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DAY OF GENERAL DISCUSSION

Right to take part in cultural life (article 15 (1) (a) of the Covenant)

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Cultural Life in the context of Human Rights*

Background paper submitted by Ms. Yvonne Donders**

* Reproduced as submitted.

** The views expressed in the present document are those of the author and do not necessarily reflect those of the United Nations. Dr Yvonne Donders is Deputy Director of the Amsterdam Center for International Law at the Law Faculty of the University of Amsterdam.

**DAY OF GENERAL DISCUSSION ON THE RIGHT TO TAKE PART IN CULTURAL LIFE
COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, GENEVA, 8 MAY 2008**

CULTURAL LIFE IN THE CONTEXT OF HUMAN RIGHTS - YVONNE DONDEERS*

INTRODUCTION

As a scholar on cultural rights once said: "...any attempt to talk about cultural issues in terms of rights may be slippery and difficult."[†]

The main reason that cultural rights are 'slippery and difficult' is that their content and scope are unclear. This obscurity is mainly caused by the fact that the term 'culture' is broad and vague. The concept of culture can refer to many things, varying from cultural products, such as arts and literature, to the cultural process or culture as a way of life. In between are the cultural institutions established to transfer culture, such as museums, educational institutions and the media. This broadness of the term 'culture' has led to a lack of consensus on which rights are 'cultural rights' and how to best implement them.[‡]

During this Day of General Discussion, however, we should not let ourselves be taken away by a discussion on cultural rights as a whole category, but instead focus on one of them: the right to take part in cultural life. I was asked to focus on the concept of 'cultural life', which is almost as difficult to define as the concept of 'culture'.

ARTICLE 27 UDHR

The right to take part in cultural life is not only included in the Covenant that the Committee on ESC Rights is supervising, but also in the Universal Declaration of Human Rights. Article 27(1) UDHR reads: "Everyone has the right freely to participate in the cultural life of the community..."

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[†] L. Prott, "Understanding One Another on Cultural Rights", in: H. Niec (ed.), *Cultural Rights and Wrongs – A Collection of Essays in Commemoration of the 50th Anniversary of the Universal Declaration of Human Rights*, UNESCO Publishing, Paris, 1998, p. 94.

[‡] See, on the issue of cultural rights, Yvonne M. Donders, *Towards a Right to Cultural Identity?*, School of Human Rights Research Series, Volume 15, Intersentia, Antwerp/Oxford/New York, 2002; S.A. Hansen, "The Right to Take Part in Cultural Life: Toward Defining Minimum Core Obligations Related to Article 15(1)(A) of the International Covenant on Economic, Social and Cultural Rights", in: A. Chapman and S. Russell (eds.), *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*, Intersentia, Antwerp, 2002; S. Marks, "Defining Cultural Rights" in: M. Bergsmo (ed.), *Human Rights and Criminal Justice for the downtrodden – Essays in Honour of Asbjorn Eide*, 2003; P. Meyer-Bisch, (ed.), *Les Droits Culturels, une Catégorie Sous-Développée de Droits de L'Homme, Actes du VIII^e Colloque interdisciplinaire sur les droits de l'homme*, Editions Universitaires Fribourg, Suisse, 1993; H. Niec, (ed.), *Cultural Rights and Wrongs – A Collection of Essays in Commemoration of the 50th Anniversary of the Universal Declaration of Human Rights*, UNESCO Publishing, Paris, 1998; R. Stavenhagen, "Cultural Rights: a Social Perspective" in: A. Eide, C. Krause and A. Rosas (eds.), *Economic, Social and Cultural Rights – A Textbook*, Second Revised Edition, Martinus Nijhoff Publishers, Dordrecht, 2001; J. Symonides, "Cultural Rights", in: J. Symonides (ed.), *Human Rights, Concept and Standards*, UNESCO Publishing, Paris, 2000.

