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Human Rights, Minority Rights, Non-Discrimination and Pluralism: A Mapping Study of Intersections for Practitioners

Corinne Lennox¹
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EXECUTIVE SUMMARY

This paper shows how international standards on human rights, minority rights and the right to non-discrimination underpin many of the drivers of pluralism. Human rights practitioners can offer extensive guidance on how to use these standards to enable the practice of pluralism. Advocates of pluralism can also help human rights practitioners to go beyond the letter of the law and foster norms, institutions, processes and policies that help to realize these rights through a pluralism ethic.

Human rights standards require states to not merely tolerate diversity, but to cultivate diversity and respect for minorities. States must take proactive steps to fulfil their human rights obligations through positive measures against practices that threaten

pluralism, such as racial discrimination, unequal distribution of resources, hate speech, curricula perpetuating stereotypes and distorted visions of the past, restrictive citizenship criteria, coercive assimilation policies and political exclusion of minorities. Moreover, human rights establish both a universal and a legal basis for institutions and policies that facilitate pluralism.

The paper's first section discusses each of these rights obligations and how they are interdependent. Human rights principles that shape pluralism are explored, such as non-discrimination, the need for positive measures to fulfil human rights, accountability for human rights violations and reasonable limitations on human rights for wider public goods. The four pillars of minority rights—the right to exist, the right to non-discrimination,

This paper is part of a new publication series from the Global Centre for Pluralism titled **Intersections: Practicing Pluralism**. Designed for practitioners, each paper maps an established field of practice or perspective on diversity, examining its conceptual foundations and applications to identify potential intersections with pluralism. By helping practitioners apply a pluralism lens to their work and by showing how many fields of practice already contribute to pluralism, our aim is to open a new global conversation about living peacefully with diversity.

the right to protection of identity and the right to participate—inform core institutions for pluralism. The right to non-discrimination foresees necessary “special measures” to achieve substantive equality that can be used to justify legislative and policy measures that facilitate pluralism.

The paper also introduces the many mechanisms in inter-governmental organizations (IOs), such as the United Nations (UN), that monitor these rights and produce recommendations that can inform the analysis and practice of pluralism. Overall, monitoring mechanisms have been straightforward in prescribing interventions in key areas for pluralism like modes of political participation for minorities, the role of the media, public education against discrimination, the collection of disaggregated data, curriculum reform and citizenship criteria. Also, there are important new international policy developments on minority rights and non-discrimination that can be utilized. These new policy developments can be seen, for example, in the new UN Guidance Note of the Secretary-General on Racial Discrimination and Protection of Minorities and in the European Union’s external Action Plan on Human Rights and Democracy.

The paper’s second section considers how a pluralism approach can go beyond human rights. Pluralism studies can show the instrumental value that rights such as autonomy (absent in international minority rights standards) have had at the national level. The pluralism approach can also help states adopt a more progressive interpretation of their obligations under international human rights law, especially in relation to positive measures. Pluralism can also play a role in determining reasonable

limitations on the exercise of human rights and devising remedies in cases where human rights have been violated. The paper discusses some tensions between human rights principles and the pluralism approach but offers suggestions on how these can be mitigated, for example, through vernacularizing international human rights to local meanings. Finally, the paper encourages further study of the implicit theories of change in pluralism and in human rights.

The third section takes two important areas of global policy, child rights and Sustainable Development Goals (SDGs), to explore how a human rights-based approach in these areas can add value to pluralism approaches and vice versa. The UN Convention on the Rights of the Child offers some of the most explicit enabling provisions of a pluralist approach but the monitoring committee of the Convention could be more consistent in its review of these provisions in making recommendations to states. In the SDGs, norms of pluralism and human rights are also endorsed. The paper narrows in on the “data revolution” occurring with the SDGs and argues that pluralism can build on basic human rights principles to help manage the process and consequences of disaggregated data collection, such as the evidence of inequality and expanded diversity that such data will reveal.

I. INTRODUCTION

This paper has been prepared to inform the work of the Global Centre for Pluralism (GCP) regarding the potential to complement existing activities of international and national organizations focused

on promoting international law on human rights, minority rights and non-discrimination. The aim is to consider how global human rights standards and mechanisms already address issues of diversity, how this work can enrich the promotion of pluralism and be strengthened by a pluralism approach, and to identify where the GCP can build on areas of intersection for future collaboration with human rights practitioners.

In the view of the GCP, pluralism is “an ethic of respect that values human diversity.”² Pluralism is enabled by a set of governance institutions and policy choices that promote norms of inclusion, fairness, reciprocity and respect for diversity within a unifying civic culture. The GCP also identifies a series of “drivers” of pluralism. Shared citizenship is a key driver of pluralist societies that both “transcends and encompasses difference”³ to recognize the expression of multiple identities. Pluralism is undermined by inequality, particularly in access to livelihoods, resources, well-being and political participation. Pluralism is built on a shared history and memory but acknowledges different experiences of the past and pursues remedies for historic grievances. Education is a fundamental driver of pluralism, specifically in learning social attitudes of inclusion through formal education or other sites of intercultural exchange such as religion and the media. Pluralism is also driven by neighbourhood effects of adjacent states or the influence of transnational identities. Finally, pluralism can be affected by spaces and how people live together or apart and interact in the digital age. Horizontal relations between individuals and between groups are as important as vertical relations with the state in fostering the pluralism ethic.

There are many links between the drivers of pluralism and human rights standards to the extent that securing human rights is a necessary precondition for achieving pluralism. Respect for human diversity is a foundational principle of human rights standards promulgated under the auspices of the United Nations. Diversity was also recognized as a potential trigger of violence and abuse, prompting the UN to elaborate standards to prevent these outcomes and accommodate diversity. The resulting human rights norms espouse respect for equality and human dignity, protection of identities from discrimination, rights that enable well-being and an adequate standard of living for all, prohibitions of violence, fair participation in political institutions, specific rights and protections for minorities, and freedoms to express cultural and religious diversity. Pluralism is constituted by these rights. Moreover, human rights establish both a universal and a legal basis for institutions and policies that facilitate pluralism. Human rights standards compel states to take proactive steps to fulfil their obligations, through positive measures against practices that undermine pluralism, such as racial discrimination, unequal distribution of resources, hate speech, curricula perpetuating stereotypes and distorted visions of the past, restrictive citizenship criteria, coercive assimilation policies and impunity for crimes against minorities. Thus human rights standards require states to not merely tolerate diversity, but to cultivate diversity and respect for minorities. This applies for all people within the boundaries of the state, irrespective of citizenship.

International human rights mechanisms monitor human rights compliance and offer numerous recommendations on how states can better fulfil

their obligations. There is a host of state-specific documentation available through various UN and regional organizations that prescribe legislative and policy options that are consistent with and support pluralism. These include such common points as better collection of disaggregated data to track inequalities and target programs, eliminating discriminatory citizenship requirements, reforming justice systems, public education schemes to combat racism and xenophobia, investment to redress economic exclusion and mechanisms to protect and promote the identity of minority groups.

Pluralism, in turn, can strengthen the exercise of human rights in many ways and help human rights practitioners to advise states and civil society. The emphasis in pluralism on nurturing a shared social and political ethic of respect for diversity across time and space is particularly important to reinforcing human rights norms. This can help to give better attention to aspects of human and minority rights that are violated, ignored or weakly enforced. Pluralism can also guide human rights practitioners to better understand the legislative and policy options for meeting positive obligations on the state and also duties to the community foreseen in—but poorly defined by—international human rights law. The design of institutions that maximize political participation, for example, can be informed by state experiences with pluralism structures. The pluralism lens can also bring together interrelated issues that are sometimes siloed by the rights- or treaty-specific approach to monitoring human rights.

The paper will elaborate on these points and is divided into three sections. The first section examines the key concepts and principles of

relevance to pluralism in the international legal standards on human rights, minority rights and the right to non-discrimination. Each group of rights is considered in turn, starting with the content of the rights, followed by the international mechanisms for monitoring the rights and some highlights of the activities of inter-governmental organizations (IOs) in implementing these rights through policy and program activities. The second section responds to three major questions concerning the intersection of human rights and pluralism: 1) how does the concept of pluralism build on or go beyond human rights principles and standards; 2) how can human rights principles and standards help achieve the aims of pluralism; and 3) are there potential tensions between the human rights framework and a pluralism approach? The final section identifies two key policy entry points for collaborative human rights and pluralism initiatives: child rights and Sustainable Development Goals.

II. THREE RIGHTS FRAMEWORKS: HUMAN RIGHTS, MINORITY RIGHTS AND NON-DISCRIMINATION RIGHTS

International human rights frameworks value and protect diversity. It is notable that the first international treaty adopted by the UN pertaining to human rights was the Convention on the Prevention and Punishment of the Crime of Genocide (1948), designed to protect people on the basis of their national, ethnic, racial and religious diversity, and

to punish those who sought to eliminate them. This was followed the next day by the adoption at the UN of the Universal Declaration of Human Rights (UDHR, 1948). On the same date, the General Assembly adopted the “Fate of Minorities” resolution that acknowledged minority rights per se were not included in the UDHR, but instructed that “a thorough study of the problem of minorities [be made] in order that the United Nations may be able to take effective measures for the protection of racial, national, religious or linguistic minorities.”⁴ The study prompted the inclusion of a provision on minority rights protection in the International Covenant on Civil and Political Rights (1966). A year earlier, the second international treaty on human rights adopted by the UN was the International Convention on the Elimination of All Forms of Racial Discrimination (1965), an effort spearheaded by decolonized states and their allies.

This is how these three categories of rights—human rights, minority rights and non-discrimination—came to be formed and interconnected within the UN system. Minority rights are built on the foundation of human rights, including the fundamental human right to non-discrimination. Each will be explored in turn in this section, highlighting key principles and their intersection with pluralism.

International Human Rights Standards

In addition to the UDHR, there is now a corpus of 10 core treaties of international human rights law at the global level,⁵ plus an extensive number of related treaties or standards (e.g., declarations, principles) that have been adopted by UN Member States.⁶ At the regional level, there are also several treaties

and standards concerning human rights.⁷ These instruments have been widely ratified by states. For example, over 80% of UN Member States have ratified four or more international human rights treaties and every UN Member State has ratified at least one of these treaties. The UN Charter also makes respect for human rights and fundamental freedoms one of the purposes of the United Nations itself (Article 1.3). This has created a strong global regime of human rights norms that has been extensively codified and widely legitimized by state adoption of treaties.

It is beyond the scope of this paper to give a detailed analysis of all human rights standards, but some general principles that are relevant to pluralism debates will be summarized.

State obligations to protect human rights extend to all persons within the territory and jurisdiction of the state, regardless of citizenship.⁸ Although there is an emphasis in pluralism discourses on citizenship and civic identity, human rights must be respected even for individuals holding a legal status short of citizenship. For human rights practitioners, the civic identity championed by pluralism is useful for challenging discriminatory criteria that frequently bars equal access to citizenship because of ethnicity or religion.

The implementation of human rights must be pursued without discrimination. International human rights law treaties contain numerous non-discrimination provisions protecting a wide variety of identity markers, including ethnicity, religion, race, sex, social origin and the wide clause of “other status.”⁹ This means that identity should not be a

barrier to realizing human rights. The challenge for human rights practitioners is that even where laws exist to prohibit discrimination, social acceptance of identity diversity may be low, especially for particular identities, for an array of reasons that are not easily remedied by the law. The pluralism ethic can help nurture respect for diversity in support of the law.

Protection of human rights requires not only negative measures of refraining from interference with the exercise of human rights but also positive measures that enable human rights to be fulfilled. This mandates certain proactive legislative, institutional, policy and budgetary responses by states in the governance of pluralistic societies. For example, concerning language rights, at a minimum, the state must ensure the freedom to speak one's own language; for larger minority language groups, the state might take further positive measures such as funding education in minority languages, providing translation services and even recognizing a minority language as an official language of the state. Many of these positive measures require additional resources or enabling legislation and policy to be put in place. The determination of necessary positive measures can be vague in the letter of the law, however, presenting states with some leeway that could either enable or undermine drivers of pluralism. Human rights practitioners could benefit from guidance on state responses that have been most successful in supporting pluralism through positive measures on human rights. For example, what policies on the provision of minority language education have proven the most effective in promoting equality in education outcomes?

