**Annex: International Legal Framework for Report by the Special Rapporteur in the field of cultural rights on a Human Rights Approach to Cultural Mixing, Mixed Cultural Identities and Syncretism**

1. **International Legal Framework**
2. **Cultural Rights Standards**
3. Due to the word limit, the legal framework relevant to the Special Rapporteur’s report on cultural mixing, mixed cultural identities and syncretism is surveyed in this Annex which should be read in conjunction with the report. This Annex also contains a small number of additional comments on the topics covered in the report that should be read in conjunction with the relevant sections of the report.
4. Cultural rights are guaranteed by many provisions of international law. Such provisions include article 27 of the Universal Declaration of Human Rights, article 15[[1]](#footnote-1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and related provisions of the International Covenant on Civil and Political Rights (ICCPR). In particular, article 15 of the ICESCR guarantees to everyone the right to take part in cultural life, to enjoy the benefits of scientific progress and its applications, and to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which they are the author. According to article 15, states parties also undertake to respect the freedom indispensable for scientific research and creative activity. These norms have been explained in detail by successive mandate holders in the field of cultural rights.[[2]](#footnote-2) They are all subject to cross-cutting requirements of non-discrimination and equality.[[3]](#footnote-3)
5. The Committee on Economic, Social and Cultural Rights (CESCR) has stressed that the right to take part in cultural life entails rights of participation in, access to, and contribution to cultural life, and encompasses the right of everyone “to seek and develop cultural knowledge and expressions and to share them with others, as well as to act creatively and take part in creative activity.”[[4]](#footnote-4) Freedom of artistic expression is such an important human right that it is guaranteed by both of the covenants on human rights.
6. In her 2013 report on freedom of artistic expression, the first Special Rapporteur in the field of cultural rights explained that “[a]rtists may entertain people, but they also contribute to social debates, sometimes bringing counter-discourses and potential counterweights to existing power centres. The vitality of artistic creativity is necessary for the development of vibrant cultures and the functioning of democratic societies. Artistic expressions and creations are an integral part of cultural life, which entails contesting meanings and revisiting culturally inherited ideas and concepts. The crucial task of implementation of universal human rights norms is to prevent the arbitrary privileging of certain perspectives on account of their traditional authority, institutional or economic power, or demographic supremacy in society. This principle lies at the heart of every issue raised in the debate over the right to freedom of artistic expression and creativity and possible limitations on that right.”[[5]](#footnote-5) She further noted that “[a]rtistic expression and creativity may entail the re-appropriation of symbols”[[6]](#footnote-6) and that “[t]he aesthetic censorship of art, when artists are not free to choose their preferred style or to borrow from others, is a field which is often overlooked.”[[7]](#footnote-7)
7. Specific standards apply to the cultural rights of particular groups. For example, according to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, such persons “have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.”[[8]](#footnote-8) Article 27 of the ICCPR holds that, “[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”
8. The UN Declaration on the Rights of Indigenous Peoples establishes, in article 31, that “[i]ndigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, [and] knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts.” It also acknowledges the diversities of indigenous peoples in its preamble, and underscores the relevance of international human rights law and standards (articles 1 and 34).
9. The Convention on the Elimination of All Forms of Discrimination against Women requires that “States Parties shall take all appropriate measures to eliminate discrimination against women in… economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular… [t]he right to participate in recreational activities, sports and all aspects of cultural life.” (article 13(c)) Its article 5(a) also requires that states 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.”
10. The Convention on the Rights of the Child recognizes the rights of the child “to participate freely in cultural life and the arts.” It stresses that “States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.” (Article 31)
11. The equal cultural rights of persons with disabilities are spelled out in detail in Article 30 of the Convention on the Rights of Persons with Disabilities. These include the rights to take part on an equal basis with others in cultural life, enjoy access to cultural materials in accessible formats; and to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture, and to participate on an equal basis with others in recreational, leisure and sporting activities.
12. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families stipulates that migrant workers and their families enjoy equality of treatment with nationals of the state of employment with regard to “[a]ccess to and participation in cultural life.” (articles 43 and 45). “States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.” (article 45(3)).
