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**Human Rights Council**

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Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

 Cultural rights: Capturing the state of the art

 Report of the Special Rapporteur in the field of cultural rights[[1]](#footnote-2)\*

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| *Summary* |
|  In her first report to the Human Rights Council, the Special Rapporteur in the field of cultural rights, Alexandra Xanthaki, presents an overview of her vision for the mandate. Building on the important work conducted by her predecessors, the UN Special Rapporteur highlights important aspects in the evolution of the nature and scope of cultural rights and reflects on the corresponding States’ obligations. |
|  In the report, the Special Rapporteur highlights the positive nature of culture for the individual and the empowering force of cultural rights. The Special Rapporteur commits to working more closely with United Nations bodies in promoting cultural rights and cultural diversity, emphasises the importance of good practice and identifies a preliminary list of issues deserving more attention that she intends to address during her tenure. |
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 Report of the Special Rapporteur in the field of cultural rights

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 I. Introduction

1. The mandate in the field of cultural rights which is part of the Human Rights Council Special Procedures was first established in 2009. In October 2021, Alexandra Xanthaki was appointed as the third expert to hold the mandate. The expert is delighted to take over this mandate, which has been substantially enhanced by the visions, commitment, and tireless work of both her predecessors, Farida Shaheed and Karima Bennoune. The expert would like to express her immense appreciation and respect to both for their tangible impact on preventing and protecting cultural rights and cultural diversity.

2. Cultural rights have been substantially clarified in the last few decades. This has enabled the international community to better understand the wide breadth of human rights issues that relate to cultural rights and cultural diversity. Yet, human rights standards are ever-evolving and challenges ever-present; and cultural rights need to be more prominently present in human rights debates. Therefore, reflection on the scope of these rights and action on better protecting them are still very much needed.

 II. Legal framework

3. Human Rights Council’s Resolution 10/23, which sets out the original and continuing scope of the mandate, also sets the contours of the legal framework that the Special Rapporteur will use.

4. At the core of the legal framework relating to this mandate is Article 27 of the Universal Declaration of Human Rights which recognises that ‘everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.’ Article 27.2 also recognises the right of everyone ‘to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.’ Article 15 of the International Covenant on Economic, Social and Cultural Rights (‘ICESCR’) creates legally binding obligations to the 171 States Parties to this Convention to ‘recognize the right of everyone: (a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications; (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author’ (art. 15.1). The Convention requires States Parties to take specific steps, legal and other, ‘to achieve the full realization of this right’ including measures ‘for the conservation, the development and the diffusion of science and culture’ (art. 15.2). Steps must also be taken to guarantee the ‘freedom indispensable for scientific research and creative activity’ (art. 15.3) and to ‘recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields’ (art. 15.4).

5. The understanding and use of these provisions in conjunction with other human rights provisions is essential to fully understand the remit of this mandate. Capturing the dynamic and ever-evolving nature of human rights standards in the field of cultural rights and cultural diversity is an important element of the Special Rapporteur’s work.

6. An important focus of the Special Rapporteur will be the realisation of substantive equality in the exercise of cultural right. In this, she is guided by Article 27 of the International Covenant on Civil and Political Rights (currently ratified by 173 states) which requests States Parties to ensure that persons belonging to 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.’ The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the United Nations Declaration on the Rights of Indigenous Peoples act as interpretative tools for article 27ICCPR and clarify the need for positive steps to be taken for the realisation of the rights recognised in article 27 ICCPR.

7. Substantive equality is also the aim of the obligations of the 182 States Parties who have ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD): there should be no discrimination in purpose or in effect in the cultural field based on race, colour, descent, or national or ethnic origin (art. 1). The need to eradicate discrimination in cultural activities has been raised by several United Nations human rights bodies, including in connection to migrant workers,[[2]](#footnote-3) lesbian, gay, bisexual, transgender and intersex persons[[3]](#footnote-4) and persons with disabilities.[[4]](#footnote-5) The Committee on the Elimination of All Forms of Racial Discrimination already noted the importance of cultural rights in protecting vulnerable groups to restore the balance of power among the components of society, promote intercultural understanding and tolerance, help deconstruct racial stereotypes, facilitate the free exchange of ideas and offer alternative points of view and counterpoints.[[5]](#footnote-6) Importantly, States Parties must make no distinctions between citizens and non-citizens (art. 1.2 ICERD) and should (not merely could) take concrete measures, including positive measures, for the development and protection of the rights of vulnerable groups in the cultural field (articles 1.4 and 2.2 ICERD). The Human Rights Committee has also recently urged states to ‘strengthen awareness-raising efforts aimed at promoting respect for human rights and tolerance for diversity, revisiting and eradicating stereotypical prejudices’.[[6]](#footnote-7) The Special Rapporteur will follow the example of United Nations bodies, and adopt an intersectional approach in her work, highlighting the effects of multiple grounds of vulnerability.