Human rights obligations extend to ensuring that the actions of third parties within the state (e.g., non-state actors such as businesses, faith groups or private individuals) do not violate human rights or prevent the enjoyment of human rights. The focus in pluralism on horizontal relations between individuals and groups can be supported by these obligations to ensure respect for human rights in both the public and private spheres. For human rights monitoring mechanisms more focused on state actor compliance, pluralism activities can complement this work by nurturing positive inter-communal relations.

Human rights have corresponding duties. These duties are articulated in law primarily as duties of states. However, we find in the law some references to duties of rights-holders as well: for example, Article 29.1 of the Universal Declaration of Human Rights states that "everyone has duties to the community in which alone the free and full development of his personality is possible." These duties can be enablers of pluralism and highlight the responsibilities of individuals in building pluralistic societies. International human rights law, however, is somewhat limited in the articulation of those duties of individuals to the community, which can be developed in legislative and policy frameworks on pluralism.

Human rights can be limited under certain circumstances.¹⁰ The UDHR expresses this limitation as follows:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose

of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.¹¹

Determinations of the “just requirements” can be difficult in pluralistic societies with competing interests and beliefs, including differing concepts of justice. However, these qualifying provisions can be useful to justify compromise and to reinforce the principle that individuals also have duties to the wider society in exercising their rights.

International Human Rights Mechanisms

The United Nations’ human rights system is comprised of two types of monitoring mechanisms: UN Charter bodies and UN treaty bodies. Both give guidance on human rights obligations through recommendations to states that are instructive for pluralism approaches. The three regional human rights systems are overseen by commissions and/or courts.¹²

Treaty bodies are committees consisting of independent experts appointed for the purposes of monitoring treaty compliance, primarily through the review of periodic state reports on treaty implementation. Committees review these state reports in dialogue with state representatives and offer recommendations on how states parties can better fulfil their treaty obligations, issued in a report called Concluding Observations. Civil society organizations can also submit information to treaty bodies for their consideration, providing evidence of how states have fulfilled (or not) specific treaty provisions.¹³ States are to report back in their next

periodic report on the efforts made to respond to the committee’s recommendations.

Concluding Observations are a valuable resource for informing public policy and legislative reform that is relevant to pluralism aims. Good practice by states is recognized alongside recommendations in the legal and policy spheres for change. Committee interpretations of provisions can go beyond the minimum actions required for treaty compliance to promote pluralism. Many of the treaty bodies can also receive individual complaints on treaty compliance and issue quasi-judicial decisions on cases, which can support pluralism.¹⁴

One can also look to the General Comments outputs of the treaty bodies. In General Recommendations/General Comments, treaty bodies have the opportunity to offer their interpretation of how specific aspects of the treaty should be implemented. Here we can identify proactive attempts to direct the impact of the treaties on wider social or political change. For example, the Committee on the Elimination of Racial Discrimination (CERD) that monitors the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) has issued several General Recommendations on specific groups, including for indigenous peoples, Roma, people of African descent, and those affected by caste-based discrimination.¹⁵ CERD goes beyond the strict letter of the treaty to offer broader recommendations. For example, in the General Recommendation on Roma, CERD recommends “develop[ing] modalities and structures of consultation with Roma political parties, associations and representatives, both at central and local levels, when considering issues and adopting decisions on matters of concern to

Roma communities.”¹⁶ Yet in the ICERD itself, the corresponding right is to non-discrimination in political rights, including the right to “take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.”¹⁷ Here, CERD has demonstrated a commitment to move beyond narrower “non-discrimination” principles to support more institutionalized forms of participation in political life for a minority group. Interestingly, CERD also calls upon states “to promote more awareness among members of Roma communities of the need for their more active participation in public and social life and in promoting their own interests,”¹⁸ a point that aligns well with pluralism’s idea of civic engagement. While the ICERD contains essential principles for pluralism, CERD’s General Recommendation can go beyond this to offer considered and very specific guidance on treaty implementation that supports drivers of pluralism.

The UN Charter bodies include the Human Rights Council (HRC) and the Special Procedures created by the HRC. The HRC consists of UN Member States that meet to discuss thematic and country situations concerning human rights, including emergency situations. The HRC also oversees the Universal Periodic Review (UPR) process, whereby all Member States have their human rights compliance activities reviewed before the HRC every four-to-five years. Special Procedures are independent experts that serve in a voluntary capacity as Special Rapporteurs or on Working Groups to review country situations and thematic human rights issues. There are now 44 thematic and 12 country mandates.¹⁹ They have three main activities: country visits, thematic reports and receiving individual communications.

The Charter bodies can be important partners in fostering pluralism. The UPR, although a political forum, has proven a strong leverage tool for state acceptance of human rights reform. The recommendations of the UPR, tailored to and accepted by each state, are a resource for national dialogue on pathways to change.²⁰ The Special Procedures can engage in country-level review of human rights compliance (upon invitation of states) and will issue detailed recommendations in their reports on how states can improve, drawing from consultations with civil society and state actors. Along with treaty body Concluding Observations, the UPR reports and Special Procedures reports offer a very comprehensive set of legislative and policy guidelines for states to implement. These can inform pluralism initiatives about states’ international legal obligations, progressive interpretations of the scope of the law, civil society views on national issues and good practice standards for implementation of human rights.

International Organizations and Human Rights

The main inter-governmental organization with responsibility to support international human rights law is the United Nations. All UN agencies have a responsibility to support the implementation of human rights. This is given operational detail by Action 2 and, more recently, by Human Rights Up Front (HRuF), both initiatives of the UN Secretary-General(s). Action 2, adopted in 2002, requires that all UN agencies apply a human rights-based approach (HRBA) to development programming in their work. HRuF, adopted in 2013, emphasizes action by the UN where there is a threat of serious and large-scale violations of international human

rights and humanitarian law.²¹ It intends to strengthen UN system capacity to act and inform Member States in situations of such violations of human rights.

A better understanding of the drivers of pluralism could inform the work of HRuF and the application of the HRBA. Both initiatives are overseen by the UN Development Group's (UNDG) Human Rights Working Group (HRWG), which brings together all UN agencies under the chair of the Office of the United Nations High Commissioner for Human Rights (OHCHR).²² The HRWG aims to strengthen the capacities of UN Resident Coordinators and UN Country Teams to fulfil the human rights mandate of the UN, including supporting the implementation of recommendations for states from the UN Charter bodies and treaty bodies on human rights. Human rights practitioners can sometimes struggle to translate generalized recommendations into legislation and policy responses that take account of local contexts. Pluralism studies could outline various options and criteria to consider in designing such responses.

International Minority Rights

The international standards on minority rights are crucial to achieving pluralism but have often been overlooked by human rights practitioners. The pluralism lens can highlight the integral role of minority rights to wider human rights aims by emphasizing the respect for diversity as a driver of change. This section introduces the normative framework of minority rights, including the four key pillars of minority rights: the right to exist, the right to non-discrimination, the right to protection

of identity and the right to participation. Some discussion on the intersections between minority and indigenous rights will be offered to highlight the distinctions and tensions between the two rights regimes.

Minority rights standards within the UN system are derived from human rights law. Article 27 of the International Covenant on Civil and Political Rights (ICCPR) is the primary legally binding provision specifically targeted to ethnic, religious and linguistic minorities. Article 27 reads:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

A virtually identical article appears also in Article 30 of the Convention on the Rights of the Child. Every state has ratified at least one of these two treaties, establishing a legally binding obligation for specific minority rights protection.

Three caveats of Article 27 should be noted. First, the Human Rights Committee that monitors the ICCPR has asserted that the determination of whether a minority exists should be established by objective criteria and does not depend upon a decision by the state.²³ Second, as a component of human rights, minority rights protections are entitled by all persons within the territory or jurisdiction of the state and not only to those minorities who are also citizens of the state.²⁴ Third, although expressed

as rights of “persons,” it has been recognized that minorities may exercise these rights individually as well as in community with other members of their group. In sum, these three caveats are very important enablers of pluralism. States cannot wish away diversity, nor unduly restrict the expression of communal identities, by edict of law.

Article 27 rights are elaborated further by the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM, 1992). Although not legally binding, both the preamble and the General Assembly Resolution (47/135) to adopt the UNDM make clear that the purpose of the Declaration is to promote more effective implementation of the human rights of persons belonging to minorities and to contribute to the realization of the principles of the UN Charter.²⁵

The broad normative framework of minority rights rests on four key pillars.²⁶

1) *The right to exist*: protecting the collective physical existence of minorities, including from practices such as genocide and ethnic cleansing. The UNDM holds that states “shall protect the existence...of minorities within their respective territories.”²⁷ The prohibition of genocide and ethnic cleansing are most strongly embodied in the UN Convention on the Prevention and Punishment of the Crime of Genocide (1948) and in the Rome Statute of the International Criminal Court (Articles 3 and 7). Although genocide and ethnic cleansing are not only directed at minorities, such groups are the frequent targets of these crimes.

The right to exist is important for pluralism as a foundation of physical security and as recognition of the inherent value of an ethnic, religious or linguistic diversity. Moreover, multiple identities have the right to coexist within a given territory and the state has positive duties to protect minority groups. Policies of forced assimilation are prohibited under this provision.

2) *The right to non-discrimination*: protecting minorities from direct or indirect discrimination on the basis of ethnic, religious, linguistic or cultural identity. The right to non-discrimination is contained in all UN human rights treaties and is addressed in particular under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The right to non-discrimination protects individuals against any distinction, exclusion, restriction or preference which may have the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of their human rights and fundamental freedoms (ICERD Article 1). The ICERD also enables states parties to take temporary “special measures” in the social, economic, cultural and other fields to help individuals overcome discrimination.²⁸

For pluralism, the right to non-discrimination establishes the fundamental norm of equality of all people within a territory regardless of various identity markers. The right also mandates positive measures by the state to ensure equality in law and, in fact, moving beyond formal legal structures to examine state policy outcomes on inclusion and substantive equality.

3) *The right to protection of identity*: preserving the freedom of minorities to practice their culture, religion and language in the public and private spheres, and requiring measures to enable minorities to develop their culture, religion or language. This right is recognized in Article 27 of the ICCPR and in Article 30 of the Committee on the Rights of the Child. The UNDM holds that “states shall protect the...national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity,” including by adopting “appropriate legislative and other measures to achieve those ends.”²⁹ This is a clear endorsement for states to take positive and permanent measures to protect this right.³⁰ This includes measures in the field of education “in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory.”³¹ Additional standards include the right of minorities to have “opportunities to learn their mother tongue or to have instruction in their mother tongue” and “opportunities to gain knowledge of the society as a whole.”³² Minority rights that protect the distinct culture, language, religion, traditions and customs of groups must be exercised in a manner consistent with national law and other international standards (UNDM Article 4.2).

Identity rights build on the first two pillars to enable identities to flourish and be valued in society, another principle of pluralism. This can promote intercultural, inter-faith literacy by encouraging public expressions of identity and demonstrating state support for diversity, rather than mere tolerance of difference.

The right to protection of identity also recognizes certain limitations, which can ease inter-communal tensions where expressions of identity are in conflict and can establish a common protocol for community practices of identity. Furthermore, the UNDM establishes that no disadvantage shall result for persons belonging to minorities who chose not to exercise their rights as such (UNDM Article 3.2). This creates space in a pluralist society for minorities to not express their identity, in whole or in part, without compulsion by the state or their own community. This can help assuage concerns over essentializing identities and restricting individual expressions of multiple identities.

