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Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)

I. Introduction and basic premises

1. Cultural rights are an integral part of human rights and, like other rights, are universal, indivisible and interdependent. The full promotion of and respect for cultural rights is essential for the maintenance of human dignity and positive social interaction between individuals and communities in a diverse and multicultural world.

2. The right of everyone to take part in cultural life is closely related to the other cultural rights contained in article 15: the right to enjoy the benefits of scientific progress and its applications (art. 15, para. 1 (b)); the right of everyone to benefit from the protection of moral and material interests resulting from any scientific, literary or artistic production of which they are the author (art. 15, para. 1 (c)); and the right to freedom indispensable for scientific research and creative activity (art. 15, para. 3). The right of everyone to take part in cultural life is also intrinsically linked to the right to education (arts. 13 and 14), through which individuals and communities pass on their values, religion, customs, language and other cultural references, and which helps to foster an atmosphere of mutual understanding and respect for cultural values. The right to take part in cultural life is also interdependent on other rights enshrined in the Covenant, including the right of all peoples to self-determination (art. 1) and the right to an adequate standard of living (art. 11).

3. The right of everyone to take part in cultural life is also recognized in article 27, paragraph 1, of the Universal Declaration of Human Rights, which states that “everyone has the right freely to participate in the cultural life of the community”. Other international instruments refer to the right to equal participation in cultural activities;¹ the right to participate in all aspects of social and cultural life;² the right to participate fully in cultural

¹ International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (e) (vi).

² Convention on the Elimination of All Forms of Discrimination against Women, art. 13 (c).

and artistic life;³ the right of access to and participation in cultural life;⁴ and the right to take part on an equal basis with others in cultural life.⁵ Instruments on civil and political rights,⁶ on the rights of persons belonging to minorities to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public,⁷ and to participate effectively in cultural life,⁸ on the rights of indigenous peoples to their cultural institutions, ancestral lands, natural resources and traditional knowledge,⁹ and on the right to development¹⁰ also contain important provisions on this subject.

4. In the present general comment, the Committee addresses specifically the right of everyone under article 15 paragraph 1 (a), to take part in cultural life, in conjunction with paragraphs 2, 3 and 4, as they relate to culture, creative activity and the development of international contacts and cooperation in cultural fields, respectively. The right of everyone to benefit from the protection of moral and material interests resulting from any scientific, literary or artistic production of which they are the author, as provided for in article 15, paragraph 1 (c), was the subject of general comment No. 17 (2005).

5. The Committee has gained long experience on this subject through its consideration of reports and dialogue with States parties. In addition, it has twice organized a day of general discussion, once in 1992 and again in 2008, with representatives of international organizations and civil society with a view to preparing the present general comment.

II. Normative content of article 15, paragraph 1 (a)

6. The right to take part in cultural life can be characterized as a freedom. In order for this right to be ensured, it requires from the State party both abstention (i.e., non-interference with the exercise of cultural practices and with access to cultural goods and services) and positive action (ensuring preconditions for participation, facilitation and promotion of cultural life, and access to and preservation of cultural goods).

7. The decision by a person whether or not to exercise the right to take part in cultural life individually, or in association with others, is a cultural choice and, as such, should be recognized, respected and protected on the basis of equality. This is especially important for all indigenous peoples, who have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law, as well as the United Nations Declaration on the Rights of Indigenous Peoples.

³ Convention on the Rights of the Child, art. 31, para. 2.

⁴ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 43, para. 1 (g).

⁵ Convention on the Rights of Persons with Disabilities, art. 30, para. 1.

⁶ In particular the International Covenant on Civil and Political Rights, arts. 17, 18, 19, 21 and 22.

⁷ International Covenant on Civil and Political Rights, art. 27.

⁸ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, art. 2, paras. 1 and 2. See also Framework Convention for the Protection of National Minorities (Council of Europe, ETS No. 157), art. 15.

⁹ United Nations Declaration on the Rights of Indigenous Peoples, in particular arts. 5, 8, and 10–13 ff. See also ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, in particular arts. 2, 5, 7, 8, and 13–15 ff.

¹⁰ Declaration on the Right to Development (General Assembly resolution 41/128), art. 1. In its general comment No. 4, paragraph 9, the Committee considers that rights cannot be viewed in isolation from other human rights contained in the two international Covenants and other applicable international instruments.

A. Components of article 15, paragraph 1 (a)

8. The content or scope of the terms used in article 15, paragraph 1 (a), on the right of everyone to take part in cultural life, is to be understood as set out below:

“Everyone”

9. In its general comment No. 17 on the right to benefit from the protection of moral and material interests resulting from any scientific, literary or artistic production of which one is the author,¹¹ the Committee recognizes that the term “everyone” in the first line of article 15 may denote the individual or the collective; in other words, cultural rights may be exercised by a person (a) as an individual, (b) in association with others, or (c) within a community or group, as such.

“Cultural life”

10. Various definitions of “culture” have been postulated in the past and others may arise in the future. All of them, however, refer to the multifaceted content implicit in the concept of culture.¹²

11. In the Committee’s view, culture is a broad, inclusive concept encompassing all manifestations of human existence. The expression “cultural life” is an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future.