8. The Special Rapporteur is convinced that the protection of cultural rights and cultural diversity can only be promoted through collaborating with different bodies and agencies of the United Nations. She is committed to deepen these links and invites UN bodies to engage with her mandate on issues touching on cultural rights and cultural diversity.

 III. The positive force of culture and cultural diversity

9. Culture is much more than the sum of products. It is a process and a way of life (A/HRC/14/36, para. 5). It permeates all spheres of life and is as essential to human experience as air, water, shelter and security. It is at the core of being human: it is how we assign meaning to our lives and understand our human, natural and manufactured environment, as individuals and collectives. Culture embodies the responses human beings give to the big challenges in life, such as life and death, parenthood and childhood, growing, coming of age and getting older. Culture embodies the ways we communicate with one another and organise social life – through the development and transmission of language, values, gestures, creation of norms, rules and institutions. And it is about the relationship we have and develop with nature and the environment we live in – through specific ways of obtaining and transforming the food and water resources surrounding us, to face a changing climate and devise adapted shelter and ways of life.

10. The Special rapporteur wants to stress that culture is a positive element and a positive drive for the realisation of human rights. Cultural resources and experiences is the way we build our identity, our sense of self and our place in the world. The gradual understanding of the concept of culture as ‘a way of life’ has democratised the way cultural rights are reconfigured as the emphasis has moved from objects of beauty to everyday expressions of identity. It emphasises their importance in recognizing the human dignity expressed in all types of interactions, from communicating with one another to inhabiting a territory, from creating and transmitting knowledge to ensuring an adequate standard of living, from caring for loved ones to engaging in social, economic and political exchanges.

11. Everyone has multiple cultural resources that shape them. These may derive from their ethnic backgrounds, their minority status, their family values, their continent’s priorities; and ultimately, our common culture as humankind. Cultural frameworks form concentric, overlapping and disorderly formed circles around the individual. At times, the different elements converge and at other times, they contradict each other. Everyone is in “a constant contradictory state of becoming, in which both social institutions and individual wills are deeply implicated” (A/67/287, para. 11). It is up to the individual’s agency to decide which elements to practise and adopt.

12. Cultural diversity is the multiplicity of these processes and frameworks. It is as essential to sustainable human development and dignity. When it is not provided with possibilities to grow, change, adapt and evolve and with a diversity of inputs to do so, any ecosystem – human, cultural, economic, linguistic, natural, social or political – loses its dynamism, its elasticity and capacity to adapt. Cultural diversity is an essential resource for development, democracy and the progress of science; and ultimately for peace.

13. The recognition and protection of cultural rights is thus a tool of affirmation one’s identity and ultimately, a tool of empowerment. Individuals are empowered by learning more about themselves and our world through access to cultural activities and products of cultural heritage, by acquiring knowledge of history and civilizations, by getting emotionally excited or perplexed by the arts, by performing the customs of their cultures and by reflecting on cosmo-theories, theirs and those of others. Moreover, the Special Rapporteur puts emphasis on the benefits of cultural rights for all individuals and communities. She looks forward to learning and sharing positive examples of empowerment through cultural rights and of good practice by States and non-state entities in protecting and developing cultural rights and/ or protecting human rights through culture; and invites all shareholders to share such experiences and examples with her.

 IV. Taking stock and setting priorities

14. The Special Rapporteur is committed to engage with all aspects of culture and the related rights. As stated by her predecessors, the mandate on cultural rights does not aim to protect culture or cultural heritage per se, but to promote the conditions allowing all people, without discrimination, to access, participate and contribute to all aspects of cultural life in a continuously developing manner.

 A. Protecting cultural rights relating to monuments, objects and sites

15. Tangible manifestations of culture have been the focus of the report on the intentional destruction of cultural heritage as a violation of cultural rights, in both conflict and non-conflict situations, by both States and non-state actors ([A/HRC/31/59](https://undocs.org/en/A/HRC/31/59)). The fight against the destruction of cultural heritage was substantially strengthened by the (2006) Al-Mahdi judgement of the International Criminal Court, where for the first time the Court convicted an individual for war crimes associated with the destruction of cultural heritage. Ahmad Al Faqi Al Mahdi, a member of the Ansar Dine armed group operating in Mali, was found guilty of the war crime of attacking historic and religious buildings in Timbuktu. He was sentenced to nine years in prison. The Special Rapporteur wants to support further attempts to eradicate the intentional destruction of cultural heritage and invites the civil society to share such practices with her.

16. The Special Rapporteur believes in the need to engage in further reflection on ways to redress the loss or damage of cultural heritage of communities and groups, particularly -but not only- threatened minorities, indigenous peoples and victims of assimilationist policies. In addition to restitution, the Special Rapporteur is eager to explore alternative ways of redress including the sharing of the possible benefits that the separation of the cultural heritage has had from its original communities.

