic legal...
spaces are fundamental areas in which international human rights are actualized. Indeed, Eleanor Roosevelt, champion of the Universal Declaration, stated, "[u]nless these [human] rights have meaning [domestically], they have little meaning anywhere." In domestic legislative settings, an "international human rights approach" can include policymakers pursuing certain legislative goals or goals in implementing the International Covenant on Civil and Political Rights.

1 See Anne-Marie Slaughter & William W. Burke-White, The Future of International Law is Domestic, 47 HARV. INT'L LJ. 327, 350 (2006) ("More precisely, the future of international law lies in its ability to affect, influence, bolster, backstop, and even mandate specific actors in domestic politics. International rules and institutions will and should be designed as a set of spurs and checks on domestic political actors to ensure that they do what they should be doing anyway, that is, what they have already committed to do in their domestic constitutions and laws."); Richard B. Lillich, The Role of Domestic Courts in Enforcing International Human Rights Law, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 225, 228 (Ernst Hansmann ed., 2d ed. 1992) ("Although [international] human rights law is derived from a variety of sources and involves any kinds of materials, both international and national ... it is to national law that one must look first to determine the scope and content of human rights recognized and protected in any country. Domestic courts confronted with human rights claims initially refer to national constitutions, laws, decrees, regulations, court and administrative decisions, and policy pronouncements for relevant rules of decision. Increasingly, however, domestic courts are taking international human rights law into account in deciding cases...") (internal citation omitted); see, e.g., Ivan Shearer, The Domestic Application of the Covenant in Australia, in TOWARDS IMPLEMENTING UNIVERSAL HUMAN RIGHTS 73 (Nisuke Ando ed., 2004) (describing the role of the Human Rights Committee in implementing the International Covenant on Civil and Political Rights).

2 For a discussion of the relationship between international human rights law and national law, see, e.g., Beth A. Robinson & John Hope Franklin, The Constitution and International Human Rights, in THE CONSTITUTION AND TRANSNATIONAL HUMAN RIGHTS 61 (Franklin, ed., 2000). The relationship between international human rights law and national law is complex and multifaceted. International human rights law can be seen as a set of guidelines for national governments to follow in the protection of human rights. However, the relationship is also influenced by the political, economic, and cultural contexts of the countries concerned. In some cases, international human rights law can serve as a backstop, providing a legal framework for national governments to take action to protect human rights. In other cases, international human rights law may be disregarded or overridden by domestic laws or policies.

3 The relationship between international human rights law and national law is also influenced by the role of national courts in interpreting and applying international human rights law. In some countries, national courts have taken an active role in interpreting and applying international human rights law, while in others, this role has been limited. The degree to which national courts interpret and apply international human rights law is determined by a variety of factors, including the legal system, the political environment, and the influence of international human rights law on domestic law.

4 The relationship between international human rights law and national law is further complicated by the fact that national laws can have a significant impact on the interpretation and application of international human rights law. National laws can create a legal framework within which international human rights law is interpreted and applied, and they can also affect the availability of remedies for violations of human rights.

5 The relationship between international human rights law and national law is also influenced by the role of international human rights organizations in promoting and enforcing human rights. These organizations can play a significant role in promoting the implementation of international human rights law, and they can also provide a mechanism for holding national governments accountable for violations of human rights.

6 The relationship between international human rights law and national law is also influenced by the role of international human rights treaties in promoting and enforcing human rights. These treaties can create a legal framework within which international human rights law is interpreted and applied, and they can also provide a mechanism for holding national governments accountable for violations of human rights.

7 The relationship between international human rights law and national law is also influenced by the role of international human rights courts in interpreting and applying international human rights law. These courts can provide a mechanism for holding national governments accountable for violations of human rights, and they can also promote the implementation of international human rights law.

8 The relationship between international human rights law and national law is also influenced by the role of national human rights institutions in promoting and enforcing human rights. These institutions can play a significant role in promoting the implementation of international human rights law, and they can also provide a mechanism for holding national governments accountable for violations of human rights.

9 The relationship between international human rights law and national law is also influenced by the role of national human rights agreements in promoting and enforcing human rights. These agreements can create a legal framework within which international human rights law is interpreted and applied, and they can also provide a mechanism for holding national governments accountable for violations of human rights.

10 The relationship between international human rights law and national law is also influenced by the role of national human rights organizations in promoting and enforcing human rights. These organizations can play a significant role in promoting the implementation of international human rights law, and they can also provide a mechanism for holding national governments accountable for violations of human rights.

11 The relationship between international human rights law and national law is also influenced by the role of national human rights education in promoting and enforcing human rights. These educational programs can provide a mechanism for promoting the implementation of international human rights law, and they can also provide a mechanism for holding national governments accountable for violations of human rights.

12 The relationship between international human rights law and national law is also influenced by the role of national human rights media in promoting and enforcing human rights. These media can play a significant role in promoting the implementation of international human rights law, and they can also provide a mechanism for holding national governments accountable for violations of human rights.

13 The relationship between international human rights law and national law is also influenced by the role of national human rights research in promoting and enforcing human rights. These research programs can provide a mechanism for promoting the implementation of international human rights law, and they can also provide a mechanism for holding national governments accountable for violations of human rights.

14 The relationship between international human rights law and national law is also influenced by the role of national human rights advocacy in promoting and enforcing human rights. These advocacy groups can play a significant role in promoting the implementation of international human rights law, and they can also provide a mechanism for holding national governments accountable for violations of human rights.

15 The relationship between international human rights law and national law is also influenced by the role of national human rights dialogue in promoting and enforcing human rights. These dialogue programs can provide a mechanism for promoting the implementation of international human rights law, and they can also provide a mechanism for holding national governments accountable for violations of human rights.
goals by explicitly invoking their country’s international human rights obligations in policy debates. Even more directly, the political strand of the international human rights approach would involve enacting implementing legislation to effectuate international human rights obligations. From a judicial perspective, an international human rights approach has two strands. On one level, judges can cite foreign or international human rights decisions to buttress arguments, although not as a binding or persuasive source of legal material that compels the result. The other strand involves, more contentiously, the use of foreign or international human rights decisions as authoritative texts that might compel the result in a case.3

Female circumcision, the practice of cutting parts of the female genitalia in a rite-of-passage ceremony, is a common practice throughout Africa.7 In parts of the Middle East, honor killings and honor suicides have resulted in hundreds of women being killed or pressured to commit suicide to atone for perceived sins of sexual malfeasance.8 With respect to these culturally grounded human rights abuses,9 the political and judicial effectiveness of using an international human rights approach is not cost-neutral. Female circumcision, honor killings, and suicides contravene fundamental principles enshrined in international human rights law; as a result, the illegality of these practices under international human rights law gives judges and politicians a choice. They can explicitly seek to invoke those obligations (the international human rights approach), or they can combat the practices without using the

---

3 This debate has been particularly pronounced in the United States legal system. See Ken I. Kersch, The Next Legal Transnationalism, the Globalized Judiciary, and the Rule of Law, 4 WASH. U. GLOBAL STUD. L. REV. 343 (2005) (noting the concerns and debate surrounding some Supreme Court justices’ approach to citing international practices); Mark C. Rachder, Comparative Constitutional Advocacy, 56 AM. U. L. REV. 553 (2007) (focusing on the debate between the American insularity and prospects for change); Richard A. Posner, How Judges Think 347–49 (2008) (discussing the debate about whether the Supreme Court should cite foreign or international decisions).

5 See infra note 139 (discussing the author’s use of the term female circumcision as opposed to other terms, such as female genital mutilation, that have been used to describe the practice at issue).

7 This practice will be described more fully infra Section 3.1.

8 This practice will be described more fully infra Section 4.1.

9 By “culturally grounded human rights abuses,” I mean practices that are loosely justified by norms deemed acceptable or true by some subset of that culture.
body of international human rights law. Unlike other areas of human rights abuses and violations, the use of human rights law does not necessarily provide sufficient political or judicial benefits that outweigh its costs to political and judicial actors seeking to end such practices. In some instances, an international human rights approach may reduce the political and judicial costs of confronting culturally grounded human rights abuses by externalizing the obligation to do so. On the other hand, the invocation of human rights law for the purpose of eradicating such practices may increase political and judicial costs relative to its benefits by importing non-local normative biases into the political and judicial debate. Plain and simply, international human rights norms are universal. However, the process for implementing these norms is not.

This Comment develops a theoretical framework underlining the judicial and political costs and benefits of using an international human rights approach to combat culturally grounded human rights abuses and applies this framework to the politics of eradicating honor killings and suicides in Turkey and female circumcision in Liberia. In doing so, this Comment separates the analysis of the applicability and universality of human rights norms in the context of culturally grounded human rights abuses from the implementation strategies of combating those practices. This Comment argues that although international human rights norms are universally applicable, the appropriate implementation process of eradicating culturally grounded abuses.

---

10 This Comment is not primarily concerned with why such practices violate human rights law, but rather with what relevance human rights law has in combating these practices. Therefore, this Comment assumes that the culturally grounded human rights abuses addressed herein violate international human rights norms. It provides brief discussions of these issues in sections 3.2 and 4.2. For a discussion on the applicability, or lack thereof, of international human rights law to non-western cultural practices, see Jerome J. Shestack, *Globalization of Human Rights*, 21 FORDHAM INT'L L.J. 598, 567-68 (1997) (describing and attacking cultural relativism arguments).

11 See Buergental, supra note 2, at 791, 802 (explaining the effectiveness of the international legal system in combating human rights violations, war crimes, and crimes against humanity).

12 See infra Section 3 (describing how the international human rights approach is cost-effective in Turkey, with respect to responding to honor killings and honor suicides).

