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## **WOMEN'S HEALTH RIGHTS IN CANADIAN-ANGLOPHONE AFRICAN HUMAN RIGHTS ENGAGEMENTS: NORMATIVITY, INDIGENEITY AND THE SPACES BEYOND THE NORM LIFE CYCLE**

IREHOBHUDE O. IYIOHA\*

### **Abstract**

Canada has a demonstrated interest in sustaining a human rights agenda in Anglophone Africa. While this commitment is of common knowledge, its nature and achievements, as well as associated complications and possibilities have not been subjected to as much critical analysis as these issues deserve. This paper takes a prelude step towards a rigorous assessment of human rights engagements between Canada and the Anglophone African region within the specific field of women's health. It conducts a summative appraisal of the nature of norms and a dialectic enquiry into the origin of norms within the context of Finnemore and Sikkink's theory of the norm life cycle. Arguing that the characteristic diversity of norms complicates Canada's human rights engagements, the article reaches a three-fold conclusion that (1) proposes a binary micro-versus macro-level analysis of internalization of human rights norms; (2) identifies 'normative diversity' – a concept in formation – as a key constraint in the internalization of human rights norms as reflected in norm-based differences, indigeneity, and other metrics of diversity; and (3) highlights the importance of reciprocity as between Canada and Anglophone African states – one in which Canada also benefits from applying lessons learned from its ground operations in the region towards improving its questionable human rights record in the overall healthcare and reproductive health needs of its own Aboriginal women and peoples.

**1.A COMMITMENT TO HUMAN RIGHTS** and to the advancement of human rights within and beyond Canada is a key aspect of Canada's domestic and foreign policy. Anchored on the values of inclusive and accountable governance, peaceful pluralism and respect for diversity, and the protection of human rights (including respect for the rights of women and refugees), Canada's human rights agenda reflects a commitment to the principles of democracy, diversity, and universalism of rights underpinning major human rights conventions and to the advancement

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of these ideals through technical and strategic initiatives in target nations. In a statement of renewed commitment issued in 2016 through its Ministry of Foreign Affairs, Canada iterated its dedication to furthering the human rights agenda around the world, including in Anglophone Africa.<sup>1</sup> It also backed this commitment with a \$15 million funding pledge to this cause.<sup>2</sup>

While Canada's interest in maintaining a human rights agenda, and supporting countries in Anglophone Africa to do the same is decades old and of common knowledge, the nature, attainments, problems, and prospects of its engagements with the countries of Anglophone Africa in this regard have not been subjected to nearly as much critical analysis as these issues deserve. This is regrettable since a rigorous assessment and understanding of human rights engagements between Canada and the Anglophone African region has implications for law, policy, and practice in Canada, as well as in the countries of Anglophone Africa. The assessment of these engagements requires an analysis of a range of data, literature, and legal authorities, amongst others. In the specific context of this analysis of Canadian-Anglophone Africa human rights engagements in the field of women's health, the exercise calls for an appraisal of the nature of norms, a dialectic enquiry into the origin of norms within the context of Finnemore and Sikkink's theory of the norm life cycle, and an evaluation of the characteristic diversity of norms. As part of the discussion of the diversity of norms and its relevance to furthering a *reciprocal* human rights engagement between Canada and the Anglophone African region – *i.e.* one in which Canada also benefits experientially from Anglophone Africa – I engage with the concept of indigeneity, drawing parallels (at the level of socio-economic needs, rather than at a political level) between the particularities of the cultural traditions, aspirations, and needs of

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<sup>1</sup> Government of Canada, Global Affairs Canada, "Reinvigorating Canada's Human Rights Agenda" *Canada.ca* (17 May 2016), online: <[www.canada.ca/en/global-affairs/news/2016/05/reinvigorating-canada-s-human-rights-agenda.html](http://www.canada.ca/en/global-affairs/news/2016/05/reinvigorating-canada-s-human-rights-agenda.html)>.

<sup>2</sup> *Ibid.*

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Canada's many indigenous peoples and those of the (admittedly even more diverse) peoples of Anglophone Africa. The ideas arising from my discussion of normativity and indigeneity also contribute, it is hoped, to an understanding of any theoretical limits in the theory of the norm life cycle: In the context of the theory of the norm life cycle, I frame these ideas as both theoretical gaps and tangible spaces beyond the reach of a generalized theory of the operations of norms in the world's communities. Due to the nature of the subject of Canadian-Anglophone African human rights engagements – and of the corresponding analysis of paradigms about norms, North-South relations, and state sovereignty – the analysis of the human rights engagements between Canada and the Anglophone African region most definitely has implications for specific academic theories, and in the specific case of this article, for Finnemore and Sikkink's constructivist theory of the norm life cycle.

## II. NORM LIFE CYCLE

A norm may be defined as a “standard of appropriate behavior for actors with a given identity”.<sup>3</sup> There are different types or categories of norms recognized in the literature. These include regulative norms, which are designed to order and constrain behavior; constitutive norms, which target the creation of “new actors, interests, or categories of action”; and evaluative or prescriptive norms, which prescribe rules or standards of acceptable behavior. Norms codified as laws that aspire to change established patterns of behavior, often cast as penal legislation, are regulative in nature, even while inherently or implicitly prescriptive in their edicts about proscribed conduct. By their nature, norms are inherently “intersubjective” and “evaluative” and set standards of right and wrong.

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<sup>3</sup> Martha Finnemore & Kathryn Sikkink, “International Norm Dynamics and Political Change” (1998) 52:4 Intl Organization 887.

Norms and their role and influence in the creation and implementation of human rights law regionally and globally have attracted critical analysis and profound debates in the fields of international relations and human rights law, and rightly so. Their defining role and pervasiveness in the overall legal and non-legal frameworks that govern people's lives are evidence of their importance to human rights discourse. In their work, "International Norm Dynamics and Political Change,"<sup>4</sup> Martha Finnemore and Kathryn Sikkink apply a strategic social constructivist theory to human rights law towards the development of a theory about the origin of norms, their mechanisms of influence, and conditions under which they are most influential in world politics. Through this expatiation, Finnemore and Sikkink develop the theory of the "Norm Life Cycle" – a theory that outlines the evolution of norms in a "patterned life cycle" aided by the agency of norm entrepreneurs who strategize logically in a process of "strategic social construction" to achieve change in human rights norms.

The norm life cycle is a three-staged process involving norm *emergence*, norm *cascade* and norm *internalization*. The first stage of the process – *norm emergence* – describes the role of actors, identified as 'norm entrepreneurs', who engage in convincing or persuading "a critical mass of states" known as "norm leaders" to embrace or accept new norms. After the first stage and prior to the second stage (norm cascade) is a "threshold" or "tipping" point, which marks the adoption of the norm by a "critical mass of relevant state actors" and who thereby become norm leaders.<sup>5</sup> At the second stage – *norm cascade*, norm leaders engage in persuading other states to follow the new norm (or become "norm followers"). The authors argue that a number of factors are responsible for a cascade of norms through state populations: pressure to *conform*, interest in

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<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid* at 895, 901.

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enhancing international *legitimation*, and state leaders' desire to boost their *self-esteem*.<sup>6</sup> At the third and final stage of the norm life cycle, *norm internalization* takes place. At this stage, norms are accepted and internalized, acquiring a "taken-for-granted" nature, and the substance of each of these norms is no longer a subject for extensive public debate.<sup>7</sup>

According to Finnemore and Sikkink, one of the two elements common to the successful creation of most emergent norms is the organizational platform<sup>8</sup> from which norm entrepreneurs act to advance or promote new norms. Norm entrepreneurs may create an organizational platform, such as a Non-Governmental Organization (NGO), for the specific purpose of promoting the norm or they may join or operate from existing international organizations that have a number of norms and agendas as their organizational objectives.<sup>9</sup> Often, norm entrepreneurs and their organizations need the backing of state actors through the latter's espousal of their norms and the "socialization" of their human rights agenda.<sup>10</sup>

The process of *socialization* (or international socialization) leads to a norm cascade.<sup>11</sup> This involves strategic efforts by norm leaders to persuade norm-breakers to become norm followers. According to the authors, "the primary mechanism for promoting norm cascades is an active process of international socialization intended to induce norm breakers to become norm followers."<sup>12</sup> In international politics, this process involves "diplomatic praise or censure, either

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<sup>6</sup> *Ibid* at 895. These three reasons may simply be captured as "legitimation, conformity, and esteem" – and the result of "a cumulative effect of many countries in a region adopting new norms" analogous to "peer pressure" (*ibid* at 902-03).

<sup>7</sup> *Ibid*.

<sup>8</sup> The other element is the 'norm entrepreneur.' *Ibid* at 896.

<sup>9</sup> *Ibid* at 899.

<sup>10</sup> *Ibid* at 900.

