



# **Human Rights Advocates**

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**Cultural Rights as Hindered and Defined by Cultural Relativism/Universality and  
Extremism/Fundamentalism**

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## **I. Introduction**

Human Rights Advocates (“HRA”) welcomes the continuation of this discussion and urges this Council to call attention to promoting cultural rights while balancing international law and cultural relativism so as to avoid human harm inflicted by extremism/fundamentalism. Following the 2016 report by the Special Rapporteur in the field of Cultural Rights, many States have recognized the risk cultural relativism creates as a segue into extremism/fundamentalism.<sup>1</sup> HRA supports the Special Rapporteur’s focus on addressing the intersection of culture and extremism/fundamentalism within cultural rights and as an overarching human rights issue. HRA proposes to build upon this issue and incorporate preemptive restrictions on violent extremism/fundamentalism when affirming cultural rights. The right to culture is a tool to protect cultural traditions and ensure those rights and traditions are not used to oppress other cultural groups. In the words of Karima Bennouna, Special Rapporteur in the field of Cultural Rights,

cultural practices — or what are claimed to be cultural practices — must evolve when they constitute or lead to discrimination [...], including [...] violence. Under article 5 (a) of the Convention on the Elimination of All Forms of Discrimination against Women, States are required to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority [...].<sup>2</sup>

In order to maintain cultural rights, it is important they are be adapted with a universalist approach in an effort to avoid violence arising from extremism/fundamentalism.

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<sup>1</sup> United Nations, General Assembly, Report of the Special Rapporteur in the field of cultural rights, A/HRC/31/59, page 8 (3 February 2016), available from [undocs.org/A/HRC/31/59](http://undocs.org/A/HRC/31/59).

<sup>2</sup> *Id.*

This statement will expand on (1) the goals of the report by the Special Rapporteur in the field of Cultural Rights, as well as (2) her dialogue with the Special Rapporteur on Countering Terrorism held at the 31st Human Rights Council Session (“HRC”). It will focus on the need to develop international standard and laws concerning violent extremism as justified by culture and tradition and mechanisms to pave the path for more conscious cultural rights approaches.

## **II. Right to Culture**

Cultural rights have often been regarded as an “underdeveloped” or “neglected” category of human rights.<sup>3</sup> Although the right to culture has gained traction in recent years mainly through UNESCO’s work, it is necessary to further define the right to culture and “violent extremism” so that actions arguably justified by cultural relativism are still within the limitations of international law. The Special Rapporteur in the field of Cultural Rights has stated in her mandate that respect for cultural rights is imperative to human rights in general but that those rights cannot be used to limit the rights of others.<sup>4</sup>

The right to culture is a positive and empowering right. While it does not promote violent injustices against other groups of people, it does provide freedom to practice cultural traditions and celebrate unique identities. The full promotion of and respect for cultural rights is essential for the maintenance of human dignity and positive social interaction between individuals and communities in a diverse and multicultural world.<sup>5</sup>

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<sup>3</sup> Symonides, Janusz. *Cultural Rights: A Neglected Category of Human Rights*. International Social Science Journal, Issue 158 (Dec. 1998).

<sup>4</sup> United Nations, Human Rights Council, Mandate of the Special Rapporteur in the field of cultural rights, UN Doc.

A/HRC/RES/28/9, page 2 (10 April 2015) available from [undocs.org/A/RES/28/9](http://undocs.org/A/RES/28/9).

<sup>5</sup> United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 21: Right of everyone to take part in cultural life (art. 15, para. 1, of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/21, page 1 (21 December 2009), available from [undocs.org/E/C.12/GC/21](http://undocs.org/E/C.12/GC/21).

The report of the Special Rapporteur in the field of Cultural Rights has recognized that respect for cultural rights is not tantamount to cultural relativism, and has reaffirmed that States have the responsibility to promote and protect cultural rights. It is important for States to acknowledge this statement and take adequate steps to protect the cultural rights of all people while not tolerating violent extremism as maintained by cultural traditions. This bears in mind the General Assembly's affirmations that "cultural rights are integral part of human rights, which are universal, indivisible, interrelated and interdependent."<sup>6</sup>

### **III. Cultural Relativism, Extremism, and the 2016 Dialogue**

The dialogue that took place at the 31<sup>st</sup> session between Special Rapporteurs which directly and indirectly addressed the overlap between the right to culture, cultural relativism, and violent extremism.<sup>7</sup> This dialogue also brought attention to the current definitions within cultural rights and the need to examine when those rights cross lines of extremism and oppression of other groups by also defining "violent extremism." Referencing her report, the Special Rapporteur of Cultural Rights stressed the importance of ensuring the right of all to "access, participate in and contribute to all aspects of cultural life, including in identifying and interpreting cultural heritage and deciding which cultural traditions, values or practices are to be kept intact, modified or discarded altogether, and to do so without fear of punitive action."<sup>8</sup>

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<sup>6</sup> United Nations, General Assembly, Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action, A/RES/49/208 (23 December 1994), available from [undocs.org/A/RES/49/208](http://undocs.org/A/RES/49/208).