13 See infra Section 4 (describing how the international human rights approach is not cost-effective in Liberia, with respect to eradicating female circumcision).
is not. Certain conditions, such as a country's amenability to joining international regimes, the prevalence of the culturally grounded human rights abuse, the political strength of constituencies that support the practice and the stability of domestic political institutions, will significantly alter the cost-benefit analysis of the international human rights approach. Therefore, under certain conditions, an international human rights approach can help political and judicial actors decrease and externalize costs of combating culturally grounded human rights abuses. Under other conditions, an international human rights approach to combat a culturally grounded human rights abuse can be politically and judicially costly relative to its benefits.

Section 2 of this Comment develops a framework to analyze the political and judicial costs and benefits of the international human rights approach to combat culturally grounded human rights abuses. Section 3 applies the analytical framework to honor killings in Turkey and argues that an international human rights approach can help decrease and externalize the costs of eradicating honor killings and honor suicides. Section 4 applies the analytical framework to female circumcision in Liberia and argues that human rights law will likely increase the costs of combating female circumcision without providing significant benefits to outweigh those costs.

2. THE POLITICAL AND JUDICIAL BENEFITS AND COSTS OF USING INTERNATIONAL HUMAN RIGHTS LAW TO COMBAT CULTURALLY GROUNDED HUMAN RIGHTS ABUSES

The political and judicial use of an international human rights approach to interpret individual rights within a cultural context in domestic settings is not cost neutral. In dualist states, the

---

14 It is beyond the scope of this Comment to outline all such factors that may amplify or minimize political and judicial costs associated with an international human rights approach. The goal of this Comment, however, is to identify those costs and benefits, and illustrate their calculations in the Liberian and Turkish contexts.

15 This section draws from a variety of sources to establish an analytical framework. Political costs and benefits are derived from recent experiences in international affairs and political science. Judicial costs and benefits are reasoned from theories on the separation of powers and concepts derived from the emerging literature on judicial behavior.

16 David Kennedy, The Disciplines of International Law and Policy, 12 LEIDEN J. INT'L L. 9, 16-17 (1999) (viewing "contemporary international law as a modernist cultural production").
proscriptions that international human rights law has against human rights abuses do not, in most cases, reside in the self-executing portions of human rights treaties. As a result, domestic legislatures must actively enact legislation that criminalizes certain practices in order to effectuate fully the scope of legal obligations under human rights treaties. Even in the more monist leaning legal systems, the invocation of international human rights law imports non-local normative biases into the legal and political discourse. When questions of culture are debated, then, this non-local normative bias will not go unnoticed. Therefore, in the range of dualist and monist legal systems, the use of international human rights law on questions of individual rights and culture will likely create some political and judicial friction, positive or negative.

17 In a dualist state, the state must take rational measures ("an act of transformation") in order to execute international law. In a monist state, international law is automatically incorporated into the domestic law corpus. See, e.g., John Jackson, Status of Treaties in Domestic Legal Systems: A Policy Analysis, 86 Am. J. Int'l L. 310 (1992) (explaining the domestication process of international treaties and its policy implications).

18 Granted, while the executive branch often accepts the obligations contained in an international human rights law, the obligations belong to the state, which includes all branches of government. See Jayachandra, supra note 4, at 96-97 ("It can hardly be argued that the legislature and the judiciary of a state party to a human rights treaty are free to ignore or decide not to give effect to its provision. The commitment is made by 'the state' which, in this context, must mean all three branches of government.").


20 Kennedy, supra note 16, at 17.

2.1. Benefits Enjoyed by Political Actors

An international human rights approach may allow political and judicial actors to externalize the costs associated with confronting culturally grounded human rights abuses, thus yielding net benefits. First, international human rights treaties can serve as a precommitment to certain legal obligations, allowing political actors to buckpass to the international community such obligations to confront abuses. Essentially, political actors are in a position to rely on, and perhaps even complain about, the international human rights position and the obligatory effect of international law, while still enjoying a desired policy outcome. This tendency to buckpass unpopular policy decisions onto international norms and actors is probably most pronounced in the era of Washington Consensus International Monetary Fund (“IMF”) reform packages, in which political actors instituted unpopular economic policy for economic stabilization, but attempted to externalize the onus of responsibility to an international actor. In the human rights realm, Joseph Kabila, the president of the Democratic Republic of the Congo, has arguably externalized the cost of addressing human rights violations

22 See Steven Ratner, Precommitment Theory and International Law: Starting a Conversation, 81 TEX. L. REV. 2055, 2057 (2003) (“The theory of precommitment offers a framework for understanding the reasons that, and the methods by which, individuals and communities seek to bind themselves in the sense of preventing themselves from having full liberty of action at a time in the future.”)

23 See id. at 2072.

[Some states presumably enter into human rights treaties because they really do wish to tie their hands for fear of the consequences of their later choices. The treaty, as a promise to others, increases the costs to them of changed behavior. A clear example would include states in transition from autocracy to democracy that want to lock in human rights commitments as a way to overcome temptations by future governments to renew human rights abuses. Indeed, within societies that have less-than-ideal human rights records, NGOs push for accession to the treaty as a form of precommitment.


25 See, e.g., Kenneth Rogoff, The IMF Strikes Back, FOREIGN POL’Y, Jan./Feb. 2003, at 56, 59 (describing that the IMF, “slammed by antiglobalist protesters, developing-country politicians, and Nobel Prize-winning economists . . . has become Global Scapegoat Number One”).

26 These costs could include any peace tradeoffs associated with prosecuting individuals in the turbulent conflict, alienating the constituencies of the groups
during Congo’s civil war by inviting the International Criminal Court (“ICC”) to investigate human rights violations in Congo.\textsuperscript{27} Likewise, President Yoweri Museveni of Uganda sought to externalize his human rights problems with respect to the Lord’s Resistance Army by inviting the ICC to investigate potential violations of the Rome Statute.\textsuperscript{28} Thus, Kabila and Museveni were able to rely on an international institution to buck-pass the costs of confronting politically contentious domestic issues.

Second, political actors confronting contentious cultural practices may have a limited domestic support base to enact their policies.\textsuperscript{29} Political actors implementing international human rights law or promoting human rights generally attract a community of international organizations, donor agencies, and non-governmental organizations (“NGOs”), which are financed and willing to support political actors who further the actualization of international human rights law.\textsuperscript{30} As a result, these political actors, by implementing or promoting international human rights norms to combat culturally grounded human rights abuses, are able to leverage the support of the international human
rights community in the context of a limited domestic support base.\textsuperscript{31}

For example, international organizations and diplomatic efforts, through their programming and funding efforts, have provided support (and pressure) to political actors who are in a position to affect policy outcomes related to human rights implementation. The United States government has conditioned assistance on basic human rights and good governance standards.\textsuperscript{32}

In terms of donor agencies, the United States Agency for International Development ("USAID") provides funds and programming assistance to ministries of justice implementing genocide laws and under-resourced court systems through its Transition initiative.\textsuperscript{33} In Zimbabwe, the United States supported local parliamentarians in forging a strong opposition to Robert Mugabe's government.\textsuperscript{34} The United Kingdom Foreign and Commonwealth Office’s Global Opportunities Fund ("GOF") manages a £2.7 million budget for human rights related

\textsuperscript{31} See, e.g., Human Rights Watch, \textit{About Us}, http://www.hrw.org/about/ (last visited Mar. 17, 2009) (stating that Human Rights Watch "works tenaciously to lay the legal and moral groundwork for deep-rooted change and has fought to bring greater justice and security to people around the world"); Center for Reproductive Rights, \textit{About Us}, http://www.reproductiverights.org/about.html (last visited Mar. 17, 2009) (stating that the Center for Reproductive Rights "uses the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to protect, respect, and fulfill").

\textsuperscript{32} For example, the U.S. Congress passed laws requiring some government assistance to be eliminated if the receiving country has engaged in serious human rights violations. See Foreign Assistance Act of 1961, Pub. L. No. 87-195 § 502B(a)(1) (stating that "a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries"); id. § 502B(a)(2) ("Except under circumstances specified in this section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights."). See generally John Shattuck, \textit{Diplomacy with a Cause: Human Rights in U.S. Foreign Policy, in REALIZING HUMAN RIGHTS: MOVING FROM INSPIRATION TO IMPACT} 235 (Samantha Power & Graham Allison eds., 2008) (describing the United States' human rights policies from the Vietnam War to the Clinton Administration).


programming. GOF programming includes support to government efforts to improve access to information in India, providing capacity to support the Brazilian criminal justice system, and improving judicial professionalism in China. These few examples highlight the tools and financial support provided by human rights-minded governments to political actors committed to implementing their international human rights obligations.

International NGOs, furthermore, help protect local activists who seek to confront human rights abuses. Because local actors confronting abuses often face significant threats of reprisal and violence, international human rights organizations “place their highest priority on trying to protect the local human rights activists who are on the front line.” Furthermore, international NGO partnerships with local activists helps connect those activities with a network of international human rights activists and the international press, further providing a community of support for those activists facing resistance.

2.2. Costs Facing Political Actors

An international human rights approach, however, carries with it several costs that may make political actors hesitant to employ the approach. For political actors, using human rights law as a means to combat an abuse grounded in cultural norms can alienate politicians from their constituents and undermine future election prospects. Attempting to combat human rights abuses grounded


37 Kenneth Roth, Human Rights Organizations: A New Force for Social Change in Realizing Human Rights: Moving from Inspiration to Impact 225, 235 (Samantha Power & Graham Allison eds.).

38 Id.

39 The following section lists various cost arguments that have been raised in the relevant literature. Admittedly, each of the arguments is subject to normative attack. However, the purpose of this section is to identify reasons for political hesitancy in implementing human rights law.

40 See generally David P. Quintal, The Theory of Electoral Systems, 23 POL. RES. Q. 752, 755 (1970) (arguing that political actors must consider “costs of voter affect” which are incurred when “the electorate views the action as a cabal” and thus hold the government “responsible at the polls”).

