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#### At the regional level

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##### **African Court on Human and Peoples' Rights** (to file complaints)

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##### **Inter-American Commission on Human Rights**

(to file complaints and request information)

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##### **Inter-American Court of Human Rights** (to file complaints)

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##### **European Committee of Social Rights** (to file complaints and request information)

Department of the European Social Charter and the European Code of Social Security

Council of Europe

Directorate General of Human Rights and Rule of Law

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## CULTURAL RIGHTS

*Brochure prepared by*

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**Part of a series of the Human Rights Programme of the Europe-Third World Centre (CETIM)**

## ANNEX

### *INSTANCES TO WHICH ONE MAY RECUR*

#### **At the international level**

##### **Committee on Economic, Social and Cultural Rights, CESCR**

(to file complaints and request information)

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##### **Committee on the Elimination of Racial Discrimination, CERD**

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##### **Committee on the Elimination of Discrimination against Women, CEDAW**

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##### **Special procedures of the Human Rights Council (communications)**

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For *Special Rapporteur on the rights of indigenous peoples*:

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## CONCLUSION

As has just been discussed, cultural rights have multiple dimensions, and the human individual as well as human communities are both actors and beneficiaries of these rights.

If one admits that everyone has the right to choose her/his own identity, as emphasized by the United Nations human rights bodies, it is quite normal that there be differences in any given society, and this even beyond ethnic and confessional differences. This is all the more so that nothing is fixed permanently if one considers the evolutionary nature of culture and, moreover, the composition of nations.

In this context, cultural diversity expresses the wealth of humanity. States are obliged to respect and protect this wealth. To respect cultural diversity is to respect not only human dignity but also to contribute to peace keeping and security in the world, as UNESCO reminds us.

Of course, conflicts can occur between different cultures, or from contradictions between certain cultural practices and human rights (excision for example). Beyond these contradictions, it sometimes appears that the most important thing is perhaps the way these contradictions are managed – by force or by dialogue?

Regarding scientific research, as already emphasized, it should have a social function, and be guided above all by the general interest, bearing in mind that all scientific progress does not necessarily benefit humanity (the production of arms of massive and indiscriminate destruction, for example) or can be problematic (manipulation of life in a laboratory for example). From this point of view, its orientation, its purpose and its financing must be subject to political debate.

Access to and participation in cultural productions (artistic, literary or scientific) remains an illusion for a third of humankind owing to its social situation. This is a major challenge which states must tackle without delay if there is to be a resolution of current conflicts and prevention of future ones.

## INTRODUCTION

Cultural rights are part of the corpus of human rights and concern many areas of life (not only artistic, literary or traditional, but also political, social, economic, technological, spiritual etc.). In this regard, these rights par excellence incarnate the universality, the indissociability and the interdependence of human rights. In fact, the right to education, to information, to freedom of opinion and expression, to free association, to participation in decision making, to cite only a few, are indispensable to the enjoyment of cultural rights.

At the national level, centralized states have difficulty in “understanding” and implementing cultural rights, arguing very often that such rights are a danger for their “unity” or “national identity”. Thus, the majority or the minority in power (depending on the country) has a tendency to discriminate and exclude other constituent elements of the nation, or even to seek to suppress any cultural differences (through policies of assimilation), in particular those related to ethnic and religious differences. Such discrimination and human rights violations can even be the source of civil wars.

At the international level, some powerful states have for decades (leaving aside the colonial period) practiced what one might call a new form of colonialism, not only on the economic and political level but also on the cultural level, the one being inextricable from the other. For example, a country like the United States demands (and obtains) from South Korea (in the framework of a bilateral trade agreement) a reduction of the number of days when cinemas must show South Korean films from 146 to 73 per year, thus allowing an increased showing of United States films.<sup>1</sup>

The commodification of numerous areas of life (not only education and public services but also artistic, literary and scientific productions) constitutes a major obstacle to the enjoyment of cultural rights, for a third of humanity survives on one to two dollars per day. Current international trade rules are often in direct contradiction with human rights.

Although cultural rights have been codified in international conventions for several decades, research and publications on them (from the human rights angle) remain very modest. The present booklet has as a goal to contribute to filling this gap, treating all the aspects of cultural rights: access, contribution to and participation in cultural life and the enjoyment of all cultural rights, including scientific progress. Thus, the first two parts of the booklet deal, respectively, with the definition and the content of cultural rights. The third part presents the recognition of cultural rights at the regional and international levels. The fourth part deals with states' obligations and the implementation at the national level, with three specific

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<sup>1</sup> In this regard, see the CETIM's critical report, *International, Regional, Subregional and Bilateral Free Trade Agreements*, 2010, p. 11, [http://www.cetim.cl/en/publications\\_cahiers.php#trates](http://www.cetim.cl/en/publications_cahiers.php#trates)

examples. The fifth part explores cases dealt with by the complaints mechanisms available at the regional and international levels concerning cultural rights

The United States continues to refuse to allow the management of Internet to be entrusted to an international public organization such as the United Nations.

## VI. INTERNET AND CULTURAL RIGHTS

In barely two decades, Internet has become an indispensable tool in many areas of life. Although this tool has greatly contributed to the diffusion and archiving of, among other things, information, knowledge, artistic and literary work, it can be totally inaccessible to entire swathes of populations and to entire countries.

Obstacles, sometimes insurmountable, prevent access to Internet. They can be political (censorship), economic (cost and/or monopoly), technical (language and training) or linked to governance (there is no neutral international instance nor international convention regulating Internet).

One can well understand, and wish, that the state oversee, in the framework of legality and respect for human rights, this tool in order to prosecute, for example organized crime and racial propaganda on the Internet. But, on the contrary, it is not unusual for many countries to restrict, indeed prohibit, access to this tool by their political adversaries and/or ethnic and religious minorities. This is why the Committee on Economic, Social and Cultural Rights insists that governments respect and protect freedom of information and expression, including on Internet, to assure the implementation of Article 15 of the *International Convention on Economic, Social and Cultural Rights*.

As is well known, major gaps subsist in the use of computers and access to Internet for reasons of income, education and geographic situation.

The domination of English on the web also constitutes an obstacle for the overwhelming majority of humanity that does not know this language. As English has also become dominant in science<sup>218</sup> and cultural areas, and as Internet plays an important role in the flux of exchanges, this majority is also excluded from them.

The management of Internet is obviously a crucial matter. For the time being, everything is managed from the United States (regulation of domain names, IP addresses and decision making regarding technical evolution) by a body (ICANN) subjected to United States interests.<sup>219</sup> This country uses its domination in this area for its own interests as has been observed through the affair of the spying of all communications throughout the world, not to mention the use of data on users, stocked by monopolistic United States corporations such as Google, Facebook etc.

<sup>218</sup> The initiative of the World Intellectual Property Organization (WIPO), through its program Access to Research for Development and Innovation, provides free online access to major scientific and technical journals to local, not-for-profit institutions in least-developed countries and low-cost access to industrial property offices in developing countries across the world. (See: <http://www.wipo.int/ard/en/about.html>) This initiative however remains modest and in no way changes the paradigm on which intellectual property rights is built, to wit the protection of the private property of financially powerful actors to the detriment of the interests of those who should be the final beneficiaries of the protected innovations.

<sup>219</sup> See inter alia Jack Goldsmith and Tim Wu in *Who Controls the Internet?:* <http://www.wethenet.eu/2012/05/les-etats-face-a-internet/>

## I. DEFINITION

It is obvious that many definitions can be given to “culture” and that this notion covers multiple elements and facts. *The UNESCO Universal Declaration on Cultural Diversity* of 2 November 2001 declares that culture encompasses:

*“the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.”*<sup>2</sup>

According to the **Committee on Economic, Social and Cultural Rights** (hereafter, the Committee) the concept of culture:

*“encompasses, inter alia, ways of life, language, oral and written literature, music and songs, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives.”*<sup>3</sup>

The Committee has also emphasized the evolutionary and living aspect of culture:

*“(…) The concept of culture must be seen not as a series of isolated manifestations or hermetic compartments, but as an interactive process whereby individuals and communities, while preserving their specificities and purposes, give expression to the culture of humanity.”*<sup>4</sup>

According to a more sociological definition, culture is “the total sum of activities and material and spiritual products of a given social group which distinguish it from other similar groups [and] a system of values and symbols as well as the corpus of practices that a particular cultural group reproduces over time and which gives individuals the reference points and the meanings necessary for their

<sup>2</sup> Preamble, § 5. This definition is reproduced in the *Mexico City Declaration on Cultural Policies*, Preamble, § 6, adopted by the World Conference on Cultural Policies, Mexico City, 26 July to 6 August 1982.

<sup>3</sup> Committee on Economic, Social and Cultural Rights, *General Comment N° 21: The Right of Everyone to Take Part in Cultural Life (art. 15, para. 1 (a))*, E/C.12/GC/21 (adopted November 2009), § 13.

<sup>4</sup> *Ibid.*, § 12.

behavior and social relations in daily life.”<sup>5</sup> Thus, according to this definition, culture can be perceived as a product, a process and a way of life.<sup>6</sup>

Defined as “rights in the field of culture”,<sup>7</sup> cultural rights cover a panoply of rights which are enshrined in several international norms. While the United Nations human rights instruments play a central role, UNESCO has also contributed to fashioning cultural rights through several international conventions.

course of country visits, one of the four points for analysis concerning minorities overall deals with the protection and the promotion of the cultural identity of minority groups and the right of national, ethnic, religious and linguistic groups to assert their collective identity and reject forced assimilation.<sup>216</sup>

Following a visit to *Bosnia-Herzegovina* (September 2012), the Independent Expert noted that there were 17 recognized national minorities. However, the matter of minority rights also concerns the constitutive peoples and communities – Bosnians, Serbs and Croates – who, since the 1992-1995 conflict, have found themselves in situations similar to those of minorities. As non-dominant communities in the regions where they live, they experience considerable difficulties and are disadvantaged socially and economically and victims of discrimination. The laws adopted in order to prevent discrimination and protect the national minorities, as well as the setting up of consultative bodies, notably the national minorities councils, are welcome positive measures. Even today, however, they have not been implemented and the Independent Expert considers it necessary to take measures in order to sensitize the minorities, society as a whole and the public authorities. The Roma are the most disadvantaged national minority that is most often the object of discrimination. In particular, the employment and schooling rates of the Roma are abnormally low, and they are victims of numerous forms of discrimination.<sup>217</sup>

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5 Rodolpho Stavenhagen, “Cultural rights: a social science perspective” in *Cultural Rights and Wrongs* (Paris: UNESCO Publications and Leicester: the Institute of Art and Law, 1998), pp. 85–109.

6 Human Rights Council (hereinafter **Council**), *Report of the Special Rapporteur in the field of cultural rights, Ms. Farida Shaheed, submitted pursuant to resolution 10/23 of the Human Rights Council, A/HRC/14/36*, 22 March 2010, § 5. See also International Commission of Jurists, 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.12/40/7, § 6.

7 *Report of the Special Rapporteur in the field of cultural rights, A/HRC/14/36*, § 5, already quoted.

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216 <http://www.ohchr.org/EN/Issues/Minorities/IEExpert/Pages/IEminorityissuesIndex.aspx>

217 *Report of the Independent Expert on Minority Issues, Mme Rita Izsák, Mission to Bosnia-Herzegovina, A/HRC/22/49/Add.1*, 31 December 2012.

### The Special Rapporteur on the Rights of Indigenous Peoples

The mandate of the Special Rapporteur on the Rights of Indigenous Peoples was created by the former Commission on Human Rights (replaced by the Human Rights Council) in 2001. In May 2008, James Anaya was appointed to this position.<sup>211</sup> As already discussed, matters related to cultural rights of indigenous populations are often at the heart of the debate over human rights violations of which these peoples are victims.

Following his visit to *Argentina* in December 2011, the Special Rapporteur noted that the state had undertaken constitutional reforms in 1994 oriented towards the rights of indigenous peoples and adopted a law instituting a process aiming to contribute to the regularization of indigenous lands of the country. Having stated this, the Special Rapporteur noted that there remains a gap between the normative framework adopted in relation to indigenous peoples and its implementation. He thus recommended that the state accord priority to the entirety of matters relative to indigenous peoples' human rights and exert greater effort in this regard. Argentina must, in particular, adopt clear public policies as well as additional legislative and administrative measures to favor a greater knowledge of indigenous matters by all the state agencies and improve their action in this area.<sup>212</sup>

The Special Rapporteur also carried out a visit to the *United States* and a study on the living conditions of indigenous populations there. He noted that the United States' indigenous peoples – Amerindians, and natives of Alaska and Hawaii – who constitute dynamic communities that have made a major contribution to the life of the country, experience great difficulties resulting from serious wrongs committed on a wide scale throughout history. These wrongs, notably broken treaties and acts of oppression, as well as ill advised government policies, have translated today into indicators of precariousness and obstacles to the exercise of individual and collective rights. Among the disadvantageous conditions suffered by the indigenous peoples of the United States, the Special Rapporteur highlighted that, with the loss of their lands, especially as these lands are used for mining and other development projects, the peoples have lost control of places of cultural and religious significance. The desecration and restrictions on access to sacred areas have inflicted a permanent wound on the indigenous populations for whom these places are essential elements of their identity.<sup>213</sup>

### The Independent Expert on Minority Issues

The mandate of the Independent Expert on Minority Issues was created in 2005.<sup>214</sup> It has been regularly renewed since then.<sup>215</sup> The primary task of the Independent Expert is to promote the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*. In the

211 For further information: <http://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages-/SRIPeoplesIndex.aspx>

212 A/HRC/21/47/Add.2, 4 July 2012.

213 A/HRC/21/47/Add.1 du 30 August 2012.

214 Commission on Human Rights, Resolution 2005/79, 21 April 2005.

215 The current Independent Expert is Rita Izsák.

## II. CONTENT

### A) The United Nations

All international human rights treaties enshrine cultural rights in at least some of their aspects, starting with the *Universal Declaration of Human Rights (UDHR)*<sup>8</sup>, which states in Article 27:

*“1. 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.*

*2. Everyone has the right 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)*<sup>9</sup> – a central provision enshrining cultural rights as human rights – reproduces these different elements of cultural rights. These are expressed in terms similar to those used in the *UNDHR* and subdivided into **three** distinct but interdependent rights: 1. the right to participate in cultural life (Article 15.1.a); 2. the right to benefit from scientific progress and its applications (Article 15.1.b); 3. the right [of everyone] to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which she/he is the author (Article 15.1.c).