13. Cultural rights are an expression of and a prerequisite for human dignity. They are core to the human experience, and essential for implementing other universal human rights and achieving the Sustainable Development Goals. They are not a luxury, even during a global health crisis. The Sustainable Development Goals are key to the implementation of cultural rights and vice versa. Progress on human rights obligations and on the Goals are two sides of the same coin. Moreover, the safeguarding and promotion of culture in all its diversities contributes directly to the achievement of many of the Goals.[[9]](#footnote-9)
14. Cultural rights protect in particular (a) human creativity in all its diversity and the conditions for it to be exercised, developed and made accessible; (b) the free choice, expression and development of identities, which include the right to choose not to be a part of particular collectives, and the right to exit a collective, and to take part on an equal basis in the process of defining it; (c) the rights of individuals and groups to participate, or not to participate, in the cultural life of their choice, and to conduct their own cultural practices; (d) the right to interact and exchange, regardless of group affiliation and of frontiers; (e) the rights to enjoy and have access to the arts, to knowledge, including scientific knowledge, and to an individual’s own cultural heritage, and that of others; and (f) the rights to participate in the interpretation, elaboration and development of cultural heritage and in the reformulation of cultural identities (A/HRC/40/53, para. 15).
15. The Special Rapporteur’s report on cultural rights defenders contains a thorough discussion of the international standards pertaining to their work.[[10]](#footnote-10) The rights of cultural rights defenders to carry out their work in accordance with international standards is guaranteed by the Declaration on Human Rights Defenders adopted by the General Assembly. The rights of defenders that are recognized include the rights to: meet and assemble peacefully; benefit from effective remedies; exercise their occupation as human rights defenders; effective protection under national law in peacefully opposing State human rights violations; conduct human rights work individually and in association with others; seek, receive and hold information relating to human rights; unhindered access to and communication with non-governmental and intergovernmental organizations; and solicit, receive and utilize resources (including funds from abroad) for the purpose of protecting human rights.
16. Cultural rights standards and international human rights bodies have not explicitly and thoroughly enough addressed questions of cultural mixing, hybridity and syncretism. This is a gap which needs to be filled. Those key standards which have addressed cultural diversity have sometimes been considered to describe the interaction between separate cultural wholes. However, many of them can and should be equally interpreted to cover a wide range of “internal” diversities, and may explicitly indicate this.
17. There are important signposts in international standards, pointing in these directions, which should be heeded. For example, in its General Comment No. 21 on Article 15 of the ICESCR, the CESCR has noted that, “In particular, a first and important step towards the elimination of discrimination, whether direct or indirect, is for States to recognize the existence of diverse cultural identities of individuals and communities on their territories.”[[11]](#footnote-11) Furthermore, the CESCR explained that it is a core obligation under the ICESCR with immediate effect for states “[t]o respect the right of everyone to identify or not identify themselves with one or more communities, and the right to change their choice.”[[12]](#footnote-12)
18. The Committee on the Elimination of Racial Discrimination has clarified that the International Convention on the Elimination of All Forms of Racial Discrimination applies to multiple and intersecting forms of discrimination.[[13]](#footnote-13) A number of the bodies and mechanisms working to combat racial discrimination have emphasized the importance of intercultural education.[[14]](#footnote-14) The former Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance stressed that “[t]o combat racism in a thorough and lasting manner, the cultural equation that every multicultural society is called upon to solve is that of promoting the link between recognition, protection and respect for specific ethnic, religious and cultural characteristics and the promotion and recognition of universal common values resulting from the interaction and cross-fertilization of these characteristics.”[[15]](#footnote-15) The current Special Rapporteur has noted that, “State obligations should be understood to require collection and analysis of disaggregated data that enable a better understanding of the human rights situation of groups and persons subject to multiple and intersecting structures of discrimination.”[[16]](#footnote-16)
19. **UNESCO Standards on Cultural Diversity**
20. The 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions[[17]](#footnote-17) in its preamble, “Affirm[s]that cultural diversity is a defining characteristic of humanity,” and “forms a common heritage of humanity and should be cherished and preserved for the benefit of all.” It also stresses*“*that cultural diversity creates a rich and varied world, which increases the range of choices and nurtures human capacities and values, and therefore is a mainspring for sustainable development for communities, peoples and nations,” while “Recallingthat cultural diversity, flourishing within a framework of democracy, tolerance, social justice and mutual respect between peoples and cultures, is indispensable for peace and security...” Moreover, it “[c]elebrat[es]the importance of cultural diversity for the full realization of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized instruments.” Perhaps most relevantly, it recognizes “that culture takes diverse forms across time and space and that this diversity is embodied in the uniqueness and plurality of the identities and cultural expressions of the peoples and societies making up humanity…”
21. The goals of the 2005 Convention include “to protect and promote the diversity of cultural expressions… and to create the conditions for cultures to flourish and to freely interact in a mutually beneficial manner” (article 1); to foster interculturality[[18]](#footnote-18) in order to develop cultural interaction in the spirit of building bridges among peoples… to promote respect for the diversity of cultural expressions and raise awareness of its value at the local, national and international levels… and to reaffirm the importance of the link between culture and development for all countries (article 1 (d)(e) and (f)).