Published by Penn Law: Legal Scholarship Repository, 2014
in cultural norms opens politicians to attacks of being overly “Western.” This constraint is particularly evident in societies with strong anti-Western sentiment, where the label of “Western sympathizer” is politically deadly. For example, the 2005 Arab Human Development Report describes that:

[Many Arabs . . . stigmatize the endeavour to liberate women as a task taken from the agenda of Western imperialism and to demean those who call for it as creatures of the West. Moreover, foreign calls for reform, even if by force if necessary, have also created a backlash against Arab models for the rise of women, which have been bracketed with outside initiatives considered to encroach on Arab culture and sovereignty.]

The Arab Development report encapsulates the political costs associated with applying Western notions of justice to culturally sensitive issues. Not only does the approach solicit attacks of Western imperialism, but it also discredits homegrown domestic efforts to implement human rights norms. Therefore, because an international human rights approach is inextricably attached to the West, its international institutions, and its governments, the approach itself is prone to anti-Western attacks.

In addition, using an international human rights approach to combat human rights abuses grounded in cultural norms can amplify the costs of implementing international law. In legislative systems that disfavor laws purporting to exist above domestic legislation (such as the United States), such implementation efforts are costly. For example, under the United


42 The legislative process produces political costs at multiple points. Internal decision-making costs refer to the political costs of gaining consensus to support a legislative action. In countries without a party in the majority, these costs are higher. Minority parties opposed to the legislative action may also make the proposed legislative action costly, by delaying motions, calling for further debate, and hamstringing the overall legislative process. Political actors must also consider information costs, referring to the calculations that need to be made as to the political consequences of supporting the proposed legislative action. See Quintal, supra note 40, at 753-56.

43 See Jackson, supra note 17, at 323 (“It is sometimes argued that urging the direct application of treaties is tantamount to ‘interference in the internal affairs’ of a sovereign state.”).
States Constitution, the president has the power, "by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur."44 This arrangement creates two areas of political pressures in implementing international law—in the executive and the legislative. Both the President and the Senate must be prepared to fight on the side of international law in an arena hostile to international law.45 For contentious issues, political actors may not wish to expend valuable political capital in such circumstances. In Europe, the recent rejection of the European Constitution demonstrates the political costs of attaching to supranational ideals. For example, Jacques Chirac suffered blows to his political capital when France emphatically rejected the European Constitution.46 Throughout Africa, Frans Viljoen and Lirette Louw have found state compliance with the Banjul human rights system lacking for the most part.47 In thirty percent of the cases the authors considered, state parties did not comply with the recommendations. In another thirty-two percent of cases, state parties only partially complied with the recommendations. The authors argue that "[i]nadequate political commitment at the regional level is an important factor underlying the lack of state compliance with the recommendations of the

44 U.S. Const. art. II § 2.
46 See Craig Whitlock, France Rejects European Constitution, THE WASHINGTON POST, May 30, 2005, at A1, available at http://www.washingtonpost.com/wp -dyn/content/article/2005/05 /29/AR2005052900644.html (reporting that Chirac's "already weak political standing was hurt even more by the referendum results").
48 Viljoen & Louw, supra note 47, at 5-6.
Commission at the macrolevel. This conclusion further highlights the political difficulty and the associated costs of incorporating supranational norms in domestic political systems.

2.3. Benefits Enjoyed by Judicial Actors

For judicial actors, international human rights law can be beneficial in confronting culturally grounded human rights abuses. The use of international human rights law in such settings imports the benefits of persuasive authority to buttress human rights claims; this, in turn, helps judiciaries overcome the cost of confronting thorny legal issues. Judges in several countries have used an international human rights approach to confront practices within their country that violate human rights law. Therefore, judicial actors can rely on human rights law even if domestic legislatures have not treated, or have negatively treated, a culturally grounded human rights abuse.

When judicial actors search for persuasive authority, global norms and international judicial materials can offer support in human rights cases. For example, in the controversial opinion that struck down Texas’ anti-sodomy law, Justice Kennedy of the U.S. Supreme Court referenced decisions by the European Court of

---

[30] The following two sections broadly borrow insights from various models of judicial behavior that have been developed in the analysis of judicial decision-making in the United States. See generally Posner, supra note 5, at 19-56 (describing the dominant theories of judicial behavior); Nancy Mavette, THE PIONEERS OF JUDICIAL BEHAVIOR (2006) (surveying the foundational work of prominent scholars of judicial behavior). Some arguments fit within the “legal model” of judicial decision-making, whereby judges, in the scenarios contemplated in this Comment, use international and foreign human rights materials to logically reason outcomes. See Frank Cross, DECISION MAKING IN THE U.S. COURT OF APPEALS 40 (2007) (describing judicial decision making as the application of “legitimate legal material” to “the ascertainable facts of the case to reach a ruling”).

[31] COLLOQUIUM ON THE DOMESTIC APPLICATION OF INTERNATIONAL HUMAN RIGHTS NORMS, Bangalore Principles (1988), available at http://www.chr.up.ac.za/hr_docs/african/docs/other/cwnl.doc (noting that “there is a growing tendency for national courts to have regard to these international norms for the purpose of deciding cases where the domestic law—whether constitutional, statute or common law—is uncertain or incomplete” and that “[t]his tendency is entirely welcome because it respects the universality of fundamental human rights and freedoms and the vital role of an independent judiciary in reconciling the competing claims of individuals and groups of persons with the general interests of the community”). The Bangalore Principles were set forth at a colloquium attended by common law judges in 1988.

https://scholarship.law.upenn.edu/jil/vol30/iss4/2
Human Rights in protecting the sexual privacy of adults. In a seminal opinion that struck down the death penalty in South Africa, Justice Chaskalson relied on international and comparative precedent. In order to confront the problem of enforced disappearances in Nepal, whose legal corpus lacked robust provisions to confront this problem, the Nepali Supreme Court relied on international law, regional human rights systems, and the International Convention for the Protection of All Persons from Enforced Disappearance to compel the Nepali Government to criminalize enforced disappearances. In all of these cases, the underlying human rights claim was politically contentious and

52 See Lawrence v. Texas, 539 U.S. 558, 572 (2003) (referring to a European Court of Human Rights’ opinion stating that a law similar to the Texas law was proscribed by the European Convention of Human Rights); see also Roper v. Simmons, 543 U.S. 551, 578 (2007) (arguing in striking down the death penalty for juveniles, that “[t]he opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions”); see generally Melissa A. Waters, Creeping Modernism: The Judicial Trend Toward Interpretive Incorporation of Human Rights Treaties, 107 CQRS. L. REV. 655, 668 (2007) (“Common Law judges are increasingly abandoning their traditional dualist orientation to treaties and are beginning to utilize human rights treaties despite the absence of implementing legislation giving domestic legal effect to the treaties.”).

53 See State v. Makoanyane & Another 1995 (3) SA 391 (CC) 33-95 (S.Afr.) (considering the implications of capital punishment in comparative and international law).


55 See: Lawrence v. Texas, 539 U.S. at 692 (Sotul, J., dissenting) (“Today’s opinion is the product of a Court, which is the product of a law-profession culture, that has largely signed on to the so-called homosexual agenda, by which I mean the agenda promoted by some homosexual activists directed at eliminating the moral opprobrium that has traditionally attached to homosexual conduct.”); Mwiriga Nduru, Death Penalty: Calls for the Return of Capital Punishment in South Africa, IPS, June 7, 2006, available at http://ipswnews.net/news/widescreen/33927 (describing attempts to scale back on the Makoanyane decision); UN Probing Nepal Disappearances, BBC NEWS, Dec. 6, 2004, http://news.bbc.co.uk/2/hi/south_asia/4071717.stm (describing the difficulty of responding to enforced disappearances in Nepal).
international human rights law provided a crutch to those judges who wished to confront these issues. Moreover, judicial inclusion of foreign or international sources can help align that country to a progressive, global framework in which human rights are more vigorously protected.57

2.4. Costs Facing Judges58

Judges using a "creeping monism"59 approach to human rights implementation may raise fears of judicial activism that might undermine the separation of powers and domestic accountability. Yuval Shany suggests that "[t]he ability of courts to step outside of the ‘four corners’ of the text and to fill an existing normative cast with contents derived from international law sources liberates judges from the obligation to abide by the original intent of the norm’s drafters... [and] amplifies their law-creating role..."60 Furthermore, a judge’s interpretation of international human rights law empowers judicial officials to interpret the contours of international law over domestic legislatures. In democratic systems that value a judiciary’s commitment to the separation of powers, judges might be hesitant to transcend this perceived boundary by invoking an international human rights approach.61

In terms of domestic accountability, judges empowered by international human rights law to further unmet human rights benchmarks may be "viewed as incompatible with notions of popular sovereignty."62 By proactively using human rights treaties

57 See Christopher McCrudden, Human Rights and Judicial Use of Comparative Law, in JUDICIAL COMPARATIVISM IN HUMAN RIGHTS CASES 1, 12 (Esin Orlić ed., 2003) (“Having regard to the judicial decisions of other jurisdictions in the area of human rights is perceived as part of a larger project of economic or social integration, or as a continuation of a common history.”).

58 As with perceived political costs, the perceived judicial costs are all open to serious normative attack. The point of this section is to identify the costs that judges may perceive in employing an international human rights approach.

59 Waters, supra note 32, at 628. Creeping monism is the idea that international law can slowly be incorporated into the domestic legal corpus through incremental direct applications by the judiciary.


61 For a critique of this argument, see Martin S. Flaherty, Separation of Powers in a Global Context, in JUDGES, TRANSITION, AND HUMAN RIGHTS 9, 12 (John Morison, Kieran McEvoy, & Gordon Anthony eds., 2007).

62 Shany, supra note 60, at 384.
to further a human rights agenda, judges face the costs of appearing distanced from the national values that the judiciary is purported to embody. Furthermore, using an international human rights approach in light of perceived lacunae in domestic jurisprudence might smack of an “international countermajoritarian difficulty,” whereby judges thwart the common will in furtherance of international standards.