17. The Special Rapporteur wants to continue the work of the mandate on historical and commemorative narratives and further discuss majority biased, elitist and/or one-sided historical narratives promoted by the State under the banner of strengthening its national identity. The mandate will pay special attention to the problem of weaponizing the teaching of history to support State narratives of monoculturalism. Positive changes in the teaching of history must be highlighted and shared, as operationalisations of provisions in several minority rights instruments, including article 4.4 of the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, article 12 of the Council of Europe Framework Convention for the Protection of National Minorities, and case-law of regional human rights bodies. Thanks to the work of the Special Rapporteur on Truth, Justice, Reparations and Guarantees of Non-Recurrence, who is increasingly emphasizing the role of historical narratives and memorialization in transitional justice processes, stakeholders active in these areas have now two mandates to promote and protect their rights.

18. The rights of professionals working in the area of cultural heritage have been addressed by her predecessors. History and heritage professionals and their specific challenges in terms of cultural rights were highlighted in the reports on access and enjoyment of cultural heritage (A/HRC/17/38, 2011), on the intentional destruction of heritage (A/71/317, 2016), on the writing and teaching of history (A/68/296, 2013) and on memorialization processes in post-conflict and divided societies (A/HRC/25/49, 2014). Discussion on cultural rights in the field of heritage is also pursued through the Human Rights Council, where a regular resolution associating this mandate of Special Procedure provides for further involvement of many stakeholders concerned in this area.[[7]](#footnote-8)

19. The Special Rapporteur is looking forward to contributing to these continuing debates in the coming years. She is particularly interested in the rights of marginalised groups to their cultural heritage. Rights of refugees, migrants, minorities and indigenous peoples to their cultural heritage and ways to be operationalised require further discussion. The active participation of and consultation with members of these groups in all discussions relating to their cultural heritage is unfortunately not always in place. Discussions between experts, curators and professionals with the owners of the cultural heritage can be improved. Difficult discussions about cultural heritage such as monuments, street names etc that are vestiges of colonialism or slavery also need to be further explored. The Special Rapporteur would like to invite all stakeholders to share good practices and raise issues of concern on these issues.

20. The rights of artists and artistic freedom have also been the focus of the mandate. Though the reports on the right to freedom of artistic expression and creation (A/HRC/23/34, 2013), on memorialization processes of the events of the past in post-conflict and divided societies (A/HRC/25/49, 2014), on copyright law and policy from the perspective of the right to science and culture (A/HRC/28/57, 2015) and on cultural initiatives to creating and developing right-respecting societies (A/HRC/37/55, 2018), previous mandate holders have provided important insight into the conditions of artists and cultural operators, the specific challenges they face in exercising their cultural rights and in making cultural and creative processes accessible to others. This included some discussion of their socio-economic situations. Several mechanisms, including the Human Rights Committee,[[8]](#footnote-9) have also analysed the content of freedom of artistic expression in all its forms and manifestations, as a fundamental right inherent to all persons and an indispensable requirement for the existence of a democratic society.

21. The Special Rapporteur would also like to focus on the rights of artists who belong to marginalised sections of the population, including migrant artists, lesbian, gay, bisexual, transgender and intersex artists and artists with disabilities. An intersectional approach and collaboration with other mandate holders is of critical importance on this issue. The Special Rapporteur has been particularly impressed with the International Cities of Refuge Network (ICORN) that have hosted more than 200 persecuted artists and writers since 2006. More such initiatives to protect vulnerable artists need to be highlighted.

22. The Special Rapporteur is also looking forward to gathering examples of artistic work that promotes human rights, raises concern on specific human rights matters and explores difficult human rights issues. Highlighting art as a means of promoting human rights, and protecting the rights of those who do so, is important.

23. The rights of scientists have also been considered in the reports on the right to benefit from scientific progress and its application (A/HRC/20/26, 2012), on the implications of patent policy for the human right to science and culture (A/70/279, 2015) and on the impact of the coronavirus (COVID-19) pandemic on cultures and cultural rights (A/HRC/46/34, 2021). However, there seems to be room for further detailed work on academic freedoms and the rights of stakeholders concerned to interact with this mandate. The Special Rapporteur will work with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and civil society to clarify the content of academic freedoms and the obligations of stakeholders.