<sup>11</sup> The authors suggest that this occurrence may be passively described as a "contagion", in which international and transnational norm influences for achieving normative change rise in importance beyond domestic politics. *Ibid* at 902.

<sup>12</sup> *Ibid* at 902.

bilateral or multilateral, which is reinforced by material sanctions and incentives”.<sup>13</sup> The concept of socialization benefits from the interest of states – it does so by developing a political persona, or identity, in the international community of which states are members. Socialization therefore implies that the summative impact of many countries in a region adopting new norms is tantamount to peer pressure among countries, the three incentives for this process of legitimation, conformity, and esteem.<sup>14</sup> In the case of legitimation, Finnemore and Sikkink argue that domestic legitimation promotes local compliance with government laws and rules and, because a state cannot rule by force alone, it needs international legitimation because it “reflects back on a government’s domestic basis of legitimation and consent and thus ultimately on its ability to stay in power.”<sup>15</sup>

A final point of relevance for this analysis is Finnemore and Sikkink’s hypothesis regarding which norms will be influential in world politics and under what conditions they will be influential. Applying the theories of *legitimation*, *prominence*, and *intrinsic characteristics* of a norm, they hypothesize that states would embrace new norms during periods of domestic turmoil and of insecurity about their international reputation and status (legitimation); accept norms because of the quality of the norm or the quality of the states promoting the norm (prominence); and readily embrace norms with certain intrinsic qualities, either due to the formulation of the norm in terms of its clarity and specificity or due to the substance of the norm and its content or the issues it addresses (intrinsic characteristics).<sup>16</sup> In terms of the form of a norm, norms making universalistic claims of a common good for all peoples are said to have a

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<sup>13</sup> Finnemore & Sikkink, *supra* note 3.

<sup>14</sup> *Ibid* at 903, citing Ramirez, Soysal, & Shanahan (1997).

<sup>15</sup> *Ibid* at 903.

<sup>16</sup> *Ibid* at 906.

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greater potential for acceptance and internalization than those that are localized.<sup>17</sup> On the substance of norms and the impact on internalization, the authors field different postulations. One view by John Boli and George Thomas posit that there are five principles at the core of world cultures which, when they undergird norms, hasten those norms along the path to internalization. These are: “universalism, individualism, voluntaristic authority, rational progress, and world citizenship.”<sup>18</sup>

With some specificity, the authors outline Margaret Keck and Kathryn Sikkink's theory of which norms matter. Accordingly, norms that involve “(1) bodily integrity and prevention of bodily harm for vulnerable or “innocent” groups, especially when a short causal chain exists between cause and effect, and (2) legal equality of opportunity,” are said to be particularly effective transnationally and cross-culturally.<sup>19</sup> While arguing that norm entrepreneurs must address facets of belief systems or worldviews that “transcend a specific cultural or political context”, the authors assert that:

Although notions of bodily harm are culturally interpreted...they also resonate with basic ideas of human dignity common to most cultures. The notion that norms about equality and protecting vulnerable groups from bodily harm will have more transnational resonance than other norms explains why norm campaigns around slavery and women's suffrage succeeded while a similar, powerful temperance campaign organized by many of the same people failed to reach a critical mass or tipping point.<sup>20</sup>

Finnemore and Sikkink's contention above is reinforced by, and resonates quite clearly when certain norms with a universal quality attracting recognition cross-culturally are in issue,

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<sup>17</sup> *Ibid* at 907.

<sup>18</sup> *Ibid*, citing John Boli and George Thomas (1998).

<sup>19</sup> *Ibid* at 907.

<sup>20</sup> *Ibid*.



such as the unjust taking of life and the appropriation of another's property.<sup>21</sup> However, as is further discussed below, this hypothesis does not adequately account for the failure of some norms (possessing a universal quality) to take root even after domestication in large populations, such as is common in Asia, Latin America and Africa. If arguments about difference, diversity, and relativism are given any weight, then the causative accounts of this failure of necessity totter back to the rejection by certain cultures of notions of universal truths, especially when they are contrary to belief systems specific to the cultural or political context.

### **III. CANADIAN-ANGLOPHONE AFRICAN HUMAN RIGHTS ENGAGEMENTS: WOMEN'S HEALTH RIGHTS IN INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS**

Global, as well as regional, human rights norms that address the status of women are designed to end the historical and persistent discrimination against women. Through the declaration and entrenchment in international and regional agreements of basic norms regarding entitlements to health and equality, freedom from discrimination and violence, and basic entitlements to social, economic, cultural, and political rights, human rights law aspires towards the eradication of a long and taxing history of gender inequality. In the specific area of women's overall health, and more specifically their reproductive and sexual health, global and regional human rights norms affirm women's rights to substantive equality, non-discrimination, life, liberty and security of the person, and to reproductive and sexual healthcare. The *International Covenant on Economic, Social and Cultural Rights* (ICESCR)<sup>22</sup> recognizes the right to gender equality, as well as a general right to the enjoyment of the "[h]ighest attainable standard of physical and mental

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<sup>21</sup> See Irehobhude O Iyioha, "Beyond the Act: Women's Health and the Impact of Laws on Violence against Women" in RN Nwabueze, *Essays on Nigerian Law*, Lexis Nexis [Forthcoming in 2017] [Iyioha, "Beyond the Act"].

<sup>22</sup> 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

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health". The *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW)<sup>23</sup> recognizes women's equality with men and the need for the special protection of women during pregnancy.

Furthermore, the *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa* ('Protocol to the African Charter'), which also focuses on equality and non-discrimination, mandates African states to "protect the reproductive rights of women" – in order to this, states must authorize "medical abortion in cases of sexual assault, rape, incest, and where continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus".<sup>24</sup> Charles Ngwena has notes that the "juridical aim" of the Protocol to the African Charter is substantive equality, non-discrimination, and human dignity for women and girls achieved within an agenda that both protects human rights and espouses their fulfillment at local levels.<sup>25</sup>

General Comment No. 2, adopted by the African Commission at its 55<sup>th</sup> Ordinary Session in Angola in 2014, interprets Article 14 of the Protocol on the African Charter as enjoining states to make provisions for women's right to health, particularly sexual and reproductive health, which includes the right to fertility control, contraception, to determine the number and spacing of children, the right to prenatal, postnatal and delivery services, as well as to medical abortion in enumerated cases.<sup>26</sup> It is noteworthy that Article 14 of the Protocol on the African Charter advances women's reproductive health rights beyond the level of protection provided for at the global level. For example, although the International Conference on Population and

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<sup>23</sup> 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

<sup>24</sup> African Union, 2nd Sess, 11 July 2003, art 14(2)(c).

<sup>25</sup> Charles G Ngwena, Eunice Brookman-Amissah & Patty Skuster, "Human Rights Advances in Women's Reproductive Health in Africa" (2015) 129:2 Intl J Gynecology & Obstetrics 184 [Ngwena 2015].

<sup>26</sup> The African Commission on Human and Peoples' Rights, *Final Communiqué of the 55<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights*, (Luanda, Angola: ACHPR, 2014), online: <[www.achpr.org/files/sessions/55th/info/communique55/achpr\\_fico\\_2014\\_eng.pdf](http://www.achpr.org/files/sessions/55th/info/communique55/achpr_fico_2014_eng.pdf)>.

Development (ICPD)<sup>27</sup> recognized that unsafe abortions contribute to high rates of maternal mortality, ICPD left the question of the legality or otherwise of abortion to be determined at the national levels, according to national legislative processes as a “political compromise”, to win the support of countries that would otherwise have opposed the achievement of global consensus on eradicating unsafe and unlawful abortion.<sup>28</sup>

In spite of these international and regional protections for women’s health rights, data on the impact of human rights in the African region, as well as in Canada’s indigenous communities, raise questions about the prospects and limits of human rights law. Before addressing the data and literature on the impact or otherwise of the relevant aspects of human rights law, it is important to first examine the relevant human-rights inspired initiatives of the Canadian government in the Anglophone African region.

#### **A. CANADA’S DOMESTIC AND FOREIGN HUMAN RIGHTS AGENDA**

Canada’s commitment to human rights in the area of women’s health, especially regarding women’s right to health, equality, reproductive healthcare, and bodily integrity, and security of the person, is evident in the efforts, initiatives, and projects undertaken and established at country-levels in many countries in Anglophone Africa. As an expression of its commitment to the advancement of human rights at home and abroad, the Government of Canada, through its Ministry of Global Affairs, created the Office of Human Rights, Freedoms and Inclusion (OHRFI) in 2016 with a \$15 million dollar budget.<sup>29</sup> Following the creation of this office, Canadian heads of mission (ambassadors, high commissioners, and consuls general), including

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<sup>27</sup> ICPD was held in Cairo, Egypt from 5–13 September 1994 and produced a *Program of Action*, which is the steering document for the United Nations Population Fund (UNFPA).

