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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **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**

### *Summary*

In this first report to the Human Rights Council, the independent expert in the field of cultural rights develops preliminary views on the conceptual and legal framework of her mandate. Focusing on the challenges regarding the scope and content of cultural rights, she reviews the relevant existing provisions in United Nations human rights instruments, and develops her initial thoughts on the interaction among the principle of universality of human rights, the recognition and implementation of cultural rights and the need to respect cultural diversity (chap. II).

Aware that many other United Nations mechanisms have received mandates which relate to cultural rights, the independent expert has committed to coordinating with other mechanisms (chap. III).

The independent expert has also selected a list of priority issues she proposes to address. These issues relate to two main topics: (a) cultural rights, globalization of exchanges and of information, and development processes; and (b) participation, access and contribution to cultural life, without any discrimination (chap. IV).

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## I. Introduction

1. In resolution 10/23, the Human Rights Council established, for a period of three years, a new special procedure entitled “independent expert in the field of cultural rights”. The independent expert is requested: (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 and/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 subregional, regional and international cooperation in that regard; (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 (UNESCO), with the aim of further promoting cultural rights; (e) to integrate a gender and disabilities perspective into his and her work; and (f) to work in close coordination, while avoiding unnecessary duplication, with intergovernmental and non-governmental organizations, other special procedures of the Council, the Committee on Economic, Social and Cultural Rights and UNESCO, 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.

2. On 1 and 2 February 2010, the independent expert held consultations to clarify the content of cultural rights and reflect upon some key issues raised in relation to the realization of cultural rights, taking into consideration a wide and diverse range of perspectives. The seminar, entitled “Implementing Cultural Rights: Nature, Issues at Stake and Challenges”, was organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR), in partnership with the International Organization of La Francophonie and UNESCO, in collaboration with the Observatory of Diversity and Cultural Rights. The seminar involved a wide range of experts as well as States, intergovernmental organizations, national human rights institutions and non-governmental organizations. It provided valuable insights that will help the independent expert in fulfilling her mandate and identifying how best to implement cultural rights.

## II. Cultural rights: conceptual and legal framework

### A. Cultural rights in United Nations human rights instruments

#### 1. Challenges: content and scope of cultural rights

3. Cultural rights have often been described as underdeveloped in comparison to other human rights.<sup>1</sup> Insufficient attention has led to them sometimes being viewed as rights of lesser priority. However, as emphasized in resolution 10/23 of the Human Rights Council, they are an integral part of human rights, which are universal, indivisible, interrelated and interdependent. In many aspects, cultural rights are pivotal to the recognition and respect of

<sup>1</sup> Patrice Meyer-Bisch, *Les droits culturels, une catégorie sous-développée des droits de l'homme, Actes du VIIIe Colloque interdisciplinaire sur les droits de l'homme à l'Université de Fribourg* (Editions Universitaires Fribourg, Suisse, 1993). See also Elsa Stamatopoulou, “The right to take part in cultural life”, submission to the Committee on Economic, Social and Cultural Rights, day of general discussion on the right to take part in cultural life (E/C.12/40/9), pp. 7–8.

human dignity, as they protect the development and expression of various world visions — individual and collective — and encompass important freedoms relating to matters of identity. Provided that cultural rights are fully understood as being part of the wider human rights system and therefore grounded in existing norms and principles of international human rights law, they allow for an enriched understanding of the principle of universality of human rights by taking into consideration cultural diversity. In addition, cultural rights are essential tools for development, peace and the eradication of poverty,<sup>2</sup> and for building social cohesion, as well as mutual respect and understanding between individuals and groups, in all their diversity.

4. There is no official definition of cultural rights (nor are there official definitions of “civil”, “political”, “economic” or “social” rights). Mandated to perform her functions “in the field of cultural rights, as set out in the relevant United Nations human rights instruments”, the independent expert is required to investigate how best to distinguish which human rights may be considered cultural and to further define the content of these rights. This task, however, can only be undertaken in an exploratory manner. Human rights instruments being living instruments, it is essential to preserve sufficient room for new developments and interpretations to arise, based on the emergence of “new situations, demands, or foci of oppression”.<sup>3</sup>

5. It is not the intention of the independent expert to attempt to define culture. This is not necessary, and may be inappropriate. Instead, a better understanding of the scope of her mandate can emerge by identifying cultural rights, understood as “rights in the field of culture”, by building upon and advancing available working definitions of culture. Such working definitions may be found, in particular, in the preamble of the Universal Declaration on Cultural Diversity,<sup>4</sup> and general comment No. 21 (2009) on the right to take part in cultural life, adopted by the Committee on Economic, Social and Cultural Rights.<sup>5</sup> These definitions correspond to what a number of experts have stressed, i.e. that culture can be understood as a product, as a process and as a way of life,<sup>6</sup> and imply that culture includes references beyond ethnicity, language and religion.

<sup>2</sup> See United Nations Development Programme (UNDP), *Human Development Report 2004* (New York, 2004), pp. 1–12 and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), art. 2. See also E/C.12/40/9, p. 2.

<sup>3</sup> Patrick Thornberry, “Cultural rights and universality of human rights”, submission to the Committee on Economic, Social and Cultural Rights, day of general discussion on the right to take part in cultural life (E/C.12/40/15), p. 6.

<sup>4</sup> “Reaffirming that culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.”

<sup>5</sup> “The Committee considers that 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 and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives.” See also Fribourg Declaration on Cultural Rights (2007), art. 2 (a), available from [www.unifr.ch/iiedh/assets/files/declarations/eng-declaration.pdf](http://www.unifr.ch/iiedh/assets/files/declarations/eng-declaration.pdf).

<sup>6</sup> Rodolpho Stavenhagen, “Cultural rights: a social science perspective”, in A. Eide, C. Krause, A. Rosas (eds.), *Economic, Social and Cultural rights: A Textbook* (Boston, Martinus Nijhoff Publishers, 2001), pp. 85–109; E/C.12/40/9, pp. 4–5; E/C.12/40/15, pp. 3–4. See also International Commission of Jurists, submission to the Committee on Economic, Social and Cultural Rights, day of general discussion on the right to take part in cultural life (E/C.12/40/7), para. 6.

