

## *Identity, Dignity, Culture and Human Rights*

*Clarence J. Dias*

*President*

*International Center for Law in Development*

### **I**

#### **Introduction**

When Samuel Huntington put forward his spurious thesis of a clash of civilizations, he opened a Pandora's Box of global proportions. Islam was demonized and the west regressing into a crusades mentality. The shocking events of September 11 and their aftermath were both a cause and effect of such developments. The Bush administration's declaration of a global war against terrorism has escalated and exacerbated tensions and divisions. Single Super Power hegemony and U.S. unilateral action in Iraq are contributing to convert Huntington's thesis into a self-fulfilling prophecy of conflict and mayhem.

In today's increasingly conflict-ridden world, identity (a concept not only constructed, but constantly reconstructed) is increasingly viewed as negative and undesirable both by some governments and by sections of the international community. Ethnic identity, in particular, is increasingly being viewed by them as something to be controlled, co-opted and homogenized. Communities are themselves, uncertain about how to deal with their ethnicity.

In many societies, minority communities, continuing to be excluded from development, and facing increasingly intolerable impoverishment, are responding by asserting their ethnic identity in their struggles against discriminations, and their struggles for social and economic justice, for self-determination, and ultimately for secession. The resulting internal armed conflicts are, all too quickly, labeled ethnic conflicts.

In other societies such as Indonesia, unprecedented economic crises, driving two-thirds of the country's population below the poverty line, are causing ethnic majorities to attack the more affluent ethnic minorities. In yet other countries such as Bangladesh, harsh economic conditions, at home, are pushing increasing numbers of migrant workers to seek employment, both within the more affluent countries of their region, as well as outside their region. Such migrant

workers are encountering not only exploitation but harsh discrimination as well. The States involved are often responding by adopting authoritarian policies and measures. Today, environmentalists rightly bemoan the loss of biological diversity and are advocating steps to halt such loss. Unfortunately, there is no counterpart movement to arrest the loss of cultural diversity.

Over the past 50 years, state management of ethnic relationships has often ranged from policies and practices of forced integration, discrimination, co-optation and manipulation; to those of militarization, ethnic cleansing and ethnocide. Over the past 50 years, on the other hand, people-to-people community initiatives, in respect of ethnic relationships, have often provided successful examples of accommodation, mediation, crisis-response and peace negotiation. Clearly, there is a lesson to be learned from this. Democratic governance must respond to the challenges of ethnicity and pluralism by becoming more and more inclusive.

The charter of the United Nations gives us a vision of a world in which **cultural diversity** is a treasure beyond any price, to be nurtured, savored, conserved and preserved. A vision of a world, in which **pluralism** is the conspicuous, preferred alternative: to be strived for, attained and safeguarded. The **Universal Declaration of Human Rights** gives us a universal, indivisible, holistic framework of values and principles which reiterate and reverberate core concepts of equality, nondiscrimination, participation, accountability, well-being and justice for all. These values, principles and norms need to be applied vigorously and consistently to protect and promote cultural diversity and pluralism in multi-ethnic societies. They need to be applied as the framework for renewed international co-operation to arrest, and reverse the tide of resurgence of unilateralism in relations between States, governments and people.

This paper seeks to provide a human rights-based analysis of three inter-related concepts: identity, dignity and culture. It advocates that applying international human rights values, principles, norms and standards to and involving international human rights mechanisms in **all aspects of relationships** between identity, dignity and culture is essential both for conflict prevention and for post-conflict peace-building. It advocates that applying such international human rights values, principles, norms and standards to and involving international human rights mechanisms in **all aspects of relationships** between identity, dignity and culture is essential to protect and promote cultural diversity and pluralism in multi-ethnic societies.

## II

### Identity

Webster's dictionary defines identity as the distinguishing character or personality of an individual. That definition holds equally true for both individuals and communities or collectivities.

The word identity has multiple meanings and, not surprisingly, most people have multiple identities stemming, for example from their gender, sexuality, age, religion, language, ethnicity, race etc. The two International Human Rights Covenants address the different dimensions of identity: civil (e.g. the right to recognition everywhere as a person before the law); political (e.g. the right to vote); economic (e.g. the right to form and join a trade union of one's choice); social (e.g. the right of the family to protection by society and the state); and cultural (e.g. the right of groups to enjoy their own culture, practice their own religion or to use their own language).

