

Monitoring Cultural Human Rights: The Claims of Culture on Human Rights and the Response of Cultural Rights

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ABSTRACT

Given the reticence of states about cultural rights, this essay explores how the independent UN human rights monitoring bodies filled the gap. Cultural rights made the human rights system burst at the seams, and these bodies picked up the bold demand that culture poses for human rights. Through their practice, they crafted an understanding of the normative content of

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This essay is dedicated to the memory of Samba Cor Konate of Senegal, member of the Committee on Economic, Social and Cultural Rights who pioneered the work on cultural rights in the early 1990s.



cultural rights and thus helped overcome the seemingly insurmountable political difficulties of states. Through an international law perspective, the essay unravels this practice and presents a critical analysis of the new developments in this area.

I. INTRODUCTION

Speaking of cultural human rights is not the same as discussing the question of cultural relativism vs. universality or culture vs. human rights, although it is close enough that it begs the question.

Over the decades, the political reticence of states has cast a shadow on international law and practice concerning cultural human rights. Even among human rights bodies and at UNESCO the human rights aspect of culture was taboo for a long time.

Today, it would be no exaggeration to say that if so-called classical lawyers think human rights is a weak part of law, then human rights lawyers think cultural rights are the soft part of human rights. They could not be more mistaken. The neglect of cultural rights has hidden one of the most disgraceful and violent parts of human history: that of states knowingly and deliberately oppressing and even annihilating communities. In short, committing what Raphaël Lemkin first called genocide or ethnocide. Lemkin originally advocated for a concept that would clearly include both physical and cultural destruction of a group, but later gave up most of the cultural aspects to ensure ratification of the Convention on the Prevention and Punishment of the Crime of Genocide.¹

The reality of cultural rights today is complex. It involves globalization, the North/South tensions, migration and racism, cultural relativism and identity politics, peace and security, the huge economic interests invested in current international intellectual property regimes, the so-called “dialogue among civilizations” or “alliance among civilizations,” the post-September 11 era, and the impact of terrorism on human rights.

The culturalization of political life has been on the rise within states as well as internationally. This “battle of the cultures,” as some may see it, is part of a more fundamental struggle: the struggle for the expression of identity, both personal and political. One reason for this increased assertiveness of identity is that globalization has accentuated local awareness,

1. See RAPHAËL LEMKIN, *AXIS RULE IN OCCUPIED EUROPE: LAWS OF OCCUPATION, ANALYSIS OF GOVERNMENT, PROPOSALS OF REDRESS* (1944). See also BARTOLOMÉ CLAVERO, *GENOCIDE OR ETHNOCIDE, 1933-2007: HOW TO MAKE, UNMAKE, AND REMAKE LAW WITH WORDS* (2008). In this extraordinary treatise, the author offers a compelling review of the history of the term genocide, the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide, the weakening of the concept of genocide, and the need to give full meaning to the concept and crime of genocide by advocating for cultural rights.



consciousness, sensitivity, sentiment, and passion, a clear sign of which has been reflected in human rights debates at the UN after the end of the Cold War. One of the challenges in contemporary law and politics is to ensure that the politicization of culture is a positive development and that it results in the respect of human rights, including cultural human rights.

In the six decades since the adoption of the Universal Declaration of Human Rights (UDHR), cultural rights have been largely neglected. Some of the reasons are:²

(a) The prevalent attitude among many human rights experts has been to avoid discussion of cultural rights lest the lurking issue of cultural relativism appears, implicitly or explicitly, to undermine the delicate universality concept that has painstakingly been woven over the last five decades.

(b) The definition of cultural rights is obviously tied to the concept of culture, which is fluid and changing.

(c) Cultural rights may be considered by some as a “luxury,” as something that comes after “bread and water,” as a concern only for societies at a certain stage of development.

(d) Even as individual rights, cultural rights can be perceived as threatening to the state or the community. One person’s nontraditional artistic creation can be seen as a threat that needs to be suppressed.

(e) Perhaps most significantly, these rights have evoked, for many governments, the scary spectrum of group identities and group rights that they fear could threaten the “nation” state and territorial integrity. Governments may also be wary of the threat that majorities could feel from the promotion of minority cultures.

This article will explore how, given the reticence of states regarding cultural rights, the independent UN human rights monitoring bodies filled the gap for a long time. Cultural rights made the human rights system burst at the seams, and the monitoring bodies picked up the bold demand that culture poses for human rights. Through their practice, they crafted an understanding of the normative content of cultural rights and thus helped overcome the seemingly insurmountable political difficulties of states. Through an international law perspective, the essay will unravel this practice and also present a critical analysis of the new developments in this area.

Part II will provide a historical perspective of the issue via the drafting history of Article 27 of the UDHR and a comparison of how cultural rights have been viewed from 1945 to the present. Part III will be a selective examination of the practice of international human rights monitoring bodies and also provide a critical overview of recent developments on cultural rights

2. For an extensive explanation, see ELSA STAMATOPOULOU, CULTURAL RIGHTS IN INTERNATIONAL LAW: ARTICLE 27 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND BEYOND 4-6 (2007).



in the UN human rights system. The conclusion will identify some current challenges and future paths in monitoring cultural human rights.

II. A HISTORICAL PERSPECTIVE ON CULTURAL RIGHTS

The drafting history of the Universal Declaration of Human Rights (UDHR) is revealing of the difficulties we still face today in dealing with cultural rights. It is impressive that the core debate on whether the Declaration should recognize group rights and minority rights in particular took place within the context of Article 27, which deals with cultural rights. This discussion was in turn connected with the fierce controversy as to whether the Convention on the Prevention and Punishment of the Crime of Genocide, which was being prepared simultaneously to the UDHR, should address “cultural genocide” in addition to “physical” or “biological” genocide.³

Article 27 of the UDHR states:⁴

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

The question about the inclusion of rights for persons belonging to minority groups did arise, as was to be expected, in the very First Session of the Commission on Human Rights in 1948. In the drafters’ minds “protection of minorities” would normally “include both protection from discrimination and protection against assimilation” and in particular protection for ethnicity and language since other elements of protection for minorities were covered by other articles of the Declaration.