<sup>7</sup> "Human Rights Council holds dialogue with Special Rapporteur on human rights while countering terrorism and on cultural rights" (Side event summary report, United Nations, 31<sup>st</sup> Human Rights Council Session, Geneva, 10 March 2016), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17199&LangID=E>.

<sup>8</sup> *Supra* note 1 at page 20.

She stressed the importance of understanding and justifying acts of a specific culture from the mind frame of that culture while bearing in mind the risks violent extremism. Similarly, the cultural explanations sometimes offered in the past for systematic racial discrimination or slavery are recognized as entirely incompatible with contemporary notions of human dignity.<sup>9</sup> Article 4 of the Universal Declaration on Cultural Diversity, further stresses that no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.<sup>10</sup> Therefore, not all cultural practices can be considered as protected in international human rights law and cultural rights may be subjected to limitations in certain circumstances.

Cultural rights are not an excuse for violations of other human rights and do not justify discrimination or violence. They are not a license to impose identities or practices on others or to exclude them from either in violation of international law and are firmly embedded in the universal human rights framework.<sup>11</sup> Hence, the implementation of human rights must take into consideration respect for cultural rights, even as cultural rights themselves must take into consideration respect for other universal human rights norms.<sup>12</sup>

The Special Rapporteur recalled Article 5 of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) which not only guarantees the right of everyone to take part in cultural right but also states “common to both of the covenants on human rights, which is all too often overlooked: ‘nothing in the present Covenant may be

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<sup>9</sup> *Id* at page 8.

<sup>10</sup> “UNESCO Universal Declaration on Cultural Diversity” (Records of the General Conference, United Nations, Resolutions, Paris, 15 October to 3 November 2001), [http://portal.unesco.org/en/ev.php-URL\\_ID=13179&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13179&URL_DO=DO_TOPIC&URL_SECTION=201.html).

<sup>11</sup> *Supra* note 1.

<sup>12</sup> *Id.*

interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein.”<sup>13</sup> Within her report, the Special Rapporteur has also noted that the “need to centre the issue of State responsibility to respect, protect and fulfill cultural rights, but also to find innovative ways to speak directly about the impact on cultural rights of a wide range of non-State actors, and not only through the lens of State due diligence.”<sup>14</sup> This State responsibility includes having appropriate laws be in place for cultural practices to be both beneficial their preservation and free from forms of violent extremism.

During the 70<sup>th</sup> General Assembly, the report of the Secretary-General provided an in-depth analysis and plan of action to prevent violent extremism.<sup>15</sup> Secretary General, António Guterres, stated,

Nothing can justify violent extremism but we must also acknowledge that it does not arise in a vacuum. Narratives of grievance, actual or perceived injustice, promised empowerment and sweeping change become attractive where human rights are being violated, good governance is being ignored and aspirations are being crushed.[...] There is a need to take a more comprehensive approach which encompasses not only ongoing, essential security-based counter-terrorism measures, but also systematic preventive measures which directly address the drivers of violent extremism that have given rise to the emergence of these new and more virulent groups.<sup>16</sup>

The Secretary-General refers to leaders, as both State and non-State actors, as drivers of violent extremism who cynically distort and exploit religious [and cultural] beliefs, ethnic

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<sup>13</sup> *Id.*

<sup>14</sup> *Supra* note 1 at page 9.

<sup>15</sup> United Nations, General Assembly, Plan of Action to Prevent Violent Extremism, A/70/647, (24 December 2015), available from [undocs.org/A/70/647](http://undocs.org/A/70/647).

<sup>16</sup> *Id.* at page 1.

differences and political ideologies to legitimize their actions, establish their claim on territory and recruit followers.<sup>17</sup>

#### **IV. Instances Exemplifying the Good Practices and the Need for Legal Definitions**

UNESCO is an example of an international organization protecting the right to culture while maintaining a consciousness of extremism/fundamentalism. However, even with conscious sensitivity, both international and national standards are necessary to both promote cultural rights and safeguard against the negative impacts of extremism/fundamentalism. As UNESCO cannot safeguard the world's cultural rights on its own, presented below are examples of the intersections of culture and extremism and the various ways States have responded.