22. The Convention embraces universal human rights and rejects cultural relativism. According to its article 2, “[c]ultural 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. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof.”

1. Article 4(1) defines cultural diversity as referring “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.” States are to take a wide variety of measures in accordance with the convention to promote diversity, including by promoting an environment conducive to diverse cultural expressions, education and awareness, cooperation with civil society, international cooperation, integration of culture in sustainable development, as well as the strengthening of cultural industries in developing countries and creating an international fund for cultural diversity.
2. UNESCO’s 2001 Universal Declaration on Cultural Diversity in its article 1, like the 2005 Convention, also notes the continuity of diversities in human cultures, and the plurality of identities. “As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature. In this sense, it is the common heritage of humanity and should be recognized and affirmed for the benefit of present and future generations.” This Declaration emphasizes that its drafters were “[a]spiring to greater solidarity on the basis of recognition of cultural diversity, of awareness of the unity of humankind, and of the development of intercultural exchanges…” (preamble).
3. It also encourages a shift in perspective “from cultural diversity to cultural pluralism” by stressing that, “In our increasingly diverse societies, it is essential to ensure harmonious interaction among people and groups with plural, varied and dynamic cultural identities as well as their willingness to live together. Policies for the inclusion and participation of all citizens are guarantees of social cohesion, the vitality of civil society and peace. Thus defined, cultural pluralism gives policy expression to the reality of cultural diversity. Indissociable from a democratic framework, cultural pluralism is conducive to cultural exchange and to the flourishing of creative capacities that sustain public life” (article 2).
4. In the declaration’s Annex II, UNESCO member states commit themselves to a variety of relevant implementation actions, including: “[d]eepening the international debate on questions relating to cultural diversity” (para. 1), “[f]ostering the exchange of knowledge and best practices in regard to cultural pluralism with a view to facilitating, in diversified societies, the inclusion and participation of persons and groups from varied cultural backgrounds…” (para. 3), “[d]eveloping cultural policies, including operational support arrangements and/or appropriate regulatory frameworks, designed to promote the principles enshrined in this Declaration, in accordance with the international obligations incumbent upon each State” (para. 18), and “[i]nvolving the various sections of civil society closely in the framing of public policies aimed at safeguarding and promoting cultural diversity” (para. 19).
5. Cultural diversity is also clearly differentiated from cultural relativism in the Declaration’s vital article 4 which must be constantly born in mind. “The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.”
