

## **Cultural rights: what are these and why are they important for women's right to development?**

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The right to development was recognized 25 years ago in the 1986 UN Declaration, and reaffirmed by the 1993 World Conference on Human Rights as a 'universal and inalienable right and an integral part of fundamental human rights'. As all rights, the right to development is interconnected and interdependent on the enjoyment of all other rights. Seen as a process, the right to development is described as:

*"the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development, fair distribution of the benefits resulting therefrom,"* [Article 2.3]

Article 1 holds that "every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized." Article 6 clarifies that this must be "without any distinction as to race, sex, language or religion," and underlines that "equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights." [para 1]

From the perspective on my mandate the question that needs exploration is why the four-page Declaration mentions cultural rights and development ten times. Partly, this is because the right to development derives from the International Covenant on Economic Social and Cultural Rights (ICESCR) that states in its preamble that "the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights." It also specifies the right of everyone to take part in cultural life [Article 15.a] and that, by virtue of having the right of self-determination, all people have the right to "freely pursue their economic, social and cultural development." [Article 1.1]

Cultural rights are recognized in the other instruments of the International Bill of Human Rights. The Universal Declaration of Human Rights (UDHR) avers in Article 27 (1): "Everyone has the right freely to participate in the cultural life of the community." The International Covenant on Civil and Political Rights (ICCPR) provides for the right of minorities "to enjoy their own culture, to profess and practice their own religion, or to use their own language." [Article 27] Despite

this early recognition, cultural rights have remained relatively underdeveloped. This is beginning to change and there is now a growing realization that, in many ways, cultural rights are pivotal to the recognition and respect of human dignity that lies at the very core of all human rights.

Encompassing important freedoms relating to matters of identity, cultural rights protect the development and expression of individual and collective world visions. The increasing recognition accorded cultural rights is reflected in the day of General discussion devoted to the subject in 2008, a General Comment elaborated by the Committee on Economic Social and Cultural rights (CESCR) on the right to take part in cultural life<sup>1</sup> and, of course, the establishment of the Independent Expert in the field of cultural rights, for which I am the first mandate-holder.

In the context of international human rights law, my mandate provides a new framework to revisit both culture and human rights in order to advance human rights as a whole, including the gender equality agenda, building on work done, amongst others, by the United Nations Educational, Scientific and Cultural Organization (UNESCO) which has a particular focus on culture.<sup>2</sup> My appointment in November 2009 has made me acutely conscious of the general lack of awareness about and focus on cultural rights. Therefore, before turning to why cultural rights are relevant to women's right to development, it is important to share some basic information on cultural rights, starting with cultural diversity and gender.

### **Culture, Cultural diversity & Gender**

There is no official definition of cultural rights, and as the first expert for this mandate, an immediate task is to distinguish which rights may be considered to be cultural and to further define the content of such rights. There is no official definition of "civil", "political", "economic" or "social" rights either for that matter and human rights instruments are living instruments.<sup>3</sup> Hence, the intention is not to evolve a definitive definition of cultural rights which could narrow the scope of such rights and impede an evolutionary process, but to undertake this task in an exploratory manner that allows sufficient room for new developments and interpretations to arise, based on the emergence of "new situations, demands, or foci of oppression".<sup>4</sup> I am tasked with:

- 1) Identifying best practices as well as obstacles in the promotion & protection of cultural rights;
- 2) Studying the relationship between cultural rights and cultural diversity; and
- 3) Incorporating a gender and disabilities perspective in my work.

Studying the relationship between cultural rights and cultural diversity presupposes an understanding -- at least a working definition -- of "culture" on which views differ views: from

limited culture to what has been termed “high culture,” i.e. to the “grand traditions” of fine arts, music, and architecture to considering any manmade object as part of culture, as distinct from the natural world. I take the broader anthropological view, seeing culture as the manner in which humanity expresses itself – whether through ‘high’ or ‘popular’ culture. Less about specific manufactured objects than about the meanings assigned to these. More than the food we eat, it encompasses perceptions of and interaction with other people *and* nature alike. Culture is a prism through which we perceive, respond to and engage with the world around us; it *is* a way of life and this way of life is to be kept in mind when referring to cultural rights.