In another sense, Webster defines identity as "sameness in all that constitutes the objective reality of a thing". Thus, identity has an objective dimension as well as a subjective dimension. Subjectively one determines one's own identity. Objectively others perceive one's identity. Thus identity is both real and constructed. The identification process becomes very important and most individuals and groups claim the right of self-identification, Human rights standards govern the process of identification and require that such process be one of inclusive recognition rather than one of exclusion or discriminatory non-recognition. Caricatures and stereotyping of identity is also prohibited by international human rights law. Agreement and common perception of identity by both self and others promotes harmony and peace. When tensions surround identity or when there is non-recognition, an ensuing identity-crisis can often lead to friction and conflict. Hence the importance of international human rights law which seeks to recognize and affirm identity and proscribe practices which negate or deny identity.

## III

### Dignity

Webster's Dictionary defines dignity as "the quality or state of being worthy, honored or esteemed". Dignity is a value affirmed in the charter of the United Nations and reaffirmed in the International Human Rights Covenants and indeed in all the international and regional human rights instruments. Dignity has an internal and an external dimension. Dignity stems from pride in one's identity from a

feeling of self-worth. But dignity gets enhanced when it is recognized, honored and esteemed by others.

Dignity is thus a product of the interaction between worth and respect. One of the four core duties that are an essential part of the human rights paradigm is the duty to respect.

It is the relationship between identity and dignity that helps us appreciate and value differences and diversity. Understanding and tolerance of differences promote not only dignity but also peace and harmony. This is why a very important international human rights law, namely the International Convention on the Elimination of All Forms of Racial Discrimination condemns racial discrimination, racial segregation and apartheid and requires all parties to the convention to “prevent, prohibit and eradicate” all practices of such nature in territories under their jurisdiction. The Convention on the Elimination of All Forms of Discrimination against women does the same with special regard to women.

Numerous practices of disrespect of human dignity such as discrimination, exclusion, intolerance, xenophobia, ethnic cleansing and genocide are also prohibited by international human rights law and the last two mentioned are deemed to be “crimes against humanity” in the Statute of the International Criminal Court. Respecting, protecting, promoting and fulfilling human rights not only safeguards human dignity, both individual and collective but also promote a culture of peace.

## IV

### Culture

Webster’s dictionary defines culture as the customary beliefs, social forms and material traits of a racial, religious or social group. And the set of shared attitudes, values, goals and practices. International human rights law embraces the centrality of ethnicity and race, affirms the right of each individual culture to develop fully free from degradation by more powerful groups, and stresses that the abolition of discrimination based on race depends on universal respect for the uniqueness of each ethnic group in our multicultural world. Individual enjoyment of one’s cultural heritage depends on the protection of the cultural rights of the entire group.

The International Covenant on Economic, Social and Cultural Rights recognizes the right of every one to take part in cultural life. The International Covenant on Civil and Political Rights recognizes the right of ethnic, religious or linguistic minorities, individually or in community with the other members of their group, to enjoy their own

culture, to profess and practice their own religion, or to use their own language. The UN Declaration on the Rights of Minorities applies to national, ethnic, religious or linguistic minorities. And enumerates (in Article 2), five specific rights of minorities:

The right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and public, freely and without any form of interference or discrimination.

The right to participate effectively in cultural, religious, social, economic and public life

The right to participate effectively at the national and, where appropriate, regional level in decisions concerning the minority to which they belong

The right to establish and maintain, without any discrimination, free and peaceful contacts with members of their group and with persons belonging to other minorities. The right also includes maintaining contact across frontiers, with citizens of other States to whom they are related by national, ethnic and religious or linguistic ties.

The right to establish and maintain their own associations

The Declaration makes it clear that persons belonging to minorities may exercise their rights individually, as well as in community with other members of their group. The Declaration also balances the rights of minorities with the rights of others, stating that the exercise of the rights set out in the Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedom. This particular is important, because it can be invoked to address and redress harmful “cultural practices” such as female genital mutilation.