The text as originally debated provided for the right of persons belonging to ethnic, linguistic, or religious minorities to establish and maintain schools and cultural and religious institutions and to use their own language in the press, in public assembly, and before the courts and other state authorities. This text was never adopted. We see, then, that states felt protecting language was vital for the preservation of culture and identity, yet they deliberately omitted reference to it.

The United States led the opposition to the minority-related article, claiming minorities were a European issue and there was no reason to

3. See JOHANNES MORSINK, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING, AND INTENT* 217-22, 269-80 (1999).

4. The summary that follows is based on STAMATOPOULOU, *supra* note 2, at 11-18.



reflect the matter in the UDHR. Eleanor Roosevelt, the US representative, was later supported by Latin American countries and Canada in this position, while Australia declared that assimilation of minority groups was in the best interest of all in the long run. In favor of minority rights were the USSR, Yugoslavia, and other Eastern European countries as well as Lebanon and India. Belgium, although hesitant, was also one of the supporters. When the debate came to a crunch, the USSR, hoping to get developing countries on its side, accused the colonial powers of denying the cultural rights of the people in the colonies and engaged in Cold War rhetoric. However, this strategy did not have the desired effect and the idea of an article on minorities was ultimately rejected.

The drama of the debate on cultural rights, which encompassed the debate on minority rights, had another angle as well. It was connected with the Convention on the Prevention and Punishment of the Crime of Genocide, which was being drafted by the General Assembly Sixth Committee simultaneously with the UDHR's drafting by the Third Committee. There was a proposal during the preparation of the Anti-Genocide Convention to include in the definition of genocide the intent to destroy, in whole or in part, cultural groups, alongside "national, ethnical, racial or religious" groups; in other words to include "cultural genocide" along with "physical or biological" genocide. The proposed Article 3 in the Genocide Convention read as follows:

In this Convention genocide also means any deliberate act committed with the intent to destroy the language, religion or culture of a national, racial or religious group on grounds of national or racial origin or religious belief such as: 1. Prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group; 2. Destroying, or preventing the use of, libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the groups.

This language was also not adopted.

The final wording adopted by the General Assembly for Article 27 includes the prescriptive word *the* in the phrase "the right freely to participate in *the* cultural life of *the* community," giving out a signal of limitation to this freedom and an assumption of a homogenous rather than multicultural society. Later, in 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) improved on this wording by recognizing, in Article 15, the right of everyone "to take part in cultural life." By contrast, the International Covenant on Civil and Political Rights (ICCPR) is the most broadly ratified international instrument with binding nature to recognize, in its Article 27, that persons belonging to ethnic, religious, or linguistic minorities "shall not be denied the right, in community with other members



of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

The dramatic history of Article 27 of the UDHR may well explain much of the silence on cultural rights over the decades to the extent that, for many states, the original reasons for resisting them still remain. However, avoiding the respect of cultural rights can only lead to frustrations in society and the instigation of conflict. In fact, states have learned hard lessons and are gradually opening up.

What has changed between 1948 and today in the discussions on culture, identity and collective rights? We can identify three main issues: a) the genocide during WWII has been followed by other genocides, thus creating a new awareness of the need for early warning and prevention; b) the end of the Cold War has allowed the expression of cultural identities in an unprecedented manner, thus obliging states to provide some recognition of such or else face serious political and other consequences; and c) globalization has triggered the urge in people to confirm and express their distinct identities.

The boldest recognition of ethnicity and of cultural rights in the post WWII era was marked by the adoption, in 2007, of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). While stories of indigenous peoples’ resistance to colonialism, domination, and exploitation abound, these did not always find resonance at the international level. In the post-WWII era, questions of ethnicity and minorities were viewed with suspicion. It is well known for example that even the body established in 1946 for this purpose—the Sub-Commission on Prevention of Discrimination and Protection of Minorities—was essentially prevented from doing its work on minority issues by its parent bodies—the Commission on Human Rights and the Economic and Social Council—until after the end of the Cold War.

What clearly distinguishes the minority agenda from the indigenous peoples’ agenda internationally is that indigenous peoples transitioned from local struggles to international ones and created an international indigenous peoples’ movement. On the other hand, there has never been an international movement of minorities.

States have changed their stance *vis-à-vis* indigenous peoples over the years. In the 1970s, when the issue of gross violations of human rights was brought up in the human rights bodies, states viewed the issue mostly as a humanitarian one, one of “kindness,” so to speak, to disappearing civilizations in the process of assimilation. One could therefore see some permissiveness on the part of governments in UN processes. States allowed the birth of exceptional, unprecedented, and extensive participatory procedures for indigenous peoples, which, in turn, increased the numbers of indigenous

representatives at the UN as well as their overall political impact.⁵ This dynamic interface of indigenous peoples' movements with the UN has brought culture to human rights.

By 1993, the relative softness on the part of states was no longer present, as the balance of power and international solidarity had changed the scenery at the UN. From the Latin American region especially, the exclusion of indigenous peoples combined with their increased political awareness were creating tense situations demanding solutions.⁶ The adoption of UNDRIP can be seen as a way of states and indigenous peoples seeking constructive solutions.

III. THE PRACTICE OF INTERNATIONAL HUMAN RIGHTS MONITORING BODIES AND THE NORMATIVE CONTENT OF CULTURAL HUMAN RIGHTS

A. Three Recent Important Developments

There have been three important developments in the last five years at the United Nations that can contribute tremendously to the promotion and protection of cultural rights as a part of international human rights law. They are: a) the adoption of UNDRIP, the most advanced international human rights instrument in terms of recognizing cultural rights as international legal norms; b) the creation in 2009 of an Independent Expert in the area of cultural rights by the UN Human Rights Council; and c) the adoption in January 2010 by the Committee on Economic, Social and Cultural Rights (CESCR) of the long-awaited General Comment (i.e., authoritative interpretative comment) on Article 15(a) of ICESCR regarding the right to participate in cultural life. This Comment was indispensable for a more objective and less politicized understanding of cultural rights to emerge.⁷

The *sensu stricto* global human rights monitoring mechanisms are the human rights treaty bodies and the special rapporteurs and related mecha-

5. Elsa Stamatopoulou, *Taking Cultural Rights Seriously: The Vision of the UN Declaration on the Rights of Indigenous Peoples*, in REFLECTIONS ON THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES 387 (Stephen Allen & Alexandra Xanthaki eds., 2011).