4) *The right to participation*: ensuring that minorities “have the right to participate effectively in cultural, religious, social, economic and public life” (UNDM Article 2.2); the right to participate in decision-making that affects them (UNDM Article 2.3); and the right participate in and to form their own associations freely, including across borders (UNDM Articles 2.4 and 2.5). The right of citizens to participate in the conduct of public affairs, directly or through freely chosen representatives is outlined in Article 25 of the ICCPR.³³ Minorities are frequently denied this right due to structural, political and/or social barriers. For example, the nature of representative democracy can often exclude numerical minorities, or minorities may be targeted in the denial of rights of citizenship or electoral rights that enable such participation. In response, the UNDM expands on this right by recognizing that “persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, the regional level concerning the minority to which they belong

or the regions in which they live.”³⁴ Furthermore, the UNDM declares that “national policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.”³⁵ To this end, states also have obligations to “consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.”³⁶ Policies that give effect to these rights include the establishment of national councils on minorities, electoral systems that increase minority representation, or the recognition of functional or territorial autonomy to enable decision-making.

The right to participation in public life establishes the central and equal place of minorities in pluralist societies, rather than isolated at the margins. Participation in decision-making provides the normative basis for institutional structures that enable pluralism at different levels of governance. It also enables minority groups to influence government legislation and policy that might affect them, thus increasing a sense of inclusion and ownership in governance. Fulfilling the right to participation can also make policies more effective because the process of participation can yield suggestions that reduce negative impacts and make outcomes more beneficial for minorities, in turn reducing the potential for grievances. The right to freedom of association across frontiers points to the possible transnational dimensions of pluralism.

Although each of these four pillars includes human rights that all persons have, the sum of the pillars establishes a framework of protection that best responds to the particular situation of minority

groups. This framework creates the conditions under which persons belonging to minorities can realize all of their human rights while maintaining freely their distinct ethnicity, religion, language and/or culture.

Human rights practitioners have wrestled with several major debates in the field of minority rights, which pluralism experiences could inform. One debate concerns the formulation in international law of minority rights as rights of “persons belonging to minorities” rather than rights of minority groups per se. This is important to the pluralism agenda because it is a tension between the rights of individuals and the collective rights of groups, which has implications for structures to govern diverse societies. There is an interest on the part of many states to limit the exercise of minority rights as group rights,³⁷ not least because of the possibility that minorities as groups may claim the right to self-determination as peoples, which encompasses a range of possible governance structures, including forms of non-territorial or territorial autonomy to outright sovereignty. In the “civic” discourse of pluralism, the “persons belonging to minorities” formulation may seem more compatible, but this masks the sense of collective identity that many groups feel in both the public and private sphere, and which cannot be ignored in the construction of pluralist states. State duties to minorities may need to be conceived as duties to the group as a whole, rather than duties to individual minority persons.³⁸

Another debate concerns the extent to which differences between minority groups can confer different positive obligations on the part of the state. This division is illustrated by the frequent recognition at the domestic level of forms of

autonomy for some (usually national) minority groups and recognition of little more than non-discrimination rights for immigrant minority groups. It is not clear in law what criteria should be used to determine the application of policies such as autonomy or positive measures.³⁹ This has been kept deliberately vague in international law by states concerned with the potential of minority group claims to territory, autonomy or other resources. However, in highly diverse states, with increasing immigrant populations, how the state allocates limited resources or restructures political institutions in support of minority rights is a key area where pluralism approaches can contribute.

A third debate in minority rights is to what extent minority groups can pursue traditional practices that are part of their culture but which contravene international human rights standards or dominant social values. As noted above, the UNDM sets firm limitations on cultural practices that contravene national laws or international standards; however, it is frustratingly vague on how this should be measured. A pluralistic approach can facilitate dialogue on how to legitimately and proportionately set limits on expressions of identity in a way that will not alienate targeted groups.

A fourth debate is the one-size-fits-all approach of minority rights standards at the global level. The UNDM is designated for national, ethnic, religious and linguistic minorities, and no distinction is made within the Declaration to suggest that each type of group would not be entitled to all of the rights included therein. Yet, in reality, the needs and interests of these types of groups, while overlapping, could also be very different. For example, do

religious minorities require the same kind of political participation rights as national minorities? In the management of pluralist societies, the varied nature of minority identities can create a complex field to navigate, but the normative standards are arguably not sufficiently disaggregated to instruct states on the specificities of different types of minorities and their legitimate interests.

Intersection of International Minority Rights and Indigenous Peoples' Rights

The human rights regimes for minorities and indigenous peoples have diverged within the UN system.⁴⁰ This is evidenced by the normative standards elaborated for both groups and by the distinct monitoring mechanisms that exist at the international level. Human rights practitioners have not adequately considered the impact of this division in practice. The divergence can have implications for how states manage competing community interests, particularly in cases where indigenous peoples and minorities experience similar degrees of exclusion from economic and political life. Pluralism could provide spaces for negotiating these different rights claims.

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted in 2007. Although it is not legally binding, it is considered by many to have greater normative legitimacy than the International Labour Organization's (ILO) Convention 169 Concerning Indigenous and Tribal Peoples (1989), the principal legally binding international treaty focused on indigenous peoples.⁴¹ The latter has only been ratified by 23 states and indigenous peoples had little involvement in its drafting.

Three key differences between the UNDM and UNDRIP are highlighted here. First is the recognition in UNDRIP that “indigenous peoples have the right to self-determination.”⁴² Although the standards provide caveats that limit this right to internal self-determination, there are indigenous groups that seek full sovereignty and statehood. Many minority groups have sought similar outcomes but the right to self-determination has been omitted from the UNDM and regional minority rights standards. Second is the guarantee of free, prior and informed consent (FPIC); for example, according to UNDRIP Article 19, “states shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.” These provisions on FPIC go far beyond the much more weakly worded “right to participate in decision-making” offered by the UNDM. Third is the extensive acknowledgment in UNDRIP of land rights for indigenous peoples. For example, in UNDRIP Article 26.1, “indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.” Land is not mentioned in the UNDM or any of the regional standards for minority rights despite the fact that land rights are a common feature of rights claims of many minority groups. In national contexts where both indigenous peoples and minorities have land claims, this creates a two-tiered system that can be a source of tension and inequality. Even on broader economic or political inclusion issues, the divergence in participation rights can create unequal policies that are seen to benefit one group more than another. Moreover,

the differences can be politicized by leaders to break down solidarities across marginalized communities.

This is a structural problem in the international human rights law concerning these two groups. It is exacerbated by the absence of an accepted legal definition of either “indigenous peoples” or “minority.” However, policies for pluralism can be sensitive to these divergences and the tensions they might create when negotiating national plans for development and political participation. In Peru, for example, there is a National Development Institute for Andean, Amazonian and Afro-Peruvian Peoples (INDEPA), a statutory body that brings some convergence in representation and rights for groups that have similar degrees of exclusion. When creating such institutional arrangements for managing diversity across the indigenous/minority divide (or also across the national minority/immigrant minority divide) human rights practitioners can use pluralism norms like shared citizenship, history and memory, and reciprocity to help deliberate agreeable outcomes. Much depends also on how the state defines the nation and the common civic identity that transcends diversity.

International Minority Rights Mechanisms

At the global level, the UN has created two Special Rapporteurs for “minority issues” and for “the rights of indigenous peoples.” There are also related Special Rapporteurs on racism, cultural rights, migrants and freedom of religion. In the arena of conflict prevention, there is a Special Adviser of the Secretary-General on the Prevention of Genocide. The UN also has two global spaces for dialogue on minority and indigenous rights: the UN Forum on

Minority Issues and the UN Permanent Forum on Indigenous Issues (PFII). They are vastly different in structure and resources, with the PFII operating as a much more robust and formally representative structure than the Forum. Additionally, there is an Expert Mechanism on the Rights of Indigenous Peoples that provides the Human Rights Council with thematic advice and a Working Group of Experts on People of African Descent that emerged from the 2001 World Conference Against Racism. For pluralism policy, it is worth noting that each space and mechanism produces reports and recommendations on the implementation of the international human rights standards for each group. These can provide some normative guidance for policy design, particularly given that minorities and indigenous peoples, alongside states representatives, have had the opportunity to have input into the content of the recommendations. Among the outputs of the Forum are recommendations on minority participation in political and economic life, and in education. The PFII has been concerned with a wide range of topics, including indigenous peoples and conflict in 2016, and indigenous peoples' collective rights to land, territories and resources in 2018.

Several regional organizations have established specific standards and mechanisms for minorities and indigenous peoples but the extent to which these differ highlights the varied legal approaches to diversity by region. At the European level, the Council of Europe (CoE) has adopted the Framework Convention for the Protection of National Minorities (FCNM, 1995) and the European Charter for Regional or Minority Languages (1992). The FCNM is overseen by the Advisory Committee and the European Charter by the Committee of Experts,

which both function much like a UN treaty body. Specifically for Roma, the CoE has a Special Representative of the Secretary-General for Roma Issues and an Ad hoc Committee of Experts on Roma and Traveller Issues. The Organization for Security and Cooperation in Europe (OSCE) established the High Commissioner on National Minorities in 1992 to promote resolution of ethnic tensions that might endanger peace and stability within the OSCE region. The mandate has issued several normative guidelines to inform best practice in states for managing inter-communal relations.⁴³ The OSCE also has a Contact Point for Roma and Sinti Issues. At the inter-American level, the Inter-American Commission on Human Rights has created Special Rapporteurs on “the Rights of People of African Descent and Against Racial Discrimination,” “the Rights of Indigenous Peoples” and “the Rights of Migrants.” The African Commission on Human and Peoples' Rights established a Working Group on Indigenous Populations/Communities in Africa in 2000. This working group formulates recommendations to prevent and remedy violations of human rights of indigenous populations/communities, including through country visits, communications and other dialogues. Article 25 of the Arab Charter on Human Rights provides that “persons belonging to minorities shall not be denied the right to enjoy their own culture, to use their own language and to practice their own religion. The exercise of these rights shall be governed by law.” The Association of Southeast Asian Nations (ASEAN) Human Rights Declaration does not mention minorities but reaffirms the right to non-discrimination on the basis of, among other things, race or any other status (Article 2), and the rights of migrant workers (Article 4).

Given these varied approaches to minority and indigenous rights, it is clear that human rights practitioners can struggle to localize international norms. Studies of pluralism approaches can highlight how different regions have conceptualized and accommodated identities, suggesting why certain international norms do or do not resonate. Such insights can help human rights practitioners to better formulate their recommendations to find links with local understandings of diversity and rights.

International Organizations and Minority Rights

The most significant recent development in UN policy on minority rights is the adoption of the UN's Guidance Note of the Secretary-General on Racial Discrimination and Protection of Minorities (2013). An Action Plan has also been adopted to implement the Guidance Note. This is broadly overseen by an inter-agency UN Network on Racial Discrimination and Protection of Minorities, with leadership from the OHCHR Indigenous Peoples and Minorities Section. Action Plan activities include developing a new tool addressing caste-based discrimination⁴⁴ and training UN staff on minority rights.

The UN takes divergent policy approaches to minorities and indigenous peoples, with little overlap institutionally or in terms of activities. In general, these activities are focused more on indigenous peoples. For example, since 2011, there has been a UN Indigenous Peoples' Partnership to finance joint UN programs at the country level, in partnership with indigenous peoples, whereas no equivalent fund exists for minorities. The World Bank has a policy on indigenous peoples (OP/

BP 4.10), but not on minorities. The UN has also agreed to an International Decade for People of African Descent (2015–24), similar to two earlier international decades for indigenous peoples.

At the regional level, we find more group-specific initiatives for minorities than generalized minority rights programs, with an emphasis on non-discrimination rights. In Europe, one example of this minority rights/non-discrimination merger is the EU Fundamental Rights Agency's European Union Minorities and Discrimination Survey, which had its second wave of data collection in 2015, focusing on indicators of discrimination. There are also some policies under the banner of culture, such as the CoE and European Commission's joint international Intercultural Cities Programme. Policy attention by inter-governmental organizations (IOs) in Europe is predominantly on the Roma, through programs like the EU Framework for National Roma Integration Strategies (2014–20), which centres on inclusion in economic and social rights. More recently, attention to Muslims is increasing and also to Jews, albeit primarily through the non-discrimination lens of Islamophobia and anti-Semitism, rather than a broader minority rights approach.⁴⁵ Notably, the EU has adopted an Action Plan on Human Rights and Democracy, focused on external action, which foresees a revised policy on indigenous peoples,⁴⁶ action focused on religious minorities related to the EU's guidelines of freedom of religion, and a general commitment to "support partner countries' efforts and relevant initiatives by the UN, as well as regional organizations aimed at protecting and promoting the rights of persons belonging to minorities and engage with their representatives and civil society working on these issues."⁴⁷

This commitment falls under the heading of “Cultivating an Environment of Non-Discrimination,” suggesting the EU is tending towards a non-discrimination approach to addressing minority issues in its external action. In other regional IOs, the Organization of American States’ (OAS) Department of International Law has a targeted program of activities for people of African descent and for indigenous peoples. There is little work of a policy- or capacity-building nature at the African regional level on minority rights, with the exception of some NGO-led activities around the African Commission Working Group on Indigenous Populations.⁴⁸ Similarly in Asia, in the absence of strong or relevant regional organizations, international NGOs have done some policy work, but concentrated on caste-affected groups and indigenous peoples.⁴⁹ The Arctic Council has some engagement with indigenous peoples.