#### *1. The Right to Participate in Cultural Life*

As perceived by the Committee on Economic, Social and Cultural Rights, there are three main interdependent constituent elements to the right to participate or take part in cultural life:

*“(a) participation covers in particular the right of everyone – alone, or in association with others or as a community – to act freely, to choose his or her own identity, to identify or not with one or several communities or to change that choice, to take part in the political life of society, to engage in one's own cultural practices and to express oneself in the language of one's choice. Everyone also has the right 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;*

*(b) access covers in particular the right of everyone – alone, in association with others or as a community – to know and understand his or her own*

8 Adopted 10 December 1948 by the United Nations General Assembly.

9 Adopted 16 December 1966 by the United Nations General Assembly, ratified by 160 states (as of 6 August 2013).

*culture and that of others through education and information, and to receive quality education and training with due regard for cultural identity. Everyone has also the right to learn about forms of expression and dissemination through any technical medium of information or communication, to follow a way of life associated with the use of cultural goods and resources such as land, water biodiversity, language or specific institutions, and to benefit from the cultural heritage and the creation of other individuals and communities;*

(c) *contribution* to cultural life refers to the right of everyone to be involved in creating the spiritual, material, intellectual and emotional expressions of the community. This is supported by the right to take part in the development of the community to which a person belongs, and in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person's cultural rights."<sup>10</sup>

Regarding paragraph (c) above, the importance of **procedural rights** is obvious: material/fundamental rights cannot be exercised if specific mechanisms and their concomitant procedures are not established so that groups and individuals concerned can effectively participate in the decision-making processes affecting their way of life.<sup>11</sup> In this regard, the Committee on Economic, Social and Cultural Rights provides for consultations with "individuals" and "concerned communities" for the protection of cultural diversity.<sup>12</sup>

The right to participate in the making of decisions influencing cultural rights is fundamental and is at the heart of the discussion on cultural rights.

For the United Nations **Special Rapporteur in the Field of Cultural Rights**, the **right of everyone to rest and leisure**, provided for in Article 24 of *Universal Declaration of Human Rights*, is closely linked to cultural rights. The Special Rapporteur has pointed out the "importance of time to be available for all to participate in cultural life and the close relationship existing between leisure and culture" while noting that "culture, permeating all aspects of life, cannot be limited to specific activities and should not be restricted to the concept of rest and leisure".<sup>13</sup>

## 2. The Right to Benefit from Scientific Progress and Its Applications

The right to science has a tendency to be considered independently of the right to participate in cultural life, to which it is generally linked in international instruments. According to the Special Rapporteur, these two rights are intrinsically linked and have numerous points in common in that they both deal with the search

at the promotion and protection of cultural rights through concrete proposals enhancing subregional, regional and international cooperation in that regard; d. to study the relationship between cultural rights and cultural diversity..."<sup>205</sup> In 2012, the mandate was renewed for a three-year period with its title changed to Special Rapporteur in the Field of Cultural Rights.<sup>206</sup> In carrying out her mandate, the Special Rapporteur, like her pairs, has the same tools available to her, to wit: drafting of thematic reports, country missions and communications with governments concerning specific cases of violations.

In her preliminary conclusions and observations following her visit to **Russia** (April 2012), the Special Rapporteur noted that, in spite of substantial progress regarding artistic freedom, freedom of expression and participation in cultural life since the end of the Soviet Union, the state's support of cultural activities infrastructure, such as cultural centers, libraries and museums, had decreased in the most remote areas.<sup>207</sup> According to the Special Rapporteur, even if there is recognition by the Russian Federation of its multi-ethnic and multi-confessional character through significant constitutional provisions, it must be noted that the implementation of these provisions is highly varied and that many minorities lack support from the federal and regional authorities in this area. In particular, the production and publication of books in the languages of minorities and indigenous populations seems difficult, unless neighboring countries using the same language help.<sup>208</sup> The Special Rapporteur also expressed her disquiet regarding harassment by the police, of which artists have been victims, and criminal prosecutions of artists accused of provocative artistic expression, in particular when these expressions are related to the Russian Orthodox Church.<sup>209</sup>

Following her visit to **Austria** in 2011, the Special Rapporteur noted that the official recognition of ethnic, linguistic and religious diversity in Austria was an important basis for the promotion of cultural diversity and cultural rights. However, the approach is fragmented. Only the recognized indigenous minorities are granted particular rights, which they lose outside their territory. The Special Rapporteur further noted that a strict application of the criterion of territoriality, particularly regarding education, could weaken the efforts to safeguard minority languages and identities. Moreover, effective interventions to promote diversity and intensify the implementation of cultural rights remain scarce and little known and lack long-term financial support as well as an institutional framework that could facilitate a development based on past experiences and existing resources.<sup>210</sup>

<sup>205</sup> Human Rights Council, A/HRC/RES/10/23, 26 March 2009.

<sup>206</sup> Human Rights Council, A/HRC/RES/19/6, 22 March 2012.

<sup>207</sup> *Preliminary conclusions and observations by the Special Rapporteur in the field of cultural rights at the end of the Visit to the Russian Federation, 16-26 April 2012*, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12084&LangID=E>

<sup>208</sup> *Ibid.*

<sup>209</sup> *Ibid.*

<sup>210</sup> *Preliminary conclusions and observations by the Special Rapporteur in the field of cultural rights at the end of the Visit to Austria, 15 April 2011*:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11311&LangID=E>



## The Committee on the Elimination of Discrimination against Women (CEDAW)<sup>201</sup>

Following the review of the report from *Pakistan*, the CEDAW deplored the persistent inequality in the area of education, characterized by a high rate of illiteracy among women, the low attendance of girls in school, especially at the secondary level, and their high drop-out rate, particularly in rural areas. It also deplored the negative effect of the priority given to the education of boys compared with girls, the lack of qualified teachers and the long distances to be traveled to get to school, so many factors that make it even more difficult for girls to accede to schooling. Another subject of disquiet was the lack of measures to readmit girls to school after a pregnancy and the number of child marriages. Women students, teachers and professors are also victims of violent attacks and public threats by non-state actors. Such is also the case in schools and universities, especially schools for girls. According to the CEDAW, these elements affect disproportionately access to schooling by women and girls.<sup>202</sup>

### **2. Special Procedures of the Human Rights Council**

The Human Rights Council (formerly the Commission on Human Rights) has 47 mandates of which 36 are thematic and 11 are country-specific, called “special procedures”. They cover economic, social and cultural rights (food, water, adequate housing, education, health...) as well as civil and political rights (protection against torture, arbitrary detention, forced disappearances, summary and extra-judicial execution...).<sup>203</sup> They can also deal with groups considered vulnerable (women, indigenous peoples, minorities...).<sup>204</sup> Several of these procedures’ mandates concern cultural rights. For lack of space, only three will be discussed here: cultural rights *pe se*, indigenous populations and minorities.

### The Special Rapporteur in the Field of Cultural Rights

In 2009, the Human Rights Council established a new mandate under its special procedures: the Independent Expert in the Area of Cultural Rights. This mandate laid out the following tasks: “a. to identify best practices in the promotion and protection of cultural rights at the local, national, regional and international levels; b. to identify possible obstacles to the promotion and protection of cultural rights, and to submit proposals and/or recommendations to the Council on possible actions in that regard; c. to work in cooperation with States in order to foster the adoption of measures at the local, national, regional and international levels aimed

for knowledge and the understanding of the world as well as with human creativity in a constantly changing environment.<sup>14</sup>

Moreover, one of the requirements for the implementation of these rights consists in assuring the conditions necessary for each person to develop a critical approach toward the individual person and the world each person inhabits, and to have the possibility of questioning and exploring new knowledge through ideas, expression and specific applications.

Further, given the immense effect of scientific and technological progress on the daily life of individuals and peoples, the right to science must also be understood in relation to freedom of expression, the right of everyone to take part in public affairs, directly or through freely chosen representatives, and the right of peoples to self-determination.<sup>15</sup> The right to development should also be taken into consideration, in the sense of “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 and in the fair distribution of the benefits resulting therefrom”.<sup>16</sup>

The normative content of the right to benefit from scientific progress and its applications includes 1. the access of everyone to the benefits of science, without discrimination; 2. opportunity offered to everyone to contribute to science and the indispensable freedom to pursue scientific research; 3. participation of individuals and communities in decision-making processes; and 4. an environment encouraging the conservation, development and diffusion of science and technology.<sup>17</sup>

### Indispensable Freedom to Pursue Scientific Research and Opportunity to Contribute to Science

The freedom to pursue scientific research implies assuring that science be exempt from political and economic interference while guaranteeing the highest degree of ethics in the scientific professions. Read in relation to the right to freedom of association, of expression and of access to information, scientific freedom includes the right to communicate freely the results of one’s research to others and to publish and diffuse those results without censure and geographic limitation. The right of scientists to set up and take part in professional associations as well as to collaborate with their peers in other countries and in their own country must also be respected and protected.<sup>18</sup>

“The *Venice Statement on the Right to Enjoy the Benefits of Scientific Progress and its Applications*<sup>19</sup> emphasizes that freedom of research is vital to ad-

201 Entrusted with overseeing compliance with the *Convention on the Elimination of All Forms of Discrimination against Women* by its states parties.

202 CEDAW, *Concluding Observations: Pakistan*, CEDAW/C/PAK/CO/4, 1 March 2013, § 27.

203 Since 2005, the CETIM has published educational booklets on most of these rights: [http://www.cetim.ch/en/publications\\_brochures.php](http://www.cetim.ch/en/publications_brochures.php)

204 In this regard see *The Human Rights Council and its Mechanisms*, (Geneva: CETIM, 2008, electronic version only): [http://www.cetim.ch/en/publications\\_cahiers.php#conseil](http://www.cetim.ch/en/publications_cahiers.php#conseil). See also the web page of the Human Rights Council Special Procedures on the site of the Office of the United Nations High Commissioner for Human Rights: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcompage.aspx>

14 Council, *Report of the Special Rapporteur in the field of cultural rights. The right to enjoy the benefits of scientific progress and its applications*, A/HRC/20/26, 14 May 2012, §§ 3, 7.

15 *Ibid.*, § 21.

16 General Assembly, *Declaration on the Right to Development*, A/RES/41/128, 4 December 1986 Article 2.3: <http://www.un.org/documents/ga/res/41/a41r128.htm>

17 Council, *Report of the Special Rapporteur in the field of cultural rights. Farida Shaheed: The right to enjoy the benefits of scientific progress and its applications*, A/HRC/20/26, 14 May 2012, § 25.

18 Committee on Economic, Social and Cultural Rights, *General Comment N° 13: The right to education, art. 13 of the Covenant*, E/C.12/1999/10, §§ 38–40, 8 December 1999.

vance knowledge of a specific subject, to furnish data and to test hypotheses for practical application as well as to promote scientific and cultural activity

This having been said, scientific research should have a social function and be guided above all by the general interest, bearing in mind that scientific progress does not all benefit humanity (the making of weapons of mass destruction, for example) and can be problematic (manipulation of life in laboratories, for example). From this point of view, its orientation, its finality and its financing must be subject to open and informed political debate.

### **3. The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Stemming from All Scientific and Artistic Productions She/He Has Created**

Known as intellectual property, this right “derives from the inherent dignity and worth of all persons. This fact distinguishes article 15, paragraph 1 (c), and other human rights from most legal entitlements recognized in intellectual property systems. ... It is therefore important not to equate intellectual property rights with the human right recognized in article 15, paragraph 1 (c)”.<sup>20</sup>

The intention of the drafters of this provision was “to proclaim the intrinsically personal character of every creation of the human mind and the ensuing durable link between creators and their creations”.<sup>21</sup> The “moral interests” referred to in Article 15.1.c of the *International Convention on Economic, Social and Cultural Rights* include “the right of authors to be recognized as the creators of their scientific, literary and artistic productions and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, such productions, which would be prejudicial to their honor and reputation. The Committee stresses the importance of recognizing the value of scientific, literary and artistic productions as expressions of the personality of their creator...”<sup>22</sup>

Regarding “material interests” of authors, their protection under Article 15.1.c of the *Convention* “reflects the close linkage of this provision with the right to own property”<sup>23</sup> as recognized in the *Universal Declaration's* Article 17. Further, unlike other human rights, the material interests of the author are not directly related to the personality of the author but contribute to the enjoyment of the right to an adequate standard of living (*UDHR*, Article 11.1). Currently, this aspect is often omitted, and transnational corporations, abusively, cite this article to defend their patents *ad vitam aeternam* with specious scientific and legal arguments (see below).

19 Adopted at the end of a meeting of experts devoted to this subject, organized by UNESCO in July 2009 in Venice.

20 Committee on Economic, Social and Cultural Rights, *General Comment No. 17 (2005): The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author*, E/C.12/GC/17, §§ 1 and 3, adopted in November 2005.

21 *Ibid.*, § 12.

22 *Ibid.*, §§ 13, 14.

23 *Ibid.*, § 15.

### The Human Rights Committee

Following the review of the report of *Turkey*, the Human Rights Committee expressed its preoccupation concerning “the discrimination and the restrictions suffered by members of minorities, such as the Kurds and the Roma, affecting their right to enjoy their own culture and use their own language”.<sup>193</sup> It was also concerned at “the discrimination and alleged acts of violence against people on the basis of their gender identity and sexual orientation”.<sup>194</sup>

The Committee noted, moreover, “the vagueness and lack of clarity of the definition of ‘illegal organizations’, which has the effect of restricting the right to freedom of association under Article 22 of the *Covenant*”.<sup>195</sup> It also expressed concern “about the restrictions imposed on Muslim communities, as well as non-Muslim religious communities, that are not covered by the 1935 Law on Foundations”.<sup>196</sup> Further, the Committee deplored “reports of hate crimes against non-Muslim religious communities and other minorities, and about the on-going and unpunished hate speech in the media, including in TV series and films”.<sup>197</sup> In view of these conclusions, the Committee requested that Turkey bring its practices in line with the *International Covenant on Civil and Political Rights*.

Following the review of the report from *Germany*, the Committee deplored “the persistence of racially-motivated incidents against members of the Jewish and Sinti and Roma communities as well as Germans of foreign origin and asylum seekers in the State party... [and] the persistent discrimination faced by members of the Sinti and Roma communities regarding access to housing, education, employment and healthcare”.<sup>198</sup> The Committee expressed its concern about “continued allegations of hate speech and racist propaganda on the Internet including from right-wing extremism, despite awareness-raising efforts and judicial measures taken on the basis of Sections 86 and 130 of its Criminal Code”.<sup>199</sup> The Committee requested that Germany “take concrete measures to increase the effectiveness of its legislation and to investigate all allegations of racially-motivated acts and to prosecute and punish those responsible” and to “extend the mandate of the Federal Anti-Discrimination Agency including the power to investigate complaints brought to its attention and to bring proceedings before the courts, so as to enable it to increase its efficiency”.<sup>200</sup>

193 Human Rights Committee, *Concluding Observations: Turkey*, CCPR/C/TUR/CO/1, 13 November 2012, § 9.

194 *Ibid.*, § 10.

195 *Ibid.*, § 19.

196 *Ibid.*, § 21.

197 *Ibid.*, § 22.

198 Human Rights Committee, *Concluding Observations: Germany*, CCPR/C/DEU/CO/6, 13 November 2012, § 17.

199 *Ibid.*, § 18.

200 *Ibid.*, §§ 17, 5 respectively.