<sup>28</sup> Charles G Ngwena, “Protocol to the African Charter on the Rights of Women: Implications for Access to Abortion at the Regional Level” (2010) 110 Intl J Gynecology & Obstetrics 163 at 164 [Ngwena 2010].

<sup>29</sup> Government of Canada, Global Affairs Canada, “Canada Reaffirms Commitment to Human Rights” *Government of Canada* (15 February 2016), online: <[news.gc.ca/web/article-en.do?nid=1034259](http://news.gc.ca/web/article-en.do?nid=1034259)>.

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the country's representatives to the United Nations, were directed to make the advancement of "human rights, freedoms and inclusion" a key part of their objectives. The OHRFI is expected to collaborate with Canadian and international members of civil society, religious groups, academics, and non-governmental organizations towards realizing the objectives of the OHRFI. The OHRFI will also carry out its objectives at home through three divisions: the divisions of Human Rights and Indigenous Affairs, Inclusion and Religious Freedom, and Democracy.

As noted at the outset, Canada's approach to advancing and protecting human rights involves a commitment to three values: inclusive and accountable governance, peaceful pluralism and respect for diversity, and human rights (including the rights of women and refugees).<sup>30</sup> The country's human rights commitments can be traced back to the central role it played in the drafting of the Universal Declaration of Human Rights between 1947 and 1948. Canada is a party to seven key international human rights conventions, including the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*. The country is invested in the promotion of gender equality, the protection of the human rights of women and girls, and the empowerment of females. These are the key values that are central to the Canadian identity as a norm entrepreneur and norm leader.

To this end – *i.e.* the protection of human rights under international law and the United Nations Charter, Canada adopts four strategic pathways:

1. Direct support for the development of democratic institutions and practices;
2. International development assistance;
3. Legal and administrative training;
4. The provision of technical assistance.<sup>31</sup>

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<sup>30</sup> Government of Canada, Global Affairs Canada, *Canada's Approach to Advancing Human Rights*, <[international.gc.ca/world-monde/world\\_issues-enjeux-mondiaux/advancing\\_rights-promouvoir\\_droits.aspx?lang=eng](http://international.gc.ca/world-monde/world_issues-enjeux-mondiaux/advancing_rights-promouvoir_droits.aspx?lang=eng)>.

<sup>31</sup> *Ibid.*

The discussion that follows outlines some health and social initiatives for women, girls, and adolescents based on the above approaches.

#### **IV. CANADA AS A NORM ENTREPRENEUR: REPRODUCTIVE AND SEXUAL HEALTH AND OTHER WOMEN'S HEALTH-RELATED INITIATIVES IN ANGLOPHONE AFRICA**

Canada has demonstrated significant commitment to the healthcare needs of women and children in Anglophone Africa, and thus to their lived enjoyment of their health rights. Canada has demonstrated its human rights' engagements in the region largely in the four strategic formats outlined above. While some projects are entirely located and operated in specific countries, others are multi-country initiatives, involving simultaneous operations which are ongoing in both Canada and target countries. There are other multi-state projects that are regional in nature and spread across some of the countries of Anglophone Africa, as well as in countries in Asia and Francophone Africa.

In the broad area of healthcare, Canada has provided some assistance with routine polio immunization, support for newborn and maternal health,<sup>32</sup> health improvement through support for frontline workers, strengthening regional disease surveillance, supporting state and local health governance through evidence-based healthcare initiatives, establishing an AIDS-responsive Fund and other tactical projects to prevent mother-to-child HIV transmission,<sup>33</sup> and

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<sup>32</sup> See for example, the *Catalyzing Change for Maternal, Newborn and Child Health through Innovation Program* (Project Number M013802-001), which began in March 14, 2014 and ends on December 31, 2020. The program aims to improve primary healthcare in the areas of maternal, newborn and child health by addressing critical problems that plague health systems through "implementation research". In order to achieve this goal, the program provides support for two Health Policy and Research Organizations (HPROs) and about twenty Implementation Research Teams (IRTs), with each allied with one of the two HPROs. The program is operative in nine countries in sub-Saharan Africa falling within both Anglophone and Francophone countries, including: Ethiopia, Ghana, Tanzania, Mozambique, Mali, Senegal, South Sudan, Malawi and Nigeria.

<sup>33</sup> The *Enhancing the prevention of Mother-to-Child Transmission of HIV Project*, also branded as INSPIRE (Integration and Scaling up Prevention of Mother-to-Child transmission through Implementation Research), is

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initiatives to support livelihood and improved nutrition.<sup>34</sup> In the more specific area of women's reproductive health, Canada's engagements with some countries in Anglophone Africa in the furtherance of health-related human rights has taken several notable formats, including through initiatives to prevent early and forced marriage, reduce maternal mortality, provide contraceptives and safe-motherhood kits, eradicate gender-based violence, and protect adolescent health and rights, while supporting the legal empowerment of women in the context of HIV-AIDS epidemic.<sup>35</sup> Of course, the interest of this article is on initiatives taken to further reproductive and sexual health rights (as human rights), as well as on women's physical and psychological well-being generally. The next several sub-sections provide an overview of some specific Canadian initiatives in and beyond Anglophone Africa addressing: (1) the lived experience of women's reproductive and sexual health rights and the eradication of gender-based violence; and (2) the protection of adolescent health rights and prevention of early and forced marriage.

#### **A. CANADA'S INSTITUTIONAL FUNDING FOR UNFPA INITIATIVES ON REPRODUCTIVE HEALTHCARE<sup>36</sup>**

As one of the more significant donors to the United Nations Population Fund (UNFPA),<sup>37</sup> Canada is invested in the improvement of women's reproductive health. With \$15.6 million committed towards the UNFPA's annual 2016 budget, Canada has renewed its institutional funding support for the UNFPA, and this funding is geared towards the implementation of the

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targeted at supporting the elimination of mother-to-child transmission of HIV through continued support in countries with a high prevalence of HIV/AIDS, including Zimbabwe, Malawi and Nigeria.

<sup>34</sup> See generally Government of Canada, Global Affairs Canada, *Nigeria – International Development Projects*, online: <[www.acdi-cida.gc.ca/cidaweb/cpo.nsf/fWebCSAZEn?ReadForm&idx=00&CC=NG#countryonly](http://www.acdi-cida.gc.ca/cidaweb/cpo.nsf/fWebCSAZEn?ReadForm&idx=00&CC=NG#countryonly)>.

<sup>35</sup> *Ibid.*

<sup>36</sup> Government of Canada, Global Affairs Canada, *Canada's support for United Nations Population Fund to help women and girls*, online: <[news.gc.ca/web/article-en.do?nid=1038469](http://news.gc.ca/web/article-en.do?nid=1038469)>.

<sup>37</sup> Formerly the United Nations Fund for Population Activities, the UNFPA is a key multilateral partner of Canada and the primary United Nations organization with a mandate to address population, demographics and reproductive health matters, including maternal health issues.

2030 Sustainable Development Goals.<sup>38</sup> This support will go towards addressing such key issues as improved access to sexual and reproductive healthcare, framed around the values of gender equality and human rights standards for equitable healthcare access and qualitative healthcare; the advancement of policies and programs prioritizing adolescent health; accelerated advancement in the empowerment of women and girls; the furtherance of sexual and reproductive health services and rights; and use of data to establish national policies and international development initiatives to fix the gaps in reproductive and sexual healthcare.<sup>39</sup>

As part of this commitment, Canada has allotted \$5 million towards the provision of contraceptive supplies in the developing world (including in parts of Anglophone Africa) where up to 225 million women require contraceptives but are unable to obtain them due to their limited access to contraception, denial of such access on cultural or religious grounds, the prejudice of healthcare providers', and/or gender-based barriers.<sup>40</sup> Canada also pledged a \$50-million contribution to UNFPA for the training of midwives and other "front-line" healthcare practitioners in South Sudan – an important commitment considering that South Sudan has one of the highest maternal mortality rates in the world.<sup>41</sup>

Of particular importance to the discussion here is the fact that, in supporting reproductive health services and designing development policies, Canada must consider "population dynamics" in the target country. More analysis of this point, central to some key aspects of this article, follows below.

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<sup>38</sup> Government of Canada, *Address by Minister Bibeau to a Press Conference on Funding for the United Nations Population Fund*, online: <[news.gc.ca/web/article-en.do?nid=1038899](http://news.gc.ca/web/article-en.do?nid=1038899)>.

<sup>39</sup> *Ibid.*

<sup>40</sup> Michelle Zilio, "Ottawa gives new funding for international reproductive health program" *Globe and Mail* (7 March 2016), online: <[www.theglobeandmail.com/news/politics/ottawa-gives-new-funding-for-international-reproductive-health-program/article29049945/](http://www.theglobeandmail.com/news/politics/ottawa-gives-new-funding-for-international-reproductive-health-program/article29049945/)>.