This fragmented approach in international and regional programming is in part a reflection of different civil society strengths in securing the attention of IOs and of different state interests. Transnational groups tend to gain more attention. However, this fragmentation could be unified under a pluralism lens, which would emphasize a holistic approach to diversity that sees forms of exclusion as interconnected.

International Non-Discrimination Rights

This section develops the parameters of the right to non-discrimination in more general terms, beyond the specific protection afforded to minorities. The right to non-discrimination aims to achieve equality in law and, in fact, in the enjoyment of all human

rights. The “anti-discrimination” frame or discourse can resonate even where human rights and minority rights are not generally embraced. However, a narrow non-discrimination approach to pluralism can also fall short of the expectations of minority groups and undermine pluralism aims.

Everyone has the right not to be discriminated against in the realization of their human rights and to have a right to equality in fulfilment of their human rights. The right to non-discrimination is firmly entrenched in every international human rights treaty, including protection on the basis of, among other things, ethnicity, nationality, religion, race, sex, age, disability and numerous other statuses.⁵⁰ In particular, the prohibition of racial discrimination constitutes an obligation *erga omnes*, meaning it is an obligation of all states to the international community.⁵¹

The main international treaty to address discrimination on grounds most relevant to ethnic, cultural and religious pluralism is the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The treaty defines “racial discrimination” broadly as

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.⁵²

ICERD requires states parties to prohibit and eliminate discrimination in the realization of all human rights, including rights to freedom of religion and cultural rights (Article 5). This includes the provision of “effective protection and remedies” in cases of discrimination (Article 6). To this end, states should adopt anti-discrimination laws and establish national mechanisms to combat discrimination.⁵³ States must also focus on third parties and “shall prohibit and bring to an end... racial discrimination by any persons, group or organization.”⁵⁴

There are additional aspects of ICERD that can facilitate pluralism. States should promote “understanding, tolerance and friendship” through effective measures, “particularly in the fields of teaching, education, culture and information.”⁵⁵ ICERD prohibits any propaganda or organizations that aim “to justify or promote racial hatred and discrimination in any form,” and prohibits “all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin.”⁵⁶ ICERD also instructs states to “encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races.”⁵⁷

Practices of discrimination can either be direct or indirect. Direct discrimination is intentional and results when a person is treated less favourably than another person in a similar situation based on prohibited grounds of discrimination. Indirect discrimination refers to practices that may appear neutral but still have the effect of discriminating on prohibited grounds. States have obligations to prevent and prohibit both direct and indirect discrimination. Moreover, the Committee on the

Elimination of Racial Discrimination (CERD, ICERD’s treaty monitoring body) notes that “Discrimination is constituted not simply by an unjustifiable ‘distinction, exclusion or restriction’ but also by an unjustifiable ‘preference.’”⁵⁸ This has implications for how to manage targeted policies for different groups in pluralist societies. Discrimination can also be structural, deeply embedded in institutional practices and assumptions and requiring significant measures of reform. Dismantling structural discrimination is a vital component of promoting pluralism.

Under ICERD’s provisions, states have an obligation to use “special measures” where necessary to overcome discrimination.⁵⁹ Special measures in the “social, economic, cultural and other fields” are instruments to ensure non-discrimination and equality in the full exercise or enjoyment of human rights.⁶⁰ Special measures are mandatory in order to fulfil the objectives of the ICERD.⁶¹

There are numerous legislative, institutional, policy and other programs that can be established under “special measures.”⁶² Affirmative action programs are one form of special measures but a wide range of interventions can be used, such as targeted poverty reduction programs, scholarships or housing subsidies.

Such special measures must be suitable to the aim of addressing disadvantage that results from patterns of discrimination. In pluralist societies, where many different groups may experience discrimination, care must be taken to mitigate any tension that might arise from perceptions of “favoured” treatment. CERD indicates that

special measures should “respect the principles of fairness and proportionality” and be “designed and implemented on the basis of need...of the individuals and communities concerned,”⁶³ including in full consultation with those communities. The need for special measures also can be demonstrated through disaggregated data showing that inequalities along identity lines exist in targeted spheres of action.

Special measures are distinct from minority rights. Special measures are intended to be temporary measures to redress discrimination, whereas minority rights are of a permanent nature, so long as minority groups wish to preserve their distinct identity.⁶⁴

There are several debates concerning the intersection between non-discrimination rights and minority rights that pertain to pluralism. At the broadest level is the question of whether non-discrimination measures are sufficient to enable minorities to protect their identity and practice their culture or religion. The UN studies and standards make clear that non-discrimination alone is not sufficient and that minority rights are a distinct human rights obligation of states. Non-discrimination law arguably does not confer the necessary positive obligations on the part of states to promote minority identities or to establish institutions for formal participation in decision-making for minority groups.

A second debate centres on the difference between *de jure* and *de facto* equality. Some states persist in citing non-discrimination and equality legislation as sufficient evidence to suggest that distinctions, for example, along racial, ethnic or religious grounds, do not exist in their jurisdiction.⁶⁵ This further justifies

the non-recognition of minority rights because such identities are not believed to be under threat thanks to non-discrimination legislation. The literature on Critical Race Theory (CRT) has delved into this debate, arguing that non-discrimination/anti-racism law has been created in the interests of states.⁶⁶ We can see this, for example, in the locus of the burden of proof in non-discrimination cases, which can be placed entirely on the victim and not the alleged perpetrator.⁶⁷ CRT also talks of “model minorities,” those for whom non-discrimination legislation has afforded sufficient protection and who do not seek further minority rights, at least in the public sphere. These “model minority” groups are contrasted with other minorities for whom legislation has done little to address structural discrimination, perpetuating poor access to justice and marginalization in economic, cultural and political life. The blame for exclusion is shifted away from the state, which points to the adequacy of equality laws, and on to minorities, who have found those laws inadequate to remedy *de facto* inequality.

In some contexts like this, minority groups have bypassed anti-discrimination legislation to make rights claims on another basis, for example, cultural or religious rights. We can see this for people of African descent in Latin America, where racism is widely denied, pushing groups to seek rights via cultural identity routes. This helps to perpetuate racism by diminishing the anti-discrimination discourse in public life. Conversely, many Roma activists in Europe argue that the exclusion of Roma has been cast too much under a failed anti-discrimination framework that has not given sufficient attention to the importance of cultural and political participation rights for Roma in overcoming

marginalization. In sum, there can be difficulties for groups making rights claims on the basis of only non-discrimination or only cultural rights, rather than a unified framework of minority rights.

Another debate concerns the use of special measures. Opponents of policies such as affirmative action argue that identity-based quotas are divisive, essentialize difference, discriminate against non-beneficiary groups and somehow diminish achievement on the basis of merit. CERD makes clear that special measures are to be used only in cases where discrimination is a barrier to equality. In such cases, divisions in access to human rights already exist and special measures should be seen as a remedy for divisions, not a cause of them. Nor are special measures a form of discrimination against non-beneficiaries who otherwise face no discrimination barriers in access to their human rights.⁶⁸ Pluralism can assuage concerns about essentializing difference by emphasizing shared citizenship and bolstering inter-communal respect. Evidenced-based policy can meet the CERD criterion of “objective and reasonable justification for differential treatment,”⁶⁹ demonstrating the fact of inequality and unequal access to power. This can justify asymmetrical treatment for substantive equality outcomes. Furthermore, generalized approaches to reducing inequality that ignore identity differences are unlikely to redress the specific causes of inequality that arise from identity-based discrimination, be that direct or indirect discrimination.

International Non-Discrimination Mechanisms

The main international treaty on non-discrimination on the basis of ethnicity and race is the ICERD, which is monitored by CERD. This should be read in conjunction with other non-discrimination treaties covering other characteristics, such as the Convention on the Elimination of All Forms of Discrimination Against Women (1979). UNESCO also has a Convention Against Discrimination in Education (1960). The standards are less developed for prohibition of discrimination on the basis of religion beyond general non-discrimination provisions. The UN adopted a Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief in 1981, but has failed to convert this to a treaty.

There is a UN Special Rapporteur on “contemporary forms of racism, racial discrimination, xenophobia and related intolerance.” At the regional level, the OAS has recently adopted the Inter-American Convention against Racism, Racial Discrimination and Related Intolerance (2013), and the Inter-American Convention against All Forms of Discrimination and Intolerance (2013). In Europe, the European Convention on Human Rights (ECHR) includes Protocol 12 on equality and non-discrimination (2000), expanding the scope of the ECHR on non-discrimination. Also adopted in 2000, the EU’s Racial Equality Directive (Council Directive 2000/43/EC) that applies to both the public and private sectors. The CoE has the European Commission against Racism and Intolerance,

which issues general policy recommendations and reports on state efforts to combat racism, racial discrimination, xenophobia, anti-Semitism and other intolerance, including through country visits.

International Organizations and the Right to Non-Discrimination

As noted above, there is a strong pull in the work of IOs towards only the non-discrimination pillar of minority rights. These activities have also been concentrated under the heading of anti-racism initiatives. Within the UN, work on non-discrimination (on the basis of ethnic, race and religion) is mostly guided by the Anti-Discrimination Unit of the OHCHR. Among other things, this unit leads on follow-up to the 2001 World Conference Against Racism, which is also overseen by a UN Inter-governmental Working Group on the effective implementation of the Durban Declaration and Programme of Action. UNESCO also has some initiatives related to non-discrimination, such as the European Coalition of Cities Against Racism.

Apart from racism, there have been some recent developments on discrimination on the basis of religious identity. The Organisation for Islamic Cooperation (OIC) has supported an Islamophobia Observatory, which produces periodic monitoring reports documenting situations primarily in Western countries. The OIC has also been active in supporting the “Istanbul process” to help implement UN Human Rights Council Resolution 16/18 on “combating intolerance, negative stereotyping and stigmatization and discrimination, incitement to

violence and violence against persons based on their religion or belief.” Related to this at the UN level is the Ad Hoc Committee on the Elaboration of Complementary Standards, which aims to fill the gaps in ICERD and has concentrated on issues such as incitement to religious hatred and xenophobia.

Pluralism can bring much to the efforts of human rights practitioners to tackle these forms of discrimination. For example, the 2001 World Conference Against Racism outcome documents go far beyond non-discrimination principles to also address cultural rights for “racialized” groups, who have sometimes struggled to assert their claims beyond equality rights. Pluralism can draw from dialogues on history and memory to highlight cultural identities of enslaved peoples and contemporary manifestations of this (often evident in shared national cultures through markers such as cuisine and music), or to uncover hidden histories of diversity that are not part of the national narrative. On religious discrimination, pluralism could support human rights practitioners wrestling with some major lacunae in the law. Concerns like defamation, the relation of religious beliefs to the state, freedom to change religion, proselytizing and claims of superiority or inferiority of religious beliefs often bring groups into conflict with one another, individual members and the state, but such conflicts are not easily remedied with reference only to international human rights law. The emphasis in pluralism on sites of cultural exchange and civic identity could complement mainstream non-discrimination protections.