Moreover, incorporation of human rights treaties against prevailing national values, perceived as the implementation of a politicized and distant body of law, might “put courts on a collision course with the executive and legislative branches.”

For this reason, Michael Kirby, Honorable Judge of the High Court of Australia has cautioned:

[C]ritics have pointed to the generality of the expression of many of the provisions contained in international human rights instruments. Of necessity, these are stated in language lacking in precision. This means that those who use them may be tempted to read into the broad language what they hope, expect or want to see. Whilst the judge of the common law tradition has an indisputably creative role, such creativity must be restrained. It must proceed in a judicial way. It must not undermine the primacy of democratic law-making by the organs of government, directly or indirectly accountable to the people...

An additional judicial cost to implementing human rights obligations is international law’s threat to legal coherence. Judicial actors may fear disruption caused by imposing international standards on the prevailing domestic legal corpus, particularly when judicial actors on their own are the sole engine for such

---

62 Roger P. Alford, Missing International Sources to Interpret the Constitution, 98 Am. J. Int’l L. 57, 59 (2004). See generally Toobin, supra note 21 (highlighting the contentiousness of using international law in the Supreme Court); Foreign Judgments, supra note 21 (noting the House of Representatives’ uncomfortable reaction to the use of foreign law to interpret U.S. law).

63 Sherry, supra note 60, at 397.

reform. Furthermore, a lack of adequate training in the norms and methodologies in international law may very well exacerbate this hesitancy to incorporate international human rights law in a judicial setting. For example, Leonadro Despouy describes some judicialities as reluctant to be “‘colonized’ through the importation of legal and judicial norms foreign to their own.”

Finally, judicial actors are susceptible to the same cultural identity politics that plague political actors. Some commentators argue that “a robust use of international sources could have the unintended consequence of undermining . . . constitutional guarantees” by imposing an international counter-majoritarian ideology against domestic standards. As a result, judicial invocation of “international protection might be viewed as a redundant gesture, entailing more potential risks of diluting local standards than potential benefits for normative progress.” For example, some commentators have observed that African countries have not had the opportunity to contribute to the development of international law. This observation is one of the pillars of the cultural relativism critique of universal human rights standards. In turn, the presence of such tensions may very well give judicial actors second thoughts about incorporating international human rights law to correct domestic norms that contravene international human rights.

2.5. Summary

The above discussion demonstrates that the political and judicial use of the international human rights approach is not cost-neutral. Rather, using international human rights law imports both political and judicial costs and benefits. For policymakers...
seeking to combat culturally grounded human rights abuses, these costs and benefits must be weighed in order to determine whether international human rights norms should be explicitly included in the policy discourse. In some instances, international human rights law might be a powerful tool that allows political and judicial actors to offset any costs of confronting thorny political and cultural questions with judicial and political benefits. On the other hand, the costs of politically or judicially invoking international human rights discourse to combat culturally grounded human rights benefits may very well outweigh the benefits associated with using international human rights law. The following two sections unpack these divergences in Turkey and Liberia.

3. HONOR KILLINGS AND HONOR SUICIDES IN TURKEY: A CASE FOR AN INTERNATIONAL HUMAN RIGHTS APPROACH

This Section will situate the analytical framework developed in the previous section in the context of honor killings and honor suicides in Turkey. First, this Section will describe honor killings and honor suicides and argue that these practices violate Turkey’s human rights obligations. Then, this Section will consider the political and judicial costs and benefits of employing an international human rights approach in Turkey to address honor killings and suicides. Ultimately, this Section argues that Turkey’s application to join the European Union, with its resulting political and judicial obligations, and the demographics of populations that condone honor killings and honor suicides in Turkey, make an international human rights approach effective in Turkey.

3.1. Honor Killings and Honor Suicides

In a country with sharp regional differences in human development, honor killings and honor suicides have been most prevalent in Eastern Turkey, where feudal, patriarchal political

---

72 As the subsequent discussion will demonstrate, a variety of factors may amplify or minimize the political and judicial costs and benefits of employing a human rights approach. This Comment discusses factors relevant in the Turkish and Liberian contexts and is not meant to serve as an exhaustive list of factors that affect the cost-benefit analysis of the international human rights approach.

organization exists alongside formal state institutions.\textsuperscript{74} In Eastern Turkey, ninety percent of women working in agriculture still carry the status of an unpaid family laborer.\textsuperscript{75} The region also has the highest fertility rate in Turkey.\textsuperscript{76} Further, in parts of Anatolia, female education is seen as a waste, given the high financial costs of sending children to school.\textsuperscript{77}

In Turkey and other parts of the Middle East, the concept of honor is "at the forefront."\textsuperscript{78} For women, honor has been inextricably linked to their "chastity . . . dressing properly, [and] conducting [themselves] according to . . . traditions."\textsuperscript{79} Virginity, "considered a family right" is one of the penultimate elements of honor; because virginity is considered family property and not an individual choice of a woman, a woman’s sexual choices are effectively delegated to her family.\textsuperscript{80} Given the primacy placed on a woman’s honor, “the customary penalty for preadolescent, adolescent, and adult women suspected of having violated the limits on sexual behavior as imposed by tradition . . . is . . . death, the so called ‘honour killings.’”\textsuperscript{81} Typically, once a family member is notified of a woman’s “sexual disgrace,” a council of male relatives convenes to decide her fate, sometimes concluding that only death can restore the family’s honor.\textsuperscript{82} A United Nations poll revealed that seventeen percent of Turkish men approved of honor killings, and many more men approved of measures short of killing, such as cutting off a woman’s nose.\textsuperscript{83}

\textsuperscript{74} Pinar Ilkkaracan, Women for Women’s Hum. Rts., Exploring the Context of Women’s Sexuality in Eastern Turkey, 6 REP. HEALTH MATTERS 66, 66 (1998).

\textsuperscript{75} Asuam Aytekin Incioglu, So-called “Honour Killings” as a Social Conflict in Turkey, in CONFLICTS AND CONFLICT RESOLUTION IN MIDDLE EASTERN SOCIETIES— BETWEEN TRADITION AND MODERNITY 317, 319 (Hans-Jürg Albrecht et al. eds., 2006).

\textsuperscript{76} Id. at 319-20.

\textsuperscript{77} Id. at 320.


\textsuperscript{79} Id.

\textsuperscript{80} Incioglu, supra note 75, at 322-23.

\textsuperscript{81} Id. at 317.

\textsuperscript{82} Dan Billetsny, How to Avoid Honor Killings in Turkey? Honor Suicide, NY Times, July 16, 2006, at A3.


https://scholarship.law.upenn.edu/jil/vol30/iss4/2
Traditionally throughout the Middle East, legislatures have provided leniency to those men who murder women in the name of honor. For example, in cases of adultery, the laws take "into account the psychological state of mind that hits the husband whose honour has been violated, the most precious thing that he possesses. At the moment he catches his wife committing adultery, he will no doubt lose his reason and kill his wife and her partner."84 Before Turkey began its serious efforts in European Union accession, Article 462 of the Turkish Penal Code (Turk Ceza Kanunu ("TCK")) provided significantly reduced sentences (four to eight years instead of life imprisonment or five to ten years instead of death sentences) to those perpetrators who murder:

[At the time the victim is caught in the act of adultery or illegal sexual intercourse, or while the victim was about to commit adultery or engage in illegal sexual intercourse, or while the victim was in a situation showing, free from any doubt, that he or she has just completed the act of adultery or sexual intercourse ... 85

To meet the human rights requirements of EU accession, the Turkish parliament revoked Article 46285 and recommended that such killings be punished with "life imprisonment with hard labor."86 However, Article 51 of the TCK provides perpetrators with a mitigating provocation defense, resulting in a two-thirds sentence reduction, where the perpetrator "has committed murder because of 'uncontrollable grief' or as a result of


85 A fuller discussion of the effects of EU accession politics in Turkey is in the following subsection.


87 Rebecca E. Boen, Note, They Killed Her for Going Out with Other Honor Killings in Turkey in Light of Turkey’s Accession to the European Union and Lessons for Iraq, 35 Hofstra L. Rev. 815, 829-30 (2006). See also Wilkinson, supra note 83 (quoting a Turkish lawyer who noted that "On paper, we seem to have achieved a lot" but that "when we go out into the field, we recognize that a lot more needs to be done").

Some human rights commentators have cautioned that the provocation provision "employs the very same case of suspected or witnessed infidelity as an example of unjust provocation, thereby openly proving that the annulment of Article 462 was a merely feigned gesture lacking any actual intent to stop honor killings." Further, in light of the legal penalties that Turkey has implemented to meet EU human rights requirements, the practice of honor killings has begun to morph into honor suicides. In parts of Eastern Turkey, "families of disgraced girls are choosing between sacrificing a son to a life in prison by designating him to kill his sister or forcing their daughters to kill themselves ...." It is unclear whether aiding or abetting a woman's suicide could constitute a criminal offence; however, it appears that the emerging suicide problem in Eastern Turkey has not been subject to prosecution. Local organizations have focused on educating young women on their rights, instead of pursuing criminal sanctions against those who urge young women to commit suicide.

---


91. Granted, while most legal systems offer a mitigating defense for crimes of passion, it remains unclear whether this provision could be a loophole for perpetrators of honor killings to receive reduced sentences, especially in Turkish courts that feel geographically (and culturally) removed from Ankara.


93. See Filefksy, supra note 82 (describing how some Turkish women are being forced to commit suicide so that their families can avoid more stringent penalties).

94. Id.

95. See Press Release, United Nations, Statement by Prof. Yakın Ertürk, Special Rapporteur on Violence Against Women, Its Causes and Consequences (Mar. 20, 2007), available at http://www.unhchr.ch/hurricane/hurricane.nsf/view/0fB27881D696C7E9C12572AA003E38D7?opendocument (noting that because honor killings are now subject to prosecution, such acts have morphed into suicides and accidents in order to evade prosecution).
This may suggest that legal penalties may be unavailable to those that abet honor suicides.