##### Egypt

The history of Female Genital Mutilation (“FGM”) dates back at least 2000 years with its roots in the Arab Republic of Egypt (“Egypt”).<sup>18</sup> Within Egypt, FGM is rooted in culture and ties to religion.<sup>19</sup> In its history, it was believed that FGM would ensure women's virginity and reduce female sexual desire.<sup>20</sup> In Egypt today, approximately 82% of women are affected by FGM.<sup>21</sup>

Though both the former Grand Mufti of Cairo and late Pope of the Coptic Orthodox Church of Alexandria, the two biggest religious and cultural influencers in the country, have expressed their disapproval of FGM, the rate of practice remains consistent because

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<sup>17</sup> *Id* at page 2.

<sup>18</sup> FGM National Clinical Group, *Historical & Cultural* (2007), available at [http://www.fgmnationalgroup.org/historical\\_and\\_cultural.htm](http://www.fgmnationalgroup.org/historical_and_cultural.htm).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> E-International Relations Students, *A Case-Study of Female Genital Mutilation* (Feb. 9, 2014), available at <http://www.e-ir.info/2014/02/09/a-case-study-of-female-genital-mutilation-in-egypt/>.

a majority of the population fears the destruction of a cultural society in a shift toward westernization.<sup>22</sup>

There have been international efforts since the 1970s to persuade practitioners to abandon FGM.<sup>23</sup> As a result it has been outlawed in most countries, although those laws are poorly enforced. The opposition to the practice is not without critique however, where some have raised issues concerning cultural relativism and the universality of human rights.<sup>24</sup> This practice by as exercised by State or non-State actors, however, which uses culture to protect social dominance over another group, is a violation of the Universal Declaration on Cultural Diversity.<sup>25</sup>

In an effort to battle violent extremism perpetuated by culture, Egypt has taken steps to protect against FGM by first criminalizing it in 2007 and later amending its penal code to maintain stricter penalties for practice such as the threat of years in prison.<sup>26</sup> There is a strong correlation between families who utilize FGM procedures, poverty, and lack of education.<sup>27</sup> A lack of education and living in poverty allows these parents to rely on those they see most educated, doctors, who falsely legitimize and perpetuate the violently extreme cultural practice.<sup>28</sup> Despite its criminalization, which has stopped most practice by medical professionals, many parents use Dayas, non-medically trained local midwives who also influence and train medical professionals, to undertake the procedure. Because Egypt's stricter legal reform has been sidestepped, it serves as a strong example for the

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<sup>22</sup> *Id.*

<sup>23</sup> Shell-Duncan, Bettina. *From Health to Human Rights: Female Genital Cutting and the Politics of Intervention*. American Anthropologist, Vol.110, Issue 2 (June 2008).

<sup>24</sup> *Id.*

<sup>25</sup> *Supra* note 9.

<sup>26</sup> CNN: *Cut in Secret: the Medicalization of FGM in Egypt* (Feb. 7, 2017), available at <http://www.cnn.com/2017/02/06/africa/africa-view-egypt-fgm/>.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

need of both broader legal reform and education to adequately combat this form of violent cultural extremism.<sup>29</sup>

## India

Sati within the Republic of India (“India”) is another example of violent extremism as practiced by cultural tradition. Sati is the act of a widow throwing herself onto her husband’s funeral pyre and dates back to 510 CCE.<sup>30</sup> What was once a common practice has become a rarity, nevertheless the Sati still continues in modern India at a low but consistent rate.<sup>31</sup> Sati is among the many cultural practices which violate a woman’s human rights and blind adherence to these practices in combination with State inaction with regard to these customs and traditions have made possible large-scale violent extremism against women in the name of culture.<sup>32</sup>

Though India has done a tremendous job in decreasing the number of Sati practices by outlawing its practice on both the national and state governmental levels the practice has seen a resurgence attributed to strong ties to cultural tradition.<sup>33</sup> In 1987, a highly discussed instance of Sati by 18-year-old Roop Kanwar, a Rajput girl from the Deyrala village, shocked the nation and in turn strengthened the laws against it.<sup>34</sup> Many of the Rajputs, including both men and women, defended the practice on the basis of cultural

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<sup>29</sup> Human Rights Watch, *Egypt: New Penalties for Female Genital Mutilation* (Sept. 9, 2016), available at <https://www.hrw.org/news/2016/09/09/egypt-new-penalties-female-genital-mutilation>.

