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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fortieth session

SUMMARY RECORD OF THE 18th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 9 May 2008, at 3 p.m.

Chairperson: Mr. TEXIER

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The meeting was called to order at 3.05 p.m.

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND
CULTURAL RIGHTS (continued)

General discussion on article 15, paragraph 1 (a), of the Covenant, on the right to take part
in cultural life (continued)

Session 3: Cultural rights and universality of human rights

1. Mr. THORNBERRY (Member, Committee on the Elimination of Racial Discrimination (CERD)) said that if the right to take part in cultural life was to be recognized then it should be possible to give substance to and provide guidance on such a right. It would not exist in a vacuum but in relation to other human rights and in the context of the provisions of human rights instruments.
2. Culture was a complex term; everyone was “in” culture in a broad sense and saw through cultural lenses to more or less the same degree. Finding a discrete substance for a general right to take part in cultural life was however a complex undertaking. The international human rights environment had evolved, shifting from a relatively culture-specific focus to a more global focus encompassing minorities and indigenous peoples and individual, collective and group rights.
3. While the right to take part in cultural life was guaranteed, there might nevertheless be limitations on cultural practices, for example in relation to the rights of women. International human rights instruments sought to ensure that the invocation of cultural diversity or cultural practices did not impair the enjoyment of other fundamental human rights. In the context of work of the Committee on the Elimination of Racial Discrimination (CERD), he said that, while non-discrimination was a universal principle, that notion required interpretation in order for the Convention to work. Racial discrimination could have cultural implications and non-discrimination did not mean uniform treatment of a group regardless of the circumstances.
4. Cultural issues pervaded any discussion of human rights; and disapproval of another culture or way of life could become a pretext for discrimination. Religion was a particularly difficult area for CERD and fell within its mandate only when religious freedom was denied in the context of racial discrimination. CERD also devoted considerable time to minorities and indigenous peoples and had developed procedures, including an early warning and urgent action procedure, to deal specifically with collective and group rights, which often related to culture.
5. All countries were multicultural and the issue of cultural rights posed a problem for all human rights instruments. It was a complex issue, but one that must be addressed because cultural rights, like other rights, were indispensable to human dignity and violations could cause irreparable damage. It was when cultural practices led to situations of which treaty bodies disapproved that problems arose. When faced with such situations, treaty bodies must first verify the facts and then decide on follow-up action, which could take the form of either punitive or educational recommendations. Yet even if a treaty body denounced certain cultural practices, it had to be pragmatic and take into account the prevailing situation in the State party when making its recommendations.

6. Mr. BACOUICHE (Arab Institute of Human Rights) said that the question of the universality of human rights and the diversity of culture raised issues of exclusiveness and complementarity and the diverse ways of expressing shared values. Human beings defined themselves as individuals but also as members of the human community and of their own particular society. Everyone was thus a member of multiple communities, exposed to various interdependent and interrelated cultures, and cultural identity could not be separated from universal notions of culture.

7. It was essential that promotion of the right to take part in cultural life promoted the concepts of non-discrimination, tolerance and respect for the dignity of individuals and the communities they represented. Invocation of cultural practices to justify violations of universally accepted human rights was not acceptable.

8. Mr. MEYER-BISCH (Interdisciplinary Institute for Ethics and Human Rights, University of Fribourg, Switzerland) said that culture in its widest sense informed life and gave meaning and value to our identity. Human dignity itself was based on culture. The relationship between individual, collective, universal and cultural rights was played out in society, where diverse elements were not so much mixed as interwoven. While a distinction was often made between individual and collective rights, no right was exercised at a purely individual level; there was always a social context. The right to food, for example, was related to the concept of human dignity and the ability to feed oneself in the context of a specific social system. It was therefore important to avoid an ideological approach to human rights based on notions such as individual or collective rights and to stress rather the social aspect of respect for rights in a context of communion and communication.

