State Conformity with International Human Rights Norms: Evidence from Ghana

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ABSTRACT

State conformity with international human right norms requires the internalization of international norms by both state and non-state actors. States comply with international human rights treaties when state-level practices are consistent with international obligations, but conform to the treaties’ norms when both state-level and non-state level practices are consistent with the treaty’s requirements. International human rights treaties generally obligate state parties to conform state and non-state level actions, institutions and laws with the treaty. The treaties however appear not to have envisaged domestic barriers to their internalization, such as non-state level norms that have shaped attitudes for centuries but are inconsistent with international norms and are not easily removed by the methods proposed by the treaties. Assuming the willingness of state parties to conform to international human rights norms, this paper confronts non-state level barriers to state conformity with international human rights law. The paper examines three approaches of state conformity with international human rights to determine whether they can help conform Ghana’s non-state level norms on disability to the norms of the Convention on the Rights of Persons with Disabilities (CRPD).

Keywords: International, Human Rights, Treaties, Disability Ghana, conformity

INTRODUCTION

The focus of this paper is international human rights law as distinct from International law, and state conformity with international human rights norms as distinct from state compliance with international human rights treaties. The major distinguishing feature of international human rights regime is its enforcement, because unlike other international laws, international human rights treaties are generally not self-enforcing. Governments have little or no interest in enforcing them post-ratification, and are hardly coerced into enforcement by internal or external forces. Also, a state complies with international human rights treaties when state practices are consistent with the treaty obligations but conforms with international human rights norms when both state-level and non-state level practices are consistent with the international norms.

The international human rights treaties actually expect states parties to conform to the treaties, as evidenced in the treaties. For instance, three of the nine international human rights treaties: the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the CRPD (these were selected because they have the highest number of state ratifications will be analyzed along with the CRPD in this paper) require state parties to change negative domestic customs and stigma constituting barriers to the enjoyment of particular human rights. CEDAW obligates state parties to take legislative and other appropriate measures ‘to modify or abolish existing … customs and practices which constitute discrimination against women,’ and ‘modify the social and cultural patterns
of conduct ... to eliminate .... prejudices and customary and all other practices ... based on ... stereotyped roles for men and women.’ The CRC obligates state parties to ‘take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.’ State parties to the CRPD are required ‘to modify or abolish existing ... customs and practices that constitute discrimination against persons with disabilities,’ specifically ‘combat[ing] stereotypes, prejudices and harmful practices relating to persons with disabilities...’ The trend in these international human rights treaties is towards requiring state parties to additionally change non-state level norms and to make them consistent with the treaties’ norms. This would produce state conformity with treaty norms.

Three methods by which state can achieve conformity with international human rights norms are: This paper will examine these three methods and apply them to the situation to disability rights in Ghana to determine if they would help improve the respect, recognition and fulfillment of disability rights in Ghana by both state and non-state actors. To this end, section one of this paper comprises the present introduction and the methodology to be used in this paper. Section two of this paper presents an in-depth case study of disability rights in Ghana; including, Ghanaian cultural perspectives of disability and its effect on the attitudes of both state and non-state actors. Section three will examine three approaches of state conformity with international human rights norms and apply them to the findings in section two to determine whether they can help achieve Ghana’s conformity with the norms of the CRPD, if not, what can and should be done by Ghana to achieve conformity with the CRPD, and would this solution have enough traction in other sectors of human rights. This section would be followed by the conclusion which would summarize the analysis undertaken in this paper.

**METHODOLOGY**

This paper investigates how state parties to international human rights treaties can bring domestic non-state norms into conformity with international norms. The investigation takes a qualitative approach to the influence of non-state norms on state conformity with international human rights norms. This approach will also be applied to verify three approaches to determine whether they achieve state conformity with international human rights norms.

**SECTION TWO: DISABILITY RIGHTS IN GHANA**

**Ghana’s Statutory Compliance with the CRPD**

Ghana was a colonized state in 1948 when the United Nations General Assembly (GA) proclaimed the Universal Declaration of Human Rights (Universal Declaration). However, since attaining independence in 1957, Ghana has received several international human rights laws into its municipal laws.

In the area of disability rights, following the 1975 GA Declaration on Rights of Disabled Persons, the 1979 and 1992 Constitution of Ghana provided for the rights of PWDs. The 1992 Constitution particularly entrenched the rights of Persons with Disabilities (PWD) borrowing its provisions almost entirely from the 1975 GA Declaration. In 2006, Ghana enacted the Persons with Disabilities Act, Act 715. This was the same year the GA adopted the CRPD. Ghana has since signed and ratified the CRPD. Additionally Ghana’s1992 Constitution and Children’s Act, 1998 provide for the treatment of Children with Disabilities (CWDs).