6. The independent expert notes that, as stated by the Committee on Economic, Social and Cultural Rights in its general comment No. 21 (2009), cultural life “is an explicit reference to culture as a living process, historical, dynamic and evolving” (para. 11), and that “the concept of culture must be seen not as a series of isolated manifestations or hermetic compartments, but as an interactive process whereby individuals and communities, while preserving their specificities and purposes, give expression to the culture of humanity” (para. 12). One must bear in mind that “nations, and ethnic groups and cultural communities are ideologically plural even if they share common cultural mores”.<sup>7</sup> Further, power differentials must be taken into consideration, as they impact on the ability of individuals and groups to effectively contribute to the identification, development and interpretation of what should be considered as a common “culture” or shared cultural heritage.

7. The Universal Declaration on Cultural Diversity appears to be unique in that it lists rights expressly categorized as cultural. According to article 5 of the Declaration:

The flourishing of creative diversity requires the full implementation of cultural rights as defined in article 27 of the Universal Declaration of Human Rights and in articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights. All persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons are entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.

8. Some civil society initiatives may also be useful, such as the Fribourg Declaration on Cultural Rights,<sup>8</sup> which outlines eight cultural rights that relate to identity and cultural heritage, freedom of identification with one or several communities and the right to change such identification, access to and participation in cultural life, education and training, information and communication, and cultural cooperation. Some experts have also elaborated lists of cultural rights or normative elements of cultural rights, indicating for example that they encompass non-discrimination and equality; freedom from interference with the enjoyment of cultural life (freedom to create and contribute to culture); freedom to choose and change in which culture(s) and cultural life to participate (freedom to manifest one’s own culture); freedom of dissemination; freedom to cooperate internationally; the right to participate in the definition, preparation and implementation of policies on culture; and other elements connected to the right to participate in cultural life and emerging from the interdependence of human rights.<sup>9</sup>

9. These texts and studies, as well as the discussions held during the February 2010 seminar, demonstrate that cultural rights relate to a broad range of issues, such as expression and creation, including in diverse material and non-material forms of art; information and communication; language; identity and belonging to multiple, diverse and changing communities; development of specific world visions and the pursuit of specific ways of life; education and training; access, contribution and participation in cultural life; the conduct of cultural practices and access to tangible and intangible cultural heritage. Cultural rights protect the rights for each person, individually and in community with

<sup>7</sup> Ephraim Nimni, “Collective dimensions of the right to take part in cultural life”, submission to the Committee on Economic, Social and Cultural Rights, day of general discussion on the right to take part in cultural life, (E/C.12/40/17), p. 8.

<sup>8</sup> See footnote 5.

<sup>9</sup> E/C.12/40/9, p. 5.

others, as well as groups of people, to develop and express their humanity, their world view and the meanings they give to their existence and their development through, inter alia, values, beliefs, convictions, languages, knowledge and the arts, institutions and ways of life. They may also be considered as protecting access to cultural heritage and resources that allow such identification and development processes to take place.<sup>10</sup>

10. One debate that constantly arises in international human rights law, in particular when it concerns cultural rights, relates to the collective dimension of rights — referring to the collective exercise of individual rights on the one hand, and the existence of collective rights per se – understood as group rights — on the other hand. Indeed, “the term ‘cultural life’ itself strongly suggests the collective”,<sup>11</sup> and article 27 of the Universal Declaration of Human Rights expressly refers to the cultural life of “the community”, which today must be understood by its plural “communities”.<sup>12</sup> Several points must be signalled in this respect. First, the collective dimension of cultural rights has been recognized in instruments such as the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.<sup>13</sup> Second, the existence of collective cultural rights is a reality in international human rights law today, in particular in the United Nations Declaration on the Rights of Indigenous Peoples. In addition, the Committee on Economic, Social and Cultural Rights, in its general comment No. 17 on 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 (art. 15, para. 8) and general comment No. 21 (para. 15), underlined that cultural rights may be exercised alone, or in association with others or as a community.<sup>14</sup> Third, this does not imply the denial of individual cultural rights: individuals always enjoy their right, inter alia, to participate or not to participate in one or several communities; to freely develop their multiple identities; to access their cultural heritage as well as that of others; and to contribute to the creation of culture, including through the contestation of dominant norms and values within the communities they choose to belong to as well as those of other communities. The independent expert proposes to explore further the relationship between individual and collective cultural rights, taking into consideration the practice of human rights mechanisms at the national, regional and international level.

## 2. References in United Nations human rights instruments

11. Many explicit and implicit references to cultural rights as understood above are found in international instruments and the practice of human rights mechanisms. Explicit references include rights that expressly refer to culture. Implicit references include rights that although not expressly referring to culture may constitute an important legal basis for the protection of cultural rights as defined above. It must be stressed that cultural rights are so closely interconnected with other human rights that it is sometimes difficult to draw a

<sup>10</sup> Based on the working definitions of culture proposed by the Committee on Economic, Social and Cultural Rights (general comment No. 21, para. 13) and the Fribourg Declaration on Cultural Rights, art. 2 (a). See Patrice Meyer-Bisch, “Définir les droits culturels”, working paper submitted to the seminar on implementing cultural rights: nature, issues at stake and challenges, Geneva, 1–2 February 2010, para. 12.

<sup>11</sup> E/C.12/40/15, p. 9.

<sup>12</sup> Ibid., pp. 7–9.

<sup>13</sup> Art. 3, para. 1: “Persons belonging to minorities may exercise their rights (...) individually as well as in community with other members of their group, without any discrimination.”

<sup>14</sup> See also Jaime Marchan Romero, “Derechos culturales: la practica del Comité de derechos economicos, sociales et culturales”, working paper submitted to the seminar on implementing cultural rights: nature, issues at stake and challenges, p. 5.

line between cultural and other rights. The references below have been identified on a preliminary basis as the most important ones, and should not be considered exhaustive.