6. Who does not remember, for example, the appearance of the Zapatistas and the mysterious *Sub-Commandante* Marcos in Mexico, whose supreme commander was a council of indigenous elders?

7. See *General Comment No. 21, Right of Everyone to Take Part in Cultural Life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 43rd Sess., U.N. Doc. E/C.12/GC/21 (2009) (hereinafter Gen. Comm. No. 21).



nisms of the UN Human Rights Council.⁸ It is useful to recall that when the first human rights monitoring procedures of the UN Commission on Human Rights were created in the late 1960s, it was clear in the minds of states that there was a distinction between human rights protection through monitoring and the promotion of human rights. The former, considered the more intrusive arm of the international community, aims to protect human rights from governmental actions or omissions that violate them. The latter, while continuing to be extremely valuable, is viewed as the softer approach. In the last four decades, the international human rights system, especially the system developed by the United Nations, has taken on a more comprehensive methodology. Today, the “naming and shaming” connected with human rights monitoring often goes together with institution building, information, education, and training; all areas where states can seek the technical assistance of the United Nations. In addition, human rights monitoring has to be seen against the backdrop of increasing efforts of the UN system to integrate human rights in development work and humanitarian and peace operations, which in turn make monitoring relatively easier since this can be done within an all encompassing operational framework. Lastly, a new type of human rights monitoring was born through UNDRIP, which in Article 42 states: “The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States, shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.”

In a commentary on Article 42 at its eighth session in 2009, the UN Permanent Forum on Indigenous Issues decided it would pursue monitoring of the implementation of the Declaration in ways similar to human rights treaty bodies.⁹ Such developments demonstrate a tendency of the international human rights system toward additional or softer methods of monitoring of human rights than the *sensu stricto* international human rights monitoring mechanisms. While recognizing the value of adding a variety of tools to

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8. The term “special rapporteur” is often used as a blanket term to cover mandate holders under other titles, such as “independent expert,” “special representative,” or occasionally “working group.” Although there is sometimes diplomatic nuance in using these terms, their aim is to monitor human rights and their methodologies are similar. Other intergovernmental organizations, especially the OAS and the Council of Europe, have occasionally appointed similar mechanisms, but those are not as extensive or as developed as those of the United Nations. As of September 2011 there were thirty-five thematic and eight country-specific mandates at the UN Human Rights Council. Five of the thematic mandates are “Working Groups” (on arbitrary detention, on discrimination against women in law and practice, on enforced or involuntary disappearances, on people of African descent, and on transnational corporations and other business enterprises).
 9. *Permanent Forum on Indigenous Issues, Report on the Eighth Session*, U.N. ESCOR, Econ. & Soc. Council, 8th Sess., Annex, U.N. Doc. E/2009/43 (2009) (hereinafter Eighth Sess. Rep.).

the international human rights system, it should be emphasized that a large number of states have, in the last ten years, attempted to weaken the international monitoring system at the UN Human Rights Council (HRC), not without some success. The drastic reduction of country-specific human rights rapporteurs at the HRC is but one such proof, and one could not maintain that the excessively diplomatic and government-controlled Universal Periodic Review has replaced the voices of independent country-specific rapporteurs.

In addition to their main task of monitoring the implementation of human rights by governments, international monitoring mechanisms have also contributed considerably to the interpretation of international human rights instruments and the progressive development of human rights norms. This has been particularly valuable in the case of cultural human rights, where human rights treaty bodies have clarified the normative content of these rights. Given the interdependent nature of human rights, almost all international human rights instruments are pertinent to cultural rights.¹⁰ While global legal instruments have seemed reticent to fully recognize cultural rights (the most notable exception being UNDRIP), regional instruments have done so clearly and boldly. This is the case with the 1955 Council of Europe Framework Convention on the Protection of National Minorities (entered into force in 2009), the 2000 ASEAN Declaration on Cultural Heritage, the 2006 Charter for African Cultural Renaissance and the 2011 Faro Council of Europe Framework Convention on the Value of Cultural Heritage for Society.

UNESCO approaches human rights and cultural rights in particular with considerable political caution but has truly contributed, even if many times indirectly, to the understanding of cultural rights as human rights. UNESCO can be viewed as too prolific, producing too many international instruments too fast without having gone through the kind of preparation and collection of views required for a standard-setting text of universal character. In addition, UNESCO's overseeing mechanisms are soft compared to those of the UN: UNESCO conventions have dealt with culture for decades without providing a human rights perspective, especially in terms of trade and commercial relations. However, this trend seems to be changing and two relatively recent instruments have been especially sensitive to cultural rights as human rights: the 2001 Universal Declaration on Cultural Diversity and the 2003 UNESCO

10. The most relevant are the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries, the Convention on the Rights of Persons with Disabilities and the UN Declaration on the Rights of Indigenous Peoples.



Convention on Safeguarding of Intangible Cultural Heritage. The latter is an instrument that sees the human rights element of cultural heritage referring to communities, in particular indigenous communities, and the need for their participation in actions of the state in this area.

Several Special Rapporteurs of the Human Rights Council (formerly the UN Commission on Human Rights) have been especially attentive to cultural rights, including the Special Rapporteur on the Rights of Indigenous Peoples, the Special Rapporteur on the Right to Education, and the Special Rapporteur on Freedom of Religion and Belief. References to cultural rights in country-specific reports by Special Rapporteurs have been rare, with the exceptions of past reports on Yugoslavia, Bosnia and Herzegovina, Croatia, and the Former Yugoslav Republic of Macedonia.