12. 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. This concept takes account of the individuality and otherness of culture as the creation and product of society.

13. The Committee considers that culture, for the purpose of implementing article 15 (1) (a), encompasses, inter alia, ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food,

¹¹ See definition of “author” in general comment No. 17 (2005), paras. 7 and 8.

¹² Culture is (a) “the set of distinctive spiritual, material, intellectual and emotional features of a society or a social group, [which] encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs” (UNESCO Universal Declaration on Cultural Diversity, fifth preambular paragraph); (b) “in its very essence, a social phenomenon resulting from individuals joining and cooperating in creative activities [and] is not limited to access to works of art and the human rights, but is at one and the same time the acquisition of knowledge, the demand for a way of life and need to communicate” (UNESCO recommendation on participation by the people at large in cultural life and their contribution to it, 1976, the Nairobi recommendation, fifth preambular paragraph (a) and (c)); (c) “covers those values, beliefs, convictions, languages, knowledge and the arts, traditions, institutions and ways of life through which a person or a group expresses their humanity and meanings that they give to their existence and to their development” (Fribourg Declaration on Cultural Rights, art. 2 (a) (definitions); (d) “the sum total of the material and spiritual activities and products of a given social group which distinguishes it from other similar groups [and] a system of values and symbols as well as a set of practices that a specific cultural group reproduces over time and which provides individuals with the required signposts and meanings for behaviour and social relationships in everyday life”. (Rodolfo Stavenhagen, “Cultural Rights: A social science perspective”, in H. Niec (ed.), *Cultural Rights and Wrongs: A collection of essays in commemoration of the 50th anniversary of the Universal Declaration of Human Rights*, Paris and Leicester, UNESCO Publishing and Institute of Art and Law).

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. Culture shapes and mirrors the values of well-being and the economic, social and political life of individuals, groups of individuals and communities.

“To participate” or “to take part”

14. The terms “to participate” and “to take part” have the same meaning and are used interchangeably in other international and regional instruments.

15. There are, among others, three interrelated main components of the right to participate or take part in cultural life: (a) participation in, (b) access to, and (c) contribution to 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 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,¹³ 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.¹⁴

B. Elements of the right to take part in cultural life

16. The following are necessary conditions for the full realization of the right of everyone to take part in cultural life on the basis of equality and non-discrimination.

(a) *Availability* is the presence of cultural goods and services that are open for everyone to enjoy and benefit from, including libraries, museums, theatres, cinemas and sports stadiums; literature, including folklore, and the arts in all forms; the shared open spaces essential to cultural interaction, such as parks, squares, avenues and streets; nature’s gifts, such as seas, lakes, rivers, mountains, forests and nature reserves, including the flora and fauna found there, which give nations their character and biodiversity; intangible cultural goods, such as languages, customs, traditions, beliefs, knowledge and history, as

¹³ General comment No. 15 (2002), paras. 6 and 11.

¹⁴ UNESCO Universal Declaration on Cultural Diversity, art. 5. See also Fribourg Declaration on Cultural Rights, art. 7.

well as values, which make up identity and contribute to the cultural diversity of individuals and communities. Of all the cultural goods, one of special value is the productive intercultural kinship that arises where diverse groups, minorities and communities can freely share the same territory;

(b) *Accessibility* consists of effective and concrete opportunities for individuals and communities to enjoy culture fully, within physical and financial reach for all in both urban and rural areas, without discrimination.¹⁵ It is essential, in this regard, that access for older persons and persons with disabilities, as well as for those who live in poverty, is provided and facilitated. Accessibility also includes the right of everyone to seek, receive and share information on all manifestations of culture in the language of the person's choice, and the access of communities to means of expressions and dissemination.

(c) *Acceptability* entails that the laws, policies, strategies, programmes and measures adopted by the State party for the enjoyment of cultural rights should be formulated and implemented in such a way as to be acceptable to the individuals and communities involved. In this regard, consultations should be held with the individuals and communities concerned in order to ensure that the measures to protect cultural diversity are acceptable to them;

(d) *Adaptability* refers to the flexibility and relevance of strategies, policies, programmes and measures adopted by the State party in any area of cultural life, which must be respectful of the cultural diversity of individuals and communities;

(e) *Appropriateness* refers to the realization of a specific human right in a way that is pertinent and suitable to a given cultural modality or context, that is, respectful of the culture and cultural rights of individuals and communities, including minorities and indigenous peoples.¹⁶ The Committee has in many instances referred to the notion of cultural appropriateness (or cultural acceptability or adequacy) in past general comments, in relation in particular to the rights to food, health, water, housing and education. The way in which rights are implemented may also have an impact on cultural life and cultural diversity. The Committee wishes to stress in this regard the need to take into account, as far as possible, cultural values attached to, inter alia, food and food consumption, the use of water, the way health and education services are provided and the way housing is designed and constructed.