This formulation is slightly different from Article 15(1)a of the ICESCR. Why was this provision included? What did the drafters have in mind? From the analysis of the *travaux préparatoires*[§] it can be concluded that States wished to include this provision, because they found that culture was an important aspect of human life to be protected by human rights. The background of Article 27(1) was the fact that culture used to be something of a small *élite*, in which large parts of the population did not take part. Article 27(1) was supposed to be an encouragement to States to have the masses participate in cultural life and to make culture more available to them. At that time, culture did not refer to a specific lifestyle or to the tradition of a community, or to aspects such as language or religion.

It is interesting to note that the term ‘freely’ was included in the last phase of the drafting, in the General Assembly. It was pointed out that the individual should not only have the right to take part in the cultural life of the community, but should also have the right to do so in complete freedom.

The *travaux* give no further clarity on the exact content of this right. The main idea was to include a reference to culture in the Universal Declaration, without clearly defining what was meant by ‘free participation in the cultural life of the community’. Most likely, the drafters had a narrow concept of cultural life in mind, with an emphasis on arts, literature and education. With ‘community’, one probably meant the national community. In any case, the term ‘community’ did not refer to the situation of minorities, indigenous peoples or other local or regional communities.

ARTICLE 15(1)(A) ICESCR

Article 15(1)(a) ICESCR states that: “The States Parties to the present Covenant recognize the right of everyone: (a) to take part in cultural life...”

What is meant by ‘cultural life’? Is there a specific reason why, in comparison with Article 27 UDHR, the terms ‘community’ and ‘freely’ are absent here? Below some answers are provided, based mainly on the work of the Committee on ESC Rights, and dealt with in chronological order.

Let us first look at the drafting process.^{**} It was in fact the Director-General of UNESCO that made a first proposal for a provision on participation in cultural life.^{††} In the Commission on Human Rights and General Assembly, States generally supported this idea. Only limited debate took place on the precise content of the right to take part in cultural life. One of the interesting issues was another proposal by UNESCO concerning the role of cultural communities. It suggested to include in Article 15 a reference to *communities* and to change it into ‘to take part in the cultural life of the communities to which he belongs’. It was argued that the individual normally participates in the cultural

[§] The drafting process of Article 27 UDHR is described in: A. Verdoodt, *Naissance et Signification de la Déclaration Universelle des Droits de l'Homme*, Louvain-Paris, 1963, pp. 252-257; H. Kanger, *Human Rights in the UN Declaration*, Upsala-Stockholm, 1984, pp. 16-22 and pp. 150-163; United Nations, *These Rights and Freedoms*, UN Publications, New York, 1950, pp. 70-72.

^{**} The drafting process of Article 15(1) ICESCR can be found *inter alia* in the following documents: UN Doc. E/1992 (E/CN.4/640), Report of the seventh session of the Commission on Human Rights, 24 May 1951; UN Doc. A/2929, Annotations on the text of the draft International Covenants on Human Rights, New York, 1 July 1955.

^{††} E/CN.4/541, Commission on Human Rights Seventh Session, Agenda Item 3, suggestions submitted by the Director-General of UNESCO, 18 April 1951.

life of various communities. States should not only recognize the right of everyone to participate in his or her *national* cultural life, but should also respect the right to have access to foreign cultures or the cultural life of smaller communities within the State. This proposal was, however, rejected by States.^{‡‡}

At the time of its adoption, the right to take part in cultural life was still mainly meant to make the 'high' material aspects of culture more broadly available. The emphasis still lay on participation in the *national* cultural life. Moreover, the drafters did not have in mind what could be called the 'popularization' of culture. The right to take part in cultural life did not imply the right of all people to enjoy the cultural activities that they *themselves* found worthwhile.

The question is to what extent the intention of the drafters is still the valid interpretation of Article 15(1)(a) ICESCR today. The Committee on ESC Rights has dealt with this provision for a number of years.

