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

Report of the independent expert in the field of cultural rights, Farida Shaheed

Summary

The independent expert in the field of cultural rights submits the present report in accordance with Human Rights Council resolution 10/23.

The report investigates the extent to which the right of access to and enjoyment of cultural heritage forms part of international human rights law. Stressing the need for a human rights-based approach to cultural heritage matters, the independent expert explores the concept of cultural heritage from the perspective of human rights and presents a non-exhaustive list of human rights issues related to cultural heritage. A compilation of references in international law on the rights of individuals and communities in relation to cultural heritage and a summary of information received regarding national initiatives are included. The report further contains an analysis of the right of access to and enjoyment of cultural heritage, in particular regarding its normative content, related State obligations and possible limitations. The report's final section contains conclusions and recommendations.

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I. Introduction

1. The present report investigates the extent to which the right of access to and enjoyment of cultural heritage, in all manifestations, form part of international human rights law today. It takes into consideration international instruments and the practice of relevant monitoring bodies.

2. Considering access to and enjoyment of cultural heritage as a human right is a necessary and complementary approach to the preservation/safeguard of cultural heritage. Beyond preserving/safeguarding an object or a manifestation in itself, it obliges one to take into account the rights of individuals and communities in relation to such object or manifestation and, in particular, to connect cultural heritage with its source of production. Cultural heritage is linked to human dignity and identity. Accessing and enjoying cultural heritage is an important feature of being a member of a community, a citizen and, more widely, a member of society. The importance of having access to one's own cultural heritage, including linguistic heritage, and to that of others has been emphasized by the Committee on Economic, Social and Cultural Rights in general comment No. 21 on the right of everyone to take part in cultural life. As further stressed by the Committee, "the obligations to respect and to protect freedoms, cultural heritage and cultural diversity are interconnected".¹

3. In order to collect the views of United Nations Member States, national human rights institutions, non-governmental organizations and other stakeholders, the independent expert disseminated a questionnaire on access to cultural heritage. Responses were received from 30 States and 22 other stakeholders (see Annex I). On 8 and 9 February 2011, the independent expert held an experts' meeting on the right to access and enjoy cultural heritage (see Annex II). She also convened a public consultation in Geneva on 10 February 2011, in which some 35 States as well as other stakeholders participated. The in-depth discussions and various perspectives have provided valuable assistance to the independent expert in preparing the present report, and she is very grateful to all those who contributed.

II. Concept of cultural heritage from a human rights perspective

4. Various definitions of cultural heritage exist at the national level as well as in international instruments.² Although no uniform definition can be found, these instruments, together with a number of references relating to traditional knowledge and traditional cultural expressions,³ provide useful guidance for defining what is usually understood as

¹ General comment No. 21 (2009), Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/21, in particular paras. 49(d) and 50.

² See in particular UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (1972), art. 1; Convention for the Safeguarding of the Intangible Cultural Heritage (2003), art. 2; Council of Europe Framework Convention on the Value of Cultural Heritage for Society (Faro Convention) (2005), art. 2 (a); ASEAN Declaration On Cultural Heritage (2000), art. 1.

³ For example, World Intellectual Property Organization (WIPO) uses the terms "traditional cultural expressions" and "expressions of folklore" to refer to tangible and intangible forms in which traditional knowledge and cultural heritage are expressed, communicated, manifested and passed on within indigenous and traditional communities. These terms have replaced the term 'folklore', which had negative connotations." See WIPO "Intellectual Property and the Safeguarding of Traditional Cultures: Legal Issues and Practical Options for Museums, Libraries and Archives", 2010, p. 106; see also Secretariat of Pacific Communities, Model Law for the Protection of Traditional Knowledge

cultural heritage. Noting that no list is exhaustive, the independent expert describes cultural heritage in the questionnaire as:

...tangible heritage (e.g. sites, structures and remains of archaeological, historical, religious, cultural or aesthetic value), intangible heritage (e.g. traditions, customs and practices, aesthetic and spiritual beliefs; vernacular or other languages; artistic expressions, folklore) and natural heritage (e.g. protected natural reserves; other protected biologically diverse areas; historic parks and gardens and cultural landscapes).

5. The concept of heritage reflects the dynamic character of something that has been developed, built or created, interpreted and re-interpreted in history, and transmitted from generation to generation. Cultural heritage links the past, the present and the future as it encompasses things inherited from the past that are considered to be of such value or significance today, that individuals and communities want to transmit them to future generations.

6. As stated by the Committee on Economic, Social and Cultural Rights in general comment No. 21 on the right of everyone to take part in cultural life, “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”.⁴ Therefore, to speak of cultural heritage in the context of human rights entails taking into consideration the multiple heritages through which individuals and communities express their humanity, give meaning to their existence, build their worldviews and represent their encounter with the external forces affecting their lives.⁵ Cultural heritage is to be understood as resources enabling the cultural identification and development processes of individuals and communities which they, implicitly or explicitly, wish to transmit to future generations.

7. Several instruments reflect this approach and stress the importance of individuals and communities, including indigenous peoples, in defining and stewarding cultural heritage. In these instruments, the definition of cultural heritage is not limited to what is considered to be of outstanding value to humanity as a whole, but rather it encompasses what is of significance for particular individuals and communities, thereby emphasizing the human dimension of cultural heritage. For example, as one purpose of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003) is to “ensure respect for the intangible cultural heritage of the communities, groups and individuals concerned”,⁶ the criteria for safeguarding is not the notion of outstanding universal value, but the meaning the heritage carries for a specific community. According to article 2.1 of the Convention, “...intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity”. The Association of Southeast Asian Nations (ASEAN) Declaration on Cultural Heritage (2000) also includes a reference to cultural heritage that is “of considerable importance as habitat for the cultural survival and identity of particular living traditions”.⁷

and Expressions of Culture, in Regional Framework for the Protection of Traditional knowledge and Expressions of Culture, art. 4; see also the definition of “indigenous heritage” in the United Nations study on the “Protection of the heritage of indigenous peoples”, E/CN.4/Sub.2/1995/26, Annex, paras. 11 and 12.

⁴ General comment No. 21 (2009), para. 12.

⁵ See also the first report of the independent expert, A/HRC/14/36, para. 9.

⁶ Convention for the Safeguarding of the Intangible Cultural Heritage, art. 1 (b).

⁷ ASEAN Declaration on Cultural Heritage, art. 1 (c).

The Council of Europe Framework Convention on the Value of Cultural Heritage for Society (Faro Convention) (2005), for its part, defines cultural heritage as “a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time.”⁸

8. The independent expert notes that cultural heritage is not restricted to objects and manifestations about which individuals and communities may be proud. In some instances, heritage recalls errors made in the past and actions reflecting the darker side of humanity, the memory of which also needs to be transmitted to future generations, albeit in a different manner.