C. Limitations to the right to take part in cultural life

17. The right of everyone to take part in cultural life is closely linked to the enjoyment of other rights recognized in the international human rights instruments. Consequently, States parties have a duty to implement their obligations under article 15, paragraph 1 (a), together with their obligations under other provisions of the Covenant and international instruments, in order to promote and protect the entire range of human rights guaranteed under international law.

18. The Committee wishes to recall that, while account must be taken of national and regional particularities and various historical, cultural and religious backgrounds, it is the duty of States, regardless of their political, economic or cultural systems, to promote and protect all human rights and fundamental freedoms.¹⁷ Thus, no one may invoke cultural

¹⁵ See general comment No. 20 (2009).

¹⁶ Fribourg Declaration on Cultural Rights, art. 1 (e).

¹⁷ Vienna Declaration and Programme of Action, para. 5.

diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.¹⁸

19. Applying limitations to the right of everyone to take part in cultural life may be necessary in certain circumstances, in particular in the case of negative practices, including those attributed to customs and traditions, that infringe upon other human rights. Such limitations must pursue a legitimate aim, be compatible with the nature of this right and be strictly necessary for the promotion of general welfare in a democratic society, in accordance with article 4 of the Covenant. Any limitations must therefore be proportionate, meaning that the least restrictive measures must be taken when several types of limitations may be imposed. The Committee also wishes to stress the need to take into consideration existing international human rights standards on limitations that can or cannot be legitimately imposed on rights that are intrinsically linked to the right to take part in cultural life, such as the rights to privacy, to freedom of thought, conscience and religion, to freedom of opinion and expression, to peaceful assembly and to freedom of association.

20. Article 15, paragraph 1 (a) may not be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized in the Covenant or at their limitation to a greater extent than is provided for therein.¹⁹

D. Special topics of broad application

Non-discrimination and equal treatment

21. Article 2, paragraph 2, and article 3 of the Covenant prohibit any discrimination in the exercise of the right of everyone to take part in cultural life on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²⁰

22. In particular, no one shall be discriminated against because he or she chooses to belong, or not to belong, to a given cultural community or group, or to practise or not to practise a particular cultural activity. Likewise, no one shall be excluded from access to cultural practices, goods and services.

23. The Committee emphasizes that the elimination of all forms of discrimination in order to guarantee the exercise of the right of everyone to take part in cultural life can, in many cases, be achieved with limited resources²¹ by the adoption, amendment or repeal of legislation, or through publicity and information. In particular, a first and important step towards the elimination of discrimination, whether direct or indirect, is for States to recognize the existence of diverse cultural identities of individuals and communities on their territories. The Committee also refers States parties to its general comment No. 3 (1990), paragraph 12, on the nature of States parties' obligations, which establishes that, even in times of severe resource constraints, the most disadvantaged and marginalized individuals and groups can and indeed must be protected by the adoption of relatively low-cost targeted programmes.

¹⁸ Universal Declaration on Cultural Diversity, art. 4.

¹⁹ International Covenant on Economic, Social and Cultural Rights, art. 5, para. 1.

²⁰ See general comment No. 20 (2009).

²¹ See general comment No. 3 (1990); statement by the Committee: an evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the Covenant (E/C.12/2007/1).

24. The adoption of temporary special measures with the sole purpose of achieving de facto equality does not constitute discrimination, provided that such measures do not perpetuate unequal protection or form a separate system of protection for certain individuals or groups of individuals, and that they are discontinued when the objectives for which they were taken have been achieved.

E. Persons and communities requiring special protection

1. Women

25. Ensuring the equal right of men and women to the enjoyment of economic, social and cultural rights is a mandatory and immediate obligation of States parties.²² Implementing article 3 of the Covenant, in relation to article 15, paragraph 1 (a), requires, inter alia, the elimination of institutional and legal obstacles as well as those based on negative practices, including those attributed to customs and traditions, that prevent women from participating fully in cultural life, science education and scientific research.²³

2. Children

26. Children play a fundamental role as the bearers and transmitters of cultural values from generation to generation. States parties should take all the steps necessary to stimulate and develop children's full potential in the area of cultural life, with due regard for the rights and responsibilities of their parents or guardians. In particular, when taking into consideration their obligations under the Covenant and other human rights instruments on the right to education, including with regard to the aims of education,²⁴ States should recall that the fundamental aim of educational development is the transmission and enrichment of common cultural and moral values in which the individual and society find their identity and worth.²⁵ Thus, education must be culturally appropriate, include human rights education, enable children to develop their personality and cultural identity and to learn and understand cultural values and practices of the communities to which they belong, as well as those of other communities and societies.

27. The Committee wishes to recall in this regard that educational programmes of States parties should respect the cultural specificities of national or ethnic, linguistic and religious minorities as well as indigenous peoples, and incorporate in those programmes their history, knowledge and technologies, as well as their social, economic and cultural values and aspirations. Such programmes should be included in school curricula for all, not only for minorities and indigenous peoples. States parties should adopt measures and spare no effort to ensure that educational programmes for minorities and indigenous groups are conducted on or in their own language, taking into consideration the wishes expressed by communities and in the international human rights standards in this area.²⁶ Educational programmes should also transmit the necessary knowledge to enable everyone to participate fully and on an equal footing in their own and in national communities.