12. The most obvious right to be mentioned is the right to take part or participate in cultural life, which is referred to in resolution 10/23 of the Human Rights Council and is widely recognized in human rights instruments.<sup>15</sup> Particular reference must be made to article 27 of the Universal Declaration of Human Rights and article 15, paragraph 1 (a), of the International Covenant on Economic, Social and Cultural Rights. The independent expert welcomes in this regard the adoption by the Committee on Economic, Social and Cultural Rights of general comment No. 21, which further clarifies the scope and content of this right. This document stresses the relevance of a wide range of norms included in instruments on civil and political rights, on the rights of persons belonging to minorities, on the rights of indigenous peoples and on the right to development.<sup>16</sup> It also stresses that there are three interrelated main components of the right to participate or take part in cultural life: (a) participation in (b) access to, and (c) contribution to cultural life.<sup>17</sup> This right also includes the right not to participate.<sup>18</sup>

13. In its resolution 10/23, the Human Rights Council refers to the right to enjoy the benefits of scientific progress and its applications, enshrined in article 27 of the Universal Declaration of Human Rights and article 15, paragraph 1 (b), of the International Covenant on Economic, Social and Cultural Rights. Little has been done in this area, and the practice of the Committee on Economic, Social and Cultural Rights thereon is underdeveloped. The independent expert notes, however, that a series of experts' meetings on the issue was organized recently by UNESCO and the European Inter-University Centre for Human Rights and Democratisation, in collaboration with many partners, including OHCHR and the Committee on Economic, Social and Cultural Rights. The Venice Statement on the Right to Enjoy the Benefits of Scientific Progress and its Applications, adopted at the end of these meetings, constitutes an important first step to elaborating the normative content of this right and the related obligations of States and other actors.<sup>19</sup>

14. A number of other rights relating to culture and science are also relevant for the mandate of the independent expert, such as the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which a person is the author, enshrined in article 27 of the Universal Declaration of Human Rights and article 15, paragraph 1 (c), of the International Covenant on Economic, Social and Cultural Rights. In 2005, the Committee on Economic, Social and Cultural Rights adopted its general comment No. 17 on this right, and this provides useful guidance to the independent expert. The freedom indispensable for scientific research and creative activity, set out in article 15, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights, also deserves to be mentioned. The independent expert notes in this regard that article 19, paragraph 2, of the International Covenant on Civil and Political Rights recognizes that the right to freedom of expression shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one's choice.

15. The right to education, enshrined in numerous international instruments, in particular articles 13 and 14 of the International Covenant on Economic, Social and

<sup>15</sup> Committee on Economic, Social and Cultural Rights, general comment No. 21, para. 3.

<sup>16</sup> *Ibid.*, para. 3.

<sup>17</sup> *Ibid.*, para. 15.

<sup>18</sup> *Ibid.*, para. 7.

<sup>19</sup> See UNESCO, *The Right to Enjoy the Benefits of Scientific Progress and its Applications* (Paris, 2009).

Cultural Rights, and articles 28 and 29 of the Convention on the Rights of the Child, constitutes a cultural right. As stressed in the World Declaration on Education for All (1990), people develop their own particular but ever-evolving world visions and capacities through a lifelong process of education; and it is education that allows access to knowledge, values and cultural heritage.<sup>20</sup>

16. Many references to cultural rights are to be found in provisions and instruments relating to minorities (in particular in article 27 of the International Covenant on Civil and Political Rights and in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities) and indigenous peoples (in particular the United Nations Declaration on the Rights of Indigenous Peoples and the Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169) of the International Labour Organization). These many provisions, which cannot all be listed in the present report, relate to important issues such as identity, language, belief systems, traditions and customs, participation in cultural life, education and cultural heritage. The Declaration on the Rights of Indigenous Peoples also contains important references relating to land rights, with close connections to cultural rights (see art. 26). The independent expert also notes that the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families contains provisions relating to her mandate, including article 43, paragraph 1 (g), and article 45, paragraph 1 (d), on access to and participation in cultural life, and article 31 relating to the respect for the cultural identity of migrant workers.

17. The non-discrimination principle, enshrined in a large number of international legal instruments, constitutes an important legal basis for the independent expert. According to these texts and interpretation of the relevant oversight bodies, discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights.<sup>21</sup> The independent expert will pay particular attention to the implementation of this principle in relation to cultural rights. She further notes that it is generally agreed that the enjoyment of rights and freedoms on an equal footing “does not mean identical treatment in every instance”.<sup>22</sup> She proposes to explore further the meaning of such statements in relation to the implementation of cultural rights, especially with regard to the accommodation required to respect and facilitate the expression of various

<sup>20</sup> *Final Report of the World Conference on Education for All: Meeting Basic Learning Needs, Jomtien, Thailand, 5–9 March 1990*, Inter-Agency Commission (UNDP, UNESCO, UNICEF, World Bank) for the World Conference on Education for All (New York, 1990), appendix 1, art. 1.

<sup>21</sup> In particular, Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights (art. 2, para. 2), para. 7.

<sup>22</sup> Human Rights Committee, general comment No. 18 (1989) on non-discrimination, para. 8. See also the Convention on the Rights of Persons with Disabilities, art. 2, which states that discrimination includes “denial of reasonable accommodation”, and the Declaration of Principles on Equality, art. 2: “Equal treatment, as an aspect of equality, is not equivalent to identical treatment. To realise full and effective equality it is necessary to treat people differently according to their different circumstances, to assert their equal worth and to enhance their capabilities to participate in society as equals.” The Declaration of Principles on Equality was adopted by a group of experts following a conference entitled “Principles on Equality and the Development of Legal Standards on Equality” organized by The Equal Rights Trust and held in London from 3 to 5 April 2008. See also Dimitrina Petrova, “Diverse cultural identities: the challenges of integrating cultural rights in policies and practices”, working paper submitted at the seminar on implementing cultural rights: nature, issues at stake and challenges, p. 6.

cultural identities. Caution must be exercised however, as going beyond the permissible scope of differential treatment may in itself constitute a breach of the non-discrimination principle.<sup>23</sup>

18. The right of everyone to rest and leisure, as set out in article 24 of the Universal Declaration of Human Rights, is closely linked to cultural rights, but has received little attention so far. The independent expert, noting the importance of time to be available for all to participate in cultural life and the close relationship existing between leisure and culture, believes this provision deserves attention. She notes however that culture, permeating all aspects of life, cannot be limited to specific activities and should not be restricted to the concept of rest and leisure.