III. Human rights issues related to cultural heritage

9. Human rights issues related to cultural heritage are numerous. They include questions regarding who defines what cultural heritage is and its significance; which cultural heritage deserves protection; the extent to which individuals and communities participate in the interpretation, preservation/safeguarding of cultural heritage, have access to and enjoy it; how to resolve conflicts and competing interests over cultural heritage; and what the possible limitations to a right to cultural heritage are.

10. Since cultural heritage encompasses things that are assigned significance, its identification requires a selection process. Usually, selection processes in which the State plays the main role are reflective of power differentials; likewise, selection by communities may also indicate internal differences. As already stated by the independent expert, power differentials must be taken into consideration, as they impact the ability of individuals and groups to effectively contribute to the identification, development and interpretation of what should be considered as a common “culture” or shared cultural heritage.⁹ Hence, the participation of individuals and communities in cultural heritage matters is crucial, fully respecting the freedom of individuals to participate or not in one or several communities, to develop their multiple identities, to access their cultural heritage as well as that of others, and to contribute to the creation of culture, including through the contestation of dominant norms and values within the communities they belong to as well as those of other communities.¹⁰

11. While cultural heritage could be instrumental in the protection of cultural diversity, conversely, it could be recognized selectively to force individuals and communities to assimilate into a mainstream community/society. Cultural symbols of dominant communities may be glorified, and the content of education and information about cultural heritage may be distorted for political purposes. Depending on their own histories, communities may have diverging interpretations of a specific cultural heritage, which are not always taken into consideration in implementing preservation/safeguard programmes. Particular aspects of the past may be emphasized or removed, in line with political processes and the will to shape public opinion, to unite or separate peoples and communities. Limited access to and enjoyment of cultural heritage may also be used as tools to exert political or social pressure.

⁸ Council of Europe Faro Convention, art. 2 (a), to enter into force on 1 June 2011.

⁹ A/HRC/14/36, para. 6.

¹⁰ *Ibid.*, para. 10.

12. Competing claims and interests over cultural heritage may lead to controversy and conflict. Different individuals, communities and/or the State may claim ownership of, interest in, and rights to certain cultural heritage. In particular, many communities argue that their cultural heritage is merely used for commercial purposes, in tourism, by cultural industries or the mass media, or as part of showcasing national culture, without proper authorization or shared benefits. The independent expert notes in this regard the current negotiations at the WIPO aimed at developing an international instrument to protect traditional knowledge and traditional cultural expressions. A good balance needs to be found. While overly strict protection may stifle creativity, artistic freedom and cultural exchanges, the misappropriation of cultural heritage would also impair the rights of communities to access and enjoy their own cultural heritage.¹¹

13. Globalization, the exploitation of economic resources, the promotion of tourism, and development programmes may have a detrimental impact on the ability of individuals and communities to preserve/safeguard, develop and transmit their cultural heritage, including cultural practices, specific ways of life, and cultural sites and landscapes.

14. The disconnection which may occur between cultural heritage and the people concerned is an important human rights issue. The challenge is how to ensure that the people themselves, in particular source communities, are empowered, and that cultural heritage issues are not confined to preservation/safeguarding. In particular, cultural heritage programmes should not be implemented at the expense of individuals and communities who, sometimes, for the sake of preservation purposes, are displaced or given limited access to their own cultural heritage.

15. The destruction of cultural heritage in the context of war or conflict also has important human rights implications. The right of access to and enjoyment of cultural heritage of others in a non-stereotypical way in post-conflict situations is of utmost importance. The independent expert notes in this regard that, today, cultural peace-making traditions are often endangered. Peace-building processes should include the repair of cultural heritage with the participation of all concerned, and the promotion of intercultural dialogue regarding cultural heritage.

16. Other human rights issues may arise when elements of the cultural heritage of specific communities are stored or displayed in cultural institutions, in particular museums, libraries and archives, without the participation or consent of those communities, and/or in a manner not respecting the significance and interpretation they give to such heritage. Respecting the express wishes of the source community may entail destruction, for example, when a community feels that when an individual passes away their name, voice, and creations must be erased, or that human remains should be buried or specific objects burnt or destroyed. Another issue often raised relates to the possible human rights dimension of calls for repatriation of cultural heritage. The independent expert underlines in this regard, the need to build stronger relationships between cultural institutions and communities, including indigenous peoples, and to develop good practices, building on existing initiatives.¹²

17. The improvement of infrastructure and policies to ensure access to and enjoyment of cultural heritage by people living in extreme poverty, as well as people with mental and physical disabilities, continues to be a challenge.

¹¹ WIPO, *op. cit.*

¹² *Ibid.*

IV. References in international law relating to the rights of individuals and communities in relation to cultural heritage, and initiatives at the national level

18. Because the destruction of cultural heritage can be used as a strategy to destroy the morale of the enemy, cultural heritage is firstly considered in international humanitarian law as requiring a special protection regime in times of conflict and war.¹³ According to international criminal law, individual criminal responsibility can include serious offences against cultural heritage.¹⁴ In particular, the destruction of cultural property with discriminatory intent against a cultural community can be charged as a crime against humanity, and the intentional destruction of cultural and religious property and symbols can be considered as evidence of an intent to destroy a group within the meaning of the Genocide Convention.¹⁵

19. Numerous international instruments on the protection of cultural heritage in times of peace have also been adopted. Besides a number of declarations and recommendations, Member States of UNESCO have adopted the Convention concerning the Protection of the World Cultural and Natural Heritage (1972); the Convention on the Protection of the Underwater Cultural Heritage (2001); and the Convention on the Safeguarding of the Intangible Cultural Heritage (2003). The widespread support for the 1972 and 2003 Conventions demonstrates the general agreement on the need to preserve/safeguard cultural heritage. Some instruments have also been adopted at the regional level.¹⁶

20. Although these instruments do not necessarily have a human rights approach to cultural heritage, in recent years, a shift has taken place from the preservation/safeguard of cultural heritage as such, based on its outstanding value for humanity, to the protection of cultural heritage as being of crucial value for individuals and communities in relation to their cultural identity. In particular, the addition of intangible heritage as a cultural object to be safeguarded has been instrumental to the increased emphasis on the link between cultural heritage and cultural identity. At the same time, the “deep-seated interdependence” between intangible and tangible heritage is increasingly being taken into consideration.¹⁷ Generally speaking, the more recent the instrument, the stronger the link with rights of individuals and communities. Notably, the UNESCO Declaration on the Intentional Destruction of Cultural Heritage, adopted in 2003, stresses that “cultural heritage is an

¹³ Hague Conventions and Regulations of 1899 and 1907; Geneva Convention IV of 1949 and its 1977 Additional Protocols I and II; 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, and its two Protocols of 1954 and 1999.