<sup>41</sup> Government of Canada, *Address by Minister Bibeau to a Press Conference on Funding for the United Nations Population Fund*, online: <[news.gc.ca/web/article-en.do?nid=1038899](http://news.gc.ca/web/article-en.do?nid=1038899)>.

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**B. THE PROTECTING ADOLESCENT HEALTH AND RIGHTS INITIATIVE<sup>42</sup>**

The Protecting Adolescent Health and Rights Project<sup>43</sup> targets health education and improved health outcomes for adolescents and, by extension, upholds the human rights to health of this demographic. Through this project, adolescents aged 13-18 in 71 communities in Nigeria and Senegal are exposed to a diverse range of programs to address and counter the risks of HIV/AIDS, sexually transmitted infections, early or unwanted pregnancies, and violence and sexual abuse.<sup>44</sup> Through directed initiatives, the project expects to achieve specific health-related objectives, including increased healthy behavioral practices among adolescents that reduce risks of contracting HIV/AIDS or other sexually transmitted infections (STIs) and preventing early or unwanted pregnancies, as well as the enhanced protection of children and adolescents from violence and sexual abuse.<sup>45</sup>

Since the inception of the project on January 23, 2013, a number of outcomes have been realized. As reported by Global Affairs Canada, the results achieved as of March 2016, in Nigeria are reported as follows:

[L]ocal partner staff have recruited and trained 620 peer educators (412 female and 208 male) with the objective of increasing healthy behaviors among youth that will reduce threats from HIV or STIs. 620 Adolescent Health Groups (AHGs) (412 female and 208 male) with 7,094 participants (5,050 female and 2,044 male) have been formed. There is a high level of attendance and engagement in discussions on reproductive health rights.

130 Youth Action Groups have been established, have appointed leaders and are meeting regularly. These groups have carried out 32 outreach activities in the form of dramas and street rallies. 30 advocacy visits have been undertaken to religious leaders, school authorities, community and traditional leaders on issues of HIV and AIDS and promotion

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<sup>42</sup> Project number S065541-001 ending April 30, 2017. This project is also located in Senegal, with 50% of resources directed to operations in that country.

<sup>43</sup> Government of Canada, Global Affairs Canada, *Project profile – Protecting Adolescent Health and Rights*, online: <[w05.international.gc.ca/projectbrowser-banqueprojets/project-projet/details/s065541001](http://w05.international.gc.ca/projectbrowser-banqueprojets/project-projet/details/s065541001)>.

<sup>44</sup> Another aim, an educational objective, is to improve literacy and vocational skills among adolescents in the program.

<sup>45</sup> Government of Canada, Global Affairs Canada, *Project profile – Protecting Adolescent Health and Rights*..



of adolescent health and rights. 160 parent groups have been formed and have carried out 390 dialogue sessions. 80 out-of-school youth (56 female and 24 male) have been financially supported by community members or capital grants to start micro enterprises such as hair salons, kiosks and tailoring. Another 600 out-of-school youth (420 female and 180 male) have received vocational and economic empowerment training.<sup>46</sup>

As revealed by the above report, the relevant initiatives are often locally grounded, directed at relevant demographics, and small-scale.

### **C. ADVANCING ADOLESCENT RIGHTS: PREVENTING EARLY AND FORCED MARRIAGE<sup>47</sup>**

Canada's initiatives toward preventing early marriage – encompassing child and adolescent marriage and forced marriage – is designed to end the practice of early and forced marriages in the region.<sup>48</sup> The Preventing Child, Early and Forced Marriage Initiative is (more or less) specific to Nigeria. Target beneficiaries include young girls and boys who are currently married, separated, or divorced, and the objective is to strengthen the protection of child rights by delaying marriage and parenthood among this demographic.<sup>49</sup> Through collaborations with relevant key government ministries and civil society organizations (CSO), the initiative is directed at:

(1) Creating gender-sensitive, child-friendly spaces, including those specifically for girls, within selected schools and centers; (2) working with schools to improve equitable access and retention of children, especially for girls and boys who have missed their school for economic or social reasons; (3) working with primary health facilities to improve maternal, neonatal and child health services; (4) providing support for civil society organizations and forming coalitions to monitor the situation of child rights and encourage local action against violence, abuse and exploitation; and (5) organizing town hall meetings, roundtable discussions and leading advocacy to engage parents and

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<sup>46</sup> *Ibid.*

<sup>47</sup> Project number D001675-001, ending March 31, 2017.

<sup>48</sup> Government of Canada, Global Affairs Canada, *Project Profile – Preventing Child, Early and Forced Marriage*, online: <[w05.international.gc.ca/projectbrowser-banqueprojets/project-projet/details/d001675001](http://w05.international.gc.ca/projectbrowser-banqueprojets/project-projet/details/d001675001)>.

<sup>49</sup> *Ibid.*

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community members, especially traditional and religious leaders, to delay early marriage and onset of first pregnancy, and to support girls abused within and outside marriage.<sup>50</sup>

Beyond the goal of preventing and perhaps eradicating the incidence of early and forced marriage, a broader goal that can be achieved through this initiative is the advancement of gender equality through the empowerment of boys and girls through informational resources that can encourage “better and informed decision making”.<sup>51</sup> Therefore, the project is expected to equip young girls and boys with “increased and equitable capacity” to prevent and protect themselves, with the support of the family and community, from becoming victims of child, early, and/or forced marriage and parenthood. Of particular relevance, the initiative aims to strengthen laws and policies as well as other child protection systems (such as reporting mechanisms) to ensure the realization of gender equality and the prevention of early and forced marriages.<sup>52</sup>

A related project – multi-state in this case – is the Action for Adolescent Girls: Accelerating Action to End Child Marriage.<sup>53</sup> While located in a number of countries outside Anglophone Africa, Nigeria is the only country in Anglophone Africa where Canada (with the partnering organization, UNFPA) has initiated this project, and Nigeria has the highest allocation of resources towards the realization of the objectives of the project.<sup>54</sup> With the goal of advancing human rights and achieving legal and judicial development, this project aims to end the problem of child, early, and forced marriage through strengthening “evidence-based, girl-centered approaches”.<sup>55</sup> At the heart of this collaborative initiative is the goal of upholding the rights of adolescents, especially the most marginalized members of this group. This project represents one

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<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> Government of Canada, Global Affairs Canada, *Action for Adolescent Girls: Accelerating Action to End Child Marriage*, online: <[w05.international.gc.ca/projectbrowser-banqueprojets/project-projet/details/d002465001](http://w05.international.gc.ca/projectbrowser-banqueprojets/project-projet/details/d002465001)> [Global Affairs Canada, *Action for Adolescent Girls*]. See Project number CA-3-D0002465-001.

<sup>54</sup> This project is also ongoing in Sierra Leone and Niger, among other non-African nations.

<sup>55</sup> Global Affairs Canada, *Action for Adolescent Girls*, *supra* note 53.

of several approaches through which the UNFPA supports the efforts of the Canadian government towards ending child marriages. Through targeted investments aimed at the community-levels, the UNFPA and Canada have a shared goal of addressing the needs of thousands of girls who are either currently married or at risk of child and forced marriage. Working through “community-level girl groups”, the UNFPA expects to encourage social participation and leadership, the development of life skills, and facilitate literacy and access to health services for girls affected by early and forced marriage.

Some of the activities outlined for achieving the objectives of this project include assisting key national, regional, and local authorities to build evidence regarding the problem of child marriage and adolescent pregnancy and working with officials to support national strategies for eradicating child, early, and forced marriage and reducing teenage pregnancy.

#### **D. ENDING GENDER-BASED VIOLENCE**

Gender-based violence, and the severe health outcomes that are its corollary, is an endemic problem across the world, especially in Africa, parts of Asia, Latin America, and among the Aboriginal women of Canada. The statistics on violence against women are alarming: at least 1 in 3 women (or 35%) of the world’s women have experienced sexual violence by a person who is a non-partner, or physical and/or sexual violence by an intimate partner.<sup>56</sup> National studies reveal that a significant 70% of women have been victims of physical and/or sexual violence in their life-times.<sup>57</sup> The situation is no different with respect to Canada’s indigenous women and is in fact worse in many respects. Aboriginal women and girls 15 years and older experience

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<sup>56</sup> UN Women, *Facts and figures: Ending violence against women*, online: <[www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures#sthash.fbga58WT.dpuf](http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures#sthash.fbga58WT.dpuf)>. See also World Health Organization, *Violence against women: Intimate partner and sexual violence against women*, online: <[www.who.int/mediacentre/factsheets/fs239/en/](http://www.who.int/mediacentre/factsheets/fs239/en/)>.