III. PLURALISM AND RIGHTS: COMPLEMENTARITY OR CONFLICT?

This section points to ways in which the pluralism approach could contribute to the field of practice of human rights, minority rights and non-discrimination, and how human rights practitioners could benefit from a pluralism lens to enhance their work. Three key questions will frame the discussion: 1) how does the concept of pluralism build on or go beyond human rights principles and standards; 2) how can human rights principles and standards help achieve the aims of pluralism; and 3) are there potential tensions between the human rights framework and a pluralism approach?

How Does the Concept of Pluralism Build On or Go Beyond Human Rights Principles and Standards?

Many drivers of pluralism are rooted in human rights principles and standards. On some important points, however, international human rights law is silent or limiting from the point of view of promoting pluralism aims.

International human rights law has some inherent limitations that stem from its social construction. It is a regime that has been defined by elite actors within states and in the interests of states. It has been created largely on the basis of consensus in order to substantiate claims to universality, but which obscures the persistence of many different or conflicting interests, values and beliefs. Consequently, the agreed provisions of international

human rights law should be regarded as a baseline of minimum standards. Pluralism both enables and justifies the expansion of these standards through the articulation of a social contract specific to each state. International human rights law can serve as the scaffolding for this social contract, helping to avoid injustices that might arise in its construction. Pluralism can mitigate elite capture of the negotiation of the contract itself.

Beyond this structural limitation of international human rights law, we can identify a role for pluralism in the interpretation of the law, the letter of the law and also in the implementation of the law.

On the interpretation of the law, there are some lacunae in the standards where pluralism can bring clarity. As a prime example, the right to self-determination of all peoples, a pillar of international human rights law, does not prescribe how the “people” should be defined. Pluralism can be a framework to negotiate this through national processes of recognition, complemented by human rights standards that define the rights of minorities to exist and their identities to be protected.

Pluralism can help to define duties to the community. Duties to the community are foreseen in international human rights law but are not articulated as detailed provisions.⁷⁰ For example, the preamble of the International Covenant on Civil and Political Rights (ICCPR) broadly recognizes that the individual has duties “to other individuals and to the community to which he belongs,” which include “a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.” Beyond individual responsibility

in exercising human rights, pluralism can help to determine duties to the community at large. These might include moral or ethical duties that both underpin human rights standards but also go beyond the letter of international human rights law. The case can also be made for such duties to be defined nationally, not universally, to take local values into account. There are also some principles of pluralism that might be more easily articulated as duties than as rights. For example, intercultural understanding is expressed in international human rights law more commonly as an aspiration than as a right. Pluralism can complement the vertical duties of states to individuals that are regulated by international human rights law by elaborating on duties in the horizontal relations between individuals and communities, including across borders.

On the letter of the law, there are rights in support of pluralism that have been used nationally but which do not find expression in international human rights law. The right to autonomy is a prime example, which is not explicitly recognized as a right of minority groups in international law, but which has been granted in many national contexts. There is also no right to recognition of ethnic, religious or linguistic identities under international human rights law, while the principle of self-identification (with a particular identity) is only loosely coded in law.⁷¹ The Human Rights Committee has commented that ICCPR Article 27 rights should be protected for minorities regardless of whether the state recognizes they exist but has fallen short of insisting on formal legal recognition, for example, in national constitutions. Nevertheless, such formal recognition, including in law, can be an important building block of pluralist societies. Pluralism studies can

demonstrate the utility of certain rights that are absent from international human rights law for protecting other human rights and in this way could also contribute to international norm emergence.

On the implementation of the law, pluralism can help to negotiate various options and compromises necessary to give effect to the law where human rights practitioners have been reluctant to make concrete prescriptions. There are many possible legislative, institutional or policy options in support of pluralism that are not mandated by international human rights law. Those experts responsible for monitoring state compliance with international human rights tend to be international lawyers making recommendations on the basis of normative interpretations of obligations rather than on the basis of testing various systems designed for implementation of laws. Moreover, such prescriptions will often require context-specific considerations, which may be beyond the capacity of global or regional monitoring mechanisms to make. The GCP's studies of country experiences of pluralism can help to identify variables that might influence legislative, institutional and policy choices. For example, major points such as whether the decentralization of governance structures is more likely to protect various types of minority groups (and in which particular form), are not answered by the UN Declaration on the Rights of Minorities' (UNDM) provision that minorities have a right to participate in decision-making.

The extent to which states ought to pursue positive or special measures in support of human rights and minority rights can be unclear. The actions taken as positive or special measures can vary significantly

and place very different burdens on the state. This is the case, for example, regarding the determination of positive measures for groups of different size, dispersion and historical presence in the state. What degree of inequality should justify group access to affirmative action (ICERD Article 2.2) or what budget is sufficient to create favourable conditions for the promotion and expression of minority identities (UNDM Articles 1.2, 1.2, 4.2)? In practice, international monitoring mechanisms that review these standards encourage states to interpret their obligations progressively, including in a manner that broadly supports pluralism aims. For example, the Advisory Committee to the Framework Convention for the Protection of National Minorities encourages states to apply an article-by-article approach to the question of the groups covered, so that certain provisions (e.g., Article 6) could be claimed by a wider range of communities and not only “national minorities.”⁷² However, states are at liberty to determine how far they will take this. Pluralism can be used to promote the adoption of more robust special and positive measures by showing how these measures facilitate the drivers of pluralism and the consequent benefits such as inclusion and stability. Moreover, pluralism can create institutions for these measures to be negotiated fairly and transparently in a manner that mitigates tensions that can arise from differential treatment and asymmetrical resource distribution.

Pluralism can also play a role in determining and upholding reasonable limitations on the exercise of human rights. International human rights law contains many clauses that restrict the expression of human rights to safeguard other individuals and the wider community; for example, the ICCPR limits the

freedom of expression of religion by measures that are “necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”⁷³ These limitations concern individual responsibilities when exercising human rights and the regulation of rights that might impinge on wider social goods.

There is no absolute liberty in the exercise of most human rights, and individuals need to be educated on their responsibilities in this regard. Pluralism can help to demonstrate why these limitations on liberty are morally or instrumentally important for society as a whole or for respecting the rights of individuals or groups within society, including by advancing norms of civic responsibility. For example, in defamation of religion debates, where one person’s freedom of religion clashes with another’s freedom of expression, pluralism can explore the intersections of these rights through mutual understanding and responsibility rather than polarized human rights principles.

The determination of limitations on the exercise of rights can be problematic, particularly for non-dominant groups whose practices or beliefs differ from the majority. Even leaving such decisions to a court of law can be dubious. For example, in most states, the judiciary is populated almost exclusively by dominant groups and, although many may be willing to act against public views, it is also possible they will impose majority values or beliefs in making their decisions on reasonable limitations. Pluralism tools, such as intercultural dialogue, might be better suited to defining the needs of “public safety” or the contours of shared “morals” of a society. A more consultative and inclusive process of determining

these boundaries also can be more conducive to compliance. Pluralism can also inform the kind of institutions and laws that can regulate these safeguarding principles in day-to-day life.

Pluralism can also help to define appropriate remedies in cases where human rights have been violated. The right to a remedy is recognized in international human rights law⁷⁴ but the remedy per se is case-specific. Remedies determined by national or international courts can include recommended changes in wider legislation, institutions or policy or can be focused on benefits to the individual victim, such as compensation for damages incurred. A key driver of pluralism is how societies deal with memory of human rights violations and respond to grievances that arise from those violations, even across generations. Pluralism can build on remedies prescribed by legal decisions or establish remedies independent of formal litigation. For example, the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation include remedies of “satisfaction” and “guarantees of non-recurrence,” which delve into areas where pluralism can contribute such as public education, the establishment of truth, and public apologies.⁷⁵

Finally, pluralism can help to interrogate or nurture the values behind the legal framework of human rights. While laws protecting minorities may be adopted and non-discrimination standards in place, this often belies underlying social, cultural or political norms that ultimately undermine the realization of legal rights. As noted elsewhere, states have adopted equality laws to sidestep minority rights obligations or adopted minority rights standards while pursuing assimilation agendas.

The human rights legal framework functions better where wider norms are in line with a pluralism ethic.

How Can Human Rights Principles and Standards Help Achieve the Aims of Pluralism?

The international human rights regime is a common global standard that offers both normative and practical assistance to the achievement of pluralism aims. While the motivations for ratifying human rights treaties varies, states have voluntarily committed to the binding obligations of international human rights law. Most states also engage with the international monitoring mechanisms for reviewing their implementation of treaty obligations and participate in spaces for the global governance of human rights. This results in an important dialectic opportunity for human rights practitioners to socialize state actors to human rights-related drivers of pluralism.

Normatively, human rights principles and standards establish a basic foundation for pluralism to thrive and to be governed. These norms include the rights of different identity groups to exist, the right to not be discriminated against on the basis of one’s identity, the right to participate in decision-making, the right to an education that fosters tolerance and understanding between groups, the right to a remedy, and freedoms for civil society. As noted above, these principles and standards are not overly prescriptive on the precise institutions and methods for achieving these norms but function as a baseline to shape such decisions, and to regulate relations between majority and minority groups. These rights entail obligations to respect, protect and fulfil rights, pushing states to take positive and special measures

of a legislative, institutional and/or policy nature that constitute a material framework for pluralism. Importantly, these are rights to be exercised in the public and private spheres, regardless of citizenship. International human rights law also entails obligations beyond the borders of states, including forms of international cooperation to realize human and minority rights, which can shape the transnational dimensions of pluralism.

Human rights constrain the actions of states towards individuals and the actions of individuals and groups towards each other. The excesses of the state and groups within the state that might undermine pluralism can be regulated through human rights standards. For example, international human rights law limits the ability of states to violate certain human rights in the name of national security or to forcibly assimilate groups that do not conform to narrow definitions of national identity. Monitoring of human rights can also unmask hidden forms of discrimination and inequality that national laws are failing to address. Human rights guard against elite capture of resources by requiring non-discrimination in deciding budgetary allocations. Human rights law requires states to protect against the action of third parties that would violate human rights, which can aid pluralism by fostering positive horizontal relations between individuals and groups. This includes private sector actors, such as businesses or the media, which also have obligations of due diligence to ensure compliance with human rights.⁷⁶ Human rights can also constrain the potentially harmful side of identity politics; for example, prohibiting incitement to discrimination on the basis of racial or religious hatred, guarding against essentialism by protecting the rights of individuals

not to express a certain identity and recognizing everyone's shared identity as human beings. These provisions can also be useful where there might also be genuine concerns about the accommodation of diversity undermining certain dominant/historical cultures.

Instrumentally, the international human rights regime comes with a host of supra-state governance and monitoring mechanisms that can inform and facilitate pluralism. Through the advancement of these norms and their progressive interpretation, human rights practitioners (such as experts in treaty monitoring bodies) have been active in socializing state actors to the pluralism ethic more broadly. The many outputs of the human rights monitoring mechanisms can guide pluralism efforts by offering jurisprudential expertise or state peer-to-peer recommendations (e.g., from the Universal Periodic Review) for domestic legislative and policy change. Global governance spaces mandated by human rights standards, like the UN Human Rights Council, UN Permanent Forum on Indigenous Issues or the UN Forum on Minority Issues, provide some outlet for calls for pluralism by substate groups. These arenas provide space for dialogue through which new norms can emerge in support of pluralism. The scrutiny of monitoring mechanisms and global governance spaces also provide some leverage for human rights advocacy by civil society at the national level in persuading states to comply with human rights law.

International human rights courts and treaty body complaints mechanisms can offer principled decisions on rights in conflict, guidance on reasonable accommodation and legitimate and

proportionate limitations on rights, as well as asserting human rights as a minimum obligation. This jurisprudence can be particularly useful in helping to bolster pluralism in cases where national institutions and laws have been captured by elites and largely exclude protection of marginalized minorities.

These international monitoring mechanisms complement national mechanisms that serve similar functions. These include National Human Rights Institutions, equality bodies and issue-specific regulatory bodies such as electoral commissions, police commissions or child protection agencies that monitor the implementation of specific human rights norms.