Some international human rights treaty bodies have made significant contributions to cultural rights. The Committee on the Rights of the Child, for example, adopted an important General Comment on the indigenous child, detailing the specificities of indigenous children's cultural rights.¹¹ The work of two human rights treaty monitoring bodies is the most noteworthy; namely that of CESCR, and that of the Human Rights Committee, which monitors the implementation of ICCPR. Given that it would be beyond the purview of this essay to provide a detailed examination of the work of all human rights monitoring bodies, this essay will focus on the two above-mentioned treaty bodies as well as on the work of the Independent Expert on Cultural Rights.¹²

B. The Human Rights Committee

The Committee has been most proactive in monitoring cultural rights via its work under Article 27 of ICCPR, which provides: "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 other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." In 1994, the Committee adopted an important General Comment on Article 27, stressing that the enjoyment of these rights

does not prejudice the sovereignty and territorial integrity of a State party. At the same time, one or other aspect of the rights of individuals protected under that article—for example, to enjoy a particular culture—may consist in a way

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11. *General Comment No. 12, The Right of the Child to be Heard*, U.N. GAOR, Comm. on Rts. of the Child, 51st Sess., U.N. Doc. CRC/C/GC/11 (2009).
 12. A detailed examination of the whole international monitoring system in terms of cultural rights is provided in STAMATOPOULOU, *supra* note 2.



of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority.¹³

In the case of indigenous peoples such traditional activities may include fishing or hunting and the right to live in reserves protected by law.

The Committee moreover deems that the rights stipulated in Article 27 are also to be enjoyed by non-citizens. As to the term “exist” in Article 27, the degree of permanence of a non-citizen’s stay is not relevant. Thus migrant workers or even visitors are entitled to exercise those rights. The existence of an ethnic, religious, or linguistic minority in a given state party does not depend upon the decision by that state party, but is to be established by objective criteria. In examining state parties’ reports the Committee has been thorough in its monitoring of cultural rights of minorities, in particular language rights, cultural autonomy in terms of cultural institutions as well as consultation regarding traditional means of livelihood, limits to indigenous cultures by logging and mining, delays in demarcation of traditional lands, protection of sites of religious or cultural significance, and protection of cultural rights of non-citizens.

The case law of the Human Rights Committee under the (first) Optional Protocol to ICCPR has reflected this interpretation of Article 27 and has made pronouncements on: (a) use of land and resources in a way that will respect the culture of a minority or indigenous group; (b) the possible limitations of such rights of the group by other development concerns in the area; (c) the requirement of a consultation between the state and any minority group concerned with a decision that may affect its use of the land and resources; and (d) the issue of the sensitive limits between the cultural rights of a member of a group and what the group perceives as its own cultural rights.

C. The Committee on Economic, Social and Cultural Rights

CECSR is the main international human rights body that has cultural rights explicitly under its mandate. The Committee has to monitor the implementation by state parties of Article 15 of the Covenant, which establishes the right to participate in cultural life. For a long time, the Committee’s work on cultural rights could be viewed as good but limited. The reasons for this inadequate attention could be understood by the Committee’s prioritization of economic and social rights, which the Committee, especially since its constitution as an expert body, has proceeded to analyze and interpret as well as monitor over the years. It seems the overall reasons mentioned earlier

13. *General Comment No. 23, The Rights of Minorities (Article 27)*, U.N. GAOR, Hum. Rts. Comm., 50th Sess., ¶ 3.2, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (1994).



in this essay for the neglect of cultural rights prevailed in the Committee's practice as well. However, it is clear that the quality work of CESCR has made major contributions to cultural rights.

The Committee's first attempt to grapple with cultural rights dates back to the early 1990s. At its request, a study was prepared in 1992 by one of its members, Samba Cor Konate of Senegal, who had a special interest in cultural rights.¹⁴ In the same year the Committee held a day of general discussion on the subject.¹⁵ Konate was requested by the Committee to draft recommendations on the obligations of states concerning the right to participate in cultural life, but Konate's death halted this effort for years to come. It was only in 2001 that the Committee decided to embark on the preparation of a General Comment on the right to participate in cultural life, and its work was successfully completed in 2010.

The Committee has contributed to the understanding of what cultural rights are in various other ways, namely through its examination of state parties reports, through its General Comments on various other articles of ICESCR, and through its articulation of states' obligations under and violations of ICESCR.¹⁶ This analytical work offers a good basis for deciphering some of the normative elements of cultural rights.

At its thirty-fifth session in November 2005, CESCR issued a General Comment on Article 15, paragraph 1(c) of ICESCR, regarding the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.¹⁷ The seminal moment of CESCR's contribution came with the adoption of the aforementioned General Comment 21 on Article 15, paragraph 1(a) regarding the right to participate in cultural life.¹⁸ The main contributions of the General Comment are summarized below.¹⁹

14. *Implementation of the International Covenant on Economic, Social and Cultural Rights, Implementation of Cultural Rights, Analytical Study of Article 15 of the International Covenant on Economic, Social and Cultural Rights (prepared by Mr. Samba Cor Konate)*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 7th Sess., U.N. Doc. E/C.12/1992/WP.4 (1992).
15. *Committee on Economic, Social and Cultural Rights, Report on the Seventh Session, Supp. No. 2*, U.N. ESCOR, Econ. & Soc. Council, ¶¶ 202-23, U.N. Doc. E/1993/22 (1993).
16. *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Monday, 27 November 2000, The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights and The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 24th Sess., Prov. Agenda Item 3, U.N. Doc. E/C.12/2000/13 (2000).
17. *General Comment No. 17, The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph 1 (c), of the Covenant)*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 35th Sess., U.N. Doc. E/C.12/GC/17 (2006). Gen. Comm. No. 21, *supra* note 7.
19. This analysis of CESCR's General Comment 21 is based on the author's contribution to a possible UNESCO forthcoming publication (on file with author).



Regarding the understanding of “culture,” the Committee adopted a broad and inclusive concept, encompassing all manifestations of human existence. The expression “cultural life” is an explicit reference to culture as a living process. Culture, for the purpose of implementing Article 15 (1) (a), encompasses, *inter alia*, ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing, shelter, and the arts; in short, all customs and traditions through which individuals and communities express their humanity and build their worldview. Culture shapes and mirrors the values of well-being and the economic, social, and political life of individuals, groups of individuals, and communities.

The Committee has rightly underlined the interdependence of cultural rights with other human rights, including freedom of expression, freedom of religion, and freedom to peaceably assemble. At the same time the Committee also stresses the significance of cultural rights in the implementation of other human rights by recalling the notion of cultural appropriateness (or cultural acceptability or adequacy) in relation in particular to the rights to food, health, water, housing, and education.

