

PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

**Interactive Dialogue**

**Human Rights Council, 40th Session**

**Karima Bennoune, Special Rapporteur in the field of cultural rights**

Excellencies, Ladies and Gentleman,

Good morning. I will begin by presenting my report on Malaysia, followed by my thematic report for the 10th anniversary of the cultural rights mandate. In both regards, there are positive developments and outstanding challenges, and the key theme is the need for implementation.

**Malaysia Report**

I was pleased to visit Malaysia from 11 to 22 September 2017, at the invitation of the Government. I thank the Government for this invitation, and note with appreciation the care with which official meetings were prepared. The Government changed subsequently, after elections in May 2018. I am pleased that the new authorities stated in their comments on my report that they are currently reviewing policies and laws, and will duly consider my recommendations. In this moment of opportunity for Malaysia, bold steps should be made to implement these recommendations.

It is essential for Malaysia, without further delay, to improve its record on the ratification of international human rights treaties, as well as on their implementation, and on following up on recommendations made by United Nations experts.

Malaysia has developed as a multi-ethnic, multi-religious society. I was pleased to receive many testimonies about its tradition of tolerant and inclusive culture. More must be done to preserve this in the face of challenges to cultural diversity at the time I visited. For example, intragroup/intrareligious diversity was being insufficiently taken into account. I heard reports about obstacles faced by Malaysian Shia and Ahmadi Muslims in carrying out religious and cultural rituals. Lesbian, gay, bisexual, transgender and intersex (LGBTI) cultural events had been cancelled.

Efforts to build unity on a foundation of diversity are vital, and yet harmony cannot imply silence about issues deemed “sensitive”. The use of the term “race” interchangeably with religion or ethnicity should be reconsidered. It is important to continue to centre the notion of the inclusion of all of Malaysia’s cultures, religions and traditions on an equal footing, in accordance with international standards.

I welcome efforts by the Ministry of Women, Family and Community Development to improve accessibility for persons with disabilities, which require the support of all relevant government agencies.

I share the concerns of the Committee on the Elimination of Discrimination against Women about “the persistence of… deep-rooted stereotypes regarding the roles and responsibilities of women…” To enable women to freely participate in cultural life, the authorities need to ensure prompt enactment and implementation of the Gender Equality Act, in consultation with women’s rights groups.

The active involvement of indigenous peoples in the management of parks and reserves, as well as the representation of their arts in museums, and the national arts academy’s curriculum are positive features. However, I also received reports of pressure on indigenous peoples to conform culturally, and of bullying of Orang Asli children in schools, which contributes to the incidence of dropping out. In this international year of indigenous languages more must be done to preserve diverse mother tongues. Representation of indigenous peoples in the bodies focused on their issues must be increased.

Malaysia has a diverse and dynamic arts world. I was pleased to note that the National Heritage Act of 2005 integrated both tangible and intangible forms of cultural heritage. However, freedom of artistic expression faces a number of challenges. The bans and restrictions in the state of Kelantan that target vibrant cultural heritage practices, such as Mak Yong and Wayang Kulit (shadow puppetry), and that restrict women performing for mixed audiences must be lifted without delay. The Government needs to develop concrete plans to guarantee freedom of artistic expression.

Many sectors of Malaysian society, including diverse government officials themselves, at the time of my visit expressed concern at what they saw as the growing Islamization of the society and polity, based on an increasingly rigid and fundamentalist interpretation of Islam which represented a significant break with the past and was giving rise to cultural engineering. This has had many negative effects on the enjoyment of cultural rights across Malaysian society.

I hope the new authorities will consider how to allow to flourish the diversities of Malaysian Islam, which represent the plurality of South-East Asian Islams. I am also deeply concerned at the level of involvement of religious authorities, and often only those of the majority religion, in policy decisions throughout the country, including in relation to culture. I was dismayed to learn that religious minorities had been prohibited since 1986 from using the Arabic word Allah (God). There appears to be no official recognition or acceptance of non-religious persons. The rule that those choosing to leave Islam must undergo counselling and obtain a certificate from a Syariah Court to do so is a limit on their right to take part in cultural life without discrimination.

I call for the fatwa against the Muslim women human rights defenders Sisters in Islam to be withdrawn, and for the Malaysian authorities to take all necessary steps to respect and ensure the rights of all human rights defenders challenging fundamentalism and extremism. Putting a stop to the rise of fundamentalism and curbing its negative effect on cultural rights must be a top priority of Malaysia’s new Government.

Malaysia is a wonderful diverse country with a rich history, vibrant and multifaceted cultures and a sophisticated set of cultural institutions in which many people can and do enjoy their cultural rights. However, the many gains achieved since independence and the cultural freedoms historically enjoyed must be protected with vigilance by concrete action demonstrating effective commitment to the cultural rights of all.