 B. Protecting cultural rights relating to intangible culture

24. The Special Rapporteur is also committed to exploring further the benefits of protecting rights to intangible culture. The rights to expressions, cultural practices, cosmoviews, values, approaches, customs, traditions and their manifestations need to be protected for the well-being, health and development of the individual, the social cohesion of the society and the evolution of civilization. Disrespect of such elements of the identity and violations of the above-referenced rights have had a lasting impact in several segments of the population; many indigenous communities carry the scars of such disrespect. At times, such violations have been happening under the pretext of protecting human rights or ‘educating’ the persons whose rights were being violated. These narratives are recently used in the migration debate, when host States affirm that migrants allegedly needed to be ‘educated’ about the ‘rule of law’. Such policies and attitudes could be an expression of covert and insidious cultural superiority, which ignores and despises the value of every culture. The end of historical injustices and disrespect of specific cultures, explicitly or implicitly, have to be pushed ahead and difficult discussions about redress for the gross violations committed have to be initiated. The collective nature and elements of cultural rights, as recognised by current standards in international law,[[9]](#footnote-10) is also part of the remit of the mandate.

25. At the same time, intangible culture has in some circles been mistakenly equated to traditional values, often set by elites, overwhelmingly by male-dominated elites. A top-down approach to culture does not satisfy current standards of international law. As the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has recently noted, religious interpretations, traditional values and patriarchal social constructs are used to restrict or repress cultural expression, including the artistic freedom of women and gender non-conforming individuals. Restrictions range from prohibiting women from performing or broadcasting their performances to suppressing lesbian, gay, bisexual, transgender, intersex, queer (LGBTQ+) and gender-nonconforming produced art and culture.[[10]](#footnote-11)

26. According to the Vienna Declaration and Programme of Action (1993), while the significance of national and regional particularities and various historical, cultural and religious backgrounds must 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, sect. 5). This entails, as enshrined in the 2001 Universal Declaration on Cultural Diversity (art. 4), and reiterated in resolution 10/23 of the Human Rights Council (para. 4), that no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope. Members of various cultural frameworks are the ones to decide in the first instance which practices actually do violate human rights; on the sustainability of their cultural practices and their coherence with current human rights. Through their interactions with other cultures, their continuous re-evaluation of new circumstances, needs and ideas, members of groups contribute to defining and shifting the contours of “cultures”. Cultures are not monolithic and must be encouraged to evolve in an organic way.

27. In order for cultural rights to flourish, States need to take measures to ensure a) a healthy civil society that is not afraid to question and revisit practices and interact with various groups; b) dialogue that recognises the value of cultural diversity; c) the protection of other human rights that allow individuals to challenge and reject their own cultural references and adopt other elements if they so wish; and d) the realisation of socio-economic rights and the guarantee of protection mechanisms that make such ongoing processes real and possible.

28. In celebrating the deeply positive impact of intangible culture, the Special Rapporteur is under no illusion about the possible conflicts between cultural rights and other rights. But such conflict should not be inflated and should not be used as an excuse to restrict human rights unnecessarily. The Special Rapporteur is satisfied that international law has provided guidance on how to balance conflicting rights, as will be discussed in section V of this report.

 C. Protecting cultural rights relating to the natural environment

29. In addition, the Special Rapporteur is fully committed to further unpack the relationship of natural diversity, the environment, and cultural rights. Identities and cultural realities are also built through the way individuals and communities interact with nature and their environment.

30. In the past, the mandate has considered the relationship between cultural rights and the environment, both natural and build, mainly in the reports dedicated to public spaces and advertising (A/69/286, 2014). The right to take part in cultural life and to pursue specific ways of life requires spaces. The mandate considered that public spaces are spheres for deliberation, cultural exchange, social cohesion and diversity (A/69/286, para.76), and that a human rights framework should be applied to the design, development and maintenance of public spaces. Authorities at all levels therefore have obligations to guarantee the collective and participatory character of public spaces of urban, rural, natural and digital nature (A/74/255, para.84).

31. Specific challenges that have been previously analysed also include the growing commercialization and privatization of public spaces. The overwhelming presence in the environment of advertising aiming to sell tends to shape and limit how individuals think, feel and act, reduce cultural diversity and the capacities of each person and group to choose and aspire to something else than a “lifestyle based on intense consumption that is detrimental to human societies and the environment” (A/69/286, paras. 46-48). Recommendations of this report on advertisement-free schools were taken up by the United Nations Children's Fund (UNICEF), with the aim to develop guidelines for public authorities on how to protect the rights of the child from the adverse impacts of marketing in schools. Also, in her report on climate change (A/75/298, 2020), the previous mandate holder highlighted how the disappearance of the built and natural environment of certain population, the traces of their existence and ways of life, due to climate change represented a threat to the survival of their specific cultural identities (para. 37).

