**2016 Human Rights Council thematic report: fundamentalism (or intolerance) and its impact on assembly and association rights**

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**Concept Note**

Introduction:

The Special Rapporteur’s previous reports have largely focused on States’ central role in perpetrating violations of the rights to freedom of peaceful assembly and of association (FOAA rights), as well as their potential capacities to protect and remedy violations. But the Special Rapporteur recognizes that State actions are not the only threat to these rights, as illustrated by his emphasis on the private sector in his report on natural resource exploitation (A/HRC/29/25). In addition, he has focused on sectoral equity between businesses and civil society (A/70/266).

In his next report to the Human Rights Council, the Special Rapporteur will focus on the role of both States and non-State actors in violating or abusing human rights – this time looking through the lens of fundamentalism or “intolerance”. This is a broad concept, and more than about religious fundamentalism, and will look at how intolerance affects FoAA rights.

Fundamentalism has no fixed academic or legal definition, but for purposes of this consultation, the Special Rapporteur intends to view it as broadly as possible, i.e., as a strict adherence to the principles of any subject or discipline, including nationalism, cultural supremacy (and identity), ethnicity, political or economic doctrines, etc. Fundamentalist views typically imply intolerance to other non-compatible views, but the focus of this report is not on the fundamentalist views per se. Rather, it is on how intolerance resulting from fundamentalist views can weaken the concept of pluralism and ultimately impact the enjoyment of FOAA rights.

In this sense, the report is likely to draw upon Article 2(1) of the ICCPR, which requires States “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 20(2) will also be relevant (“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”).

Over the last years, there has been a perceived rise in the expression of fundamentalism in many contexts across the world. The challenge in this next report will be to understand how fundamentalism—by non-state actors and by the State itself—has affected the rights to freedom of peaceful assembly and of association.

Thus, for instance:

1. How has Hindu fundamentalism in India affected the FOAA rights of Muslim and Christians in the country? And what has been the State response and what are the State’s obligations under international human rights law, norms and standards?
2. How does Muslim fundamentalism affect the FOAA rights of Christians, other religious minorities (e.g. Bahai) and others with dissenting views in Saudi Arabia, Iran and other countries?
3. How has Christian fundamentalism contributed to the undue restrictions of FOAA rights on LGBTI issues in Nigeria and Uganda for example? Or the rights of organizations advocating for sexual and reproductive health and rights in Latin America? How would we classify the anti-LGBTI groups in Russia?
4. To what extent has Buddhist fundamentalism contributed to restricting the FOAA rights of Rohingya people in Myanmar?

But it is not just religious issues that are of concern. The Special Rapporteur wishes to explore other examples where State and non-State actors actively suppress pluralism of views, cultures, languages, ideologies, and so on. For example:

1. Would we classify the surge of unrestricted free-market doctrines as fundamentalism or “intolerance”? And if so, how has that affected the FOAA rights of trade unions and environmental groups in Latin America (Brazil) and Canada?
2. What about States with one-party political systems (whether enforced in law or in practice) that suppress those outside the ruling political class, such as Vietnam, Laos and the Democratic People’s Republic of Korea (DPRK)?
3. How do we treat cultural and social phenomena – like the caste system in India and Nepal or the Songbun system in DPRK – that denigrates the FOAA rights of those in lower castes?
4. Is there a case to be made that “nationalistic” fundamentalism (xenophobia) restricts the FOAA rights of migrants in Europe, Australia?
5. Is the oppression of certain minority groups, such as the Tibetans in China, an expression of linguistic or cultural fundamentalism?
6. Are tribal allegiances (such as in Kenya) an expression of ethnic fundamentalism, and how does this affect the FOAA rights of certain groups such as Muslims and Somalis in the country?

It is important to state that this report does *not* intend to focus on violent extremism related to terrorism. Nor is it intended to be a discussion on fundamentalism itself, in the same way that the previous reports on natural resource extraction and sectoral equity did not discuss the merits or otherwise of business. In a sense, the report is envisioned as a sequel to the UNSR’s previous report on the violations of FOAA rights of marginalized groups. That report focused on the groups whose rights were being violated; this report focuses on the other half of the equation: Who are the “perpetrators” of these abuses, what are the ideologies that drive them, and what are the State’s obligations to respect, protect and fulfill FOAA rights in light of rising fundamentalism?

In addition, the report will look at the process of how fundamentalist ideas translate into FOAA rights violations and abuses. In some cases, it may be direct State action based on State-sponsored fundamentalism. In others, violations may arise due to the inability or unwillingness of the State to respond to the actions of private actors. In others still, abuses may come purely at the hands of non-State actors, with the role of State actors being less clear.

Issues for discussion:

1. *Defining fundamentalism*

How do we define fundamentalism? The definition will be critical in framing the scope of the report.