9. Notions such as collective rights and peoples' rights must be reconsidered because it was not cultures that interacted but individuals, although that interaction took place in a broader social context. The human rights community must go beyond the mere notion of non-discrimination and look at the social dimension of cultural rights, for the enjoyment of rights, including cultural rights, occurred in a mutually reinforcing context. It was also essential for the human rights community to truly understand cultural identity, so that any criticism of cultural practices that conflicted with human rights was based on a complete understanding of the context.

10. Ms. RINGELHEIM (University of Louvain, Belgium) said that there were three dimensions to the promotion of culture. The first was culture in the context of society and problems relating to infrastructure, funding, custom, censorship and the protection of artists and scientists. The second was increased democratization, whereby the notion of culture was expanded to include disadvantaged groups such as the poor, the disabled, immigrants and prisoners, and popular expressions of culture. Third, there was a greater diversification of the notion of culture to embrace minorities, indigenous groups, one's own culture, access to other cultures and the goal of non-assimilation.

11. Discussion of the right to take part in cultural life required a definition of the prerogatives of the individual and the obligations of States parties but it was also important to show that the promotion of cultural rights, including the right to produce culture and the right of access to cultural experience and cultural decision-making, provided some added value in the context of the promotion of other human rights.

12. Promotion of the right to culture should involve recognition and promotion of the rights of minorities and indigenous groups and the links between and communication with other elements of society. The extent to which a State party recognized and protected the rights of its minorities in its educational system or in cultural events, was an indicator treaty bodies could use to evaluate the State's commitment to human rights.

13. The need to condemn cultural practices that violated other fundamental human rights should not pose a problem. Where rights were in conflict it was quite justifiable to impose some limitations on the enjoyment of one of those rights. What was specific to the right to culture was that it involved world views and values; not only that, but conflicts between the right to culture and other human rights might involve victims who themselves defended the practices that violated their rights.

14. A distinction must be made between defence of the right to culture as a whole and condemnation of specific cultural practices. Treaty bodies must adopt a pragmatic approach taking into account the specific context in a State party when making recommendations to that State party. Moreover, all the human rights treaty bodies should discuss the very complex issue of culture and cultural rights.

15. Mr. ABDEL-MONEIM said that, while States parties had an obligation to ensure the universal application of human rights, including the right to culture, they also had the right under international law to make reservations to treaties on cultural grounds. Such reservations could affect the universal implementation of human rights, including cultural rights. The international community could therefore either maintain and support the right to make a reservation or prohibit or restrict their use in respect of fundamental human rights instruments. The problem was how to balance the universality of human rights and due regard for specific value systems.

16. Mr. NIMNI (Queens University, Belfast, United Kingdom) said that any discussion of religion and human rights must be informed by the specific characteristics of the religion concerned; the three main Abrahamic religions, for example, contained significant differences in interpretation. No religion was by definition opposed to human rights and any criticism should avoid generalizations and confine itself to a specific context.

17. Mr. MARCHÁN ROMERO said that the Committee should resist the temptation to establish its own definition of culture or cultural life. The definition was implicit in article 15 of the Covenant, which alluded to culture in its broadest sense. A general comment should aim to define the legal content of the right to take part in cultural life. Article 2 of the Covenant identified religion as a potential basis for discrimination and, in dialogues with States parties, the Committee had taken the view that freedom of religion was a fundamental part of the right to culture and therefore fell within its competence.

18. With regard to the remarks of Mr. Meyer-Bisch, he pointed out that many countries' constitutions recognized collective rights and acknowledged the dual dimension - individual and collective - of human rights. The notion of the added value of the right to take part in cultural life, mentioned by Ms. Ringelheim, was an interesting one. That idea had already been taken up in other international instruments the Committee referred to in its discussions with States parties. The International Labour Organization Convention concerning indigenous and tribal peoples in independent countries (No. 169) was one example.