19. The independent expert further notes that several studies and other documents refer to a cultural dimension of human rights. According to the latest UNESCO *World Report*, “highlighting the cultural dimensions of all human rights should in no way be understood as undermining universality but rather as encouraging a sense of ownership of these rights by all, in their diversity”.<sup>24</sup> In article 9 (d), the Fribourg Declaration on Cultural Rights invites all actors to identify and take into account “the cultural dimensions of all human rights in order to enhance universality through diversity and to encourage the appropriation of these rights by all persons, alone or in community with others”. Some human rights mechanisms, and in particular the Committee on Economic, Social and Cultural Rights, have referred to a concept of “cultural acceptability” or “appropriateness” in relation to the implementation of, inter alia, the rights to education, food and health.<sup>25</sup> The approach taken by indigenous peoples also stimulates further thinking on the subject, as they view culture as holistic and all-inclusive, such that “each and every human rights topic includes a cultural dimension”.<sup>26</sup> The independent expert proposes to explore further the existence, meaning and scope of a cultural dimension of human rights.

20. Convinced that cultural rights include freedoms and entitlements, the independent expert will pay particular attention to the general obligations of States to respect, protect and fulfil cultural rights of all persons, without discrimination based on their particular identity(ies), and in a way that enhances the enjoyment of all human rights. As in the case of other human rights, such obligations shall take into consideration the notions of availability, accessibility, acceptability, adaptability and appropriateness, as developed in particular by the Committee on Economic, Social and Cultural Rights.<sup>27</sup> The independent expert is also interested in addressing the issue of the responsibilities of non-State actors in the implementation of cultural rights. She will in particular closely follow developments on the “protect, respect and remedy framework” in relation to the roles and responsibilities of corporate actors with regard to human rights, with a specific focus on cultural rights.<sup>28</sup>

<sup>23</sup> Committee on Economic, Social and Cultural Rights, general comment No. 20, para. 13.

<sup>24</sup> UNESCO *World Report 2009: Investing in Cultural Diversity and Intercultural Dialogue* (Paris, 2009), p. 224.

<sup>25</sup> Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education (art. 13), para. 6 (c); general comment No. 12 (1999) on the right to adequate food (art. 11), para. 8; and general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 12 (c). See also Committee on Economic, Social and Cultural Rights, general comment No. 21, para. 16 (e).

<sup>26</sup> Kenneth Deer, “The complexities in practical terms: cultural practices contrary to human rights, possible limitations to cultural rights, and tensions around who defines culture and rights”, working paper submitted at the seminar on implementing cultural rights: nature, issues at stake and challenges, p. 2.

<sup>27</sup> General comment No. 21, para. 16. See also Petrova, “Diverse cultural identities”, p. 4.

<sup>28</sup> See the report of the Special Representative of the Secretary-General on the issue of human rights and

## B. Universality of human rights, cultural rights and cultural diversity

21. In its resolution 10/23, the Human Rights Council refers to the principle of universality of human rights. It mandates the independent expert to study the relationship between cultural rights and cultural diversity. The preliminary views of the independent expert 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 are set out below.

### 1. Relationship between cultural rights and cultural diversity

22. According to the Universal Declaration on Cultural Diversity, cultural diversity “is embodied in the uniqueness and pluralities of the identities of the groups and societies making up humankind” (art. 1). Additionally, the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), ratified by an increasing number of States, indicates in article 4, section 1, that cultural diversity:

Refers to the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies.

Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.

23. The independent expert wishes to add that cultural diversity exists not only between groups and societies, but also within each group and society, and that identities are not singular. Each individual is the bearer of a multiple and complex identity, making her or him a unique being and, at the same time, enabling her or him to be part of communities of shared culture. Individuals identify themselves in numerous ways, simultaneously participating in several cultural communities, on the basis of grounds such as ethnicity, descent, religion, beliefs and convictions, language, gender, age, class affiliation, profession, ways of life and geographical location. In other words, “certainly, identities are not based solely on ethnicity, nor are they uniform within the same community; they may be held by different members in varying shades and degrees”.<sup>29</sup> The increasing movement of persons and ideas has enhanced the potential for cultural affiliations. Individuals may select one community identity over others in particular interactions and engagements. These multiple cultural identities, which include, but also go beyond, issues relating to ethnic, linguistic and religious affiliations, are relevant for private life as well as the sphere of public life, and are an integral part of cultural diversity.

24. One principle widely agreed upon today, and emphasized in General Assembly resolution 64/174, is that the universal promotion and protection of human rights, including cultural rights on the one hand, and respect for cultural diversity on the other, are mutually supportive (para. 10). This entails several points.

25. First, as the Universal Declaration on Cultural Diversity states, full respect for human rights, and in particular for cultural rights, both creates an enabling environment for, and is, a guarantee of cultural diversity (arts. 4 and 5). The defence of cultural diversity is thus an ethical imperative, inseparable from respect for human dignity. It implies a

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transnational corporations and other business enterprises (A/HRC/11/13).

<sup>29</sup> Foundation on Inter-Ethnic Relations, “The Lund recommendations on the effective participation of national minorities in public life, and explanatory note” (September 1999), p. 16.

commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and of indigenous peoples (para. 4). Freedom of expression, media pluralism, multilingualism, equal access to art in all its forms and scientific and technological knowledge, including in digital form, and the possibility for all to have access to the means of expression and dissemination are the guarantees of cultural diversity (para. 6). The Convention on the Protection and Promotion of the Diversity of Cultural Expressions adds that cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed (art. 2, sect. 1). The right to participate or not to participate in the cultural life of given communities, as defined by decision makers within such communities or State authorities, is also key for the protection of cultural diversity. The exercise of cultural freedoms by all can enhance cultural diversity.<sup>30</sup>

26. Furthermore, the respect, protection and promotion of cultural diversity are essential for ensuring the full respect of cultural rights. This has been proclaimed implicitly by the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, according to which States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities and shall encourage conditions for the promotion of that identity (art. 1). This also stems from the Declaration on the Rights of Indigenous Peoples. Beyond this, cultural diversity in a society can provide people — irrespective of their background — with the opportunity to enjoy a wider range of cultural choices.<sup>31</sup> In this regard, it is important to bear in mind the tendency of nation-States to protect dominant nations or groups.<sup>32</sup> As further stressed by the Committee on Economic, Social and Cultural Rights in its general comment No. 21, States' obligations to respect and to protect freedoms, cultural heritage and diversity are interconnected, and ensuring the right to participate in cultural life includes the obligation to respect and protect cultural heritage in all its forms and of all groups and communities (para. 50).

