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The role of human rights in diversity management and conflict prevention[1]

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Diversity along ethnic, cultural, religious and linguistic lines exists as a matter of fact within all our societies as a result of migration of people across political boundaries or the changing of those boundaries themselves. Such cultural diversity[2] is not a new phenomenon. This chapter argues that States should take active steps to effectively manage the diversity within their jurisdiction and sets out a 'human rights-informed' approach for doing so. It examines the different roles that international human rights law (IHRL) can play in managing diversity, while also acknowledging its limitations. It aims to show how the approach complements and builds on rights-based approaches by acknowledging the relevance and potential of other normative frameworks and principles in addition to those of human rights in processes of diversity management.

The argument for diversity management

Regardless of the level of a country's development, the nature of its political system or whether it is essentially peaceful or on the brink of (or in the midst of) violent conflict, diversity requires proactive management in policy, legislation and practice for both principled and pragmatic reasons. In democratic societies founded on majority rule, the culture of the majority (or otherwise dominant group) tends to enjoy privileged status within the State whether due to formal/

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1   This chapter draws on the following sources: S. Holt and Z. Machnyikova (2013) 'Culture for Shared Societies', in M. Fitzduff (ed.), *Public Policies in Shared Societies: A Comparative Approach* (New York: Palgrave), pp. 167–214; and S. Holt 'Managing Diversity: Culture', *Conflict Prevention Handbook Series*, No. 7, Initiative on Quiet Diplomacy, forthcoming 2015.

2   The term 'cultural diversity' is used here to denote the existence within a population of people from a variety or multiformity of ethnic, cultural, religious or linguistic backgrounds.

legal status or simply as matter of fact. Those in a non-dominant position are left at a disadvantage. Minority groups may be (or feel) marginalised, discriminated against or otherwise face challenges and obstacles relating both to aspects of maintaining, developing, expressing and transmitting their distinct cultural identities in public and private, and with regard to their full participation in the political, social and economic life of the State. In this regard, barriers to accessing public services and other resources or opportunities on an equitable basis are common.

Unequal societies that leave some groups marginalised and alienated are not only unjustifiable from a rights perspective, they are also inefficient and damaging for society as a whole because they exclude the talents, resources and beneficial contributions of significant sections of the population. Inequality also potentially creates resentments and tensions, both in terms of communities' relationships with State authorities and/or between different groups within society. Manifestations of frustration by the excluded can provoke or increase chauvinism and hostility from the wider society, which may in turn exacerbate divisions and tensions and, in some cases, escalate into violence. Diversity is by no means inevitably a source of conflict, but such tensions are easily exploited for political ends, with fears or prejudices amongst different groups whipped up by those intent on engendering conflict for their own gain. In many cases cultural identity has a role in violent conflict, not as a root cause, but as a driver for political mobilisation to wrest or maintain a hold on power. Once violence has started more grievances accrue on both sides and the conflict may continue even after initial grievances have been remedied. It is therefore essential to address contentious issues before tensions erupt into violence. It is noteworthy that the absence of overt tensions or violent conflict does not necessarily signal successful management of cultural diversity. A pattern of peaceful enforced domination of one group by another is particularly prone to breakdown.

Obstacles and challenges

Despite increasing recognition of cultural diversity as a feature of all societies, in many countries acceptance of this fact has yet to translate into concrete policies and practices that effectively accommodate diversity. The first step to effective policy lies in official recognition of the existence of diversity and of the rights, interests and aspirations of different groups. In practice, many States seek to restrict the enjoyment of universal human rights, and particularly minority rights, to selected communities. Even where official recognition is in place, the implementation of effective policies can be impeded by a lack of political will related to common reasons for resistance to change, including: failure to understand the need for or the potential benefits of change; fear of the unknown; adherence to beliefs and misconceptions about the threat to society posed by diversity; and pressure from the media and popular opinion based on similar fears and misconceptions.

Another major challenge, particularly in States transitioning from authoritarian regimes, is simply the lack of knowledge or experience of the frameworks, mechanisms and options available for successful diversity management. In the experience of the OSCE High Commissioner on National Minorities (HCNM) (a regional mechanism dedicated to resolving minority-related tensions within and between States) policy and law-makers in newly independent States of the former Soviet Union and across Central and Eastern Europe were often quite open to receiving specific guidance to help them develop effective responses to diversity-related tensions within their jurisdictions in line with their international commitments.[3]

A human rights-informed approach[4]

A human rights-informed approach recognises that, while societies and situations may differ, precluding universal policy prescriptions or 'recipes', lessons can nevertheless be drawn from an examination of the comparative practice of States in implementing their obligations under IHRL and building peaceful cohesive societies. Examples of 'effective practice' (i.e. generally or specifically successful practices proven to work in real situations) include: constitutional guarantees of human rights, including minority rights; devolution or other territorial arrangements for self-governance; equitable State investment, expenditure and resource allocation; positive measures, including affirmative action policies, as well as special measures to support and promote various different cultures; and policies and measures aimed at improving relations between different cultural communities. Lessons can also be gleaned from examples of bad or 'ineffective' practice, including the unintended consequences of exclusionary or 'culturally blind' laws and policies.