The Special Rapporteur’s role is not to pass judgment on whether the holding of strict, intolerant views is right or wrong (as do not make judgment on racist/xenophobic or chauvinist views, except where these views are incitement to hatred as prohibited under Article 20 of the ICCPR). His sole focus will be on when these views cross over into the public realm and motivate actions or policies that affect the rights of others. Further, there may be the need to specifically define State-sponsored fundamentalism, such as in Myanmar’s policy of suppressing the FOAA rights of Rohingyas, and the State policies in Russia, Uganda and Nigeria in officially curtailing the rights of LGBTI individuals.

In order to understand how fundamentalism impacts the rights to freedom of peaceful assembly and association, it is also important to identify the various types or manifestations of fundamentalist ideologies and how they transform into actions which may infringe on human rights.

Some questions/issues for consideration:

* 1. Types of fundamentalism: religious, nationalist (political), ethnic, social, economic, political
	2. Victims – which groups are vulnerable or otherwise at risk?
	3. How do definitional gaps contribute to State action/inaction that violates FOAA rights?
1. *Fundamentalism and human rights*

How should the FOAA rights of groups at risk of being victimized by fundamentalists be protected appropriately? What are the State’s obligations under international human rights law in respect of abuses committed by non-State actors?

Some questions/issues for consideration:

* 1. Examples of fundamentalist manifestations that explicitly constitute a violation of international human rights law e.g., racism, xenophobia etc. (Ref to arts 5 and 20 of ICCPR; art. 4 of CERD etc.)
	2. Protected vs. unprotected associations and assemblies in the context of fundamentalism
	3. Fundamentalist activity online – how FOAA rights apply online and offline in this context
1. *The impact of fundamentalism on the enjoyment of FOAA rights*

This section recognizes that individuals and groups adhering to fundamentalist ideologies can violate the FOAA rights of others. States have obligations to protect individuals and groups from actions by third parties that would violate their rights, but sometimes they fail to meet this obligation – whether deliberately or otherwise, including by colluding with fundamentalist groups. For example, when police forces openly endorse nationalistic or xenophobic ideas or fail to intervene to stop the harassment, verbal abuse or violence by far-right or neo-Nazi groups against individuals such as migrants.

Even with the best of intentions, measures to prevent and counter fundamentalism may exacerbate the violation of FOAA rights. For example, by inappropriately identifying broad groups (e.g., Muslim populations) as vulnerable to radicalization or as “terrorist groups”, whole communities can be stigmatized and face restricted assembly or association rights.

The discussion will explore the ways in which State and non-State actors intentionally or otherwise engage in actions that violate FOAA rights, whether acting separately or in collusion.

Some questions/issues for consideration:

* 1. Ways in which private individuals contribute to the violation of FOAA rights in the context of fundamentalism
	2. Appropriate and inappropriate State responses to fundamentalism (e.g., the securitization of associational and assembly activity, evaluating associations or assemblies from a security perspective rather than a rights perspective, measures to prevent funding of violent extremist groups, collection of intelligence data, proscription of groups, banning of assemblies)
	3. Policies and practices that exacerbate violations of FOAA by supporting actions that contravene international human rights law, e.g. in the context of elections.
	4. The role of traditional and social media in spreading/consolidating fundamentalist views vs respect of freedom of expression
1. *Denial of FOAA rights as a root cause of fundamentalism*

The impact of undue restrictions on assembly and association rights in environments where fundamentalism is not prevalent is also a cause for concern. Authorities may simply be clamping down on what they perceive as opposition to political power, which may push peaceful dissent underground.

The discussion will explore the role of State action, and whether it can directly or indirectly contribute to the process of fundamentalism or radicalization.

1. *FOAA rights/safeguarding civic space as a means of countering fundamentalism*

States are engaged at both the national and multilateral level in developing strategies to prevent, counter and reverse extremist ideologies and actions that are likely to lead to violence. This discussion will examine how an enabling environment for civil society can contribute to efforts that address the challenges associated with fundamentalism. This would include the role of civil society as directly involved in strategies to counter fundamentalism and in addressing the broader underlying civil, political, social, economic and cultural issues at play. An analysis of the risks that civil society takes in collaborating with the State on this issue and how to mitigate them is also relevant.

Some questions/issues for consideration:

* 1. How does the current trend of shrinking civic space affect associations’ work on countering fundamentalism?
	2. How does collaboration between associations and authorities in countering negative fundamentalism help or hinder the creation of enabling civic space, e.g. independence, legitimacy of associations.
	3. Recommendations for strengthening laws and practice on FOAA rights as they relate to countering fundamentalism.
	4. Role of multilateral institutions in countering fundamentalism.
1. *Conclusions and recommendations*

The focus of this section will be to propose targeted recommendations that will help various actors assess whether laws and practices protect and promote the exercise of FOAA rights in the context of fundamentalism.