The Committee balances between individual rights and collective or group rights, although it uses the term “community” more comfortably rather than the former terms. Presumably the Committee prefers this word as less politically charged and sensitive for states. However, in the case of indigenous peoples the Committee has used the right terminology, *i.e.* “peoples,” in almost all references. The General Comment makes clear that the decision by a person whether or not to exercise the right to take part in cultural life individually, or in association with others, is a cultural choice and, as such, should be recognized, respected, and protected on the basis of equality, while recognizing that cultural rights may be exercised in association with others or within a community or group. States shall respect the right of everyone to identify or not identify themselves with one or more communities, and the right to change their choice.

On the issue of universality *vs.* particularity, the Committee recalls the well-known UN position that emerged at the 1993 World Conference on Human Rights: while account must be taken of national and regional particularities and various historical, cultural, and religious backgrounds, it is the duty of states to promote and protect all human rights and fundamental freedoms. Thus, no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.

The Committee carefully outlines the parameters and limitations on the right of everyone to take part in cultural life in the case of conflict of rights. Limitations may be necessary in certain circumstances, in particular the case of negative practices, including those attributed to customs and tradi-

tions that infringe upon other human rights. Such limitations must pursue a legitimate aim, be compatible with the nature of this right, and be strictly necessary for the promotion of general welfare in a democratic society in accordance with Article 4 of ICESCR.

The Committee takes a broad view on non-discrimination and equal treatment, analyzing Article 2, paragraph 2, and Article 3 of ICESCR, which prohibit any discrimination in the exercise of the right of everyone to take part in cultural life on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. The Committee points out in particular that no one shall be discriminated against because he or she chooses to belong, or not to belong, to a given cultural community or group, or to practice or not to practice a particular cultural activity. Likewise, no one shall be excluded from access to cultural practices, goods, and services. The Committee affirms the obligation of states to take legislative and any other necessary steps to guarantee non-discrimination and gender equality in the enjoyment of the right of everyone to take part in cultural life.

Through its careful comments the Committee makes sure to underline that measures for equality will not result in forced assimilation. It states, in particular, that a first and important step towards the elimination of discrimination is for States to recognize the existence of diverse cultural identities of individuals and communities in their territories. Voicing a well-known human rights principle in favor of positive measures, the Committee reaffirms that adoption of temporary special measures with the sole purpose of achieving de facto equality does not constitute discrimination, and that the responsibility to remedy structural forms of discrimination, so as to ensure that the under-representation of persons from certain communities in public life, does not adversely affect their right to take part in cultural life. Even in times of severe resource constraints the most disadvantaged and marginalized individuals and groups can and indeed must be protected by the adoption of relatively low-cost targeted programs.

In the discussion on globalization the Committee strikes a wise balance between the need to protect and promote the diversity of cultural expressions and for all cultures to express themselves and make themselves known, the requirement to respect human rights standards, and the need to protect the free flow of ideas by word and image. The measures may also aim at preventing the signs, symbols, and expressions of a particular culture from being taken out of context for the sole purpose of marketing or exploitation by the mass media.

The right to impart information and cultural exchanges at the national and international level is recognized in the General Comment as part of the normative content of cultural rights: to enjoy freedom of opinion, freedom of expression in the language of one's choice, and the right to seek, receive,



and impart information and ideas of all kinds and forms. This implies the right of all persons to have access to, and to participate in, varied information exchanges, and to have access to cultural goods and services as vectors of identity, values, and meaning.

Under the rubric of promoting understanding and tolerance and eliminating prejudice against other cultures, a positive contribution of the Committee is the recognition of the obligation of the state to take appropriate measures to conduct public campaigns through the media, educational institutions, and other available channels with a view to eliminate any form of prejudice against individuals or communities based on their cultural identity.

The Committee brings out the importance of international cooperation towards the development of the right to take part in cultural life, especially as an obligation of those states that are in a position to provide assistance. This is particularly significant given the considerable neglect of cultural rights within development cooperation.

Far from seeing cultural rights as a “luxury,” the General Comment underlines the importance of the fact that cultural rights must be treated with similar attention to other human rights by requiring that state parties must take the necessary steps without delay to guarantee immediately at least the minimum content of the core obligations. Many of these steps, such as those intended to guarantee non-discrimination *de jure*, do not necessarily require financial resources.

Also especially positive is the Committee’s view of the duty-bearers for the implementation of cultural rights. While compliance with ICESCR is mainly the responsibility of state parties, the Committee recognizes agency and duties for all members of civil society—individuals, groups, communities, minorities, indigenous peoples, religious bodies, private organizations, business, and civil society in general—who also have responsibilities in relation to the effective implementation of the right of everyone to take part in cultural life.

Given the significance of cultural rights for the survival of indigenous peoples, it is important to turn to some challenges for the Committee’s work in the coming years. The UNDRIP is imbued with the affirmation of the cultural rights of indigenous peoples, as collectivities and as individuals. Cultural rights are reflected in at least seventeen of the forty-six articles of the Declaration. Significantly, about fifteen of the forty-six articles deal with governance and participation in a democratic polity; they are crucial procedural and substantive rights through which the culture and identity of indigenous peoples will have an impact in the public sphere, in relations with the state, and on society at large. Article 3 of the Declaration recognizes that indigenous peoples have the right of self-determination. By virtue of this right they freely determine their political status and freely pursue their economic, social, and cultural development.

Although the General Comment refers to participation in general, the full understanding of cultural rights of indigenous peoples must be understood as containing self-determination as a normative element. Similarly, free, prior, and informed consent (FPIC) of indigenous peoples, to which the General Comment refers, is both a procedural and a substantive right and is mentioned in Articles 10, 11, 19, 28 and 29 of UNDRIP in connection with culture and, in Article 19, in connection with lands and possible relocation. Full and effective participation of indigenous peoples in matters that concern them, as well the implementation of FPIC, continue to be challenges as repeatedly affirmed by the UN Permanent Forum on Indigenous Issues. The Permanent Forum has adopted an understanding of the elements of FPIC, which, among other things, stresses that the state and others concerned must interface and receive the express consent from representative institutions that indigenous peoples themselves will specify and who are entitled to express consent on behalf of the affected peoples or their communities.²⁰ In other words, the governance institutions and structures of indigenous peoples must be respected in consultation and decision-making processes.