During the examination of the periodic report of *Tanzania*, the Committee noted, among other things, that several vulnerable communities, such as shepherds and hunter-gatherers, had been driven by force from their traditional lands to allow the development of various projects (large-scale farming, creation of game reserves, extension of national parks, mines, constructions, tourism infrastructure and commercial hunting). The Committee expressed its concern that restrictions on land and resources, threats to the fauna and reduced access by these communities to the decision-making process threatened the fulfillment of their right to cultural life. It recommended that Tanzania take measures, especially legislative, in order to protect, preserve and promote the cultural heritage and traditional ways of life of vulnerable communities such as the hunter-gatherers and shepherds.<sup>189</sup>

#### The Committee on the Elimination of Racial Discrimination (CERD)<sup>190</sup>

In its *Concluding Observations* addressed to the government of *New Zealand*, the CERD noted that the Maori are still victims of various forms of discrimination, notably regarding the enjoyment of their rights in relation to the land and the resources that they traditionally possess or use and in particular places with a cultural or traditional significance. Some laws, for example, unjustly impose requirements on the Maori for the enjoyment of these rights. The CERD also regrets that a judicial ruling favorable to the Maori regarding the rights to intellectual and cultural property has not yet been given effect. This decision reinforces the rights of the Maori by recognizing the link that unites them to nature and the environment in connection with conservation, language, cultural heritage, medicine and traditional healing. As in the case of other indigenous populations, the CERD also noted, regarding the Maori, that often they are not consulted, or are not appropriately consulted, regarding commercial projects that have an impact on the lands and resources that they possess or use traditionally.<sup>191</sup>

Following the examination of the periodic report of *Kirghistan*, the CERD deplored the non-respect of the right of minorities to education in their own language owing to the lack of qualified teachers, translators, books and school materials. The CERD noted that in some schools teaching in minority languages had even been suppressed to the benefit of Kirghiz. The CERD pointed out that the *de facto* differentiated treatment between the students speaking Kirghiz and those speaking minority languages amounted to discrimination which could have very negative consequences for the chances for the minorities' accession to universities or to the labor market compared with students speaking Kirghiz.<sup>192</sup>

188 Committee on Economic, Social and Cultural Rights, *Concluding Observations: Bulgaria*, E/C.12/BGR/CO/R.4-5, 22 November 2012, § 23.

189 Committee on Economic, Social and Cultural Rights, *Concluding Observations: Tanzania*, E/C.12/TZA/CO/1-3, 13 December 2012, §§ 22, 29.

190 Entrusted with overseeing compliance with the *Convention on the Elimination of All Forms of Racial Discrimination* by its states parties.

191 CERD/C/NZL/CO/18-20, 1 March 2013.

192 CERD, *Concluding Observations: Kyrgyzstan*, CERD/C/KGZ/CO/5-7, 1 March 2013, § 12.

#### The conflict Between Human Rights and Intellectual Property

For many years, especially since the adoption by the World Trade Organization of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)<sup>24</sup>, there has been a conflict between human rights and intellectual property rights.<sup>25</sup>

Regarding, more specifically, the right to science, the *Venice Declaration* expresses this conflict in the following terms:

*"The right to enjoy the benefits of scientific progress and its applications may create tensions with the intellectual property regime, which is a temporary monopoly with a valuable social function that should be managed in accordance with a common responsibility to prevent the unacceptable prioritization of profit for some over benefit for all."*<sup>26</sup>

This profit priority of a minuscule number of stakeholders to the detriment of the common well being was already condemned by the Committee on Economic, Social and Cultural Rights in 2001:

*"(...) Intellectual property regimes, although they traditionally provide protection to individual authors and creators, are increasingly focused on protecting business and corporate interests and investments."*<sup>27</sup>

Intellectual property regimes have effectively demonstrated that they have the ability to block the optimal development of, and greatest access to, new technological solutions to essential human problems such as adequate nutrition, clean water, the highest level of health attainable, chemical safety, energy and climate change.

It is in the area of health and food that the conflictual relation between human rights and intellectual property has been most often denounced.<sup>28</sup> However, it is just as much – if not more – pertinent regarding the right to science since, as mentioned above, this implies that governments assure that the benefits of science (of which medicine is but one example) be physically available and economically affordable in a non-discriminatory way. Yet the intellectual property rights in

24 *Marrakesh Declaration of 15 April 1994* (creating the World Trade Organization), Annex 1C: [https://www.wto.org/english/docs\\_e/legal\\_e/marrakesh\\_dec1\\_e.htm](https://www.wto.org/english/docs_e/legal_e/marrakesh_dec1_e.htm)

25 Sub-Commission on the Promotion and Protection of Human Rights, Resolution E/CN.4/SUB.2/RES/2000/7, 17 August 2000, § 2. See also the reports of the Special Rapporteur on the Right to Health, A/HRC/11/12 and A/HRC/17/43, § 7.

26 UNESCO, *Venice Statement on the Right to Enjoy the Benefits of Scientific Progress and its Applications*, July 2009, § 10.

27 Committee on Economic, Social and Cultural Rights, *Follow-up to the day of general discussion on article 15.1 (c), Monday, 26 November 2001: Human rights and intellectual property*, E/C.12/2001/15, 14 December 2001, § 6.

28 The international intellectual property regime currently in force so far has effectively allowed pharmaceutical companies to profit almost without limit from the protection conferred by patents on medicine, often to the detriment of the right to health of the most vulnerable persons, to wit those who most need medicines but are without the means to procure them precisely because the prices are kept high owing to the intellectual property protection system. See, *inter alia*, *The Right to Health* (Geneva: CETIM, 2006), pp. 14-15. See also, concerning seeds Jack Kloppenburg, Birgit Müller and Guy Kastler, *La propriété intellectuelle contre la biodiversité ? Géopolitique de la diversité biologique* (Geneva: CETIM, 2011).

force have had the effect of preventing access – which should be as great as possible – to results, innovations and applications of scientific endeavor.

As the World Intellectual Property Organization (WIPO) “naively” affirms: “in order for the international patent system to continue to serve its fundamental purpose of encouraging innovation and promoting dissemination and transfer of technology, the right balance should be struck between the rights of technology holders and the rights of technology users for the benefit of society as a whole”.<sup>29</sup>

Obviously, this “right balance” advocated by WIPO cannot be achieved. On the contrary, transnational corporations – most often pharmaceutical and agro-chemical – benefit from the unbalanced commodification of scientific progress, which is contrary to human rights and in particular to the right to science, in a way that is almost always detrimental to the right-holders. This disproportionate profit, realized through the patent system, is amplified by “evergreening”<sup>30</sup> and by biopiracy<sup>31</sup> practiced by some transnational corporations with the complicity of the governments concerned.

In this vein, the Special Rapporteur pointed out that the economic efficiency of intellectual property regimes to promote scientific and cultural innovation is more and more being questioned by researchers. Studies carried out on the subject have failed to demonstrate empirically the claim that scientific creativity is galvanized only by legal protection or that the short-term costs necessary to limit the dissemination are lower than the long-term benefits of additional supportive measures.<sup>32</sup>

One possible approach – proposed by the Special Rapporteur – would be to consider innovation and diffusion of knowledge as public goods<sup>33</sup> or, at the least, to reconsider the current maximizing approach to intellectual property and to explore the virtues of a minimizing approach. Whatever, it is high time to end the

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29 Quoted in *Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: The right to enjoy the benefits of scientific progress and its applications*, A/HRC/20/26, 14 May 2012, § 58.

30 *Evergreening* is the term designating various techniques used by patent owners, in particular pharmaceutical corporations, to extend ever longer the protection they benefit from on patented products. One of these techniques – the most common – consists of continually modifying a few genes or molecules of their products so as to be able to register – and obtain approval for – new patents for a single medicine based on the same active formula.

31 Biopiracy refers to the privatization of genetic resources (including those derived from plants, animals, micro-organisms and humans) of peoples who hold them, maintain them, incarnate them, develop them, improve them, create them, reinforce them or sustain them. The most frequent MODVVS OPERANDI of biopirates is the use of intellectual property (for example brands, patents, vegetable samples) to obtain the monopolistic control of genetic resources previously under the control of indigenous peoples, peasants and traditional communities. It is biopiracy even this process is legal according to national laws and even if legitimized by a “bioprospecting agreement” that includes provisions for a “benefit sharing”. Jack Kloppenburg, Birgit Müller and Guy Kastle, *La propriété intellectuelle conte la biodiversité? Géopolitique de la diversité biologique*, (Geneva: CETIM, March 2011).

32 *Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: The right to enjoy the benefits of scientific progress and its applications*, A/HRC/20/26, 14 May 2012, § 65.

33 This approach had already been suggested by Dr Jonas Salk, who, when asked by Edward R. Murrow during a CBS Television interview on *See It Now* (12 April 1955), “Who owns the patent on this vaccine?” responded, “Well, the people, I would say. There is no patent. Could you patent the sun?”

their ancestral lands in the Lake Bogoria region, in order to create a natural reserve, with neither appropriate consultation nor adequate compensation, in violation of several rights guaranteed by the *African Charter on Human and Peoples’ Rights*, in particular the right to culture, recognized in Article 17.2 and 17.3.

In its judgment handed down in November 2009, the Commission ruled that the restriction by the Kenyan state of access for the Endorois populations to a lake of importance to their culture, means that “it has denied the community access to an integrated system of beliefs, values, norms, mores, traditions and artifacts closely linked to access to the Lake”.<sup>184</sup> It followed that forcing this community to live on semi-arid lands without access to medicinal plants and resources vital to the health of their livestock “created a major threat to the Endorois pastoralist way of life” and constituted a violation of their cultural rights<sup>185</sup>.

## C. At the International Level

For the same reasons as those mentioned in the previous chapter, we shall not present the workings of these mechanisms but shall give as examples several cases (related, directly or indirectly, to cultural rights) dealt with by the United Nations human rights mechanisms.

### 1. The United Nations Human Rights Treaty Bodies

#### The Committee on Economic, Social and Cultural Rights<sup>186</sup>

At this point it is worth mentioning the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, adopted 10 December 2008, which allows an individual or collective complaint to be brought before the Committee on Economic, Social and Cultural Rights in the event of a violation of the rights guaranteed by the *Covenant*, entered into force on 5 May 2013 after having been ratified by 10 states<sup>187</sup>.

During its consideration of the periodic report of *Bulgaria*, the Committee, while noting that “ethnic diversity” is recognized in Article 54 of the constitution, expressed its concern at the absence of official recognition of national minorities living on the national territory of Bulgaria. The Committee thus recommended that Bulgaria envisage a review of its position on the matter of official recognition of national minorities in conformity with the constitution, and officially recognize the necessity of protecting the cultural diversity of all those minority groups under its jurisdiction, in application of the provisions of Article 15 of the *Covenant*. It also reminded Bulgaria of its obligation to respect the right of everyone to participate in cultural life.<sup>188</sup>

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184 *Ibid.*, § 250.

185 *Ibid.*, § 251.

186 Entrusted with overseeing compliance with the *International Convention on Economic, Social and Cultural Rights* by its states parties.

187 As of 31 July 2013, it had been signed by 42 other states.

the omission of consulting the Sarayaku had violated their cultural identity in that the destruction of their cultural heritage and the interference in it testified to a lack of respect for their cultural and social identity, their customs, their traditions as well as their conception of the world and their way of life.<sup>180</sup>

The obligation to consult the indigenous populations before undertaking any project that might affect them, whose precise dimensions were detailed in *Sarayaku v. Ecuador*, had already been affirmed in the Court's judgment of 28 November 2007 in *Saramaka v. Surinam*,<sup>181</sup> which had laid the groundwork for the obligation to obtain the prior, free and informed consent of indigenous peoples. On this occasion the Court had affirmed that, when a project can have an impact on the resources and the way of life of indigenous people, the state must consult them. This duty requires that the state accept this principle and diffuse the information and that the state be in constant communication with the parties. This consultation must be carried out in good faith, through culturally appropriate procedures and with the purpose of reaching an agreement. Further, the populations concerned must be consulted in a way that is in conformity with their own traditions, at an early stage of the development of the project and not only when the necessity arises of obtaining the consent of the community, when appropriate. This must allow for discussions within the communities and an appropriate response from the state. The state must also make the communities attentive to possible risks, including environmental and health risks, in order for the development and investment plan to be accepted with full knowledge of its implications.<sup>182</sup>

### 3. The African Commission on Human and Peoples' Rights

Created in 1987, the African Commission on Human and Peoples' Rights is entrusted with monitoring compliance with the African human rights treaties, among which are the *African Charter on Human and Peoples' Rights* and the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*.

In *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*,<sup>183</sup> a complaint was filed (in 2003) noting violations resulting in the displacement from their ancestral land of members of the Endorois community, an indigenous people, the failure of adequate compensation for the loss of their property, the disruption of the community pastoral activities and violations of the right to practice their religion and their culture, as well as the disruption of the overall development process of the Endorois community. In this case, the Endorois claimed that the government of Kenya, in violation of the *African Charter on Human and Peoples' Rights*, the Kenyan constitution and international law, had expelled them from

privatization of knowledge that deprives individuals of the opportunity to participate in cultural life and benefit from the fruits of scientific progress, for, indisputably, this impoverishes society overall.<sup>34</sup>

In this context, two recent decisions by Indian courts concerning generic medicines are interesting and go in this direction. On 7 September 2012, the New Delhi High Court handed down a ruling in favor of the Indian pharmaceutical company Cipla Ltd. in litigation between it and the Swiss pharmaceutical group Roche going back to 2008.<sup>35</sup> The Basel pharmaceutical group had sued Cipla in 2008, claiming that the generic product Erlocip, made by Cipla, violated Roche's patent on Tarceva, a Roche medicine used to treat lung cancer. The New Delhi High Court had judged that this was not the case, for Erlocip had a molecular structure different from that of Tarceva. For a one-month treatment, Tarceva cost 140,000 rupees (US\$ 2,179), even though there are discounts possible for the poorest patients, whereas a one-month treatment of Erlocip cost 25,000 rupies (US\$ 389).<sup>36</sup> In the first ruling (19 March 2008) on provisional measures, the New Delhi High Court had, in particular, judged that public interest in guaranteeing access to a medicine able to save lives should have priority over private interest involving the protection of a patent. Confirming its decision in 2012 that the generic medicine did not violate the Roche patent, the High Court facilitated access to less costly medicines and contributed to weakening the position of the pharmaceutical transnationals trying by all means to benefit from their patents, to the detriment of the health of millions of poor individuals.

The case of the Novartis' medicine Glivec recently confirmed this approach. On 1 April 2013, the Indian Supreme Court rejected a request by the pharmaceutical giant for a patent for a new version of its very effective medicine Glivec, used in treating leukemia.<sup>37</sup> Novartis, which tried to use "evergreening", claimed that the new formula represented a significant improvement, allowing the human body to better absorb it. But the highest court in India considered that the new composition of Glivec did not correspond to the criteria of "newness or creativity" required by Indian law and thus left the way open for the sale of generics of this medicine. Glivec sells for US\$ 4,000 per patient per month, while in India the current generic version sells for less than US\$ 73.

These decisions by the Indian courts also establish the primacy of public health needs over economic interests, in full conformity with the human rights requirements, especially economic, social and cultural rights.

As such, these decisions contrast with the Western practice of patent protection. Numerous "false innovations" are patented in Europe and the United States

34 Council, *Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: The right to enjoy the benefits of scientific progress and its applications*, A/HRC/20/26, 14 May 2012, §§ 65 and 74.(o).