The Declaration requires states to:

Protect the existence and identity of minorities within their respective territories (Article 1)

Encourage conditions for the promotion of such identity (Article 1)

Adopt appropriate legislative and other measures to achieve those ends (Article 1)

Take measure where required to ensure that persons belonging to minorities “may exercise fully and effectively all their human rights”, “without any discrimination and in full equality before the law” (Article 4)

Create favorable conditions to enable minorities to “express their characteristics and to develop their culture, language, religion, tradition and customs” (Article 4)

Take appropriate measures so that, wherever possible, minorities “may have adequate opportunities to learn their mother tongue or to

have instruction in their mother tongue”(Article 4)

Take measure in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory ”(Article 4)

Consider appropriate measures so that “Minorities may participate fully in the economic progress and development in their country” (Article 4)

## V

### **Understanding Human Rights**

This paper advocates that applying such international human rights values, principles, norms and standards to and involving international human rights mechanisms in **all aspects of relationships** between identity, dignity and culture is essential to protect and promote cultural diversity and pluralism in multi-ethnic societies. If such a strategy is to be indeed adopted, it is vital that all sectors of society, and not just human rights NGOs alone, develop a basic common understanding of human rights.

### **Human Rights Are Human Rights**

Human rights are indeed legal rights: enshrined in the Universal Declaration of Human Rights;

various human rights Covenants, Conventions, Treaties and Declarations; Regional Charters; National Constitutions and laws.

But human rights are much more than legal rights as well. Human rights are rights not solely because they are recognized in legal instruments

Human rights inhere in the very nature of the human person

They define and enshrine our humanity

They exist to ensure that human life remains human

They exist to ensure that inhuman wrongs are redressed and prevented

Human rights provide the values, principles and standards essential to safeguard that most precious of all the rights to be human, of which the right to be woman is an essential and integral component.

### **Human Rights Are Central to Human Well-being**

Enjoyment of human rights makes the difference between being and just merely existing.

They safeguard both human dignity and human identity (individual and collective) and thus bring purpose and worth to existence.

They safeguard physical integrity of the person and human security of all peoples.

Freedom from fear and freedom from want constitute the minimal essential conditions of being, for individuals, communities and peoples.

Human rights are holistic and interdependent, as indeed they must be since they inhere in the human person.

Human rights are both individual and collective, as indeed they must be since no man is an island. Indeed our individual, solitary existence draws meaning from our social interactions: with family, friends and community.

Hence, human rights define and defend our very human futures.

### **Key Human Rights Concepts**

**Human rights are universal, indivisible, interdependent and interrelated.**

**Human rights are universal and inalienable.**

Across centuries, across civilization, across religions, human rights have existed for all human beings and for all peoples.

**Human rights are indivisible.**

It is a false dichotomy that certain Asian government propounds between bread and freedom. They argue bread now, freedom later. But over time, stripped of rhetoric, such governments guarantee neither bread nor freedom. The real question in our societies is not bread versus freedom. Rather, it is who in our societies has how much of each, and why? Without bread, it is difficult to exercise one's freedom. Without freedom, the bread has lost its flavor.

**Human rights are interdependent and interrelated.**

Thus, the right to food is related to the right to work, the right to health, and the right to social services and, most importantly to the rights of women.

The right to adequate housing is a good example. What constitutes "adequate" housing is determined by interdependent factors and rights such as availability of jobs, access to basic services, proximity to work and health care, affordability, habitability, accessibility and cultural adequacy.

Certain rights such as freedom from discrimination are crosscutting and intimately related to the enjoyment of several other human rights.

However, the indivisibility, interdependence and inter-relatedness

of human rights do not preclude the setting of priorities in human rights activism. Clearly priority must be given to the rights most neglected and least-realized and to the rights of peoples most neglected, excluded or discriminated against.

### **Duties Related to Human Rights**

Human rights carry with them four correlative duties owed by the State:

The duty to **respect**, which requires refraining from interfering with the enjoyment of the right

The duty to **protect** which requires the prevention of violations of such rights by authorities of the State as well as by third parties

The duty to **promote** which requires raising public awareness as to the right and procedures for asserting and protecting the right

The duty to **fulfill** which requires the state to take appropriate measures towards the full realization of the right

The duties are both **positive** (relating to acts of commission) and **negative** (relating to acts of omission).

