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Institute for the Advanced Study
of Sustainability

アフリカでのグローバル人材育成プログラム :
Global Leadership Training Programme in Africa

Research Plan

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TRAVEL ITINERARY	
City of Departure in Japan and Arrival in Africa	Hanoi
Date of Departure from and Return to Japan	February 10

Research Title

The implementation of International Human Rights Laws and SDGs on harmful cultural practices in Kenya

<p>Research Objective</p>	<p>The objective of this study is to <u>explore how the society internalize or socialize the international human rights laws and their norms into the domestic context of development through the interactions among the government, global and local civil society and international organizations.</u></p> <p>In its concluding observation to the eighth periodic report of Kenya (CEDAW/C/KEN/8) issued on 17 November 2017, Committee on the Elimination of Discrimination against Women (CEDAW) showed its concern on remaining harmful practices, such as child and/or forced marriage, female genital mutilation (FGM), polygamy, bride price, and widowhood rites such as widow inheritance and Samburu people’s “beading” which are justified as a cultural practice (para.18). CEDAW, recalling joint general recommendation <u>No. 31 of the Committee and No. 18 of the Committee on the Rights of the Child (2014)</u> on harmful practices, and in line with <u>Sustainable Development Goal 5.3 (eliminate all harmful practices, such as child, early and forced marriage and female genital mutilations)</u>, to eliminate all harmful practices, recommends that the State party should: “(a) Develop and implement a comprehensive strategy to eliminate harmful practices and stereotypes that discriminate against women, including through increased awareness-raising campaigns for community and religious leaders and the general public and <u>by effectively prosecuting and adequately punishing perpetrators</u>; (b) Take immediate measures, including <u>severe sentences for perpetrators</u>, to eliminate the harmful practice of child rape referred to as “beading”; (c) Provide systematic training for judges, prosecutors, legal professionals, law enforcement officials and medical personnel on the strict application of criminal law provisions to punish child and/or forced marriage, FGM, child rape (so-called “beading”), and widow inheritance, and raise awareness about the criminal nature of such practices and their adverse effects on women’s rights;(d) Ensure that women victims of harmful practices can file complaints without fear of retribution or stigma and have access to effective remedies and victim support such as legal, social, medical and psychological assistance and shelters.” (para.19).</p> <p>Particularly, as for the FGM, Kenya enacted <u>the Prohibition of Female Genital Mutilation Act (2011)</u> after the active public discussion on the eradication of female genital mutilation (FGM) in Kenya since the late 1990s. In 1999, the Ministry of Health launched a “National Plan of Action for the Elimination of Female Circumcision”, particularizing the government’s commitment to ending the practice; shortly after, president issued a decree banning FGM and prohibiting government hospitals from performing FGM (FIDA 2009). This was followed by the Children’s Act, passed in 2001, coming into force in 2002, the first law in the fight to eradicate the practice. The Act made FGM illegal for girls under eighteen and imposed twelve months imprisonment and/or a fine of up to Kes 50,000 for breach of the law. And in 2011, the Prohibition of Female Genital Mutilation Act not only criminalized FGM for underage girls but for everyone and, in a bid to tackle social pressure, also banned the stigmatization of women who had not undergone FGM. Kirigo Njenga, human rights lawyer from Kenya mentions in her blog post in 2016;</p> <p>The 2011 Act extended the powers of previous legislation, providing for the prosecution of those who perform FGM and anyone who aids such a person or who knowingly fails to report knowledge of such</p>

	<p>acts or pending acts in Kenya or abroad. The 2011 Act made the punishment more severe than the 2001 Act, making it three to seven years imprisonment or life imprisonment for causing death by performing FGM and a fine of Kes 200,000. In addition to the various national laws, Kenya is signatory to several international human rights conventions, denouncing FGM and requiring governments to have positive obligations towards victims.</p> <p>It is meritorious on the part of the Kenyan government to conclude that there is a genuine and consistent commitment to eradicate FGM, given the various national and international laws now in place in the country. Many of the local and international organizations working to eradicate FGM in Kenya agree that the new laws are a great step forward. However, FGM continues to be practiced widely especially in the rural areas. It then begs the question of why the stringent legislation on the matter has not seen much success; if such success can indeed be measured in number of prosecutions.</p> <p>CEDAW also reiterates its concern that this harmful practice remains prevalent in some communities and <u>the lack of accurate data and relatively low level of prosecutions and continued impunity of perpetrators</u>, as well as reports that this practice is now being carried out by medical practitioners, referred to as the medicalization of FGM.</p> <p>To respond this concern, this study will examine the background of this change, the enactment of “the Prohibition of Female Genital Mutilation Act” and social movement to abolish harmful cultural practice which increased awareness-raising among religious and traditional leaders and the general public, in cooperation with civil society, about the criminal nature of FGM and its adverse effect on the human rights of women, and the need to eradicate FGM and its underlying cultural justifications, based on the theory of the socialization or vernacularization of international legal norms and transnational legal processes to promote national obedience of international human rights law [Koh 1999, Goodman & Jinks 2004, Merry 1999].</p> <p>Also, it aims to examine how the Prohibition of Female Genital Mutilation Act of 2011 is implemented to identify the challenges to implement the law to prohibit harmful cultural practice. The focus of this paper is on judicial decision on the harmful practice as well as the experiences of NGOs and local communities, and the interaction between domestic and international advocacy, particularly to the UN human rights bodies, which urged the government to take legal measures.</p>
<p>Research methods</p>	<p>As for methodology, as well as the desk review and analysis of related materials such as judicial decisions and policy papers, the study is based on in-depth socio-legal analysis with qualitative interviews of various actors including related international institutions, human rights lawyers, not-for-profit organizations workers, and government officers. In addition to analytical framework of law and development, this research employs the following primary research methods:</p> <p>1. Archival and Documentary-based Research</p> <p>I will conduct archival research for records on rulings on harmful cultural practices. I expect to access some valuable data, archival records, and libraries in the university, research institute and governmental office. The first phase in Nairobi will be short (2 weeks). Therefore, I will conduct desk</p>

