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

Cultural rights: an empowering agenda

Report of the Special Rapporteur in the field of cultural rights, Alexandra Xanthaki*

Summary

In her first report to the Human Rights Council, the Special Rapporteur in the field of cultural rights, Alexandra Xanthaki, presents an overview of her vision for the mandate. Building on the important work conducted by her predecessors, the Special Rapporteur highlights important aspects in the evolution of the nature and scope of cultural rights and reflects on the corresponding States' obligations.

In the report, the Special Rapporteur highlights the positive nature of culture for the individual and the empowering force of cultural rights. The Special Rapporteur commits to working more closely with United Nations bodies in promoting cultural rights and cultural diversity, emphasizes the importance of good practice and identifies a preliminary list of issues deserving more attention that she intends to address during her tenure.

* The present report was submitted after the deadline so as to include the most recent information.



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I. Introduction

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

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

II. Legal framework

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

4. At the core of the legal framework relating to this mandate is article 27 of the Universal Declaration of Human Rights, which recognizes that everyone has the right to participate freely in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Article 27 (2) also recognizes the right of all persons to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which they are the authors. Article 15 of the International Covenant on Economic, Social and Cultural Rights creates legally binding obligations of the 171 States parties to this Covenant to recognize the right of all persons (a) to take part in cultural life, (b) to enjoy the benefits of scientific progress and its applications, and (c) to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which they are the author (art. 15 (1)). The Covenant requires States parties to take specific steps, legal and other, to achieve the full realization of this right, including measures for the conservation, the development and the diffusion of science and culture (art. 15 (2)). Steps must also be taken to guarantee the freedom indispensable for scientific research and creative activity (art. 15 (3)) and to recognize the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields (art. 15 (4)).

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

6. An important focus of the Special Rapporteur will be the realization of substantive equality in the exercise of cultural rights. In this, she is guided by article 27 of the International Covenant on Civil and Political Rights (currently ratified by 173 States), in which States parties are required to ensure that persons belonging to minorities are not denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the United Nations Declaration on the Rights of Indigenous Peoples act as interpretative tools for article 27 of the Covenant and clarify the need for positive steps to be taken for the realization of the rights recognized in that article.

7. Substantive equality is also the aim of the obligations of the 182 States parties that have ratified the International Convention on the Elimination of All Forms of Racial Discrimination: there should be no discrimination in purpose or in effect in the cultural field

based on race, colour, descent, or national or ethnic origin (art. 1). The need to eradicate discrimination in cultural activities has been raised by several United Nations human rights bodies, including in connection to migrant workers,¹ lesbian, gay, bisexual, transgender and intersex persons² and persons with disabilities.³ The Committee on the Elimination of Racial Discrimination already noted the importance of cultural rights in protecting vulnerable groups to restore the balance of power among the components of society, promote intercultural understanding and tolerance, help to deconstruct racial stereotypes, facilitate the free exchange of ideas and offer alternative points of view and counterpoints.⁴ Importantly, States parties to the International Convention on the Elimination of All Forms of Racial Discrimination must make no distinctions between citizens and non-citizens (art. 1 (2)) and should (not merely could) take concrete measures, including positive measures, for the development and protection of the rights of vulnerable groups in the cultural field (arts. 1 (4) and 2 (2)). The Human Rights Committee has also recently urged States to strengthen awareness-raising efforts aimed at promoting respect for human rights and tolerance for diversity, revisiting and eradicating stereotypical prejudices.⁵ The Special Rapporteur will follow the example of United Nations bodies and adopt an intersectional approach in her work, highlighting the effects of multiple grounds of vulnerability.

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

III. Positive force of culture and cultural diversity

9. Culture is much more than the sum of products. It is a process and a way of life.⁶ It permeates all spheres of life and is as essential to human experience as air, water, shelter and security. It is at the core of being human: it is how people assign meaning to their lives and understand their human, natural and manufactured environment, as individuals and collectives. Culture embodies the responses human beings give to the big challenges in life, such as life and death, parenthood and childhood, growing, coming of age and getting older. Culture embodies the ways humans communicate with one another and organize social life – through the development and transmission of language, values and gestures, and the creation of norms, rules and institutions. And it is about the relationship humans have and develop with nature and the environment they live in – through specific ways of obtaining and transforming the food and water resources surrounding them, of facing a changing climate and of devising adapted shelter and ways of life.