**Positive Policies and Initiatives**

Ghana has proven her ability to ‘harness her economic and social potential’ to resolve social issues. ‘Ghana has almost halved poverty rates;’ is within reach of meeting the ‘Millennium Development Goal for access to improved water sources;’ and has improved basic school enrollment reaching an enrollment and gender parity rates of 84.1% and 1.02 respectively. These successes have been achieved through government policies such as the Free Compulsory Universal Basic Education (FCUBE) Policy, the School Feeding Programme, and the Livelihood Empowerment Against Poverty Programme (LEAP).

In the specific area of disability rights, the early missionaries commenced the education of CWDs in the 1930s, and after attaining independence in 1957, the post-colonial government continued this work. In 1958, the report of an Expert Committee on Medical Rehabilitation to the World Health Organisation emphasized the importance of rehabilitation in enabling PWDs participate in society. Following this report and subsequent United Nations’ attention to disability issues in the 1960s, Ghana’s government adopted certain practices and policies that provided opportunities for rehabilitation of PWDs. And the establishment of various rehabilitation centers and Special Education Schools. Today, with the shift in
focus from special education to inclusive education, the Special Education Division (SpED) of the Ghana Education Service (GES) is making great strides in implementing Ghana’s Policy of Inclusive Education with the help of UNICEF. Furthermore, Ghanaian PWDs are allocated 2% of the District Assemblies Common Fund (DACF), constituting 7.5% of Ghana’s total annual revenue, intended to minimize poverty among them and enhance their social image through the attainment of dignified labor. The National Council on Persons with Disability (NCPD) has issued Guidelines for the disbursement and management of this fund guaranteeing access to the fund by PWDs.

Challenges in Enforcing Disability Rights

The superstructure of legal and policy regimes demonstrates Ghana’s state-level compliance with the CRPD but this has not advanced non-state level protection of disability rights. Attitudes towards PWDs in Ghana are still informed by cultural beliefs about disability. Although such beliefs vary in Ghana they generally show in the negative labelling of disability and affect attitudes towards PWDs. They determine whether a PWD dies or lives, the political or social position she can occupy and how the PWD can feel about himself or herself (personhood.) We consider cultural beliefs about disability in three regions in Ghana and how they shape attitudes. Among Ashantis of central Ghana, the cultural belief is that babies born with disabilities are an evil sign for the community from the gods, threatening the very survival of the community. Parents must have offended the gods to bring forth a CWD. Babies with intellectual disabilities are believed to come from rivers and are labelled ‘Nsuoba’ literally; ‘child of the river.’ Such babies were returned to the river, to go back to where they came from, or ‘to go to their own kind.’ Babies with physical ‘deformities’ such as six fingers, were killed at birth (Munyi 2012.) Persons with physical disabilities are labelled ‘nea wadidem’ literally; ‘the one who has a physical deformity.’ This label signifies ‘an imperfect or incomplete person.’ Based on this belief, adults with physical ‘deformities’ could neither become chiefs nor appear before them.

Among northerners babies born with disabilities were also killed because they were considered to pose a threat to parents’ prosperity. The common understanding of the ‘problem’ among northern communities is that such babies were actually evil spirits sent to impoverish the parents. This understanding stems from the fact that the parents would have to spend all their wealth nursing their CWDs to health. (This understanding has now been extended to cover children, born during a period of family crises.) Babies born with disabilities (or complex medical conditions) are labelled ‘spirit children;’ ‘Kinkirigo’ (language in Kassena Nankana district) and their birth signifies the emergence of an evil force in the family necessitating their death or abandonment. In January 2013, Ghana’s internationally acclaimed investigative journalist uncovered the active pursuit of the killing of “spirit children” through soothsayers in communities in northern Ghana. These practices of soothsayers have persisted as non-state (non-state) norms because of strong cultural beliefs about disabilities. Following the publication some ethnic-group leaders in the Upper-East Region banned the killing of babies born with disabilities in April 2013. Although this a small step judging from the fact that there are dozens of other ethnic groups in the north whose leaders have made no such commitments, it is particularly significant because it involved non-state actors with a shared non-state understanding of disabilities in children (chiefs and soothsayers) regulating themselves to achieve practices that are consistent with the CRPDs norms.

