# Revaluation of UNDHR in interests of cultural sensitivity and domestic enforceability

The concept of human rights is bound closely to the belief that cultureis precious and central to our identity. The way we are born, live and die is affected by the culture to which we belong, so to take away our cultural heritage is to deny us our identity. At the same time, we can all benefit from our experience of other cultures and we have something to offer them in return. The Universal Declaration of Human Rights says “everyone has the right freely to participate in the cultural life of the community” and by implication, this also means that no-one has the right to dominate, direct or eradicate that culture or impose theirs upon someone else.

Human rights are everybody’s work, and being culturally sensitive and understanding the context is everybody’s business. Communities have to look at their cultural values and practices and determine whether they impede or promote the realization of human rights. Then, they can build on the positive and change the negative.

Cultural sensitivity and engagement do not mean acceptance of harmful traditional practices, or a free pass for human rights abuses – far from it. Values and practices that infringe human rights can be found in all cultures. Understanding cultural realities can reveal the most effective ways to challenge these harmful cultural practices and strengthen beneficial ones.

The precise relationship between cultural diversity and human rights, however, is not clarified and thus leaves room for further exploration. This contribution analyses the issues surrounding the relationship between cultural diversity and human rights, in particular cultural rights. Firstly, it addresses general human rights issues such as universality and cultural relativism and the principles of equality and non-discrimination. Secondly, it explores the scope of cultural rights, as well as the cultural dimension of human rights. Thirdly, several cases are discussed in which human rights were invoked to protect cultural interests, confirming the value of cultural diversity. Finally, some concluding remarks are presented, indicating which areas require attention in order to further improve the promotion and protection of human rights in relation to cultural diversity.

# List of cultural rights:

Created in the aftermath of the Second World War and the horrors of the holocaust, the declaration was an attempt to ensure that such a catastrophe could never ever take place again. The humanity of all peoples was to be acknowledged beyond recognition by all states, with no exceptions. From this point on, all humans were to be regarded as free and equal,

*“with no distinction given to their race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 2, UDHRs*

The first instrument adopted by the United Nations which enumerates cultural rights was the Universal Declaration of Human Rights, adopted by the General Assembly on 10 December 1948. In Article 27, it provides:

**1.** Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

**2.** Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

The Declaration adds in Article 22 that everyone is entitled to the realization, through national effort and international co-operation, of the cultural rights, indispensable for his or her dignity and the free development of his or her personality.

The next step in the development of the concept of cultural rights was made in the International Covenant on Economic, Social and Cultural rights which, in Article 15, provides:

**1.** The States Parties to the present Covenant recognize the right of everyone: (a) to take part in cultural life; (b) to enjoy the benefits of scientific progress and its applications; (c) to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which [he is] the author.

**2.** The steps to be taken by the States Parties to the present Covenant to achieve the fuller realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

**3.** The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

**4.** The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

Cultural rights are often qualified as an 'underdeveloped category' of human rights. This term was chosen as the title of the seminar organized in 1991 at Fribourg University and was then broadly accepted. It suggests that, in comparison with other categories of human rights: civil, political, economic and social, cultural rights are the least developed as far as their scope, legal content and enforceability are concerned. Indeed, they need further elucidation, classification and strengthening. However, the term 'development' suggests the process of the creation of new rights. This point of view may be challenged as the existing list of cultural rights is relatively exhaustive. Therefore the problem is linked rather to the fact that these rights are neglected or underestimated and that they are treated as 'poor relatives' of other human rights.

This neglect can be seen in the fact that though, in accordance with the International Covenant on Economic, Social and Cultural rights, cultural rights are usually enumerated together with economic and social rights, they receive much less attention and quite often are completely forgotten. As observed by A. Eide, although the expression 'economic, social and cultural' is widely used, in most cases concern appears to be limited to economic and social rights.

This can be observed not only in the doctrine but in State practice. Thus one can hardly find a State constitution which, when enumerating economic and social rights, has a chapter dealing comprehensively with cultural rights. In the majority of cases, constitutions limit themselves to the mentioning of the right to education.