Some of the duties must be **undertaken immediately** while others can be undertaken "**progressively.**"

The obligations are both **obligations of conduct** as well as **obligations of result**. Hence the obligation is not discharged merely by enacting a law (e.g., requiring that **one third** of all seats in local government be filled by women). It becomes pertinent to examine how many women, in fact, hold political office as a result of the law.

Conventionally, **the duties are owed by the State**. However, as a result of the breakthrough made by women in gaining recognition of their human rights, it is now recognized that **the duties attach as well to non-state actors** (e.g., domestic violence against women).

The duties may be **individual or collective**.

### **Human Rights Principles**

Three human rights principles are of special relevance to the work of development bureaucracy: participation, nondiscrimination and the rule of law.

The Declaration on the Right to Development elaborates on the principle of participation in development as being free, active and meaningful. It further clarifies that participation is both an interdependent means and end of development.

The Declaration also stresses the principle of nondiscrimination and equitable sharing in the benefits of development. This principle provides the justification for targeting development programs to reach those most in need and for policies of affirmative action to reach those



historically neglected and excluded from development.

The principle of rule of law is of considerable relevance to governance programming. It stresses that no one is above the law. All persons are entitled to the equal protection of laws. It also states that for every right there must be a remedy and that therefore, the right to a timely and effective remedy provides a challenge for programming in the sectors of legal and justice sector reform.

Human rights are dynamic and not static and, often, their scope expands over time (e.g. freedom from torture no longer relates solely to physical torture). States may also expand the scope of human rights by making various aspects of a specific right justifiable (enforceable in a court of law).

### **Human Rights Standards**

Each human rights instrument contains an enumeration of the rights guaranteed under the instrument. The legal description of the right contained in the instrument, is referred to by the term human rights standard. Below, for example, are the human rights standards contained in the Convention on the Rights of the Child:

- Freedom from discrimination
- Right to education
- Freedom of association, opinion, expression, assembly and movement
- Freedom of thought, conscience and religion
- Freedom from torture and cruel, inhuman or degrading treatment or punishment
- Freedom from unlawful or arbitrary arrest or detention
- The right to a fair trial
- Right to equal protection of the law
- Freedom from arbitrary interference with privacy, family, home or correspondence
- Right to asylum from persecution
- Right to a name and nationality
- Right to vote and take part in public affairs
- The right to life, liberty and security of person
- Right of everyone to the highest attainable standard of physical and mental health
- Right to just and favorable conditions of work
- Right to adequate food, shelter, clothing and social security
- Right to participate in cultural life, and, of course
- The right to development.

Protecting, Promoting and Realizing Human Rights:  
Complementary Approaches

There are two basic approaches to working on human rights: the reactive approach and the proactive approach. The reactive approach focuses on violations. The proactive approach focuses on prevention of violations and on securing the realization of human rights. Both the approaches are complementary and reinforce one another.

### **Violations Approaches**

A violations approach, typically, focuses on the violator and seeks to impose sanctions on such violator. But a violations approach could also focus on the victim and seek to secure redress relief and rehabilitation for the victim. A violations approach could also focus on the bystander (one who is neither victim nor violator) and seek to mobilize awareness, indignation and concern.

For a development agency, the violations approach is important as a diagnostic: focusing on the system of institutions of governance. Patterns of violations indicate systematic weaknesses which need to be addressed through institutional strengthening or reform. The institutions involved include those responsible for implementation and enforcement of laws.

#### **Preventive Approaches**

There are three aspects of a preventive approach:

1. Promotion of awareness about human rights and remedies through Human Rights Education;
2. Strengthening of mechanisms for the protection of human rights such as the judiciary, National Human Rights commissions, ombudsperson, and the media
3. Realization and fulfillment of human rights through development programs in conventional sectors of development such as health or education in poverty alleviation and in governance.

Human rights are undoubtedly about power and empowerment. The Czech author, Milan Kundera, reminds us that "the struggle of man over power is the struggle of memory over forgetting ". Human rights are about power and emphasize "Right not Might". Human Rights are about memory and remind us of our dignity, our identity, our very humanity.