Among Ewes the cultural belief is that a person with mental disability is a fool. Such persons are therefore labelled ‘Asovi’ meaning ‘a fool or an idiot (Avoke 2002.) As a result of this perception, a PWD is subjected to treatments that affect his personhood. For instance, among Ewe-Anlos of South-eastern Ghana, certain feelings do not fall into the broad categories of the five senses such as they call “seselelame” literally; “feel-feel-at-flesh-inside.” This kind of sentiment emanates from participating in certain cultural activities limited to people sharing the intersubjective meaning of that activity. For instance the calling out of drinking names of an Ewe-Anlo awakens his personhood in ways that defy categorization using the five senses. The denial of a drinking name to a PWD on the basis of his disability is blow on his personhood, making him feel ‘less than.’ Being denied the pleasure of that recognition from his community when colleagues are accorded it, is an example of not being allowed to participate fully in the activities of the community. However, the people sharing the intersubjective understanding of drinking names also share the communal cultural belief about disability which influences their attitude toward the PWD and cannot be forced by state laws to give a drinking name to a PWD. Even if they are, the name may lose its significance. Cultural beliefs about disability shape state and non-state level attitudes towards PWDs. We can consider exclusion from non-level activities (community life)
and state-level activities (accessibility to public places and services) as two examples of how cultural beliefs about disability shape both state and non-state level attitudes about disability. Operating at the non-state level, stigmatization is the single most difficult barrier to PWDs participating in community life. Its effects include the situation where parents refuse to have CWDs as playmates for their ‘normal’ children and parents of CWDs hide them from the community. The cultural perception that the birth of a child with disability is the parent’s punishment for offending a god, leads some parents to stop their ‘healthy’ children from playing with CWDs, least the ‘punishment’ is transferred from the “unhealthy” child to their ‘healthy’ children. Consequently, parents of CWDs hide them from the community instead of seeking help for them. Baffoe (2013) narrates the response of a parent of a child with Intellectual disability who was a participant in his survey:

“when my child was born with this illness (Down’s syndrome), everybody told me that my family may have done something wrong for the gods to send me this child. I never brought him outside the house. The only time I bring him out of the room to the open compound is when everyone in the neighborhood has gone to the farm...”

For PWDs, cultural beliefs about disability prevent them from living regular lives in their communities. There is a Ghanaian cultural requirement that before someone marries, a non-state check is conducted of the prospective partner to determine if there are any issues of mental illnesses or other forms of disability in that proposed partner’s family. Where there are, the marriage is discouraged, least the disability is introduced into the ‘healthy’ family. A PWD’s chance of marriage is therefore severely hampered. In 2012, Ghana enacted the Mental Health Act of Ghana. The law was intended to “promote a culturally appropriate ... mental health care that will involve both the public and the private sectors.” Two years after the enactment of this legislation the Chief Psychiatrist of the Accra Psychiatric Hospital, Dr. Akwasi Osei, still complained that when mentally ill patients are treated and sent home, their families and communities do not want to accept them back because of the cultural perception that ‘once a person has been mentally ill before, he or she still retained some mental illness no matter how well-recovered he or she may be.’

Attitudes about public places and services in Ghana equally reflect the cultural beliefs about disability. We consider accessibility to public places and provision of education. In the area of accessibility, the CRPD requires state parties to ensure to PWDs access to inter alia, buildings, roads, transportation and other indoor and outdoor facilities on equal basis with others, to enable them live independently and participate fully in all aspects of life. Ghana’s Constitution provides for equal access to public places for PWDs and Ghana’s PWD Act directly obligates the owner or occupier of a public place to provide appropriate facilities for disability access to them. In 2007, the Millennium Development Authority (Ghana), began constructing the George Walker Bush Highway in Ghana. During the construction, the Ghana Federation of the Disabled (GFD), was informed by the designer of the highway that overpasses and pelican crosses were available for use by pedestrians. The overpasses were however constructed in such a way that they were inaccessible to PWDs. Thus whereas able-bodied persons would be able to cross the highway safely by using either the overpasses or the pelican crossings, PWDs who are the more vulnerable of the two groups, would be limited to the pelican crossings as the only medium for traversing the highway. Secondly, the pelican crossings are so far apart from each other that the PWDs have the additional burden of walking long distances just to be able to cross the highway from one side to the other. This bad situation was worsened by the fact that most of the stops for commercial vehicles (the usual means of transportation of PWDs) on the highway are far away from the pelican crossings. Thus, when a PWD alights from a commercial vehicle but needs to traverse the road to reach her destination, she must walk a further distance to reach a pelican crossing, cross the road before continuing her journey. For these reasons the GFD issued a writ of summons at the High Court, Accra (Human Rights Division) seeking, inter alia, an order compelling the defendants to provide facilities to make the overpasses accessible to PWDs traversing the Highway in compliance with Article 17 of the 1992 Constitution (non-discrimination clause) and Act 715. What is particularly interesting about the case is the absence of disability access to the Human Rights courtroom. Thus the representative of the GFD in the case who is mobility-impaired usually struggles up the stairs to the third floor where the Court is located.