**Tenth anniversary thematic report**

Ten years ago, on 26 March 2009, the Human Rights Council adopted resolution 10/23 which established the mandate on cultural rights. Just over 70 years ago, the General Assembly adopted the Universal Declaration of Human Rights, article 27 of which provided the first universal guarantee of cultural rights. These two anniversaries mark a critical moment for assessing progress made in the implementation of cultural rights.

I pay tribute to the diverse States that have supported the creation and work of the cultural rights mandate, including through financial contributions. I hope they and many others will continue to collaborate with me and my successors.

The report contains an overview of the work carried out by the mandate. During its first decade, the mandate has produced 16 thematic reports, covering most aspects of article 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights. The thematic work has clarified the scope of cultural rights, demonstrated how cultural rights and cultural diversity contribute to strengthening the universal human rights framework, and recalled the long-established international legal principle that cultural rights and diversity may not be invoked to infringe upon other human rights.

Fact-finding missions

Since its inception, the mandate has conducted 12 fact-finding missions: 4 to the Eastern Europe region, 3 to the Asia-Pacific region, 2 to the Latin America and Caribbean region, 2 to the Africa region and 1 to the Western Europe region. In addition, I conducted a mission to Mali for the International Criminal Court to provide advice on reparation for victims of cultural heritage destruction in the landmark case of The Prosecutor v. Ahmad Al Faqi Al Mahdi, the first case in which destruction of cultural heritage was charged and tried as a stand-alone war crime. The resulting brief outlines a gender-sensitive human rights approach that can be referenced in future cases.

I am grateful for invitations received and cooperation of States and civil society in the conduct of missions. However, a number of requests for invitations have gone unanswered and full implementation of country recommendations remains outstanding.

**Communications**

Another important tool is the communications procedure, under which I raise cases of alleged violations. Since the creation of the mandate until the time of the preparation of this report, 119 such communications have been sent. I encourage further submission of cases for my consideration, including by individuals and civil society.

I am glad to have received responses to 76 communications (63 per cent), although I deeply regret instances in which there has been no or insufficient response. It is unacceptable that some States have repeatedly failed to reply to pressing concerns. The Council must do more to urge states to reply adequately and to strengthen the communications procedures.

The number of communications issued by the mandate does not reflect the state of violations of cultural rights. Many whose cultural rights are being violated are unaware of the procedure; and the mandate does not have sufficient capacity to take up all cases received. We need to change these realities.

In some instances, communications have had a positive impact. However, in other cases, I remain deeply concerned owing to the failure of States to take the necessary measures. In particular, I reiterate my call for the immediate release of Cheikh Ould Mohamed M’kheitir, a Mauritanian blogger who challenged the use of religious justifications for caste discrimination and whose health is reportedly deteriorating; and Tashi Wangchuk, a Tibetan language rights defender jailed by Chinese authorities for defending cultural rights. Their release would be one of the best ways to mark the tenth anniversary of the mandate. I also renew my call for the preservation of Latin Village, a Latin American cultural hub in London, United Kingdom which is threatened by a regeneration project.

I call on all states, and other actors, to review all past communications received from the mandate and ensure they have fully investigated allegations and, where appropriate, taken measures to halt violations and hold perpetrators accountable.

**Engagement with stakeholders**

Many civil society organizations are increasingly aware of cultural rights. I appreciate their engagement, including with the mandate. However, coordinated international advocacy must accelerate. I call for the relevant stakeholders to consider the creation of a civil society coalition for cultural rights at the United Nations. It is time for more actors in the cultural rights sphere to recognize the relevance of the United Nations human rights system for their work and for the United Nations human rights system to pay greater attention to cultural rights.

**Challenges**

The implementation of cultural rights at the national and international levels remains one of the main outstanding challenges. Greater funding and staffing are needed for the UN work on cultural rights. The Human Rights Council could do more by drawing attention to States that do not respond favourably to requests for visits and inquiring about follow-up to recommendations made during the universal periodic review.

Special Rapporteurs must contend with twenty-first-century human rights challenges using twentieth-century tools, which need updating. They must be enabled to make their work more interesting for a broader audience, including through the use of cultural items such as artwork, video and photographs, as well as further enabled to use social media. Please follow my work for the mandate on @UNSRCulture. I hope that together we can popularize the hashtag #CulturalRights, in particular on 26 March to mark the 10th anniversary.

One of the most significant challenges that all special procedures mandate holders face is how to mobilize shame in an increasingly shame-free political world, where sometimes even hate speech and open defence of human rights violations, even at the highest levels, have been normalized.