Gender is central to all community life and thus integral to every culture. Community life and a sense of self always encompasses a gender perspective with its normative rules and prescriptive behaviour simply because there are only three incontrovertible facts of life that all communities, regardless of economic and political systems, modes of production and any other distinguishing feature, have to explain for themselves: the fact of birth, the fact of death and the fact that there is more than one sex.

It is well to remember that neither culture nor human rights are monolithic or static. Both are constantly evolving in ways that influence each other. Cultural diversity is not to be confused with cultural relativism, however. The 2001 Universal Declaration on Cultural Diversity notes that:

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

I would like to underline three points on the question of cultural diversity made in my first report:

1. **Culture is never static.** It is not an object like an earthenware pot handed from one generation to another. Culture is produced and reproduced through the minutia of our lives, everyday actions and exchanges in the social, political, and economic arenas. It is a constantly evolving reaffirmation of a sense of self – of the values and modalities considered to be essential from a particular community’s understanding of what it means to be human, what nature and life mean. Even when they may appear static, values, traditions and practices are in constant motion reaffirmed or rejected, reproduced faithfully or changing sometimes rapidly sometimes slowly, but never static.

The challenge lies in ensuring that all cultures embrace a human rights perspective as integral to their way of life.

2. **No society ever has just one singular culture.** Every society has *both* a dominant culture *and* multiple subaltern cultures (or subcultures). The dominant culture reflects the viewpoint and interests of those in power at a particular time; subaltern cultures represent the viewpoints and perspectives of those who do not accept, or do not live according to, the 'normative' behaviour defined by the dominant culture. Minorities, individuals living on the periphery, and communities outside the mainstream all have distinct cultures. So too do the poor who are often not a minority. In many societies, women have subcultures – sometimes even their own languages as the case in north India and China, for example. Almost inevitably, youth develops its own cultural variation. Communities of shared cultural values extend beyond what UNESCO calls 'social identities', i.e. communities based on a common religion, language, race, or ethnicity. They encompass groups who consciously reject the dominant cultural paradigm, new evolving cultural communities, cultures of resistance, including communities of human rights activists, such as those focusing on women's rights.
3. **Identity is not singular.** Each individual is the bearer of a multiple and complex identity, making her or him a unique being. Individuals identify themselves in numerous ways. Hence, they participate simultaneously in several communities of shared cultural values.

As stressed in my first report,<sup>5</sup> a human rights perspective requires that all efforts to promote cultural diversity recognize internal diversity; that they respect, protect and promote the rights of all individuals within all communities of shared cultural values. Further, people must have the freedom to participate in as many or few communities they want to; be able to critique their own community and that of others; have the freedom to join and leave communities at will. Protecting diversity across and within communities becomes all the more important in the context of the politicization of cultural and religious identity being witnessed today.

In this respect it is well to reiterate that international human rights law obliges States to uphold, protect, and promote the human rights of all individuals under their jurisdiction without discrimination. The 1993 Vienna Declaration and Programme of Action underline that while the significance of national and regional particularities and various historical, cultural and religious backgrounds are to be borne in mind, it is the duty of the States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms (Part I, Section 5). Amongst other things, this means that no one may invoke either cultural diversity or religious belief to infringe upon or to limit any human rights guaranteed by international law.<sup>6</sup>

### ***What are cultural rights and why are they important for women?***

Since all human beings are embedded in a, or several, cultural contexts, human rights never exist outside a cultural context while culture, as stated earlier, is in constant recreation in

everyday life. As such culture is a primary site of contestation for all rights, including cultural rights. The Independent Expert mandate, it should be clarified, is not to preserve culture, but to ensure the conditions exist for all people to exercise their cultural rights, starting with the right to take part in cultural life without discrimination and to identify, in this context, what obligations devolve on states.