The absence of disability access is not only a barrier to justice (as in the above account of the GFD case), but is also a barrier to education of PWDs. Baffoe (2013) narrates the observations of a visually impaired student of the University of Ghana (Ghana’s premier public university.)
Teachers in elementary public inclusive education remain prejudiced against CWDs due to negative cultural beliefs about disability. The CRPD provides that PWDs should be guaranteed the right to inclusive education at all levels, regardless of age, without discrimination and on the basis of equal opportunity. Until recently, CWDs in Ghana were generally not educated. The change begun in 1962 when Ghana’s Education laws mandated inclusive education of children with moderate disabilities in regular schools. Currently, the Ghanaian Constitution, the PWD Act of Ghana and the additional Policy of Inclusive Education collectively guarantee the right to inclusive education of CWDs according to certain guiding principles. Yet, teachers of children with stigmatized diseases feel that such children do not need to be educated beyond the elementary level and an overwhelming number of the regular teachers are unwilling to teach CWDs inclusively; considering themselves ‘mentally unprepared’ to teach CWDs. In the face of clear legislation that CWDs have right to education, attitudes of teachers influenced by cultural beliefs about disability suggest the contrary. For these reasons CWDs complete the cycle of education ill-equipped to participate in society, which already does not expect their participation. Students who undergo specialized education graduate with “non-functional” diplomas because society is unwilling to employ them due to their disabilities.

The examples above demonstrate the influence of cultural beliefs (non-state level norms) about disability on state-level and non-state level attitudes towards PWDs in Ghana. These norms have become a barrier to Ghana’s conformity to the CRPD. This leads to the obvious question; whether Ghana can change these non-state norms and become conformed to the CRPD using the prevailing approaches of state conformity.

The above-explored disability rights violations in Ghana, occur although Ghana has a human rights respecting government, has ratified the CRPD, entrenched constitutional provisions guaranteeing the rights of PWDs and enacted statutes protecting the rights of PWDs. Under the CRPD, Ghana is obligated to take all appropriate measures to eliminate disability-based discrimination by any person, organization or private enterprise. Ghana has already taken appropriate constitutional, legislative and administrative measures proscribing discrimination against PWDs but these have not advanced the elimination of discrimination against PWDs sustained through non-state level norms. Ghana is therefore not conformed to the CRPD’s norms. To bring Ghana into conformity with the CRPD, both state level and non-state level practices should protect disability rights. The issue is whether or not these three approaches of state conformity are the appropriate tools for achieving Ghana’s conformity with the CRPD.

SECTION THREE: APPROACHES OF STATE CONFORMITY

This section examines Professor Harold Hongju Koh’s transnational legal process, Professors Goodman and Jinks’ acculturation and Professors Thomas Risse and Kathryn Sikkink’s five-phase spiral model. Selection of these approaches is based on their processes of norm diffusion and internalization. They will be examined to determine if their approaches of how international human rights norms diffuse domestically can take international human rights norms to Ghana’s non-state level actors and bring the state into conformity with the CRPD’s norms.

According to Koh, transnational actors internalize transnational law through repeated interaction with the transnational rules, leading states into compliance with the rules (including human rights treaties.) Koh’s approach would be applicable to the three international human rights treaties chosen for examination: The CEDAW, The CRC and the CRPD. These treaties require states to incorporate international human rights norms into their domestic legal systems through ‘all appropriate means’ such as those identified by Koh: executive action; legislative and judicial decisions. The problem with this process is that Koh’s analogy, falls short of providing for the post state-level internalization stage. Specifically, how, the international norms, after percolating into domestic laws, are further diffused from state-level to the non-state level to effect change in the domestic cultural beliefs which are the underlying causes of state violations of international human rights norms. This is the stage in most African countries where implementation of international human rights laws is challenged by cultural barriers. Ghana’s Children’s Act provides a good example: after Ghana ratified the CRC in 1990, the country quickly guaranteed children’s rights under the 1992 Constitution and enacted the Children’s Act by virtually adopting the British Children’s Act. To date the Ghanaian version

“All the roads on this campus have open gutters beside them. There are no pavements by the roadside so it is very difficult for those of us that are blind to walk safely around the campus. Another difficulty I have is the stairs to climb to some of the lecture halls that are on the second and third floors. There is no lift (elevator) in the building so sometimes I get friends to carry me upstairs but this is difficult. When I don’t get any people to carry me upstairs to the lecture hall, I don’t go to class. It is as if the university is only for able-bodied persons.”