<sup>30</sup> Kashgar, *Life in India: The Practice of Sati or Widow Burning* (2000), available at <http://www.kashgar.com.au/articles/life-in-india-the-practice-of-sati-or-widow-burning>.

<sup>31</sup> Sarkar, Sumit and Sarkar, Tanika, *Women and Social Reform in Modern India: A Reader* (2008).

<sup>32</sup> United Nations, Commission on Human Rights, Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of Work of Means Within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms, E/CN.4/1995/42 (22 November 1994), available from [undocs.org/e/cn.4/1995/42](http://undocs.org/e/cn.4/1995/42).

<sup>33</sup> *Id.*

<sup>34</sup> RT, *Indian Women Still Commit Ritual Suicide* (Sept. 9, 2009), available at <https://www.rt.com/news/india-ritual-suicide-sati/>.

relativism, stating that Sati is an ancient Rajput tradition.<sup>35</sup> They claimed the right to commit Sati as part of their ethnic culture. Nevertheless, villagers of Deyrala erected a makeshift shrine to Kanwar as a symbol for a group of Rajput extremists and despite the ban on the practice the cultural glorification still strongly exists.<sup>36</sup> These same extremists branded Indian human rights activists as Western imperialists imposing their view on ancient Indian culture and the Indian feminist movement was discredited for denigrating their national culture, for its lack of national pride, and for tarnishing the image of India abroad.<sup>37</sup> Despite the laws passed, enforcement against Sati practices is difficult because federal prosecutors are often unable to gather evidence against the offenders from a community that protects them.<sup>38</sup> India serves as both an example of the effectiveness national laws have in reducing culture based violent extremism while also emphasizing the need for stronger educational standards which target stubborn cultural communities in an effort to completely eradicate practices like Sati.

#### United States of America and Canada

Perhaps a more nuanced example of violent extremism perpetuated by cultural norms comes from the West. Since the election of Donald Trump, non Judeo-Christian religions and cultures have been under attack as a result of the policy and rhetoric of the Trump Administration. America's culture has been based on of perpetual fear.<sup>39</sup> This can be partially attributed to the media's fixation on covering violent crime and terrorism with

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<sup>35</sup> Zechenter, Elizabeth, *In the Name of Culture: Cultural Relativism and the Abuse of the Individual*, Universal Human Rights versus Cultural Relativity, *Journal of Anthropological Research*, Volume 53, No. 3 (1997).

<sup>36</sup> *Supra* note 33.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Pacific Standard, *Right-Wing Extremism Kills More Americans Than Islamic Terrorism*, (June 26, 2015), available at <https://psmag.com/right-wing-extremism-kills-more-americans-than-islamic-terrorism-5b43ae3f618f#.g5yyq3ocg>.

an “it bleeds, it leads” mantra of the cable-news era.<sup>40</sup> Research has found that fears of crime “may be natural; reactions to the violence, brutality, and injustice that are broadcast to living rooms on a daily basis.”<sup>41</sup> Studies have also shown that the more individuals are bombarded with fear-mongering images, the more they fear the monger’s imminence.<sup>42</sup> The horrific image of planes crashing into the World Trade Center has been engraved into America’s cultural conscience, enshrining Muslims and Islam as threats to all American lives.<sup>43</sup>

Since Trump began his presidential campaign and through his subsequent election, the West has seen a spike in the number of attacks on mosques and establishments owned or operated by Muslims because of and fear mongering tactics which embedded both intentional and unintentional racism into American culture creating pathways for these acts of violent extremism.<sup>44</sup> One recent incident in the United States of America occurred in Texas where the Victoria Islamic Center was burned to the ground in an arson attack hours after the enactment of Trump’s immigration ban.<sup>45</sup> This mosque had been subject to hate speech, vandalism, and burglary in the past and after this latest attack, there was no condemnation or comment by the Trump Administration.

Canada serves as a positive example of combatting violent extremism derived from cultural norms. Only two days after the mosque in Texas was burned down, a gunman in

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> International Business Times, *How Many Muslims, Mosques Have Been Attacked Since Donald Trump’s Election? Genocide Letter Mark Latest Hate Attacks* (Aug. 28, 2016), available at <http://www.ibtimes.com/how-many-muslims-mosques-have-been-attacked-donald-trumps-election-genocide-letters-2451838>.