35 F. Hoffmann-La Roche et al. v. Cipla Ltd., case No° 89/2008: <http://lobis.nic.in/dhc/MAN/judgment-10-09-2012/MAN07092012S892008.pdf>

36 Exchange rate as of 26 August 2013.

37 *Novartis v. Union Of India & Others*, 1 April 2013: <http://judis.nic.in/supremecourt/imgs1.aspx?filename=40212>

180 *Ibid.*, § 220.

181 Inter-American Court of Human Rights, *Saramaka v. Surinam*, Series C No° 172.

182 *Ibid.*, § 133.

183 276 / 2003 – *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*: <http://caselaw.ihra.org-fi/doc/276.03/view>

by the pharmaceutical industry, which reduces by at least a third the number of real scientific discoveries.

## B. UNESCO: Cultural Heritage and Cultural Diversity

According to the first article of its constitution<sup>38</sup>, the *United Nations Educational, Scientific and Cultural Organization (UNESCO)* proposes “to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion”. Thus, from its beginning, UNESCO has made the link between, on the one hand, science and culture, and on the other, human rights.

Besides several declarations and recommendations, UNESCO member states have adopted the *Convention Concerning the Protection of the World Cultural and Natural Heritage* (1972), the *Convention on the Protection of the Underwater Cultural Heritage* (2001) and the *Convention for the Safeguarding of Intangible Cultural Heritage* (2003). Although these instruments do not precisely define the rights of individuals or communities to cultural heritage, many links can be established between them and the human rights related to cultural heritage and the participation by communities in its protection.

In particular, the *Convention for the Safeguarding of Intangible Cultural Heritage* recognizes that “communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and re-creation of the intangible cultural heritage”.<sup>39</sup> It should be emphasized that according to the *Convention* and its *Operational Directives for Implementation*, the ratifying states can intervene only with the participation or active commitment of the communities, groups and persons concerned.<sup>40</sup>

This convention also includes the obligation for states parties to include cultural heritage in education programs and to disseminate information related to the existence and value of cultural heritage. Article 14 in particular requires states to “endeavor, by all appropriate means, to: (a) ensure recognition of, respect for, and enhancement of the intangible cultural heritage in society, in particular through: (i) educational, awareness-raising and information programs, aimed at the general public, in particular young people; (ii) specific educational and training programs within the communities and groups concerned”.

For example, as provided for in the *UNESCO Universal Declaration on Cultural Diversity* (2001), the full respect of human rights, and, in particular, cultural rights, creates a framework propitious to cultural diversity and guarantees it (Articles 4, 5). The defense of cultural diversity is an ethical imperative, insepar-

<sup>38</sup> Adopted 16 November 1945.

<sup>39</sup> *Convention for the Safeguarding of Intangible Cultural Heritage*, Preamble.

<sup>40</sup> *Ibid.*, Articles 11, 15; *Operational Directives for Implementation*, 2010, Directives 1, 2, 7, 12, 23, 79-82, 88, 101, 109, 157, 160, 162.

## 2. The Inter-American Human Rights Commission and Court

The Inter-American Human Rights Commission and Court oversee the respect and implementation of the *American Convention on Human Rights* and the *Protocol of San Salvador* by their states parties.

The Court's judgment of 27 June 2012 in *Sarayaku v. Ecuador*<sup>177</sup> marked an important victory for indigenous peoples and the protection of their cultural rights. This judgment ended a struggle of more than ten years carried on by the indigenous Sarayaku community. In 1996, after major deposits of petroleum had been discovered on the territory on which several indigenous communities lived, including the Sarayaku, a concession was granted by the Ecuadorian national oil company Petroecuador to the Compañía General de Combustibles S.A. (CGC) to explore the area and exploit its resources for twenty years. Not only were the indigenous communities not consulted regarding the project, but they had been victims of violence, pressure and attempts at manipulations by CGC and the Ecuadorian state throughout the whole time in order to prevent them from hindering the oil exploration operation. In reaction to these violations, the Sarayaku had undertaken to lead an international campaign and had appealed to the Inter-American Commission in 2003 in order to oppose the “imposed oil activity on Sarayaku territory [which] meant militarization of their territory, environmental destruction, violence, and loss of elements their culture and spiritual cosmologies.”<sup>178</sup>

In its judgment, the Inter-American Court recalled that the right to cultural identity is a fundamental right – collective in nature – of indigenous communities, which must be respected in a democratic, pluralist and multi-cultural society. For the states parties, this involves an obligation to assure that the indigenous populations are adequately consulted regarding the matters that affect or can affect their cultural and social life, in conformity with their values, traditions, customs and forms of organization, in order to guarantee that they exercise control over their own institutions, way of life and economic development and maintain and develop their identities, languages and religions.<sup>179</sup> In this case, the Court considered that

<sup>177</sup> [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_245\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_245_ing.pdf)

<sup>178</sup> *Cultural Survival Quarterly*, 36-3 “Defending Life First” (September 2012), “Confirming Rights: Inter-American Court Ruling Marks Key Victory for Sarayaku People in Ecuador”, 17 August 2012: <http://www.culturalsurvival.org/publications/cultural-survival-quarterly/confirming-rights-inter-american-court-ruling-marks-key>

<sup>179</sup> Inter-American Court of Human Rights, *Sarayaku v. Ecuador*, § 217. The Court ruled that CGC – with the approval of the Ecuadorian state – had violated the right to cultural identity of the Sarayaku in several ways and repeatedly: by destroying sites having a spiritual significance for the Sarayaku, it had violated their beliefs and their conception of the world, which constituted an important part of their cultural identity; by causing the suspension of ancestral cultural ceremonies and events, it had violated the harmony and the spirituality of the community; by the organization and execution of exploration activities, which involved powerful and frequent detonations, it had hindered the cultural life and the teaching of this cultural life to youth and interrupted the perpetuation of the spiritual traditions and knowledge of the ancients. The Court noted further that, owing to the close relation between the Sarayaku community's culture and the elements of nature in which it lived, the destruction or the alteration of these elements of nature had a profound effect on the social and spiritual relations of the members of the community and on their life and cultural identity (§§ 218-219).

cognized that Article 8 of the *ECHR* – which enshrined the right to respect of private family life and of the home – also protected the right, for a minority, to maintain its identity and, for its members, to lead a private family life in conformity with the corresponding tradition. In this regard, the Court affirmed:

*“The Court considers that the applicant’s occupation of her caravan is an integral part of her ethnic identity as a Gypsy, reflecting the long tradition of that minority of following a traveling lifestyle. This is the case even though, under the pressure of development and diverse policies or by their own choice, many Gypsies no longer live a wholly nomadic existence and increasingly settle for long periods in one place in order to facilitate, for example, the education of their children. Measures affecting the applicant’s stationing of her caravans therefore have an impact going beyond the right to respect for her home. They also affect her ability to maintain her identity as a Gypsy and to lead her private and family life in accordance with that tradition.”*<sup>172</sup>

Regarding linguistic rights (in particular the rights of persons belonging to linguistic minorities and foreign nationals) the Court acknowledged a broad margin of appreciation to the states parties. Thus, even if the spelling of family and first names in conformity with the minority languages falls under Article 8, which guarantees the right to respect of private and family life, states parties have the freedom of imposing and regulating the use of their official language(s) in official identification papers and other official documents in order to maintain the linguistic unity of the country.

In *Güzel Erdagöz v. Turkey*,<sup>173</sup> the Court ruled that here had been a violation of Article 8 of the *ECHR*, noting that the Turkish jurisdictions had rejected the request of the plaintiff to have the spelling of his first name rectified in conformity with its pronunciation in Kurdish.

Article 8 of the *ECHR* can also be applied to the right of prisoners to the freedom to correspond in their own language. In *Mehmet Nuri Özen et alia v. Turkey*,<sup>174</sup> the Court recently ruled that there had been a violation of Article 8, noting that there was no legal basis for refusing to mail prisoners’ letters when they were written in Kurdish. This judgment attenuated the Court’s previous jurisprudence in the matter, which was restrictive, for example in *Senger v. Germany*.<sup>175</sup>

Linguistic rights can also be protected in the area covered by the right to freedom of expression guaranteed by Article of the 10 *ECHR*. For example, in *Ulusoy et alia v. Turkey*,<sup>176</sup> the Court ruled that the prohibition of the Kurdish production of a show in a municipal hall constituted a violation of freedom of expression.

able from respect for the dignity of the human person. It implies the commitment to respect human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples (§ 4). Freedom of expression, media pluralism, multilingualism, equal access to art and to scientific and technological knowledge, including in digital form, and the possibility for all cultures to have access to the means of expression and dissemination are the guarantees of cultural diversity. (Article 6).

The *UNESCO Universal Declaration* moreover lists “cultural” rights:

*“The flourishing of creative diversity requires the full implementation of cultural rights... All persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons 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.”* (Article 5)

In Resolution 64/174, *Human Rights and Cultural Diversity*, the General Assembly emphasized the principle, widely accepted today, that the promotion and the protection of human rights, including cultural rights, “underlines the fact that tolerance and respect for *cultural diversity* and the universal promotion and protection of human rights are mutually supportive”.<sup>41</sup>

The *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (2005) adds that cultural diversity can be protected and promoted only if human rights and fundamental freedoms such as freedom of expression, of information and of communication, as well as the possibility for individuals to choose their cultural expression, are guaranteed (Article 2.1). The right to participate or not in the cultural life of certain communities, such as defined by the deciders in these communities or by state authorities, is also fundamental to the protection of cultural diversity. The enjoyment of cultural freedoms by everyone can thus enrich cultural diversity.<sup>42</sup>

Further, the respect, protection and promotion of cultural diversity are essential to guarantee the respect of cultural rights. This link is particularly visible in the area of the protection of national, ethnic, religious and linguistic minorities as well as of indigenous peoples. As the Committee on Economic, Social and Cultural Rights has stated in its *General Comment N° 21*: “In many instances, the obligations to respect and to protect freedoms, cultural heritage and diversity are interconnected,” and guaranteeing the right to participate in cultural life comports the obligation to “respect and protect cultural heritage of all groups and communities” in all its forms.<sup>43</sup>

<sup>172</sup> European Court of Human Rights, Judgment N° 27238/95, ECHR 2001-I, § 73: <http://hudoc.echr-coe.int/sites/eng/pages/search.aspx?i=001-59154#%7B%22itemid%22:%5B%22001-59154%22%7D>

<sup>173</sup> European Court of Human Rights, Judgment N° 37483/02, 21 October 2008.

<sup>174</sup> European Court of Human Rights, Judgment N° 15672/08 and others, 11 January 2011.

<sup>175</sup> European Court of Human Rights, Judgment N° 32527/05, 3 February 2009.

<sup>176</sup> European Court of Human Rights, Judgment N° 34797/03, 3 May 2007.

<sup>41</sup> A/RES/64/174, 18 December 2009, § 10; emphasis added.

<sup>42</sup> PNUD, *Human Development Report 2004*, p. 23.

<sup>43</sup> Committee on Economic, Social and Cultural Rights, *General Comment N° 21: Right of everyone to take part in cultural life* (art. 15, para. 1 (a) § 50).

### III. PERTINENT NORMS

#### A. At the International Level

Besides the principle instruments mentioned above, which enshrine cultural rights, many international treaties adopted under the aegis of the United Nations recognize these rights.

Article 27 of the *International Covenant on Civil and Political Rights*<sup>44</sup> has for specific purpose to protect *minorities* and their cultural particularities. This article states: “In 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 practice their own religion, or to use their own language.”

The *International Convention on the Elimination of All Forms of Racial Discrimination*<sup>45</sup> mentions “the right to equal participation in cultural activities” (Article 5.e.vi). This provision is not superfluous in that it is not uncommon for the cultural rights of certain categories of persons to be violated on the basis of criteria that this convention specifically designates as inadmissible.

The states parties to the *International Convention on the Elimination of All Forms of Discrimination against Women*<sup>46</sup> commit themselves to taking all appropriate measures to eliminate discrimination against women in order to assure, on an equal basis between women and men, the right to participate in all aspects cultural life (Article 13.c).<sup>47</sup>

According to the *Convention on the Rights of the Child*,<sup>48</sup> 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 31.2).

The *International Convention on the Protection of the Rights of all Migrant Workers and their Families*<sup>49</sup> stipulates that migrant workers should benefit from equality of treatment with the nationals of the state in which they are employed regarding the right of access to, and of participation in, cultural life (Article 43.1.g).

44 Adopted 16 December 1966 by the General Assembly; ratified by 167 states (as of 6 August 2013).

45 Adopted 21 December 1965 by the General Assembly; entered into force 4 January 1969; ratified by 176 states (as of 6 August 2013).

46 Adopted 18 December 1979 by the General Assembly; entered into force 3 September 1981; ratified by 187 states (as of 6 August 2013).

47 The relation between cultural rights and sexual discrimination was the subject of a specific report by the Special Rapporteur in the Field of Cultural Rights. See A/67/287, 10 August 2012.

48 Adopted by the General Assembly 20 November 1989; entered into force 2 September 1990; ratified by 193 states (as of 6 August 2013). Thus almost the totality of the United Nations members states, with the exception of South Sudan, a new member state, and the United States of America.

49 Adopted by the General Assembly 18 December 1990; entered into force 1 July 2003; ratified by 46 states (as of 6 August 2013).

been presented in detail in previous booklets,<sup>168</sup> we shall make a succinct presentation here, mentioning in this chapter several cases (related to cultural rights) dealt with by these mechanisms.

#### 1. The European Court of Human Rights

Created in 1959, the European Court of Human Rights is a regional jurisdiction entrusted with overseeing compliance with the *European Convention on Human Rights (ECHR)* by its states parties.<sup>169</sup> It accepts complaints (individual and/or collective or governmental) alleging violations of the provisions of the *ECHR*. Although the convention does not explicitly protect cultural rights per se, the Court, through its dynamic interpretation of the various articles of the *ECHR*, has progressively recognized the existence of material rights that can fall under the notion of “cultural rights” in the broader sense. The provisions of the *ECHR* most frequently invoked regarding cultural rights are the following: Article 8 (right to respect of private and family life), Article 9 (right to freedom of thought, conscience and religion) and Article 10 (freedom of expression), as well as Article 2 of *Protocol N° 1* (right to education).

Another factor that can explain the increasing importance of cultural rights in the jurisprudence of the Court, is the number of cases brought before it by individuals and national minorities, especially cultural, linguistic and ethnic minorities.<sup>170</sup> The few examples mentioned below concern more specifically access to culture, the right to cultural identity and linguistic rights.

In *Khursid Mustafa and Tarzibachi v. Sweden*, the Court ruled on the right of migrants to maintain their cultural relations with their country of origin. In this case – which concerned the eviction of tenants because they had refused to take down a satellite antenna that allowed them to receive programs in Arabic and Farsi broadcasted from their home country (Iraq) – the Court developed its jurisprudence relative to the freedom to receive information under Article 10 of the *ECHR*. It insisted on the importance of such freedom for an immigrant family with three children, who wanted to remain in contact with the culture and the language of their country of origin. The Court also pointed out that freedom to receive information was not limited to subjects related to events of public interest, but that it might also include, in principle, cultural expressions as well as entertainment.<sup>171</sup>

In *Chapman v. the United Kingdom*, the Court was requested to examine the question of the way of life of gypsy families and the specific difficulties they encountered to park their caravan vehicles. In its judgment, the High Chamber re-

168 See, in particular, *The Right to Non-Discrimination*: [http://www.cetim.ch/en/publications\\_non-discrimination.php](http://www.cetim.ch/en/publications_non-discrimination.php) and *The Right to Work*, [http://www.cetim.ch/en/publications\\_droitau travail.php](http://www.cetim.ch/en/publications_droitau travail.php).