In its general comment 21,<sup>7</sup> the Committee on Economic, Social and Cultural Rights (CESCR) has elaborated three distinct aspects of the basic right to participate in cultural life:

1. The right to **access** cultural life
2. The right to **take part** in cultural life
3. The right to **contribute** to cultural life.

For many women the right to access starts with the basic right of freedom of movement as well as the right to information without encumbrances; it includes the right to access not only one's own culture but that of others, implying the ability to freely engage with people, ideas and events beyond their own particular community.

The right to take part in cultural life includes the right not to participate in particular traditions, customs and practices that infringe upon human dignity and individual rights. It means the right to choose to be affiliated with one or more cultural communities, to join and leave these at will, including religion and religious groupings, without fear of violence and punitive actions.

The right to contribute to cultural life implies a host of other rights such as the freedoms of expression, association and thought, the right to education, to be included in cultural activities and to have the means and resources to access, participate in and contribute. It means the right to critique existing cultural norms, traditions and traditional values as well as to create new cultural meanings and norms of behaviour, and the right of bodily and intellectual integrity.

My second report focuses on the right to access and enjoy cultural heritage which I see as inextricably linked to the right to participate in cultural life. Indeed, it is difficult to see how one can participate in cultural life, much less contribute to it, without accessing one's own cultural heritage as well as that of others. Cultural heritage, it must be emphasized, is not confined to tangible heritage, e.g. constructed monuments or objects and the natural sites of cultural landscapes, but equally encompasses intangible cultural heritage.<sup>8</sup> Intangible heritage includes cultural expressions and traditional knowledge systems, historical narratives, practices and customs, and the interpretation of both tangible and intangible heritage.<sup>9</sup> Three points need to be kept in mind:

1. Cultural heritage consists of things inherited from the past that are considered to be of such value or significance today, that individuals and communities want to transmit them to future generations;

2. Cultural heritage is thus linked to human dignity and identity, so that accessing and enjoying cultural heritage is an important feature of being a member of a community, a citizen and more widely a member of society;
3. But, like culture itself, cultural heritage is constantly interpreted and re-interpreted in the transmission from one generation to the next.

This is important because if, as generally accepted, cultural heritage consists of things inherited from the past considered to be of such value or significance today, that individuals and communities desire to transmit them to future generations, the question is: who assigns meaning and who decides what is important enough to be transmitted, by whom to whom?

The value of viewing the access and enjoyment of cultural heritage as a human right is that it promotes the right to be part of selecting what constitutes heritage, to participate in the interpretation of meanings assigned to heritage as well as in decisions about what should be passed on to future generations, *and* with what meaning. Heritage inevitably will have elements from the past that reflect a darker side of a community's history, which may be remembered for the lessons they provide but not celebrated.

In terms of human rights, which must always consider the most marginalised and vulnerable populations, the crucial question is: who speaks for the community? Who assigns the meaning to different aspects of life? Who decides what is important, what is to be kept and what is to be discarded? Women of course rarely - if ever - define the dominant culture because they do not have the economic, social or political power to do so, remaining on the peripheries of decision-making. Decision-making in both personal lives and public arenas is thus a central aspect of cultural rights. For women to enjoy cultural rights, to participate in cultural life without discrimination, they have to be brought from the margins of subcultures to a central position so as to equally define the communities of shared cultural values they choose to belong to.

### **How is this relevant for the right to development?**

I would argue that it is in fact impossible for women to exercise the right to development in the absence of cultural rights.

The 1986 Declaration on the right to development envisages development as a comprehensive economic, social, cultural and political process that everyone is entitled to participate in, contribute to, and enjoy, within which all human rights and fundamental freedoms can be fully realised. [Article 1] Cognisant of the need to tackle the historical discrimination against women, the declaration calls for "effective measures" to "ensure women have an active role in the development process" [Article 8] in which the human person must be the central subject of development, active participant and beneficiary [Article 2].