review a way before the visit with the supervision of the professors in the university.

2. Qualitative interviews

I would like to conduct interviews with lawyers, human rights activists, community elders, and high-ranking government officials and judges in Kenya, along with research with Kenyan communities and aid agencies. The interviews will be conducted in semi-structured format and in English. But I may need translators particularly in the interviews with people in a community relating to interviewee's perceptions of cultural practices. Before going to the field, I will contact to the expected interviewee as much as possible.

Ideally, I will conduct 2-3 interview per day and I would like to conduct more than 15-20 interviews during the period of stay in Kenya. The interviews will be recorded upon approval of the interviewees and analyzed with coding after the interview (it will be after I come back from Kenya). The interview will be conducted with semi-structured questions for about 1-2 hours each in mainly in English.

Targeted/ Expected interviewees are:

The law and development academics

Legal professionals (Lawyers, prosecutors and judges)

Government Officials from Ministry of Health, Department of Justice etc.

International NGOs(IDLO)

(To be revised)

The questions of this research depend on the informant but e.g.;

1. How the policy and legal reform against harmful practices happened?
2. What the role of international organizations, international human rights laws and civil society organization in that transformation process?
3. How legal reform and international development projects transform the conducts of "harmful practice" such as FGM?
4. Does judiciary has played significant role on the implementation of the laws, if not, why?
5. Does the reform contribute to advancement of women's rights?
6. What is the challenges to implement the law to prohibit harmful practice?
7. Are gender indicators (Proposed Indicators: Percentage of women aged 20-24 who were married or in a union by age 18, Percentage of girls and women aged 15-49 years who have undergone FGM/C) to assess the development project on harmful practice appropriate to promote women's rights from international human rights law perspective?
8. How can we improve the gender indicators based on the lessons we have gained from the local and cultural context in Africa?

3. Ethnographic Observations

I will observe four legal arenas: state courts; legal aid centers; and workshops, conferences designed and implemented by local or international aid groups and rural communities with customary dispute resolution mechanism.

<p>Research plan at abroad university</p>	<p>Phase 1(February 2018- March 2018): The researcher will conduct archival and documentary-based research and conduct interviews with cooperation and supervision of the local researchers. The expected output will be developing the network with local researchers and stakeholders, elaborating the research design and making the list of interviewees with framed questions. Based on the list developed, the researcher makes appointments and interviews with informants. The researcher also stated above. The results of the interview and ethnographic observations may require modification of the research outline.</p> <p>Phase2 (March 2018- May 2018): The researcher will be outside of the Kenya but continue to communicate with supervisors and informants by e-mails and skype so that she will analyze the data and develop the paper draft in appropriate direction.</p> <p>Phase3 (June 2018- July 2018): The researcher will conduct the follow-up field work with interviews and ethnographic observations. The researched will also clean up the result of the qualitative research and ethnographic observations. The researcher writes a summary report to UNU and academic paper in cooperation and under direction of supervisor at the designated institute with <u>a workshop at the University of Nairobi to present the result of the research.</u></p>
<p>Expected results</p>	<p>1. Advance in the research in law and development, human rights field</p> <p>This research will contribute to scholarship of law and development particularly from gender and human rights perspective. This study in Kenya will provide reference to the local context and conditions that better explain the dynamics among law, institutions, and existing political, social and economic conditions. <u>This study provides a solid example to explain how international human rights work in practice and can inspire the discussion on the effective implementation of the international human rights law to protect vulnerable people from harmful cultural practice with effective implementation of SDGs, particularly SDG5.3 and indicators.</u></p> <p>2. Leading to the enhancement of women’s rights with impact on the socialization on international human rights in global and local governance</p> <p>The clarification of the regulatory impact mechanisms also raises important practical implications. Firstly, <u>attention to gender issues reiterated in SGD 5 and international human rights law</u> will contribute to the discussion on effective and sustainable implementation of international laws and norms in international level. Secondly, the analysis of how harmful cultural practice can be regulated in judiciary as well as in the context of local socioeconomic conditions will assist national reformers in improving the effectiveness of law reform projects through better regulatory design and implementation including better gender guidelines. It should be noted international human rights law itself are powerless unless it became internalized as “living law”, that regulate everyday life of people [Ehrlich, 1936: 390].</p> <p>3. Synergies in research projects and establishing the basis for long-term cooperation</p>