6. **Universality and Cultural Diversity**
7. This close relationship between universality and cultural diversity was stressed in the 2018 report by the Special Rapporteur in the field of cultural rights to the General Assembly.[[19]](#footnote-19) In that report, she stressed that “[u]niversality is the cornerstone of human rights law, which likewise enshrines this principle. Article 1 of the Universal Declaration of Human Rights affirms that ‘all human beings are born free and equal in dignity and rights’. Article 2 adds specificity, making clear that neither cultural category nor political status can justify exemption from rights protection. The Charter of the United Nations has specifically endorsed the framework of universal rights in treaty form.”[[20]](#footnote-20)
8. Universality greatly enhances the lives of all human beings everywhere and advances equality, dignity and rights, including cultural rights. In practice, it is a critical tool for the United Nations human rights system, diverse regional human rights mechanisms and human rights defenders around the world. “Cultural diversity is still wrongly understood as being in opposition to universality, including by some Governments and other actors who misuse it as an excuse for violations of the very universal human rights within which its enjoyment is explicitly embedded, and by others who oppose the concept altogether, and… [the Special Rapporteur] is unequivocally committed to the principle of the universality of human rights and to cultural diversity and to recognizing and reinforcing the organic relationship between these two commitments.”[[21]](#footnote-21)
9. Cultural rights are not a justification for violations of human rights or attacks on universality, nor are they tantamount to cultural relativism. Respect for cultural rights and cultural diversity, without discrimination and in accordance with international standards and as interpreted by human rights bodies, is a core aspect of implementing universality. These are, in fact, conjoined tasks.[[22]](#footnote-22)
10. States have reiterated their commitment to universality in, inter alia, standards such as the Vienna Declaration and Programme of Action of 1993, in which they reaffirmed that “[a]ll human rights are universal, indivisible, and interdependent and interrelated … While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne it mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms”.[[23]](#footnote-23)

D. **Intellectual Property and Cultural Rights**

1. The first Special Rapporteur in the field of cultural rights surveyed the intersections of cultural rights and intellectual property in a series of 2015 reports. In her report on related aspects of copyright, she noted that, “[t]he human rights perspective calls for recognition of the social and human values inherent in copyright law and a heightened regard for fundamental rights and the needs of marginalized groups. The emphasis on active participation in cultural and scientific life, rather than simply the ability to access cultural and scientific works, recognizes the dual importance of accessing the knowledge and expressive creations of others and of self-expression within the broader cultural context.” (para. 60). She noted that “Copyright exceptions and limitations — defining specific uses that do not require a licence from the copyright holder — constitute a vital part of the balance that copyright law must strike between the interests of rights-holders in exclusive control and the interests of others in cultural participation.” (para. 61) In particular, she stressed certain categories of such uses, including the importance of assuring artistic livelihoods, empowering new creativity, expanding educational opportunities and promoting non-commercial forms of culture (paras. 62-65). In her view, “A human rights perspective also requires that the potential of copyright exceptions and limitations to promote inclusion and access to cultural works, especially for disadvantaged groups, be fully explored.” (para. 66)
2. The first Special Rapporteur in the field of cultural rights recommended that “states should consider that exceptions and limitations that promote creative freedom and cultural participation are consistent with the right to protection of authorship. Protection of authorship does not imply perfect authorial control over creative works.” (para. 105) Moreover, she urged that “[s]tates should enable allowance for uncompensated use of copyrighted works, in particular in contexts of income disparity, non-profit efforts, or undercapitalized artists, where a requirement of compensation might stifle efforts to create new works or reach new audiences.” (para. 106)
3. With regard to the relevant cultural rights of indigenous peoples, she assessed that “[s]ome indigenous peoples consider it vital to keep certain cultural expressions and forms of knowledge from public disclosure, to be used only by persons and in ways appropriate to their customary laws and practices, and never commercially exploited. Some indigenous peoples desire to benefit from the commercial potential of licensing products based on their traditional knowledge and cultural expressions.” (para. 55) She also concluded that “[i]ntellectual property regimes have historically failed to take into account the unique concerns of indigenous peoples.” (para. 56) In this regard, she stressed the importance of “provid[ing] protection for the collective holders of traditional cultural expressions.”[[24]](#footnote-24)