¹⁴ Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), art. 3 (d); Rome Statute of the International Criminal Court, arts. 8.2 (b) (ix) and 8.2 (e) (iv). For a detailed analysis of cultural heritage in International Humanitarian Law and in International Criminal Law, see: Forest, C., *International Law and the Protection of Cultural Heritage*, Routledge, London, 2010; Vrdoljak, A.F., “Cultural Heritage in Human Rights and Humanitarian Law”, in O. Ben-Naftali (ed.), *Human Rights and International Humanitarian Law*, Oxford University Press, 2009.

¹⁵ ICTY, *Prosecutor v Dario Kordic and Mario Cerkez*, Trial Judgment, Case No. IT-95-14/2-T, 26 February 2001, para. 206-207; ICTY, *Prosecutor v Radislav Krstic*, Case No. IT-98-33-T, Trial Chamber, 2 August 2001, para. 580, and affirmed by Appellate Chamber, 19 April 2004.

¹⁶ In particular, Convention on the Protection of the Archeological, Historical, and Artistic Heritage of the American Nations (1976); Cultural Charter for Africa (1976); Charter for the Cultural Renaissance of Africa (2006); ASEAN Declaration on Cultural Heritage (2000); and among other instruments of the Council of Europe, the 2005 Framework Convention on the Value of Cultural Heritage for Society.

¹⁷ See preamble of the Convention for the Safeguarding of the Intangible Cultural Heritage. Some instruments, such as the Faro Convention, do not distinguish between tangible and intangible heritage.

important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights”.¹⁸

21. In parallel, although the right to cultural heritage does not appear per se, references to cultural heritage have emerged in international human rights instruments and in the practice of monitoring bodies. The link between cultural heritage, cultural diversity and cultural rights has been strengthened. There is a better understanding today that, in order to respect and protect cultural identity, tangible cultural heritage should be preserved with a view to maintaining its authenticity and integrity, intangible cultural heritage should be safeguarded to ensure viability and continuity, and rights of access to and enjoyment of cultural heritage should be guaranteed.

22. Within international law instruments and practice, references can be found on the participation of communities and individuals in cultural heritage, as well as their access to and enjoyment of cultural heritage. Indeed, participation, access and enjoyment are closely interrelated.

A. UNESCO instruments

23. Although UNESCO instruments do not generally specify the rights of individuals and/or communities to cultural heritage, several entry points in the instruments themselves, or developed through practice, invite the adoption of a human rights-based approach. In particular, a shift can be seen from the preservation/safeguarding of cultural heritage for the public at large to the preservation/safeguarding of cultural heritage of and for communities, involving them in the processes of identification and stewardship.

24. Increasing recognition to community involvement has been accorded over the years under the Convention concerning the Protection of the World Cultural and Natural Heritage. In 2007, the World Heritage Committee introduced an additional strategic objective, calling on States to enhance the role of communities in the implementation of the Convention. Furthermore, the Operational Guidelines of the Convention consider local communities as partners and strengthen community involvement in nomination, management and monitoring,¹⁹ which constitutes a significant step.

25. The Convention for the Safeguarding of the Intangible Cultural Heritage is more specific and recognizes that “communities, in particular indigenous communities, groups and, in some cases, individuals play an important role in the production, safeguarding, maintenance and recreation of the intangible cultural heritage”.²⁰ The Convention, together with its Operational Directives, emphasizes that State activities can only be undertaken with the active involvement or participation of concerned communities, groups and individuals.²¹ In particular, their free, prior and informed consent is required for inscribing intangible cultural heritage elements on the List of Intangible Cultural Heritage in Need of Urgent

¹⁸ UNESCO Declaration on the Intentional Destruction of Cultural Heritage, preamble.

¹⁹ Operational Guidelines for the Implementation of the World Heritage Convention, WHC. 08/01, January 2008, paras. 39-40.

²⁰ Convention for the Safeguarding of the Intangible Cultural Heritage, preamble.

²¹ *Ibid.*, arts. 11 and 15; and Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage, 2010, dirs. 1, 2, 7, 12, 23, 79-82, 88, 101, 109, 157, 160 and 162.

Safeguarding or Representative List of the Intangible Cultural Heritage of Humanity, and for including programmes, projects or activities on the Register of Best Practices.²²

26. The obligation to include cultural heritage in educational programmes and to raise awareness on the existence and value of cultural heritage is also included in UNESCO instruments. For example, according to article 27(1) of the Convention concerning the Protection of the World Cultural and Natural Heritage, States “shall endeavour by all appropriate means, and in particular by educational and information programmes, to strengthen appreciation and respect by their peoples of the cultural and natural heritage defined in articles 1 and 2”. The Convention for the Safeguarding of the Intangible Cultural Heritage more specifically holds that States should “(a) ensure recognition of, respect for, and enhancement of the intangible cultural heritage in society, in particular through: (i) educational, awareness-raising and information programmes, aimed at the general public, in particular young people; (ii) specific educational and training programmes within the communities and groups concerned...”.²³

27. Reference must also be made to instruments addressing the impact of globalization and free trade on the diversity of cultural expressions through which cultural heritage is expressed, augmented, and transmitted. In particular, the 2001 Universal Declaration on Cultural Diversity stresses “the specificity of cultural goods and services which, as vectors of identity, values and meaning, must not be treated as mere commodities or consumer goods,”²⁴ and that “while ensuring the free circulation of ideas and works, cultural policies must create conditions conducive to the production and dissemination of diversified cultural goods and services through cultural industries that have the means to assert themselves at the local and global level.”²⁵ This is echoed by the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), which lays down a “principle of equitable access” according to which “equitable access to a rich and diversified range of cultural expressions from all over the world and access of cultures to the means of expression and dissemination constitute important elements for enhancing cultural diversity and encouraging mutual understanding.”²⁶ The Convention on the Protection of Underwater Cultural Heritage specifically forbids trade in such heritage.²⁷

B. Convention on Biological Diversity

28. Under article 8 (j) of the Convention on Biological Diversity, States shall “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices”.

²² Operational Directives, dirs. 1, 2 and 7. See also dir. 101.

²³ Convention for the Safeguarding of the Intangible Cultural Heritage, art. 14.

²⁴ Universal Declaration on Cultural Diversity, article 8.