27. In the view of the independent expert, this second aspect needs further reflection. The question is to what extent, and in which circumstances, do cultural rights entail the obligation to respect, protect and promote cultural diversity and cultural heritage in its diverse forms. At stake, from a human rights perspective, are the possibilities for individuals and groups: (a) to freely express and develop their cultural identity; (b) to access cultural heritage and references that allow such expression, development and identification processes to take place freely, including information from outside their own specific communities as well as the benefits of scientific progress; and (c) to participate in the interpretation, elaboration and development of cultural heritage and references and in the reformulation of the contents and contours of their cultural identity.

28. Therefore, ensuring mutual support between cultural diversity and human rights, in particular cultural rights, requires the fulfilment of certain conditions. As stated in the *Human Development Report 2004*:

It is certainly true that allowing diversity in cultural practices can be extremely important, since the exercise of cultural liberty depends on it. This, however, is not the same as championing cultural diversity for its own sake. Much would depend on how cultural diversity comes about and the extent to which the people involved can exercise their freedom. It would be a serious mistake to regard cultural diversity as

<sup>30</sup> UNDP, *Human Development Report 2004*, p. 23.

<sup>31</sup> *Ibid.*

<sup>32</sup> E/C.12/40/17, pp. 10–11.

valuable no matter how it is brought about. Indeed, cultural diversity, particularly in the perspective of human development, cannot be evaluated without taking note of the processes involved and the role of human freedom in the way things get decided.<sup>33</sup>

29. As further stressed during the February 2010 seminar, the question of whether cultural diversity and cultural rights have a relationship of mutual protection cannot be answered without asking a second question: what kind of cultural diversity is favourable to intercultural dialogue which will constructively influence the permanent dynamic processes that are an integral part of cultural diversity? In addition, beyond processes, the content and implications of diverse cultural practices must also be evaluated.

30. In particular, ensuring the mutual protection of cultural rights and cultural diversity shall be based on (a) the recognition of the diversity of cultural identities and expressions, (b) equal treatment and respect for the equal dignity of all persons and communities, without discrimination based on their cultural identities and (c) openness to others, discussion and intercultural exchanges. Culture being a living and dynamic process, it is not suggested that barriers between individuals and groups should be raised in order to protect their specificities, nor that discussion about, and criticism of cultural practices, ways of life and world visions should be banned. It is the responsibility of States, however, to create an environment favourable to cultural diversity and the enjoyment of cultural rights, by meeting their obligations to respect, protect and fulfil those rights. This entails taking a wide range of positive measures, including financial measures.<sup>34</sup> Although States have the obligation to respect and protect cultural heritage in all its forms, the challenge is not so much to preserve cultural goods and practices as they are, which may be inappropriate in certain circumstances, but preserve the conditions which have enabled these goods and practices to be created and developed.

31. Fulfilling these obligations constitutes an enormous challenge, especially in societies where people feel that their common cultural heritage is under threat, due, in particular, to the dynamism or dominance of other cultures, globalization and development processes and/or the dominant position of corporate actors in the field of culture and leisure. In addition, the principle of universality of human rights must remain the common basis of action.

## **2. The principle of universality of human rights**

32. The principle of universality of human rights, one of the core principles of international human rights law, on the one hand, and cultural rights and cultural diversity on the other, are sometimes considered as opposed. This view stems partly from a misplaced tendency to equate cultural diversity with cultural relativism, which has the effect of raising fears and misunderstandings regarding the recognition and implementation of cultural rights.

33. According to the Vienna Declaration and Programme of Action (1993), while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of the States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms (part. I, sect. 5). In particular, this entails, as enshrined in the Universal Declaration on Cultural Diversity (art. 4), and reiterated in resolution 10/23 of the Human Rights Council (para. 4), that no one may invoke cultural diversity to infringe upon

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<sup>33</sup> UNDP, *Human Development Report 2004*, pp. 22–23.

<sup>34</sup> Committee on Economic, Social and Cultural Rights, general comment No. 21, paras. 48–54.

human rights guaranteed by international law, nor to limit their scope. As clearly stated in the 2009 UNESCO *World Report*:

Recognition of cultural diversity grounds the universality of human rights in the realities of our societies by drawing attention to their appropriation by *all* individuals who can identify these rights with a sense of ownership, regardless of language, tradition and location. In the same vein, the fact that these rights and freedoms are meant to be exercised in a wide variety of cultural environments by no means implies that universal norms can be relativized in terms of their application.<sup>35</sup>

34. Therefore, not all cultural practices can be considered as protected in international human rights law. For example, in accordance with article 5 of the Convention on the Elimination of All Forms of Discrimination against Women, States “shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”. The independent expert further stresses that cultures are constantly evolving, as are the concepts of human rights; and “there is hardly any culture ... that has not, at a given moment, violated human rights”.<sup>36</sup> Furthermore, “cultures are dynamic, subjected to many influences and internal debates and internal contestations, they change over time ... it is myopic [and] misinformed to say that cultures are essentially pro or anti-human rights. They are in fact neither of the two and a fertile arena for contestation”.<sup>37</sup>

35. Cultural rights may be subjected to limitations in certain circumstances. However, as in the case of any limitations in international human rights law, this should be a last resort only and be in accordance with certain conditions. As stated by the Committee on Economic, Social and Cultural Rights in its general comment No. 21 (para. 19):

Applying limitations to the right of everyone to take part in cultural life may be necessary in certain circumstances, in particular in the case of negative practices, including those attributed to customs and traditions, 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 the Covenant. Any limitations must therefore be proportionate, meaning that the least restrictive measures must be taken when several types of limitations may be imposed.