4. In her 2015 report on the implications of patent policy for the human right to science and cultural rights[[25]](#footnote-25), the first Special Rapporteur in the field of cultural rights also made many relevant comments. Protection “of traditional knowledge or traditional cultural expressions in the intellectual property sense means ensuring that the intellectual innovation and creativity embodied in traditional knowledge and traditional cultural expressions are not wrongly used. It may include protection against misuse or misappropriation, such as copying, adaptation or use by unauthorized third parties, equitable compensation schemes and protection against unfair competition. Requiring inventors to include and make public relevant information about important inputs obtained from communities can be used as a protective mechanism. Such disclosure can serve as a check against misappropriation, and help to determine the scope of benefit sharing due to indigenous groups.” (para. 41, footnotes omitted). She recommended that “States should (1) ensure availability of legal measures and remedies to ensure the control by indigenous peoples and local communities over their biocultural heritage; (2) prohibit unethical and/or unlawful appropriation of the heritage of indigenous peoples and local communities through patents; [and] (3) ensure appropriate credit and compensation…” (para. 114) She also stressed that “Enhanced disclosure requirements in intellectual property legislation, such as sources, should be adopted to protect the right of attribution of communities whose traditional knowledge contributed to a patent application.” (para. 115)
5. **Interpretation of the Relevant International Legal Framework**
6. The current Special Rapporteur in the field of cultural rights notes that in the areas under discussion in her current report there may be or seem to be some tensions between different aspects of relevant international standards, such as between those guaranteeing the freedom of artistic expression of everyone, and providing indigenous peoples with control over their cultural heritage. All these tensions and potential conflicts merit further consideration. In any case, the interrelationship of all the relevant standards must be interpreted in light of international law in general, and international human rights law, including the standards on limitation of cultural rights, in particular, and bearing in mind the conjoined commitments to universality and to cultural diversity. As the first Special Rapporteur in the field of cultural rights underscored in her report on freedom of artistic expression, any claims to limit artistic freedom, such as to protect the rights of others, including indigenous peoples, “need to be addressed in compliance with international standards regarding possible limitations… The Special Rapporteur encourages States, when applying these standards, to take into consideration the specific nature of artistic expressions and creations.”[[26]](#footnote-26)
7. Cultural rights may be subjected to limitations in certain circumstances.[[27]](#footnote-27) Such limitations placed on the enjoyment of cultural rights are only legitimate if they are in accordance with international standards. As stressed by the Committee on Economic, Social and Cultural Rights, limitations should be a last resort only and should be in accordance with certain conditions as established under international human rights law. Such limitations must be in pursuit of a legitimate aim, be compatible with the nature of the right and be strictly necessary for the promotion of general welfare in a democratic society, in accordance with article 4 of the International Covenant on Economic, Social and Cultural Rights. Any limitations must be proportionate, meaning that, when several types of limitations may be imposed, the least restrictive measures must be taken.[[28]](#footnote-28) Fully participatory and consultative approaches, and the free, prior and informed consent of indigenous peoples where relevant, are critical.
8. Experts from different regions reported to the Special Rapporteur that diversity is understood in simplified ways based on narrow views of identity and may omit diversity of thought or of cultural perspectives. In any case, actual cultural mixing goes beyond diversity, and as such it is more threatening to monolithic visions because it forces us to rethink many of our comfortable assumptions about the natures of cultures, identities and histories themselves, and because it may be seen to “signal confusion”[[29]](#footnote-29) in the face of a more comforting simplicity. “Cultural diversity is also the representation of a radical rhetoric of the separation of totalized cultures that live unsullied by the intertextuality of their historical locations, safe in the Utopianism of a mythic memory of a unique collective identity.”[[30]](#footnote-30) This also recalls the warning by experts in the field of cross-cultural psychology that although cross-cultural paradigms “recognize cultural differences, they also discourage intercultural learning and motivate movements that seek to preserve the purity of heritage cultures.”[[31]](#footnote-31) Separate but equal has been recognized as a problematic approach to participation in public life, and yet such discourses which assume the interaction between separate cultural wholes are all too common in the cultural and human rights arenas.[[32]](#footnote-32) These insights should be borne in mind when interpreting the relevant international standards.
9. **Additional Comments**
10. **Additional Comments Related to Section II. D. 1 of the Report: Obstacles, Challenges and Ways Forward: Contemporary Debates About Cultural Appropriation and Identity Politics**
11. The over-writing of the colonial past onto the complex present in simplistic ways disappears the reality of contemporary challenges and post-colonial limitations on cultural rights. As one West African expert told the Special Rapporteur, “we need to think about the impact of colonialism and neo-colonialism, but there are times when I want to get out of this box to become myself, and to recognize that I have all the rights in the world to have critical definitions of who I am myself.”