The right to development, it has been emphasized, requires a development process that is transparent and accountable, and equipped with participatory non-discriminatory mechanisms

that ensure equity in decision-making as well as in sharing the fruits/outcomes of a process of development.<sup>10</sup> For women, development cannot be participatory and non-discriminatory unless and until women enjoy the right to access, participate in and contribute to cultural life on an equal footing.

That there is a need to rethink the development paradigm, as implicit in the Declaration on the right to development, is hardly news for women. The failure of existing development paradigms to equally benefit girls and women as boys and men and to address their needs equitably has not only been noted and well-documented, but protested against for decades. The WID, WAD and GAD<sup>11</sup> frameworks were attempts to address the inequities and discriminatory outcomes of planned development interventions. The call to rethink development is clearly visible in the 1995 Beijing Platform for Action which emphasises the necessity of an integrated human rights approach and empowering rights-holders to bring about gender equality, development and peace. Today, empowerment has become the new buzzword. Unfortunately, the more empowerment has been used in development arenas, the more it has become divorced from its root 'power'.<sup>12</sup> And yet, there is no question that to be empowered requires the exercise of the full gamut of human rights.

Development planning, when driven by a perceived need to increase productivity and accelerate economic growth regardless of how this may impact existing disparities and reinforce discrimination, exasperates inequities and violations of human rights. Much of development planning continues to be conducted with highly inadequate input, if any, from women, even when they are the primary intended beneficiaries. And, it is a fallacy to suggest that economic, social and cultural rights are more important for the global south than civil and political rights. Indeed, the Declaration on the right to development repeatedly stresses the vitality of the interconnectedness and interdependence of all rights.

Women's exclusion from both decision-making *and* benefits of development processes derives directly from women being denied the right to determine their way of life, to access, participate in and contribute to cultural life without discrimination and fear, i.e. cultural rights. The numerous structural barriers to the right to development relate not only to the field of economics or politics, but also to the political economy of culture itself. As said earlier, culture is always a site of, often fierce, contestation. The best equipped health facilities cannot fully benefit women when women's access to such facilities is dependent on obtaining the permission or facilitation of male relatives. Facilities will fail to address the needs of adolescent girls if parents fear that taking their teenage daughters to health facilities will lead to community gossip that, in turn, will adversely impact their marital prospects. Cultural considerations at the community and family level thus commonly override health priorities and state facilities.

Because women are unable to exercise their cultural rights, which includes shaping the values, practices and priorities of their families and communities, women's disadvantaged status - consciously or unconsciously - underwrites many development processes as well as unhelpful business practices. As long as planners desiring to accelerate economic growth view women as economically 'unproductive', no investment will be made on girls and women, and what investments are made will be seen as charitable acts. Business enterprises will continue to use society's patriarchal patterns to exercise control over women workers in the workplace. Examples include imposing male supervisors over female workers and paying less for the same work under the excuse that, as one author put it "women only work for lipstick".

Research shows that to claim rights, women must first believe they have a right to be rights claimants. Consequently, so long as socialisation processes promote subservience, obedience and silent suffering as positive female attributes while discouraging self-assertiveness and free thinking, women will not enjoy the right to development. Kept ignorant of their rights, women can internalise oppression, eventually coming to believe that they are subservient to males and that a disempowered state is 'natural' to the female person.