The Human Rights approach is best encapsulated in that poignant saying "I complained because I had no shoes, until I met a child who had no limbs". Human rights are about complaining about discriminatory lack of shoes and acting thereon. Human rights are about understanding why (because of deadly armaments or drugs like thalidomide) children have no limbs, and acting thereon.

**Myths and Misconceptions about Human Rights**

Several myths and misconceptions abound about human rights:

Human rights are western and alien to many cultures

Economic, social and cultural rights are not really rights

Human rights over emphasize the individual over the community

Human rights over emphasize rights over responsibilities

Human rights encourage adversarial and litigious approaches over compromise and consensus

Human rights favor the status quo over social change

Concern is also raised about selectivity and double standards in the manner in which Human Rights are invoked by powerful States over weak or poor States.

**VI****Human Rights Mechanisms for the Protection, Promotion and Realization of the Rights of Minorities**

Effective protection of the Human Rights of minorities and ethnic groups requires a creative interplay between mechanisms at the international and regional levels and those at the national level. There is an important division of labor here:

Standard-setting and recognition of rights (individual and collective) has been most successfully undertaken at the international and regional levels through negotiations leading to the signing and ratifying of international treaties such as the Convention on the Elimination of All Forms of Racial Discrimination; and the European Charter of Human Rights.

Implementation and enforcement of such standards must inevitably take place primarily at the national level. Hence, the importance of constitutions and constitutionalism.

Monitoring of implementation or of violation of such standards take place as a cooperative endeavor both at international/regional levels and at national levels. Below, we briefly review existing mechanisms and institutions for protecting the Human Rights of minorities and addressing challenges of ethnicity.

**1. International and Regional Mechanisms and Institutions**

The main international mechanism is the UN Human Rights system which performs many roles and functions through a range of institutions comprising: treaty- bodies, the UN Human Rights Commission, the Special Mechanisms and Procedures of the Human Rights Commission and its Sub-Commission, the High Commissioner for Human Rights and UN ECOSOC. Together, they play the following key roles:

**Standard-Setting (law making).** Although, as mentioned earlier, no single UN treaty exists covering the rights of minorities, several UN Human Rights treaties and declarations do set standards relating to minority rights notably the UN Charter; the Universal Declaration; the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights; the Convention against Racial Discrimination; the Women's Convention (CEDAW); the Child Convention (CRC); the Genocide Convention and the UN Declaration on the Elimination of All Forms of Intolerance and Discriminations Based on Religion or Belief; the UNESCO Declaration on Race and Racial Prejudice; and the European, Inter-American and African Human Rights Charters. There thus, does exist a formidable body of international law relating to minorities and ethnic groups. The challenge, as always, lies in implementation and enforcement.

**Awareness-Raising.** The setting of international law standards, while itself an important task, is not enough if such standards exist only on paper. There is a need to raise global awareness about such standards and to promote advocacy for States to adopt such standards by ratifying international treaties. This task is performed by the Office of the UN High Commissioner for Human Rights, several UN agencies notably UNESCO and UNICEF, and the UN Country Team as a whole, working at the national level. Important contributions are also made by international and national NGOs.

**Monitoring Implementation and Violations.** This task is performed at the international level by the UN Human Rights Commission; the Committees (called "treaty-bodies") under the 6 core UN human rights treaties; by Special Rapporteurs created by the UN Human Rights Commission, such as the Special Rapporteur on Religious Intolerance and Discrimination; and by international NGOs. At the regional level this task is performed by the European, Inter-American and African Human Rights Commissions (which are inter-governmental bodies) assisted by international, regional and national NGOs. Together they investigate complaints and "situations"; document progress or violations and engage in what has come to be known as "the international mobilization of shame." The responses to the execution of the Ogoni Nine in Nigeria, and the killing of street children in Brazil are examples of the effectiveness of the international "mobilization of shame".

Civil society is important for monitoring not only individual violations but also widespread practices as well. The European Monitoring Centre on Racism and Xenophobia conducted a study which found that in 1998, such practices existed in all the then 15 member countries in Europe.