The Committee also emphasized “the need to take into consideration existing international human rights standards on limitations that can or cannot be legitimately imposed on rights that are intrinsically linked to the right to take part in cultural life, such as the rights to privacy, to freedom of thought, conscience and religion, to freedom of opinion and expression, to peaceful assembly and to freedom of association”.

36. The independent expert considers that the above statement is applicable to all cultural rights. However, identifying exactly which cultural practices should be considered as contrary to human rights is not always a simple task. At the national level, such an identification process requires, inter alia, a legal framework indicating principles on the basis of which cultural rights may be limited and an independent judiciary able to adopt an informed decision on the basis of such a legal framework, as well as international human rights law, taking into consideration the practice of international human rights supervisory

<sup>35</sup> p. 225.

<sup>36</sup> E/C.12/40/17, p. 8.

<sup>37</sup> *Ibid.*, p. 9.

bodies. The law alone does not suffice, however. Policy measures allowing for an informed, open and participatory debate to take place within a given society and/or community and encouraging a modification of cultural patterns or practices which are detrimental to the enjoyment of human rights are also necessary. What is particularly needed at the community level is the reinforcement of positive elements of culture while raising awareness of the oppressive nature of certain practices pursued in the name of culture through a process of “cultural negotiation” involving families, intellectuals and community leaders.<sup>38</sup> Such a process can create the space for new interpretations to arise and for developing good cultural practices, in particular those that are able to foster the implementation of universal human rights in various cultural contexts.

37. Throughout her mandate, the independent expert will pay particular attention to all these points, in particular when integrating a gender perspective into her work. It is also her intention to consult further on this issue with all relevant actors, including UNESCO, in accordance with resolution 10/23 of the Human Rights Council.

### **III. Complementarity and coordination with other mechanisms**

38. In its resolution 10/23, the Human Rights Council requests the independent expert to work in close coordination with other relevant mechanisms and actors, while avoiding unnecessary duplication.

39. The independent expert is aware that many other United Nations mechanisms have received mandates which from one aspect or another relate to cultural rights. This is especially true of special procedures and treaty bodies, whose mandates relate to the rights of particular groups such as minorities, indigenous peoples and migrants. Thus the independent expert will pay particular attention to consulting and collaborating with these mechanisms, in order to avoid duplication and to reinforce the promotion and protection of human rights. There will also be an opportunity to identify gaps in the protection of cultural rights, if any. The independent expert stresses however that many other special procedures dealing with rights do find common areas of work with mechanisms dealing with groups.

40. The independent expert also notes that there will be many interlinkages between her mandate and mechanisms dealing with issues such as expression, religion, racism, education, extreme poverty and violence against women, amongst others. Her intention is to focus on the cultural dimensions of these issues and on issues that have not been addressed or that have been insufficiently addressed in the past. She believes, in particular, that there will be many opportunities for cooperation with the Special Rapporteur on the right to education.

41. The independent expert is keen to develop collaborative relationships with interested intergovernmental organizations, including UNESCO, non-governmental organizations, national human rights institutions, as well as academic and research institutes, some of which participated in the seminar held in 2010. One possible area of cooperation relates to the development of methods for examining and indicators for assessing the implementation of cultural rights. The independent expert also believes that a number of studies, for example on the conceptual and legal framework of cultural rights, could usefully be undertaken in partnership with some of these organizations and institutions.

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<sup>38</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk (E/CN.4/2004/66), para. 55 (b).

## IV. Areas of concern and priority issues for the mandate

42. The present chapter contains an overview of the main issues the independent expert proposes to address as a priority in the course of her mandate, in addition to the proposals made above to further define the conceptual and legal framework of cultural rights. The independent expert is not suggesting that she will have the capacity to address all these issues in full detail, nor that she will confine herself only to these issues, as this will also depend upon her resources and opportunities.

43. For each issue, the independent expert, as requested in resolution 10/23 of the Human Rights Council, will seek to identify best practices and possible obstacles for the realization of cultural rights. She will work in cooperation with States to foster the formulation and adoption of measures at the local, national, regional and international levels aimed at the promotion and protection of cultural rights through concrete proposals enhancing subregional, regional and international cooperation in that regard. She will integrate a gender and disabilities perspective into her work, and in more general terms, address the situation of disadvantaged and marginalized groups in the enjoyment of cultural rights. Depending on available resources, she also proposes to organize consultations, in particular regional consultations on some of these issues.

### A. Cultural rights, globalization of exchanges and of information, and development processes

44. There is a growing perception that globalization leads to cultural homogenization. This raises the question of how best to assess the accuracy of such a perception and what measures, if any, are required to ensure the enjoyment of cultural rights in this context.

45. UNESCO addresses this issue in its *2009 World Report*. Rather than understanding globalization as a “unidirectional and unidimensional process, driven by a Western-dominated global market economy and tending to standardize, streamline and transnationalize in ways inimical to cultural diversity”,<sup>39</sup> the report proposes an understanding of globalization as a multidirectional and multidimensional process. According to the report “globalization can be described in terms of the increasing ‘flows’ of virtually everything that characterizes contemporary life: capital, commodities, knowledge, information, ideas, people, beliefs and so on. These flows — transiting essentially through the media, communication networks and commerce — consist of an ever-increasing volume of cultural goods, services and communications, including language and educational content”.<sup>40</sup>

46. It is important to bear in mind that some societies and communities are more vulnerable to, and marginalized by this process than others and that concerns about the impact of globalization on cultural rights are expressed in both developing and developed countries. It is also important not to underestimate the anxiety and tensions that rapid cultural changes may cause, especially when they are felt to be imposed. Here, several points must be taken into consideration. First, intercultural exchanges and therefore mutual integration have always existed between societies and communities through information, commerce and migration. Second, the extent to which anxiety and tensions related to cultural changes are felt varies amongst individuals within the same community, for example amongst generations. Third, culture being a dynamic and living process, taking

<sup>39</sup> p. 13.