The General Comment indicates that states must allow and encourage the participation of minority groups and indigenous peoples in the design and implementation of laws and policies that affect them. In particular, state parties should obtain their free and informed prior consent when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk. In light of the extensive references to the right of self-determination, participation, and governance in UNDRIP, this reference in the General Comment appears restrictive regarding indigenous peoples. Who determines that a culture is at risk, the state or the indigenous peoples concerned? It is obvious indigenous peoples should participate fully and effectively through their own governance structures and authorities in all cases of decisions that concern them.

A number of cultural rights of indigenous peoples are reflected in UNDRIP in a more explicit or detailed manner than in the General Comment: the right to maintain and strengthen their distinct cultural institutions while retaining their rights to participate fully, if they so choose, in the cultural life of the state (Article 5); the collective right to live as distinct peoples (Article 7); the right not to be subjected to forced assimilation or destruction of their culture, including mechanisms of prevention and redress (Article 8); the right to belong to an indigenous community or nation in accordance with the traditions and customs of the community or nation concerned (Article 9); the

20. *Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples*, U.N. ESCOR, Econ. & Soc. Council, Perm. Forum on Indigenous Issues, 4th Sess., Prov. Agenda Item 4, ¶¶ 45-50, U.N. Doc. E/C.19/2005/3 (2005).



right to manifest, practice, develop, and teach their spiritual and religious traditions, customs, and ceremonies; to maintain, protect, and have access to their religious and cultural sites, to use and control their ceremonial objects, and to have their human remains repatriated (Article 12); the right to revitalize and transmit to future generations their histories, languages, oral traditions, and philosophies, and to designate their own names for communities, places, and persons; the obligation of states to ensure that indigenous peoples can understand and be understood in political, legal, and administrative proceedings (Article 13); the right to establish and control their education systems and institutions providing education in their own language and in a manner appropriate to their cultural methods of learning and teaching; the right to have access, when possible, to an education in their own culture and provided in their own language (Article 14); the right to have the dignity and diversity of their cultures reflected in all forms of education and public information (Article 15); the right to their traditional medicines and to maintain their health practices (Article 24); the right to maintain, control, protect and develop their cultural heritage, traditional knowledge, and traditional cultural expressions, as well as the manifestations of their sciences, technologies, and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games, and visual and performing arts; the right to maintain, control, protect, and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions (Article 31); the right to determine their own identity or membership in accordance with their customs and traditions (Article 33); and finally, the right to promote, develop, and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, and practices and, in case they exist, juridical systems or customs in accordance with international human rights standards (Article 34).

The above-mentioned cultural rights of indigenous peoples, including those earlier identified in the General Comment, have also been affirmed over the decades in the practice, case law and policies of national and international bodies. The UNDRIP is the most universal, comprehensive, and fundamental instrument on indigenous peoples' rights. Its Article 42 constitutes the legal basis for all activities on indigenous issues²¹ and reads as follows: "The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration." The CECSR would therefore be guided by the detailed enumeration of indigenous peoples' cultural rights in the Declaration. Its adoption of the long-awaited

21. See Eighth Sess. Rep., *supra* note 9, Annex ¶¶ 6-13.



General Comment 21 on cultural rights, two years after the adoption of the UNDRIP, was a welcome coincidence.

The UNDRIP recognizes indigenous peoples' cultural rights—namely their human right to exist as peoples and as cultures. The cultural rights of indigenous peoples constitute a major path to mending the hurt of past injustices committed against indigenous peoples, building bridges among indigenous and non-indigenous communities, and fostering inclusive, pluricultural democratic states.²²

D. The Independent Expert on Cultural Rights

The establishment of the Independent Expert has to be seen against the backdrop of a 2002 resolution of the UN Commission on Human Rights (the precursor of the current UN Human Rights Council). Resolution 2002/26, entitled "Promotion of the Enjoyment of the Cultural Rights of Everyone and Respect for Different Cultural Identities," was the very first on cultural rights in the fifty-year history of the Commission, a clear demonstration of the reticence of states on the subject. A Cuban initiative, the resolution at first played out like previous negotiations on cultural matters at UNESCO, the dominant elements of which have been commercial, trade, and political relations and not the human rights of individuals and groups, with the notable exceptions mentioned above. The original resolution, however, was enriched over the years with human rights elements and finally, resolution 10/23 of the Human Rights Council, adopted in 2009, included the establishment of an Independent Expert on Cultural Rights or, as the resolution stipulates, "an Independent Expert in the field of cultural rights."

According to the resolution, the mandate of the Independent Expert in the Field of Cultural Rights (IECR) is: (a) to identify best practices in the promotion and protection of cultural rights at the local, national, regional, and international levels; (b) to identify possible obstacles to the promotion and protection of cultural rights, and to submit proposals or recommendations to the Council on possible actions in that regard; (c) to work in cooperation with states in order to foster the adoption of measures at the local, national, regional, and international levels aimed at the promotion and protection of cultural rights through concrete proposals enhancing sub-regional, regional, and international cooperation; (d) to study the relationship between cultural rights and cultural diversity, in close collaboration with states and other relevant actors, including in particular the United Nations Educational, Scientific, and Cultural Organization, with the aim of further promoting cultural rights; (e) to integrate a gender and disabilities perspective into his

22. Stamatopoulou, *Taking Cultural Rights Seriously*, *supra* note 5, at 412.



or her work; and (f) to work in close coordination, while avoiding unnecessary duplication, with intergovernmental and nongovernmental organizations (NGOs), other special procedures of the Council, CECSR, and the United Nations Educational, Scientific, and Cultural Organization, as well as with other relevant actors representing the broadest possible range of interests and experiences within their respective mandates, including by attending and following up on relevant international conferences and events.