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

11. Everyone has multiple cultural resources that shape them. These may derive from their ethnic background, their minority status, their family values, their continent’s priorities and,

¹ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 5 (2021), para. 68. See also [CERD/C/NLD/CO/22-24](#), paras. 33–34.

² [A/74/181](#), paras. 5 and 103 (b).

³ Committee on the Rights of Persons with Disabilities, general comment No. 2 (2014), para. 44. See also [A/HRC/31/62](#), paras. 15 and 31; and [A/HRC/46/27](#), para. 51.

⁴ Committee on the Elimination of Racial Discrimination, general recommendation No. 35 (2013), paras. 24, 29, 31 and 34.

⁵ [CCPR/C/DEU/CO/7](#), para. 11 (c). See also [CCPR/C/HUN/CO/6](#), para. 17.

⁶ [A/HRC/14/36](#), para. 5.

ultimately, our common culture as humankind. Cultural frameworks form concentric, overlapping and disorderly formed circles around the individual. At times, the different elements converge and, at other times, they contradict each other. Everyone is in “a constant contradictory state of becoming, in which both social institutions and individual wills are deeply implicated”.⁷ It is up to the individual’s agency to decide which elements to practise and adopt.

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

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

IV. Taking stock and setting priorities

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

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

15. Tangible manifestations of culture were the focus of the report of the previous mandate holder in which the intentional destruction of cultural heritage as a violation of cultural rights – in both conflict and non-conflict situations, and by both States and non-State actors – was discussed.⁸ The fight against the destruction of cultural heritage was substantially strengthened by the judgment in 2006 of the International Criminal Court, where for the first time the Court convicted an individual for war crimes associated with the destruction of cultural heritage. Ahmad al-Faqi al-Mahdi, a member of the Ansar Eddine armed group operating in Mali, was found guilty of the war crime of attacking historic and religious buildings in Timbuktu. He was sentenced to nine years in prison. The Special Rapporteur wishes to support further attempts to eradicate the intentional destruction of cultural heritage and invites civil society to share such practices with her.

16. The Special Rapporteur believes in the need to engage in further reflection on ways to redress the loss or damage of cultural heritage of communities and groups, particularly – but not only – threatened minorities, indigenous peoples and victims of assimilationist policies. In addition to restitution, the Special Rapporteur is eager to explore alternative ways of redress, including redress in the form of special benefits for the community to compensate for their separation from their cultural heritage.

⁷ Angela P. Harris, “Race and essentialism in feminist legal theory”, *Stanford Law Review*, vol. 42, No. 3 (February 1990), p. 584.

⁸ See [A/HRC/31/59](#) and [A/HRC/31/59/Corr.1](#).

17. The Special Rapporteur wishes to continue the work under the mandate on historical and commemorative narratives and to further discuss majority-biased, elitist and/or one-sided historical narratives promoted by the State under the banner of strengthening its national identity. She will pay special attention to the problem of weaponizing the teaching of history to support State narratives of monoculturalism. Positive changes in the teaching of history must be highlighted and shared, in such ways as operationalizing provisions in several minority rights instruments, including article 4 (4) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, article 12 of the Framework Convention for the Protection of National Minorities and case law of regional human rights bodies. Thanks to the work of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, who is increasingly emphasizing the role of historical narratives and memorialization in transitional justice processes, stakeholders active in these areas now have two mandates to promote and protect their rights.

18. The rights of professionals working in the area of cultural heritage were addressed by the Special Rapporteur's predecessors. History and heritage professionals and their specific challenges in terms of cultural rights were highlighted in the reports on access to and enjoyment of cultural heritage,⁹ on the intentional destruction of heritage,¹⁰ on the writing and teaching of history¹¹ and on memorialization processes in post-conflict and divided societies.¹² Discussion on such issues is also pursued through the Human Rights Council, and a recurring Council resolution on cultural rights and the protection of cultural heritage provides for the further involvement of many stakeholders concerned.¹³