Given the diversity of practice between (and sometimes within) States, IHRL can provide a useful framework for understanding and managing diversity and for preventing violent conflict in several ways:

3   The HCNM provides tailored guidance to individual States. The office has also overseen the development of a series of thematic recommendations and guidelines on recurrent issues arising in the course of the HCNM's engagement, including matters of language, education, effective participation in public life, policing and inter-State relations. The full set of thematic recommendations is available at OSCE, *Thematic Recommendations and Guidelines*, available at http://www.osce.org/hcnm/66209 (accessed 18 Sept. 2015).

4   The 'human-rights informed approach' was initially conceived and implemented in practice under the first OSCE High Commissioner on National Minorities, Max van der Stoel. It was further developed and promoted in other regions of the world by the *Initiative on Quiet Diplomacy* (http://www.iqdiplomacy.org/) under the leadership of Prof. John Packer, former Director of the Office of the OSCE HCNM.

1. In the *identification of human rights violations* that underlie tensions and conflict. Crucially, IHRL prohibits discrimination based on race, religion, language or ethnicity, among other grounds, and it confers specific rights on persons belonging to minorities and indigenous peoples who are often disadvantaged by virtue of their cultural identity. Where discrimination, exclusion, or marginalisation of certain communities or groups is a source of grievance against the State and of inter-community tensions it is essential that policy-makers are able to identify and effectively address sources of injustice, including all forms of discrimination where they exist.[5]

2. As a *source of leverage* for both international and national actors (including those whose rights have been violated) in holding States to account for failing to live up to their obligations under IHRL and pressing for measures that will prevent or mitigate conflict. These may relate to the need for effective remedy for individual violations, as well as structural changes to legislation, policy and practice to prevent recurrence of such violations in future.

3. As a *principled framework* for analysing situations and developing appropriate responses. IHRL provides a set of underlying principles to be adhered to. Key in this regard are the principles of non-discrimination and equality, and of participation. Non-discrimination and equality includes States' obligations to take 'special measures' to address past discrimination (often referred to as 'affirmative action') and to ensure equality in fact for members of communities who are in a (permanently) disadvantaged position by virtue of their group identity. Principles of participation including the management of one's own or the group's cultural affairs are also fundamental to diversity management. This implies a degree of self-governance that can be realised through various arrangements for the community concerned. At the same time, ensuring equal opportunities for effective participation in all relevant decision-making processes of the State is essential in building peaceful cohesive societies in which everyone has a stake. To this end, measures for the recognition, protection and promotion of distinct cultural identities must be complemented by measures for the inclusion of communities within society as a whole, including via political and economic opportunities and social relations. The promotion of mutual respect, understanding and tolerance between communities, particularly in the fields of culture, education and the media — as enshrined in human rights (including minority rights) standards — are also essential to this process.

5   For detailed guidance on identifying and addressing discrimination see Hollo (2011).

In addition to setting out a broad principled framework, IHRL provides guidance in determining what is possible and permissible when developing policy, legal and institutional approaches to diversity management. It sets parameters in terms of legitimate limitations on individual rights and freedoms and provides a methodology for mediating between competing interests or claims where the rights of one individual or community clash with the rights of others or with the wider public interest. This can entail a careful balancing act for which the jurisprudence of universal and regional human rights oversight bodies provides specific guidance, including factors for consideration, in assessing whether a restriction on an individual right related to cultural expression has a legitimate aim (i.e. it is in the public interest and/or to protect the rights of others) and is proportional to that aim (i.e. is the least restrictive for achieving the required result). For example, where a woman's right to express her culture or religion by covering her head or face in public is balanced against national security interests in ensuring images on identity documents allow easy identification of individuals. Similarly, rights of indigenous peoples to access traditional lands, sites or monuments of cultural or religious significance to them may conflict with the public interest in economic development that (potentially) takes place on the same land.[6]

