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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

**Promotion of the enjoyment of the cultural rights of everyone and
respect for different cultural identities**

Report of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted in accordance with Commission on Human Rights resolution 2005/20. Further to the resolution, the Office of the High Commissioner invited States to submit written comments and also organized, in collaboration with the Observatory for diversity and cultural rights, a one-day informal consultation on this theme. The report concludes that there is interest in continuing discussions and exploring ways of further protecting cultural rights, that existing human rights mechanisms might be encouraged to give greater emphasis to this area of work, and that the proposed Human Rights Council might appropriately follow up on the resolution when and if it is established.

Introduction

1. In accordance with requests from the Commission on Human Rights, the Office of the High Commissioner for Human Rights (OHCHR) had invited States, United Nations agencies and non-governmental organizations (NGOs) to transmit their comments on the implementation of resolutions 2002/26, 2003/26 and 2004/20 and on the possibility of appointing a special rapporteur. In previous years replies were received from the Government of Australia, Belize, Cuba, Finland, Haiti, Panama, and Uruguay; from the United Nations Conference on Trade and Development (UNCTAD), the United Nations Economic, Social and Cultural Organization (UNESCO), and the United Nations Children's Fund (UNICEF); as well as from NGOs such as the International Federation of Human Rights Leagues, Franciscans International and the International Organization for the Development of Freedom of Education (OIDEL).

2. Resolution 2005/20 of 14 April 2005 requested the Office of the High Commissioner for Human Rights to "consult States and intergovernmental and non-governmental organizations on the particularities and scope of the mandate of an independent expert on the promotion of the enjoyment of the cultural rights of everyone and respect for different cultural identities". A note verbale was sent on 4 July 2005. In view of the limited number of comments received, OHCHR in collaboration with the Observatory for diversity and cultural rights,¹ decided to organize, a one-day informal consultation aiming mainly at discussing the subject. The level of participation in consultation was significant, demonstrating the relevance of the subject in the aftermath of the adoption of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

I. SUMMARY OF INFORMATION RECEIVED FROM GOVERNMENTS

3. Two replies were received in response to the note verbal. In its extensive written answer, the **Government of Lebanon** recognized the importance of cultural rights and cultural diversity and mentioned that it had taken all measures to ensure that every citizen benefited from these rights. The Government referred to a number of activities undertaken to promote cultural rights and values. Some of the activities had been initiated in close cooperation with the International Organization of La Francophonie, with which the authorities had worked towards the establishment of several reading-centres, cultural centres and libraries all over Lebanon, including Beirut, as well as the enhancement of the cultural heritage of the country. Building on the rich cultural heritage of the country, the teaching of languages in addition to Arabic had been encouraged and several international instruments related to cultural rights had been ratified, in particular those adopted under the auspices of UNESCO.

4. In its extensive written answer of 29 September 2005, the **Government of Cuba** recognized the importance of the role of the international community in promoting and protecting cultural rights and cultural identities in full respect of the political, economic, cultural, social and religious diversity of each society. Cuba underlined that the globalisation process had contributed to dismembering culture and development, and stressed that the privatisation of cultural productions had created instruments of manipulation. Cultural development was encouraged in Cuba through the National Literacy Campaign, the establishment of educational and cultural institutions throughout the country and the promotion of the national heritage; these efforts to promote culture were, however, affected by the economic, financial and commercial blockade imposed on Cuba by the Government of the United States of America.

The Government of Cuba reiterated its commitment to support any effort undertaken within the United Nations system, including UNESCO, in favour of the preservation and promotion of the cultural identities and diversities of peoples and nations. In that respect, the Government supported the UNESCO Convention and encouraged the establishment of the mandate of an independent expert for the promotion and protection of cultural rights.

II. SUMMARY OF INFORMAL CONSULTATIONS

5. The one-day informal consultation on cultural rights was held on 26 October 2005. A total of 55 States were represented, as well as 16 NGOs and international or regional organizations. The list of participants is contained in the annex.
6. The consultation consisted of presentations by representatives of UNESCO and NGOs specializing in cultural rights and independent experts on different aspects of cultural rights. The meeting was then mainly devoted to discussions and interventions from participants. The morning meeting was facilitated by OHCHR representative and in the afternoon by OIDEL.
7. Mrs. Ingeborg Breines, Director of the UNESCO Liaison Office in Geneva, referred to the adoption by the UNESCO General Conference of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions noting that there had been 148 votes in favour of adoption, 2 votes against and 4 abstentions. Mrs. Breines underlined that the Convention was conceived as a means of strengthening the adoption of links between culture and development, culture and international solidarity, and culture and mutual understanding. The Convention sought to reaffirm the link between culture, development and dialogue and to create an innovative platform for international cultural cooperation. International promotion and cooperation, especially in the case of developing countries, was at the heart of the Convention. The creation of an international Fund for Cultural Diversity has been provided for that purpose. The Convention also established a series of follow-up mechanisms aimed at ensuring efficient implementation of the new instrument, including a non-binding mechanism for the settlement of disputes. Mrs. Breines gave an overview of other UNESCO normative instruments that had been adopted prior to the Convention, including the UNESCO Universal Declaration on Cultural Diversity (2001). She concluded her presentation by conveying a message from the Director-General of UNESCO, Mr. Koïchiro Matsuura, who made reference to article 2 of the Convention, which stipulated that no one may invoke the provisions of the Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights.
8. Mr. Taïmour Mostafa-Kamel, Technical Adviser for the International Organization of la Francophonie, expressed his appreciation for the consultation and underlined that cultural rights are a core part of the work of the OIF. Mr. Mostafa-Kamel pointed out that the francophone community was extremely supportive of the UNESCO Convention. He also announced that the Organization was convening an international conference on the present status of cultural rights and future perspectives, which would take place in Rabat from 14 to 16 December 2005.
9. Mr. Patrice Meyer-Bisch, representative of the Observatory for diversity and cultural rights, stressed that apprehension related to “cultural relativism” and to the risk that promotion of cultural rights could jeopardize the universality of human rights had delayed consideration on the part of the international community of the fact that culture could trigger development. Cultural