Another interesting example is MIMCO (the Mattel Independent Monitoring Council) set up by one of the world's largest toy-making

companies, to monitor implementation of its 1997 corporate code of conduct. This independent body visits Mattel plants, makes recommendations to Mattel's Board of Directors, and revisits the plants after six months to ensure that its recommendations are being heeded.

**Implementation.** This takes place primarily at the national level but the UN development agencies and international NGOs (e.g.: - Minority Rights Group) assist governments in fulfilling their obligations under treaties that they have ratified, and in promoting the progressive realization of all human rights of all, including, through sustainable human development. International NGOs like Transparency International can play important roles here. Another interesting international example is the Forest Stewardship Council: a coalition of environmental groups, timber industry, forest workers, indigenous people and communities who work together to certify sustainably harvested timber for export.

**Enforcement.** Once again, this takes place primarily at the national level. However, there has been a trend towards enforcement at the regional level (notably by the European Court on Human Rights) and at the international level through ad hoc tribunals (on the Former Yugoslavia and on Rwanda) and through the recently created International Criminal Court. The NGO Coalition for an International Criminal Court played vital roles during the negotiations that led to the creation of an International Criminal Court, but is also facilitating collaboration between governments and civil society now that the Court has come into existence. But international enforcement is a highly politicized and therefore selective process; able to work only in exceptional cases. Hence national implementation and enforcement become vital.

Regional mechanisms are also proving important. The work of the European Court of Human Rights (of the Council of Europe) and the European Court of Justice (of the European Union) in protecting the human rights of minorities and fighting racism and xenophobia has received worldwide recognition and acclaim. Moreover, the OSCE (Organization for Security and Co-operation in Europe) created a High Commissioner for National Minorities in 1993.

## 2. National Mechanisms and Institutions

The main mechanisms at the national level are governmental, assisted by NGOs and civil society. Hence, developing a national system for the promotion and protection of human rights and minority rights; and developing national institutions for inclusive democratic governance are really two sides of the same coin.

**Standard-Setting(law making)** at the national level is primarily the task of parliaments and legislatures with the judiciary playing a

supplemental role

**Awareness-Raising** is the task of Ministries (e.g.: of Education, Justice, Human Rights), NGOs and civil society, including the media and professional organizations.

**Monitoring** is the task of regular governance institutions (the Parliament, the Executive, and the Judiciary) as well as of special institutions such as National Human Rights Commissions, National Commissions on Minorities, on Women or on Youth, and the Office of the Ombudsman. National Truth Commissions have also played a historic role in South Africa, Central America and in some other Latin American countries. It is also, importantly, the task of NGOs and of civil society. In Costa Rica for example, a citizens audit of the quality of democracy was conducted (in 1998-99) which reinforced positive developments regarding the electoral system and constitutional reviews of public policy; but also drew attention to shortfalls regarding local government. In many countries, the National Human Development Report, often a joint undertaking by the UN and national government serves a monitoring function. Since 1992, there have been 157 such reports in Eastern Europe and the CIS; 106 in Africa, 63 in Latin America and the Caribbean, 50 in Asia and the Pacific, and 26 in the Arab states. However, when broken down by governance-related topics, only 17 dealt with human rights, 21 with decentralization, 30 with social cohesion and exclusion, 29 with participation, 17 with democracy and 3 with inequity.

**Implementation** is the task of Ministries and their bureaucracies assisted by NGOs and civil society.

**Enforcement** is the task of the law enforcement system comprising the police, prosecutors and judges. But here again NGOs and civil society need to create the pressure for effective enforcement.

As the above summary indicates, there already exist a large number of human rights mechanisms at international, regional and national levels. Admittedly, many of these mechanisms require strengthening and some of them require reform. But they all can potentially be engaged strategically in the task of protecting, promoting and fulfilling the Human Rights of minorities. By doing so, identity will be recognized and respected and so will dignity both individual and collective. Cultural diversity will be preserved and appreciated rather than feared and suppressed. Human rights violations masquerading as cultural practices will be exposed and dealt with. Human rights, the most noble creation of humankind will serve as a vital resource in keeping human life human; in cherishing the most important human values; and in realizing that most precious of Human Rights namely, the right to be human.