The operationalization of human rights principles through the human rights-based approach (HRBA) also has instrumental value for pluralism aims. The HRBA can shape development and governance processes and outcomes to be consistent with human rights, which reinforces the foundations of pluralism. The HRBA requires measures to address the root causes of exclusion, which can help to target structural inequality and discrimination that is anathema to pluralism. The HRBA pillars of the principles of non-discrimination, participation and accountability can be applied to national strategies for pluralism, for example, at all stages of program cycle management and in the formulation of impact assessments for proposed policies. Gathering human rights-based indicators can also be a way to measure violations of human rights that might threaten pluralism and thus can be a tool for conflict prevention.

Are There Potential Tensions Between the Human Rights Framework and a Pluralism Approach?

Most of the aims and drivers of pluralism can be traced back to norms of international human rights law. This means there is very little inherent tension between the human rights framework and the pluralism approach. Some difficulty can arise from perceptions of human rights, the structural or constitutive dimensions of human rights or in the challenges of regulating conflicts between rights.

The perceived Western bias in international human rights law can be alienating to some groups or in some contexts. Pluralism as a principle can be invoked to create space for different normative beliefs to interact or be used in a complementary way. A process of “vernacularizing” human rights laws “to local institutions and meanings”⁷⁷ also can be used. This means adapting to different cultural and religious beliefs but also to dominant norms espoused by powerful institutions in the state, like financial institutions or the military.⁷⁸ This can be mediated by human rights practitioners in state bodies and in civil society who have knowledge of both international human rights law and local or institutional customs and beliefs.

Human rights can be seen as too individualistic, in contrast to pluralism’s emphasis on the communal good. A close reading of human rights standards can repudiate this critique, where many of the norms, from protecting minority rights to religious freedoms, protections for cultural life and free association, are in support of communal life. Moreover, many individual rights also aggregate

into public goods like a fair legal system, democratic political processes and social welfare provisions.

Given that compromise is a key facet of pluralism, the perceived rigidity of human rights principles may seem counter-productive or even obstructive. For example, in post-conflict transitions, the granting of amnesties for human rights violations contravenes basic principles of human rights, such as the right to a remedy, but are often used as a way to restore stability. However, we can see many provisions that make human rights more flexible built into international human rights law, particularly in relation to responsibilities to respect the rights of others and limitations that may be necessary for wider public goods. These provisions can also be useful for resolving tensions in pluralistic societies where values conflict between groups, and between groups and individual group members.

The practice of international human rights legal mechanisms in resolving inter-group tensions has not always been consistent with a pluralism ethic. This is evidenced when contrasting the approach of the European Court of Human Rights and the UN treaty bodies. The European Court of Human Rights has applied a margin of appreciation doctrine that defers to the freedom of states in balancing human rights, particularly where there is no clear European consensus in state practice on how to accommodate the particular rights in conflict.⁷⁹ Where this concerns rights protections for ethnic and religious minorities, many have found this approach wanting, arguing that the Court fails in its duty to protect human rights and pluralism within the state in favour of majority views on national law and practice.⁸⁰ UN treaty bodies, in contrast, have

generally not applied a margin of appreciation and have made decisions on the basis of principles of reasonableness and proportionality.⁸¹ For example, in ICCPR cases concerning cultural rights, the Human Rights Committee has examined the “impact on the minority group of the actions taken, the degree to which the state has consulted the group and attempted to mitigate damage, and the benefits to all those in the state, including the minority, from the actions taken.”⁸² This latter approach has the potential to be more compatible with pluralism within the state than the European Court’s deference to state sovereignty and the values of dominant groups.

Built into international human rights law are some provisions that could create tensions for pluralism by curtailing the rights to which minority groups might aspire. For example, the territorial integrity and sovereignty of states is emphasized in many human rights standards as a means of blocking secession by minorities. The right to self-determination of peoples is also vague and highly contested for groups that try to claim it. The significant differences between minority rights and indigenous peoples’ rights in international human rights law are also potentially problematic when trying to negotiate institutions for pluralism.

Implicit theories of change within human rights frameworks and the pluralism approach might differ or conflict. Theories of change critique our planned activities for achieving change by asking what our assumptions about how change happens are and, especially, which actors or institutions are key drivers of change. Theories of change also consider how internal processes of change occur differently

in each institution. For example, human rights and pluralism may have divergent views of the role of law for achieving social change: does law quicken nascent social change, or is law more about codifying social change that is already well advanced towards consensus?⁸³ Whereas human rights advocates might push for immediate legal reform, pluralism advocates might see this as a slower process of consensus-building before codification. There can also be different views of whether “rights” or “duties” are more instrumental for achieving pluralism aims. Human rights and pluralism approaches may also focus on different actors as drivers of change, with the former focused more on state duty bearers and pluralism focused on civil society. There may be different institutional emphasis: is respect for diversity best achieved through institutions of law and a robust legal system or by careful consideration of the design of political institutions? The way strategies for change are “framed” might also be different: is socialization to respect for diversity better framed as a human rights obligation or as a rational choice? Importantly, successful framing might be institution-specific and need tailoring to resonate with actors driving change. Human rights practitioners can also have conflicting theories of change, particularly in cases where the implementation of human rights obligations can take varied institutional forms: for example, affirmative action policies targeting poverty of racialized groups could be based on racialized identities or on income-based measures.

Whereas the GCP has identified drivers of pluralism, what could be important in taking forward its work is identifying institutional drivers of change and the specific actors that can guide this best under

the various thematic drivers of pluralism so far identified. Human rights practitioners can contribute to this through their knowledge of, among other things, legal systems and social mobilization, where human rights standards are tools for change.

IV. USING HUMAN RIGHTS-BASED APPROACHES FOR PLURALISM

In this section, two case examples are explored showing how human rights standards (including minority rights and non-discrimination) can be a tool for achieving pluralism aims in key policy sectors. The examples have been selected on the basis that the normative instruments and policies—of child rights and Sustainable Development Goals—have broad application across focus countries and at various stages of progression towards pluralism.

UN Convention on the Rights of the Child and Pluralism

The Convention on the Rights of the Child (CRC) has been ratified by every state in the world, bar one (the United States). It thus represents a widely accepted normative framework. The protection of children is often considered a softer entry point for “rights” language as well. Furthermore, establishing rights protection for children can have many roll on effects for wider social cohesion and other pluralism aims. In particular, the education of children can positively or negatively impact on future trends in accepting or rejecting pluralism. The CRC also recognizes, in some articles, protections for the identity of parents.

Two groups of CRC articles that relate directly to pluralism will be given attention here: those concerning protection of identity and those concerning the right to education.

On identity, the CRC begins with a general non-discrimination provision, which foresees protection for several identities including “irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”⁸⁴

Article 8 protects identity rights in general: “States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.”⁸⁵ Article 14 protects the right to, among other things, freedom of religion. Article 17 concerns the media and encourages the mass media “to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous.”⁸⁶ This is further reinforced by provisions that call for children to have “access to information and material from a diversity of national and international sources” and for states to encourage the mass media to “disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of Article 29 [on education].”⁸⁷ Finally, in Article 30, we find a general provision for the protection of minority and indigenous children.⁸⁸

Turning to education rights, beyond the basic right to education, the CRC provides extensive detail on rights protection in the content of education. In Article 29.1, the CRC calls upon states to direct

the education of the child to, among other things, “the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations.”⁸⁹ Of particular interest for pluralism, education shall be directed to

the development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.⁹⁰

And in the CRC’s Article 29.1 (d), education shall be engaged with “the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.”

This is one of the clearest expressions of support to pluralism in any international human rights law treaty. That it is focused on the narrow policy arena of education is problematic but it articulates a vision for society that is in line with pluralism, especially when read alongside the other identity protection provisions of the treaty.

We also see in the CRC some recognition of norm diversity. The preamble takes account of “the importance of the traditions and cultural values of each people for the protection and harmonious development of the child.” Article 5 directs states to “respect the responsibilities, rights and duties of parents or, where applicable, the members of the

extended family or community as provided for by local custom...to provide...appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention [emphasis added].” Similarly, in Article 29.2, there is a provision that safeguards the “liberty of individuals and bodies to establish and direct educational institutions.”

The CRC drafters have set limitations as well. Article 29.2 cannot be exercised in violation of the rights laid out in Article 29.1 concerning the content of the education of the child. The CRC places other limits on cultural practices, notably that “states parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”⁹¹ The CRC as a whole has a take on pluralism that is both supportive of diversity but also willing to place some conditions on the exercise of diversity to help fulfil other human rights.

Enhancing the role of the CRC treaty body for pluralism

How has the Committee on the Rights of the Child, responsible for monitoring the implementation of the treaty, interpreted the CRC in support of pluralism? What could be done to strengthen or complement this role? There are two main entry points: Concluding Observations (CO) reports on state compliance with treaties and General Comments (GC) on interpreting treaties.

It is beyond the scope of this paper to evaluate fully the Committee’s support for pluralism in its CO. A cursory survey of recent CO reports shows an inconsistent approach by the Committee in

reviewing relevant issues such as identity and minority rights. For example, at the 73rd session of the Committee in September 2016, six states were reviewed (Nauru, New Zealand, Saudi Arabia, Sierra Leone, South Africa and Suriname). Only one CO report makes specific recommendations on identity rights (on New Zealand for Māori) and one for religious minorities (in Saudi Arabia). The report on South Africa goes into great detail on indigenous and migrant/refugee children and similarly on refugee and asylum-seeking children in Nauru. The CO on Suriname gives attention to economic and social rights for “Amerindian and Maroon” children, including on language education. The CO on Sierra Leone mentions none of the above issues. The need to collect ethnically disaggregated data appears in each of the COs alongside a general discussion on strengthening non-discrimination laws. There are some recommendations that emphasize general pluralism principles, such as that urging Nauru to “include teaching of the Convention’s principles and provisions at all levels of the school curricula, emphasizing tolerance and diversity.”⁹² Overall, the findings suggest that the Committee is not systematic in its determination to highlight pluralism issues through its dialogue with states and tends towards the non-discrimination provisions rather than other pillars of minority rights.⁹³

In contrast, we can see elements of a pluralism approach in General Comment 11 on the Rights of Indigenous Children and in General Comment 1 on the Aims of Education.⁹⁴ The Committee has been willing to interpret human rights standards in ways that reinforce the pluralism ethic and enhance rights claims that support pluralism. For example, in the case of the right to cultural life, the

Committee notes “that the right to exercise cultural rights among indigenous peoples may be closely associated with the use of traditional territory and the use of its resources.”⁹⁵ This is accepting the view of indigenous peoples that protection of land is a component of exercising the right to cultural life and goes well beyond the actual provisions of the treaty. On education, the Committee stresses “the need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference.”⁹⁶

While encouraging the protection of several aspects of identity, the Committee also supports pathways to inclusion in wider society. For example, on education for indigenous peoples in the mother tongue, the Committee “affirms that indigenous children shall be taught to read and write in their own language besides being accorded the opportunity to attain fluency in the official languages of the country.”⁹⁷ There is no right or obligation in the CRC to learn the official language(s) as such but the Committee is interpreting this as a means to fulfil other rights in the Convention, in particular, under Article 29.

The Committee also attempts to find balance between the CRC principle of the “best interests of the child” and collective rights of that child’s community. The committee is firm that “the best interests of the child cannot be neglected or violated in preference for the best interests of the group,” but also indicates that “considering the collective cultural rights of the child is part of determining the child’s best interests.”⁹⁸ The Committee seeks to assert that individual human rights can be safeguarded while also respecting the rights of cultural communities.

With regard to limitations on expression of culture, the GC also goes beyond the provisions of the CRC and “underlines that cultural practices provided by Article 30 of the Convention must be exercised in accordance with other provisions of the Convention and under no circumstances may be justified if deemed prejudicial to the child’s dignity, health and development.”⁹⁹

To conclude, advocates of pluralism can make good use of the CRC’s provisions as a legal basis for pluralism policies, some GCs for normative recommendations in support of pluralism and COs in seeking state-specific recommendations for pluralism. Equally, the Committee could benefit from a better understanding of pluralism and the rights beyond non-discrimination that are so central to achieving pluralism outcomes. Pluralism studies could be instructive for human rights practitioners focused on the pluralism provisions of the CRC. This could include research on variables to consider in curriculum design, working with media on cultural issues and examples of policies to safeguard cultural identities while still protecting the best interests of the child.