(of the “British” Children’s Act) is yet to achieve meaningful change in the lives of Ghanaian children. During consultations by the Constitution Review Commission of Ghana in 2011, majority of the submissions on ‘children’ questioned the basis of having a concept of ‘child rights’ in the Ghanaian setting. These show that the international norm of child rights may have percolated to, and been internalized at the state-level resulting in the constitutional and legislative provisions, but after 20 years, It was yet to percolate to the non-state level for non-state actors whose cultural beliefs did not include ‘child rights’ to internalize it. Professor Koh’s norm percolation approach therefore does not achieve the non-state level change required for state conformity to international human rights norms.

Goodman and Jinks’ acculturation approach states that when states identify with a reference group (institutions and other states), the reference group exerts pressure on them to assimilate (through a range of socialization processes) which induces behavioral change resulting in conformity to the rules (including international human rights treaties.) Although Goodman and Jinks’ approach describes how government officials are acculturated through state membership of the reference group and in turn influence national level legal and policy outcomes, they fail to additionally describe how this influence leads states to change non-state level norms. This means that the same critique of Koh’s transnational legal process holds for Goodman and Jinks’ acculturation approach. Non-state level practices within the state may therefore continue to be inconsistent with state-level commitments to the international treaty. For instance, CEDAW requires state parties to modify traditional practices violating women’s rights. According to Goodman and Jinks’ acculturation approach, once a CEDAW state party, through treaty-membership pressure enacts domestic legislation protecting women’s rights like other state parties, that state is in isomorphism with those other state parties and therefore is acculturated, even though the law may not modify domestic cultural practices as intended by CEDAW. Goodman and Jinks admit that their acculturation approach results in incomplete internalization of international human rights laws and in a reaction paper to a critique by Professor Roda Mushkat, they re-emphasize that acculturative forces do not necessarily increase respect for international human rights norms.

Risse and Sikkink five-phase spiral model claims that governments of human rights violating states could be pressurized by the international community into adopting human rights-respecting norms and institutionalizing these norms to the extent that the norms become part of the domestic legal system through their five-phase spiral model. According to Risse and Sikkink, the boomerang pattern used by transnational advocacy networks can be used against governments of human rights violating states get them to act consistently with the human rights treaties in order to achieve the rule of law. Like Koh, and Goodman and Jinks, Risse and Sikkink’s limitation of the target-of-influence to state level actors; governments of human rights violating states leaves out other targets-of-influence such as non-state level actors, necessary for achieving state conformity. Consequently, although the approach show how to diffuse international norms to state actors they do not additionally show how to diffuse the norms to reach the level of non-state actors that enforce non-state level norms accounting for state non-conformity to international human rights norms. The professors’ reference to Fearon’s (1997) argument that people follow norms because they ‘want others to think well of them’ may not work to extend their target of influence group to include non-state actors. This is because within their sphere of operation, non-state actors are already well regarded, commanding a lot of authority and respect among their people, so they are not pressurized by the thinking that “good people do X” to abandon negative human rights practices and internalize the legitimated ones. Thus socialisation of state actors is insufficient to generate the change in non-state norms required for state conformity with international human rights norms.

To achieve state conformity with international human rights norms, it is not enough for the above approaches to produce state-level compliance with international human rights norms. They should additionally generate non-state level compliance with the international human rights norms. This is particularly relevant to disability rights in Ghana which, as shown above, are violated through non-state norms. Ghana therefore, cannot be conformed to the CRPD through Risse and Sikkink’s five-phase “spiral model”, Koh’s transnational legal process or Goodman and Jinks’ acculturation approach alone. There should be an additional process to change negative non-state norms.