REVISED GUIDELINES (1990)

In 1990, the Committee adopted revised guidelines for the reporting procedure.^{§§} With regard to Article 15(1)(a), States Parties should describe, *inter alia*, which funds are available for the promotion of cultural development, what institutional infrastructure has been established, what role the mass media play in this process and how mankind's cultural heritage is preserved. States are also asked to provide information on the steps taken for the conservation, development and diffusion of culture, through the educational system and the media. Information is also requested on the promotion of awareness and enjoyment of the cultural heritage of national ethnic groups and minorities and of indigenous peoples.

In the guidelines, no definition of cultural life is given. It seems, however, that the Committee accepts a broader concept of culture than the drafters of Article 15(1)(a) had in mind. While the drafters considered *the State* to be the proper body to determine which cultural activities should be supported, in the guidelines the Committee argues that Article 15(1)(a) contains the right to take part in the cultural life "...which he or she considers pertinent." With the inclusion of references to minorities and indigenous peoples, it appears that the role of cultural communities other than the national community, which was denied during the drafting of Article 15, was now endorsed by the Committee.

DAY OF GENERAL DISCUSSION

The Committee held a day of general discussion on Article 15(1) in December 1992.^{***} One of the Committee members, Mr Konaté, prepared a working paper^{†††} for this

^{‡‡} UN Doc. A/C.3/SR.797, 1957 (p. 178) and UN Doc. A/C.3/SR.799 (p. 190-191), Summary Record of the General Assembly, Third Committee, Twelfth session, October 1957.

^{§§} UN Doc. E/C.12/1991/1, Revised General Guidelines regarding the form and content of reports to be submitted by States Parties under Article 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, 17 June 1991.

^{***} E/C.12/1992/SR.17, General Discussion on the Right to Take Part in Cultural Life as recognized in Article 15 of the Covenant, 11 December 1992.

^{†††} E/C.12/1992/WP.4, Implementation of Cultural Rights, analytical study of article 15 of the International Covenant on Economic, Social and Cultural Rights, by Mr. S.R. Konaté, 25 November 1992.

meeting, in which he advised the Committee to widen the scope of the concept of cultural life, including its individual and collective dimension. “Culture is no longer an expression of knowledge or demand for recreational activities as consumer goods, but reflects a way of being and feeling, in short, the community’s way of life and thought.”

During the discussion, several Committee members explicitly expressed their willingness to adopt a broad concept of cultural life as being more than cultural manifestations, as to include language, literature, clothing, shelter, arts, customs and traditions. The scope of Article 15(1)(a) should accordingly be broadened to include not only access to cultural materials but an active engagement in culture and participation in the decision-making process. Several components of the right to take part in cultural life were formulated, including participation, access, policy-making and artistic freedom.

Committee members also pointed at the individual as well as the collective dimension of the right to take part in cultural life. While it was emphasized that Article 15(1)(a) contains an individual right, the community aspect of it was firmly acknowledged. As regards State obligations, the emphasis was laid on negative obligations, including the obligation to respect. Positive obligations following from the obligation to protect and to fulfill were not explicitly discussed. The formulation of a core content of Article 15(1)(a) was neither discussed at that time.

PERIODIC REPORTS AND CONCLUDING OBSERVATIONS

How has the right to take part in cultural life been discussed during the dialogues with the States on their periodic reports? During the first 25 years of the Covenant, Article 15 was hardly given any attention by either the States Parties or the Committee. In recent years, States have more frequently reported on a broad range of issues, including measures taken to make culture available to as many people as possible, to facilitate freedom of cultural expressions, to promote creativity and to protect cultural heritage.