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

20. The rights of artists and artistic freedom have also been a focus under the mandate. Through the reports on the right to freedom of artistic expression and creation,¹⁴ on memorialization processes of the events of the past in post-conflict and divided societies,¹⁵ on copyright law and policy from the perspective of the right to science and culture¹⁶ and on the role of cultural initiatives in creating and developing rights-respecting societies,¹⁷ previous mandate holders have provided important insight into the conditions of artists and cultural operators and the specific challenges they face in exercising their cultural rights and in making cultural and creative processes accessible to others. These reports included some discussion of their socioeconomic situations. Several mechanisms, including the Human Rights Committee,¹⁸ have also analysed the content of freedom of artistic expression in all its forms and manifestations as a fundamental right inherent to all persons and an indispensable requirement for the existence of a democratic society.

21. The Special Rapporteur would also like to focus on the rights of artists who belong to marginalized sections of the population, including migrant artists, lesbian, gay, bisexual, transgender and intersex artists and artists with disabilities. An intersectional approach and

⁹ See [A/HRC/17/38](#).

¹⁰ See [A/71/317](#).

¹¹ See [A/68/296](#).

¹² See [A/HRC/25/49](#).

¹³ See Human Rights Council resolutions 33/20 and 37/17.

¹⁴ See [A/HRC/23/34](#).

¹⁵ See [A/HRC/25/49](#).

¹⁶ See [A/HRC/28/57](#).

¹⁷ See [A/HRC/37/55](#).

¹⁸ Human Rights Committee, general comment No. 34 (2011), para. 11.

collaboration with other mandate holders are of critical importance in addressing this issue. The Special Rapporteur has been particularly impressed with the International Cities of Refuge Network, which has hosted more than 200 persecuted artists and writers since 2006. More initiatives to protect vulnerable artists need to be highlighted.

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

23. The rights of scientists have also been considered in the reports on the right to benefit from scientific progress and its application,¹⁹ on the implications of patent policy for the human right to science and culture²⁰ and on the impact of the coronavirus disease (COVID-19) pandemic on cultures and cultural rights²¹. However, there seems to be room for further detailed work on academic freedoms and the rights of stakeholders in relation to this mandate. The Special Rapporteur will work with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and with civil society to clarify the content of academic freedoms and the obligations of stakeholders.

B. Protecting cultural rights relating to intangible culture

24. The Special Rapporteur is also committed to exploring further the benefits of protecting rights to intangible culture. The rights to one's identity and to maintain, celebrate and develop one's world views, values, approaches, customs, traditions and their manifestations need to be protected for the well-being, health and development of the individual, the social cohesion of the society and the evolution of civilization. Disrespect for substantial elements and violations of the above-referenced rights have had a lasting impact on several segments of the population; many indigenous communities carry the scars of such disrespect. At times, such violations have been happening under the pretext of protecting human rights or "educating" the persons whose rights were being violated. These narratives were recently used in the migration debate, where some host States claimed that migrants allegedly needed to be "educated" about the rule of law. Such policies and attitudes could be an expression of covert and insidious cultural superiority, through which the values of every other culture are ignored and despised. Historical injustices have to be addressed and disrespect for specific cultures, explicit or implicit, must end, and difficult discussions about redress for the gross violations committed have to be initiated. The collective nature and elements of cultural rights, as recognized by current standards in international law,²² are also part of the remit of the mandate.

25. At the same time, intangible culture has in some circles been mistakenly equated with traditional values, often set by elites, and overwhelmingly by male-dominated elites. A top-down approach to culture does not satisfy current standards of international law. As the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has recently noted, religious interpretations, traditional values and patriarchal social constructs are used to restrict or repress cultural expression, including the artistic freedom of women and gender non-conforming individuals. Restrictions range from prohibiting women from performing or broadcasting their performances to suppressing art and cultural productions of lesbian, gay, bisexual, transgender, intersex, queer and gender-non-conforming people.²³

26. In accordance with the Vienna Declaration and Programme of Action, while the significance of national and regional particularities and various historical, cultural and

¹⁹ See [A/HRC/20/26](#).

²⁰ See [A/70/279](#) and [A/70/279/Corr.1](#).

²¹ See [A/HRC/46/34](#).

²² See Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009); United Nations Declaration on the Rights of Indigenous Peoples; and article 1 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the collective nature of the existence and protection of minorities.