Sustainable Development Goals and Human Rights

The newly adopted SDGs are the major development modality for the both the Global North and South in the period to 2030. There are 17 goals and 169 targets. A full set of indicators to monitor progress is still being negotiated but all agree that a “data revolution” is needed to trace progress effectively and to achieve the SDGs major overarching aim to “leave no one behind.”

Across the SDGs, one can identify synergies with the drivers of pluralism and also with human rights standards. For example, Goal 10 is to “reduce inequality within and among countries” and includes Target 10.2, to “empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status” and Target 10.3 to “ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard.” This SDG and its targets align strongly with international human rights law on non-discrimination and the call for positive measures to fulfil this right. Goal 16 calls upon states to “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels” and includes Target 16.7 to “ensure responsive, inclusive, participatory and representative decision-making at all levels.” This SDG corresponds also with minority rights to participate in decision-making that affects them.

The link to human rights standards can serve to reinforce state commitments to achieve the SDGs and also provide accountability leverage for rightsholders to see the SDGs fulfilled. Given that SDG issues like material inequality, representative governance and access to justice are believed to impact on pluralism aims, these SDGs could aid pluralism. A better understanding of pluralism could also inform pathways to achieving the SDGs in the sustainable manner that is sought.

Several minority and indigenous peoples’ rights advocates have been disappointed that the SDGs did not go farther in recognizing diversity and its potential relevance to the SDGs. Indigenous peoples’ advocates, for example, have called for culturally relevant indicators of progress and for indigenous peoples’ priorities to be incorporated into policies and programs aimed at reaching the SDGs.¹⁰⁰

Helping UN agencies use pluralism for the SDGs

The UN agencies and UN Country Teams (UNCTs) will play a major role in assisting states on SDG policy and in monitoring progress. In this regard, they will be mandated to take full account of human rights in achieving the SDGs, including applying a human rights-based approach (HRBA) to development in line with the UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming (2003). An HRBA to development rests on ensuring the key rights principles of non-discrimination, the right to participation and accountability in both the process and outcome of development. Non-discrimination and participation have been discussed elsewhere in this paper. Accountability refers to the obligations of states as duty bearers to respect, protect and fulfil human rights but also to ensure access to justice and remedies in cases of violations of human rights. These same principles are held to be drivers of pluralism. Using an HRBA in pluralism projects focused on the SDGs would align well with the mandates of UN partners but also integrate drivers of pluralism into all stages of the program cycle (i.e.,

assessment, design, implementation, monitoring, evaluation).

UNCTs will face challenges in getting government partners to reform their institutions and development practices so that no one is left behind. Insights from pluralism could build on the foundation of human rights obligations to highlight material or other benefits of incorporating the drivers of pluralism into SDG programs. In the case of Goal 16, for example, human rights standards establish the requirements for non-discrimination and rights to participation in public life and in decision-making, while pluralism can add knowledge on the design of institutions to best meet these rights under different conditions and ultimately the SDG of peaceful, inclusive and just societies.

This synergy can be illustrated further in relation to data collection and the so-called data revolution that is occurring as part of the SDGs. There is an urgent need for much better disaggregated data to track exclusion from the SDGs and potential harms from SDGs programs, both of which could undermine pluralism aims. Uncovering hidden inequalities, however, will not be without controversy. This data is foreseen by Target 17.18, which seeks “to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts.”

International human rights law is largely silent on the best way to collect this data beyond the right to privacy safeguards.¹⁰¹ Collecting data with an HRBA can ensure that individuals are not discriminated

against in the data-collection process, that they can participate in decision-making concerning data collection (including rights around self-identification for minorities) or in the collection of data directly, while accountability measures can protect against the misuse of data. All of these points can help ensure that data-collection processes are not harmful to individual human rights or contrary to pluralism aims.

Pluralism can build on this by exploring issues such as how disaggregated data is useful for mutual understanding of difference in society, why groups want certain identity characteristics to be measured, how shared knowledge of the full diversity of society can inform a common (pluralist) national identity, or translating the facts of inequality into mediated policies for inclusion. These insights from pluralism approaches can go beyond human rights-based approaches to manage debates or tensions that emerge when disaggregated data pushes the state to be honest about diversity and (in)equality.

V. CONCLUSION

This paper has attempted to sketch out the most relevant dimensions of the international human rights, minority rights and non-discrimination protection regimes for pluralism aims. The paper also tried to show where pluralism can build on human rights and how to address some points where human rights principles and the pluralism approach might come into conflict. Two key policy entry points for pluralism, child rights and SDGs, were explored to show how human rights principles and the

pluralism approach could be mutually reinforcing and add-value.

It is clear that human rights practitioners and pluralism advocates are natural partners and share a common ethic of respect for diversity. Pluralism is constituted by many human rights standards, including minority rights and non-discrimination rights. The last 60 years of monitoring state compliance with human rights obligations has given human rights practitioners many insights that could be of use to the pluralism agenda. The body of detailed and state-specific recommendations emerging from these mechanisms is a rich resource for pluralism advocates, highlighting opportunities and deficits that can impact on pluralism. Human rights standards also establish a legal obligation for states to address many of the drivers of pluralism, such as protection of minority identities and economic inclusion.

Equally, pluralism studies has much to offer the human rights community of practice. Pluralism approaches can offer methods of socializing communities to human rights norms that underpin pluralism. Studies of pluralism can give human rights practitioners much-needed advice on variables and institutional design options to consider when developing the recommendations of monitoring mechanisms into concrete legislative and policy changes in specific states. Pluralism can also explore issues where human rights standards are less developed, like fostering shared memories of the past, facilitating intercultural dialogue and defining duties to the community. Pluralism can also facilitate the localization of international human rights and

duties to better reflect local understandings and improve implementation.

There are many human rights partners at the international level that the GCP can engage with in future collaboration. The most active agencies with the inter-agency UN Network on Racial Discrimination and Protection of Minorities, such as UNDP, UNICEF and ILO, can be important allies to facilitate cooperation with UN Country Teams in focus countries. The GCP's work can support UN agencies to more systematically consider issues of ethnic, religious and linguistic diversity in the HRBA. The EU's commitment to minority rights and non-discrimination in its Action Plan for external action will require greater capacity and more detailed guidance, to which GCP can also contribute. It can also be said that cooperation between different levels of global governance on minority rights and pluralism has been poor, and the GCP could provide space for international knowledge exchange.

In the future, human rights practitioners can also advise the GCP on how to integrate more analysis on intersecting forms of discrimination. Discrimination on the basis of gender, age, disability and sexual orientation are issues that can be ignored when ethnic, national and religious identities are privileged in the analysis and dialogue on pluralism. Yet, these are fissures that undermine equality and need to be addressed holistically if structural forms of discrimination are to be fully reformed.

It is also the case that international human rights law is paradoxically always expanding and always under threat of contracting. Human rights practitioners and the GCP can contribute to the development of

new global norms through evidence of emerging consensus at the state level. Some key areas where norms can be developed include disaggregated data collection, institutions for participation, and policies of special measures in combatting non-discrimination. By integrating human rights and minority rights into its work, the GCP can collaborate better with human rights practitioners and make a valuable contribution to buttressing international human rights law in support of pluralism aims.

NOTES

- ¹ Dr. Lennox is senior lecturer in Human Rights at the School of Advanced Study, University of London. Dr. Lennox would like to thank Lee Berney, Anna-Mária Bíró, Matthew Burkard, Poorvi Chitalkar, Will Kymlicka, Sejal Parmar, Margot Salomon and Martin Scheinin for their helpful conversations in relation to this paper. Comments are welcomed at corinne.lennox@sas.ac.uk.
- ² Beverly Boutilier (2012), “Defining Pluralism,” *Pluralism Papers No. 1* (Ottawa: Global Centre for Pluralism), 1.
- ³ Boutilier (2012), 11.
- ⁴ UN General Assembly (1948), Resolution 217 C (III), *Fate of Minorities*, A/RES/3/217 C, 10 December.
- ⁵ The UN denominates the follow 10 core international human rights treaties: International Convention on the Elimination of All Forms of Racial Discrimination (1965); International Covenant on Civil and Political Rights (ICCPR) (1966); International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984); Convention on the Rights of the Child (CRC) (1989); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) (1990); International Convention for the Protection of All Persons From Enforced Disappearance (CPED) (2006); Convention on the Rights of Persons With Disabilities (CRPD) (2006); and Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) (2002).
- ⁶ For a non-exhaustive list of universal human rights standards, see OHCHR, *Universal Human Rights Instruments*, accessed 15 August 2018, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx>.
- ⁷ There are four core regional human rights treaties: the European Convention on Human Rights and Fundamental Freedoms (ECHR) (1950); the American Convention on Human Rights (1969); the African Charter on Human and Peoples’ Rights (1981); and the Arab Charter on Human Rights (2004). The Association of Southeast Asian Nations (ASEAN) has adopted the ASEAN Human

Rights Declaration (2012), which is not legally binding.

- ⁸ There are some exceptions, for example, concerning the right to vote in periodic elections (International Covenant on Civil and Political Rights [ICCPR] Article 25 (b)) which might reasonably be limited to those with full citizenship. See Human Rights Committee (1986), General Comment No. 15, The Position of Aliens Under the Covenant, 11 April.
- ⁹ For example, the UN Committee on Economic, Social and Cultural Rights has recognized under the “other status” provision other identity markers, including disability, age, marital status, sexual orientation, health status, place of residence and economic or social status. See UN Committee on Economic, Social and Cultural Rights [CESCR] (2009), General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights, Art. 2, ¶ 2 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/GC/20, 2 July, ¶ 27–35.
- ¹⁰ There is also the principle of derogation from certain human rights (e.g., freedom of assembly, freedom of expression) during periods of exceptional public emergency. See, for example, ICCPR Article 4, which illustrates the strict conditions under which derogations are temporarily permitted.
- ¹¹ UN General Assembly (1948), Resolution 217 A, Universal Declaration of Human Rights [UDHR], A/RES/3/217 A, 10 December, Article 29.2.
- ¹² The European Court of Human Rights; the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights; and the African Commission on Human and Peoples’ Rights, and the African Court on Human and Peoples’ Rights.
- ¹³ As most of the UN treaty bodies have no mandate for country visits, they rely heavily on information provided by civil society to enable them to have a broader view of state compliance.
- ¹⁴ For further information on the jurisprudence of the UN treaty bodies on individual complaints, see “About the Jurisprudence,” accessed 19 August 2018, <http://juris.ohchr.org>.
- ¹⁵ For a full list of Committee on the Elimination of Racial Discrimination (CERD) General Recommendations, see the UN Treaty Bodies Database, accessed 15 August 2018, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=6&DocTypeID=11.
- ¹⁶ CERD (2000), General Recommendation XXVII on Discrimination Against Roma, 16 August, ¶ 42.
- ¹⁷ UN General Assembly (1965), Resolution 21066 (XX), International Convention on the Elimination of All Forms of Racial Discrimination [ICERD], A/RES/2106, 21 December, Article 5 (c).
- ¹⁸ CERD (2000), ¶ 44.
- ¹⁹ The mandate total dates from August 2017. There are several mandates of particular relevance

to pluralism issues. These include UN Special Rapporteurs on minority issues; indigenous peoples; cultural rights; education; human rights defenders; freedom of religion; racism and related forms of intolerance; migrants; truth, justice, reparations and guarantees of non-reoccurrence; and international solidarity. There are UN Working Groups on people of African descent, and discrimination against women in law and practice. OHCHR, “Special Procedures of the Human Rights Council,” accessed 15 August 2018, <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.

²⁰ For UPR reports, including recommendations accepted by states, see OHCHR, “Universal Periodic Review: Documentation,” accessed 15 August 2018, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>.

²¹ UN Secretary-General, *Human Rights Up Front: A Summary for Staff*, accessed 15 August 2018, <http://www.un.org/News/dh/pdf/english/2016/Human-Rights-up-Front.pdf>.

²² UN Development Group (UNDG), Human Rights Working Group, accessed 15 August 2018, <https://undg.org/human-rights/undg-human-rights-working-group/>.

