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The Trouble with Tradition

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“Tradition!” proclaims Tevye the milkman, in his foot-stomping opening to the musical *Fiddler on the Roof*. “Tradition!”

Tevye’s invocation rings true—what is more reassuring than the beliefs and practices of the past?

Which is why the resolution passed by the United Nations Human Rights Council (UNHRC) in September 2012 seems, at first blush, so benign.

Spearheaded by Russia, it calls for “promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind.”

But a close look at the context from which this resolution arose reveals that traditional values are often deployed as an excuse to undermine human rights. And in declaring that “all cultures and civilizations in their traditions, customs, religions and beliefs share a common set of values,” the resolution evokes a single, supposedly agreed-upon value system that steamrolls over diversity, ignores the dynamic nature of traditional practice and customary laws, and undermines decades of rights-respecting progress for women and members of the lesbian, gay, bisexual, and transgender (LGBT) communities, among others.

In countries around the world, Human Rights Watch has documented how discriminatory elements of traditions and customs have impeded, rather than enhanced, people’s social, political, civil, cultural, and economic rights.

In Kenya, for example, the customary laws of some ethnic communities discriminate against women when it comes to property ownership and inheritance. As one woman told us, “They talk about African traditions, but there is no tradition you can speak of—just double standards.”

International human rights law—including the Convention on the Elimination of All Forms of Discrimination against Women, and the Protocol to the African Charter of Human and Peoples’ Rights on the Rights of Women in Africa—calls for transforming customary and traditional practices that violate human rights to remove discriminatory elements.

United Nations treaty-monitoring committees, such as the Committee on the Rights of the Child (CRC) and the Committee Against Torture (CAT), have also stated that customs and traditions may not be put forward as a justification for violating rights.

But such authoritative statements have done little to dampen growing support among UN member states for resolutions that support “traditional values.”

Tradition need not be out of step with international human rights norms and standards. For many people living in rural areas, such as parts of sub-Saharan Africa, traditional values interpreted in customary law may be the only recourse to any form of justice. Nor is the substance of the HRC resolution all bad. Its text specifically states that “traditions shall not be invoked to justify practices contrary to human dignity and that violate international human rights law.”

But unfortunately, “tradition” is indeed often used to justify discrimination and crackdowns on rights and is easily hijacked by nations determined to flout the rights of particular groups and to quash broader social, political, and legal freedoms. In such environments, “tradition” subordinates human rights. It should be the other way around.

For women, upon whose shoulders the burden of upholding cultural norms and values often falls, traditional values can be a tool that *curtails* their human rights. Human Rights Watch has shown that such “values” are sometimes used to justify forced marriages in Afghanistan, virginity testing in Indonesia, “honor crimes” in Iraq, and marital rape in Kyrgyzstan. In Yemen, the abolition of the minimum marriage age on religious grounds in 1999 means that girls as young as 8 are married off to much older men, some of whom rape their pre-pubescent girl brides without legal consequence.

For LGBT people, the language of traditional values tends to cast homosexuality as a moral issue, and not a rights issue—as a social blight that must be contained and even eradicated for the good of public morality.

In 2008, for example, Human Rights Watch showed how vague and ill-defined “offenses against public morality” laws are used in Turkey to censor or close LGBT organizations and to harass and persecute LGBT people.

Similarly, several former British colonies, including Nigeria and Malaysia, use moral terms such as “gross indecency” and “carnal knowledge against the order of nature” in rejecting homosexuality, citing so-called traditional values embodied in laws that in fact only date to the relatively recent, and otherwise derided, colonial era. In Uganda, Malaysia, Moldova, and Jamaica, where the state rejects LGBT rights, claims that homosexuality is simply “not in our culture” are ubiquitous.

Traditional values need not be at odds with human rights.

In Iraqi Kurdistan, for example, where tradition, custom, morality, and Islam have been invoked to justify continuing female genital mutilation (FGM) from one generation to the next, the highest Muslim authority issued a *fatwa* signed by 33 imams and scholars saying that Islam does not require it, though implementation has been lackluster.

There has also been some progress in adapting or banning “traditional” practices that fail to respect human rights. The 2009 Elimination of Violence Against Women law in Afghanistan, for

example, outlawed *baad*—the practice where community disputes are settled by giving up women or girls as compensation for crimes—although implementation has also been poor.

Several recent legal cases also show that rights-limiting traditional practices do not necessarily hold sway over inclusive, rights-respecting national law. In 2008, for example, South Africa’s Constitutional Court decided in favor of a daughter inheriting her father’s chieftaincy—in line with the country’s constitution and against a male rival’s claim.

But too often, “traditional values” are corrupted, serving as a handy tool for governments in the business of repression. For Russia, which spearheaded the HRC resolution, the insertion of traditional values into the realm of human rights comes amid intensifying government repression of civil society and the media, and is part of a concerted effort to roll back the gains made by women and LGBT people.

It’s no coincidence that traditional values—and the related push against LGBT rights—are finding an eager and broadening international audience at this time.

The climate of political uncertainty, social upheaval, and economic crisis in much of the world has enhanced the appeal of the timeless universal essence that tradition is claimed to embody.

Blaming one group for the ills befalling society is easy and appealing in the face of such instability. Gays and lesbians are particularly easy targets for the moral panics that can erupt at a time of social crisis.

The human rights movement is not inherently at odds with customary law, religious law, and tradition, but with the aspects that violate rights. The task at hand is one of transformation, not rejection.

“Culture changes with time,” Botswana’s High Court stated in its October 2012 ruling in favor of four sisters battling for their family home in the face of customary law. And that is precisely the point. Culture *does* change with time.

Evoking a static and vague concept of “tradition” not only fails to account for these shifts, it fossilizes society. The risk is that instead of advancing human rights and basic freedoms, the HRC resolution and its call for a “better understanding of traditional values” could be used to bury rights under a mound of cultural relativism—threatening to roll back women’s rights and exclude LGBT people from a human rights framework in the process.

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