²³ [A/76/258](#), paras. 15, 30, 33, 37 and 59.

religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms (part I, sect. 5). This entails, as enshrined in the Universal Declaration on Cultural Diversity of the United Nations Educational, Scientific and Cultural Organization (UNESCO) (art. 4) and reiterated in Human Rights Council resolution 10/23, that no one may invoke cultural diversity to infringe upon human rights guaranteed by international law or to limit their scope. Members of various cultural groups are the ones to decide in the first instance which practices actually do violate human rights, on the sustainability of their cultural practices and their coherence with current human rights. Through their interactions with other cultures and their continuous re-evaluation of new circumstances, needs and ideas, members of groups contribute to defining and shifting the contours of “cultures”. Cultures are not monolithic and must be encouraged to evolve in an organic way.

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

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

C. Protecting cultural rights relating to the natural environment

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

30. In the past, the mandate holders considered the relationship between cultural rights and the environment, both natural and built, mainly in the reports dedicated to public spaces and advertising.²⁴ The right to take part in cultural life and to pursue specific ways of life requires spaces. The mandate holder considered that public spaces were spheres for deliberation, cultural exchange, social cohesion and diversity,²⁵ and that a human rights framework should be applied to the design, development and maintenance of public spaces. Authorities at all levels therefore have obligations to guarantee the collective and participatory character of public spaces of an urban, rural, natural or digital nature.²⁶

31. Specific challenges that have been analysed also include the growing commercialization and privatization of public spaces. The overwhelming presence in the environment of advertising aimed at selling tends to shape and limit how individuals think, feel and act, and to reduce cultural diversity and the capacities of each person and group to choose and aspire to something other than a lifestyle based on intense consumption that is detrimental to human societies and the environment. Recommendations on advertisement-free schools issued under the mandate in 2014²⁷ were taken up by the United Nations Children’s Fund (UNICEF), with the aim of developing guidelines for public authorities on how to protect the rights of the child from the adverse impacts of marketing in schools. Also, in her report on climate change,²⁸ the previous mandate holder highlighted how the disappearance of the built and natural environments of certain populations, and of the traces

²⁴ See [A/74/255](#) and [A/69/286](#).

²⁵ [A/69/286](#), para. 76.

²⁶ [A/74/255](#), para. 84.

²⁷ [A/69/286](#), paras. 46–48.

²⁸ See [A/75/298](#).

of their existence and ways of life, due to climate change represented a threat to the survival of their specific cultural identities.²⁹

32. The recent recognition of the right to the enjoyment of a safe, clean, healthy and sustainable environment refocuses the attention of the mandate holder on the importance of cultural practices and traditional knowledge as tools for the realization of the right to the enjoyment of a safe, clean, healthy and sustainable environment. Often, cultural rights relating to nature are neglected or sidelined for other needs and interests. At times, projects funded by international organizations and executed by transnational corporations do not prioritize the spiritual and cultural rights of the persons and communities concerned. Certain cultural practices are also often unfairly attacked and deemed environmentally unfriendly (such as shifting cultivation and cultural burning). Also, development and sustainability are being interpreted as serving a specific way of life, and the expertise of the people who inhabit the lands to be “developed” is not sought, despite the guarantee of free, prior and informed consent. As the Special Rapporteur on the rights of indigenous peoples has noted, environmental impact assessments should give special consideration to the cultural rights of indigenous peoples and any such project should include meaningful consultations to obtain their free, prior and informed consent.³⁰ The Special Rapporteur invites all stakeholders to send ideas on how the implementation of cultural rights can be strengthened in addressing environmental issues and to share good practice and concerns on these matters with the mandate holder.

V. Balancing of rights

33. Similar to most other human rights, cultural rights are not absolute rights. In her attempts to balance cultural rights with other rights or interests, the Special Rapporteur is again guided by international law. First, cultural rights cannot prevail over absolute rights, including the prohibition of torture and other forms of ill-treatment, slavery and genocide. Harmful traditional practices that constitute torture and other forms of ill-treatment or slavery must be eradicated. Any violence, including rape and harmful traditional practices, is a violation of human rights, no matter what their origin. As highlighted by United Nations bodies, coercive practices of bonded labour of migrant domestic workers or indigenous individuals must not be tolerated by any State under any circumstances.³¹ States are under the clear obligation to take measures to eradicate such practices and to effectively investigate such cases.