169 At present, 47 states have ratified the *ECHR*. Besides the members of the European Union, this includes all the members states of the Council of Europe.

170 European Court of Human Rights, *Cultural Rights in the case-law of the European Court of Human Rights*: [http://www.echr.coe.int/Documents/Research\\_report\\_cultural\\_rights\\_ENG.pdf](http://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf)

171 European Court of Human Rights, Judgment N° 23883/06, § 44, 16 December 2008: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-90234#%7B%22item%22%3A%22001-90234%22%7D>



## V. OVERSIGHT MECHANISMS

### A. At the National Level

Practically speaking, all states are multi-ethnic and multi-confessional, including those considered homogeneous in their constitution or which have become so by virtue of migrations. Generally, violations of cultural rights are related to the states being confronted with new problems or, for a significant number of them, the refusal to respect these rights of their populations for fear of calling into question national “identity”. Thus the majority or minority in power (depending on the state) often exercises discrimination against the other elements of the population. Sometimes, this discrimination even figures in national legislation, in flagrant violation of the international commitment of the states concerned.

Most of the states have ratified the human rights convention guaranteeing cultural rights as well as *ILO Convention 169* regarding indigenous peoples and tribes. Most have also integrated them into their national legislation. Since cultural rights include several distinct rights, the way they are integrated into national laws – and, of course, the political willingness to implement them – differs significantly among countries.

Thus, the way these rights can be implemented and invoked before the national courts depends on the judicial system of each country. Regardless, states parties to conventions enshrining cultural rights should provide domestic mechanisms allowing these rights to be asserted in individual cases. These mechanisms are generally the constitutional courts or administrative tribunals that have the responsibility of giving substance to cultural rights during litigation between individuals and the state.

As an example, in a judgment handed down in April 2013, the Indian Supreme Court rejected the appeal of a transnational corporation *Vedanta Resources* concerning its mining project on the sacred Dongria Kondh mountain, in the state of Orissa. For the Court, those who were the most affected by the mining project had the right to decide on its future.<sup>167</sup>

### B. At the Regional Level

On three continents (Africa, the Americas and Europe), there are human rights protection mechanisms. In so far as the workings of these mechanisms has already

Likewise, this right is enshrined in an extended way in the most recent convention, the *Convention on the Rights of Persons with Disabilities*:<sup>50</sup>

*“1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:*

- a) enjoy access to cultural materials in accessible formats;*
- b) enjoy access to television programs, films, theater and other cultural activities, in accessible formats;*
- c) enjoy access to places for cultural performances or services, such as theaters, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.*

*2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.*

*3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.*

*4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.” (Article 30)*

The International Labor Organization's 1989 *Convention N° 169* on indigenous and tribal peoples in independent countries also contains provisions dealing with matters related to cultural rights such as identity, language, belief systems, traditions and customs, participation in cultural life, education and cultural heritage. In practice, this convention plays an important role.

The *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*<sup>51</sup> in Article 2 enshrines the right of minorities to their own culture as well as the right to participate in the cultural life of the state in which they are domiciled:

*“1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.*

*2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.”*

<sup>167</sup> <http://www.survivalfrance.org/actu/9162>. Although the selection procedure for the villages by the local administration has been criticized (12 villages selected out of more than a hundred in the region), all the villages consulted (eight in all to the present time) voted against the mining project (see the press release from Survival International, 31 July 2013).

<sup>50</sup> Adopted by the General Assembly 13 December 2006; entered into force 3 May 2008; ratified by 133 states (as of 6 August 2013).

<sup>51</sup> Adopted by the General Assembly 18 December 1992.

The *United Nations Declaration on the Rights of Indigenous Peoples*<sup>52</sup> also plays an important role in human rights. Its purpose is to protect indigenous peoples and to safeguard their right to their own culture. For example, Article 5 states that “indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State”. This declaration also emphasizes property rights, linking them closely to the notion of cultural rights (see Article 26).

Among the other human rights figuring into cultural rights, one might note the *right to education*, recognized in Articles 13 and 14 of the *International Covenant on Economic, Social and Cultural Rights* and in Articles 28 and 29 of the *Convention on the Rights of the Child*. Referring to the *World Declaration on Education For All* (1990), the Special Rapporteur in the Field of Cultural Rights emphasized that “people develop their own particular but ever-evolving world visions and capacities through a lifelong process of education; and it is education that allows access to knowledge, values and cultural heritage”.<sup>53</sup>

To the above mentioned rights must be added, in particular, the right to education, to information and to freedom of opinion and expression, to free association and to participation in decision-making, recognized in all human rights instruments regional as well as international, which are indispensable to the enjoyment of cultural rights.

## B. At the Regional Level

### 1. The Americas

The *American Declaration of the Rights and Duties of Man*,<sup>54</sup> recognizes that:

“Every person has the right to take part in the cultural life of the community, to enjoy the arts, and to participate in the benefits that result from intellectual progress, especially scientific discoveries. He likewise has the right to the protection of his moral and material interests as regards his inventions or any literary, scientific or artistic works of which he is the author.” (Article XIII)

Article 14 of the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*, “*Protocol of San Salvador*”, protects cultural rights in terms similar to those of Article 15.1 of the *International Covenant on Economic, Social and Cultural Rights*.

Article 38 of the *Charter of the Organization of American States* stipulates: “The Member States shall extend among themselves the benefits of science and

indigenous peoples” and that “in practice the rights of indigenous peoples have been compromised, due to the interpretations adopted by the State party of national interest, modernization and economic and social development”.<sup>160</sup> The CERD has noted, moreover, that “a high number of conflicts arise each year throughout Indonesia between local communities and palm oil companies” and that “references to the rights and interests of traditional communities contained in domestic laws and regulations are not sufficient to effectively guarantee their rights”.<sup>161</sup> The CERD is also concerned by “the distinction made between Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism, which are often referred to in legislation, and other religions and beliefs” and has expressed its concern at “the adverse impact of such a distinction on the rights to freedom of thought, conscience and religion of persons belonging to ethnic groups and indigenous peoples”.<sup>162</sup>

The *Committee against Torture (CAT)* was concerned “at incitement and acts of violence against persons belonging to minorities, in particular the Ahmadiyah and other minority religious communities.”<sup>163</sup>

The *Human Rights Committee*, noted that laws and regulations adopted by the local (provincial/regional) authorities are not always compatible with the *International Covenant on Political and Civil Rights* and requested Indonesian government to assure its implementation throughout the entirety of the national territory.<sup>164</sup> The Committee deplored the restrictions on religious freedom of the Ahmadiyah and “the persecution of other religious minorities, such as Shia and Christians, who are subjected to violence by other religious groups and law enforcement personnel”.<sup>165</sup> It has also denounced “undue restrictions of the freedom of assembly and expression by protesters in West Papua” and requested that the Indonesian government, among other things, reform the teaching programs in order to promote religious diversity so that the preferences of believers and non-believers be respected.<sup>166</sup>

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160 CERD, *Concluding Observations: Indonesia*, CERD/C/IDN/CO/3, 17 August 2007, §§ 15, 16; <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.IDN.CO.3.pdf>

161 *Ibid.*, § 17.

162 *Ibid.*, § 21.

163 CAT, *Concluding Observations: Indonesia*, CAT/C/IDN/CO/2, 2 July 2008, § 19.

164 Human Rights Committee, *Concluding Observations: Indonesia*, CCPR/C/IDN/CO/1, 21 August 2013, § 6.

165 *Ibid.*, § 25.

166 *Ibid.*, §§ 28, 26, respectively.

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52 Adopted by the General Assembly 13 September 2007.

53 Quoted in *Report of the Special Rapporteur in the field of cultural rights*, A/HRC/14/36, §15.

54 Adopted at the ninth International Conference of American States in Bogota (Colombia), April 1948.

whose articles defined very strictly the dress code to the point of criminalizing certain traditional costumes. This made it possible to define the rights of the citizen, including cultural rights.

As already emphasized, Indonesia has adopted legal pluralism with the constitution as supreme authority and as the basis of all the other legal systems, be it Islamic law, customary law or certain forms of traditional rules and practices. Regarding indigenous peoples, several laws recognize the laws and systems of these peoples, including rights to forests, to the sea and small islands and to fishing.

However, the cultural rights of some groups and/or peoples are violated by discriminatory practices.

#### Criticism by National Institutions, Social Movements and NGOs

*Komnas-Perempuan* (The Indonesian National Commission on Violence against Women) points out that there are 207 discriminatory measures concerning religion and morality, of which 78 specifically apply to women.<sup>152</sup> Many NGOs denounce attacks on the freedom of the press and the repression to which journalists are subjected.<sup>153</sup> Others denounce the arbitrary arrests of peaceful demonstrators.<sup>154</sup>

According to *Aliansi Masyarakat Adat Nusantara* (Indigenous Peoples Alliance of the Archipelago), “indigenous peoples continuously experienced various forms of discrimination, coercion and exploitation of their lands, territories and resources”,<sup>155</sup> Several Indonesian organizations, “highlighted the lack of respect for Free Prior and Informed Consent (FPIC)”.<sup>156</sup> *Vivat International* “alleged that islands such as Flores, Timor, Lembata and Sumba had been mined by force by local government with multinational corporations”.<sup>157</sup>

#### Criticism by the United Nations Human Rights Bodies<sup>158</sup>

*UNESCO* is concerned by the lack of teachers in remote rural communities. There is said to be too many teachers in 68 % of the urban primary schools whereas 66 % of primary schools in remote regions lack teachers.<sup>159</sup>

The *CERD* has deplored the lack of “appropriate safeguards guaranteeing respect for the fundamental principle of self-identification in the determination of

technology by encouraging the exchange and utilization of scientific and technical knowledge in accordance with existing treaties and national laws.”

## 2. Africa

The *African Charter of Human and Peoples' Rights* (1981) mentions the right to everyone to freely take part in the cultural life of her/his community (Article 17.2) as well as the right of all peoples to their “economic, social and cultural development, with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind” (Article 22.1).

These principles were also taken up in the *Charter for African Cultural Renaissance* (2006), which recognizes in its preamble that all cultures emanate from societies, communities, groups and individuals and that any African cultural policy must necessarily allow peoples to flourish in order to assume an increased responsibility in their own development. Article 15, moreover, exhorts states to “create an enabling environment to enhance the access and participation of all in culture, including marginalized and underprivileged communities”.

## 3. Europe

Article 22 of the *European Union Charter of Fundamental Rights* (18 December 2000) mentions that “the Union shall respect cultural, religious and linguistic diversity”.

The *Council of Europe Framework Convention on the Value of Cultural Heritage for Society*, the “*Faro Convention*” (27 October 2005), recognizes that “every person has a right to engage with the cultural heritage of their choice, while respecting the rights and freedoms of others, as an aspect of the right freely to participate in cultural life enshrined in the *United Nations Universal Declaration of Human Rights* (1948) and guaranteed by the *International Covenant on Economic, Social and Cultural Rights* (1966)”. Emphasizing “the need to involve everyone in society in the ongoing process of defining and managing cultural heritage”, the *Convention* refers to the right to benefit from cultural heritage and to contribute to its enrichment, the right of everyone to participate in “the process of identification, study, interpretation, protection, conservation and presentation of the cultural heritage” and to its access (art. 4, 12 et 14).

## 4. Asia

The *ASEAN Human Rights Declaration*, although very controversial and criticized by human rights defenders,<sup>155</sup> also contains a provision (Article 32) protecting cultural rights, formulated in terms similar to those of Article 15.1 of the *International Covenant on Economic, Social and Cultural Rights*.

Further, the *ASEAN Declaration On Cultural Heritage* (2000) also refers to aspects of cultural heritage related to human rights, recognizing that “all cultural heritage, identities and expressions, cultural rights and freedoms derive from the dignity and worth inherent in the human person in creative interaction with other

55 <http://conventions.coe.int/Treaty/en/Treaties/Htm/199.htm>

152 Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, A/HRC/WG.6/13/IDN/3, 9 March 2012, § 21: <http://www.refworld.org/docid/50040e5d2.html>

153 *Ibid.*, §§ 46, 47.

154 *Ibid.*, § 50.

155 *Ibid.*, § 58.

156 *Ibid.*

157 *Ibid.*

158 The first report of Indonesia will be examined by the Committee on Economic, Social and Cultural Rights in 2014.

159 Cited in Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, A/HRC/WG.6/13/IDN/3, 9 March 2012, § 53.

human persons and that the creative communities of human persons in ASEAN are the main agents and consequently should be the principal beneficiary of, and participate actively in, the realization of these heritage, expressions and rights” (Preamble; see also Articles 3, 9, 14).

Madura, the Javanais, and others), conflicts (in Borneo, in the Moluques Islands, in Aceh, in the central region of Jakarta), political representation (there are generally moderates and/or nationalists who win national elections, and conservatives or loyalists who win the provincial/regional elections).

- ◆ The Indonesians live under several legal systems simultaneously: the constitution, Islamic law, indigenous law (or customary law, which is generally binding), and under various traditional laws and practices.
- ◆ The type of sovereignty is defined not only by land law but also by maritime law. Some ethnic groups have strong traditions and a particular way of life in which water or the sea play an important role, for it has a profound influence on their existence. This is the case of the Bajau, the Kei, the Bugis, and many smaller ethnic groups who define their right to the sea and their basis of subsistence. (Indonesia is recognized internationally as a maritime country and possess vast interior seas.)
- ◆ Indonesia has as its official language Indonesian, which is the lingua franca of ethnic groups. However, the education system includes courses in local languages, which, in certain cases has allowed a resurgence of local identities.
- ◆ Recognizing the importance of the historical context and cultural diversity, Indonesia has accorded some provinces a considerable level of autonomy. This is the case of the provinces of Aceh, Papua, Yogyakarta (a constitutional monarchy with an elected representative body).
- ◆ The reference system includes not only the constitution but also customary law, which takes precedence in certain cases over the constitution. The most striking example of this is that of the Subak of Bali, where the irrigation system defines the rights and obligations of parties regarding real estate.

#### Indonesian Constitutionalism as a Foundation of the Rights of the Citizen

From 1998 to the present, many segments of Indonesian society have tried to adapt to modern democracy. Numerous institutional reforms have been carried out, not without difficulty. At present, what defines Indonesian democracy is modern constitutionalism. Here one might note two striking facts. First, the *resurgence* of the Indonesian constitution (with the place of the citizen within the nation) and its four amendments, notably the second amendment, which enshrines the adoption of the *Universal Declaration of Human Rights*. Second, the *creation*, in 2003, of the Indonesian Constitutional Court and its judgments. These two facts have had an immense influence on Indonesian legislative policies, resulting, for example, in the concept and the practice of citizenship and the legal institutions set up so that citizens can bring cases directly affecting them before the courts. Very often, cultural diversity has raised heated debates, especially regarding language, the right to vote and attire. Thus it is that, in a case that garnered a great deal of attention, a citizen called into question the law prohibiting pornography one of

military, security, justice, national monetary and fiscal policy and religious matters).<sup>147</sup>

#### Commitments by the Indonesian State

Indonesia has ratified most of the international human rights treaties, including the *International Covenant on Economic, Social and Cultural Rights* in 2006. It has also ratified the main UNESCO cultural rights treaties.