1. One of the major challenges in the field of human rights is the problem of silos. Some of those working in the field of protecting minority or indigenous cultural rights may have important reasons to work for the right to be different and for collective rights and to warn against cultural appropriation because those are where they have encountered abuses of power. Meanwhile, many advocating for cultural dissenters, for “minorities within minorities” or for women’s rights may have as important reasons for being wary of such concepts because of how they may contribute to the very abuses of power – and the cultural relativism - which they must challenge to achieve human rights, including cultural rights. Neither is wrong; the vantage points are distinct. Intersectional approaches are important but cannot alone reconcile these competing priorities. There is an outstanding need to weave these disparate strands together into the fabric of a multi-directional approach which recognizes the threat to human rights from a variety of dynamics, and to achieve a balanced approach, effective in a specific context, but which does not undercut rights protection elsewhere. This is very difficult, but a task which the Special Rapporteur hopes will be undertaken by 21st century cultural rights advocates and her successor.
2. We need to recognize that there will be differences of opinion about the issues raised in this report. There must be other options besides hateful clashes or politically correct silence for addressing such disagreements in accordance with human rights values and standards. Open debate and respectful but frank exchanges are critical. There are many genuine human rights harms that diverse persons are experiencing that cause pain and suffering and foster inequalities all of which must be addressed. At the same time, a default impulse to be offended, or to assume bad motives of those who disagree, is not conducive to an open cultural life. We must recognize, address and learn from the points of disagreement.
3. Tensions within cultural rights approaches to identity and diversity were recently analysed in the following thoughtful manner: “[T]he protection of religious and cultural minorities and indigenous people’s right to distinctness and difference in the way they express their religious and cultural identities is pressing and urgent. However, in defending their right to distinctness, or cultural diversity, we sometimes forget that there is also a broader struggle against the political and social forces in our midst which seek to homogenise what “us” as a country, faith, or community should look like. While being respectful and mindful of the different kinds of experiences of oppression associated with distinct intersecting identities, we need to protect against…the very idea of limiting, containing and suffocating the possibilities of people mixing and matching their beliefs.”[[33]](#footnote-33) Such complex thinking will be essential to develop the strategies needed to ensure cultural rights on this fraught terrain.
4. **Additional Comments Related to Section II. D. 2 of the Report: Significant Constituencies and Spaces: The Role of the Internet**
5. With thoughtful approaches, the internet, new technologies and social media can facilitate new forms of cultural mixing, sharing and hybridity, and increase opportunities for positive polycultural interactions and respect for mixed identities. However, they can also contribute to homogenizing dynamics if careful consideration is not given to the need to respect, protect and fulfill cultural rights for all in cyber-space.[[34]](#footnote-34) For example, the global cultural footprint reflected in new applications for documenting culture should actively and consciously reflect hybridity and syncretism, ensuring that multiple voices are heard, and that complexity is encouraged. This requires inter alia tackling underlying digital inequality. “We believe the internet is the World Wide Web — yet it only tells the stories of just over half the world. We are silencing parts of the world without knowing it… Not having access online means that the stories, platforms and ideas we see shared online today are only created by those privileged enough to be online in the first place.”[[35]](#footnote-35)
1. This article has been interpreted by the Committee on Economic, Social and Cultural Rights (CESCR) in General Comments No. 21 and No. 25. [↑](#footnote-ref-1)