There is no earth of challenges to ensuring the right to development; here I shall only point out three I believe to be foundational from the perspective of women's rights:

- 1) It is crucial to overcome the strongly entrenched but completely misguided notion that development can be separated from human rights and addressed in isolation. This historical disjuncture is reflected in government structures and planning and implementation processes, it is evident in civil society organizations some of which focus on human rights and others on service delivery; it is also visible within the UN system. For the right to development to be realized, this disjuncture must be resolved. As suggested by the Declaration on the right to development "*human development [must be] the central subject of development*", [article 1] and "popular participation in all spheres as an important factor in development and in the full realization of all human rights" must be encouraged. [article 8.2]
- 2) Women's right to development most vividly illustrates the need for a holistic approach to both development and human rights. Not only is planning dominated by men, it is inevitably sector-specific, addressed for example in the field of health, education, infrastructure, sports, etc. which is how governments are organised. In reality, however, people's lives are not divided by sectors, we all live complicated lives in which the impact of one domain impacts others and I have tried to illustrate the interconnections above, using the example of health. Women need to be empowered within their homes in order to access the benefits of development services.

- 3) In Asia as in many other countries located in the global South, a separate problem arises if those responsible for developing and implementing programmes for women's development, and especially empowerment, view these as externally imposed agendas to be accommodated to receive financial aid, rather than as essential for the country's well being. Consequently, while many planning documents now reflect the language of a rights-based approach to development, this has not translated into ownership and action.

Demanding women's cultural rights provides a new framework for promoting all other rights, including the right to development. In this regard, it is of paramount importance to identify what States' obligations are in terms of promoting, protecting and fulfilling women's cultural rights, including all those rights which are necessary for accessing, participating in and contributing to cultural life. These include: freedom of movement, association and thought, to critique and leave communities without fear of punishment, to join and to create communities of shared cultural values, to be equal partners in deciding what is cultural heritage and how this should be transmitted and what should be eliminated as contravening human dignity and rights; to have the wherewithal to contribute equally to the cultural life of the communities they chose to be members of.

#### *Scientific progress and its applications*

The right to development also directly relates to the mandate on cultural rights through the right to benefit from scientific progress and its applications (REBSP) enshrined in Article 15 of the ICESCR. REBSP is a virtually unexplored right which I am investigating for my next report. The right covers all sciences: life, physical, behavioural and social, as well as engineering and the health professions. The realization of this right requires steps be taken to ensure that

- a) All people, especially marginalized groups, have access to the benefits of scientific knowledge, progress and its applications that are necessary for leading a dignified life, as well as to the information required for engaging in decision-making processes regarding proposed areas of research, development and applications;
- b) Scientific research is undertaken and applied in a manner that does not give rise to any violations of human rights;
- c) Scientists enjoy the freedom indispensable for research, including the right to freedom of thought, to hold opinions without interference, and to travel; and
- d) Infrastructure for scientific research exists, bearing in mind financial and human resources, including the international cooperation.

If, as indicated by the Declaration, human development *is the central subject of development* and the right to development requires transparency, popular participation and non-

discriminatory, this raises a number of questions regarding scientific research and its applications.

1. Who decides the areas of research to be undertaken?
  - a. Are the needs of women, the poor and other marginalized groups adequately addressed by research? Are sufficient resources being invested to respond to the needs of persons with disabilities? Always a concern, this last is even more vital in Asia because of the devastation caused by an unprecedented number of tsunamis, earthquakes and floods in the last decade that have resulted in women suffering double or triple burdens.
  - b. Are women sufficiently present in all decision making bodies that determine priorities for research and its applications? Many years ago, a friend commented that had women had been in charge of scientific research, childbirth would have become painless decades ago. It was ridiculous, she said, that with men up on the moon, so many women continued to suffer.
2. How does one ensure that the purpose and manner in which research is conducted is in consonance with human rights?
  - a. What mechanisms have been put into place to ensure that scientific research is in keeping with and upholds human rights? This is of particular concern regarding medical research and its impact on those who participate in such research – it is often the marginalised who offer themselves as participants.
  - b. What measures exist to ensure that private as well as public research institutions safeguard any participants of scientific research?
  - c. What remedies exist that allow people access to redress and relief when scientific research or its applications have unpredicted negative impact?
3. How can one ensure that the benefits of scientific application are shared equitably without discrimination?
  - a. In terms of agricultural, for instance, what typically happens is that as soon as there is a breakthrough on some basic technology, what used to be unpaid women's work is magically transformed into a paid male task. For example, the labour consuming and physically arduous task of fetching water is a woman's responsibility in most rural communities, but should a tubewell be installed, this becomes a male prerogative, and often a paid input. Alternatively, scientific progress can fail to benefit women if planners' stereotypes result in training on new technologies being given to men instead of the women who actually do the job. Similarly, health clinics and water systems have been installed in areas too far for women to walk to or in areas women rarely frequent. Women need to be