3.2. Honor Killings and Honor Suicides: Implications in International Human Rights Law

Under international human rights law and the regional human rights law of the European Union, honor killings contravene the rights of women. At the most basic level, honor killings violate a woman’s right to life, enshrined in the Universal Declaration and Article 6 of the International Covenant for Civil and Political Rights. Turkey is a party to the Convention on the Elimination of All Kinds of Discrimination Against Women (“CEDAW”), the human rights treaty that most directly implicates women’s rights. The practice of honor killings or the aiding and abetting of honor suicides constitutes a form of discrimination, defined by the CEDAW as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

To the extent that provocation defenses may still be available to perpetrators of honor killings, and to the extent that Turkey is not taking sufficient measures to prevent and protect women from honor killings or honor suicides, Turkey is in violation of its obligation under CEDAW “[t]o establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the enforceability of that protection.”

This section will not provide an exhaustive examination of all the relevant provisions of international human rights law implicated by honor killings in Turkey. Rather, the purpose of the section is to provide a basic overview of the international human rights norms at play in the honor killing and suicide context in Turkey.

See Wilkinson, supra note 83 (noting that local advocacy groups were holding town meetings and setting up emergency hotlines to respond to the problem).

93 This section will not provide an exhaustive examination of all the relevant provisions of international human rights law implicated by honor killings in Turkey. Rather, the purpose of the section is to provide a basic overview of the international human rights norms at play in the honor killing and suicide context in Turkey.


Id. art. 1.
effective protection of women against any act of discrimination. ... Furthermore, Article 5(a) of CEDAW is implicated, insofar as honor killings or suicides constitute a "cultural pattern... based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women" that Turkey is obligated to modify.

Because Turkey seeks membership to the European Union, it has accepted the accession requirements established in the Copenhagen Criteria. The political principle furthered by the Copenhagen Criteria requires that Turkey "achieve[] stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities." Relevant to this discussion, the accession partnership agreement demanded, in part, that Turkey "[c]omply with the European Convention for the Protection of Human Rights and Fundamental Freedoms, including respect of the judgment of the European Court of Human Rights... strengthen the independence and efficiency of the judiciary and promote consistent interpretation of legal provisions related to human rights and fundamental freedoms in line with the European Convention on Human Rights," and "[t]ake measures with a view to ensuring that the obligation for all judicial authorities to take into account the case-law of the European Court of Human Rights is respected." By seeking membership to the European Union, Turkey not only reiterated its commitment to international human rights norms, but also agreed to put its judiciary at the center of meeting those obligations.

---

100 Id. art. 2(c).
103 Id.
104 McCrudden notes, in fact, that the judicial impulse to cite law from foreign or international jurisdictions "will be strongest... when the integration is set out explicitly as a political programme with institutional characteristics, such as in Europe." McCrudden, supra note 57, at 13. Oričič argues that "[a]s the judges start regarding the member states of the European Union as the audience to impress in addition to the domestic audience of various shades, then references to decisions of courts of foreign jurisdictions and the European Court of Human Rights and the European Court of Justice may become more explicit and persuasive." Estin Oričič, The Turkish Experience with Judicial Complementarism in
3.3. The Political and Judicial Advantages of an International Human Rights Approach to Combat Honor Killings and Honor Suicides in Turkey

In Turkey, international human rights instruments embodied in Western norms of justice will likely be an effective means to confront the honor killings problem at the level of national dialogue and policymaking.105

3.3.1. Political Benefits Outweigh the Political Costs of Combating Honor Killings and Honor Suicides in Turkey

Two factors essentially make the international human rights approach favorable for political actors at a national level in Turkey. First, because honor killings are for the most part concentrated in Eastern Turkey, national parliamentarians face less political pressure in confronting these crimes.106 The population density of Eastern Turkey cannot compete with the large urban centers found in Western Turkey: nearly seventy-five percent of Western Turkey's population is urban, compared with forty-six percent in the East.107 Therefore, relative to the politics at the national center, those in Eastern Turkey who wish to condone honor killings and honor suicides do not enjoy the political leverage necessary to

---


106 See Ilkaracan, supra note 74, at 67.
attack national politicians engaged in ridding Turkey of harmful, culturally grounded human rights abuses.\footnote{See supra text accompanying notes 27-36 and accompanying text (describing how the strength of the domestic support base affects the international human rights approach calculation).}

Second, eliminating honor killings or suicides in Turkey can help Turkey gain accession to the European Union.\footnote{See Press Release, European Parliament, Turkey: MEPs concerned at lack of progress in talks with EU (Feb. 11, 2009), available at http://www.europarl.europa.eu/news/expert/infopress_page/027-4880-040-02-07-005-2009/28674876/09-02-2009-2009-false/default_svr.htm (stating that the EU Foreign Affairs Committee adopted a resolution demanding that Turkey reduce the number of honor killings).} Turkey's population initially viewed accession to the European Union favorably,\footnote{See supra text accompanying notes 27-36 and accompanying text (describing how the strength of the domestic support base affects the international human rights approach calculation).} even though popular support has begun to wane because of various impediments that have surfaced during the negotiating process.\footnote{See supra text accompanying notes 27-36 and accompanying text (describing how the strength of the domestic support base affects the international human rights approach calculation).} A recent Eurobarometer Report showed that forty-three percent viewed the E.U. favorably and forty-five percent supported enlargement. These results indicate popular frustration with Europe's tough negotiating stance, but do not necessarily mark a shift in pursuing a pro-European, pro-Western political trajectory embodied by policies of Ataturk.\footnote{New Eurobarometer Poll Results Show a Drop in Turkish Support for the EU, HURRIYET, July 7, 2006, http://www.hurriyet.com.tr/english/471373.asp?gclid=74. See also The Ever Lengthening Road, THE ECONOMIST, Dec. 9, 2006, at 54 (describing the increasing difficulty Turkey is having in making progress on EU accession).} In any event, political actors who push effective policies that further E.U. accession do have a significant domestic support base. As a result, there are real political advantages to pursuing policies, including implementing human rights norms not fully actualized in Turkey, that further Turkey's prospects for E.U. accession. Any political costs associated with confronting honor killings (and its recent


\footnote{For a tour of the debate surrounding secularism and political Islam in Turkish politics, see \textsc{Stephen Kinzer, Crescent and Star: Turkey Between Two Worlds} (Farrar, Straus, and Giroux 1994); \textsc{Bernard Lewis, The Emergence of Modern Turkey} (3rd ed., 2002); \textsc{Eric J. Zürcher, Turkey: A Modern History} (rev. ed. 2004); \textsc{Berna Turan, Between Islam and the State: The Politics of Engagement} (2007); \textsc{Isra Övörük, Nostalgia for the Modern: State Secularism and Everyday Politics in Turkey} (2006).}
A NON-UNIVERSAL PROCESS

morph into honor suicide) can be externalized in a process of aggressively seeking E.U. membership. Furthermore, using the international human rights discourse will allow political actors to demonstrate their seriousness in satisfying the human rights elements of the Copenhagen Criteria because the language of international human rights will help political actors signify that they are serious about the Criteria. These gains would help overcome the political costs of the international human rights approach intrinsic in human rights law implementation.

Furthermore, political use of the international human rights discourse will help political actors align with international and European and Turkish civil society, international donors, and foreign governments committed to protecting women's rights and ending honor killings and suicides. Pursuing a favorable human rights policy will help Turkish political actors curry favor with foreign governments. Indeed, the United States favorably received Turkey's recent penal code reforms. In addition, USAID, supporting Turkey's admission to the E.U., provides funds to support economic development and reduce unemployment in Turkey. While this assistance is not directly attached to a human rights agenda, such assistance supports the larger E.U. accession process that includes the firm implementation of human rights

113 See, e.g., Turkish Law Easing Carbs on Speech Wins Praise, N.Y. TIMES, May 1, 2008, at A15 (evidencing the political benefits for Turkish politicians of implementing laws strengthening human rights protections by noting that the President of the European Union declared, “This step is both positive for Turkey and an indication of Turkey’s continuing commitment to the reform process.”)

114 See supra text accompanying notes 27-36 (describing how the strength of the domestic support base affects the international human rights approach calculation).

115 See Yildiz Ecevit, Women’s Rights, Women’s Organizations, and the State, in HUMAN RIGHTS IN TURKEY, supra note 88, at 187 (describing the growth of domestic civil society organizations promoting women’s human rights).

116 For a general overview of Turkey's engagement with regional and global human rights systems and actors, see Fuşun Turkoğlu, Turkey's Participation in Global and Regional Human Rights Regimes, in HUMAN RIGHTS IN TURKEY, supra note 88, at 249, 249.

117 See supra text accompanying notes 30-36 (describing how the availability of international support affects the international human rights approach calculation).

118 See (President George W. Bush, Remarks by the President in Istanbul, Turkey, 40 WEEKLY COMP. PRES. DOC. 1151 (June 29, 2004) (declaring that Turkey is moving rapidly to meet the criteria for membership while giving support to Turkey's accession to the European Union)).

norms in Turkey. The United Kingdom asserts that it is "strongly committed to supporting Turkey's accession to the European Union and assisting Turkey in the process of reform necessary to achieve this goal." Therefore, because E.U. accession places a high premium on the implementation of international human rights norms, and because strategic partnerships are needed to help Turkey overcome some of the contentious political obstacles in the way of E.U. accession, the use of the international human rights discourse will allow political agents to keep these strategic partners engaged in Turkey's cause.121

3.3.2. Judicial Benefits Outweigh the Judicial Costs of Combating Honor Killings and Honor Suicides in Turkey

An international human rights approach in the Turkish judicial setting also reaps more advantages than the costs associated with the approach. Turkish political leaders consented to having the country's judiciary align with the juridical approach of the European Court of Human Rights ("EHCR"). Therefore, the Turkish judiciary has essentially been given the mandate to incorporate European human rights law. This mandate helps minimize separation of powers and domestic accountability costs. Fears of undermining legal coherence are unwarranted in the Turkish context because the Turkish judiciary has been expressly directed to shift Turkish jurisprudence in the direction of international norms, and legal harmonization is essential to Turkey's E.U. accession. Further, cultural concerns of imposing non-local normative biases over national values are less at play in


121 In addition to Turkey's attempt to curry favor with European governments, Turkey's desire to strengthen its relationship with the United States provides an additional motivation to rigorously enforce its human rights obligations. See Richard Falk, Forward, in HUMAN RIGHTS IN TURKEY, supra note 88, at 6, xi.