32. The recent recognition of the right to the enjoyment of a safe, clean, healthy and sustainable environment re-focuses the attention of the mandate on the importance of cultural practices and traditional knowledge as tools for the realisation of the right to the enjoyment of a safe, clean, healthy and sustainable environment. Often, cultural rights relating to nature are neglected or side-lined for other needs and interests. At times, projects funded by international organisations and executed by transnational corporations do not prioritise spiritual and cultural rights of the persons and communities concerned. Certain cultural practices are also often unfairly attacked and deemed environmentally unfriendly (e.g. shifting cultivation, cultural burns, etc.) Also, development and sustainability are being interpreted serving a very specific way of life and the expertise of the people who inhabit the lands to be ‘developed’ is not sought, despite the guarantee of free, prior and informed consent. As the Special Rapporteur on the rights of indigenous peoples has noted, (A/HRC/45/34 (2020)), environmental impact assessments should give special consideration to the cultural rights of indigenous peoples and any such project should include meaningful consultations to obtain their free, prior and informed consent.[[11]](#footnote-12) The Special Rapporteur invites all stakeholders to send ideas for the strengthening of cultural rights in environmental issues and to share good practice and concerns on these matters with the mandate.

 V. The balancing of rights

33. Similar to most other human rights, cultural rights are not absolute rights. In her attempts to balance cultural rights with other rights or interests, the Special Rapporteur is again guided by international law. First, cultural rights cannot prevail over absolute rights, including prohibition from torture and other forms of ill-treatment, slavery and genocide. Harmful traditional practices that constitute torture and other forms of ill-treatment or slavery must be eradicated. Any violence including rape, and the toleration of harmful traditional practices is a violation of human rights, no matter what its origin.[[12]](#footnote-13) Any coercive practice of bonded labour, as reported by United Nations bodies against migrant domestic workers or indigenous individuals, cannot be tolerated by any State under any circumstances.[[13]](#footnote-14) States are under the clear obligation to take measures to eradicate such practices and to effectively investigate such cases.

34. Second, any balancing between cultural rights and rights other than absolute ones or other interests must follow the principles of legality, legitimacy and proportionality. In its evaluation of the communications submitted by Lovelace,[[14]](#footnote-15) Kitok[[15]](#footnote-16) and Länsman,[[16]](#footnote-17) the Human Rights Committee asked for the existence of a reasonable and objective justification for the prevalence of one right over the other; consistency with human rights instruments; the necessity of the restriction; and proportionality. It is argued that the complete neglect of one right –be it a cultural right or another right - for the full realisation of the competing right, would in most cases violate the principle of necessity.[[17]](#footnote-18) The core of each human right must be protected.

35. In accordance with the request mentioned in resolution 10/23 to integrate a gender perspective into its work, this mandate has continuously considered women as important stakeholders in the field of culture. The reports on the enjoyment of cultural rights by women on an equal basis with men (A/67/287, 2012) and on the impact of fundamentalism and extremism on the cultural rights of women (A/72/155, 2017) are important sources. Whether collective cultural rights must be balanced with women’s rights or other individual rights, the alleged victim must have the real ‘right to exit’ from the culture, if they do not agree with the values it embodies. To have this right, the State must provide some adequate level of physical security and socio-economic rights, including minimal education, health system and a secure society.[[18]](#footnote-19) Otherwise, the expectation of the individual to make a choice between their right to exercise a cultural practice and their other human rights is not real.

36. In balancing cultural rights with other rights or interests, the rights of vulnerable or marginalised sections of the population must take priority so that effective and real equality can be achieved. This is of particular importance when faced with the balancing of the right to development and the cultural rights of a community. Although at times such violations are caused by transnational corporations, and the Special Rapporteur follows with interests the developments in human rights responsibility of transnational corporations, ultimately the duty bearer to respect, protect and fulfil cultural rights is the State; and the State has to act towards the full implementation of such rights for all, without discrimination.

 VI. Indivisibility of cultural rights and other human rights

37. Cultural rights have firm links with other human rights, to the extent that, at times, the separation of such rights is difficult. For example, distinctions between cultural rights and religious rights are not always clear. The Special Rapporteur on freedom of religion or belief will discuss in his forthcoming report rights relating to spirituality, which transcend both religion and culture. The Special Rapporteur on the right to education has noted that the right to education should be viewed as a cultural right. She has noted: ‘The right to education – as the right of each person to the cultural resources necessary to freely follow a process of identification, to experience mutually rewarding relations his or her life long, to deal with the crucial challenges facing our world, to engage in the practices that make it possible to take ownership of and contribute to these resources – is, in substance, a cultural right.’[[19]](#footnote-20) The Special Rapporteur is delighted that close collaborations exist with some mandates, also made evident by the high number of joint communications, letters and statements, and is looking forward to further collaboration and combined resources on cross-cutting topics that will ensure even more cohesion in the messages and bigger impact.