²⁵ *Ibid.*, art. 9. See also art. 11.

²⁶ Convention on the Protection and Promotion of the Diversity of Cultural Expressions, art. 2.7.

²⁷ Convention on the Protection of Underwater Cultural Heritage, Annex, Rules concerning activities directed at underwater cultural heritage, rule 2.

C. Regional instruments and initiatives relating to cultural heritage

29. Some regional instruments for the preservation/safeguard of cultural heritage, such as the Charter for African Cultural Renaissance (2006), establish clear bridges between cultural rights, cultural diversity and cultural heritage. The Charter recognizes that all cultures emanate from societies, communities, groups and individuals and that any African cultural policy should, of necessity, enable peoples to evolve for increased responsibility in its development.²⁸ Article 15, in particular, calls on States to “create an enabling environment to enhance the access and participation of all in culture, including marginalized and underprivileged communities.” The Charter echoes the African Charter on Human and Peoples’ Rights (1981), according to which “All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.”²⁹

30. The ASEAN Declaration on Cultural Heritage (2000) also refers to the human rights dimension of cultural heritage, recognizing that “...all cultural heritage, identities and expressions, cultural rights and freedoms derive from the dignity and worth inherent in the human person in creative interaction with other human persons and that the creative communities of human persons in ASEAN are the main agents and consequently should be the principal beneficiary of, and participate actively in the realization of these heritage, expressions and rights...”³⁰ Furthermore, the Declaration refers to “the people’s right to their own culture”,³¹ the recognition of communal intellectual property rights, the need to ensure that “traditional communities have access, protection and rights of ownership to their own heritage”³² and calls for increased efforts to assist countries “to create the conditions under which individuals can participate in cultural heritage planning and development.”³³

31. The European Faro Convention more openly takes the approach of cultural heritage rights. It recognizes that “every person has a right to engage with the cultural heritage of their choice... as an aspect of the right freely to participate in cultural life”.³⁴ Stressing “the need to involve everyone in society in the ongoing process of defining and managing cultural heritage”, it contains references to the right to benefit from cultural heritage and to contribute towards its enrichment,³⁵ the participation of everyone “in the process of identification, study, interpretation, protection, conservation and presentation of the cultural heritage”,³⁶ and access.³⁷ Of note, the Convention calls on States to “encourage reflection on the ethics and methods of presentation of the cultural heritage, as well as respect for diversity of interpretations” and to “establish processes for conciliation to deal equitably with situations where contradictory values are placed on the same cultural heritage by different communities”.³⁸

32. The independent expert was interested to learn that the Secretariat of the Pacific Community has developed a Model Law for the Protection of Traditional Knowledge and

²⁸ Charter for African Cultural Renaissance, preamble.

²⁹ African Charter on Human and Peoples’ Rights, art. 22.1.

³⁰ ASEAN Declaration on Cultural Heritage, preamble.

³¹ *Ibid.*, art. 3.

³² *Ibid.*, art. 9.

³³ *Ibid.*, art. 14.

³⁴ Council of Europe Faro Convention, preamble.

³⁵ *Ibid.*, art. 4 (a).

³⁶ *Ibid.*, art. 12 (a) and (b).

³⁷ *Ibid.*, arts. 12 (d) and 14.

³⁸ *Ibid.*, arts. 7 (a) and (b).

Expressions of Culture, establishing a range of statutory rights for traditional owners of traditional knowledge and expressions of culture, in particular the requirement that their prior and informed consent be obtained before their traditional knowledge or expressions of culture are used for a non-customary use.³⁹

D. Human rights instruments

33. In international human rights treaties, a number of provisions constitute a legal basis of a right of access to and enjoyment of cultural heritage.

1. The right to take part in cultural life

34. One of the most explicit provisions in relation to access to and enjoyment of cultural heritage is article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights which obliges States to recognize the right of everyone to take part in cultural life. In its general comment No. 21, the Committee on Economic, Social and Cultural Rights stressed that "...in many instances, the obligations to respect and to protect freedoms, cultural heritage and diversity are interconnected". The Committee makes it clear that the obligation to respect the right to take part in cultural life "...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... to have access to their own cultural and linguistic heritage and to that of others."⁴⁰ The right to participate in cultural life implies that individuals and communities have access to and enjoy cultural heritages that are meaningful to them, and that their freedom to continuously (re)create cultural heritage and transmit it to future generations should be protected.

35. The Committee especially emphasized that: "...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. 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."⁴¹

36. It also considered as a core obligation the obligation of States 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."⁴²

2. The right to enjoy one's own culture

37. Article 27 of the International Covenant on Civil and Political Rights (ICCPR) provides for the right of members of minorities to enjoy their own culture, practice their own religion and use their own language. A similar provision is found in article 30 of the Convention on the Rights of the Child, which applies to both minority and indigenous children. These provisions do not mention cultural heritage specifically, however, people cannot enjoy culture without accessing and enjoying cultural heritage.

³⁹ Pacific Forum, Model Law for the Protection of Traditional Knowledge and Expressions of Culture, in particular arts. 7 and 14.

⁴⁰ General comment No. 21 (2009), para. 50.

⁴¹ Ibid., para. 49 (d).

⁴² Ibid., para. 55 (e).

38. The Human Rights Committee observed “that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples” and noted that it can include traditional economic activities such as fishing and hunting.⁴³

39. The Committee established a set of criteria to identify violations of the provision contained in article 27 of the ICCPR. In general, State interference with the enjoyment of culture must have a reasonable and objective justification and be compatible with the other provisions of the Covenant. States must ensure the effective participation of members of minorities in decisions affecting them and limit the negative impact of the measures taken.⁴⁴ This implies more than mere information or consultation; it entails meaningful participation and prior and informed consent of the community concerned.⁴⁵

40. Many useful references are contained in the United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. For instance, under article 4.2, “States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs,” In the same spirit, States Parties to the Council of Europe Framework Convention on the Protection of National Minorities undertake “to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage”.⁴⁶ The European Charter for Regional or Minority Languages is also worth mentioning.

3. The right to maintain, control, protect and develop cultural heritage

41. The United Nations Declaration on the Rights of Indigenous Peoples, and the International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries contain many provisions relating to cultural rights and, more or less explicitly, cultural heritage.

42. In applying the provisions of the Convention, “the social, cultural, religious and spiritual values and practices of these peoples shall be recognized and protected”.⁴⁷ Furthermore, Governments shall “consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly”.⁴⁸

43. Among other important provisions, in particular those relating to the free, prior and informed consent of indigenous peoples, article 31 of the United Nations Declaration stipulates that:

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well

⁴³ General comment No. 23 (1994) on the rights of minorities, para. 7.