<sup>57</sup> *Ibid.*

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violence at more than thrice the rate of non-Aboriginal women and are five times more likely to experience violence or disappear than their non-Aboriginal counterparts.<sup>58</sup>

Inequality in gender relations and the consequential discrimination against women underlie the problem of violence against women. Canada has also demonstrated a keen interest in human rights in Anglophone Africa through its efforts towards the eradication of gender-based violence in Ghana. As noted above, the promotion and protection of women's rights and the advancement of gender equality are at the core of Canada's foreign and domestic policies. Canada recognizes that violence against women violates women's human rights and constitutes an obstacle to equality and women's economic and social development.<sup>59</sup> Canada is working to end widespread gender discrimination against women in many communities in Ghana (including in that Anglophone African country's Northern regions), where "deeply entrenched traditions and customs" handed down through generations continue to act as obstacles towards the full realization of women's rights and equality.<sup>60</sup>

Many communities in Ghana, particularly in the Northern regions, experience widespread discrimination against women due to cultural norms that have been passed down through generations. To this end, Canada's Fund for Local Initiatives provides direct funding support to local non-governmental organizations such as the Maata-N-Tudu Association (MTA) in Northern Ghana, which is leading initiatives to eradicate gender-based violence. The MTA has launched a series of training sessions to reduce the incidence of child, early, and forced marriage and gender-based violence in Bimbagu, Gbingbalanchet, and Jimbale – three communities in the

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<sup>58</sup> Amnesty International, *No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence Against Indigenous Women in Canada* (London: Amnesty International, 2009) at 1, online: <[www.amnesty.ca/sites/amnesty/files/amr200122009en.pdf](http://www.amnesty.ca/sites/amnesty/files/amr200122009en.pdf)>. See also John Borrows, "Aboriginal and Treaty Rights and Violence against Women" (2013) 50:3 Osgoode Hall LJ 699 at 700.

<sup>59</sup> Government of Canada, Canada's International Gateway, *Canada – working to end Violence Against Women*, online: <[www.canadainternational.gc.ca/ci-ci/eyes\\_abroad-coupdoeil/vaw-vcf.aspx?lang=eng](http://www.canadainternational.gc.ca/ci-ci/eyes_abroad-coupdoeil/vaw-vcf.aspx?lang=eng)>.

<sup>60</sup> *Ibid.*

Northern Region of Ghana. Due to the underlying role of social and cultural norms in the incidence of gender-based violence and child and early marriage, the MTA targets socio-cultural norms with the goal of undoing social impediments and providing informational and educational resources to women and other community members about women's rights in order to end these vices.

Canada has also supported projects for the eradication of gender-based violence in South Africa, another Anglophone African country where the practice is prevalent. As in the case of Ghana, Canada's objective in South Africa is to contribute to ending physical, sexual, economic, and psychological forms of abuse that constitute gender-based violence. Anchoring its initiative on the need to challenge social norms that make rape and other forms of violence socially acceptable among many in South Africa, Canada, through its High Commission to South Africa, has partnered with a local organization to, among other things, produce an educational film that would expand dialogue on gender roles, social norms, and gender-based violence among youths, especially boys.

## **V. CANADIAN CIVIL SOCIETY ORGANIZATIONS AS HUMAN RIGHTS NORM ENTREPRENEURS**

In the recent past, Canadian Civil Society Organizations (CSOs) have undertaken initiatives that are largely or completely independent of governmental control or support. In the interest of being concise, I examine the efforts of just one Canadian CSO, The Equality Effect,<sup>61</sup> which uses an international network of human rights advocates, including healthcare workers, lawyers, judges, parliamentarians, teachers, community members, artists, and film makers to advocate and engage

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<sup>61</sup> The Equality Effect, online: <[theequalityeffect.org/](http://theequalityeffect.org/)>.

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with communities towards the eradication of social vices, such as gender-based violence that weakens health and social outcomes for women and girls.

Through its Customary Law Project, the organization seeks to develop better understandings of the relationship between customary law and women's rights as an important pathway to improving the equality rights of both women in Africa and Aboriginal women in Canada. Of particular importance, the organization's efforts in Kenya, Malawi, and Ghana, as well as in Canada (with respect to Aboriginal women) is premised on the notion that "[t]he development of improved *understandings* of women's rights in all these contexts involves refining the capacity to assess both the positive and negative potential of customary law".<sup>62</sup> More analysis of the organization's commitment to this notion is undertaken elsewhere in this article.

Notably, in 2010 the Director of Canadian Lawyers Abroad Project, Fiona Sampson (now founder and executive director of The Equality Effect), led the Marital Rape in Africa project<sup>63</sup> with the support of Canada's Department of Justice, the International Development Research Council (IDRC), a representative of the Fasken Martineau's Women's Networking Initiative,<sup>64</sup> and the Stephen Lewis Foundation, towards reforming equality discourses and the law in Kenya. The aim of the project was to support equality advocates in Africa who needed informational and strategic support with the development of substantive equality analyses. Through the Three to be Free Project, which targeted Kenya, Malawi, and Ghana, the team applied litigation, policy reform, and legal education towards "altering the status of women" for the realization of gender equality. Drawing on law reform initiatives around sexual assault in Canada in the 80s, which

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<sup>62</sup> The Equality Effect, *Projects*, online: <[theequalityeffect.org/projects-2/](http://theequalityeffect.org/projects-2/)> [emphasis added].

<sup>63</sup> Sally Armstrong, "Update on African and Canadian Women's Human Rights Project" *Fasken Martineau Women's Networking Initiative* (21 July 2010), online: <[www.fasken.com/files/Publication/a4ab4aaf-e25f-4f04-80cd-10d15a31b85a/Presentation/PublicationAttachment/59245880-5cfb-42fe-9c70-66355e14a9bc/Womens%20Networking%20Initiative%20July%2021%202010.pdf](http://www.fasken.com/files/Publication/a4ab4aaf-e25f-4f04-80cd-10d15a31b85a/Presentation/PublicationAttachment/59245880-5cfb-42fe-9c70-66355e14a9bc/Womens%20Networking%20Initiative%20July%2021%202010.pdf)>.

<sup>64</sup> Fasken Martineau is a notable Canadian and international law firm.

involved “rewriting the law, educating the judiciary and raising awareness with the public,” the women started what appears now to be a multi-year project for the eradication of social vices that impede women’s equality and worsen women’s health outcomes.

## **VI. ANGLOPHONE AFRICAN CIVIL SOCIETY ENGAGEMENTS IN CANADA**

While the research so far has not revealed any appreciable human rights engagements by Anglophone African countries and/or CSOs in Canada (at least not on anything close to the scale of Canada’s interventions in parts of Anglophone Africa), there is evidence of smaller scale engagements in Canada by CSOs founded by individuals originally from Anglophone Africa. These CSOs tend to be non-profit organizations (NPOs) and non-governmental organizations (NGOs) established in Canada that advocate for the rights of segments of Canadian society and whose leaders thereby take on the role of norm advocates. For example, efforts by NPOs and NGOs founded by Nigerian-Canadian and other Canadians of African descent are currently contributing towards the wellbeing of vulnerable women and children in Canada – a country where poverty and hunger among children remains a problem that is significant enough to make it to news headlines now and again. These CSOs have engaged in activities aimed at advancing the education of immigrant children in Canada through free English language and math tutoring; the eradication of HIV/AIDS through financial contributions to international bodies and organizations working with patients; and the empowerment of girls and women in Canada.<sup>65</sup> However, since these CSOs are neither based in, nor funded from, Anglophone Africa itself, it is unclear to what extent their activities in Canada count as a form of Anglophone African human rights engagement with Canada.

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<sup>65</sup> Some of these organizations include The Patricia Eromon Iyioha Foundation Fund (PEIF Fund) Inc., Ribbon Rouge, and the Whole Woman Network – organizations founded by Nigerian-Canadians.

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**VII. WOMEN'S HEALTH-RELATED HUMAN RIGHTS IN PRACTICE: EXPERIENTIAL EVIDENCE IN CANADA AND ANGLOPHONE AFRICA**

In spite of the global and regional commitments to the promotion and protection of women's health rights, the data on the impact of human rights in the African region indicates limited actual impact in some cases and an apathetic response to rights in others. For example, reproductive and sexual health rights are yet to be fully realized in Anglophone Africa. Africa (as well as Latin America) remains a geographical zone with some of the most restrictive abortion laws in the world.<sup>66</sup> Data from the World Health Organization reveals that unsafe abortion is responsible for 13% of global maternal mortality. While a staggering majority of these – about 95% – occur in low-resource countries, sub-Saharan (including Anglophone) Africa bears a disproportionate burden of mortality from unsafe abortions.<sup>67</sup> At a general level, the protection, implementation, and realization of women's human rights remain weak, especially in the area of women's reproductive and sexual healthcare. With the exception of a few states, including South Africa and Zambia, the primary model of abortion regulation across Anglophone Africa remains criminalization. Authorizations for the procedure, based on enumerated grounds related to the health and life of the mother and/or fetus, merely constitute exceptions to the operative criminal law.