²³ UN Human Rights Committee (1994), General Comment No. 23, Article 27 (Rights of Minorities), CCPR/C/21/Rev.1/Add.5, 8 April, ¶ 5.2.

²⁴ UN Human Rights Committee (1994), ¶ 5.1. See also Article 31 of the International Migrant

Workers Convention, which protects cultural identity rights.

²⁵ UN Sub-Commission on the Promotion and Protection of Human Rights (2005), Commentary Of the Working Group On Minorities to United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, E/CN.4/Sub.2/AC.5/2005/2, 4 April.

²⁶ UN Commission on Human Rights (2006), Report of the Independent Expert on Minority Issues, Gay McDougall, E/CN.4/2006/74, 6 January, ¶ 22.

²⁷ UN General Assembly (1992), Resolution 47/135, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities [UNDM], A/RES/47/135, 18 December, Article 1.1.

²⁸ ICERD Article 2.2.

²⁹ UNDM Article 1.1 and 1.2.

³⁰ UN Human Rights Committee (1994), ¶ 6.1 and 6.2.

³¹ UNDM Article 4.4.

³² UNDM Article 4.3, 4.4.

³³ ICCPR Article 25 holds that “every citizen shall have the right and the opportunity... (a) To take part in the conduct of public affairs.” See also the UN Human Rights Committee (1996), General

Comment No. 25, The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Article 25), 12 July.

³⁴ UNDM Article 2.3.

³⁵ UNDM Article 5.1.

³⁶ UNDM Article 4.5.

³⁷ States have built in a safeguard: minority rights standards cannot be invoked in any way that “may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States” (UNDM Article 8.4).

³⁸ UN Sub-Commission on the Promotion and Protection of Human Rights (2005), ¶ 14.

³⁹ In its Commentary on the UNDM, the UN Working Group on Minorities has suggested some criteria to determine different entitlements, such as territorial concentration of groups or length of presence on the territory of the state. See UN Sub-Commission on the Promotion and Protection of Human Rights (2005), ¶ 10–11, 20.

⁴⁰ For a discussion on this split, see Will Kymlicka (2007), *Multicultural Odysseys: Navigating the New International Politics of Diversity* (Oxford: Oxford University Press); and Corinne Lennox (2009), “Mobilising for Group-Specific Norms: Re-Shaping the International Protection Regime

for Minorities,” PhD thesis, London School of Economics and Political Science.

⁴¹ See also ILO Convention 107 on Indigenous and Tribal Populations Convention (1957). It has been superseded by ILO Convention 169, but ILO Convention 107 is still in force for 17 countries.

⁴² UN General Assembly (2007), Resolution 61/295, United Nations Declaration on the Rights of Indigenous Peoples [UNDRIP], A/RES/61/294, 13 September, Article 3.

⁴³ See, for example, The Hague Recommendations Regarding the Education Rights of National Minorities (1996), The Oslo Recommendations Regarding the Linguistic Rights of National Minorities (1998), The Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999), The Ljubljana Guidelines on Integration of Diverse Societies (2012), and The Graz Recommendations on Access to Justice and National Minorities (2017).

⁴⁴ UN Network on Racial Discrimination and Protection of Minorities (2017), *Guidance Tool on Descent-Based Discrimination: Key Challenges and Strategic Approaches to Combat Caste-based and Analogous Forms of Discrimination* (Geneva: United Nations, OHCHR), accessed 15 August 2018, <https://www.ohchr.org/Documents/Issues/Minorities/GuidanceToolDiscrimination.pdf>.

⁴⁵ See the work of the OSCE and the FRA on Islamophobia and anti-Semitism.

⁴⁶ See the EU Council Conclusions on Indigenous Peoples (May 2017) and the Joint Staff Working Document “Implementing EU External Policy on Indigenous Peoples” (October 2017).

⁴⁷ Council of the European Union (2015), *Council Conclusions on the Action Plan on Human Rights and Democracy, 2015–19*, 20 July, ¶ 16.c, accessed 15 August 2018, <http://data.consilium.europa.eu/doc/document/ST-10897-2015-INIT/en/pdf>.

⁴⁸ This is led by the International Work Group for Indigenous Affairs.

⁴⁹ See, for example, the work of the Asia Dalit Rights Forum and International Dalit Solidarity Network with UN or bilateral development agencies, and the work of the Asian Development Bank through its in-house policy on indigenous peoples. <http://asiadalitrightsforum.org/>

⁵⁰ Treaties differ in the precise list of protected characteristics and several include the open provision of “other status.” Treaty bodies have interpreted the scope of non-discrimination protection afforded to “other status” identities, for example, in General Comments. See Stephanie Farrow, ed. (2015), *Equality and Non-Discrimination under International Law* (Farnham, UK: Ashgate Publishing).

⁵¹ This principle was recognized by the International Court of Justice in the Barcelona Traction case. See ICJ Reports (1970), *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)* (1962–70), Second Phase, Judgment, ¶ 33 and 34.

The same case recognizes, among other things, the prohibition of genocide as an obligation *erga omnes*.

⁵² ICERD Article 1.1. CERD notes that discrimination based solely on the grounds of religion does not fall under the ICERD. However, in cases where religious discrimination intersects CERD, it “would be competent to consider a claim of ‘double’ discrimination on the basis of religion and another ground specifically provided for in Article 1 of the Convention, including national or ethnic origin.” CERD (2007), Communication No. 37/2006 A.W.R.A.P. v Denmark, CERD/C/71/D/37/2006, 8 August, ¶ 6.3.

⁵³ CERD (1994), General Recommendation No. 17, The Establishment of National Institutions to Facilitate Implementation of the Convention, A/48/18, 19 January.

⁵⁴ ICERD Article 2.1 (d).

⁵⁵ ICERD Article 7.

⁵⁶ ICERD Article 4 and Article 4 (a). See also ICCPR Article 21.2.

⁵⁷ ICERD Article 2.1 (e).

⁵⁸ CERD (2009), General Recommendation No. 32, The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms Racial Discrimination, CERD/C/GC/32, 24 September, ¶ 7.

⁵⁹ ICERD Article 1.4, 2.2.

⁶⁰ CERD (2009) Article 2.2.

⁶¹ CERD (2009), ¶ 30.

⁶² CERD (2009), ¶ 22.

⁶³ CERD (2009), ¶ 16.

⁶⁴ CERD (2009), ¶ 15.

⁶⁵ For example, France has made a reservation to ICCPR's Article 27 citing equality principles in the French Constitution.

⁶⁶ See Kimberlé Crenshaw, Neil Gotanda, Gary Peller and Kendall Thomas, eds. (1995), *Critical Race Theory: The Key Writings That Formed the Movement* (New York: The New Press).

⁶⁷ Lilla Farkas and Orlagh O'Farrell (2014), *Reversing the Burden of Proof: Practical Dilemmas at the European and National Level* (Luxembourg: European Commission, DG for Justice and Consumers).

⁶⁸ CERD (2009), ¶ 20.

⁶⁹ CERD (2009), ¶ 8.

⁷⁰ International Council on Human Rights Policy (1999), *Taking Duties Seriously: Individual Duties in International Human Rights Law, A Commentary* (Versoix: ICHRP).

⁷¹ CERD comments that the way individuals are identified as belonging to racial or ethnic groups will "if no justification exists to the

contrary, be based upon self-identification by the individual concerned." CERD (1991), General Recommendation VIII Concerning the Interpretation and Application of Article 1, paragraphs 1 and 4 of the Convention, A/45/18 at 79. In ILO Convention 169, Article 1.2 states that "self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply."

⁷² FCNM Article 6, ¶ 6.1: "The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media." Article 6.2.: "The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity."

⁷³ ICCPR Article 18.3.

⁷⁴ See, for example, UDHR Article 8, ICCPR Article 2.3 and ECHR Article 13.

⁷⁵ UN General Assembly (2005), Resolution 60/147, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 16 December, A/RES/60/147, distributed 21 March 2006, Articles 22 and 23.

- ⁷⁶ See OHCHR (2011), *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (New York; Geneva: United Nations).
- ⁷⁷ Sally Engle Merry (2006), “Transnational Human Rights and Local Activism: Mapping the Middle,” *American Anthropologist* 108 (1): 39.
- ⁷⁸ See Galit A. Sarfaty (2012), *Values in Translation: Human Rights and the Culture of the World Bank* (Stanford: Stanford University Press).
- ⁷⁹ See Dominic McGoldrick (2011), “Religion in the European Public Square and in European Public Life: Crucifixes in the Classroom?,” *Human Rights Law Review* 11 (3): 451–502.
- ⁸⁰ Eyal Benvenisti (1999), “Margin of Appreciation, Consensus and Universal Standards,” *International Law and Politics* vol. 31: 848–50.
- ⁸¹ For differences in approach between the Court and UN treaty bodies, see Andrew Legg (2012), *The Margin of Appreciation in International Human Rights Law: Deference and Proportionality*, (Oxford: Oxford University Press).
- ⁸² Dinah Shelton (2005), “The UN Human Rights Committee’s Decisions,” *Human Rights Dialogue: “Cultural Rights,”* series 2, no. 12 (Spring), accessed 10 January 2016, https://www.carnegiecouncil.org/publications/archive/dialogue/2_12/section_3/5151.html/:pf_printable.
- ⁸³ Paul Gready (2015), “Theories of Change for Human Rights and for Development,” in *Contemporary Challenges for Securing Human Rights*, edited by Corinne Lennox (London: School of Advanced Study, University of London), 49.
- ⁸⁴ UN General Assembly (1989), Resolution 44/25, Convention on the Rights of the Child [CRC], A/RES/44/25, 20 November, Article 2.1.
- ⁸⁵ CRC Article 8.1.
- ⁸⁶ CRC Article 17 (d).
- ⁸⁷ CRC Article 17 and Article 17 (a).
- ⁸⁸ CRC Article 30: “In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.”
- ⁸⁹ CRC Article 29.1 (b).
- ⁹⁰ CRC Article 29.1 (c).
- ⁹¹ CRC Article 24.3.

⁹² Committee on the Rights of the Child (2016), Concluding Observations on the Initial Report of Nauru, CRC/C/NRU/CO/1, 28 October, ¶ 19 (b).

⁹³ The role of NGO reports in encouraging the Committee to examine certain issues may account in part for such differences. The interests of the Committee members leading each state review may also be a factor.

⁹⁴ Committee on the Rights of the Child (2009), General Comment No. 11, Indigenous Children and Their Rights under the Convention, CRC/C/GC/11, 12 February. The Committee also notes “certain references in this general comment may be relevant for children of minority groups” (¶ 15). Committee on the Rights of the Child (2001), General Comment No. 1, Article 29.1 The Aims of Education, CRC/GC/2001/1, 17 April.

⁹⁵ CRC (2009), GC No. 11, ¶ 16.

⁹⁶ CRC (2001), GC No. 1, ¶ 4.

⁹⁷ CRC (2009), GC No. 11, ¶ 62.

⁹⁸ CRC (2009), GC No. 11, ¶ 30 and ¶ 32

⁹⁹ CRC (2009), GC No. 11, ¶ 22.

¹⁰⁰ UN Department of Economic and Social Affairs/ Division of Social Policy and Development (2015), Concept Note: Indigenous Peoples and Agenda 2030, 22 and 23 October, accessed 15 August 2018, <http://www.un.org/esa/socdev/egms/docs/2015/indigenous-agenda2030/egmconceptnote.pdf>.

¹⁰¹ Human Rights Centre Clinic, Essex University (2013), *Disaggregated Data and Human Rights: Law, Policy and Practice*, October, accessed 15 August 2018, <https://www.essex.ac.uk/hrc/careers/clinic/documents/disaggregated-data-and-human-rights-law-policy-and-practice.pdf>.

AUTHOR

Corinne Lennox is Associate Director of the Human Rights Consortium as well as a Senior Lecturer in Human Rights at the Institute of Commonwealth Studies, both located at the University of London. Her research focuses on issues of minority and indigenous rights protection, civil society mobilisation for human rights, and human rights and development. She has also worked for many years as a human rights consultant and trainer, including at Minority Rights Group International, the UNDP, and the UN Office of the High Commissioner for Human Rights.

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