38. In addition to the mandates that work on aspects of cultural rights in the broad sense, the indivisibility of human rights is evident in the cross-section of rights. As mentioned earlier, the promotion and protection of cultural rights and cultural diversity presupposes a healthy society where human rights defenders have their rights protected; a society where socioeconomic rights are protected; a society that strives to eradicate poverty. General Comment 21 (2009) of the Committee of Economic, Social and Cultural Rights links the right of everyone to take part in cultural life with the right to self-determination and the right to an adequate standard of living.[[20]](#footnote-21) General Comment 25 (2020) of the Committee on Economic, Social and Cultural Rights on science discerns linkages between poverty and access to scientific freedom: ‘Economic inequality hinders equal access to scientific education and to the benefits of scientific progress for people living in poverty.’ Covid-19 has exposed the need for promotion of other human rights, including the eradication of racism, the right to health, the rights of persons with disabilities and the rights of older persons. (A/HRC/46/34 (2021). Respect for cultural rights presupposes respect for human rights, and the protection of cultural rights promotes the respect for other human rights.

39. In all programmes promoting and protecting cultural rights, the voices of all are of paramount importance. The Special Rapporteur is committed to advocate for the rights of vulnerable and marginalised individuals and communities to participate in all phases and lead programmes relating to cultural rights. It is a real pity that in creating and delivering programmes aiming to limit the spread of the COVID-19 pandemic, States did not engage with indigenous peoples on measures of shielding, a well-known and successful practice among indigenous peoples. The mandate also looks forward to learning more about initiatives taken by marginalised people to advance cultural rights or use cultural rights to empower themselves and others.

40. Cultural rights are also discussed and involved in the work of other international organisations. However, fragmentation among these different organisations continues to exist. Since the establishment of this mandate in 2009, UNESCO has been a natural partner of many aspects of its work. The first big avenue for cooperation relies on the principle of mutual strengthening between cultural diversity and cultural rights, established in the 2001 Universal Declaration on cultural diversity (preamble and art. 4-6), and strengthened and made more operational since 2015 through the monitoring framework of the 2005 Convention on the promotion and protection of the diversity of cultural expressions. From the 10 areas of focus informed by State Parties to the Convention in their periodic implementation reports, two – on gender equality and on artistic freedoms – were clearly drafted integrating human rights and cultural rights languages and concepts. UNESCO has collaborated with the mandate on several aspects and often contributes to expert meetings, roundtables and conferences. However, there is a need for further collaboration in certain areas, including the participation of marginalised individuals in the conception and delivery of cultural programmes, the free, prior and informed consent of communities in determining World Heritage sites and the discussion on reparations and redress of historical and current violations.

41. Substantive collaboration is needed with the World Intellectual Property Organisation (WIPO). When the mandate conducted its work on intellectual property regimes (2014-2015), not much had been done to include a human rights perspective to this area of law, nor on the impact of these regimes on cultural rights. WIPO accompanied the work of the mandate for the 2 years that led to the presentation of the reports on copyrights (A/HRC/28/57, 2015) and patent policies (A/70/279, 2015), participating in expert consultations and in specific analysis. As the Special Rapporteur has said in the latter report,

 “The right to protection of moral and material interests cannot be used to defend patent laws that inadequately impact the right to participate in cultural life, to enjoy the benefits of scientific progress and its applications, to scientific freedoms, as well as the rights to food and health and the rights of indigenous peoples and local communities. Where patent rights and human rights are in conflict, human rights must prevail.”[[21]](#footnote-22)

Yet, the work of WIPO still has not incorporated current standards on cultural rights and a follow up to the previous reports of the mandate is needed.

42. These regimes, international human rights law, international law in the cultural sector and intellectual property law must be in line with the ever-evolving standards of international law regarding cultural rights and cultural diversity. The Special Rapporteur also notes the need to look into the impact of development and financial organisations, including the World Bank and the International Monetary Fund (IMF), on cultural rights and diversity. The Environmental and Social Standards of the World Bank and their application (or not) have a direct impact on cultural rights.

43. But notwithstanding all these bodies, the Special Rapporteur is particularly eager to open dialog and provide technical co-operation with States. The standards and the nature of states’ obligations are at times difficult to grasp and the expertise and experience of the mandate in operationalising such standards is vast. As the main protector of cultural rights, States are under the obligation to take steps, legal and other, to promote and protect these rights. Through country visits that will, to the extent possible, fit with the thematic studies of her mandate but also through wider dialogue and co-operation, the Special Rapporteur is looking forward to working with member States towards improving the application of cultural rights at the domestic level. To this end, she is open to providing support and technical expertise to legislation and other measures that promote and protect cultural rights and cultural diversity.

 **VII.** Work methods and next reports

44. In her attempt to address current significant challenges that are in the juncture of cultural rights and cultural diversity with other rights and interests, the Special Rapporteur will dedicate her next two reports to sustainable development and people on the move.