2. See, e.g., [www.ohchr.org/EN/Issues/CulturalRights/Pages/InternationalStandards.aspx](http://www.ohchr.org/EN/Issues/CulturalRights/Pages/InternationalStandards.aspx); A/74/255, paras. 19–31; A/HRC/37/55, paras. 14–24; and A/HRC/40/53, para. 15. [↑](#footnote-ref-2)
3. See, e.g., Universal Declaration of Human Rights, articles 1 and 2 and International Covenant on Economic, Social and Cultural Rights, articles 2(2) and 3. [↑](#footnote-ref-3)
4. E/C.12/GC/21, para. 15 (a). [↑](#footnote-ref-4)
5. A/HRC/23/34, para. 3. [↑](#footnote-ref-5)
6. *Id*., at para. 36. [↑](#footnote-ref-6)
7. *Id.* at para. 52. [↑](#footnote-ref-7)
8. General Assembly resolution [47/135](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/47/135), annex (Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities), article 2. [↑](#footnote-ref-8)
9. See General Assembly resolution 70/1, annex; see also Jyoti Hosagrahar, “Culture: at the heart of SDGs”, *The UNESCO Courier*, April–June 2017. [↑](#footnote-ref-9)
10. A/HRC/43/50, paras. 32-45. [↑](#footnote-ref-10)
11. CESCR General Comment No. 21, Para. 23. [↑](#footnote-ref-11)
12. *Id*., para, 55(b). [↑](#footnote-ref-12)
13. A/HRC/44/57, para. 51. [↑](#footnote-ref-13)
14. [A/HRC/32/50/Add.1](http://undocs.org/A/HRC/32/50/Add.1), para 34, and [A/61/335](file:///C%3A%5CUsers%5Ckatiecrawford%5CDownloads%5CA%5C61%5C335), para. 16. [↑](#footnote-ref-14)
15. [A/HRC/7/19](file:///C%3A%5CUsers%5Ckatiecrawford%5CDownloads%5CA%5CHRC%5C7%5C19), para. 64. [↑](#footnote-ref-15)
16. [A/HRC/44/57](https://undocs.org/A/HRC/44/57), para. 52. [↑](#footnote-ref-16)
17. A series of reports prepared in relation to implementation of the 2005 UNESCO Convention are a valuable resource: [Publications | Diversity of Cultural Expressions (unesco.org)](https://en.unesco.org/creativity/publications); [2018 Global Report - Re|Shaping Cultural Policies | Diversity of Cultural Expressions (unesco.org)](https://en.unesco.org/creativity/global-report-2018); and [Freedom & Creativity: Defending art, defending diversity | Diversity of Cultural Expressions (unesco.org)](https://en.unesco.org/creativity/publications/freedom-creativity-defending-art-defending). [↑](#footnote-ref-17)
18. The convention notes that “interculturality” “refers to the existence and equitable interaction of diverse cultures and the possibility of generating shared cultural expressions through dialogue and mutual respect…” (article 4(8)). [↑](#footnote-ref-18)
19. A/73/227. [↑](#footnote-ref-19)
20. *Id*., para. 18, citing UN Charter, arts. 55, 56. [↑](#footnote-ref-20)
21. *Id*., paras. 1, 2, and 9. See also [A/HRC/14/36](https://undocs.org/A/HRC/14/36), para. 3. [↑](#footnote-ref-21)
22. *Id*., para. 11. [↑](#footnote-ref-22)
23. See [A/CONF.157/24 (Part I](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G93/853/46/pdf/G9385346.pdf?OpenElement)), para. 5, chap. III (Vienna Declaration and Programme of Action). [↑](#footnote-ref-23)
24. See also E/CN.4/Sub.2/1995/26. [↑](#footnote-ref-24)
25. A/70/279. [↑](#footnote-ref-25)
26. A/HRC/23/34, para. 34. [↑](#footnote-ref-26)
27. A/HRC/31/59, paras. 25 and 26. [↑](#footnote-ref-27)
28. With regard to limitations on freedom of expression under Article 19 of the ICCPR, it is important to take into account the specific language of that instrument, and its interpretation by successive Special Rapporteurs on freedom of expression, and the UN Human Rights Committee. [↑](#footnote-ref-28)
29. Coco Fusco, English is Broken Here: Notes on Cultural Fusion in the Americas (1995) ix. [↑](#footnote-ref-29)
30. Homi Bhabha, Cultural Diversity and Cultural Differences, in the Post-Colonial Reader (Bill Ashcroft *et al* eds, 1995) at 206. [↑](#footnote-ref-30)
31. Jia Hao et al., Advancing Our Understanding of Cultural Mixing, Journal of Cross-Cultural Psychology 2016, Vol. 47(10) 1257-1267, 1258. [↑](#footnote-ref-31)
32. Brown v. Bd. of Educ., 347 U.S. 483, 494-95 (1954) [↑](#footnote-ref-32)
33. [Stop homogenising us: mixing and matching faith and beliefs in India and beyond | Institute of Development Studies (ids.ac.uk)](https://www.ids.ac.uk/opinions/stop-homogenising-us-mixing-and-matching-faith-and-beliefs-in-india-and-beyond/) [↑](#footnote-ref-33)
34. See Human Rights Council resolution 20/8; A/74/255, para. 70. [↑](#footnote-ref-34)
35. [Arda Awais and Savena Surana – World Wide Web Foundation](https://webfoundation.org/2021/03/web-champion-arda-savena/) [↑](#footnote-ref-35)