Farida Shaheed of Pakistan is the first expert appointed for this mandate and reported to the Human Rights Council in 2010, 2011, and 2012. She conducts her work via thematic reports and public statements, as well as through country visits and country-specific reports. She also convenes seminars and consultations on specific topics. As of October 2011, the Independent Expert has issued two thematic reports, one on the overall understanding of cultural rights and the interpretation of her mandate²³ and one on cultural heritage.²⁴ She also conducted three country visits and issued a report on Brazil²⁵ and preliminary notes on Austria,²⁶ Morocco, and Western Sahara.²⁷

Among the positive elements to be noted in the IECR's first two thematic reports that set the stage for her mandate are the following:

(a) Cultural rights are viewed as rights in the field of culture, and culture is understood broadly as a process, product and a way of life, beyond ethnicity, language, and religion; as a living process, historical, dynamic, and evolving. Cultural rights also include the right to question the existing parameters of "culture," to opt in or out of particular cultural entities, and to continuously create new culture.

(b) The IECR acknowledges both the individual and collective or group aspects of cultural rights and their significance for the expression of identity. The early dealing by the IECR with this topic contributes to the much-needed demystification of group human rights in the international human rights edifice.

23. *Report of the Independent Expert in the Field of Cultural Rights, Ms. Farida Shaheed, Submitted Pursuant to Resolution 10/23 of the Human Rights Council*, U.N. GAOR, Hum. Rts. Council, 14th Sess., Agenda Item 3, U.N. Doc. A/HRC/14/36 (2010).

24. *Report of the Independent Expert in the Field of Cultural Rights, Farida Shaheed*, U.N. GAOR, Hum. Rts. Council, 17th Sess., Agenda Item 3, U.N. Doc. A/HRC/17/38 (2011).

25. *Report of the Independent Expert in the Field of Cultural Rights, Farida Shaheed, Addendum, Mission to Brazil (8-19 November 2010)*, U.N. GAOR, Hum. Rts. Council, 17th Sess., Agenda Item 3, U.N. Doc. A/HRC/17/38/Add.1 (2011).

26. *Report of the Independent Expert in the Field of Cultural Rights, Farida Shaheed, Preliminary Note on the Mission to Austria (4-15 April 2011)*, U.N. GAOR, Hum. Rts. Council, 17th Sess., Agenda Item 3, U.N. Doc. A/HRC/17/38/Add.2 (2011).

27. Press Release, United Nations, Office of the High Commission for Human Rights, UN Independent Expert in the Field of Cultural Rights Visit to Morocco and Western Sahara, 5-16 September 2011 Preliminary Conclusions and Observations Rabat (16 Sept. 2011), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11396&LangID=E>.



(c) The IECR explicitly mentions migrants as well as indigenous peoples and persons belonging to minorities as special categories to whom identity-related cultural rights apply. In particular, regarding indigenous peoples, the IECR recognizes that the right to land is closely connected to cultural rights.

(d) A very important step is that in her first report the IECR lays out her preliminary views on the interaction between the principle of universality of human rights, the recognition and implementation of cultural rights, and the need to respect cultural diversity. She analyzes the concept of multiple identities and the permanent dynamic processes that are integral to cultural diversity, the link between cultural diversity and human rights overall, and the need to evaluate the content and implications of cultural practices. She dispels the confusion between cultural diversity and cultural relativism, and points out that not all cultural practices can be protected under International Law.

(e) The IECR recognizes the ideological plurality and power differentials that exist within nations, ethnic groups, and cultural communities concerning the identification, development, and interpretation of a “common” culture.

(f) The IECR recognizes the inter-connectedness of cultural rights with a series of other human rights, including freedom of religion and freedom of expression.

(g) The non-discrimination principle, enshrined in a large number of international legal instruments, constitutes an important legal basis for the IECR. She notes it is generally agreed that the enjoyment of rights and freedoms on an equal footing “does not mean identical treatment in every instance,” which enables the accommodation required to respect and facilitate the expression of various cultural identities.

(h) The IECR has incorporated in her working methods the holding of consultations and seminars on the topics of the thematic reports. So far two have been held, one on the concept of cultural rights and the other on cultural heritage. Given the novelty of the mandate and the topic, this method of work is needed and appreciated.

(i) The IECR establishes access to and enjoyment of cultural heritage as part of cultural rights. Her report identifies the normative content of this right as well as state obligations in that regard. The IECR provides a human rights analysis of the complex issues involved in matters of cultural heritage, not the least of which has to do with power relations within the state and among and within groups. The well-known problem of individuals and groups, including indigenous peoples, being disconnected from their cultural heritage due to tourism and other projects is rightfully highlighted by the IECR, who underlines the participation rights of indigenous peoples in matters connected to cultural heritage, namely the right of indigenous peoples to self-determination and to maintain, control, protect, and develop cultural heritage. The Independent Expert fully acknowledges the authority

and legal force of UNDRIP by mentioning clearly the many elements on cultural heritage contained in the Declaration.

(j) The IECR sees access to and enjoyment of cultural heritage as interdependent concepts—one implying the other. They convey an ability to know, understand, enter, visit, make use of, maintain, exchange, and develop cultural heritage, as well as to benefit from the cultural heritage and creations of others without political, religious, economic, or physical encumbrances. Individuals and communities cannot be seen as mere beneficiaries or users of cultural heritage. Access and enjoyment also imply contributing to the identification, interpretation, and development of cultural heritage, as well as to the design and implementation of preservation/safeguard policies and programs. Effective participation in decision-making processes relating to cultural heritage is a key element of these concepts.

(k) At the end of her report on cultural heritage the IECR makes a series of strong and concrete recommendations to states, cultural institutions, researchers, and the private sector that give concrete policy direction to all the actors that have the political will to act on this topic. These recommendations, it could be said, have a central theme, which is a perspective on cultural heritage from the angle of individuals and groups—a human angle, a human rights angle. The IECR's recommendations focus substantively on the various ways people will participate actively and meaningfully in matters related to cultural heritage—ways people will be given agency and voice.

(l) In addition to clarifying the normative elements of cultural rights in her thematic reports, the IECR also conducts country visits. As of September 2011, she had visited Brazil, Austria, Morocco, and Western Sahara and has requested visits to Algeria, Ecuador, Nepal, the Philippines, the Russian Federation, and Vietnam. The country visits and reports follow the standard practice of other monitoring human rights mechanisms of the Human Rights Council, namely receiving and discussing information with governments, NGOs, indigenous peoples, community representatives, the media, and other civil society actors. The reports analyze the legal systems of the countries, the institutional frameworks, and state practices. Good practices and areas for improvement are identified and recommendations are addressed to the government as well as communities, indigenous peoples, and civil society at large. The reports and recommendations give concrete content, in country-specific terms, to the promotion, protection and fulfillment of cultural rights, including calling for specific plans and benchmarks. In this way cultural rights are finally given the serious consideration and profile that they had been missing for decades.