Article 31 of the Indonesian constitution requires the central government to attribute “at least 20% of the state and regional budgets to the implementation of the national education system”<sup>148</sup> According to official figures, 95% of children at the primary level are in school in Indonesia.<sup>149</sup>

#### Cultural Diversity and Cultural Rights

Indonesia is a vast archipelago comprising 17,508 islands – of which only 6,000 are inhabited – with a population 237 million inhabitants.<sup>150</sup> It is home to a vast diversity (nearly 600 ethnic groups and different languages). The country covers three time zones and territory equal to the distance separating London and Moscow. Indonesia's cultural diversity has always fascinated researchers, especially the “Indonesianists”, as well as the universities and research institutes of France, the Netherlands, the United States of America, Germany, Australia and, more recently, Singapore and Turkey, who have explored questions related to history, law and gender as well as matters dealing with the indigenous peoples of the country. These researchers paint a picture of a unique country, its uniqueness having already been the subject of much research, some of which has produced a very positive image of the country and some of which has produced a very negative image.<sup>151</sup>

This cultural diversity can be better understood through certain facts or situations:

- ◆ Communal life attributes great importance to certain dimensions of social life such as religion and/or ethnic affiliation and/or social strata. This is seen sometimes in commercial relations (guilds created by the Bugis, the

147 Ibid., § 72.

148 Indonesian government report submitted to the Committee on Economic, Social and Cultural Rights, E/C.12/IDN/1, 29 October 2012, § 232.d.

149 Common core document forming part of the reports of States parties: Indonesia, HRI/CORE/IDN/2010 Table N° 19, p. 17.

150 Ibid., §§ 1, 6.

151 In particular: Denys Lombard, 1996, *Le Carrefour Javanais, Essai d'histoire globale, 1. Les limites de l'occidentalisation, 2. Les réseaux asiatiques 3. L'héritage des royaumes concentriques*, Paris: École des Hautes Études en Sciences Sociales, 1990; Jamie S. Davidson, David Henley and Sandra Moniaga (eds), *Revival of tradition in Indonesian Politics: the Deployment of adat from Colonialism to Indigenism*, London and New York: Routledge, 2007; Gerry Van Klinken, *Communal Violence and Democratization in Indonesia: Small Town Wars*, New York and London: Routledge 2007; Henri Chambert-Loir, Hasan Muarif Ambary, *La scène de l'histoire: hommage à Denys Lombard*, 2011; Mujiburrahman, 2008, *Mengindonesiakan Islam (Indonesianising Islam)*, Yogyakarta: Pustaka Pelajar, Ricklefs, Merle Calvin, 1993, *A History of Modern Indonesia, ca. 1300 to the Present*, 2<sup>nd</sup> edition, Palgrave & Stanford University Press.

## IV. STATES' OBLIGATIONS AND IMPLEMENTATION AT THE NATIONAL LEVEL

### A) States' Obligations<sup>56</sup>

Generally speaking, the *International Covenant on Economic, Social and Cultural Rights* “imposes on States parties the specific and continuing obligation to take deliberate and concrete measures aimed at the full implementation of the right of everyone to take part in cultural life”<sup>57</sup> This obligation is tempered by taking into account the constraints of each state arising from available resources, which allows the states to fulfill the rights enshrined in the *Covenant* in a “progressive” way. The *Covenant* distinguishes “the inability from the unwillingness of a State party to comply with its obligations” in matters of economic, social and cultural rights.<sup>58</sup>

Moreover, as the Committee has clarified in *General Comment N° 3*, a core obligation to ensure the satisfaction of, at the least, essential levels of each of the rights in the *Covenant* is incumbent upon every state party, which implies the minimal obligation to establish and promote conditions in which everyone can participate in the culture of her/his choice.<sup>59</sup>

Specifically, as is the case with the other rights enshrined in the *Covenant*, the right to participate in cultural life imposes three categories of obligations: a. the obligation to respect; b. the obligation to protect; and c. the obligation to fulfill.

The obligation to **protect** is intrinsically linked to the obligation to **respect**. The Committee has been explicit in this regard:

“In many instances, the obligations to respect and to protect freedoms, cultural heritage and diversity are interconnected. Consequently, the obligation to protect is to be understood as requiring States to take measures to prevent third parties from interfering in the exercise of rights listed in paragraph 49 above.”<sup>60</sup>

These measures must allow everyone to freely choose his/her own cultural identity, to enjoy freedom of expression and opinion in the language(s) of his/her

56 The details in this chapter about states' obligations regarding the right to participate in cultural life are drawn mostly from Committee on Economic, Social and Cultural Rights, *General Comment N° 21: Right of everyone to take part in cultural life* (art. 15, para. 1 (a)).

57 Committee on Economic, Social and Cultural Rights, *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 and Cultural Rights*), § 45.

58 See, inter alia, Committee on Economic, Social and Cultural Rights, *General Comment No 14: The right to the highest attainable standard of health*, May 2000, § 47.

59 Committee on Economic, Social and Cultural Rights, *General Comment N° 21: Right of everyone to take part in cultural life* (art. 15, para. 1 (a)), § 55.

60 Ibid., § 50.

choice and the right to freely seek, receive and transmit information and ideas without consideration of borders, to enjoy freedom to create, to have access to his/her own cultural and linguistic heritage as well as to that of other cultures and to participate in a free, active and enlightened way “in any important decision-making process that may have an impact on his or her way of life and on his or her rights under article 15, paragraph 1 (a)”<sup>61</sup>.

The obligation to respect and to protect applies also to cultural heritage, notably to the cultural productions of indigenous peoples. The *Covenant* specifies that this includes “protection from illegal or unjust exploitation of their lands, territories and resources by State entities or private or transnational enterprises and corporations”.<sup>62</sup> The relationship to land is considered a fundamental aspect of indigenous peoples’ culture (not only for feeding and housing themselves but also for their religious rites). Thus, if the state does not make available appropriate means – legislative or judicial – to prevent interference with this right or to remedy its non-respect, it is violating Article 15.1.a of the *Covenant*. It should be noted that this aspect of this right is regularly violated by many states, which allow the most extensive exploitation possible of the local resources by transnational corporations in contempt of the rights of the local populations locales (see also Chapters IV.B; V.B and C).

Regarding the obligation to *fulfill*, it has multiple facets and compasses the obligation to facilitate, the obligation to promote and the obligation to supply. Specifically, this means that the state must adopt political measures, measures of encouragement, measures of financial aid and, generally speaking, measures of all sorts intended to facilitate the exercise of this right by all individuals and communities, especially minorities, migrants, the disadvantaged and those requiring particular assistance owing to their situation (the elderly, children, the disabled).

The Committee also insists on the obligation of states parties to ensure the full enjoyment of the rights guaranteed by the *Covenant* through international assistance and cooperation, especially economic and technical cooperation:

*“In negotiations with international financial institutions and in concluding bilateral agreements, States parties should ensure that the enjoyment of the right enshrined in Article 15, Paragraph 1 (a), of the Covenant is not impaired. For example, the strategies, programs and policies adopted by States parties under structural adjustment programs should not interfere with their core obligations in relation to the right of everyone, especially the most disadvantaged and marginalized individuals and groups, to take part in cultural life.”*<sup>63</sup>

In spite of the efforts made by certain states to respect and protect the right to participate in cultural life, much remains to be done. On the one hand, the adoption of measures at the national level is necessary to prevent the worst forms of violence against vulnerable members of a group, in particular women. On the other

and the right to effective consultation with a view to obtaining consent”.<sup>138</sup> The Committee was also concerned “by the slow pace of progress in the development of legal instruments governing the areas of authority, jurisdiction and responsibilities of the indigenous justice system”.<sup>139</sup>

The *Committee on the Rights of the Child* was concerned that “children born in the State party from parents who are immigrants or asylum seekers are denied the right to birth registration” and by “the low budgetary allocation per capita to the educational system in provinces with majority indigenous population, and the lack of information on its evaluation.”<sup>140</sup>

The *Committee for the Elimination of Discrimination against Women (CEDAW)* noted “with concern... the high drop-out rates among women and girls, especially indigenous girls, and discrepancies between men and women in access to higher education”.<sup>141</sup> It was also concerned by “the persistence of structural, political, cultural and socio-economic obstacles to the participation of women, especially indigenous women and women of African descent, in many spheres of public life”.<sup>142</sup>

### 3. Indonesia

Ranked 121<sup>st</sup> in the United Nations Development Program’s Human Development Index (2013) with US\$ 4,154 per capita income, Indonesia is among those countries with an “average” human development index.<sup>143</sup>

Since independence in 1945, Indonesia has passed through periods of terrible political violence during the years 1965-1966 (massacres of 500,000 to a million Communists or those assumed to be Communists),<sup>144</sup> followed by a long period (more than 30 years) of dictatorship, and in 1999-2006 further troubles (riots, ethnic and religious conflicts and repression).

Indonesia is a unitary republic with a presidential system.<sup>145</sup> Since 1999 (first revision of the constitution tending to create a separation of executive, legislative and judicial powers),<sup>146</sup> this country has committed itself to the democratization of its political system. Indonesia has also begun a process of decentralization, transferring authority to local powers (with the exception of foreign affairs, the

138 Ibid.

139 Ibid., § 19.

140 Committee on the Rights of the Child, *Concluding Observations: Ecuador*, CRC/C/ECU/CO/4, 2 March 2010, §§ 43, 82.

141 CEDAW, *Concluding Observations: Ecuador*, CEDAW/C/ECU/CO/7, 7 November 2008, § 30.

142 Ibid., § 42.

143 <http://hdrstats.undp.org/fr/pays/profils/IDN.html>

144 In a report published in 2012, the Indonesian Human Rights Commission (*Komnas-Ham*) characterized these massacres as “crimes against humanity”. See *Le Monde*, 6 August 2012: [http://www.lemonde.fr/asia-pacifique/article/2012/08/06/indonesie-en-passe-de-reconnaitre-les-massacres-de-1965\\_1742911\\_3216.html](http://www.lemonde.fr/asia-pacifique/article/2012/08/06/indonesie-en-passe-de-reconnaitre-les-massacres-de-1965_1742911_3216.html)

145 *Common core document forming part of the reports of States parties: Indonesia*, HRI/CORE/IDN/2010, § 45.

146 Ibid.

61 Ibid., § 49.e

62 Ibid., § 50

63 Ibid., § 55

### Criticism by the United Nations Human Rights Bodies

The *Committee on Economic, Social and Cultural Rights* noted “its concern about the failure to undertake consultations as a basis for obtaining the prior, freely given and informed consent of indigenous peoples and nationalities for natural resource development projects that affect them”, and notes with further concern “that the objectives of the State party’s efforts to disseminate information, establish permanent consultative offices and organize tours through areas surrounding proposed mining and hydrocarbons development project sites... fail to engender an intercultural dialogue that would serve as a basis for obtaining the consent of indigenous peoples and nationalities and respecting their right to be consulted”.<sup>131</sup> The Committee also deplored restrictions hampering access to education and the persistence of illiteracy as well as its prevalence particularly among indigenous, Afro-Ecuadorian and Montubio adolescents and young persons.<sup>132</sup>

For the *Special Rapporteur on the Rights of Indigenous Peoples*, the consultation mechanisms have not been completely worked out and, *a fortiori*, are not implemented systematically. In general, indigenous peoples are not adequately consulted and are thus *de facto* deprived of their lands and prevented from living according to their traditional way of life.<sup>133</sup> The Special Rapporteur also considered that it is essential that indigenous peoples and their representatives be able to benefit from their own system of justice and collaborate fully in its implementation. It is also necessary that mechanisms be put into place allowing for dialogue with indigenous peoples and taking into account their opinion regarding all the legislative proposals that might affect their rights and interests.<sup>134</sup>

The *Committee on the Elimination Racial Discrimination (CERD)*, while emphasizing the sex-based discrimination and violence of which indigenous, Afro-Ecuadorian, Montubio, migrant and refugee women are victims,<sup>135</sup> also declared itself to be concerned by the way the media portray a negative image of indigenous and Afro-Ecuadorian persons.<sup>136</sup> The CERD further deplored “the absence of any effective, systematic or regulated consultations with indigenous peoples to obtain their prior, free and informed agreement on the extraction of natural resources or on other matters that affect them [as well as] the public statements that have been made to justify the lack of consultation with indigenous peoples...”<sup>137</sup>. The CERD further denounced the arbitrary arrest, with unfounded accusation, of indigenous chiefs “who organize or take part in social protests relating primarily to laws and policies that regulate the use of natural resources

hand, the freedom of individuals to choose and change their cultural identity (for example a change of religion or sex) remains an illusory right if states do not guarantee a certain number of civil and political rights, such as the right to education and to information and the freedom of expression of all individuals both within the state overall and within their own community.”<sup>64</sup>

### Environment Supportive of the Conservation, Development and Diffusion of Science

According to Article 15.2 of the *Covenant*, the measures that states parties must take with a view to assuring the full exercise of the right to participate in cultural life and benefit from scientific progress, must “include those necessary for the conservation, the development, and the diffusion of science and culture”.

*Conservation* requires the identification and the safeguard of scientific knowledge, the products and tools, including literature, data banks, specimens and equipment.

*Development* implies an explicit commitment to develop science and technology for the advantage of human beings, for example by developing national action plans. Generally, this implies the adoption of programs to support and reinforce research financed by public funds, to develop partnerships with private enterprises and other actors such as farmers in the context of food security and to promote freedom of scientific research.

*Diffusion* includes the dissemination of scientific knowledge and its applications both within the scientific community and within society in the broadest sense, especially through the publication of the results of research. Open communication of results, hypotheses and opinions of research are at the heart of the scientific process and offer the best guarantee of the accuracy and neutrality of scientific results. The diffusion of science is a condition for public participation in decision-making and is essential to encouraging research and its applications.<sup>65</sup>

## **B. Implementation at the National Level**

This section will deal with cultural rights in three countries on three continents with very different configurations: Morocco, Ecuador and Indonesia.

### **I. Morocco**

Ranked 130th in the United Nations Development Program’s Human Development Index (HDI) in 2013 with US\$ 4384 per capita income, Morocco just barely figures among those countries considered as having a “medium” level of development, according to the HDI.<sup>66</sup>

64 Laura Pineschi, “Cultural Diversity as a Human Right? General Comment No. 21 of the Committee on Economic, Social and Cultural Rights”, in Silvia Borelli and Federico Lenzerini (eds), *Cultural Heritage, Cultural Rights, Cultural Diversity: New Developments in International Law* (Leiden, 2012), 65 *ibid.*, § 45-48; see also UNESCO, *Venice Statement on the Right to Enjoy the Benefits of Scientific Progress and its Applications*, July 2009.  
66 *Human Development Index 2013*: [http://hdr.undp.org/en/media/HDR2013\\_EN\\_Statistics.pdf](http://hdr.undp.org/en/media/HDR2013_EN_Statistics.pdf)

131 Committee on Economic, Social and Cultural Rights, *Concluding Observations: Ecuador*, E/C.12/EU/CO/3, 13 December 2012, § 9.