122 Council Decision, supra note 102.

123 See 2007 Progress Report, supra note 111, at 12 (explaining that "overall, Turkey has made progress on the ratification of international human rights instruments and on the execution of ECtHR judgments. However, the OPCAT remains to be ratified, and further efforts are needed for Turkey to comply fully with its obligations under the ECHR").

124 See supra text accompanying notes 57-69 (describing how impressions of judicial activism might affect the decision to use international human rights law).
the Turkish context because of the sizable domestic constituency that supports Turkey’s accession to the European Union.\textsuperscript{123}

In addition, Turkey’s constitutional provisions on judicial power provide Turkish judges with a comfortable space to incorporate international human rights provisions. Under Article 90 of Turkey’s Constitution, “[i]nternational agreements duly put into effect carry the force of law,” and Article 138 provide that judges shall “give judgment in accordance with the Constitution, law, and their personal conviction conforming with the law.”\textsuperscript{126} Article 90 has been interpreted “to mean that international law binds domestic law.”\textsuperscript{127} These provisions, coupled with legislative enactments harmonizing Turkish law with European human rights jurisprudence, diminish fears that Turkish judges are acting outside the scope of their judicial power in fashioning rules that combat honor killings and honor suicides.\textsuperscript{128} In fact, the Constitutional Court of Turkey recognized “supra-constitutional norms [for] the European Convention” and Turkey’s supreme administrative court, the Council of State, “affirmed that the Convention was effectively incorporated into Turkish law upon its ratification.”\textsuperscript{129} Further, the Constitutional Court has premised decisions upholding the legal equality of men and women on CEDAW.\textsuperscript{130}

European human rights jurisprudence, moreover, has in several cases chastised the Turkish government for its failure to abide by European human rights norms, from its exclusion of political parties to its protection of defendants’ due process rights.\textsuperscript{131} As a result, the European Court of Human Rights has not been associated with the policies of the central Turkish government.

\textsuperscript{123} See generally Becker, supra note 106, at 1152 (describing the impact of interest group politics on political cost-benefit analysis).


\textsuperscript{127} Thomas W. Smith, Leveraging Norms: The ECHR and Turkey’s Human Rights Reforms, in HUMAN RIGHTS IN TURKEY, supra note 88, at 262, 264.

\textsuperscript{128} See supra text accompanying notes 57–59 (describing how impressions of judicial activism might affect the decision to use international human rights law).

\textsuperscript{129} Smith, supra note 127, at 264.

\textsuperscript{130} Levin, supra note 88, at 208.

\textsuperscript{131} Smith, supra note 127, at 262 ("[M]ore than 5,000 applications from Turkey have flooded the court’s docket. For much of the 1990s, the ECHR received more petitions from Turkey than from any other country.").
and has refused to rubber stamp those decisions. Therefore, the Court is likely to be perceived as a credible, balanced and fair institution within Turkey, including in the East. Turkish judges can argue that importing European human rights law does not necessarily suggest blind adherence to Western norms, but rather sensible adoptions of the declarations of the prevailing human rights standards. The credibility of the court then diminishes the “foreignness” of European human rights jurisprudence.

Given that the judicial costs associated with an international human rights approach are minimized, the Turkish judiciary is effectively free to enjoy the benefits of incorporating international human rights law to combat honor killings, should they choose to do so. In the context of honor killings, the legal lacuna resides in the potential availability of a provocation defense and an inability to reach those who aid and abet an honor suicide. In addition, international human rights law affords the judiciary the opportunity to chastise the central government for failing to fulfill its obligation to prevent acts of discrimination under CEDAW. Therefore, in the face of domestic legal gaps that prevent an effective legal response to honor killings or suicides, an international human rights approach (via incorporation of international human rights norms in judicial opinions) affords the

---

132 See id. at 262 (noting the “often rocky relations between Ankara and the ECHR”).
135 See supra text accompanying notes 60-63 (describing how national values affect a judge’s decision to use international human rights law).
136 See supra text accompanying notes 49-55 (describing how the international human rights law can provide additional authority for judges writing progressive human rights decisions).
137 CEDAW, supra note 98, art. 2(c), 128 U.N.T.S. at 37 (requiring states “to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.”).
judiciary an opportunity to fill in legal gaps, or at the very least, identify the existence of such gaps, particularly when the Turkish parliament has failed to act.138

3.4. Summary

Therefore, an international human rights approach is politically and judicially beneficial in the context of honor killings and suicides in Turkey. Because there is sizable support to accede to the European Union, and because Turkish politicians can rely on higher population densities in Western Turkey to support their human rights policies, the political costs of using an international human rights approach are minimized, whereas the benefits are pronounced. Politicians can gain political capital by taking real steps to meet the Copenhagen Criteria, and open themselves to donor aid and foreign government support in doing so. Judicial actors, moreover, have been expressly mandated by political elites to align their jurisprudence with the European human rights system. This mandate minimizes the judicial costs, namely accountability and separation issues, associated with a judicial international human rights approach. Further, charges of diluting national values with non-local international norms are sheltered by domestic support for accession. As a result, international human rights law, in a judicial setting in Turkey, is advantageous in that it allows the judiciary to fill in legal gaps and chastise inefficient enforcement of women’s human rights.

4. FEMALE CIRCUMCISION IN LIBERIA: A CASE AGAINST AN INTERNATIONAL HUMAN RIGHTS APPROACH

This Section situates the analytical framework developed in Section 1 and applies it to female circumcision in Liberia. First, this Section describes the practice of female circumcision and argues that the practice violates Liberia’s international human rights obligations. This Section then unpacks the political and judicial costs and benefits of employing an international human rights approach to combat female circumcision. Ultimately, this Section argues that because of Liberia’s political instability, the prevalence

138 As a civil law country, the Constitutional Court of Turkey is limited in its ability to “make law.” See Ayip Payashoglu, AN INTRODUCTION TO LAW AND THE TURKISH LEGAL SYSTEM 137-38 (2d ed. 1993). However, the Constitutional Court has the ability to interpret laws to give them a fuller meaning in human rights terms. M.
and support for female circumcision, and the likely alienation of domestic constituents through political and judicial processes that engage international human rights law, an international human rights approach to combat female circumcision in Liberia is a politically and judicially costly endeavor.

4.1. Female Circumcision

Female circumcision refers to a range of procedures of varying intrusiveness that remove parts of the female genitalia. Various international organizations have defined female circumcision as consisting of "all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs" whether for cultural or other non-therapeutic reasons. There are four main types of female circumcision. In a clitoridectomy (Type I), the prepuce and perhaps part or the entire clitoris is excised. In a Type II excision, the circumciser removes the prepuce, the clitoris, and part or all of the labia minora. Infibulation (Type III) involves the removal of the clitoris, in addition, after removing the entire labia minora, the surface of the remaining genitalia is stitched together, with a small opening remaining for urination and menstruation. Type IV refers to "numerous other procedures that have been documented, such as prickling, piercing, stretching or burning of the clitoris and/or surrounding tissues." In Arabic, the term ṣima, or

139 The choice of term in English can import a significant degree of bias. Female circumcision in the West is often referred to as female genital mutilation, a term that signifies Western appall against the practice. In this Comment, I shall use the term female circumcision in order to avoid demonizing the adherents of female circumcision as mutilators, for such an approach may impede efforts to eradicate the practice. See Corinne A.A. Packer, Using Human Rights to Change Tradition: Traditional Practices Harmful to Women’s Reproductive Health in Sub-Saharan Africa 18 (Intersentia 2002) (noting the problems with translating the term into English).


142 Id. at 8.

143 Id. at 8; Esther M. Kisaakye, Women, Culture, and Human Rights: Female Genital Mutilation, Polygamy, and Bride Price, in The Human Rights of Women: International Instruments and African Experiences 268, 270 (Wolfgang Benedek, Esther M. Kisaakye & Gerd Oberleitner eds. 2002).

144 Rahman & Toure, supra note 141, at 8.
“tradition” is used to describe the process of female circumcision; in Sudan, female circumcision is referred to as *talwr*, meaning “purity.” Some communities circumcise their daughters at birth; others do so as a rite of passage ceremony during adolescence. Typically, women perform the procedure, and the circumciser is a revered member of society. Further, midwives who circumcise have made lucrative careers out of the practice; in Sudan and Gambia, circumcision income is much higher than midwife or nurse income. Circumcision usually takes place outside the village in secluded settings. One observer describes:

The conditions under which these take place are often unsanitary and the instruments used crude and unsterilized: usually a razor blade, a piece of glass, a sharp stone, or a kitchen knife. Wounds are dabbed with a range of treatments including alcohol, lemon juice, ash, earth, herb mixtures, or cow dung. After cutting, the wound may be sewn closed, again usually with primitive sutures, such as thorns. The girl’s legs are then bound together until her wounds have healed, a process which may take up to 40 days.