More recent State reports show that cultural life is considered a broad concept. States have referred to, for example, visual and performing arts, traditional folk arts, crafts and literature. Measures taken concern the protection of the artist, freedom of creation and the dissemination of creative results. States have also provided information on cultural industries and cultural institutions, such as cinemas, theatres, libraries and museums. Another topic addressed is the protection of cultural heritage, including monuments and archeological sites. States have further mentioned the role of education, disseminating information on different cultures and promoting an intercultural dialogue. The role of the mass media in promoting the right to take part in cultural life has also been discussed. Finally, States have paid attention to the protection of the cultures of minorities and indigenous peoples, including measures taken in relation to the protection of different languages. Several States have used the concepts of multiculturalism and cultural pluralism.^{###}

^{###} See, for example, the State reports of Slovakia (11 July 2001), Poland (13 July 2001), United Kingdom (10 August 2001), Georgia (10 August 2001), Benin (5 September 2001), Luxembourg (28 September 2001), Estonia (2 October 2001), New Zealand (16 October 2001), Israel (16 October 2001), Russian Federation (17 November 2001), Democratic People’s Republic of Korea (15 May 2002), Yemen (17 May 2002), Guatemala (26 July 2002), Greece (23 October 2003), Lithuania (9 December 2002), Ecuador (20 December 2002), Spain (14 January 2003), Moldova (14 April 2003), Denmark (28 April 2003), Italy (24 May 2003), Malta (26 May 2003), Chile (14 June 2003), Kuwait

The Committee in its concluding observations has also dealt with a wide variety of topics relating to the implementation of the right to take part in cultural life. In recent years, the Committee has referred to the narrow as well as the broad scope of cultural life. It has commented on policies and funds related to cultural associations and institutions, cultural performances and arts.^{§§§} The Committee has also paid attention to the situation of specific communities, such as indigenous peoples, minorities and the Roma, including their rights to housing, health, education and employment, as well as the protection of their language, intellectual property and the access to and ownership of natural resources and land.^{****} Language rights have also been referred to by the Committee as part of the right to take part in cultural life. These include the use of minority languages in private, for example names, and in public, for example in the media, education and in relation to the administration.^{†††}

The Committee has also dealt with the important issue of cultural practices that may be harmful to the enjoyment of human rights. In several concluding observations, it has expressed its concern about the “prevalence of customs, traditions and cultural practices, which lead to substantial discrimination against women and girls...” or which “impedes the full enjoyment by women and girls of their rights...”^{††††} The Committee urges States to overcome obstacles based on cultural and religious traditions that prevent women from fully participating in cultural life.^{§§§§}

CONCLUDING REMARKS

Allow me to draw some conclusions. The scope of the right to take part in cultural life has broadened over the years. At the time of its inclusion in the Covenant, the right to take part in cultural life was meant to make cultural life accessible and available to the large population. Culture mainly referred to *national* culture and was approached from a narrow perspective, as equivalent to cultural materials, such as arts and literature, to be

(20 November 2003), China (4 March 2004), Slovenia (26 May 2004), Uzbekistan (24 June 2004), Norway (6 July 2004), Canada (28 October 2004 and 30 August 2005), Bosnia and Herzegovina (3 February 2005).

^{§§§} See, for example, the concluding observations of the Committee on Estonia (E/C.12/1/Add.85, December 2002) and Luxembourg (E/C.12/1/Add.86, May 2003).

^{****} See, for example, the concluding observations of the Committee on Venezuela (E/C.12/1/Add.56, May 2001), Bolivia (E/C.12/1/Add.60, May 2001), Syrian Arab Republic (E/C.12/1/Add.63, September 2001), Panama (E/C.12/1/Add.64, September 2001), Croatia (E/C.12/1/Add.73, November 2001), France (E/C.12/1/Add.72, November 2001), Sweden (E/C.12/1/Add.70, November 2001), Colombia (E/C.12/1/Add.74, November 2001), Czech Republic (E/C.12/1/Add.76, June 2002), Japan (E/C.12/2002/12, November 2002), Slovakia (E/C.12/1/Add.81, December 2002), Estonia (E/C.12/1/Add.85, December 2002), Brazil (E/C.12/1/Add.87, May 2003), Guatemala (E/C.12/1/Add.93, December 2003), Ecuador (E/C.12/1/Add.100, June 2004), Chile (E/C.12/1/Add.105, November 2004), China (E/C.12/1/Add.107); Serbia and Montenegro (E/C.12/1/Add.108, 23 June 2005); Libyan Arab Jamahiriya (E/CN.12/LYB/CO/2, 25 January 2006), Slovenia (E/C.12/SVN/CO/1, 25 January 2006), Mexico (E/CN.12/CO/MEX/4, 17 May 2006), Morocco (E/CN.12/MAR/CO.3, 19 May 2006), Canada (E/CN.12/CAN/CO/4 and 5, 19 May 2006).