45. The Special Rapporteur will consider issues related to cultural rights and sustainable development, noting that cultural rights must be at the core of any discussion and activity relating to sustainable development. The Sustainable Development Goals do not mention cultural rights explicitly, but nevertheless provide an important programmatic platform in which the transversal relevance of cultural rights must be analysed and highlighted. As early as 1987, the Brundtland Report rightly noted that, in order to be ‘sustainable’, development must meet the needs of the community without compromising the ability of future generations to meet their own needs. States are under a clear obligation to adopt all appropriate measures to protect the environment, the livelihood and the natural resources of affected individuals and communities. Cultural rights are integral in protecting the environment and nature. It is vital that States and the international community apply a variety of development models. The Special Rapporteur is looking forward to analysing ways that financial models of development will be enriched and even replaced by more human rights-oriented models of development. The wisdom of traditional knowledge holders and the experiences of affected communities must be used at all stages of development projects, from inception to delivery and evaluation. Such communities must not only be consulted; their free, prior and informed consent must be sought and respected and their leadership in implementing and evaluating development programmes must be secured. This is the only way to ensure that individual and collective cultural rights are protected and that no one is left behind.

46. The Special Rapporteur would like to invite all stakeholders, including States, international organisations and civil society organisations to share with the mandate their views on the respect of cultural rights in development; to inform her of good practice in development that prioritises cultural rights; to discuss the participation of and leading by marginalised groups in projects that promote and protect cultural rights in development; and to convey concerns relating to cultural rights in development processes. She is particularly interested in collaborating with UNESCO on this issue. She would also like to learn more about developments within the World Bank and international financial and trade organisations as well as transnational corporations that protect cultural rights.

47. The Special Rapporteur is also looking forward to exploring how the right to participate in cultural life is implemented in the context of migration. Of particular importance is how people on the move have access to the prevailing cultures as well as the freedom to maintain and exercise their own cultural practices in the host States. Migration policies focus on ‘integration’ as a positive policy that enhances social cohesion. The Special Rapporteur is looking forward to finding good practice of integration models that do not involve assimilationist or patronising elements. The mandate will focus on the positive use of cultural rights to improve the rights of migrants and on cultural initiatives by migrants themselves to improve their rights, including housing, health and education.

48. She is particularly interested to hear from migrants and relevant civil society organisations on the concerns they have relating to the implementation of integration measures by States and more generally their cultural rights. She looks forward to receiving examples of good practices of measures implemented by states in this area as well as measures that empower marginalised and vulnerable migrants to develop their cultures. She would also like to learn more about debates on balancing different rights relating to cultural rights of migrants and people on the move. She is looking forward to engaging closely with the UNHCR, the IMO and the UN Special Rapporteur on the human rights of migrants.

49. Other themes that the Special Rapporteur would like to consider include the cultural rights of persons with disabilities, the fragmentation in the international responses to cultural rights and diversity, scientific and academic freedoms and issues relating to restitution and reparation.

50. In addition to thematic reports, communications are also really important took in promoting and protecting cultural rights. The Special Rapporteur is grateful for the information received and open to receiving more from civil society organisations and other stakeholders. The number of communications sent to Governments and other actors about alleged violations of cultural rights has progressively increased, illustrative of the broader understanding stakeholders have acquired on cultural rights. To date, the mandate has either joined or initiated 340 such communications.[[22]](#footnote-23) They raised concerns about a variety of issues: from the neglect of ways of life and heritage resources to the active imposition of a single narrative about the past, the shared identity and the way to interact in society; from violations on the right to take part in cultural life to targeted harassment, arrest and killings of those who challenge cultural norms; from violations of the right to access and enjoy the creativity of others and to benefit from scientific progress and its applications to censorship of artistic, academic and scientific freedoms; from lack of respect for cultural diversity to the use of cultural arguments to violate human rights. These communications addressed alleged violations in all regions of the world, about two thirds of them seeking clarification from Governments and the remaining third reminding other stakeholders, including private companies, of their due diligence towards human rights. Ten communications raised issues about [laws or policies](https://www.ohchr.org/EN/Issues/CulturalRights/Pages/Communications.aspx) as they were discussed publicly, providing a cultural rights analysis of the potential effects of the law in question.

51. An important part of the mandate consists in conducting country visits to learn from best practices and assess challenges to the implementation of cultural rights and to report on them, providing recommendations and advice for all relevant stakeholders. 14 such visits have already been conducted. The reports and conclusion are available on the webpage of the mandate.[[23]](#footnote-24) The Special Rapporteur looks forward to being invited by States for state visits.

52. To summarise, in her work the Special Rapporteur will:

* Seek dialogue and co-operation regarding the issues of the mandate.
* Focus on follow up mechanisms that are important to ensure that all issues are addressed.
* Work towards capacity building within the States so that they have the means to fully implement their obligations regarding cultural rights
* Help building resilience in the local societies regarding violations and involve the local stakeholders in identifying the best ways to prevent violations from taking place.
* Focus on vulnerable and marginalized sections of the population.