Every year the Commission on Human Rights discusses the question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural rights. An analysis of statements during the debate on this item once again shows that, though culturalrights are mentioned together with economic and social rights, in fact attention is limited to economic and social rights, whereas cultural rights are not debated.

This neglect can also be found in reports presented by the States Parties to the International Covenant on Economic, Social and Cultural rights on its implementation. The attention paid to cultural rightsformulated in Article 15 is also far from satisfactory.

To rectify this situation, detailed guidelines have been adopted concerning the right of everyone to take part in cultural life, to enjoy the benefits of scientific progress, to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production. The States Parties, in the context of the implementation of the right to participate in cultural life, are requested to provide information on availability of funds for the promotion of cultural development and popular participation; the institutional infrastructure established for the implementation of policies to provide popular participation in cultural promotion of cultural identity as a factor of mutual appreciation among individuals, groups, national or regions; promotion of awareness and enjoyment of the culturalheritage of national ethnic groups and minorities and of indigenous peoples; role of the mass media and communications media in promoting participation in cultural life; preservation and presentation of mankind's cultural heritage; legislation protecting the freedom of artistic creation and performance; professional education in the field of culture and art; any other measures taken for the conservation, development and diffusion of culture.

These guidelines prove that, for the Committee on Economic, Social and Cultural rights which monitors the implementation of cultural rights, they have concrete legal content allowing them to evaluate States' performances. Nevertheless, even in the case of this Committee, one may observe certain signs of neglect of cultural rights. Thus, for example, the program of the eighteenth session of the Committee foresaw a general discussion on globalization and its impact on the enjoyment of economic and social rights***.*** No doubt, globalization has also profound effects on the enjoyment of cultural rights but this aspect has been overlooked.

What are the reasons for the reserve demonstrated by the doctrine and State practice in relation to cultural rights. They are manifold. Cultural rights are scattered throughout a great number of instruments, both universal and regional, adopted by the United Nations and by the Specialized Agencies. This, in the absence of any codifying treaty or declaration, opens the way for various articulations and groupings. In some cases cultural rights are presented as an aggregate -- as one right -- the right to culture or the right to participate in cultural life. They may also be listed in a more elaborated way.

The scope of cultural rights also depends on the understanding of the very term 'culture'. In the absence of any binding definition, 'culture' may be understood in different ways: narrowly as creative, artistic or scientific activities or, in a broader sense, as a sum of human activities, the totality of values, knowledge and practice. The adoption of the broader definition of 'culture' means that cultural rights also embrace the right to education and the right to information.

The experience of the 1990s shows that the recognition of cultural rights of persons belonging to minorities is not a danger and a source of conflict but rather an important factor of peace and stability. Many internal conflicts, in particular in Europe, are linked to the crisis of existing identities and the creation of new ones with the denial or rejection of the right to a different cultural identity, and with the refusal to protect cultural rights of minorities.

By the end of the 20th century, cultural rights formulated by the Universal Declaration of Human Rights, developed by the International Covenants and other human rights instruments, are obtaining new importance. They are today 'empowering rights'. Without their recognition and observance, without implementation of the right to cultural identity, to education or to information, neither may human dignity be guaranteed nor other human rights fully implemented. Without the recognition of cultural rights, cultural plurality and diversity, fully democratic societies cannot function properly.

In spite of this, the universality of the document has been criticized by some, not least by members of the American Anthropological Association (AAA). They argue that by claiming human rights are universal, we ignore and undermine the cultural differences that exist between societies in different parts of the world.

How can one single document claim to represent every single person in the world, when our experiences are so different?

Our view of the world and our role in it is shaped by the society in which we live; and therefore our moral standards, the values which we emphasize as individuals, depend on our cultural upbringing. As a result, how can the UDHR possible have the same meaning for everyone in the world?

For critics, the Universal Declaration of Human Rights is a Western-biased document which fails to account for the cultural norms and values which exist in the rest of the world. More than that, it is an attempt to impose Western values on everybody else.