<sup>40</sup> *Ibid.*, p. 14.

measures that impede cultural change may be extremely damaging to both culture and cultural rights; cultural innovations within communities contribute to cultural diversity.

47. As noted by the Committee on Economic, Social and Cultural Rights in its statement on globalization and economic, social and cultural rights, globalization:

Has also come to be closely associated with a variety of specific trends and policies including an increasing reliance upon the free market, a significant growth in the influence of international financial markets and institutions in determining the viability of national policy priorities, a diminution in the role of the state and the size of its budget, the privatization of various functions previously considered to be the exclusive domain of the State, the deregulation of a range of activities with a view to facilitating investment and rewarding individual initiative, and a corresponding increase in the role and even responsibilities attributed to private actors, both in the corporate sector, in particular to the transnational corporations, and in civil society.<sup>41</sup>

The Committee added that “none of these developments in itself is necessarily incompatible with the principles of the Covenant or with the obligations of governments thereunder” but that taken together, “and if not complemented by appropriate additional policies, globalization risks downgrading the central place accorded to human rights”, including cultural rights.<sup>42</sup> In its general comment No. 21, the Committee emphasized that “particular attention should be paid to the adverse consequences of globalization, undue privatization of goods and services, and deregulation on the right to participate in cultural life”.<sup>43</sup>

48. Within the framework of UNESCO, important legislative steps have been adopted in response to the detrimental effect of globalization on cultural diversity. The Universal Declaration on Cultural Diversity and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions propose measures for the protection of cultural diversity, based, in particular, on the principle that cultural goods and services, as vectors of identity, values and meaning, must not be treated as mere commodities or consumer goods.<sup>44</sup> States are invited to develop cultural policies that do not necessarily coincide with free market rules. In some respect, such instruments enhance the capacity of States to adopt measures necessary for the conservation, the development and the diffusion of science and culture, as required by article 15, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights.

49. The issue of the impact of globalization on cultural rights should be addressed also taking into consideration important instruments, studies and initiatives that stress the existing links between culture and development.<sup>45</sup> In particular, the Universal Declaration

<sup>41</sup> *Official Records of the Economic and Social Council, 1999, Supplement No. 2 (E/1999/22–E/C.12/1998/26)*, chap. VI, para. 515 (2).

<sup>42</sup> *Ibid.*, para. 515 (3).

<sup>43</sup> Para. 50 (b).

<sup>44</sup> Universal Declaration on Cultural Diversity, art. 8; Convention on the Protection and Promotion of the Diversity of Cultural Expressions, preamble.

<sup>45</sup> In particular, the Mexico City Declaration on Cultural Policies, adopted at the World Conference on Cultural Policies, Mexico City, 26 July–6 August 1982, addressed the cultural dimension of development. It led to the World Decade for Cultural Development (1988–1997), launched by UNESCO, and the Action Plan on Cultural Policies for Development, adopted at the Intergovernmental Conference on Cultural Policies for Development (Stockholm Conference), 30 March–2 April 1998. Furthermore, in the mid-1990s the World Commission on Culture and Development, which gathered a panel of specialists under the chairmanship of former United Nations Secretary-General Javier Pérez de Cuéllar, addressed the issue of the interactions between culture and development (see “Our creative diversity: report of the World Commission on Culture and

on Cultural Diversity affirms in article 3 that “cultural diversity widens the range of options open to everyone; it is one of the roots of development, understood not simply in terms of economic growth, but also as a means to achieve a more satisfactory intellectual, emotional, moral and spiritual existence”.<sup>46</sup> UNDP has echoed this statement, stressing that “human development requires more than health, education, a decent standard of living and political freedom. People’s cultural identities must be recognized and accommodated by the State, and people must be free to express these identities without being discriminated against in other aspects of their lives. In short: cultural liberty is a human right and an important aspect of human development – and thus worthy of State action and attention”.<sup>47</sup> In the same spirit, UNESCO pleads for a cultural approach to development, explaining that recognition of the cultural specificity of lifestyles, modes of production and forms of governance is necessary for the viability of any sustainable development project, and that acknowledgement of the cultural factor adds a crucial dimension to projects in terms of relevance and appropriation. It also warns that applying the term “development” in cross-cultural context can be problematic.<sup>48</sup> In other words, who can be considered as developed, and from whose point of view?

50. The independent expert believes that these important elements should be kept in mind, together with the Declaration on the Right to Development, in which it is recognized that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.<sup>49</sup>

## 1. Ensuring cultural rights in globalization and development processes

51. The independent expert proposes to address the issue of globalization and development processes and their impact on the capacity of States to create the conditions favourable to the implementation of cultural rights, in consultation with all relevant actors, including the corporate sector.

52. From a cultural rights perspective, a set of issues arises in this context. The independent expert will pay particular attention to, inter alia, the protection of cultural freedoms (expression, information, creativity, scientific research, participation and intercultural exchange, regardless of frontiers); the creation and preservation of open space necessary for the exercise of those freedoms; measures to ensure the right to benefit from scientific progress and to access cultural heritage and knowledge; measures to enable individuals and groups to address and manage cultural changes in a participatory way, including when exploitation of economic resources has a detrimental effect on the pursuit of cultural practices or of a specific way of life; and measures to enable individuals and groups to safeguard, develop and transmit their cultural heritage. The independent expert also wishes to explore the impact of poverty on the enjoyment of cultural rights and the extent to which the non-fulfilment of cultural rights may contribute to keeping people locked into poverty.

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Development”, July 1996, Paris, available from <http://unesdoc.unesco.org/images/0010/001055/105586Eb.pdf>).

<sup>46</sup> See also Convention on the Protection and Promotion of the Diversity of Cultural Expressions, art. 2, sect. 6: “Cultural diversity is a rich asset for individuals and societies. The protection, promotion and maintenance of cultural diversity are an essential requirement for sustainable development for the benefit of present and future generations.”

<sup>47</sup> UNDP, *Human Development Report 2004*, p. 6.

<sup>48</sup> See *UNESCO World Report 2009*, pp. 191–195.

<sup>49</sup> Preamble, second paragraph.