<sup>45</sup> Democracy Now!, *Texas Mosque Set on Fire Hours After Trump Signs Immigration Order* (Jan. 30, 2017), available at [https://www.democracynow.org/2017/1/30/headlines/texas\\_mosque\\_set\\_on\\_fire\\_hours\\_after\\_trump\\_signs\\_immigration\\_order](https://www.democracynow.org/2017/1/30/headlines/texas_mosque_set_on_fire_hours_after_trump_signs_immigration_order).

Quebec attacked a mosque killing six and injuring eight. Not only did the Canadian media label the suspect as a pro-Trump conservative, Prime Minister Trudeau also condemned the massacre as an act of terrorism.<sup>46</sup> This alternate response to a heinous act of violence is in line with Canada's approach to countering violent extremism. In an effort to avoid systemically fostering cultural norms that result in violent extremism, Canada has embraced its diversity by creating community outreach and engagement programs to combat violent extremism.<sup>47</sup> Rather than isolating certain groups and perpetuating cultural norms that result in violent extremism against them, Canada developed the Cross-Cultural Roundtable on Security ("CCRS") in 2005.<sup>48</sup> Made up of 15 Canadians from diverse communities across the country, the CCRS meets three times a year to engage the government and Canadian communities in a long-term dialogue on matters related to national security.<sup>49</sup> This in turn, has created a culture of respect for diversity and dialogue rather than culturally and socially accepted hatred and violence toward other groups of people.

## **V. Conclusion**

It is without doubt that the right to culture is imperative to the universal framework of human rights in general. In combatting violent extremism, it is necessary to identify its roots especially when those roots are found within culture. It is only then that the right to culture must be limited in some degree.

[A]s stressed by the Committee on Economic, Social and Cultural Rights, limitations should be a last resort only and should be in accordance with certain conditions as established under international human rights law. Such limitations [on cultural rights]

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<sup>46</sup> *Id.*

<sup>47</sup> Government of Canada, *Community Outreach and Engagement to Counter Violent Extremism* (Feb. 12, 2015), available at <https://www.publicsafety.gc.ca/cnt/ntnl-scr/cntr-trrrsm/cntrng-vlnt-xtrmsm/cmmnt-trch-en.aspx#a04>.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

must pursue a legitimate aim, be compatible with the nature of this right and be strictly necessary for the promotion of general welfare in a democratic society, in accordance with article 4 of the International Covenant on Economic, Social and Cultural Rights. Any limitations must therefore be proportionate, meaning that the least restrictive measures must be taken when several types of limitations may be imposed. The Committee also stressed the need to take into consideration existing international human rights standards on limitations that can or cannot be legitimately imposed on rights that are intrinsically linked to the right to take part in cultural life...<sup>50</sup>

Religion and tradition has often been wrongly used to justify discrimination.<sup>51</sup> Farida Shaheed, first independent expert in the field of cultural rights, proposed a paradigm shift: from viewing culture as an obstacle to individual's rights to emphasizing the need to ensure individual's equal enjoyment of cultural rights.<sup>52</sup> It is important to ensure the right of all to access, participate in and contribute to all aspects of cultural life, including in identifying and interpreting cultural heritage and deciding which cultural traditions, values or practices are to be kept intact, modified or discarded altogether, and to do so without fear of punitive action.<sup>53</sup> By furthering researching and defining violent extremism as carried out by culture, States can take more proactive steps to prevent the misuse of culture as a justification for extremism/fundamentalism that results in violence. It is only after a definition is obtained and the right to identify which cultural traditions should be modified or discarded is respected, that the right to culture can avoid the risk of justifying violent extremism.

## **VI. Recommendations**

Human Rights Advocates urges the Human Rights Council to:

1. Request the Special Rapporteur consider definitions of “violent extremism” and which cultural practices are not protected by international

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<sup>50</sup> *Supra* note 1.

<sup>51</sup> *Id* citing to United Nations, General Assembly, Report of the independent expert in the field of cultural rights, Ms. Farida Shaheed, submitted pursuant to resolution 10/23 of the Human Rights Council, A/HRC/14/36, page 3 (22 March 2010), available from [undocs.org/A/HRC/14/36](http://undocs.org/A/HRC/14/36).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

human rights law; and

2. Urge governments to address the protection of cultural tradition while avoiding risks of extremism/fundamentalism in the following ways:
  - a. Create mechanisms to ensure protection of cultures and stop overlaps of culture and violent extremism including domestic bodies through both education and strict enforcement.
  - b. Develop a mutually beneficial balance between protecting culture and avoiding the perpetuation of self-justified violent extremism through culture.