Apologists of female circumcision have proffered various justifications for the practice, which can be grouped into roughly four categories. First, female circumcision, defenders of the practice argue, promotes health and hygiene. Apologists argue that removing the clitoris makes the female genitalia cleaner and maintain that the clitoris is a dangerous organ that may injure a baby during childbirth. Second, defenders of the practice argue that female circumcision is a matter of “physical necessity.” Removing parts of the female genitalia, they assert, makes the female genitalia more attractive, increases male sexual pleasure, preserves virginity, and decreases female sexual pleasure. Third, female circumcision is a matter of social necessity. Defenders of the practice maintain that the procedure is an important puberty

---

145 Packer, supra note 139, at 18-19.
146 Kisaakye, supra note 143, at 271-72.
147 Id. at 172.
148 Packer, supra note 139, at 22 (internal citations omitted).
149 Id. at 20-21.
150 Id. at 21.
right and that it promotes social cohesion, reduces female promiscuity, and increases the matrimonial opportunities of young women, because a man may refuse to marry an uncut woman.\textsuperscript{151}

Fourth, there are religious justifications for female circumcision; some believe that the Qur’an requires infibulation to guarantee a woman’s chastity.\textsuperscript{152}

In Sub-Saharan Africa, female circumcision is practiced in at least 28 countries.\textsuperscript{153} In Liberia, female circumcision had a sixty percent prevalence rate (before the civil war), the majority of the circumcisions being the Type II variety.\textsuperscript{154} Of Liberia’s major ethnic groups, only three do not practice female circumcision.\textsuperscript{155} While prevalence rates decreased because of population movements during the civil war, some expect the prevalence rate to return to the pre-war levels as Liberians repatriate and resettle into their pre-war livelihoods.\textsuperscript{156} The practice is not confined to rural areas; for example, an educated lawyer in Monrovia underwent the procedure due to pressures from an upcountry grandmother.\textsuperscript{157} In Liberia, older women in special societies perform female circumcision during initiation rites.\textsuperscript{158} Before the civil war, a large initiation school operated in Monrovia, but it was

\footnotesize
\begin{itemize}
  \item \textsuperscript{151} Id. at 21.
  \item \textsuperscript{152} Id. at 22.
  \item \textsuperscript{153} Kisaakyi, supra note 143, at 270.
  \item \textsuperscript{154} RAIDMAN & Toure, supra note 141, at 178.
  \item \textsuperscript{155} Id.
  \item \textsuperscript{156} See Office of the Senior Coordinator for International Women’s Issues, U.S. Department of State, Liberian Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC), Jun. 1, 2003, https://www.unhcr.org/refworld/topicdocid/46d3776a29b.html (last visited Apr. 11, 2009) [hereinafter State Department, Liberian Report on FGM].
  \item \textsuperscript{157} Id.
  \item \textsuperscript{158} Id.
\end{itemize}
destroyed during the war.\textsuperscript{159} Several smaller such schools currently exist, with women spending a weekend at the school to undergo the initiation right.\textsuperscript{160} There have also been reports that children under the age of three have been initiated. Due to the secrecy sworn by the initiators, a cloud of mystery continues to surround it.\textsuperscript{161}

Liberia currently does not have any legislation in force that specifically bars the practice. Article 11(a) of the 1986 Constitution provides that “All persons are born equally free and independent and have certain natural, inherent and inalienable rights, among which are the right of enjoying and defending life and liberty, of pursuing and maintaining and security of the person...”\textsuperscript{162} Further, Article 11(b) affirms that “All persons, irrespective of ethnic background, race, sex, creed, place of origin or political opinion, are entitled to the fundamental rights and freedoms of the individual, subject to such qualifications as provided for in this Constitution.”\textsuperscript{163} Additionally, under Section 242 of the Liberian Penal Code:

Any person who maliciously and unlawfully injures another by cutting off or otherwise depriving him of any of the members of his body, or in any wise maims him or any part of his body or the members thereof, with intent in so doing unlawfully to disfigure him or to diminish his physical vigor, is guilty of a felony and punishable by imprisonment for not more than five years.\textsuperscript{164}

However, there have not been any reported cases of using the mayhem provision to prosecute a circumciser or otherwise provide remedies to a woman who has been forcibly circumcised.\textsuperscript{165} Therefore, though a right to be free from the practice of female circumcision may be inferred from the fundamental rights and equality provisions of the Liberian Constitution, and though Liberia has a mayhem provision that could technically reach

\textsuperscript{159} Id.
\textsuperscript{160} Id.
\textsuperscript{161} Id.
\textsuperscript{162} CONSF. OF THE REP. OF LIBER., art. 11(a).
\textsuperscript{163} Id. art. 11(b).
\textsuperscript{165} State Department, Liberia: Report on FGM, supra note 156.
female circumcision, there does not appear to be an effective legal infrastructure to respond to female circumcision.

4.3. Female Circumcision: Implications in International Human Rights Law

The practice of forcing women to undergo female circumcision contravenes several of the fundamental rights of women respected by Liberia. Particularly, the practice implicates a woman’s right to health and life, freedom from discrimination, and freedom of thought. A woman’s right to life and health, enshrined in the International Covenant for Civil and Political Rights and the International Covenant for Economic, Social and Cultural Rights, is impinged upon because female circumcision can cause death and other health complications. A woman’s right to equality, enshrined under the Convention to Eliminate All Forms of Discrimination Against Women, is violated because female...
circumcision targets women only, attributing to them an inferior status. 172 Further, female circumcision serves to keep women in a subordinated position. 173 Because women are often deprived of a meaningful, informed choice in undergoing female circumcision, and are bound by cultural norms that promote the practice, a woman’s freedom of thought is also violated. 174

Furthermore, under CEDAW, the practice of forcing a woman to undergo female circumcision contravenes the principle that state parties shall seek “to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” 175 The Convention on the Rights of the Child has a similar provision, stipulating that “State Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.” 176 Female circumcision’s contravention of fundamental human rights principles is further evidenced by Protocol To The African Charter On Human And Peoples’ Rights On The Rights Of Women In Africa, signed by Liberia, which requires states to eliminate harmful cultural practices, including female circumcision. 177 Therefore, given that various provisions of international human rights law are implicated in the female circumcision debate, it is natural to assume that an international human rights approach might be one obvious method to help curtail the practice. 178 However, an analysis of the political and judicial costs in the

172 PACKER, supra note 139, at 61-62.
173 Id.
174 Id. at 75.
175 CEDAW, supra note 98, art. 5(a).
178 See generally Elizabeth Meehan, Human Rights and Women’s Rights: The Appeal to an International Agenda in the Promotion of Women’s Equal Citizenship, in JUDGES, TRANSITION, AND HUMAN RIGHTS, supra note 61, at 479-80 (noting that the “human rights agenda has become used extensively by women’s movements” because of “frustration with inadequate domestic policy or an absence altogether of attention at this level to issues of gender equality . . .”).
context of female circumcision in Liberia reveals that an international human rights approach should be avoided.

4.3. The International Human Rights Approach to Combat Female Circumcision in Liberia: A Politically and Judicially Costly Endeavor

In Liberia, an international human rights approach that seeks to directly import universal human rights norms in the female circumcision debate will likely be a politically and judicially costly exercise, relative to its benefits. Liberia is just emerging from a brutal civil war; therefore its democratic infrastructure is in its nascent stage. Furthermore, female circumcision, if not widely practiced, is widely acknowledged as a permitted cultural practice. These conditions impact the cost-benefit analysis of the international human rights approach in combating female circumcision in Liberia.

4.3.1. Political Costs Outweigh Political Benefits in Combating Female Circumcision in Liberia

Liberia held its first presidential election since the end of its fourteen-year civil war in 2005. Prior to the election, Liberian politics were characterized by the brutal, extractionist politics of Charles Taylor and others. Liberian political institutions are young and political actors are just beginning to develop their constituencies. Given the sensitivities surrounding a prevalent harmful traditional practice like female circumcision, utilizing an international human rights approach to combat the practice will likely be politically costly and potentially a drain of political

---


181 See, e.g., International Crisis Group, Liberia: Stepping Focused, Africa Briefing N. 36, Jan. 13, 2006 (describing the challenges to Liberia’s new democracy); see also International Crisis Group, Liberia and Sierra Leone: Rebuilding Failed States, Africa Briefing N. 87, Dec. 8, 2004 (describing the challenges to resurrecting Liberia from its former failed state status).
capital. For example, in his senate confirmation hearing in 2006, then—Minister of Internal Affairs-designate Ambulai Johnson stated, "[i]those expatriates who are campaigning against the practice of female genital mutilation are ignorant to the matter and need to be educated about the practice." He further promised the Liberian Senate that he would not seek to combat female circumcision. While Minister Johnson’s views are not necessarily indicative of a general sentiment toward female circumcision, his public statements testify to the political contentiousness of the subject. By importing a Western normative process to the policy debate, opponents of female circumcision will likely increase the chances of alienating constituents who are not opposed to the practice. Further, an international human rights approach will likely harden the positions of those who share Minister Johnson’s sentiments, in that a human rights approach will smack of an uneducated, foreign force imposing its own normative biases on a cultural practice in Liberia.

The costs of alienating domestic constituents through an international human rights discourse also have implications in implementing international law in Liberia. Under the Liberian Constitution, the Legislature, consisting of a Senate and a House of Representatives, has the power “to approve treaties, conventions, and such other international agreements negotiated or signed on behalf of the Republic” and to “establish various categories of criminal offenses and provide for punishment thereof.” Further, the President has the power to “conclude treaties, conventions, and similar international agreements with the concurrence of a majority of each House of the Legislature.” Thus, international law cannot simply be adopted silently without policy discussion, and political actors need to take affirmative steps to implement the
provisions of international human rights law. Doing so to combat female circumcision will further expose political actors to accusations of being detached from their constituents. Moreover, given the contentiousness of the female circumcision debate, political actors will not want to posture themselves as helpless and compelled in the face of international norms.

While the international human rights approach imports an international community of support, the visible presence of the international community in combating female circumcision may not be beneficial; in fact, it may be counterproductive. The international community necessarily adopts "the language of human rights to protect women's interests." The universalist language of the international human rights discourse, attached to an international community of NGOs and donor agencies that a political actor may wish to utilize, presents the same difficulty of alienating constituencies. This is not to say that international civil society should not be used to confront female circumcision, but rather, that their presence would need to be subtle in order to avoid introducing cultural relativism debates into the mix. One Human Rights Watch report noted: "Our colleagues from countries where FGM [female genital mutilation]..."
is widely practiced have advised us that they should be on the
front line of efforts to combat F.G.M., and a more overt role by
Human Rights Watch at this time could be counterproductive to
local efforts.  