Mechanisms to Achieve Conformity with The CRPD

The prevailing approaches address state-level compliance with the CRPD. However to achieve state conformity to its norms, the CRPD additionally
requires non-state level compliance. This paper submits a strategy for achieving the additional non-state level compliance, which, together with the prevailing approaches will bring states into conformity with the CRPD; changing intersubjective meanings. “Intersubjective meanings are concepts, arguments, beliefs and judgments that cannot be attributed to individuals; rather they are the shared property of groups of human beings,” taking their source from the “rules that constitute social practices.” An example is cultural beliefs. As identified in Part 2, cultural beliefs about disability influence attitudes towards PWDs. Where the cultural belief about disability is negative, attitudes towards PWDs is negative (and vice versa.) Cultural beliefs are communal. To change cultural beliefs one must first discover what they are, and then use approaches that are meaningful to the community to change them. In a given society, they can be discovered by “allowing the meanings to reveal themselves through intersubjective discourse” (Simmons 2000.) For instance the intersubjective (communal) meaning of intellectual disability among Ewe-Anlos, can be identified through discourse among Ewe-Anlos who share the communal meaning of disability. Where this is done, and the intersubjective meaning is found to be negative and influencing negative attitudes towards PWDs, that community’s intersubjective meaning of disability must be the target of change. Approaches to change the community’s meaning of disability should build on values and understandings the community can identify with. A change in the community’s understanding of disability will help change the non-state level norm on disability. Applying this to state conformity to human rights treaties, in order to bring non-state level norms about a human rights issue into consistency with international norms, a state party must discover the intersubjective meaning of that issue and then take targeted measures that build on the community’s intersubjective meanings of disability, to bring their meanings into consistency with international human rights norms.

Changing Intersubjective Understandings

Article 19 of the CRPD provides for the inclusion of PWDs in communities. States parties are obligated to take measures to facilitate the enjoyment of the right of PWDs to live in the community. Communities may be forced to permit PWDs to be physically present (resident) and use communal facilities and services such as the community’s public transport. Members of the communities may however prevent PWDs from taking part in communal activities such as funeral rites, rites of passage or shaking the hand of a chief. This, in the Ghanaian context, isolates a PWD from his community. Such communal activities may not be easily regulated by governments. Non-state actors are the fake-keepers to these non-state norms. These non-state actors: chiefs, soothsayers and community opinion leaders (among others), are the custodians of the community’s values and understandings of situations. They can form, sustain and enforce intersubjective understandings of disability. Measures for changing negative intersubjective understanding of disability should therefore include incentivizing such non-state actors to adopt favorable attitudes towards PWDs in their communities and community-specific regulations to facilitate the transition. Non-state actors should be incentivized psychologically and financially to abandon negative intersubjective meanings of disability. For instance, village soothsayers already command enormous respect and authority within communities in which they operate in Ghana. When a soothsayer interprets the birth of a CWD as the emergence of an evil force in a family, his interpretation is hardly contested in his community. When the same soothsayer says declares that a CWD can now be a productive citizen, so parents should seek medical attention for him, the soothsayer’s interpretation goes further and is more credible to members of his community than embarking on televised education against violations of disability rights. To incentivize village soothsayers to have a psychological change about disability, success stories should be planted in the communities to generate a positive attitude towards PWDs. Planting success stories within the communities for non-state actors to see is the role that states must play under Article 19 of the CRPD and is a process of norm diffusion. When the state provides “in-home, residential and other community support services” for the PWD the PWD will be in the position to be a ‘good, useful and happy’ member of the community. When soothsayers for instance, witness for themselves how CWDs attend school independently (using assistive devices and supportive services), participate in state-funded inclusive education and hold a job after graduation, it would be easier for them to involve PWDs in community activities.

Secondly, since some non-state actors benefit financially from the enforcement of the negative non-state norms (for instance, soothsayers are paid to kill CWDs) their pre-existing authoritative influence should be tapped into gainful employment by the state. They can be employed to use their influence as soothsayers for instance, to advise community
members to seek medical assistance for their CWDs (instead of killing them) and to enroll them in schools instead of hiding them from the public. They can more effectively influence people who share their negative intersubjective understanding of disability into respecting disability rights. Additionally, the state should facilitate the making of regulations specific to the intersubjective understandings of the non-state actors and targeted at discouraging violations of disability rights. The community-level rules should be formulated by the non-state actors themselves but the process should be facilitated by the state so that they are at once consistent with the state’s human rights obligations and reflect an understanding of the existing and projected intersubjective meanings of disability. This step is particularly relevant for the following reasons: first, because non-state norms often operate in rural communities that are immediately out of reach of state law enforcement agencies and in the domain of the non-state actors; and second, because when the non-state actors identify with the rule – making process, it engenders a sense of ownership of the rules among them thereby facilitating enforcement.

In conclusion, incentivizing non-state actors and adopting community specific regulations on disability can help change negative intersubjective understandings of disability and bring Ghana’s non-state level norms into conformity with the CRPD.

**Difference between Changing Intersubjective Understandings and the Three Approaches**

Changing negative non-state level norms is a process of social change. However, since the five-phase “spiral model” involves a process of socialisation, the transnational legal process involves social action by transnational actors and acculturation is a mechanism of social influence, why are these approaches not the appropriate tools for Ghana’s conformity to the CRPD? Three reasons are provided: the target actors of change, the source and nature of the pressure to change, and the one-size-fit all strategy of change.