²² General comment No. 16 (2005), para. 16.

²³ Ibid., para. 31.

²⁴ In particular articles 28 and 29 of the Convention on the Rights of the Child.

²⁵ World Declaration on Education for All: Meeting Basic Learning Needs, art. I-3.

²⁶ In particular the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the Declaration on the Rights of Indigenous Peoples and the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169).

3. Older persons

28. The Committee is of the view that States parties to the Covenant are obligated to pay particular attention to the promotion and protection of the cultural rights of older persons. The Committee emphasizes the important role that older persons continue to play in most societies by reason of their creative, artistic and intellectual abilities, and as the transmitters of information, knowledge, traditions and cultural values. Consequently, the Committee attaches particular importance to the message contained in recommendations 44 and 48 of the Vienna International Plan of Action on Aging, calling for the development of programmes featuring older persons as teachers and transmitters of knowledge, culture and spiritual values, and encouraging Governments and international organizations to support programmes aimed at providing older persons with easier physical access to cultural institutions (such as museums, theatres, concert halls and cinemas).²⁷

29. The Committee therefore urges States parties to take account of the recommendations contained in the United Nations Principles for Older Persons, and in particular of principle 7, that older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations; and principle 16, that older persons should have access to the educational, cultural, spiritual and recreational resources of society.²⁸

4. Persons with disabilities

30. Paragraph 17 of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities provides that States should ensure that persons with disabilities have the opportunity to utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community, be they in urban or rural areas, and that States should promote accessibility to and availability of places for cultural performances and services.²⁹

31. In order to facilitate participation of persons with disabilities in cultural life, States parties should, inter alia, recognize the right of these persons to have access to cultural material, television programmes, films, theatre and other cultural activities, in accessible forms; to have access to places where cultural performances or services are offered, such as theatres, museums, cinemas, libraries and tourist services and, to the extent possible, to monuments and places of national cultural importance; to the recognition of their specific cultural and linguistic identity, including sign language and the culture of the deaf; and to the encouragement and promotion of their participation, to the extent possible, in recreational, leisure and sporting activities.³⁰

5. Minorities

32. In the Committee's view, article 15, paragraph 1 (a) of the Covenant also includes the right of minorities and of persons belonging to minorities to take part in the cultural life of society, and also to conserve, promote and develop their own culture.³¹ This right entails the obligation of States parties to recognize, respect and protect minority cultures as an essential component of the identity of the States themselves. Consequently, minorities have

²⁷ General comment No. 6 (1995), paras. 38 and 40.

²⁸ General comment No. 6 (1995), para. 39.

²⁹ General Assembly resolution 48/96, annex.

³⁰ Convention on the Rights of Persons with Disabilities, art. 30.

³¹ International Covenant on Civil and Political Rights, art. 27; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, para. 1 (1).

the right to their cultural diversity, traditions, customs, religion, forms of education, languages, communication media (press, radio, television, Internet) and other manifestations of their cultural identity and membership.

33. Minorities, as well as persons belonging to minorities, have the right not only to their own identity but also to development in all areas of cultural life. Any programme intended to promote the constructive integration of minorities and persons belonging to minorities into the society of a State party should thus be based on inclusion, participation and non-discrimination, with a view to preserving the distinctive character of minority cultures.

6. Migrants

34. States parties should pay particular attention to the protection of the cultural identities of migrants, as well as their language, religion and folklore, and of their right to hold cultural, artistic and intercultural events. States parties should not prevent migrants from maintaining their cultural links with their countries of origin.³²

35. As education is intrinsically related to culture, the Committee recommends that States parties adopt appropriate measures to enable the children of migrants to attend, on a basis of equal treatment, State-run educational institution and programmes.

7. Indigenous peoples

36. States parties should take measures to guarantee that the exercise of the right to take part in cultural life takes due account of the values of cultural life, which may be strongly communal or which can only be expressed and enjoyed as a community by indigenous peoples.³³ The strong communal dimension of indigenous peoples' cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.³⁴ Indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity.³⁵ States parties must therefore take measures to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources, and, where they have been otherwise inhabited or used without their free and informed consent, take steps to return these lands and territories.

37. Indigenous peoples have the right to act collectively to ensure respect for their right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literature, designs, sports and traditional games, and visual and performing arts.³⁶ States parties should respect the principle of free,

³² International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 31.

³³ See Declaration on the Rights of Indigenous Peoples, art. 1. See also ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169), art. 1, para. 2.

³⁴ United Nations Declaration on the Rights of Indigenous Peoples, art. 26 (a).

³⁵ Convention No. 169, arts. 13–16. See also the United Nations Declaration on the Rights of Indigenous Peoples, arts. 20 and 33.