⁴⁴ See also Human Rights Committee: Ivan Kitok v. Sweden, communication No. 197/1985; Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada, communication No. 167/1984; Ilmari Länsman et al. v. Finland, communication No. 511/1992; Jouni E. Länsman et al. v. Finland, communication No. 671/1995; Mahuika et al. v. New Zealand, communication No. 547/1993; Angela Poma Poma v. Peru, communication No. 1457/2006.

⁴⁵ Human Rights Committee, Angela Poma Poma v. Peru, communication No. 1457/2006, para. 7.6.

⁴⁶ Council of Europe Framework Convention on the Protection of National Minorities, art. 5.

⁴⁷ ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, art. 5 (a).

⁴⁸ Ibid., art. 6.1.

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, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

Article 34 adds that “indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.”

4. Other human rights

44. Many other human rights norms are important for the implementation of the right of access to and enjoyment of cultural heritage. These must be interpreted in relation to the non-discrimination principle, in particular on the basis of cultural identity.

45. The right of peoples to self-determination protects the right of peoples to freely pursue their cultural development, and dispose of their natural wealth and resources, which has a clear link with cultural heritage.

46. The right to education is crucial in fostering respect for the diversity of cultural heritages and expressions, and in ensuring access to one’s own cultural heritage and that of others. In particular, article 29 (c) of the Convention on the Rights of the Child states that education shall be directed to “the development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.” Linguistic rights within educational systems are especially relevant. Languages should not be downgraded as mere mediums of transmission; they carry and convey histories and world views, constituting heritage in themselves. Besides, the inclusion in educational programmes of peace-making values, attitudes, modes of behaviour and ways of life could make an important contribution to strengthening the ability of youth to resolve conflicts and disputes peacefully, as called for in the Declaration and Programme of Action on a Culture of Peace.⁴⁹

47. The right to freedom of expression is essential for the development and maintenance of cultural heritage, and dialogue when conflicts of interpretation about the meaning and significance of cultural heritage arise. Similarly, the right to information plays an important role; people need to be adequately informed about the existence, significance and background of diverse cultural heritages, about the possibilities of accessing or participating in these, and, where relevant, about debates surrounding the interpretation to be given to cultural heritage.

48. Since much of cultural heritage has religious connotations, the right to freedom of thought and religion is of great relevance for the right of access to and enjoyment cultural heritage, as it protects, in particular, access to religious sites and memorials, as well as the pursuit of religious practices.

⁴⁹ General Assembly resolution 53/243.

E. Initiatives at the national level

49. As indicated by the responses to the independent expert's questionnaire, many national constitutions include the State's obligation to protect cultural heritage and/or recognize the right of people to access culture or cultural heritage. This further demonstrates the importance accorded by States to cultural heritage issues. Although the measures adopted often aim at the preservation/safeguard of the heritage itself, as well as the promotion of tourism and development, ultimate goals include public awareness, education, and access to and enjoyment of cultural heritage by all. In their responses, many States made a link between respect for cultural rights, cultural diversity, and the need to preserve/safeguard cultural heritage. Some also provided information on measures adopted to ensure the preservation/safeguard of the cultural heritage of minorities and indigenous peoples, including their languages.

50. State institutions are usually entrusted with the task of identifying and classifying cultural heritage. Some stakeholders claim that in some countries, challenges are encountered in obtaining information on procedures for the recognition of cultural heritage.

51. However, several States have reported efforts to ensure the involvement of individuals and communities, in particular, but not only, with regard to intangible heritage. For instance, in Austria, communities, groups and individuals that create, maintain and transmit intangible heritage are involved in the process of identification; tradition bearers and practitioners may, with the consent of the communities concerned, request the inclusion of an element of living traditions in the national inventory. In Syria, heritage bearers and practitioners are encouraged to participate in the identification of intangible heritage, and communities are actively involved in safeguarding activities. In Canada, First Nations are involved in the identification and classification of national parks, historic sites and marine conservation areas; there are also provincial measures involving indigenous peoples. In Nicaragua, local cultural actors participate in the identification of local cultural heritage through the National Inventory of the Cultural Goods of Nicaragua. In Cuba and Venezuela, communities are associated in the identification and classification of cultural heritage. The Ombudsman of Portugal reported on concrete examples of participation by interested persons and groups in the determination of cultural heritage, and Portugal mentioned a nationwide inventory of intangible cultural heritage that will be put on-line to ensure the widest participation of communities, groups and individuals in the safeguarding of their intangible heritage and the making of inventories. Malaysia reported on formal and informal information and presentations made to "various groups of users and interested groups" in regard to cultural heritage.

52. A number of States provide for the participation of the public at large, citizens or interested persons, in cultural heritage identification processes (for example, Canada, Georgia, Malaysia, Nicaragua, Portugal and Uzbekistan). The Dominican Republic reported on a draft law to ensure the participation of interested persons, including through cooperation with the mass media. Some States reported that information on cultural heritage identification and classification is publicly disseminated (for example, Canada, Italy and Spain), or that the civil society, through associations working in the field of cultural heritage, is involved in identification and classification processes (for example, Monaco and Switzerland).

53. The independent expert notes that in most cases the final decision for identification/classification of cultural heritage lies with State institutions. Reference to "stakeholders" or "interested persons" is not always defined at the national level, and variously includes, for example, State institutions, local authorities, experts, public or private owners, associations, communities and/or individuals. The need to ensure the participation of source or local communities, and actively seek their consent is not always clearly stated.

54. Considerable information was received on initiatives taken in the field of information technologies to foster access to cultural heritage. For instance, in Austria, special attention is paid to the production of educational materials incorporating new electronic media in minority languages. Germany noted that its digitization project must be accompanied by intensified efforts in the field of cultural education and media literacy. While new technologies allow for exciting advances in the field of cultural heritage, it is important to use these tools in ways that allow for the greatest possible access while preserving/safeguarding the heritage.

55. States also reported on awareness-raising and educational programmes (in particular, multicultural education), and support to cultural events and activities. The United Kingdom of Great Britain and Northern Ireland, for example, has a free admission policy for its national-funded museums and galleries. A number of national legislations and programmes, for example in the Dominican Republic, Greece, Italy, and Mexico, specifically address the issue of access to cultural heritage in particular by disabled persons, the elderly, minorities, migrants, refugees and/or children and students.