34. Second, any balancing between cultural rights and rights other than absolute rights or other interests must follow the principles of legality, legitimacy and proportionality. In its evaluation of the communications submitted by Lovelace,³² Kitok³³ and Länsman,³⁴ the Human Rights Committee asked for the existence of a reasonable and objective justification for the prevalence of one right over the other, consistency with human rights instruments, the necessity of the restriction and proportionality. It is argued that the complete neglect of one right – be it a cultural right or another right – for the full realization of the competing right would in most cases violate the principle of necessity.³⁵ The core of each human right must be protected.

35. In accordance with the mandate, set out in Human Rights Council resolution 10/23, to integrate a gender perspective into their work, mandate holders have consistently considered women as important stakeholders in the field of culture. The reports on the enjoyment of cultural rights by women on an equal basis with men³⁶ and on the impact of

²⁹ Ibid., para. 37.

³⁰ A/HRC/45/34, paras. 58–63. See also CCPR/C/FIN/CO/7, para. 42; CCPR/C/GTM/CO/4, para. 39; and CCPR/C/VNM/CO/3, para. 56.

³¹ See, for example, CCPR/C/LBN/CO/3, para. 39.

³² Communication No. 24/1977.

³³ CCPR/C/111/D/1985/2010.

³⁴ CCPR/C/52/D/511/1992.

³⁵ Committee on Economic, Social and Cultural Rights, general comment No. 25 (2020), para. 21.

³⁶ See A/67/287.

fundamentalism and extremism on the cultural rights of women³⁷ are important sources. Whether collective cultural rights must be balanced with women's rights or other individual rights, the alleged victims must have a real "right to exit" from the culture if they do not agree with the values it embodies. To have this right, the State must provide some adequate level of physical security and socioeconomic rights, including a minimum level of education, a health system and a secure society.³⁸ Otherwise, the expectation of the individual to make a choice between the right to exercise a cultural practice and other human rights is not real.

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

VI. Indivisibility of cultural rights and other human rights

37. Cultural rights have firm links with other human rights, to the extent that, at times, the separation of such rights is difficult. For example, distinctions between cultural rights and religious rights are not always clear. The Special Rapporteur on freedom of religion or belief will discuss in his forthcoming report rights relating to spirituality, which transcend both religion and culture. The Special Rapporteur on the right to education has noted that the right to education should be viewed as a cultural right. She has noted that the right to education – as the right of each person to the cultural resources necessary to freely follow a process of identification, to experience mutually rewarding relations his or her life long, to deal with the crucial challenges facing our world, to engage in the practices that make it possible to take ownership of and contribute to these resources – is, in substance, a cultural right.³⁹ The Special Rapporteur in the field of cultural rights is delighted that close collaborations exist with other mandate holders (also made evident by the high number of joint communications, letters and statements) and is looking forward to having further collaboration and combined resources on cross-cutting topics, which will ensure even more cohesion in, and a larger impact of, the messages.

38. The indivisibility of human rights is evident, on the one hand, through other mandate holders' work on aspects of cultural rights in the broad sense, but also, on the other hand, in discussions on the cross-section of rights. As mentioned above, the promotion and protection of cultural rights and cultural diversity presupposes a healthy society where human rights defenders have their rights protected, a society where socioeconomic rights are protected, and a society that strives to eradicate poverty. In its general comment No. 21 (2009), the Committee on Economic, Social and Cultural Rights links the right of everyone to take part in cultural life with the right to self-determination and the right to an adequate standard of living (para. 2). In its general comment No. 25 (2020), the Committee discerns linkages between poverty and access to scientific freedom, stating that economic inequality hinders equal access to scientific education and to the benefits of scientific progress for people living in poverty (para. 36). The COVID-19 pandemic has exposed the need to promote other human rights, including the guarantees of non-discrimination, the right to health, the rights of persons with disabilities and the rights of older persons.⁴⁰ Respect for cultural rights

³⁷ See [A/72/155](#).