³⁶ ILO Convention No. 169, arts. 5 and 31. See also the United Nations Declaration on the Rights of Indigenous Peoples, arts. 11–13.

prior and informed consent of indigenous peoples in all matters covered by their specific rights.³⁷

8. Persons living in poverty

38. The Committee considers that every person or group of persons is endowed with a cultural richness inherent in their humanity and therefore can make, and continues to make, a significant contribution to the development of culture. Nevertheless, it must be borne in mind that, in practice, poverty seriously restricts the ability of a person or a group of persons to exercise the right to take part in, gain access and contribute to, on equal terms, all spheres of cultural life, and more importantly, seriously affects their hopes for the future and their ability to enjoy effectively their own culture. The common underlying theme in the experience of persons living in poverty is a sense of powerlessness that is often a consequence of their situation. Awareness of their human rights, and particularly the right of every person to take part in cultural life, can significantly empower persons or groups of persons living in poverty.³⁸

39. Culture as a social product must be brought within the reach of all, on the basis of equality, non-discrimination and participation. Therefore, in implementing the legal obligations enshrined in article 15, paragraph 1 (a), of the Covenant, States parties must adopt, without delay, concrete measures to ensure adequate protection and the full exercise of the right of persons living in poverty and their communities to enjoy and take part in cultural life. In this respect, the Committee refers States parties to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights.³⁹

F. Cultural diversity and the right to take part in cultural life

40. The protection of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, and requires the full implementation of cultural rights, including the right to take part in cultural life.⁴⁰

41. Cultures have no fixed borders. The phenomena of migration, integration, assimilation and globalization have brought cultures, groups and individuals into closer contact than ever before, at a time when each of them is striving to keep their own identity.

42. Given that globalization has positive and negative effects, States parties must take appropriate steps to avoid its adverse consequences on the right to take part in cultural life, particularly for the most disadvantaged and marginalized individuals and groups, such as persons living in poverty. Far from having produced a single world culture, globalization has demonstrated that the concept of culture implies the coexistence of different cultures.

43. States parties should also bear in mind that cultural activities, goods and services have economic and cultural dimensions, conveying identity, values and meanings. They must not be treated as having solely a commercial value.⁴¹ In particular, bearing in mind article 15 (2) of the Covenant, States parties should adopt measures to protect and promote

³⁷ ILO Convention No. 169, art. 6 (a). See also the United Nations Declaration on the Rights of Indigenous Peoples, art. 19.

³⁸ See E/C.12/2001/10, para. 5.

³⁹ Ibid., para. 14.

⁴⁰ See the Universal Declaration on Cultural Diversity, arts. 4 and 5.

⁴¹ UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, preamble, para. 18. See also the Universal Declaration on Cultural Diversity, art. 8.

the diversity of cultural expressions,⁴² and enable all cultures to express themselves and make themselves known.⁴³ In this respect, due regard should be paid to human rights standards, including the right to information and expression, and to the need to protect the free flow of ideas by word and image. The measures may also aim at preventing the signs, symbols and expressions of a particular culture from being taken out of context for the sole purpose of marketing or exploitation by the mass media.

III. States parties' obligations

A. General legal obligations

44. The Covenant imposes on States parties the immediate obligation to guarantee that the right set out in article 15, paragraph 1 (a), is exercised without discrimination, to recognize cultural practices and to refrain from interfering in their enjoyment and development.⁴⁴

45. While the Covenant provides for the "progressive" realization of the rights set out in its provisions and recognizes the problems arising from limited resources, it 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.⁴⁵

46. As in the case of the other rights set out in the Covenant, regressive measures taken in relation to the right of everyone to take part in cultural life are not permitted. Consequently, if any such measure is taken deliberately, the State party has to prove that it was taken after careful consideration of all alternatives and that the measure in question is justified, bearing in mind the complete set of rights recognized in the Covenant.⁴⁶

47. Given the interrelationship between the rights set out in article 15 of the Covenant (see paragraph 2 above), the full realization of the right of everyone to take part in cultural life also requires the adoption of steps necessary for the conservation, development and dissemination of science and culture, as well as steps to ensure respect for the freedom indispensable to scientific research and creative activity, in accordance with paragraphs 2 and 3, respectively, of article 15.⁴⁷

B. Specific legal obligations

48. The right of everyone to take part in cultural life, like the other rights enshrined in the Covenant, imposes three types or levels of obligations on States parties: (a) the obligation to respect; (b) the obligation to protect; and (c) the obligation to fulfil. The

⁴² UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, art. IV-5.

⁴³ See the Universal Declaration on Cultural Diversity, art. 6.

⁴⁴ See general comment No. 20 (2009).

⁴⁵ See general comments No. 3 (1990), para. 9, No. 13 (1999), para. 44, No. 14 (2000), para. 31, No. 17 (2005), para. 26 and No. 18 (2005), para. 20. See also the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, para. 21.

⁴⁶ See general comments No. 3 (1990), para. 9, No. 13 (1999), para. 45, No. 14 (2000), para. 32, No. 17 (2005), para. 27 and No. 18 (2005), para. 21.