First, the target actors of change in all three approaches are limited to state actors and do not include non-state actors. For Risse and Sikkink, the target actors are the governments of human rights repressive states, for Koh, the target actors are states in general, and for Goodman and Jinks, the target actors are states members of the reference group. As already deciphered from the international human rights treaties, the expectation is for international human rights norms to change both state and non-state practices. State practices are in the domain of state actors whereas non-state practices are in the domain of non-state actors. Therefore the approaches should have covered both state and non-state actors. Instead, none of them targets non-state actors. This paper’s proposal of changing intersubjective understandings accounts makes up for the shortfall by targeting non-state actors.

Second, the source and nature of influence proposed in the three approaches are inapplicable to the situation of non-state norms and unable to achieve change among non-state actors. Risse and Sikkink identify the international community as the source of influence who socialise actors to internalize norms until “external pressure is no longer needed to ensure compliance.” Koh, and Goodman & Jinks share this position. Like them, the source of the pressure in Risse and Sikkink’s approach is not something that the target of influence group (the non-state actors) can relate with. The non-state actors are not members of an international human rights reference group. They cannot therefore be socialised or pressurized at the reference group level to internalize the legitimated norms. Secondly, the non-state actors cannot be pressurized with the same incentive structures that are used for non-human rights respecting governments. A non-human rights respecting government, can be pressurized with tangible benefits such as the withdrawal of foreign aid or with intangible benefits such as withholding of recognition and validation within international circles. For the non-state actors the source of validity of their practices lies in traditions, customs and religion among others and not legitimated international human rights norms. It also means that measures to modify non-state norms, should be founded on non-state intersubjective understandings of the issue rather than global understandings of the issue, if they are to have traction among non-state actors. Founding modification measures on the intersubjective understandings of the issues by non-state actors will enable states adopt local solutions that can directly respond to local intersubjective understandings of human rights issues and are valid to the non-state actors. The incentive structures outlined in Risse and Sikkink’s, Koh’s and Goodman and Jinks’ approaches however do not reflect the peculiar situation of non-state actors. In a way, we can say that whereas they project a top-up approach to state compliance with international human rights law, changing intersubjective understandings presents a bottom-up approach to state conformity with international human rights norms.

Third, the three approaches project a one-size-fit all strategy for achieving state conformity with
international human rights norms instead of a differentiated strategy stemming from a clear understanding of the intersubjective meanings accounting for the human rights violation by non-state actors. Under Risse and Sikkink’s, Koh, and Goodman and Jinks’ approaches, the one size-fit all strategy used is legislation. In Risse and Sikkink’s approach, “instrumental adaptation” is an imperative first step in the socialisation of states. With Koh, “law-abiding states internalize international law by incorporating it into their domestic legal and political structures, through executive action, legislation, and judicial decisions which take account of an incorporate international norms.” In Goodman and Jinks’ approach, once the international human rights treaty required states to adopt legislative measures to enforce the right, the acculturation approach will require the enactment of laws as the means of complying with the treaty. Meaning, once states enact the required legislation, they satisfy their treaty obligations and are considered to be in compliance with the international human rights treaty under Goodman and Jinks’ acculturation.

As earlier identified through the three treaties selected for analysis, state parties are required to adopt measures that remove negative non-state norms. Whereas CEDAW and CRC involve the removal of non-state customs and practices, CRPD involves the removal of non-state deep-seated stigma. Both customs and practices, and deep-seated stigma are in the purview of non-state norms and non-state actors. (Such customs and practices against children and women additionally work against CWDs, and Women with Disabilities to further marginalize them. Thus, in a place where few girls are educated, a girl child with disabilities has even lesser chance of receiving education.)