rights formed an integral part of the human rights framework and its principles of universality, interdependence and indivisibility. Cultural rights allowed for the development of universal rights within the diversity of cultures. Mr. Meyer-Bisch pointed out that the recent adoption of the UNESCO Convention was proof that protection of cultural diversity and individual cultural rights were not putting at risk the universality and indivisibility of human rights. He stated that Commission resolution 2005/20 was nevertheless ambiguous as the theme of the resolution remained vague: if the subject of cultural rights was clear within the context of the indivisibility of all human rights, it suffered from its association with the collective notion of “respect for different cultural identities”, which led to fears of an amalgamation with collective rights, or even with the rights of States. Like any other rights, cultural rights were individual rights; individual rights to access and participate in collective forms of identity within a given society. Mr. Meyer-Bisch further underlined that the protection of cultural diversity was only meaningful and could only be made possible through the promotion of and respect for cultural rights within the human rights system as a whole; he added that the rights to education, information and participation in cultural life were essential to prevent tensions and to the fight against poverty.

10. Ms. Joanna Bourke-Martignoni of the Institut interdisciplinaire d'éthique et des droits de l'homme of the University of Fribourg, Switzerland, made a presentation on the cultural dimensions of women's rights. Ms. Bourke-Martignoni stated that while international human rights instruments were unequivocal concerning the fact that culture, tradition and religion could not be used as excuses for the violation of women's human rights, in practice violence and other forms of discrimination against women continued to be justified on the basis of culture. She further insisted on the need to ensure that the definition of culture as it applied to women did not remain focused on its negative or repressive elements and those women should be granted the freedom to benefit from and exercise their cultural rights.

11. Mr. Jean-Bernard Marie, Director of Research of the Centre National de la recherche scientifique in Strasbourg, Robert Schuman University, stated that all existing thematic procedures implicitly or explicitly referred to the cultural dimensions of human rights. In fact, cultural rights were under-developed and neglected, but they were nevertheless, not ignored by existing instruments of the United Nations. Existing special procedures and international conventions made direct or indirect references to cultural rights. The cultural right that was directly covered by a mandate was the right to education. The establishment of an independent expert on cultural rights could contribute to the strengthening of the cultural aspects of existing procedures and reinforce the monitoring mechanisms of existing instruments. One possible task for an independent expert on cultural rights would be to sensitise other special procedures to integrate in their recommendations the cultural dimensions of their respective mandates. A new instrument would need to be considered in light of existing procedures to fill existing gaps and avoid an overlapping of mandates.

12. Mr. Giorgio Malinverni, member of the Committee on Economic, Social and Cultural Rights, said that respect for different cultural identities was positive per se but wondered whether the emphasis given to the notion of cultural diversity was not putting at risk the concept of the universality of human rights, as many violations were committed in the name of cultural traditions. References to cultural rights could be identified in instruments such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, as well as in existing special procedures (i.e. the Special Rapporteur on the right to education; the Special Rapporteur on the situation of human rights and

fundamental freedom of indigenous peoples; the independent expert on minorities, etc.). Mr. Malinverni noted that the Committee had adopted general observations related to issues of cultural rights but he recognized that the Committee often neglected the examination of articles 13 to 15 of the Covenant relating to cultural rights. The appointment of a new independent expert might increase the attention given to cultural rights. This independent expert could focus on specific issues not yet considered by other procedures and also coordinate among existing mandates.

13. Representatives of Governments, international and regional organizations as well as non-governmental organizations commented and intervened on issues raised, including the existence of a universal definition of culture, individual rights versus collective rights, the distinction to be made between traditional practices and cultural values, the defence of cultural diversity in the framework of new technologies and information, cultural rights and extreme poverty, the implications of the recently adopted UNESCO Convention and its legal value.