³⁸ Susan M. Okin, "'Mistresses of their own destiny': group rights, gender and realistic rights of exit", *Ethics*, vol. 112, No. 2 (January 2002), pp. 205–230; Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge University Press, 2001); and Jeff Spinner-Halev, "Autonomy, association and pluralism", in *Minorities within Minorities: Equality, Rights and Diversity*, Avigail Eisenberg and Jeff Spinner-Halev, eds. (Cambridge University Press, 2005), pp. 157–171.

³⁹ [A/HRC/47/32](#), para. 52.

⁴⁰ See [A/HRC/46/34](#).

presupposes respect for human rights, and the protection of cultural rights promotes respect for other human rights.

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

40. Cultural rights are also discussed by, and inform the work of, other international organizations. However, fragmentation among these different organizations continues to exist. Since the establishment of this mandate in 2009, UNESCO has been a natural partner of many aspects of the work. The first major avenue for cooperation relies on the principle of the mutual strengthening of cultural diversity and cultural rights, established in the Universal Declaration on Cultural Diversity (preamble and arts. 4–6) and strengthened and made more operational since 2015 through the monitoring framework for the implementation of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions. There are 10 areas of focus to guide States parties to the Convention in their periodic implementation reports;⁴¹ 2 areas – on gender equality and on artistic freedoms – were clearly drafted integrating the language and concepts of both human rights and cultural rights. UNESCO has collaborated with the Special Rapporteur on several aspects of the mandate and often contributes to expert meetings, round tables and conferences. However, there is a need for further collaboration in certain areas, including the participation of marginalized individuals in the conception and delivery of cultural programmes, the free, prior and informed consent of communities in determining world heritage sites, and discussions on reparations for and redress of historical and current violations.

41. Substantive collaboration is needed with the World Intellectual Property Organization (WIPO). When a previous mandate holder conducted her work on intellectual property regimes (2014–2015), not much had been done to include a human rights perspective in this area of law, or on the impact of these regimes on cultural rights. WIPO supported the work done under the mandate that led to the presentation of the reports on copyrights⁴² and patent policies,⁴³ and participated in expert consultations and in specific analysis. As the previous Special Rapporteur stated in the latter report, the right to the protection of moral and material interests cannot be used to defend patent laws that inadequately impact the rights to participate in cultural life, to enjoy the benefits of scientific progress and its applications, and to scientific freedoms, as well as the rights to food and health and the rights of indigenous peoples and local communities. Where patent rights and human rights are in conflict, human rights must prevail.⁴⁴ Yet, WIPO still has not incorporated current standards on cultural rights into its work, and a follow-up to those reports is needed.

42. These regimes, international human rights law, international law in the cultural sector and intellectual property law must be in line with the ever-evolving standards of international law regarding cultural rights and cultural diversity. The Special Rapporteur also notes the need to look into the impact of development and financial organizations, including the World Bank and the International Monetary Fund, on cultural rights and diversity. The Environmental and Social Standards of the World Bank and their application (or lack thereof) have a direct impact on cultural rights.

43. Notwithstanding all of these entities, the Special Rapporteur is particularly eager to open dialogues with States and provide them with technical cooperation. The standards and the nature of States' obligations are at times difficult to grasp and the expertise and experience of the mandate holder in operationalizing such standards is vast. As the main protector of

⁴¹ See <https://unesdoc.unesco.org/ark:/48223/pf0000380475>.

⁴² See A/HRC/28/57.

⁴³ See A/70/279 and A/70/279/Corr.1.

⁴⁴ Ibid.

cultural rights, States are under the obligation to take steps, legal and other, to promote and protect these rights. The Special Rapporteur is looking forward to working with Member States – through country visits that will, to the extent possible, fit with the thematic studies of her mandate, but also through wider dialogue and cooperation – towards improving the application of cultural rights at the domestic level. To this end, she is open to providing support and technical expertise relating to legislation and other measures that promote and protect cultural rights and cultural diversity.