132 *Ibid.*, § 31.

133 Council, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya Observations on the progress made and challenges faced in the implementation of the constitutional guarantees of the rights of indigenous peoples in Ecuador (summary)*, A/HRC/15/37/Add.7, 17 December 2010, p. 2.

134 *Ibid.*, p. 1.

135 CERD, *Concluding Observations: Ecuador*, CERD/C/EU/CO/20-22, 22 October 2012, § 23.

136 *Ibid.*, § 16.

137 *Ibid.*, § 17.

Morocco is a constitutional monarchy, its constitution having been proclaimed in December 1962 by the late King Hassan II. It has been amended five times: in 1970, 1972, 1992, 1996 and 2011. The bulk of power is concentrated in the hands of the king, a hereditary monarch and spiritual head who appoints the head of government taking into account the parliamentary majority.

Morocco is also the occupying power that has been administering the territory of Western Sahara since the withdrawal of the Spanish colonial forces in 1975. Although the organization of a referendum on the status of this territory has been planned by the United Nations Security Council since 1991, it has still not taken place.<sup>67</sup> The United Nations thus does not recognize Morocco's sovereignty over this territory. On the other hand, the Sahrawi Arab Democratic Republic is recognized by the African Union as a member state in full standing.<sup>68</sup>

### Commitments by the Moroccan State

Morocco has ratified most of the international human rights treaties containing provisions protecting cultural rights, including the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*. Moreover, in 2008, Morocco lifted all reservations on the *International Convention on the Elimination of All Forms of Discrimination against Women*. On the other hand, Morocco has not yet ratified the optional protocols to the international human rights covenants and to the *International Convention on the Elimination of All Forms of Discrimination against Women*, which would allow victims of violations to file complaints.<sup>69</sup>

Morocco is also party to UNESCO's major international treaties, considered essential for the exercise of cultural rights.<sup>70</sup> Morocco, however, has still not ratified the UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*.

### The National Context

Morocco is a multi-ethnic society. The majority of Moroccans are Sunni Muslims of Arab descent, Imazighen (Amazigh, in the singular; also known as Berbers) or mixed Arab and Amazigh. Also, a small Jewish community of some 4,000 persons, as well as persons of African descent, live in Morocco.<sup>71</sup>

In the course of the last decade, Morocco has taken several measures intended to reinforce the protection of cultural rights. In particular, it has carried out various legislative and institutional reforms with this in mind: major amendments to the

67 <http://www.un.org/fr/peacekeeping/missions/minurso/mandate.shtml>

68 [http://www.au.int/en/member\\_states/countryprofiles](http://www.au.int/en/member_states/countryprofiles)

69 <http://www.cedh.org.ma/spip.php?article4576>

70 In particular the 1972 *Convention on the Protection of Cultural and Natural Heritage*, the 2003 *Convention for the Safeguarding of Intangible Cultural Heritage* and the 2001 *Convention on the Protection of the Underwater Cultural Heritage*. Morocco has also ratified the 1960 *Convention against Discrimination in Education*.

71 Council, *Report of the Special Rapporteur in the field of cultural rights (Mission to Morocco, 16 September 2011)*, A/HRC/20/26/Add.2, 2 May 2012, § 5. See also: [www.minorityrights.org/4890/morocco/morocco-overview.html](http://www.minorityrights.org/4890/morocco/morocco-overview.html)

In *Kichwa de Sarayaku Indigenous People v. Ecuador*,<sup>125</sup> the *Inter-American Court of Human Rights* confirmed the necessity of obtaining the free and informed prior consent of the indigenous communities when projects or infrastructure are planned and are likely to affect their land, culture, way of life or rights.<sup>126</sup>

More recently, the huge palm oil plantations (especially in the Amazonian province of Napo), for producing palm oil for Western industry, have caused considerable damage to the rivers, land, fauna and flora on which the local indigenous populations depend, notably owing to the pesticides and other chemical products used on the palm trees.<sup>127</sup> These plantations constitute serious – and irreversible – threats not only to the environment but also to the cultural rights of indigenous peoples, who see their whole traditional way of life thwarted and their identity violated.

The conflict of interests between the sovereignty of the state over natural resources (supposed to be used for the benefit of the population overall) and the right of indigenous peoples to their lands is strikingly evident in Ecuador. Thus it is that the main criticism of social movements, NGOs and United Nations treaty bodies pertains to the non-respect by the government of the rights of the indigenous peoples to their lands.

### Criticism by Social Movements and NGOs

For *Acción Ecológica*, the law on mining extraction violates the right of indigenous peoples to be consulted, and the law on food sovereignty violates the constitution, for it allows the introduction of transgenic inputs into the food chain.<sup>128</sup>

*La Fundación Pachamama* deplors the lack of adequate procedures guaranteeing the implementation of the constitutional provisions regarding the free distribution of land and ancestral territories to the indigenous peoples, especially those living in isolated areas, and this in spite of the government's promises.<sup>129</sup>

*Amnesty International* and *Human Rights Watch* have denounced the criminalization of peaceful demonstrators, mostly indigenous, who have mobilized against the mining companies.<sup>130</sup>

125 See in particular, [http://corteidh.or.cr/docs/casos/articulos/seriec\\_245\\_ing.pdf](http://corteidh.or.cr/docs/casos/articulos/seriec_245_ing.pdf), § 290, 300.

126 The Human Rights Committee has clearly stated in the case *Angela Poma Poma v. Peru* that, in order for the right to participate in decision-making to be effective, it must not be limited to mere consultation but must include “the free, prior and informed consent of the members of the community”. Comm. No. 1457/2006, CCPR/C/95/D/1457/2006 (24 April 2009), § 7.6.

127 John M. Ashley, *African Palm Oil: Impact on Ecuador's Amazon*, 19 February 2010, <http://www.culturalsurvival.org/publications/cultural-survival-quarterly/ecuador/african-palm-oil-impacts-equadors-amazon>

128 *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Ecuador*, A/HRC/WG.6/13/ECU/3, 12 March 2012, § 18.

129 *Ibid.*, § 70.

130 Amnesty International, *Annual Report 2012: Ecuador*: <http://www.amnesty.org/en/region/ecuador/report-2012> and Human Rights Watch, *World Report 2013: Ecuador*: <http://www.hrw.org/world-report-2013/country-chapters/ecuador?page=1>



programming the priority concerns of the indigenous, Afro-Ecuadorian and mestizo populations (Articles 16 and 17).

The Ecuadorian government has committed itself to regularly increasing the education budget, with it reaching 6% in 2012.<sup>121</sup> Primary schooling is free, and as of 2004, 86% of children were in school.<sup>122</sup> However, the drop-out rate at the primary level remains high, especially in rural areas (20%).<sup>123</sup>

#### Cultural Rights and Indigenous Peoples

Owing to the relation that indigenous populations have with the natural environment within which they live, environmental damage can have significant repercussions on their traditional way of life. Not only do these populations live in symbiosis with nature and draw all their resources directly from it (essentially by hunting, fishing, gathering and agriculture), but the role of nature and of all its elements is equally essential in their spiritual life and their cosmological conception. Obviously, the destruction or disturbance of nature can have an impact on the cultural rights of indigenous populations affected by such damage.

In Ecuador, the particular relations of indigenous peoples to the land and territory and especially to the notion of individual property have been reconsidered in function of the approach enshrined in the 2008 constitution. Legally, this means that communities, peoples and nationalities have the right to perpetual ownership of their communal lands, “inalienable and indivisible”, as well as the “use, usufruct, administration and the conservation of *renewable* natural resources located on these lands”. (Article 58 of the constitution, emphasis added).

However, the self-government exercised by these peoples on their territory does not necessarily mean ownership of *non-renewable* resources in the sub-soil (hydrocarbons, mineral ore), which are the inalienable heritage of the state. The communities must however be consulted regarding the extraction of these resources in function of the impacts such extraction might have on their traditional way of life and derive benefit from these projects or, if not, be compensated for the damages caused socially, culturally and environmentally.

From a theoretical point of view, this constitutes a form of legal protection against the interests of transnational mining and oil companies as well as from state policies hostile to the interests of the community (Article 58.7).<sup>124</sup> However, in spite of these safeguards in the constitution, the protection of indigenous peoples by national law and the Ecuadorian state is far from being really assured in practice.

constitution in 2011, adoption of the Family Code in 2004 and the creation of a certain number of institutions for the promotion of cultural rights.

In 2010, the government drafted a National Action Plan for Democracy and Human Rights for 2011-2016. It makes official a human rights approach to various economic, cultural and environmental matters, including the promotion of the national languages, especially the Amazigh language and culture. A coordination mechanism, comprising representatives of the government, national institutions and NGOs active in the area of the defense of human rights as well as academics, was set up to supervise and evaluate the implementation of the plan.<sup>72</sup>

The Moroccan Ministry of Culture, created in 2006, has “for its mission to draft and implement the government’s policy in the area of cultural and artistic heritage and development”.<sup>73</sup>

In the area of education and literacy, another right related to cultural rights, Morocco has made significant efforts to guarantee access to education by everyone. For example, the rate of school attendance for children six to eleven years old rose from 75.5 %, for the 1998-1999 school year to 90 % for the 2000-2001 school year and to 94 % for 2003-2004. For six-year-olds, the rate of schooling reached 90.7 % for 2003-2004, as opposed to 37.2 % in 1997-1998. During the 2002-2003 school year, this rate rose to 94 % of children 6 to 11 years old and to 97 % for the six-year-olds.<sup>74</sup>

There are in Morocco several human rights protection and promotion instances. The Human Rights Advisory Council set up in 1990 had its purview broadened in 2001 (and in 2002, became the National Human Rights Council).<sup>75</sup> A consultative body, the Council issues recommendations, receives complaints, examines the compliance of national legislation with the international conventions to which Morocco is party, and defends the rights of immigrants.<sup>76</sup>

The state bodies entrusted with promoting economic and social development in the provinces of the North, the South and the East<sup>77</sup> and the Social Development Agency<sup>78</sup> have a number of projects underway intended to respond to the particular needs of each region, which take into account cultural rights. Among them is a network of media centers offering educational opportunities to the population.

72 Council, *Report of the Independent Expert in the field of cultural rights, Farida Shaheed, Addendum: Mission to Morocco (16 September 2011)*, A/HRC/20/26/Add.2, 2 May 2012, § 17.

73 Article 1 of Law N° 2-94-222, 24 May 1994, establishing the mandate of the Ministry of Culture. See also Decree N° 2-06-28, 10 November 2006, establishing the mandate and the organization of the Ministry of Culture.

74 UNESCO, *Droits culturels au Maghreb et en Égypte*, 2010 (French only), p. 204.

75 <http://www.ccdh.org.ma/spip.php?article4881>

76 UNESCO, *Droits culturels au Maghreb et en Égypte*, 2010 (French only), pp. 192-193.

77 [www.apdn.ma/index.php?option=com\\_content&view=article&id=147&Itemid=48](http://www.apdn.ma/index.php?option=com_content&view=article&id=147&Itemid=48)

78 [www.ads.ma/ads/lagence/lads-en-bref.html](http://www.ads.ma/ads/lagence/lads-en-bref.html)

121 Report of the government of Ecuador submitted to the Committee on Economic, Social and Cultural Rights, E/C.12/ECU/3, 4 May 2011, § 448.

122 Last available official statistics. At the present time, this rate is said to be the highest, given the investment by the Ecuadorian government in this sector.

123 *Ibid.*, tables 32, 33, pp. 98, 99 respectively.

124 *Hortense Faivre d’Arzier Flores, Espaces, territoires et identité dans la nouvelle Constitution équatorienne, Amerika*, February 2010, on line as of 6 January 2012: <http://amerika.revues.org/1023>

## Cultural Rights of the Amazighs

*“The Amazigh question summarizes the essence of the demands for cultural rights in today’s Morocco [and] illustrates clearly the various aspects of these cultural rights, as recognized under international law.”*<sup>79</sup>

The Amazighen – who are the most numerous indigenous people of Morocco and whose population is estimated at some 20 million persons<sup>80</sup> out of a total of 32 million inhabitants – have long been marginalized in this country, and the Amazigh language and culture have been subjected to discrimination and repression. The “Arabization” policy<sup>81</sup> promoted by the Moroccan governments since the independence of the country in 1956 can effectively be considered a denial of Amazigh cultural and linguistic identity.<sup>82</sup>

Over time, the demands of the Amazighs have been taken into account by the Moroccan state, but it was only in 2001 that the king recognized that “the Amazighen constitute a national heritage which belongs to all Moroccans, and whose promotion is a national responsibility”.<sup>83</sup> The same year saw the creation of the Royal Institute of Amazigh Culture announced as a specific measure to implement the cultural and linguistic rights of the Amazighen.<sup>84</sup>

One of the most significant measures for the protection and promotion of the Amazigh language was its recognition as an official language in the 2011 constitution. Article 5 enshrines not only this official recognition but also provides that the state must work for the preservation of the Sahrawi (*Hassani*) language, as well as for the protection of cultural expressions and speech in use in Morocco. The preamble to the constitution, as amended, emphasizes in particular that the unity of the country “forged by the convergence of its Arabic-Islamic, Amazigh and Saharo-Hassanic elements, has drawn on and been enriched by its African, Andalusian, Hebrew and Mediterranean tributaries”. Finally, a National Council of Languages and Culture has been established whose mandate is to protect and develop the Arabic and Amazigh languages and the various forms of Moroccan cultural expression.

Even if these efforts in favor of the Amazigh language and culture are commendable, it must be noted that they are considered largely insufficient both by the United Nations Special Rapporteur in the Field of Cultural Rights and by the Amazigh language and cultural protection NGOs. One of the main reproaches ad-

79 UNESCO, *Droits culturels au Maghreb et en Égypte*, 2010 (French only), p. 208.

80 <http://www.minorityrights.org/4886/morocco/berber.html>. However, there are no official data on the size of the Amazigh population in Morocco. See ILT and The African Commission for Human and Peoples’ Rights, *Country Report on the constitutional and legislative protection of the rights of indigenous peoples: Morocco*, Geneva, 2009, p. 4: [http://www.chr.up.ac.za/chr\\_old/indigenous/country\\_reports/Country\\_reports\\_Morocco.pdf](http://www.chr.up.ac.za/chr_old/indigenous/country_reports/Country_reports_Morocco.pdf)

81 The Arabization policy consisted of establishing Arabic as the exclusive official language in the countries of the Maghreb as well as the Muslim religion and Arabo-Islamic culture. This policy amounted to discrimination against other languages, including, in particular, Amazigh.

82 African Commission on Human and Peoples’ Rights, *Report of the African Commission’s Working Group of Experts on Indigenous People*, 2005, p. 42.