Challenges in the field of cultural rights

In the area of cultural rights, one of the biggest challenges remains cultural relativism. Going forward, it will be important to continue making the distinction between cultural rights, which amplify rights and are protected by universal human rights law, and cultural relativism, which diminishes rights in the name of culture and has been repudiated by international law. I again call on states to promote cultural diversities and cultural rights, but to refrain from using culture as a justification for violations of human rights.

I also frequently confront the view, even in some human rights circles, that cultural rights are less important than other rights and can be set aside in crises or austerity. This is a mistake. Cultures are like oxygen for the human spirit. We must reiterate the centrality of cultural rights to the human experience, recognizing both the inherent importance of these rights within the universal human rights framework as well as for the implementation of other rights in the Universal Declaration and the achievement of sustainable development.

**Positive Developments**

There have also been many advances around the world in the field of cultural rights during the first decade of the mandate, too numerous to mention here. The report and annex provide an overview, including many national examples. We should be proud of the achievements of the mandate and its partners around the world at strengthening and consolidating cultural rights. I salute the words of Secretary General Guterres to this Council on Monday: He emphasized that, “More people are speaking out about the indispensability of cultural rights for protecting the diversity of beliefs and practices on our planet, recognizing these rights as an essential tool for preserving diversity and our common heritage.”

I will mention only a few examples. Since 2009, there have been noticeable developments in the use of human rights language and approaches in various fields of culture. A number of organizations now refer explicitly to cultural rights, going beyond the request for “access to culture” to demand equal participation in cultural life for all. Artistic freedom is no longer marginalized within the field of freedom of expression, though further attention is needed to aspects such as women’s artistic freedom. Protection has likewise improved, with a growing number of safe haven cities for artists at risk.

The same progress can be noted in the field of cultural heritage, where policymakers and global organizations, including UNESCO, have incorporated cultural rights language and issues raised by the mandate. However, much still needs to be done to mainstream the human rights approach to heritage among diverse actors in the field and in peacekeeping and transitional justice, as well as to integrate it into the work of the Security Council on cultural heritage and to confront the dangers climate change poses to cultural heritage.

**UN Developments**

There are also positive developments at the level of the UN system, including resolutions of the Council on cultural heritage and freedom of expression. It appears that the work of the mandate has contributed to increasing the recommendations made by the treaty monitoring bodies on cultural rights, especially the Committee on Economic, Social and Cultural Rights. This positive development needs to be supported, both by the experts on the Committees, and by OHCHR. Additionally, more must be done to include cultural rights in the UPR process. Indeed, taking the lead from the Secretary General’s important words on Monday, we must mainstream cultural rights across the UN Human Rights system and dedicate more resources to their implementation.

**The Next Ten Years of the Mandate**

In my remaining years in the mandate, I hope to address a number of critical issues. They include public space as a forum for the enjoyment of cultural rights which will be my next area of thematic focus, and the work of cultural rights defenders – a critical and often overlooked constituency among human rights defenders. Discrimination in the field of cultural rights will continue to be a cross-cutting priority.

The Human Rights Council emphasized that the mandate on cultural rights should “integrate a gender and disabilities perspective.” The mandate has been very successful in addressing gender, with two dedicated reports on the cultural rights of women, as well as the mainstreaming across thematic and country work of issues related to discrimination against women and on the basis of sexual orientation and gender identity, in the enjoyment of cultural rights. However, more needs to be done on the cultural rights of persons with disabilities.

Over the next 10 years, if fully resourced and supported, the mandate will continue to play a vital role in supporting cultural rights within the universal human rights framework. However, this can only bear fruit if member states and the Council redouble their commitment to actually implementing the recommendations of the Special Rapporteur.

Governments, UN bodies, civil society and experts should develop cultural rights action plans, setting specific goals to be achieved during the next 10 years of the mandate and to be reported on in 2029. They should also set targeted goals for improving implementation of article 27 of the Universal Declaration of Human Rights by its seventy-fifth anniversary in 2023. They must ensure effective remedies for all violations of cultural rights and the justiciability of those rights.

Conclusion

Wole Soyinka, the first African writer to win the Nobel Prize for literature, took part in an event with me to launch my 2018 report on universality and cultural diversity. He stressed the need for everyone to choose whether they stand “on the side of principles which elevate humanity, rather than degrade humanity,” and asserted that the rest of the century should be dedicated to enabling the realization of the Universal Declaration of Human Rights. This tenth anniversary of the mandate is a critical moment to reflect on his words, and recommit ourselves to making the UDHR’s promise of the right of everyone to take part in cultural life a global reality. Thank you.