56. Responses to the questionnaire have addressed the issue of possible limitations to the right of access to and enjoyment of cultural heritage, in particular for conservation purposes. Information was received on access being reserved for specific communities based on their traditions in Nepal, on limits being imposed on access to sites significant to indigenous peoples in Canada, and to the cultural heritage of isolated indigenous peoples in Ecuador. A number of States stressed that access may be restricted to privately owned cultural heritage. In this respect, many European countries reported on their participation in European heritage days when people are allowed to freely visit sites usually closed to the public.

57. The independent expert welcomes information received on available remedies. For example, in Burkina Faso, citizens may commence proceedings or petition against acts endangering public heritage. Complaints in case of denial of access to cultural heritage may be lodged before the Ministry of Culture in Spain, and the courts in Mauritius. In Switzerland, associations working in the field of cultural heritage may challenge construction permits affecting cultural heritage before the courts. In Canada, indigenous peoples may also seek redress. The Ombudsman of Portugal reported on concrete cases brought to its attention, in particular regarding the lack of participation of concerned communities in the determination of protected cultural landscapes.

V. Right of access to and enjoyment of cultural heritage

A. Normative content

1. Access and enjoyment

58. Access to and enjoyment of cultural heritage are interdependent concepts – one implying the other. They convey an ability to, *inter alia*, know, understand, enter, visit, make use of, maintain, exchange and develop cultural heritage, as well as to benefit from the cultural heritage and creations of others, without political, religious, economic or physical encumbrances. Individuals and communities cannot be seen as mere beneficiaries or users of cultural heritage. Access and enjoyment also imply contributing to the identification, interpretation and development of cultural heritage, as well as to the design and implementation of preservation/safeguard policies and programmes. Effective participation in decision-making processes relating to cultural heritage is a key element of these concepts.

59. This approach is reflected in the UNESCO Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to It (1976), which defines, access to culture as “concrete opportunities available to everyone, in particular through the creation of appropriate socio-economic conditions, for freely obtaining information, training, knowledge and understanding, and for enjoying cultural values and cultural property.”⁵⁰ General comment No. 21 also stresses that “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, biodiversity, language or specific institutions, and to benefit from the cultural heritage and the creation of other individuals and communities.”⁵¹

60. The concept of access has been specifically developed by the Committee on Economic, Social and Cultural Rights.⁵² Applied to cultural heritage, the following must be ensured: (a) physical access to cultural heritage, which may be complemented by access through information technologies;⁵³ (b) economic access, which means that access should be affordable to all; (c) information access, which refers to the right to seek, receive and impart information on cultural heritage, without borders; and (d) access to decision making and monitoring procedures, including administrative and judicial procedures and remedies. An overlapping principle is non-discrimination, with special attention to disadvantaged groups.

2. Rights-holders, and concerned individuals and communities

61. Individuals and groups, the majority and minorities, citizens and migrants all have the right to access and enjoy cultural heritage. As mentioned above, general comment No. 21 stresses that the right to take part in cultural life may be exercised alone, in association with others, or as a community. Therefore, the right of access to and enjoyment of cultural heritage must be considered both as an individual and a collective human right.⁵⁴ In the case of indigenous peoples, this also stems from the Declaration on the Rights of Indigenous Peoples.

62. Varying degrees of access and enjoyment may be recognized, taking into consideration the diverse interests of individuals and groups according to their relationship with specific cultural heritages. Distinctions should be made between (a) originators or “source communities”, communities which consider themselves as the custodians/owners of a specific cultural heritage, people who are keeping cultural heritage alive and/or have taken responsibility for it; (b) individuals and communities, including local communities, who consider the cultural heritage in question an integral part of the life of the community, but may not be actively involved in its maintenance; (c) scientists and artists; and (d) the

⁵⁰ UNESCO Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to It, para. 1 (a).

⁵¹ General comment No. 21 (2009), para. 15 (b).

⁵² Access forms part of the so-called 4A scheme, composed of four elements: availability, accessibility, acceptability and adaptability. This scheme was elaborated by the late Professor Katarina Tomasevski, Special Rapporteur on the Right to Education, in E/CN.4/1999/49, and is systematically used by the Committee on Economic, Social and Cultural Rights in its general comments.

⁵³ See in particular UNESCO Charter on the Preservation of Digital Heritage (2003).

⁵⁴ See also the Council of Europe Faro Convention which states that “everyone, alone or collectively, has the right to benefit from cultural heritage...”, art. 4(a).

general public accessing the cultural heritage of others. Interestingly, the Faro Convention refers to the notion of “heritage community”, which “consists of people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations.”⁵⁵ This implies that concerned communities may reunite people from diverse cultural, religious, ethnic and linguistic backgrounds over a specific cultural heritage that they consider they have in common.

63. This distinction has important implications for States, notably when establishing consultation and participation procedures, which should ensure the active involvement of source and local communities, in particular. Therefore, general calls for public participation may not be sufficient. Taking into consideration the varied situations of individuals and groups is also of importance when States, or courts, are required to arbitrate conflicts of interests over cultural heritage.

B. State obligations

64. The language used to describe State obligations in cultural heritage instruments and human rights instruments differ. Within the framework of UNESCO and WIPO, “protection”, “preservation” and “safeguard” have different meanings. While “preservation” is used for tangible heritage with a focus on maintaining their “authenticity” and “integrity”; “safeguarding” focuses on the “viability” and “continuity” of intangible heritage. “Protection” at WIPO means protecting the creativity and distinctiveness inherent in expressions against unauthorized or illegitimate use by third parties.⁵⁶

65. In the human rights language, State obligations are commonly described following the typology of respect, protect and fulfil. These obligations can be elucidated taking into consideration relevant elements in cultural heritage instruments, interpretation of relevant human rights provisions, based in particular on general comment No. 21, and the development of good practices at the regional and national levels.

66. The obligation to respect requires States to refrain from interfering, directly or indirectly, with the right to access and to enjoy cultural heritage, while their obligation to protect requires that they prevent third parties from interfering with that right. General comment No. 21 stresses in particular that States have the obligation to:

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

(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; (...).

(c) Res-pect 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.⁵⁷

67. The obligation to fulfil requires States to take appropriate measures aimed at the full realization of the right to access and enjoy cultural heritage by all, and at improving the

⁵⁵ Council of Europe Faro Convention, art. 2(b).

⁵⁶ WIPO, *op. cit.*, p. 18.

⁵⁷ General comment No. 21 (2009), para. 50.

conditions under which this right can be enjoyed. Under article 15.1 of the International Covenant on Economic, Social and Cultural Rights, States have the general obligation to take positive measures for the conservation, development and diffusion of culture, which entails protection, preservation/safeguard, dissemination of information on and promotion of cultural heritage.