VII. Work methods and next reports

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

45. The Special Rapporteur will consider issues relating to cultural rights and sustainable development, noting that cultural rights must be at the core of any discussion and activity relating to sustainable development. The Sustainable Development Goals do not mention cultural rights explicitly, but nevertheless provide an important programmatic platform in which the transversal relevance of cultural rights must be analysed and highlighted. As early as 1987, the Report of the World Commission on Environment and Development: Our Common Future (the Brundtland Report) rightly noted that, in order to be “sustainable”, development must meet the needs of the community without compromising the ability of future generations to meet their own needs. States have a clear obligation to adopt all appropriate measures to protect the environment, the livelihoods and the natural resources of affected individuals and communities. Cultural rights are integral to protecting the environment and nature.

46. It is vital that States and the international community apply a variety of development models. The Special Rapporteur is looking forward to analysing ways in which financial models of development will be enriched and even replaced by more human rights-oriented models of development. The wisdom of traditional knowledge holders and the experiences of affected communities must be used at all stages of development projects, from inception to delivery and evaluation. Such communities must not only be consulted; their free, prior and informed consent must be sought and respected and their leadership in implementing and evaluating development programmes must be secured. This is the only way to ensure that individual and collective cultural rights are protected and that no one is left behind.

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

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

49. The Special Rapporteur is particularly interested in hearing from migrants and relevant civil society organizations about the concerns they have relating to the implementation of integration measures by States and more generally their cultural rights.

She looks forward to receiving examples of good practice of measures implemented by States in this area, as well as measures that empower marginalized and vulnerable migrants to develop their cultures. She would also like to learn more about debates on balancing different rights relating to cultural rights of migrants and people on the move. She is looking forward to engaging closely with the Office of the United Nations High Commissioner for Refugees, the International Organization for Migration and the Special Rapporteur on the human rights of migrants.

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

51. In addition to thematic reports, communications are important in promoting and protecting cultural rights. The Special Rapporteur is grateful for the information received and open to receiving more from civil society organizations and other stakeholders. The number of communications sent to Governments and other actors about alleged violations of cultural rights has progressively increased, illustrative of the broader understanding stakeholders have acquired on cultural rights. To date, the Special Rapporteur has either joined or initiated 340 such communications.⁴⁵ They raised concerns about a variety of issues: from the neglect of ways of life and heritage resources to the imposition of a single narrative about the past, about shared identity and about the way to act in society; from violations of the right to take part in cultural life to the targeted harassment, arrest and killing of those who challenge cultural norms; from violations of the right to access and enjoy the creativity of others and to benefit from scientific progress and its applications to the censorship of artistic, academic and scientific freedoms; and from a lack of respect for cultural diversity to the use of cultural arguments to violate human rights. These communications addressed alleged violations in all regions of the world; about two thirds of them sought clarification from Governments and the remaining third reminded other stakeholders, including private companies, of their due diligence obligation towards human rights. Ten communications raised issues about laws or policies that were discussed publicly, providing a cultural rights analysis of the potential effects of the law in question.

52. An important part of the mandate consists in conducting country visits to learn from best practices and assess challenges to the implementation of cultural rights and to report on them, providing recommendations and advice for all relevant stakeholders. Fourteen such visits have already been conducted. The reports and conclusions are available on the web page for the mandate.⁴⁶ The Special Rapporteur looks forward to being invited by States for visits.

53. To summarize, in her work, the Special Rapporteur will:

- (a) Seek dialogue and cooperation regarding the issues of the mandate;
- (b) Focus on follow-up mechanisms that are important to ensuring that all issues are addressed;
- (c) Work on capacity-building within States so that they have the means to fully implement their obligations regarding cultural rights;
- (d) Help to build resilience in local societies regarding violations and involve local stakeholders in identifying the best ways to prevent violations from taking place;
- (e) Focus on vulnerable and marginalized sections of the population.

⁴⁵ The full list of communications sent and the responses received can be found at <https://spcommreports.ohchr.org/TmSearch/Mandates?m=19>.

⁴⁶ See www.ohchr.org/EN/Issues/CulturalRights/Pages/CountryVisits.aspx.

54. To achieve these results, the Special Rapporteur is looking forward to working in close cooperation with treaty bodies, in particular the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of Persons with Disabilities and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as with other special procedure mandate holders whose work bears upon the enjoyment of cultural rights. She also intends to pursue further collaboration with interested intergovernmental organizations, including UNESCO and WIPO, non-governmental organizations, national human rights institutions, and academic and research institutes to further implement cultural rights for all at local, national, regional and international levels.