Other health-related human rights challenges for women in Anglophone Africa include violence against women and the subjection of women to harmful cultural or traditional practices, such as female genital cutting and widowhood practices. Federal and state laws prohibiting these practices, which are based on the human rights commitments of many states, have not lived up to the expectations of the drafters in terms of creating a significant dent in the incidence of these

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<sup>66</sup> Charles G Ngwena, "State Obligations to Implement African Abortion Laws: Employing Human Rights in a Changing Legal Landscape" (2012) 119:2 Intl J Gynecology & Obstetrics 198 at 199 [Ngwena 2012].

<sup>67</sup> See also Ngwena 2010, *supra* note 28 at 164.



adverse practices.<sup>68</sup> Furthermore, while there is some evidence that human rights treaties, such as CEDAW, have had some impact (even if minimal) on women's rights,<sup>69</sup> other studies indicate that the impact is nominal, that the "internalization" of a treaty does not lead to improved human rights outcomes in all countries, and that the impact is experienced only in certain types of countries.<sup>70</sup> On this account, Posner contends that:

Understood in the best possible light, [human rights impact] studies suggest that a small number of treaty provisions may have improved a small number of human rights outcomes in a small number of countries by a small, possibly trivial amount...<sup>71</sup>

On violence against women, a Report by the Parliament of the Republic of South Africa asserts that "the presence of clear and detailed legislation" prohibiting violence against women "has not resulted in a substantial reduction in the incidences of violence against women".<sup>72</sup> This, according to the Report, is because "[l]egislation and policy cannot address the root causes of violence against women, and thus do not prevent violence against women from occurring".<sup>73</sup>

Finally, a similar wearisome trend in the data on women's health exists among Canada's Aboriginal population. Burdened by the absence of basic necessities, including proper housing and social amenities, and their poor access to health services (including reproductive health services), the state of health among Aboriginal women in Canada is generally deplorable. To compound this problem, the rate at which violence is directed against indigenous women in

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<sup>68</sup> Iyioha, "Beyond the Act", *supra* note 21. For a discussion on the criminal law's limits in this context, see also Ireh Iyioha, "Public Health, Cultural Norms, and the Criminal Law: An Inconvenient Union? A Case Study of Female Genital Cutting" (2012) *Med L* 31:3 451 [Iyioha, "Public Health"].

<sup>69</sup> Neil A Englehart & Melissa K Miller, "The CEDAW Effect: International Law's Impact on Women's Rights" (2014) 13:1 *J Hum Rts* 22.

<sup>70</sup> Eric A Posner, *The Twilight of Human Rights Law* (Oxford: Oxford University Press, 2014) at 77.

<sup>71</sup> *Ibid* at 78.

<sup>72</sup> Parliament of the Republic of South Africa, *Legislation Relating to Violence Against Women in South Africa and the Challenges Relating to its Implementation and Success* (Research Unit, 2013), online: <pmg-assets.s3-website-eu-west-1.amazonaws.com/130422legislation.pdf>.

<sup>73</sup> *Ibid*. The report also states that legislation and policy are poorly implemented resulting in poor service delivery to victims.

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Canada is extremely high, with indigenous women being five times more likely to disappear or be killed in comparison with women in the general population.<sup>74</sup> Indigenous women are beaten, sexually assaulted, and killed in alarming numbers.<sup>75</sup> Among Canada's Aboriginal youths, including girls, suicide rates are significantly high. The WHO notes that among Inuit youths in Canada, suicide rates rank among the highest in the world. The WHO places it at eleven times the national average.<sup>76</sup>

In its Fourth Session, the United Nations Permanent Forum on Indigenous Issues observed that:

Children born into indigenous families often live in remote areas where governments do not invest in basic social services. Consequently, indigenous youth and children have limited or no access to health care, quality education, justice and participation. They are at particular risk of not being registered at birth and of being denied identity documents.<sup>77</sup>

This is true of the world's indigenous peoples and will resonate, at least to the extent of social and economic deprivations, with the Twa households of Rwanda as much as it does with most of the Aboriginal peoples of Canada.

### VIII. NORMATIVITY, INDIGENEITY, AND DIFFERENCE

There is consensus on the fact that norms around women's rights are some of the most contentious with respect to their internalization. With regard to women's suffrage, Finnemore and Sikkink observe that "[i]nternational norms about women's rights often came into direct

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<sup>74</sup> Amnesty International, *No More Stolen Sisters: The need for a comprehensive response to discrimination and violence against Indigenous women in Canada* (London: Amnesty International, 2009) at 1. See also Manitoba, Aboriginal Justice Inquiry of Manitoba, *The Justice System and Aboriginal People: Report of the Aboriginal Justice Inquiry of Manitoba*, vol 1 (Winnipeg: Queen's Printer, 1991) at 475 -87. See John Borrows, "Aboriginal and Treaty Rights and Violence against Women" (2013) 50:3 Osgoode Hall LJ 699.

<sup>75</sup> Borrows, *ibid* at 700.

<sup>76</sup> WHO, *Health of Indigenous Peoples*, citing, Health Canada, First Nations and Inuit Health, *Facts on Suicide Rates*, online: <[www.who.int/mediacentre/factsheets/fs326/en/](http://www.who.int/mediacentre/factsheets/fs326/en/)>.

<sup>77</sup> United Nations Permanent Forum on Indigenous Issues, *Report of the Inter-Agency Support Group on Indigenous Issues on its 2004 session*, UNESCOR, 4th Sess, UN Doc E/C.19/2005/2 at Annex III (13).

competition with strongly held domestic norms.”<sup>78</sup> There is perhaps no other aspect of women’s rights in which the antipathy and “contestation”<sup>79</sup> encountered by norms on women’s rights is more pronounced than in the area of women’s reproductive and sexual health rights. Circumscribed by a bubble of moral viewpoints, as well as cultural, ethical, and religious beliefs, women’s reproductive and sexual health rights are constant battlegrounds of opinions and the imposition of rules. Against this background – *i.e.* the context of the role of value-based judgments on women’s rights – it is necessary to understand the ubiquitous impact of social norms on behavior,<sup>80</sup> especially as they affect or influence the internalization of human rights norms.

Norms – as standards of proper behavior for actors with a defined identity<sup>81</sup> – involve shared and value-based assessments of what is right and acceptable among the defined group of actors. Naturally, a breach of a norm elicits disapproval from members of the group as much as conformance attracts approbation.<sup>82</sup> Norms, as collective values or “shared beliefs, common practices, and mutual expectations among members of a group,”<sup>83</sup> span the diverse categories of social, cultural, and religious beliefs and behaviors. Thus, norms can create group identity. Identity is important to group members because it ignites a sense of dignity and represents an attribute of our humanity.<sup>84</sup> Of course, closely linked to dignity fostered by group identity is equality. As Yash Ghai has observed, “dignity is closely related to equality, [and] equality in turn depends on recognition by others, in the form of demands for the equal status of cultures and

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<sup>78</sup> Finnemore & Sikkink, *supra* note 3 at 894.

<sup>79</sup> *Ibid* at 897.

<sup>80</sup> *Ibid* at 894.

<sup>81</sup> *Ibid* at 891.

<sup>82</sup> *Ibid* at 892. See also Iyioha, “Beyond the Act”, *supra* note 21.

<sup>83</sup> Peter H Schuck, *The Limits of Law: Essays on Democratic Governance* (Boulder: Westview Press, 2000) at 434.

<sup>84</sup> Yash Ghai, “Ethnicity and Competing Notions of Rights” in Colin Harvey & Alex Schwartz, eds, *Rights in Divided Societies* (Portland: Hart Publishing, 2012) 51 at 56.

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gender".<sup>85</sup>

Collective values, which of course are constitutive of norms, are negotiated within the context of our membership of a cultural community. This places the "individual securely within a cultural context," even while implicitly underpinning the reality of social and cultural diversity.<sup>86</sup> While different groups may choose to identify themselves through a variety of labels – be it cultural, religious, or linguistic, or with labels that identify the groups as "minority", "nation", or "indigenous", a common characteristic running through the identification with labels is that they reflect a "set of claims" – whether that of cultural and social difference, "participation, representation, recognition of language, religion, education, land and autonomy".<sup>87</sup>

The centrality of norms to group identity and to members' sense of dignity, humanity, and equality begins to explain the "pervasive" influence of norms on human behavior, as well as on group or even societal cohesion. Whether or not norms become law, they remain powerful determinants of conduct. Even when norms exist outside law, they – as Peter Schuck explains – "support law by securing the felt moral duty to obey on which law's legitimacy ultimately rests, by supplying the substantive standards for many legal rules."<sup>88</sup> While the substantive content of a given human rights law may be "progressive", expanding the normative boundaries of behavior to new and largely internationally-espoused liberal norms, a successful and well internalized norm quite often reflects its society and the values by which citizens live.<sup>89</sup> With a focus on the influence of norms with a universal character, Finnemore and Sikkink acknowledge the significance of the substance of norms in their theory of the factors that aid norm internalization.