Individual rights as opposed to communal rights which tend to be more heavily emphasized in the non-Western world. But are their arguments misguided? After all, the declaration was written by representatives from all over the world including Chile, China, Egypt, India, Pakistan and Lebanon, none of which would be classified as “Western”. Plus, two-thirds of the endorsing votes came from non-Western countries (48 in favour, none against and 8 abstentions). In addition, the members of the drafting committee saw their task not as a simple ratification of Western convictions but as an attempt to delimit a range of moral universals from within their very different religious, political, ethnic, and philosophical backgrounds.

By emphasizing the rights of individuals, the declaration was meant as an attempt to transcend cultural bias in such a way that it became relevant to all, no matter what their upbringing. Nevertheless, some still argue that the declaration represents a neo-colonialist attempt by the West to control the lives of those in the developing world. Such arguments have been used by authoritarian leaders and states to violate human rights (particularly those of women and children) under the guise of enforcing tradition.

The UDHR is certainly not perfect, and yes, it can be argued that the document emphasises individualism over community rights. But does this really mean that human rights are not universal? In their eagerness to promote the importance of cultural diversity and group rights, critics forget that all cultures are composed of individuals and regardless of our cultural upbringing; no two people think exactly the same.

And in addition, culture is not static, but constantly evolving as people come into contact with new ideas and concepts. Because some cultures do not emphasis certain rights at the moment, does not mean that will always be the case.

In any case, human rights are compatible with cultural diversity. Every culture can pursue its own vision of a good life, as long as it doesn’t impinge on the rights of the individuals who exist within that culture. As Ignatieff again states,

“*Even countries where one might expect a cultural clash between the “Western” rights outlined in the UDHR and local traditions are not as common as one might expect. Three quarters of all world states have endorsed the declaration with a ratification rate of 88% and it has also been argued that a progressive interpretation of Sharia law can be compatible with universal human rights”.*

The declaration might not be perfect, and certainly there are issues regarding the enforcement of such rights. But to diminish them on the claim that they are “Western” and therefore incompatible with other cultures is dangerous. What matters is the purpose of human rights – not their origins – and their ability to protect the individual interests of the powerless, in all cultures.

Looking at the events taking place across the globe today it is clear that a large number of states are repeatedly violating their international obligations. In the absence of a global police, states at times act as if they are above the law. However, international law does set out clear consequences for when the law is broken, and these consequences are on both the collective and individual level.

# How are human rights implemented and how is this monitored?

Human rights treaties are legally binding treaties. The parties to the treaties (“state parties”) are responsible for their implementation, and under an obligation to do so. Thus, the state and its agencies are called “duty bearers”.

To implement human rights treaties domestically, duty bearers have to:

* Adapt existing laws or pass new laws;
* Change or adapt administrative or financial measures;
* Issue national action plans and similar programmes;
* Guarantee and facilitate access to legal protection if someone feels violated in his or her human rights;
* Regularly review and evaluate the results of these measures.

Next to domestic courts, civil society organizations play an important role in the implementation of human rights, and so do National Human Rights Institutions (NHRI) and the media. They can inform about human rights, demand the ratification of human rights treaties, document violations of human rights as well as monitor, call for and support the implementation of human rights obligations.

Domestic implementation of human rights court rulings is an especially demanding and obtrusive kind of state observance of international norms. It involves the efforts of national authorities to redress detected violations and to bring existing laws and practices in line with the underlying standards and principles. In this process, the violating states, including established democracies, display various forms and degrees of compliance with international norms and judicial rulings, raising significant questions about the factors accounting for such differences. The extent to which states successfully and expeditiously implement human rights judgments is crucial for the credibility and legitimacy of the international protection and adjudicatory mechanisms that issue them. Over the past couple of years, academic scholarship has shifted its focus from the question whether human rights treaties bring any state-level improvements at all, to investigations in the domestic context of the factors and dynamics that account for differences in state compliance. In this direction, and through a large-N study focusing on the European Court of Human Rights’ (ECtHR) judgments across nine states, this article explores the patterns of variation in human rights compliance. It also inquires into the factors that influence how expeditiously states implement the relevant Court judgments.