⁴⁷ See general comments No. 13 (1999), paras. 46 and 47, No. 14 (2000), para. 33, No. 17 (2005), para. 28 and No. 18 (2005), para. 22.

obligation to respect requires States parties to refrain from interfering, directly or indirectly, with the enjoyment of the right to take part in cultural life. The obligation to protect requires States parties to take steps to prevent third parties from interfering in the right to take part in cultural life. Lastly, the obligation to fulfil requires States parties to take appropriate legislative, administrative, judicial, budgetary, promotional and other measures aimed at the full realization of the right enshrined in article 15, paragraph 1 (a), of the Covenant.⁴⁸

49. The obligation to respect includes the adoption of specific measures aimed at achieving respect for the right of everyone, individually or in association with others or within a community or group:

(a) To freely choose their own cultural identity, to belong or not to belong to a community, and have their choice respected;

This includes the right not to be subjected to any form of discrimination based on cultural identity, exclusion or forced assimilation,⁴⁹ and the right of all persons to express their cultural identity freely and to exercise their cultural practices and way of life. States parties should consequently ensure that their legislation does not impair the enjoyment of these rights through direct or indirect discrimination.

(b) To enjoy freedom of opinion, freedom of expression in the language or languages of their choice, and the right to seek, receive and impart information and ideas of all kinds and forms including art forms, regardless of frontiers of any kind;

This implies the right of all persons to have access to, and to participate in, varied information exchanges, and to have access to cultural goods and services, understood as vectors of identity, values and meaning.⁵⁰

(c) To enjoy the freedom to create, individually, in association with others, or within a community or group, which implies that States parties must abolish censorship of cultural activities in the arts and other forms of expression, if any;

This obligation is closely related to the duty of States parties, under article 15, paragraph 3, “to respect the freedom indispensable for scientific research and creative activity”.

(d) To have access to their own cultural and linguistic heritage and to that of others;

In particular, States must respect free access by minorities to their own culture, heritage and other forms of expression, as well as the free exercise of their cultural identity and practices. This includes the right to be taught about one’s own culture as well as those of others.⁵¹ States parties must also respect the rights of indigenous peoples to their culture and heritage and to maintain and strengthen their spiritual relationship with their ancestral lands and other natural resources traditionally owned, occupied or used by them, and indispensable to their cultural life.

⁴⁸ See general comments No. 13 (1990), paras. 46 and 47, No. 14 (2000), para. 33, No. 17 (2005), para. 28 and No. 18 (2005), para. 22. See also the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, para. 6.

⁴⁹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 31

⁵⁰ Universal Declaration on Cultural Diversity, para. 8.

⁵¹ Fribourg Declaration on Cultural Rights, arts. 6 (b) and 7 (b).

(e) To take part freely in an active and informed way, and without discrimination, 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).

50. 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. In addition, States parties are obliged to:

(a) Respect and protect cultural heritage in all its forms, in times of war and peace, and natural disasters;

Cultural heritage must be preserved, developed, enriched and transmitted to future generations as a record of human experience and aspirations, in order to encourage creativity in all its diversity and to inspire a genuine dialogue between cultures. Such obligations include the care, preservation and restoration of historical sites, monuments, works of art and literary works, among others.⁵²

(b) Respect and protect cultural heritage of all groups and communities, in particular the most disadvantaged and marginalized individuals and groups, in economic development and environmental policies and programmes;

Particular attention should be paid to the adverse consequences of globalization, undue privatization of goods and services, and deregulation on the right to participate in cultural life.

(c) Respect and protect the cultural productions of indigenous peoples, including their traditional knowledge, natural medicines, folklore, rituals and other forms of expression;

This includes protection from illegal or unjust exploitation of their lands, territories and resources by State entities or private or transnational enterprises and corporations.

(d) Promulgate and enforce legislation to prohibit discrimination based on cultural identity, as well as advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, taking into consideration articles 19 and 20 of the International Covenant on Civil and Political Rights and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

51. The obligation to fulfil can be subdivided into the obligations to facilitate, promote and provide.

52. States parties are under an obligation to facilitate the right of everyone to take part in cultural life by taking a wide range of positive measures, including financial measures, that would contribute to the realization of this right, such as:

(a) Adopting policies for the protection and promotion of cultural diversity, and facilitating access to a rich and diversified range of cultural expressions, including through, inter alia, measures aimed at establishing and supporting public institutions and the cultural infrastructure necessary for the implementation of such policies; and measures aimed at enhancing diversity through public broadcasting in regional and minority languages;

(b) Adopting policies enabling persons belonging to diverse cultural communities to engage freely and without discrimination in their own cultural practices and those of others, and to choose freely their way of life;

⁵² Universal Declaration on Cultural Diversity, art. 7.