53. To achieve these results, the Special Rapporteur is looking forward to work in close cooperation with the treaty monitoring bodies, in particular the Committees on Economic, Social and Cultural Rights, on the Rights of Persons with Disabilities and on Migrant workers, as well as with other mandates of Special procedures whose work bears upon the enjoyment of cultural rights. She also intends to pursue further collaboration with interested intergovernmental organizations, including UNESCO and WIPO, non-governmental organizations, national human rights institutions, as well as academic and research institutes to further implement cultural rights for all at the local, national, regional and international level.

1. \* The present report was submitted after the deadline in order to reflect recent developments. [↑](#footnote-ref-2)
2. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 5 (2021) on migrants’ rights to liberty, freedom from arbitrary detention and their connection with other human rights, CMW/C/GC/5, para. 68. [↑](#footnote-ref-3)
3. Special Rapporteur on protection against violence and discrimination based on sexual orientation and gender identity, A/74/181 (2019), paras. 5 and 102. [↑](#footnote-ref-4)
4. The Committee on the Rights of Persons with Disabilities, General comment No. 2 (2014), Accessibility, CRPD/C/GC/2/, para. 44. See also the Special Rapporteur on the rights of persons with disabilities, A/HRC/31/62 (2016), paras. 15 and 31, A/HRC/46/27 (2021), para. 51, sections B.2 and 4. [↑](#footnote-ref-5)
5. Committee on the Elimination of Racial Discrimination, General recommendation No. 35 (2013), Combating racist hate speech, CERD/C/GC/35, paras. 24, 29, 31, 34. [↑](#footnote-ref-6)
6. Human Rights Committee, Concluding observations on the seventh periodic report of Germany (2021), CCPR/C/DEU/CO/7, para. 8. Also concluding observations on the sixth periodic report of Hungary (2018) CCPR/C/HUN/CO/6, para. 17. [↑](#footnote-ref-7)
7. See Human Rights Council resolutions A/HRC/ RES/33/20 (2016) and A/HRC/RES/37/17 (2018). [↑](#footnote-ref-8)
8. Human Rights Committee, General comment No. 34 (2011) on Freedom of opinion and expression, CCPR/C/GC/34, para. 11. [↑](#footnote-ref-9)
9. Eg. General Comment 21 of the Committee on Economic, Social and Cultural Rights; United Nations Declaration on the Rights of Indigenous Peoples; and the collective nature of ‘existence and protection of minorities’ in art. 1 of the United Nations Declaration of National or Ethnic, Religious and Linguistic Minorities. [↑](#footnote-ref-10)
10. A/76/258 (2021), paras. 15, 30, 33, 37, 59. [↑](#footnote-ref-11)
11. Also see Human Rights Committee, 2021 Concluding observations on the seventh report of Finland, para. 42; 2018 Guatemala, para. 38; 2019 Vietnam, para. 56. [↑](#footnote-ref-12)
12. Human Rights Committee, Concluding observations on Nigeria in the absence of its second periodic report, para. 16. [↑](#footnote-ref-13)
13. Human Rights Committee, Concluding observations on the third period report of Lebanon (2018), CCPR/C/LBN/CO/3, para. 39. [↑](#footnote-ref-14)
14. Communication No. 24/1977; Views in UN Doc. A/36/40 (1981). [↑](#footnote-ref-15)
15. Communication No. 197/1985; Views in UN Doc. A/43/40 (1988). [↑](#footnote-ref-16)
16. Communication No. 511/1992; Views in UN Doc. A/50/40 (1995). [↑](#footnote-ref-17)
17. See General Comment 25 (2020) of the Committee of the Economic, Social and Cultural Rights, para. 21 on the limitations of the right to participate in the culture. Other cultural rights may. [↑](#footnote-ref-18)
18. Okin M Susan (2002). “Mistresses of Their Own Destiny”: Group Rights, Gender, and Realistic Rights of Exit. *Ethics*, *112*(2), 205–230; Shachar Ayelet (2001), Multicultural Jurisdictions: Cultural Differences and Women’s Rights, Cambridge; Spinner-Halev Jeff (2005), “Autonomy, association and pluralism”, In: Eisenberg Avigail/ Spinner-Halev Jeff (eds.), Minorities Within Minorities: Equality, Rights and Diversity, Cambridge, 157–171. [↑](#footnote-ref-19)
19. Report A/HRC/47/32 (2021), para 52. [↑](#footnote-ref-20)
20. Para 2. [↑](#footnote-ref-21)
21. A/70/279 (2015). [↑](#footnote-ref-22)
22. The full list of communications sent and responses received to them can be found at this link: https://spcommreports.ohchr.org/TmSearch/Mandates?m=19 [↑](#footnote-ref-23)
23. See page www.ohchr.org/EN/Issues/CulturalRights/Pages/CountryVisits.aspx [↑](#footnote-ref-24)