Domestic implementation of international human rights rulings is a multi-faceted and inherently political process. It involves different national institutions and actors – executive, legislative, judicial, as well as societal – with divergent preferences and priorities, who may be in conflict over whether and how to implement human rights rulings. Recent studies argue that as the gate-keeper *vis-à-vis* international institutions and courts, the executive has a powerful, albeit not always decisive, role in facilitating or conversely hampering domestic implementation of human rights rulings. Without disputing the centrality of the executive, other studies see that national justice systems are equally important interlocutors of international courts, yet less likely to support domestic implementation of human rights.

The existence of robust, domestic institutional capacity is essential for domestic implementation of international human rights judgments.

# A New Legacy for Our Generation:

Each of these entities demonstrates the many spheres of influence at play in the pursuit of full human rights and dignity for all. What if every company took the same initiative to understand the social repercussions of its actions?

We need to rethink human rights by recognizing the power of our own choices upon others. Everyone is responsible for upholding human rights, whether as a part of your day job or as a member of a community. Seemingly benign actions — how much you pay your employees or which charities you support — are manifestations of your own unique interpretation of what dignity and rights mean.

The UN, NGOs, and other global institutions have provided a priceless platform for dialogue on human rights. Without the consensus-building mechanisms they provide, there would be no Universal Declaration of Human Rights, no “naming and shaming” of human rights abusers, and no coordinated effort to stop the world’s cruelest atrocities.

And yet, as we continue our efforts to avert the “end of human rights,” what will our own generation’s legacy of implementation be? As this generation rises to power in public and private leadership roles, those at decision-making tables across the spectrum will have an opportunity to think critically about their own actions. The foundation and forums, from the UDHR to the UN Global Compact, certainly exist. Now, it’s up to us to ensure a future in which human rights are celebrated not only at the institutional level, but at a more personal, human level as well.

# Questions that must be answered in Committee:

1. History of the UNDHR and its importance as a document
   1. How did it come about?
   2. Why was it an innovative document?
   3. How was it drafted?
2. Debate surrounding the UNDHR as an inclusive document
   1. Is it really a comprehensive set of rights?
   2. Are these rights reflective of other cultures, or are they Western Normative conceptions of human rights?
   3. Did any of the weaker nations have a say when the document was drafted? Did they have the power to bring amendments?
   4. Why is it important for the UNDHR to be reflective:
      1. If it is called ‘universal’ can it really be regarded as legitimate if it only reflects the idea of human rights found in one area of the world
      2. Are the ‘Western’ idea of human rights really ‘Western’ or are they really general and Universal?
3. Debate surrounding the enforcement of the UNDHR
   1. What are the enforcement mechanisms of the UNDHR
      1. On an international level, in front of the UN
      2. On a domestic level
      3. What is the accountability of nations who violate articles of the UNDHR
      4. Are these mechanisms enough? What are the ways to improve them?
      5. Can there be enforcement of such rules?

# Guiding Questions:

* Sixty-six years after the adoption of the [Universal Declaration of Human Rights](http://www.un.org/en/documents/udhr/), who is responsible for upholding our most basic rights as humans? And are rights truly universal, or are they relative?
* What will our own generation’s legacy of implementation be?
* How to evaluate our own cultural values as it has implications for human rights and how to consider human rights on our own merits?

# What are the cultural practices that violate human rights?

* When rights and cultures collide, what are the consequences?
* How state sovereignty could never justify certain governmental practices, such as genocide or torture?
* As Asia is a region with diverse cultures, coupled with the fact that political, social and economic situations of people in the region are equally varied so how international concepts such as human rights can relate meaningfully to the cultural values present in the region?
* What are the implications of the debate along the lines of cultural relativity versus universality?
* What exactly are the sociocultural and political differences between Western and Asia-Pacific societies that can be the basis of differing conceptions of human rights?
* In accordance with international law, the right to culture is limited at the point at which it infringes on another human right, how to justify this?