(c) Promoting the exercise of the right of association for cultural and linguistic minorities for the development of their cultural and linguistic rights;

(d) Granting assistance, financial or other, to artists, public and private organizations, including science academies, cultural associations, trade unions and other individuals and institutions engaged in scientific and creative activities;

(e) Encouraging scientists, artists and others to take part in international scientific and cultural research activities, such as symposiums, conferences, seminars and workshops;

(f) Taking appropriate measures or programmes to support minorities or other communities, including migrant communities, in their efforts to preserve their culture;

(g) Taking appropriate measures to remedy structural forms of discrimination so as to ensure that the underrepresentation of persons from certain communities in public life does not adversely affect their right to take part in cultural life;

(h) Taking appropriate measures to create conditions conducive to a constructive intercultural relationship between individuals and groups based on mutual respect, understanding and tolerance;

(i) Taking appropriate measures to conduct public campaigns through the media, educational institutions and other available channels, with a view to eliminating any form of prejudice against individuals or communities, based on their cultural identity.

53. The obligation to promote requires States parties to take effective steps to ensure that there is appropriate education and public awareness concerning the right to take part in cultural life, particularly in rural and deprived urban areas, or in relation to the specific situation of, inter alia, minorities and indigenous peoples. This includes education and awareness-raising on the need to respect cultural heritage and cultural diversity.

54. The obligation to fulfil requires that States parties must provide all that is necessary for fulfilment of the right to take part in cultural life when individuals or communities are unable, for reasons outside their control, to realize this right for themselves with the means at their disposal. This level of obligation includes, for example:

(a) The enactment of appropriate legislation and the establishment of effective mechanisms allowing persons, individually, in association with others, or within a community or group, to participate effectively in decision-making processes, to claim protection of their right to take part in cultural life, and to claim and receive compensation if their rights have been violated;

(b) Programmes aimed at preserving and restoring cultural heritage;

(c) The inclusion of cultural education at every level in school curricula, including history, literature, music and the history of other cultures, in consultation with all concerned;

(d) Guaranteed access for all, without discrimination on grounds of financial or any other status, to museums, libraries, cinemas and theatres and to cultural activities, services and events.

C. Core obligations

55. In its general comment No. 3 (1990), the Committee stressed that States parties have a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights set out in the Covenant. Thus, in accordance with the Covenant and other international instruments dealing with human rights and the protection

of cultural diversity, the Committee considers that article 15, paragraph 1 (a), of the Covenant entails at least the obligation to create and promote an environment within which a person individually, or in association with others, or within a community or group, can participate in the culture of their choice, which includes the following core obligations applicable with immediate effect:

(a) To take legislative and any other necessary steps to guarantee non-discrimination and gender equality in the enjoyment of the right of everyone to take part in cultural life;

(b) To respect the right of everyone to identify or not identify themselves with one or more communities, and the right to change their choice;

(c) To respect and protect the right of everyone to engage in their own cultural practices, while respecting human rights which entails, in particular, respecting freedom of thought, belief and religion; freedom of opinion and expression; a person's right to use the language of his or her choice; freedom of association and peaceful assembly; and freedom to choose and set up educational establishments;

(d) To eliminate any barriers or obstacles that inhibit or restrict a person's access to the person's own culture or to other cultures, without discrimination and without consideration for frontiers of any kind;

(e) To allow and encourage the participation of persons belonging to minority groups, indigenous peoples or to other communities in the design and implementation of laws and policies that affect them. In particular, States parties should obtain their free and informed prior consent when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk.

D. International obligations

56. In its general comment No. 3 (1990), the Committee draws attention to the obligation of States parties to take steps, individually and through international assistance and cooperation, especially through economic and technical cooperation, with a view to achieving the full realization of the rights recognized in the Covenant. In the spirit of Article 56 of the Charter of the United Nations, as well as specific provisions of the International Covenant on Economic, Social and Cultural Rights (art. 2, para. 1, and arts. 15 and 23), States parties should recognize and promote the essential role of international cooperation in the achievement of the rights recognized in the Covenant, including the right of everyone to take part in cultural life, and should fulfil their commitment to take joint and separate action to that effect.

57. States parties should, through international agreements where appropriate, ensure that the realization of the right of everyone to take part in cultural life receives due attention.⁵³

58. The Committee recalls that international cooperation for development and thus for the realization of economic, social and cultural rights, including the right to take part in cultural life, is an obligation of States parties, especially of those States that are in a position to provide assistance. This obligation is in accordance with Articles 55 and 56 of

⁵³ See general comment No. 18 (2005), para. 29.

the Charter of the United Nations, as well as articles 2, paragraph 1, and articles 15 and 23 of the Covenant.⁵⁴

59. 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, programmes and policies adopted by States parties under structural adjustment programmes 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.⁵⁵

IV. Violations

60. To demonstrate compliance with their general and specific obligations, States parties must show that they have taken appropriate measures to ensure the respect for and protection of cultural freedoms, as well as the necessary steps towards the full realization of the right to take part in cultural life within their maximum available resources. States parties must also show that they have guaranteed that the right is enjoyed equally and without discrimination, by men and women.

61. In assessing whether States parties have complied with obligations to take action, the Committee looks at whether implementation is reasonable or proportionate with respect to the attainment of the relevant rights, complies with human rights and democratic principles, and whether it is subject to an adequate framework of monitoring and accountability.