68. Several obligations, as described in general comment No. 21, are relevant to the right to access and enjoy cultural heritage.⁵⁸ For example, States have the core obligation 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”.⁵⁹ States must develop programmes and policies aimed at “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”. Although entrance fees may be necessary, measures can ensure that they do not constitute an insurmountable obstacle for people with scarce financial resources. Programmes “aimed at preserving and restoring cultural heritage,”⁶⁰ should also be developed. States should further set up an institutional framework and support cultural institutions by 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...”.⁶¹

69. States also have international obligations, mainly to foster assistance and cooperation to protect and promote access to and enjoyment of cultural heritage.⁶² This implies facilitating and promoting cultural exchanges, but also providing intellectual or financial support to States that have difficulties in preserving/safeguarding cultural heritage. While drafting international agreements, in particular on trade and development, States should take into account the right to access and enjoy cultural heritage and ensure it is respected.

70. A strong human rights-based approach to the preservation/safeguard of cultural heritage, both tangible and intangible, requires the establishment of procedures ensuring the full participation of concerned individuals and communities. This includes public reflection and debate on the opportunities and challenges cultural heritage may present.

71. The independent expert further wishes to stress that public, fair, and just procedures should be established to arbitrate competing demands for resources by communities who wish to develop and implement cultural heritage preservation/safeguard programmes. The principle of non-discrimination should be robustly reaffirmed in this regard. More generally, effective remedies, including judicial remedies, should be made available to individuals and communities who feel that their cultural heritage is not fully respected and/or protected, or that their right of access to and enjoyment of cultural heritage has been infringed upon.

72. It has often been alleged that scarce economic resources impede States from adopting measures aimed at identifying and preserving/safeguarding cultural heritages. However, not all obligations, in particular those to recognize the diversity of cultural heritages and to ensure the participation of concerned individuals and communities, are costly. Lack of action by States also results from cultural rights not being considered as a

⁵⁸ Ibid., para. 52.

⁵⁹ Ibid., para. 55 (d)

⁶⁰ Ibid., para. 54 (b).

⁶¹ Ibid., para. 52 (a).

⁶² Ibid., paras. 56-59.

priority. The independent expert recalls that cultural rights should be treated as other human rights and that, under the International Covenant on Economic, Social and Cultural Rights, States must devote the maximum of their available resources to achieve progressively the full realization of rights. In this regard, the obligation to seek and provide international assistance and cooperation is firmly laid down in article 2 of the Covenant.

C. Possible limitations

73. The independent expert already addressed the issue of limitations to cultural rights in her first report. Cultural rights may be limited in certain circumstances, following the principles enshrined in international human rights law.⁶³ This also applies to the right of access to and enjoyment of cultural heritage.

74. Some practices, which are part of cultural heritage, may infringe upon human rights. International instruments clearly state that practices contrary to human rights cannot be justified with a plea for the preservation/safeguard of cultural heritage, cultural diversity or cultural rights. Under the Convention for the Safeguarding of the Intangible Cultural Heritage, in particular, "...consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development."⁶⁴

75. As stressed by many actors, limitations to access can also be imposed to ensure the preservation/safeguard of cultural heritage against damage, disappearance or destruction. For example, States may legitimately regulate public use and access to a specific site, monument or cultural manifestation for safety or conservation purposes, or to protect the right of a community to access and enjoy its own cultural heritage.

76. In this respect, the independent expert again stresses that under the human rights framework, unequal situations must be dealt with differently. As stated in paragraph 59 above, varying degrees of access and enjoyment may be recognized, taking into consideration the diverse interests of individuals and communities according to their relationship with specific cultural heritages. Consequently, the general public may not enjoy the same rights as local communities. Access to a monument or archives by tourists and researchers should not be to the detriment of either the object in question or its source community. Specific indigenous or religious sites may be fully accessible to the concerned peoples and communities, but not to the general public. As stated in the Convention for the Safeguarding of the Intangible Cultural Heritage, access to cultural heritage should be ensured "while respecting customary practices governing access to specific aspects of such heritage".⁶⁵

VI. Conclusions and recommendations

77. As reflected in international law and practice, the need to preserve/safeguard cultural heritage is a human rights issue. Cultural heritage is important not only in itself, but also in relation to its human dimension, in particular its significance for individuals and communities and their identity and development processes.

⁶³ A/HRC/14/36, paras. 32-37.

⁶⁴ Convention for the Safeguarding of the Intangible Cultural Heritage, art. 2.1.

⁶⁵ Ibid., art. 13 (d) (ii)

78. The right of access to and enjoyment of cultural heritage forms part of international human rights law, finding its legal basis, in particular, in the right to take part in cultural life, the right of members of minorities to enjoy their own culture, and the right of indigenous peoples to self-determination and to maintain, control, protect and develop cultural heritage. Other human rights must also be taken into consideration, in particular the rights to freedom of expression, freedom of belief and religion, the right to information and the right to education.

79. The right of access to and enjoyment of cultural heritage includes the right of individuals and communities to, *inter alia*, know, understand, enter, visit, make use of, maintain, exchange and develop cultural heritage, as well as to benefit from the cultural heritage and the creation of others. It also includes the right to participate in the identification, interpretation and development of cultural heritage, as well as to the design and implementation of preservation/safeguard policies and programmes. However, varying degrees of access and enjoyment may be recognized, taking into consideration the diverse interests of individuals and communities depending on their relationship to specific cultural heritages.

Recommendations

80. The independent expert makes the following recommendations:

(a) States should recognize and value the diversity of cultural heritages present in their territories and under their jurisdiction, and acknowledge, respect and protect the possible diverging interpretations that may arise over cultural heritage. The choices of individuals and communities to feel associated (or not) with specific elements of cultural heritages should be respected and protected;

(b) States should respect the free development of cultural heritage. They have the duty not to destroy, damage or alter cultural heritage, at least not without the free, prior and informed consent of concerned communities, and to take measures to preserve/safeguard cultural heritage from destruction or damage by third parties;

(c) Concerned communities and relevant individuals should be consulted and invited to actively participate in the whole process of identification, selection, classification, interpretation, preservation/safeguard, stewardship and development of cultural heritage. No inscription on UNESCO lists relating to cultural heritage or national lists or registers should be requested or granted without the free, prior and informed consent of the concerned communities. More generally, States should seek the free, prior and informed consent of source communities before adopting measures concerning their specific cultural heritage, in particular in the case of indigenous peoples, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples;

(d) States should ensure that cultural heritage policies and programmes are not implemented at the expense or to the detriment of concerned communities. The preservation/safeguarding of cultural heritage should aim at ensuring human development, the building of peaceful and democratic societies and the promotion of cultural diversity;