included at all stages of planning, implementation and monitoring; the informational lacuna regarding women's actual work need to be overcome and misconceptions about the division of labour and gendered responsibilities laid to rest.

- b. What mechanisms exist to ensure that local traditional knowledge systems of women (and other populations) are not exploited by commercial enterprises without their consent and participation?

I shall be circulating a questionnaire on these issues to all states, national human rights institutions, as well as experts, research institutions and civil society organizations. Responses will help to provide key inputs for my next report on exploring the right to benefit from scientific progress and its applications.

In concluding, I would like to reiterate that demanding women's cultural rights opens a window of opportunity for reinvigorating the demand for all human rights for women, including the right to development. I believe it is essential to shift the paradigm from culture as obstacle to one of demanding women's cultural rights and transposing women from the periphery of decision making to the centre. I am convinced that this shift is critical to most of the objectives of the present conference which seeks to strategise on how:

- To increase capacity of women in Asia Pacific to claim and advance women's human rights by engaging with international human rights mechanisms;
- To articulate and advance the right to development using feminist analyses (including, but not limited to, the right to benefit from scientific progress and its applications, health, land, participation and peace);
- To translate international human rights commitments into national, regional and international development policies that enable the enjoyment of women's human rights;
- To enable women of Asia Pacific to have their voices heard at the UN by having direct, face-to-face access to the mandate holders.

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<sup>1</sup> Committee on Economic, Social and Cultural Rights general comment No. 21; Day of General Discussion on the right to take part in cultural (E/C.12/40/7).

<sup>2</sup> Amongst these are the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions and the Universal Declaration on Cultural Diversity, as well as the *UNESCO World Report 2009: Investing in Cultural Diversity and Intercultural Dialogue* (Paris, 2009).

<sup>3</sup> First report of the Independent Expert in the field of cultural rights, A/HRC/14/36

<sup>4</sup> Patrick Thornberry, "Cultural rights and universality of human rights", submission to the Committee on Economic, Social and Cultural Rights, day of general discussion on the right to take part in cultural life (E/C.12/40/15), p. 6.

<sup>5</sup> A/HRC/14/36

<sup>6</sup> Also enshrined in the Universal Declaration on Cultural Diversity (Article 4), and reiterated in resolution 10/23 of the Human Rights Council (para. 4)

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<sup>8</sup> Tangible and intangible heritage are not water-tight compartments for heritage is about the *significance* attached to things received from the past, as well as its further development and reinterpretation.

<sup>9</sup> General comment 21 of CESCR also stresses the importance of having access to one's own cultural heritage and to that of others as well as the interconnectedness of States' obligations to respect and to protect freedoms, cultural heritage and cultural diversity. (General comment No. 21, Right of everyone to take part in cultural life (Art. 15, para. 1 (a) of the International Covenant on Economic, Social, Cultural Rights), in particular paras 27 (d) and 50.

<sup>10</sup> E/CN.4/2001/WG.18/2

<sup>11</sup> WID (Women in development), WAD (Women and development) and GAD (gender and development) shifted perspectives from trying to include women in development planning and processes; to a critique that women were not excluded from development but from its benefits, to the need to consider the differentiated impact of gender in development processes.

<sup>12</sup> Vivienne Wee and Farida Shaheed. *Women empowering themselves: a framework that interrogates and transforms*. Hong Kong: Research Programme Consortium on Women's Empowerment in Muslim Contexts, Southeast Asia Research Centre, City University of Hong Kong. 2008.