

Speaking Points
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Promoting Diversity as a Human Right

Canada School of the Public Service
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Establishing Diversity as a Human Right

- The international vocabulary employs the term, “diversity”. The more prevalent domestic term is “multiculturalism”.
- The protection of Canada’s multicultural heritage is enshrined in the country’s highest law. It is found in section 27 of the *Charter of Rights and Freedoms*, which states:

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

- It’s important to note that section 27 imposes more than a mere passive protection, it implies active, programmatic measures to enhance diversity. The courts have imposed a high onus when determining what infringes s. 27.

- When rights have seemingly conflicted, the right to diversity has emerged as a guiding principle through which other rights must be interpreted.
- For example, In *R. v. Keegstra*, the courts partially relied on s. 27 to thwart the claim that anti-hate laws contravened the right to freedom of expression. In that case, the court stated:

“Multiculturalism cannot be preserved, let alone enhanced if free rein is given to the promotion of hatred against identifiable cultural groups.”

- The Mulroney government passed the Multicultural Act of Canada in 1985. This Act, as well, as been used in the courts to bolster the duty to accommodate, protect and enhance Canada’s multicultural nature.

Human Rights v. Diversity

- The discourse sometimes implies that there is schism or natural juxtaposition between human rights and diversity;
- This concept is derived from the notion that human rights are a Western-centric concept that doesn’t

always apply in all parts of the world. This theory focuses on the idea that certain cultures have practices such as slavery, discrimination or genocide that offend the standard of human rights and currently accepted at international law;

- Different perspectives to, or approaches on, human rights can exist in harmony. This does not make human rights relative or mean that human rights and cultural diversity are mutually exclusive;
- This is a false paradigm that does not recognize the unity of all human rights and the successful co-existence of diversity and human rights;
- The end of the cold war, the obvious increase in the North/South hemisphere disparity, emergence of new regional political alliances, and advances in communications have highlighted the vast diversity of previously isolated or cut-off peoples;
- Statistics Canada states that by 2017 one Canadian in five will be a visible minority; and
- Without protection of diversity and its promotion as a human right, this diversity can create isolationism, ethnocentrism and intolerance in eras of transition.

Diversity as a Human Right at International Law

- Cultural diversity has always been recognized and protected in various ways since the founding of the United Nations. Instruments protecting cultural diversity include:
 - International Bill of Rights
 - The Convention on the Rights of the Child
 - International Convention on the Elimination of All Forms of Racial Discrimination
 - Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief
 - Declaration on the Principles of Cultural Cooperation
 - Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
 - Declaration on the Right to Development
 - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
 - ILO Convention No. 169 on the Rights of Indigenous and Tribal Peoples;
- The Vienna Declaration provides explicit consideration for culture in human rights promotion and protection, stating “the significance of national and regional particularities and various historical

cultural and religious backgrounds must be borne in mind”

- On October 20, 2005, the United Nations approved the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. 148 Countries voted in favour, the U.S. and Israel voted against and Australia, Honduras, Liberia and Nicaragua abstained;
- The Convention recognizes that “cultural diversity forms a common heritage of humanity” and considers that “the protection and promotion of the diversity of cultural expressions presuppose the recognition of equal dignity and respect for all cultures”;
- The Convention reaffirms the rights of sovereign states to “maintain, adopt, and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory”;
- Measures may include:
 - providing opportunities for the creation, production, dissemination, distribution and enjoyment of domestic cultural activities, goods and services, including provisions relating to language used for such activities;
 - providing financial assistance;
 - establishing and supporting public institutions;

- enhancing diversity of the media, including public broadcasting; and
 - nurturing and supporting artists and others involved in cultural expressions
- The Convention also provides for the establishment of an International Fund for Cultural Diversity; and
 - The measures are heavily programmatic, unlike many instruments of international law.

Diversity Reconciled within the International Human Rights Framework

- Universal Human Rights do not impose one cultural standard, but rather a minimum of protection necessary to ensure human dignity. This standard represents the consensus of the international community;
- Human rights are neither representative of, nor oriented towards one culture to the exclusion of others. Universal Human rights, including diversity, represents the dynamic, coordinated efforts of the international community to achieve and advance a common standard and international system to protect human dignity;

- Cultural Rights are not unlimited. The right to culture is limited at the point at which it infringes on another human right. No right can be sued at the expense or destruction of another, in accordance with international law;
- Cultural Rights cannot be invoked or interrupted in such a way as to justify any act leading to the denial or violation of other human rights and fundamental freedoms; and
- There are legitimate, substantive limitations on cultural practices, even on well entrenched traditions. I.e. torture, murder, genocide, discrimination, and slavery.