## 2. Media pluralism, information technologies and cultural rights

53. Although globalization processes afford unprecedented conditions for interaction between persons and groups,<sup>50</sup> and although information technologies may be emancipatory in many ways,<sup>51</sup> enormous imbalances have emerged in terms of access to, and control of, the means of information and communication, such that some specific world visions appear to be in a dominant position. Some increasingly feel that the room available to enable true intercultural exchanges and discussion is progressively shrinking. Collating the trends that are inimical to the development of information technologies as open spaces respectful of cultural rights and cultural diversity could be a first step to open the debate on these issues.

## B. Participation, access and contribution to cultural life, without any discrimination

54. One particular aspect the independent expert proposes to address is non-discrimination in the implementation of the right to take part in cultural life. She is interested in particular in the issue of the inclusion and exclusion of individuals and groups willing (a) to be involved in creating the spiritual, material, intellectual and emotional expressions of the community they belong to and (b) to take part in the development of that community and in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of their cultural rights.

55. This matter entails a discussion of the following issues: whose identity is at stake, that of individuals or that of communities? Whose definition of shared values and cultural heritage shall we rely on? Is such a definition elaborated in a participatory way, without any discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status? What measures, if any, should be adopted and implemented to accommodate cultural diversity and to ensure the enjoyment of cultural rights on the basis of equality, and with which safeguards? In addressing this theme, the independent expert will pay particular attention to identifying best practices and obstacles in terms of structures, policies and measures that promote pluralism in State institutions and public life.

56. The independent expert proposes to focus in particular on the following.

### 1. Cultural rights within the education system

57. The independent expert proposes to explore further what measures should be adopted to ensure the full respect of cultural rights within the education system. A set of particular issues, much debated in numerous countries today, arises in this respect. Such issues relate to, inter alia, intercultural and multicultural education, as well as linguistic rights.

58. The independent expert proposes to analyse further the content of the right of all persons to “quality education and training that fully respect their cultural identity”, as enshrined in the Universal Declaration on Cultural Diversity (art. 5), taking into consideration general comment No. 13 (1999) of the Committee on Economic Social and Cultural Rights on the right to education. In that general comment, the Committee stressed that education in all its forms and at all levels shall exhibit several interrelated and essential features, including, among others, the following:

<sup>50</sup> Convention on the Protection and Promotion of the Diversity of Cultural Expressions, preamble.

<sup>51</sup> Anita Gurumurthy, “Cultural rights and globalization of exchanges and of information”, working paper submitted to the seminar on implementing cultural rights: nature, issues at stake and challenges.

Acceptability – the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) [of the International Covenant on Economic, Social and Cultural Rights] and such minimum educational standards as may be approved by the State (see art. 13 (3) and (4));

Adaptability – education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.<sup>52</sup>

59. One main question is to what extent the content of education, as well as the way in which it is organized, can be culturally sensitive and contribute to the free and full development of one's cultural identity(ies) without jeopardizing human rights, including the right to education itself. The independent expert proposes to address this in full cooperation with the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, the Special Rapporteur on the right to education, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the independent expert on minority issues, building also on the work carried out on this topic by the Expert Mechanism on the Rights of Indigenous Peoples and the Forum on Minority Issues.<sup>53</sup>

## **2. Freedom of scientific research and creative activity, and the right to benefit from scientific progress and to access cultural heritage**

60. As stressed above, the rights of all persons to benefit from scientific progress and access cultural heritage need further thinking and elaboration. The independent expert proposes to explore these issues through consultations with all relevant stakeholders and studies, depending on available resources. She believes that these issues should be addressed in connection with the question of how to ensure the freedoms necessary for the pursuit and fulfilment of artistic and scientific endeavour of all people.

## **3. A gendered perspective on cultural rights**

61. The independent expert was requested in resolution 10/23 of the Human Rights Council to integrate a gender perspective into her work (para. 9 (e)). She commits to implement that specific part of her mandate through three interlinked approaches, in full collaboration with the Committee on the Elimination of Discrimination against Women.

62. First, noting that “gender” is a social construction that, along with attendant gendered norms of behaviours, is changeable over time and contexts, the independent expert will address specifically the right of women and girls (as well as boys and men) to participate in cultural life regardless of their gender identity.

63. Second, noting that some cultural practices may be particularly detrimental to the rights of women and girls, and noting also in this regard the work of the Special Rapporteur on violence against women, its causes and consequences on issues of culture,<sup>54</sup> she will pay due attention to the need to implement cultural rights in a way that is fully respectful of the

<sup>52</sup> Para. 6 (c) and (d). See also general comment No. 21, paras. 26–27.

<sup>53</sup> See the recommendations of the 2008 Forum on Minorities and the Right to Education (A/HRC/10/11/Add.1) and the report of the Expert Mechanism on the Rights of Indigenous Peoples (A/HRC/EMRIP/2009/2).

<sup>54</sup> See in particular A/HRC/4/34 and A/HRC/11/6/Add.5, paras. 101–106.

right of women and girls not to be discriminated against and that upholds all their human rights.

64. Third, the independent expert will focus on the contribution of women and girls to the cultural development of communities they belong to, including their contribution to the development of common values of those communities, which is pivotal to the implementation of their cultural rights.

**4. Cultural rights of persons with disabilities**

65. The independent expert was also requested in resolution 10/23 of the Human Rights Council to integrate a disabilities perspective into her work (para. 9 (e)). She proposes to address this issue on the basis of article 30 of the Convention on the Rights of Persons with Disabilities, and in full collaboration with the Committee on the Rights of Persons with Disabilities.

**5. Cultural rights of non-nationals, in particular migrant workers and members of their families**

66. As the number of migrant workers has grown steadily over the past decades, addressing the implementation of their cultural rights is an increasingly compelling issue. In various countries around the globe, debates are held on the rights and obligations of non-nationals, in particular migrant workers and members of their families. Such discussions are sometimes held in rather tense atmospheres, and involve issues relating to, inter alia, the integration or assimilation of non-nationals into the wider society, the principle of universality of human rights, and measures to be taken to respect or accommodate cultural diversity. As a first step, the independent expert proposes to explore how best to address such issues in full cooperation with the Special Rapporteur on the human rights of migrants and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

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