62. Violations can occur through the direct action of a State party or of other entities or institutions that are insufficiently regulated by the State party, including, in particular, those in the private sector. Many violations of the right to take part in cultural life occur when States parties prevent access to cultural life, practices, goods and services by individuals or communities.

63. Violations of article 15, paragraph 1 (a), also occur through the omission or failure of a State party to take the necessary measures to comply with its legal obligations under this provision. Violations through omission include the failure to take appropriate steps to achieve the full realization of the right of everyone to take part in cultural life, and the failure to enforce relevant laws or to provide administrative, judicial or other appropriate remedies to enable people to exercise in full the right to take part in cultural life.

64. A violation also occurs when a State party fails to take steps to combat practices harmful to the well-being of a person or group of persons. These harmful practices, including those attributed to customs and traditions, such as female genital mutilation and allegations of the practice of witchcraft, are barriers to the full exercise by the affected persons of the right enshrined in article 15, paragraph 1 (a).

65. Any deliberately retrogressive measures in relation to the right to take part in cultural life would require the most careful consideration and need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.

⁵⁴ General comment No. 3 (1990), para. 14. See also general comment No. 18 (2005), para. 37.

⁵⁵ See general comment No. 18 (2005), para. 30.

V. Implementation at the national level

A. Legislation, strategies and policies

66. While States parties have a wide margin of discretion in selecting the steps they consider most appropriate for the full realization of the right, they must immediately take those steps intended to guarantee access by everyone, without discrimination, to cultural life.

67. States parties must take the necessary steps without delay to guarantee immediately at least the minimum content of the core obligations (see paragraph 56 above). Many of these steps, such as those intended to guarantee non-discrimination *de jure*, do not necessarily require financial resources. While there may be other steps that require resources, these steps are nevertheless essential to ensure the implementation of that minimum content. Such steps are not static, and States parties are obliged to advance progressively towards the full realization of the rights recognized in the Covenant and, as far as the present general comment is concerned, of the right enshrined in article 15, paragraph 1 (a).

68. The Committee encourages States parties to make the greatest possible use of the valuable cultural resources that every society possesses and to bring them within the reach of everyone, paying particular attention to the most disadvantaged and marginalized individuals and groups, in order to ensure that everyone has effective access to cultural life.

69. The Committee emphasizes that inclusive cultural empowerment derived from the right of everyone to take part in cultural life is a tool for reducing the disparities so that everyone can enjoy, on an equal footing, the values of his or her own culture within a democratic society.

70. States parties, in implementing the right enshrined in article 15, paragraph 1 (a), of the Covenant, should go beyond the material aspects of culture (such as museums, libraries, theatres, cinemas, monuments and heritage sites) and adopt policies, programmes and proactive measures that also promote effective access by all to intangible cultural goods (such as language, knowledge and traditions).

B. Indicators and benchmarks

71. In their national strategies and policies, States parties should identify appropriate indicators and benchmarks, including disaggregated statistics and time frames that allow them to monitor effectively the implementation of the right of everyone to take part in cultural life, and also to assess progress towards the full realization of this right.

C. Remedies and accountability

72. The strategies and policies adopted by States parties should provide for the establishment of effective mechanisms and institutions, where these do not exist, to investigate and examine alleged infringements of article 15, paragraph 1 (a), identify responsibilities, publicize the results and offer the necessary administrative, judicial or other remedies to compensate victims.

VI. Obligations of actors other than States

73. While compliance with the Covenant is mainly the responsibility of States parties, all members of civil society — individuals, groups, communities, minorities, indigenous - peoples, religious bodies, private organizations, business and civil society in general — also have responsibilities in relation to the effective implementation of the right of everyone to take part in cultural life. States parties should regulate the responsibility incumbent upon the corporate sector and other non-State actors with regard to the respect for this right.

74. Communities and cultural associations play a fundamental role in the promotion of the right of everyone to take part in cultural life at the local and national levels, and in cooperating with States parties in the implementation of their obligations under article 15, paragraph 1 (a).

75. The Committee notes that, as members of international organizations such as United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Intellectual Property Organization (WIPO), the International Labour Organization (ILO), the Food and Agriculture Organization of the United Nations (FAO), the World Health Organization (WHO) and the World Trade Organization (WTO), States parties have an obligation to adopt whatever measures they can to ensure that the policies and decisions of those organizations in the field of culture and related areas are in conformity with their obligations under the Covenant, in particular the obligations contained in article 15 article 2, paragraph 1, and articles 22 and 23, concerning international assistance and cooperation.

76. United Nations organs and specialized agencies, should, within their fields of competence and in accordance with articles 22 and 23 of the Covenant, adopt international measures likely to contribute to the progressive implementation of article 15, paragraph 1 (a). In particular, UNESCO, WIPO, ILO, FAO, WHO and other relevant agencies, funds and programmes of the United Nations are called upon to intensify their efforts to take into account human rights principles and obligations in their work concerning the right of everyone to take part in cultural life, in cooperation with the Office of the United Nations High Commissioner for Human Rights.