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<sup>85</sup> *Ibid.*

<sup>86</sup> Ghai, *supra* at 84.

<sup>87</sup> *Ibid* at 57.

<sup>88</sup> *Ibid* at 435.

<sup>89</sup> Iyioha, "Beyond the Act", *supra* note 21.

Even as they note that “new norms never enter a normative vacuum” but rather develop in a “highly contested normative space where they must compete with other norms and perceptions of interest,”<sup>90</sup> the authors pay less attention to the substantive impact of “normative diversity” in the processes of cascade and internalization of norms.

I use the term “normative diversity” to capture the differences and diversities in concepts of rights and appropriateness as between cultures and ethnicities. These differences are important because of the impact they have on how citizens embrace a new norm that has been accepted by their state leaders. As Sampford has observed, “[t]he values that individuals hold are vital in affecting the content of their actions, in creating relations of legitimate authority and in limiting the power of certain key actors.”<sup>91</sup> While Finnemore and Sikkink’s theory recognizes the impact of acceptance of an emerging norm by norm followers, the theory pays insufficient attention to the impact of dissonance between the substantive content of emerging norms accepted *by* state actors and the substance of existing (and often diverse) norms *within* the state. As I have argued elsewhere, congruence between values and the content of laws – whether or not based on human rights norms – “passed by a legitimate authority easily allows for broad-scale acceptance,” and the importance that individuals place on them are reflected in the nature of prescriptive norms as “conduct-shaping rules” that define and constrain “actions, behavior, and expected outcomes.”<sup>92</sup> Thus, differences between normative content of law and extant societal norms can be problematic for the full internalization of, and compliance with, emerging norms.<sup>93</sup>

Differences in cultural, religious, and social norms exist between and within Anglophone African states. The contestation between a new norm and alternative philosophies and behaviors

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<sup>90</sup> Finnemore & Sikkink, *supra* 3 at 897.

<sup>91</sup> Charles Sampford, *The Disorder of Law: A Critique of Legal Theory* (Oxford and New York: Basil Blackwell, 1989) at 227.

<sup>92</sup> Iyioha, “Beyond the Act”, *supra* note 21.

<sup>93</sup> *Ibid.*

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and the impact of this contestation on the extent of norm cascade and internalization finds expression, at least in part, in the universalism versus relativism debate.<sup>94</sup> In the context of the universalism-relativism debate, it manifests in the limitations and resistance encountered in the enforcement of state and federal legislation incorporating human rights law within states, in this case, in Anglophone Africa.<sup>95</sup> It manifests in the struggle between human rights and group norms: as the former seeks to be “color-blind,” and detach from cultural and religiously situated group norms that run counter to certain interests (in this context women's health), group norms are defined by these very characteristics (culture, religion, politics, language, etc) that are central to the identity and existence of groups.<sup>96</sup> Given the diversity of cultures in the countries of Anglophone Africa, the cultural relativism of human rights takes on a new form: “[R]elativism not of peoples and cultures across national boundaries, but of citizens within the same jurisdiction”.<sup>97</sup> The question we must answer then is how to transcend the cultural and other forms of difference that characterize group norms in order to reach consensus on a shared system of norms that reflect women's needs and women's interests as rights-possessing members of both a local and global society.

Normative diversity also has an impact on the success or failure of a supposedly internalized norm, even within a country (such as Canada) that is a renowned norm entrepreneur and world leader in the promotion of human rights law. While the true internalization of reproductive and sexual health rights, human rights to health, and social, economic, and cultural rights, may appear to be complete in Canada, limits to the actualization of these rights are still manifest and indeed take shape, once again, at group levels. As observed above, shared values,

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<sup>94</sup> See next paragraph where this is discussed.

<sup>95</sup> Iyioha, “Beyond the Act”, *supra* note 21. See also Iyioha, “Public Health”, *supra* note 68.

<sup>96</sup> Ghai, *supra* at 84.

<sup>97</sup> *Ibid* at 52.

beliefs, and aspirations are critical for group identity. The norms upheld by a cultural or religious group mediate the ways in which members deal with other groups, including the more dominant groups in society. Canada's indigenous peoples as collective groups are distinguished by their shared (though differentiable) identities, values, beliefs, cultures, practices, and aspirations. Thus, while indigenous peoples are uniquely defined by their political and pre-colonial histories (and are not to be confused with cultural communities in Anglophone Africa that have gained political freedom within the post-colonial states of which they are a part), the concept of indigeneity at the level of group dynamics within Canada invokes the same forms of identity, aspirations, and normative diversity as is inherent in communities of Anglophone Africa. Although the UN system has not adopted a definition of the term 'indigenous' because of the diversity of indigenous peoples all over the world, a "modern and inclusive understanding" of indigenous includes peoples who:

1. Identify themselves and are recognized and accepted by their community as indigenous;
2. Demonstrate historical continuity with pre-colonial and/or pre-settler societies;
3. Have strong links to territories and surrounding natural resources;
4. Have distinct social, economic or political systems;
5. Maintain distinct languages, cultures and beliefs;
6. Form non-dominant groups of society;
7. Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.<sup>98</sup>

Canada is a multicultural nation with a pluralistic system that recognizes Aboriginal rights and Aboriginal culture. Canada's Aboriginal peoples uphold diverse beliefs and spiritual traditions that reflect their history, culture, and identity as a people. Human rights law recognizes the right of Indigenous peoples worldwide towards self-determination, affirming that:

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions,

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<sup>98</sup> WHO, *Health of Indigenous Peoples*, *supra* note 76.

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procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.<sup>99</sup>

The right of self-determination is not isolated from the broader context of health and wellness for indigenous peoples. Indigenous culture, traditions, and spirituality play a significant role in enhancing the health and overall wellbeing of indigenous peoples, especially in the context of their history of oppression and displacement, and this is well acknowledged in the social-scientific literature on the subject.<sup>100</sup> Yet, despite their status as Indigenous peoples and their history of oppression and displacement, the overall social and economic status of Canada's Indigenous/Aboriginal peoples, particularly their state of health, is severely suboptimal in comparison to that of the general population.<sup>101</sup> The literature and data on the health of Aboriginals in Canada reveal striking differences between the average lifespan of indigenous peoples and that of other members of the Canadian population. There are also major differences between the reproductive health and wellness of indigenous women in Canada and of other Canadian women.

The often-unstated conclusion deducible from the data is that the general human rights commitments of Canada as a norm leader, and the specific commitments it has to its Indigenous peoples, are not significantly reflected in the experiences of its Indigenous communities. The reasons for this deserve further research and academic attention. For the purposes of advancing the current research agenda of the conference and project that inspired this article, however, it is suggested that the *normative diversity* evident in Anglophone Africa and critical to both the successful internalization of norms and the effectiveness of human rights initiatives in the region

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<sup>99</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295, art 34.

<sup>100</sup> John Fleming & Robert J Ledogar, "Resilience and Indigenous Spirituality: A Literature Review" (2008) 6:2 *Pimatisiwin* 47.

<sup>101</sup> WHO, *Health of indigenous peoples*, *supra* note 76.



and the failure of the Canadian state to improve the lives of its own Indigenous peoples, is an important factor to consider. Simply put, it is important to understand the extent to which Canada's failure or inability to fully understand, accommodate, and negotiate the contexts of particularity, difference, and uniqueness of the indigenous social and cultural order is responsible for its inability to implement effective health initiatives and health policies that benefit its own indigenous peoples and communities. If this is true, it also raises the question to what extent are the same factors – as captured by the overall idea of normative diversity – also relevant to understanding the limited impact and slow internalization of some human rights norms in communities in which Canada has established health-related initiatives in Anglophone Africa? In what ways are these factors discounted in Finnemore and Sikkink's theorization of the norm life cycle? It is to this question that the article now turns.

## **IX. NORM LIFE CYCLE: THE SPACES BEYOND**

The foregoing discussion has examined Canadian-Anglophone African health-related human rights engagements, the broader impact of Canadian initiatives in this regard, and the experiential gaps in the conception and execution of these interventions. I apply the largely preliminary evidence gathered thus far from practice and theory to make three fundamental deductions that are themselves only prelude and open to further exploration and development. These deductions are grouped under two heads: (1) Macro- versus Micro-Level Norm Internalization and the Limits of International Human Rights Law; and (2) Normative Diversity and Indigeneity: Cross-Cultural Lessons.