14. The representative of the United Kingdom of Great Britain and Northern Ireland, speaking on behalf of the European Union and other countries, including Bulgaria, Romania, Turkey, Croatia, Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Serbia and Montenegro, Liechtenstein, Ukraine and the Republic of Moldova, said that the EU did not consider it appropriate to take institutional decisions on the creation of a new thematic procedure on cultural rights, especially in the context of the ongoing discussions in New York over the establishment of the Human Rights Council to whose authority the special procedures would need to be transferred.

15. The representative of Portugal associated himself with the intervention of the United Kingdom and said that he did not wish to comment on the need to create a new procedure. He expressed his gratitude for the quality of the documents shared and invited experts to participate in the next session of the working group on the elaboration of an optional protocol to International Covenant on Economic, Social and Cultural Rights, to be held in February 2006.

16. The representative of Switzerland reminded participants that many existing instruments and procedures already contained a cultural dimension. The representative considered that, at this stage, it was sufficient to request all thematic procedures of the Commission on Human Rights to examine the cultural dimensions of the rights under their respective mandates.

17. The representative of Ireland, on behalf of the Group of Western European and other States, said that she regretted the timing of the consultation, in view of the discussions in New York on the Human Rights Council. She added that the consultation should not be seen as conclusive. The representative of Australia also considered it inappropriate to discuss the establishment of an independent expert on cultural rights at this stage. The representative of the United States of America said that before coming to conclusions on the creation of a new mandate, the international community needed to wait for the outcome of the New York discussions.

18. The representative of Cuba expressed her support for the creation of a special procedure on cultural rights and pointed out that statements made by other countries on the inappropriate timing of the consultation should not mean that discussions should be stopped.

19. The representative of Argentina suggested that the Committee on Economic, Social and Cultural Rights should put more emphasis on the examination of cultural rights. He added that the present consultation - in order to be constructive - should reach a consensus and proposed that the process continue next year. The representative also invited the experts present at the seminar to actively contribute to the working group on an optional protocol to the Covenant. The representative of Mexico said that the consultation was very instructive and useful and suggested that discussions on cultural rights continue. The representative of the Islamic Republic of Iran supported the idea of a follow-up to the consultation.

20. The representative of Egypt underlined that the consultation had been organized in response to Commission resolution 2005/20 and that the objective was to discuss - and not to decide on - the issue of the establishment of a special procedure. Egypt would be receptive to the idea of the proposed mandate under the condition that clear parameters were established.

21. The representative of Amnesty International said that he considered it premature to look at the creation of a new mandate in view of the ongoing discussions in New York.

III. CONCLUSIONS

22. **The information provided, in particular through the informal consultation, suggests that there is ongoing interest on the part of some States, experts, and international, regional and non-governmental organizations in further discussing the issue of cultural rights and looking for ways of protecting and promoting these rights through existing human rights mechanisms.**

23. **The views on the establishment and mandate of a new special procedure are strongly divided. Some participants in the consultation stressed that the establishment of such a mandate could be envisaged under the condition that its scope was clearly defined and that close coordination with existing procedures was ensured. Other participants raised doubts whether establishment of a new special procedure would be desirable, since existing mandates could perform the proposed functions.**

24. **Several participants suggested that the Commission on Human Rights should request existing special procedures to take into account the cultural dimensions in the exercise of their mandates and include a relevant analysis in their future reports to the Human Rights Council. Treaty bodies, especially the Committee on Economic Social and Cultural Rights, could also be invited to pay greater attention to cultural rights in their analyses and questions to States.**

Note

¹ A network of institutes and NGOs working in partnership with the Human Right Delegation of the International Organization of la Francophonie and UNESCO.

Annex

LIST OF PARTICIPANTS

Governments

Argentina, Australia, Austria, Azerbaijan, Bahrain, Belgium, Benin, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Cambodia, Canada, Chad, Congo, Costa Rica, Croatia, Cuba, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Guinea, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Jordan, Korea (Republic of), Lebanon, Lesotho, Madagascar, Mexico, Morocco, Portugal, Russian Federation, Slovakia, South Africa, Spain, Sudan, Sweden, Switzerland, Turkey, Ukraine, Uruguay, United Kingdom of Great Britain and Northern Ireland, United States of America and Yemen

International and regional organizations

African Union, International Organization of la Francophonie, UNESCO

Non-governmental organizations

Amnesty International
ATD Forth World
Conference of NGOs
Culture of Afro-indigenous Solidarity
Europe -Third World Centre
Franciscans International
International Organization for the Development of Freedom of Education
International Service for Human Rights
Mandat International
New Humanity
Observatory for diversity and cultural rights
Soka Gakkai International
Traditions pour demain

Presentations introduced by

Ingeborg Breines, UNESCO Liaison Office in Geneva
Taïmour Mostafa-Kamel, International Organization of la Francophonie
Patrice Meyer-Bisch, Observatory for diversity and cultural rights
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University of Fribourg
Jean-Bernard Marie, Centre national de recherche scientifique de Strasbourg,
Robert Schuman University
Giorgio Malinverni, member, Committee on Economic, Social and Cultural Rights