A human rights-informed approach recognises that in addition to the normative framework of human rights, principles of *good governance* can be instrumental in identifying potential sources of tension relating to cultural diversity and devising appropriate responses to effectively manage them. Good governance signifies that governing institutions are committed to creating comparable conditions and equal opportunities for all to pursue their development and fulfil their aspirations.[7] In some cases, there may not exist a human right to State support for a certain aspect of cultural life, but principles of good governance (and experience) indicate that such situations should nevertheless be addressed. They also provide a useful guide for how to do so. For example, access to higher education in a minority language has been a contentious issue in a number of States. There is no provision under IHRL that guarantees State-funded tertiary minority language education, but bilingual and multi-lingual initiatives that respond to communities' demands for mother-tongue education, while also ensuring equal access to education in

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6   For guidance in analysing and addressing a range of problematic situations relating to cultural diversity using a human rights framework see Holt and Machnyikova (2013), Table 8.1.

7   For an overview of the relationships between good governance and human rights see United Nations Office of the High Commissioner for Human Rights, *Good Governance and Human Rights,* available at http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx (accessed 18 Sept. 2015).

the State languages (and international languages) have helped to defuse tense situations, e.g. in the Balkans.[8]

A human rights-informed approach also recognises the *limitations of a human rights framework* in reconciling differences around culture. Indeed, it can often be the claim or realisation of a right — or the way that right is expressed — that becomes a source of hostility or resentment between individuals or groups of different cultural backgrounds. For example, one community's exercise of their right to practice their religion by establishing a place of prayer can represent a symbolic marking of public space that provokes unease in others, particularly where a fear of the unfamiliar or a sense of vulnerability in terms of their own identity already exists. Local level disputes can easily become politicised, both feeding into and influenced by wider debates around the State's approaches (existing or desired) to the management of cultural difference. In such cases, a range of diplomatic means are available for managing tensions, including through techniques and mechanisms for dialogue and mediation, with a view to achieving outcomes acceptable to all parties.[9]

The approach also respects *other legal frameworks* insofar as these are compatible with IHRL. In addition to human rights, humanitarian and refugee law and standards pertaining specifically to internally displaced person (IDPs), as well as religious, cultural and economic norms (among others) can all play a role in diversity management.

Finally, the approach recognises that in some contexts the *use of human rights language* can be counter-productive. This can be the case where concepts of human rights are unfamiliar and/or are regarded by large sections of the population as 'a Western imposition' irrelevant to the local culture.[10] For example, ongoing work with women MPs in Tunisia exploring ways to more effectively support their participation in politics and wider peacebuilding has highlighted the challenges of using human rights discourses where a secular (human rights) vs. religious divide permeates politics and society. In this case it has been possible to engage meaningfully with women from different positions and backgrounds, sometimes using human rights language (e.g. with civil society activists who frame their work in these terms), but also by engaging Islamic feminist discourses exploring more progressive interpretations of Islam,[11] as well as practical methodologies for personal empowerment rooted

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8   For recent development in Serbia, for example, see OSCE, *OSCE High Commissioner on National Minorities focuses on education during visit to Serbia* (2 September 2014), available at http://www.osce.org/hcnm/123111 (accessed 18 Sept. 2015).

9   For guidance in this respect, see Collins and Packer (2006).

10 On the need for more contextualised approaches to promoting women's rights see, for example, British and Irish Agencies Afghanistan Group (2014).

11 Although the term 'Islamic feminism' is also contentious in the Tunisian context.

in religious and cultural norms prevalent in Muslim-majority societies in the region.[12]

Conclusion

A 'human rights-informed' approach to managing diversity and preventing conflict provides a structure within which advocates of different positions may find a common basis for discussion. It provides both a principled framework and a range of practical options and benchmarks for consideration in identifying and developing policy, legislative and institutional responses that are context-sensitive and appropriate. In doing so it draws on examples of individual States' practice in effectively managing diversity in line with their obligations under IHRL. The approach in no way diminishes or undermines rights-based approaches. Rather, it aims to maximise their potential to practically assist policy-makers and conflict prevention actors in understanding and responding to the challenges facing them in ways that are both conflict-sensitive and in conformity with international law. In also recognising the limitations of using human rights language in some contexts, a human rights-informed approach supports the possibility (and often probability) of effecting change that respects and promotes human rights in fact, but without insisting upon explicit reference to IHRL.

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12 For more on this methodology, see 'Success in a Changing World', developed by the International Forum for Islamic Dialogue, http://www.ifid.org.uk.

Holt, S. and Z. Machnyikova (2013) 'Culture for shared societies', in M. Fitzduff (ed.), *Public Policies in Shared Societies: A Comparative Approach* (New York: Palgrave), pp. 167–214.