Adopting the same measures to remove both customs and practices and stigma because they are all non-state norms may not achieve the expected level of state conformity. Under the proposed approach of understanding intersubjective meanings, states can adopt a differentiated strategy to achieving their conformity with the international norms. After discovering the intersubjective understanding, the state identifies the most appropriate method that sits with local understandings for the purpose of changing that intersubjective understanding. In the case of disability rights, the most appropriate method may be incentivizing non-state actors to adopt favourable cultural beliefs about disability and developing favorable community-specific regulations on disability. In the case of children’s rights the most appropriate method may be the provision of free basic education (FCUBE) and enactment of law to punish parents who do not send their girl-children to school. Applying Risse and Sikkink’s spiral model, Koh’s transnational legal process and Goodman and Jinks’ acculturation to Ghana’s disability rights, Ghana would simply use one method: enact legislation to criminalize the non-education of girl-children and the killing of CWDs in conformity to the CRPD without seeking to understand the shared non-state understandings of the problem of non-education of girls or disability accounting for non-state actors thinking that the education of girls is a waste of the family’s resources as she will end up a house-wife or that the killing of children will safeguard the community’s survival. The three approaches’ legislative measures will be enforced so that girls are sent to school and soothsayers that kill CWDs are arrested. But whereas the enrollment levels of girl-children may appreciate (as is currently happening in Ghana) the arrests of soothsayers (as happened in the example above) may not decrease the killing of CWDs. non-state actors who consider CWDs an evil sign from the gods threatening the very survival of their communities if not returned to the gods, may not consider state legislation not reflecting their cultural beliefs worth permitting to override the laws of their gods requiring them to kill CWDs to guarantee the community’s survival.

In adopting a differentiated approach to removing negative non-state norms, a state can determine that criminalization will achieve compliance when the issue has to do with certain customs and practices but where it involves stigma, incentivizing non-state actors to change communal understanding of the problem will be a more effective solution. As earlier explained, to identify the most appropriate approach for the removal of non-state norms, the state must first understand the non-state intersubjective understanding of the human rights problems. Then the state must adopt differentiated solutions targeted at changing that understanding and bringing the state into conformity with the international norms. The Risse and Sikkink, Koh, and Goodman and Jinks’ - type of solution makes no room for such differentiated strategies for achieving state conformity. At best Risse Sikkink as well as Goodman and Jinks acknowledge potential varied effect of the application of their approaches. But actually, all three approaches are restrictive in their strategy for conformity, namely legislation. Enactment of legislation protecting disability rights may set Ghana at the same level with other state parties to the CRPD (Goodman and Jinks’ structural isomorphism) but will not result in the soothsayers for instance, changing their common understanding that CWDs are evil spirits sent by the gods, to that
given the right opportunities CWDs can fully participate in society. Until that understanding changes domestically, CWDs will continue being killed. If Ghana is to achieve actual conformity with the CRPD it must adopt a differentiated approach at the non-state level to directly respond to the negative intersubjective meanings of shared by non-state actors.

Traction of Three Approaches in Other Human Rights Sectors

Disability rights are distinct from other human rights because of the unique roles of community in the enforcement or denial of this right. Whether in developed or developing nations, PWDs live in communities and their participation in communal activities depends on the community’s perception of disability. In developing countries, disability is greeted with stigma whereas in developed countries it is greeted with sympathy. Neither of these communal perceptions of disability is helpful for the full participation of the PWD in the community. Neither of them can also be changed by entirely state-level approaches. This unique characteristic sets the enforcement of the CRPD apart from all other international human rights treaties. The international community may pressurize government to take legislative measures to protect PWDs but state-level laws hardly change communal perceptions of disability. This paper does not underestimate the critical role such laws play in rights protection generally, but whereas they can effectively protect certain human rights such as children’s rights (CRC) or women’s rights (CEDAW), they cannot protect those rights associated with stigma such as disability. Influencing community non-state actors to shed of stigma and accept preferences that recognize disability rights must target the intersubjective understandings of disability within those communities. This requires something beyond state-level legislation. It requires a targeted diffusion of desirable norms founded on a clear understanding of the intersubjective meaning of the problem shared by non-state actors. Pressure from international communities can be counter-effective in the area of disability rights and actually perpetuate victimhood (Berghs et al; 2011) without advancing local communal recognition of disability rights.

CONCLUSION

This paper examined state conformity with international human rights norms. The paper demonstrated that state obligations under international human rights treaties included the changing both state and non-state norms which are inconsistent with international human rights norms, to reflect the international norms. The paper examined prevailing approaches to determine if they would succeed in helping to achieve state conformity with international human rights norms and concluded that these approaches would only achieve state level change and not non-state level change for three reasons: first, the approaches were limited to state-actors as the target of change instead of being extendable to non-state actors who actually enforce non-state norms; second, the source and nature of their pressure to change were not those that non-state actors identify with; and third, the approaches had a one-size-fit all strategy that did not give states room to apply targeted measures appropriately to effect change.

Through a case study of disability rights in Ghana, this paper demonstrated that their approaches required additional measures in order to change non-state norms constituting barriers to Ghana’s conformity to the CRPD’s norms. The paper found that if states parties seek to understand the intersubjective meanings of human rights issues and develop solutions that are consistent with international norms while building on the intersubjective understandings of those human rights issues they will be able to change non-state norms that violate international human rights treaties and bring the state into actual conformity with international human rights norms.

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