In addition, the international human rights discourse will not
fully target the underlying problems associated with female
circumcision, and as a result, political actors may find that the
international human rights approach will only flaccidly respond to
the problem. International human rights law does not "critically
analyze[e] the underlying system that has created the violations." Moreover, legislative efforts to combat female circumcision in
Liberia, given the prominence of the practice, may be counter-productive in and of themselves, either by driving the practice
underground or encouraging mass-scale circumcisions before the
law goes into effect. Therefore, political actors may find that
explicit reliance on an international human rights approach not
only alienates them from their constituencies, but also proves to
be an ineffective tool.

4.3.2. Judicial Costs Outweigh the Judicial Benefits of Combating
Female Circumcision in Liberia

Judicial actors also have reasons to hesitate in directly
incorporating international human rights law to combat female

154 Rosenthal, supra note 190 (quoting a Human Rights Watch report).

155 Mandelsohn, supra note 191, at 320.

156 See U.S.A.I.D. Bureau for Africa, Office of Sustainable Development, APR.
VOICE NEWSLETTER, Summer 1997, at 4 ("Although supporting legislation for
criminal punishment of such practices might be effective tools for preventing
FGM, in countries where large majorities believe in and adhere to these traditional
practices, legal sanctions incriminating providers might prove counterproductive.
For example, when a presidential decree in Kenya prohibited FGM, several
hundred young girls were immediately circumcised as a result.").

157 This Section only refers to Liberian statutory courts contemplated by the
Liberian Constitution, not the customary law system and its associated courts. See
JEANETTE E. CARTER & JOYCE MENDS-COLE, LIBERIAN WOMEN: THEIR ROLE IN FOOD
PRODUCTION AND THEIR EDUCATIONAL AND LEGAL STATUS 157–82 (1982) (explaining
the customary and statutory legal systems in Liberia).

158 One serious hindrance that inhibits rational discussion of a putative
Liberian judge's thought process concerning international human rights law is the
fact that the Liberian judiciary is generally acknowledged to be weak and corrupt.
See, e.g., International Crisis Group, Liberia: Reshaping the Justice System, Africa
Briefing N. 7, Apr. 6, 2006 (describing the terrible state of the justice system
and recommending reform). This section, however, does not factor corruption into
the analysis.
circumcision. Article 65 of the Liberian Constitution provides that “courts shall apply both statutory and common laws in accordance with the standards enacted by the Legislature.”

Nowhere in the articles describing judicial power does the Liberian Constitution explicitly authorize its courts to consult international law. Rather, provisions related to international law are confined to those sections within the Liberian Constitution defining executive and legislative power. As a result, judges, who are appointed in Liberia and can only be removed for certain prescribed reasons, may fear attacks of transcending the separation of powers by overstepping the plain language of their judicial grant of power. If legislatures have not themselves enacted provisions of international human rights law, or if Liberian common law does not automatically incorporate international law, then the judicial branch would be hard-pressed to find constitutional authority to incorporate these provisions. While this limitation does not preclude referencing the persuasive authority of international human rights law, judges would likely proceed down such a path with a high degree of caution, if they were concerned about preserving the separation of powers or opening themselves to attacks of inappropriately borrowing from outside legal traditions.

199 CONST. OF THE REP. OF LIBER, art. 65.

200 Id. art. 34(b) (“The Legislature shall have the power . . . to approve treaties, conventions and such other international agreements negotiated or signed on behalf of the Republic.”); id. art. 57 (“The President shall have the power to conduct the foreign affairs of the Republic and in that connection he is empowered to conclude treaties, conventions and similar international agreements with the concurrence of a majority of each House of the Legislature.”); see also Hawata Kabbah, A Guide to the Liberian Legal System and Legal Research, at 6 http://www.yu.lawglobal.org/globalex/Liberia.htm (last visited Apr. 9, 2009) (“International treaties signed and ratified by the State of Liberia have to be domesticated for them to have the force of law in the country. This means that in order to become part of the national legal system or order, international treaties have to be approved and adopted by the legislature.”).

201 CONST. OF THE REP. OF LIBER, art. 71 (“The Chief Justice and the Associate Justices of the Supreme Court and the judges of subordinate courts of record shall hold office during good behavior. They may be removed upon impeachment and conviction by the Legislature based on proved misconduct, gross breach of duty, inability to perform the functions of their office, or conviction in a court of law for treason, bribery or other infamous crimes.”)

202 See supra notes 57-59 and accompanying text (describing how separation of powers concern affect the judicial calculation of using an international human rights approach).
Even if judicial actors were prepared to tinker with the separation of powers embodied in Liberia’s constitution, judges, like political actors in Liberia, may fear imposing an international human rights standard over “accepted” national values. Given that there is not a strong national movement to eradicate female circumcision in Liberia, and that many communities continue the practice, judges may be hesitant to challenge these national values by incorporating international human rights law to combat female circumcision.\(^{203}\)

Finally, even if judges were prepared to open themselves to critiques of violating the separations of powers and ignoring national values, international human rights law would be an ineffective agent for change. As mentioned previously, international human rights law does not speak to the socioeconomic and cultural conditions that permit female circumcision to happen.\(^{204}\) Further, political agents and local leaders may avoid complying with any such judicial decision that uses international human rights law to combat female circumcision. Therefore, given the significant costs and meager benefits of using international human rights to combat female circumcision, judicial actors would be ill-advised to take on such an approach.

4.4. Other Potential Avenues to Successfully Combat Female Circumcision in Liberia

That an international human rights approach is a politically and judicially costly way of combating female circumcision of course does not imply that advocates cannot effectively combat female circumcision. A report by the Department of Women’s Health Systems and Community Health of the World Health Organization documented effective strategies to help combat female circumcision.\(^{205}\) In Egypt, for example, The Coptic Evangelical Organization for Social Services in Egypt (“CEOSS”) sends in “programme implementers” who work in concert with

\(^{203}\) See id. notes 67-69 and accompanying text (describing how national values affect the judicial calculation of using an international human rights approach).

\(^{204}\) See id. Section 4.2.

local leaders. CEOSF programme implementers "register[] the number of girls between the ages of 7 and 13 who are at risk of being excised, as well as gradually introducing issues pertaining to health and literacy, followed by the sensitive topic of FGM." Then, community leaders, each responsible for girls at risk of being excised in their respective geographic area, monitor the girls and disseminate information on the negative consequences of female circumcision. The Mandelro Ya Wanawake Organization ("MYWO") in Kenya has implemented an "Alternative Coming of Age Programme," whereby MYWO works with community leaders to develop an "alternative ritual that is acceptable to all the stakeholders (girls, fathers, community members)." In Senegal, Tostan developed community-based, educational strategies to encourage local leaders to pledge against practicing female circumcision. After several training sessions, "village women, when learning about the negative health consequences, decided independently to act to end FGM in their villages." According to Tostan, half the female communities in Senegal that practiced female circumcision have abandoned the practice, in part because of Tostan's "respectful approach that allows villagers to make their own conclusions about FGC and to lead their own movements for change." Furthermore, none of these programs explicitly uses an international human rights approach or discourse in their anti-female circumcision campaigns, even if the organizations themselves were motivated by human rights norms.

In Liberia, community-based campaigns such as those employed in Egypt, Kenya, and Senegal would be an effective means to initiate discussions about the negative consequences of female circumcision. Such approaches need not incorporate an international human rights discourse to fulfill Liberia's international human rights obligations under CEDAW, ICCPR, the CRC, or the African human rights instruments. In fact, there is evidence that policymakers are employing these community-based approaches. Recently, UNICEF in Liberia applauded the use of a

---

206 Id. at 105.
207 Id.
208 Id.
209 Id. at 113.
"non-coercive and non-judgmental approach" to "raise public awareness in the community about the harmfulness of the practice, encourage public declarations of the collective commitment to abandonment," and "spread the abandonment message within communities."

4.5. Summary

An international human rights approach is judicially and politically costly, relative to its benefits, in combating female circumcision in Liberia. Female circumcision is a prevalent practice within Liberia, a country whose democratic institutions are nascent, and whose political actors are developing their constituencies. Taking on the case against female circumcision, and using an international human rights approach to do so, will likely alienate politicians from their constituents. The potential political benefits, moreover, are meager; the presence of international assistance would need to be minimized, and the international legal corpus is not competent to address the underlying structural conditions of female circumcision. For judges, using international human rights law would contravene separation of powers under the Liberian Constitution; further, judges, relatively unfamiliar with international law, might fear stepping on national values through incorporating human rights law. This, of course, is not to say that eradication efforts will not be successful in Liberia. Rather, approaches such as those used in Egypt, Kenya and Senegal reveal that respectful, community-based educational campaigns that do not rely on an international human rights approach are the most effective means to combat female circumcision.

5. Conclusion

International human rights norms are universal. However, the process for implementing these norms is not. Because the process of explicitly implementing international human rights law imports a set of costs and benefits for the political and judicial actors considering its use, advocates who wish to confront culturally grounded human rights abuses must consider whether the toolkit

---

of international human rights law ought to be utilized. In cases like Turkey, domestic conditions amplify the benefits and minimize the costs of using an international human rights approach. In cases like Liberia, domestic conditions make the international human rights approach a costly endeavor relative to its potential benefits; advocacy approaches in Liberia need not employ international human rights law, and should instead rely on targeted strategies that do not import the normative biases that human rights law implies.

Politicians, judges and international human rights advocates that hope to eradicate culturally grounded human rights abuses must, therefore, be sensitive to the costs and benefits associated with an international human rights approach, and proceed accordingly.