^{††††} See, for example, the concluding observations of the Committee on Slovenia (E/C.12/SVN/CO/1, 25 January 2006), Morocco (E/CN.12/MAR/CO/3, 19 May 2006), Canada (E/CN.12/CAN/CO/4 and 5, 19 May 2006) and Libyan Arab Jamahiriya (E/CN.212/LYB/CO/2, 25 January 2006).

^{††††} See, for example, the concluding observations of the Committee on Nepal (E/C.12/1/Add.66, September 2001), Syrian Arab Republic (E/C.12/1/Add.63, September 2001), Jamaica (E/C.12/1/Add.75, November 2001), Algeria (E/C.12/1/Add.71, November 2001), Benin (E/C.12/1/Add.78, June 2002), Yemen (E/C.12/1/Add.92, December 2003), Zambia (E/C.12/1/Add.106, 23 June 2005), Libyan Arab Jamahiriya (E/CN.212/LYB/CO/2, 25 January 2006) and Morocco (E/CN.12/MAR/CO/3, 19 May 2006).

^{§§§§} See, also, General Comment No. 16 on Article 3 of the ICESCR, The equal right of men and women to the enjoyment of all economic, social and cultural rights, E/C.12/2005/4, 11 August 2005, § 31.

enjoyed in theatres and museums. Other aspects of a broader concept of culture, such as language, religion and education, were dealt with in other provisions in the Covenants.

However, in its Guidelines and concluding observations, the Committee has accepted a broader scope of 'cultural life'. It now represents, in accordance with the anthropological approach, a way of life of individuals and communities.

Accordingly, the right to take part in cultural life entails a whole range of issues, some of which are closely linked to other human rights. It concerns rights of creators and transmitters of culture, the right of individuals to contribute and have access to cultural life, as well as rights related to the promotion and preservation of cultural life, including education, language and religion. It also concerns the protection of cultural heritage and the establishment and consolidation of cultural institutions, such as schools, museums, libraries and archives. These issues are closely linked to other human rights, including the right to education as laid down in the ICESCR, as well as the rights to freedom of thought, religion, expression and assembly, as laid down in the ICCPR. Especially these *freedoms* reflect the dynamic character of culture as a changeable and adaptable process. It is therefore unfortunate that the term 'freely' was left out of Article 15(1)(a) in comparison with Article 27 UDHR.

Because of the broad scope of 'cultural life', you have an extremely difficult task ahead. It will, for instance, be difficult to elaborate a core content of this right beyond the issue of non-discrimination. It would be equally difficult to determine the scope of all the corresponding State obligations. If 'to take part' and 'cultural life' are considered in a broad perspective, many different State obligations might be enumerated, negative as well as positive.

The relationship between the right to take part in cultural life and cultural practices that infringe human rights is important to be addressed. It should be emphasized that the right to take part in cultural life may not be used to limit rights and freedoms of others or to impose a culture upon individuals or communities. The basis of the right to take part in cultural life is that it protects an important part of human dignity, namely culture. Many individuals and communities need such protection and need measures to be taken in order for them to be able to take part in cultural life. The right to take part in cultural life should be the basis of ending policies of forced assimilation and discrimination of individuals and communities. The right to take part in cultural life finds its roots in the right to be different, which is the reflection of the human rights principle of equality. The right to be different implies the right not to be excluded, humiliated, exploited or forcibly assimilated. It is in this spirit that the right to take part in cultural life should be respected, protected, promoted and fulfilled.