It is obvious many challenges and areas of action remain for the future work of the IECR. She has identified a number of topics to which she will devote special attention. These include: cultural dimensions of all human rights; the principle of non-discrimination as it applies to cultural rights;

analysis of the right to rest and leisure; analysis of the obligations of states within the framework developed by CECSR using the concepts of availability, accessibility, acceptability, adaptability, and appropriateness; and responsibilities of the corporate sector regarding cultural rights within the established framework of “protect, respect, and remedy.”²⁸ She has also committed herself to focusing special attention on the cultural rights issues of gender, of migrants and non-nationals, and of persons with disabilities.

A number of other issues also merit the special attention and analysis of the IEHR. They include: development in conjunction with culture and identity; the protection of youth cultures and youth’s cultural expressions, including through social media; the issue of popular, democratic community participation in setting state policies affecting cultural rights; and the promotion and protection of cultural rights within the context of peace-keeping, peace-building operations, and conflict prevention.

IV. CONCLUSION AND FUTURE PATHS

The human rights monitoring bodies have played a major role in the emergence and validation of cultural rights so that they occupy their rightful place in the human rights system.

The recent developments on cultural rights have boosted the international human rights monitoring system. From now on the challenge will be for governments, NGOs, and the UN bodies to use these mechanisms actively. Governments will have to overcome a possible reticence from the relative novelty of these mechanisms and use them constructively to develop, improve, and uphold public measures for cultural rights. They should report actively to CESCR on the implementation of Article 15 and also integrate cultural rights aspects in reporting on other articles of ICESCR. They should also report to other UN monitoring bodies, such as the Human Rights Committee, the Committee on the Elimination of All Forms of Racial Discrimination, and the Committee on the Rights of the Child. Governments should open their doors and invite the IEHR to visit.

NGOs will need to become familiar with the new developments and the potential that this analytical work of the UN monitoring bodies has unleashed, and use their work and knowledge to submit information and cooperate with CESCR and the Independent Expert. The Office of the High

28. *Promotion of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Business and Human Rights: Towards Operationalizing the “Protect, Respect and Remedy” Framework, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises*, U.N. GAOR, Hum. Rts. Council, 11th Sess., Agenda Item 3, U.N. Doc. A/HRC/11/13 (2009).



Commissioner for Human Rights and others could develop human rights training curricula or integrate into existing curricula the specific elements of cultural rights that provide concreteness, such that they can be pursued in public policy work, including the monitoring of their implementation.

A difficult and painful issue that can be addressed through the respect of cultural rights is that of remedying past injustices. Groups claim cultural rights as collective rights *vis-à-vis* the majority society, with the necessary corresponding obligations to preserve and develop the cultural integrity of the group, often in order to remedy historical injustices. Far from being a soft agenda, cultural rights have a real-world political strength. They make both moral and material claims that have a reasonable chance of being satisfied. In the case of indigenous peoples, they stake out a zone in which it is possible for some quantity of power to change hands and for age-old injustices to be mended.²⁹

Human sustainable development—or rather, well-being—will be possible in a culturally respectful and relevant policy environment that addresses people's cultural rights. At the same time, crucial as cultural rights are in the preservation or building of peace and for development, they should not be viewed only in terms of their functionality *vis-à-vis* peace and development, but also, boldly, for their value as human rights.

If we look back to over sixty years ago when the UDHR was being drafted, and since then, to when many other human rights instruments were drafted, we see that the process of drafting constituted a dialogue among the various civilizations, religions, regions, and legal and political systems that were contributing their perspectives and values, while the UN was synthesizing them. Those were put in legal language by the drafters and adopted by the UN as international human rights instruments. Now there is a need to give back to the world's diversity what that diversity gave us and we encapsulated in the brief, telegraphic language of the international human rights instruments. We have to give back an international human rights vision in a culturally specific way.

Grounding human rights in culture means listening to the local communities and peoples, dialoguing with the diversity of the world, and bringing the international/universal to the local. One of the best ways of doing that is by fostering genuine popular participation and by protecting and promoting cultural rights.

29. Bruce Robbins & Elsa Stamatopoulou, *Reflections on Culture and Cultural Rights*, 103 SOUTH ATLANTIC Q. 419 (2004).



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Elsa Stamatopoulou joined Columbia University in 2011. Her arrival marked the completion of distinguished service at the United Nations (Vienna, Geneva, and New York) with some twenty-two years dedicated to human rights. Indigenous issues have been part of her portfolio since 1983 and she became the first Chief of the Secretariat of the United Nations Permanent Forum on Indigenous Issues in 2003. In 2011, she taught the first ever course at Columbia on Indigenous Peoples' Rights and is developing a program on the topic for the Institute for the Study of Human Rights at Columbia. Her academic background in law, international law, criminal justice, and political science and her experience in international normative frameworks, institution-building, the rights of indigenous peoples and other groups, cultural rights, development, private sector, and inter-governmental cooperation equip her with a keen understanding of how to impact public policies and link this to academic work. She has cooperated closely with NGOs and has received The Ingrid Washinawatok El Issa *O'Peqtaw Metaehmoh*-Flying Eagle Woman Peace, Justice, and Sovereignty Award; the award of the NGO Committee on the Decade of the World's Indigenous Peoples; the Eleanor Roosevelt Award of the Human Rights Center and of Voices 21 and others. In 2010 the Museum "Tepee of the World" was given her name in the Republic of Sakha, Siberia, Russia. Her writings include articles on indigenous rights, women's rights, victims of human rights violations, cultural rights, and the UN. In 1998, she co-edited, with Danielli and Diaz, "*The Universal Declaration of Human Rights: 50 Years and Beyond*." Her book *Cultural Rights in International Law* was published in 2007 by Martinus Nijhoff Publishers. She oversaw the first edition of the UN publication *State of the World's Indigenous Peoples* (New York, 2009).



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