(e) States are encouraged to develop cultural heritage mapping processes within their territory and should utilize cultural impact assessments in the planning and implementation of development projects, in full cooperation with concerned communities;

(f) States should take measures to encourage professionals working in the field of cultural heritage to adopt a human rights-based approach and to develop rules and guidelines in this respect;

(g) Professionals working in the field of cultural heritage and cultural institutions (museums, libraries and archives in particular) should build stronger relationships with the communities and peoples whose cultural heritage they are the repositories of, respect their contributions regarding the significance, interpretation, sharing and display of such heritage, and consider in good faith their queries regarding repatriation;

(h) Researchers should likewise build stronger relationships with the communities and peoples whose cultural heritage they desire to investigate, especially when recording cultural heritage manifestations, to ensure their free, prior and informed consent at all stages of research and dissemination;

(i) Tourism and entertainment industries should respect the right of access to and enjoyment of cultural heritage. This implies, in particular, fully taking into consideration the complaints lodged by concerned individuals and communities who consider that their cultural heritage has been misused, misrepresented or misappropriated, or that their cultural heritage is being endangered by their activities;

(j) States should ensure access to the cultural heritage of one's own communities, as well as that of others, while respecting customary practices governing access to cultural heritage. In particular, such access should be ensured through education and information, including by the use of modern information and communication technologies. States should also ensure to that end, that the content of programmes is established in full cooperation with the concerned communities;

(k) States should adopt positive measures to ensure access to and enjoyment of cultural heritage by all people regardless of gender, including people with scarce financial resources, and those with mental and physical disabilities;

(l) States should make available effective remedies, including judicial remedies, to concerned individuals and communities who feel that their cultural heritage is either not fully respected and protected or that their right of access to and enjoyment of cultural heritage is being infringed upon. In arbitration and litigation processes, the specific relationship of communities to cultural heritage should be fully taken into consideration;

(m) States are encouraged to ratify relevant international and regional treaties for the preservation/safeguarding of cultural heritage, and to implement them at the national level adopting a human rights-based approach;

(n) States should include in their periodic reports to treaty bodies, in particular the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, and the Committee on the Rights of the Child, information on action taken to ensure the full participation of concerned individuals and communities in cultural heritage preservation/safeguard programmes, as well as on measures taken, particularly in the field of education and information, to ensure access to and enjoyment of cultural heritage.

Annex I

[English only]

Responses to the questionnaire on access to cultural heritage

Member States of the United Nations

- | | |
|-----------------------|---|
| 1. Austria | 17. Monaco |
| 2. Azerbaijan | 18. Morocco |
| 3. Canada | 19. Nepal |
| 4. Croatia | 20. Poland |
| 5. Cuba | 21. Portugal |
| 6. Cyprus | 22. Slovakia |
| 7. Dominican Republic | 23. Spain |
| 8. Georgia | 24. Switzerland |
| 9. Germany | 25. Syria |
| 10. Greece | 26. Turkmenistan |
| 11. Italy | 27. Ukraine |
| 12. Japan | 28. United Kingdom of Great Britain and
Northern Ireland |
| 13. Jordan | 29. Uzbekistan |
| 14. Kazakhstan | 30. Venezuela |
| 15. Malaysia | |
| 16. Mauritius | |

National human rights institutions and ombudspersons

1. Ecuador
2. France
3. Kosovo
4. Mexico
5. Peru
6. Portugal
7. Nicaragua

Other stakeholders

1. Association pour l'Intégration et le Développement Durable au Burundi (AIDB)
2. ATD Fourth World
3. Council of Europe, Secretariat of the European Charter for Regional or Minority Languages
4. Dr. Oscar A. Forero, Lancaster University
5. IIMA and VIDES International
6. International Campaign for Tibet
7. Kirant Kamal Sampang, Nepal
8. Partners for Law in Development
9. UNESCO Etxea – Centro UNESCO del País vasco
10. UNESCOCAT - Centre UNESCO de Catalunya
11. Bas Verschuuren, Co-Chair of the IUCN WCPA, Specialist Group on Cultural and Spiritual Values of Protected Areas
12. Vita de Waal, Member of the International Steering Committee on Cultural and Spiritual Values of Protected Areas
13. World Blind Union
14. World Network of Users and Survivors of Psychiatry (WNUSP)
15. World Uyghur Congress

Annex II

[English only]

Experts' meeting on access to cultural heritage as a human right (Geneva, 8-9 February 2011)

List of Experts

Ms. Gulnara ABBASOVA	Traditional Knowledge Division, World Intellectual Property Organization
Mr. Mikhael BENJAMIN	Vice-President, Nineveh Center for Research & Development, Iraq
Ms. Birte BRUGMANN	Aga Khan Trust for Culture, Afghanistan
Ms. Yvonne DONDERS	Deputy Director, Amsterdam Centre for International Law (ACIL), University of Amsterdam, Netherlands
Ms. Elise HUFFER	Human Development Program Adviser, Culture Secretariat of the Pacific Community, Fiji
Ms. Annamari LAAKSONEN	Project coordinator, Interarts, Spain
Mr. Simon LEGRAND	Traditional Knowledge Division, World Intellectual Property Organization
Mr. William LOGAN	Professor, UNESCO Chair of Heritage and Urbanism, School of History, Heritage and Society, Faculty of Arts and Education, Deakin University, Australia
Mr. Les MALEZER	Coordinator, Indigenous Peoples Organizations, Australia
Mr. Maurice MUGABOWAGAHUNDE	Institute of National Museums of Rwanda (INMR)
Ms. Máiréad NIC CRAITH	Professor of European Culture and Society School of Languages, Literatures and Cultures University of Ulster (Magee), United Kingdom
Ms. Rosa Maria ORTIZ	Member and Vice-Chair of the Committee on the Rights of the Child, Paraguay
Ms. Susanne SCHNUTTGEN	Programme Specialist, Section of Policies for Culture, UNESCO
Ms. Helaine SILVERMAN	Professor, Department of Anthropology, Director of CHAMP (Collaborative for Cultural Heritage and Museum Practices) University of Illinois, United States of America
Mr. Kishore SINGH	Special Rapporteur on the right to education
Mr. Folarin SHYLLON	Professor, University of Ibadan, Nigeria
Ms. Brigitte VEZINA	Traditional Knowledge Division, World Intellectual Property Organization
Ms. Ana Filipa VRDOLJAK	Professor, Faculty of Law, The University of Western Australia, Australia
Mr. Wend WENDLAND	Director, Traditional Knowledge Division, World Intellectual Property Organization