	<p>This project needs in-depth cooperation with local researcher and stakeholders. There would be synergies in conducting the cooperative project with those human rights and international law scholars in Africa as I could provide the knowledge and history of the development of Japan and Asia. This project will not only contribute to deeper exchange of ideas and values but also create co-working platform to develop good governance towards international society where people can live with dignity and peace.</p>
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WEEKLY SCHEDULE		DETAILS
Week No.	Date (start date - end date)	Planned activity, locations and institutes to visit etc.
Week 1	Feb.9-15	Flight to Nairobi Desk research in University of Nairobi Interview with stakeholders (International Organizations, Legal Professionals, NGOs) Consultation with Supervisor
Week 2	Feb.16-22	Desk research in University of Nairobi Interview with stakeholders (International Organizations, Legal Professionals, NGOs) Consultation with Supervisor
Week 3	Feb.23-Mar.2	Desk research in University of Nairobi Mid-term Presentation to Supervisor Flight from Nairobi to NY or Hanoi
Week 4	Mar.2- Mar.8	Making transcripts of the recorded interviews and analyze them with coding. Remote consultation with supervisor
Week 5	Mar.9- Mar.15	Making transcripts of the recorded interviews and analyze them with coding. Remote consultation with supervisor
Week 6	Mar.16-Mar.22	Making transcripts of the recorded interviews and analyze them with coding. Remote consultation with supervisor
Week 7	Mar.23-Mar.29	Making transcripts of the recorded interviews and analyze them with coding. Remote consultation with supervisor
Week 8	Mar.30-Apr.5	Making the first draft of paper/ under remote consultation and supervision of the supervisor
Week 9	Apr.6- Apr.12	Making the first draft of paper/ under remote consultation and supervision of the supervisor
Week 10	Apr.13-Apr.19	Making the first draft of paper/ under remote consultation and supervision of the supervisor
Week 11	Apr.20-Apr.26	Making the first draft of paper/ under remote consultation and supervision of the supervisor
Week 12	Apr.27-May.3	Making the first draft of paper/ under remote consultation and supervision of the supervisor
Week 13	May.4- May.10	Submit the first draft of paper to supervisor Revise the paper/ Making the follow-up plan to next field work
Week 14	May.11-May.17	Revise the paper/ Making the follow-up plan to next field work
Week 15	May.18-May.24	Revise the paper/ Making the follow-up plan to next field work
Week 16	May.25-May.31	Revise the paper/ Making the follow-up plan to next field work

Week 17	June.1-June.7	Revise the paper/ Making the follow-up plan to next field work
Week 18	Jun.8-Jun.14	Submit the second draft
Week 19	Jun.15-Jun.21	Revising the draft/ Planning and coordination the additional interviews under remote consultation and supervision of the supervisor
Week 20	Jun.22-Jun.28	Revising the draft/ Planning and coordination the additional interviews under remote consultation and supervision of the supervisor
Week 21	Jun.29-Jul.5	Revising the draft/ Planning and coordination the additional interviews under remote consultation and supervision of the supervisor
Week 22	Jul.6-Jul.12	Flight to Nairobi
Week 23	Jul.13-Jul.19	Desk research in University of Nairobi Interview with stakeholders (lawyers, judges, NGOs) Consultation with Supervisor
Week 24	Jul.20-Jul.26	Desk research in University of Nairobi Interview with stakeholders (lawyers, judges, NGOs) Consultation with Supervisor
Week 25	Jul.27-Aug.2	Final workshop to present the result of the research Flight back to Japan
Week 26	Aug.3-Aug.9	Making the third draft of paper/ under remote consultation and supervision of the supervisor
Week 27	Aug.10-Aug.16	Making the third draft of paper/ under remote consultation and supervision of the supervisor
Week 28	Aug.17-Aug.30	Making the third draft of paper/ under remote consultation and supervision of the supervisor
Week 29	Aug.31-Aug.6	Making the third draft of paper/ under remote consultation and supervision of the supervisor
Week 30	Aug.7-Aug.13	Making the third draft of paper/ under remote consultation and supervision of the supervisor
Week 31	Aug.14-Aug.20	Making the third draft of paper/ under remote consultation and supervision of the supervisor
Week 32	Aug.21-Aug.27	Complete the 3 rd draft
Week 33	Aug.28-Sep.3	Revision of 3rd draft would be discussed in the colloquium