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**A. MACRO- VERSUS MICRO-LEVEL NORM INTERNALIZATION AND THE LIMITS OF INTERNATIONAL HUMAN RIGHTS LAW**

Finnemore and Sikkink's strategic social constructivist theory of the norm life cycle elucidates the role of norm entrepreneurs in the dispersal and entrenchment of new human rights norms. This theory captures the process of large-scale acceptance by the West of norms regarding women's rights to reproductive and sexual healthcare, to bodily security, and freedom from violence. The theory can also be applied towards explaining the acceptance of these norms by *states* of Anglophone African origin and their ratification of treaties bearing such norms. It can also be utilized to account for the role of Canada as a norm entrepreneur and norm leader seeking to gain, through its interventions (usually in the Global South), true adherents of reproductive and sexual health norms and not just statist norm followers (who are so denoted by virtue of their formal ratification of a treaty or agreement).

Yet, while there is ample evidence of Finnemore and Sikkink's account of the cascade and internalization of human rights norms at the state-level – or as herein described, the “Macro Level” – there is less evidence of actual internalization and broad-based impact that is the upshot of internalization at the community or citizen level – what is herein described as the “Micro Level”. Simply put, there is much doubt about whether the theory itself duly explores the very significant impact of norm internalization at the micro-levels (where they are most relevant) on the overall process of the internalization of an emerging norm (*i.e.* when internalization is defined as involving the true acceptance of, and compliance with, a new norm). While Obiora Okafor has noted that the theory captures a norm-entrepreneur-led process in which human rights norms can proceed from “the margins of international socio-political life to the warm(er)

embrace of the *leaders/peoples* of ...a country/society,”<sup>102</sup> the theory falls short of accounting for and explaining dissonance between a state’s formal embrace of an emerging norm in the interests of “legitimation, conformity and esteem” and the citizenry’s socio-legal abjuration of the given norm as exemplified in non-compliance or poor legislative outcomes. From the problems of violence against women and the incidence of female genital cutting in Anglophone Africa to the continuously appalling state of the health of indigenous women and peoples in Canada, there are ample examples of the disparity between macro- and micro-level norm internalization. Indeed, the very need for a norm leader or entrepreneur (such as Canada) to take laps around particular Anglophone African states that may have already adopted an emergent norm, and supposedly (according to the theory) internalized human rights norms, has much to do with, and is indeed explained by, the failure of internalization at the micro-level.

This reality draws attention to the fact that in spite of the strength of the theory’s hypothesis that norms of influence are those with certain intrinsic substantive characteristics, examples of which include those norms addressing the “prevention of bodily harm for vulnerable or innocent groups [and] aspects of belief systems or life worlds that transcend a specific cultural or political context,” the theory’s inattention to the very significant role that the particularity and distinctiveness of cultures play in modifying or rejecting an emergent norm waters down its strength.<sup>103</sup> Finne Moore and Sikkink acknowledge that “notions of bodily harm are culturally interpreted” but argue that they “resonate with basic ideas of human dignity common to most cultures.” This hypothesis, however, must be made within the limiting constructs around notions of harm. It is in the very nature of normative diversity, based on differing notions of

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<sup>102</sup> Obiora C Okafor, “Baxian TREMF Anxieties and Patterns of Norm Entrepreneurship in Canadian-Nigerian Human Rights Engagements Between 1999 and 2011: A Theoretical Overview” (2016) 24 *African Yearbook of International Law* (forthcoming) [emphasis added].

<sup>103</sup> Especially as regards the internalization of internationally and otherwise widely accepted norms in Anglophone Africa.

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appropriateness and of right and wrong, that the supposed universalism of human rights finds its greatest opposition. Thus, a theory of the origins, dispersal, and entrenchment of norms must account more robustly for the factors that create ideational spaces in the theory as much as it accounts for the feasibility, at a general macro-level, of the theory. Communities defined by ethnic and related cultural differences where the delivery of human-rights inspired interventions is too often frustrated by value-based disagreements with emergent norms, represent the spaces – theoretical and actual – situated beyond the reach of the concept of the norm life cycle.

### **B. NORMATIVE DIVERSITY AND INDIGENEITY: CROSS-CULTURAL LESSONS**

In considering areas of Canadian and Anglophone African human rights engagement, it might be helpful to look beyond the seemingly limited nature of direct reciprocal engagements between Anglophone Africa and Canada to find indirect points of reference for the purpose of knowledge transfer. For example, what lessons can Canada transplant into its dealings with the indigenous communities in its own territory from the already available experiential evidence from Anglophone Africa, where divergences between notions of right and wrong as well as cultural and group rights and needs significantly limit the impact of (Canada's) human rights interventions?

As discussed above, the alternative notion of cultural relativism which, rather than existing between states or systems, exists within a nation state, brings to mind the need for norm entrepreneurs to study and be educated more deeply about the populations where they deliver human rights interventions. This is important because the divergence between human rights norms and other cultural norms is not a matter of mere “philosophical or political debates,” but rather a subject with practical implications for the achievement of “some degree of order,

stability and mutual respect.”<sup>104</sup> As peoples with unique identities and preferences, histories, and traditions, the needs of communities and the ways in which these needs should be met differ from place to place. In meeting the needs of different communities, attention must be paid to “population dynamics” and characteristics, even while the norm entrepreneur advances a human rights framework defined in universal terms. Human rights initiatives, when packaged with particular attention to these dynamics, may be better framed to account for factors that can limit their acceptance and long term effectiveness.

Assumptions about the “cultural and ethnic homogeneity” of peoples fail, especially in the Global South where communities are often deeply differentiated by culture, ethnicity, tradition, religion, and language, and do a disservice to effective human rights engagements with those societies. The identity of communities – within both Anglophone Africa and Canada’s indigenous peoples – whether underpinned by ethnicity or other normative labels that bind a group, make important demands. As Yash Ghai has noted in the context of ethnicity, the political claims made “vary from a constitutional or legal recognition of aspects of culture..., through special measures to improve social and economic conditions, to inclusion through representation, and state support for religion or culture.”<sup>105</sup> A continued denial of these claims – for example in the area of healthcare needs and other socio-economic needs that have a significant impact on the health of Aboriginal peoples – can cause a “progression from modest to the more substantial demands, including a fundamental re-design of the state or even secession.”<sup>106</sup> It can also lead to demands for the recognition of the right to self-determination under international human rights law through concrete constitutional actions taken by the ruling political class. Yash Ghai also observes that such claims are “increasingly” founded and rationalized by reference to

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<sup>104</sup> Ghai, *supra* at 84.

<sup>105</sup> *Ibid* at 55.

<sup>106</sup> *Ibid*.

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international human rights norms.<sup>107</sup> The importance of such claims to nation-states, and the necessity for fairness and continued cohesion with indigenous peoples, undergirds the need for a norm entrepreneur and world leader in human rights (such as Canada) to learn from its historical experiences (including its successes and failures) in intervening in Anglophone Africa.

**X. CONCLUSION: QUESTIONS FOR FURTHER RESEARCH**

The foregoing analysis tapers to the following deductions: first, Canadian human rights engagements in Anglophone Africa in the area of women's health (including women's reproductive and sexual health) whether conducted by the Canadian state or civil society organizations, tend to be micro-level efforts aimed at the full-scale internalization of human rights norms; second, they are/can be significantly constrained by normative diversities in the target regions and therefore must be conducted with recognition of "population dynamics" as reflected in norm-based diversities, indigeneity, and other areas of difference; third, as Anglophone African states benefit from Canada's role in the region as a human rights norm leader, Canada can also benefit from applying lessons learned from its ground operations in the region towards improving its questionable human rights record in meeting the healthcare and reproductive health needs of its own Aboriginal women and peoples.

To this extent, further research can address the following:

1. How does indigeneity/ethnicity/normative diversity affect the large-scale internalization of rights within the state or at the micro-level?
2. To what extent are internal and inter-state diversities and the different rates of local responses (in terms of the acceptance of, and compliance with, new and emerging human

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<sup>107</sup> *Ibid.*

rights norms) taken into consideration by norm entrepreneurs in their human rights efforts in Anglophone Africa?

3. To what extent are non-accommodation, non-negotiation, and lack of engagement with the particularities, difference, and uniqueness of indigenous social and cultural orders responsible for the inability of the Canadian state, as a human rights norm leader, to implement effective health initiatives and health policies for its indigenous peoples?
4. To what extent are the above factors – as captured by the overall idea of normative diversity – relevant to understanding the limited impact and slow internalization of some human rights norms in communities where Canada has established health-related initiatives in Anglophone Africa?
5. In what ways are these factors discounted in Finnemore and Sikkink’s theorization of the norm life cycle – thereby creating theoretical and empirical spaces that do not account for the very substantive implications of micro-level compliance for norm internalization?

While these issues are explored in this article in a prelusive way, they are ripe for fuller exploration in the near future.