83 Ajdir Speech given by King Mohammed VI 17 October 2001 at Ajdir (Khenifra).

84 UNESCO, *Droits culturels au Maghreb et en Égypte*, 2010 (French only), p. 215.

## The Commitments of the Ecuadorean State

Ecuador has ratified most of the United Nations human rights treaties, including the *Optional Protocol to the Covenant on Economic, Social and Cultural Rights* (which entered into force in May 2013). Ecuador has also ratified most of the UNESCO cultural rights conventions.

## The National Context

The history of this country, since its independence in 1830, has been marked by political instability (three coups d’état and 20 constitutions). Since the election of Rafael Correa to the presidency and the adoption of a new constitution (2008), Ecuador seems to have achieved noticeable stability.

According to the Ecuadorian government data (2010), the country comprises: mestizos (71.9 %); Montubios (7.4 %); Afro-Ecuadorians (7.2 %) and indigenous peoples (7 %).<sup>115</sup> Non-official sources indicate, on the other hand, that the indigenous peoples represent between 25 and 30% of the overall population and the Afro-Ecuadorians 10%.<sup>116</sup>

On 28 September 2008, the Ecuadorians, in a referendum, approved a new constitution that represented one of the main projects of President Correa’s first term.<sup>117</sup> In his opinion, this constitution is the way to put an end to the perverse effects of the neoliberal policies implemented throughout the continent during the 1980s and 1990s and which led to, among other things, the privatization of basic services such as health, education and access to potable water.<sup>118</sup>

The new constitution reinforces presidential power, in particular regarding economic and monetary matters, and grants the states a greater control over strategic sectors such as energy, mines, telecommunications and water.

But it is in terms of the recognition of the collective rights of the indigenous and Afro-Ecuadorian populations that the new constitution is particularly innovative, especially regarding the affirmation of their cultural identity and their specific values as well as self management of their ancestral lands and indigenous justice.<sup>119</sup>

Thus, Quechua and the other languages making up the cultural heritage of the country are recognized as “officially in use” (Article 2) and intercultural bilingual education is promoted (Article 28) through official bodies such as the SEPDI (Under-Secretariat of Education for Intercultural Dialogue) and the DINEIB (National Directorate of Bilingual Education).<sup>120</sup> The state also encourages plurality and diversity in the area of communication, facilitating the creation and the reinforcement of public, private and community media that take into account in their

115 HRI/CORE/ECU/2009/Add.1, 10 May 2012, § 2.

116 Minority Rights group International, *World Directory of Minorities and Indigenous Peoples – Ecuador: Overview*, July 2008: <http://www.minorityrights.org/4133/ecuador/ecuador-overview.html>

117 Rafael Correa was reelected in 2009 then again in 2013 for a third and last four-year term.

118 Hortense Faivre d’Arcier Flores, *Espaces, territoires et identité dans la nouvelle Constitution équatorienne*, Amerika, February 2010, on line as of 6 January 2012: <http://amerika.revues.org/1023>

119 Ibid.

120 Ibid.

of a declaration accompanied by supporting documents,<sup>106</sup> the authorities in charge of registering non-governmental organizations often arbitrarily prevent registration and thus violate freedom of association and expression of the members of these organizations.<sup>107</sup> In this regard, the Amazigh Network of Citizenship, which defends the cultural, linguistic, political and civil rights of Morocco's Amazigh population is among the many Amazigh organizations that the authorities have refused to register.<sup>108</sup>

Apart from her criticism concerning the cultural rights of the Amazighs mentioned above, the Special Rapporteur also expressed her concern over the cultural rights of the Sahrawis. Regarding education, Saharawis learn nothing about their own culture and history, for they are taught only the official culture and history of Morocco. They no longer dare even wear their traditional costume because they feel threatened and harassed, and they are often deprived of the right to register their children's birth using the name they have chosen.<sup>109</sup> Even though several cultural festivals are organized to promote and preserve Saharo-Hassani art and culture, the political situation makes it very difficult to exercise the right to participate in cultural life. The Special Rapporteur pointed out in particular that "landmines jeopardize Saharawis' traditional desert-linked nomadic style of living and prevent local communities from organizing their leisure activities. In addition, victims of landmines find it difficult to obtain police reports for compensation".<sup>110</sup>

Among the recommendations of the Special Rapporteur, one might especially note the effective implementation of Moroccan legislation dealing with the cultural rights of the various populations of the country<sup>111</sup> and the revision of "history and other subjects in school textbooks to reflect the country's diversity, ensuring the adequate representation of cultural diversity among authors, as well as in the independent review committee approving textbooks".<sup>112</sup> The same holds for teacher training programs, which "should include methodologies that reflect the richness of Moroccan cultural diversity in the most interactive and innovative fashion".<sup>113</sup>

## 2. Ecuador

Ranked 89<sup>th</sup> in the 2013 Human Development Index, with US\$ 7,471 in per capita income and some 15 million inhabitants, Ecuador is considered to have a high human development index.<sup>114</sup>

106 This is based on Royal Decree (*Dahir*) N° 1.58.376 of 1958, amended in 2002.

107 Council, *Report of the Independent Expert in the field of cultural rights, Farida Shaheed, Addendum: Mission to Morocco (16 September 2011)*, A/HRC/20/26/Add.2, 2 May 2012, § 56-57.

108 *Ibid.*, § 58.

109 *Ibid.*, §§ 75, 77.

110 *Ibid.*, § 72.

111 *Ibid.*, §§ 82-92.

112 *Ibid.*, § 86.d.

113 *Ibid.*

114 <http://hdrstats.undp.org/fr/pays/profils/ECU.html>

dressed to the Moroccan state is that whereas no specific law defines the process and stages of the integration of the Amazigh language into the various areas where it has not yet been adopted,<sup>85</sup> discriminatory laws have not been repealed and discriminatory practices continue.<sup>86</sup>

Books published by the Royal Institute of Amazigh Culture (children's books, scientific and philosophic works) are not accessible in public sector establishments such as libraries,<sup>87</sup> and education policy regarding the Amazigh is still described as segregationist.<sup>88</sup> There are no Amazigh-language examinations at the regional level, even in the regions where the Amazigh population is considerable, there are no Amazigh language courses in higher education, there are no Amazigh language manuals for pupils in first and second grades, and the current manuals are not on the list of official books of the Ministry of National Education.<sup>89</sup> Finally, the history books often present a version of history "such as to inspire a diminutive regard of the Amahigh" and should be rewritten.<sup>90</sup>

Further, in daily life and the public institutions, the use of the Amazigh language encounters numerous obstacles. Thus, "the Imazighen are subjected to a major violation of their cultural and linguistic rights regarding their relations with the public administration: it imposes on them a language different from the one that they use in their daily life and which they do not understand. The problem

85 Meryam Demnati (IRCAM/OADL), *11<sup>me</sup> Célébration d'Ajdir*, <http://www.amazighnews.net/-20121024753/11eme-Celebration-Ajdir.html>. In his recent declaration (2 July 2013), the Prime Minister of Morocco Abdelilah Benkirane confirmed the commitment of his government and announced that the process of drafting the law in question was based on a "participative approach". [http://www.lematin.ma/express/Amazigh:\\_Une-loi-organique-sur-l-officialisation-/184544.html](http://www.lematin.ma/express/Amazigh:_Une-loi-organique-sur-l-officialisation-/184544.html)

86 Council, *Report of the Independent Expert in the field of cultural rights, Farida Shaheed, Addendum: Mission to Morocco (16 September 2011)*, A/HRC/20/26/Add.2, 2 May 2012, § 13. See also the shadow report of the Observatoire amazigh des droits et libertés (French only), 21 November 2011, presented to the Human Rights Council on the occasion of the Universal Periodic Review of Morocco, p. 1: [http://lib.ohchr.org/HRBodies/UPR/Documents/session13/MA/OADL\\_UPR\\_MAR\\_S13\\_-2012\\_Observatoireamazighdesdroitslibertes\\_F.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/session13/MA/OADL_UPR_MAR_S13_-2012_Observatoireamazighdesdroitslibertes_F.pdf)

The OADL also considers in its report (p. 1) that enshrining Arabic and Amazigh as official languages in two separate paragraphs suggests that in fact there is a hierarchical relation between a primary language, which remains official, Arabic, and a second language, which must yet prove itself, Amazigh, and that in this way, Moroccans are divided into two distinct categories: first and second class citizens.

87 Council, *Report of the Independent Expert in the field of cultural rights, Farida Shaheed, Addendum: Mission to Morocco (16 September 2011)*, A/HRC/20/26/Add.2, 2 May 2012, § 20.

88 Shadow report of the Observatoire amazigh des droits et libertés (French only), 21 November 2011, presented to the Human Rights Council on the occasion of the Universal Periodic Review of Morocco, p. 2.

89 Council, *Report of the Independent Expert in the field of cultural rights, Farida Shaheed, Addendum: Mission to Morocco (16 September 2011)*, A/HRC/20/26/Add.2, 2 May 2012, § 30-31. The Special Rapporteur pointed out the relation between cultural rights and the right to education recalling that the latter is protected by a link to Article 29 of the *Convention on the Rights of the Child* and Article 5 of the *UNESCO Universal Declaration on Cultural Diversity*.

90 Shadow report of the Observatoire amazigh des droits et libertés (French only), 21 November 2011, presented to the Human Rights Council on the occasion of the Universal Periodic Review of Morocco, p. 2. See also Council, *Report of the Independent Expert in the field of cultural rights, Farida Shaheed, Addendum: Mission to Morocco (16 September 2011)*, A/HRC/20/26/Add.2, 2 May 2012, § 31.

becomes more critical if one cannot use this language in court. In this case, the Imazighen are treated like foreigners, for there is no national law authorizing the use of the Amazigh language in the courts.<sup>91</sup>

There are still law, policies and practices prohibiting the use of any language other than Arabic in a number of areas.<sup>92</sup> For example, parents are not always free to choose Amazigh given names for their children nor to inscribe them in the birth registries, which constitutes an obvious violation of cultural rights.<sup>93</sup> By the same token, some non-Arabic place names have been replaced by Arabic names, so that public spaces tend to be dominated by Arabic and French. Another practice requires that school theater performances be exclusively in Arabic. Such practices are a violation of the right to participate in cultural life and to have access to cultural heritage and to the benefits deriving from it.<sup>94</sup>

Thus, it must be conceded that Amazigh language and culture are still maintained in a “state of marginalization and inferiority”<sup>95</sup> and that the Imazighen are still victims of frequent and significant cultural rights violations.

### Criticism by Social Movements and NGOs

En 2011, thousands of persons went out into the street of Rabat, Casablanca and other Moroccan cities to demand social and political reform. The *20 February Movement*, created in the wake of the popular uprisings of the “Arab spring” that the Northern Africa and the Near East experienced starting in 2011, demanded – and is still demanding – a greater respect for human rights and democracy, better economic conditions and an end to corruption. In response to this protest movement, King Mohammed VI, in June 2011, amended the constitution so as to bring about substantial improvements regarding human rights but with virtually no serious limit imposed on the power of the monarchy.<sup>96</sup>

The Federation of the Democratic League for the Rights of Women deplores that, in the absence of public policy regarding the equality of the sexes, the present initiatives of the Moroccan state are incoherent and of a limited scope.<sup>97</sup> Other

NGOs denounce the attacks on freedom of opinion and expression as seen in the prosecution of several journalists and bloggers and in censorship.<sup>98</sup>

### Criticism by the International Institutions<sup>99</sup>

According to the *UNESCO/ISESCO Arab Research-Policy Network on Economic, Social and Cultural Rights (ARADESC)*, generally speaking, the conclusion is that the “government of Morocco has an ambitious cultural policy, but the results remain modest in comparison with the effort undertaken”.<sup>100</sup> Cultural rights in Morocco still encounter a great number of difficulties and obstacles, notably a lack of means, and the few achievements of the Ministry of Culture are not up to the expectations of the actors in this area.<sup>101</sup>

UNESCO was also concerned by the limitations on freedom of opinion and expression, by the prohibition of criticism of Islam, the king and the monarchical regime, and recommended, inter alia, a revision of the press laws.<sup>102</sup> According to UNESCO, access to basic education remains “incomplete and unequal” and a significant number of children remain “outside the educational system, deprived of opportunities of education both formal and informal”. Moreover, the Moroccan educational system is experiencing a “quality crisis”, the level of results from apprenticeships being low.<sup>103</sup>

While acknowledging the remarkable efforts made by the Moroccan state in the area of human rights, The *United Nations Special Rapporteur in the Field of Cultural Rights*, who carried out a visit to the country in September 2011, deplored that “some existing laws, policies and practices are still not in keeping with the State’s international and constitutional commitment to recognize and respect cultural rights and cultural diversity.”<sup>104</sup>

According to the Special Rapporteur: “Morocco does not, however, have a national plan on cultural development with dedicated financial resources allocated to the Ministry of Culture for implementation... [nor] a comprehensive national plan on participation in cultural life, including issues relating to cultural heritage and linguistic diversity, gender issues and the needs of persons with disabilities in the cultural sphere.”<sup>105</sup>

The Special Rapporteur also deplored numerous violations related to freedom of association. While registering an association should be authorized on the basis

98 Ibid., §§ 43, 44, 49.

99 Considering that the most recent review of Morocco by a United Nations treaty oversight body was in 2010, prior to significant changes in the country’s legislation, in this section, we shall mention only the criticism of UNESCO and of the United Nations Independent Expert in the Field of Cultural Rights.

100 UNESCO, *Droits culturels au Maghreb et en Égypte*, 2010 (French only), p. 196.

101 Ibid., p. 198.

102 *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*, A/HRC/WG.6/13/MAR/2, 12 March 2012, § 30.

103 Ibid., § 32.

104 Council, *Report of the Independent Expert in the field of cultural rights, Farida Shaheed*,

*Addendum: Mission to Morocco (16 September 2011)*, A/HRC/20/26/Add.2, 2 May 2012, § 83.

105 Ibid., § 18.

91 UNESCO, *Droits culturels au Maghreb et en Égypte*, 2010 (French only), p. 221.

92 See, for example the Prime Minister’s circular N° 4/2008 regarding the use of Arabic, Rabat, 22 April 2008.

93 Shadow report of the Observatoire amazigh des droits et libertés (French only), 21 November 2011, presented to the Human Rights Council on the occasion of the Universal Periodic Review of Morocco, pt. 9, p. 4; Council, *Report of the Independent Expert in the field of cultural rights, Farida Shaheed, Addendum: Mission to Morocco (16 September 2011)*, A/HRC/20/26/Add.2, 2 May 2012, §§ 37, 38.

94 Respectively, Ibid., p. 4-5; Ibid., §§ 39-41.

95 Meryam Demnati (IRCAM/OADL), *11<sup>ème</sup> Célébration d’Ajdır*, already quoted.

96 Amnesty International, *Deux ans de trop: protéger enfin les manifestants*, 21 February 2013, [%20documents/2013/-deux-ans-de-trop-protger-enfin-les-manifestants](http://www.amnesty.ch/fr/pays/moyen-orient-afrique-du-nord/maroc-sahara-occidental)

97 *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Morocco*, A/HRC/WG.6/13/MAR/3, 9 March 2012, § 24.