19. In drafting its general comment, the Committee should take account of two concepts: cultural diversity and cultural pluralism. It was not sufficient simply to recognize cultural diversity; the right of different cultures to coexist within a democratic society, i.e., cultural pluralism, also had to be recognized.
20. Ms. BONOAN-DANDAN said that she had been struck by Mr. Thornberry's comments regarding the cultural dimension of racial discrimination. It was true that religion underpinned many social and cultural, and even some economic, practices. That was why, in its discussions with States parties, the Committee tried to link religion to other economic, social and cultural rights. She would be interested to know whether the direct applicability of religious discrimination ever came up in discussions within the Committee on the Elimination of Racial Discrimination and, if so, how the Committee dealt with that issue. She also wondered how it dealt with practices linked to customs and traditions that violated the rights of women and girls. She welcomed the idea of a joint discussion of cultural rights by the various treaty bodies.
21. Mr. BURGER (Office of the United Nations High Commissioner for Human Rights) said that discrimination was often an important dimension to the question of participation in cultural life because many groups, notably indigenous peoples, were denied participation. Equally important was how a dominant culture imposed itself on other cultures, suppressing their languages and other aspects of their cultural life. Another major consideration was the linking of culture to identity and of identity to land. Among the Navajo people, for example, land was intimately associated with identity and with religion and culture. Lastly, consideration should be given to people's right to have their own culture reflected in the national culture, for example, through access to the media. He suggested that it might be useful for the Committee to hear a presentation by a representative of the Office of the United Nations High Commissioner for Human Rights on the United Nations Declaration on the Rights of Indigenous Peoples.
22. Mr. RIEDEL observed that the Covenant recognized the right to take part in cultural life, not the right to culture. He agreed on the need to incorporate the concept of cultural pluralism into the Committee's general comment. He would like to hear the panel's views on where the line should be drawn between respect for cultural practices and respect for human rights, bearing in mind that cultural practices such as female genital mutilation were clearly violations of women's human rights.
23. Mr. GHEMARI (Islamic Educational, Scientific and Cultural Organization) said that people's right to take part in cultural life was impaired by income disparities between individuals and differences in economic development between States. Indicators were needed to assess the extent to which disadvantaged groups had access to that right. In his organization's view, cultural life could be defined as developments in the social, spiritual, intellectual and artistic realms that had helped to forge the identity and cultural heritage of individuals and communities. That definition was rooted in Islam's holistic concept of culture. The right to participate in cultural life was a natural and universal right, inseparable from other human rights, and yet cultural rights had not always been protected in the international sphere. Poverty, conflicts and various forms of domination and subjugation continued to impede individuals' and communities' full enjoyment of cultural rights.

24. Mr. SMIERS (Utrecht School of the Arts, Netherlands) said that there were internal contradictions and differing interpretations within religions. It was necessary to respect the diversity of views and freedom of expression of religious believers.

25. Ms. DOLF-BONEKÄMPER (Fribourg Group) said that the concept of the universality of cultural rights and human rights was a cultural concept. The same was true of the concept of individuality. She wondered if Mr. Thornberry had any thoughts on how to resolve the dialectic between the two concepts.

26. Mr. THORNBERRY (Member, Committee on the Elimination of Racial Discrimination) said that he was troubled by the idea that collective rights could not be human rights. If they were not regarded as human rights, they could be changed at will by governments and could be downgraded from right to government concession to a specific group, thereby losing the essential quality of inherency associated with human rights.

27. He agreed with Ms. Ringelheim's comments regarding the importance of participation in decision-making, a right explicitly recognized in the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and various ILO conventions. Ms. Ringelheim had also made the important point that victims sometimes accepted cultural practices even though they were considered human rights violations, which was a difficult situation for human rights bodies to deal with. When a large number of victims rejected a practice, however, a bolder and more critical approach could be taken. In any case, it was essential to have a thorough understanding of cultural practices, including religious practices, before criticizing or prejudging them.

28. Mr. MEYER-BISCH (Interdisciplinary Institute for Ethics and Human Rights, University of Fribourg, Switzerland) said that it was important to take an inclusive approach, rather than one that pitted individual rights against collective rights. They were not mutually exclusive. A parallel could be drawn with trade union rights, which were both individual and collective. Freedom of association was an individual right but it had no meaning unless it was protected collectively.

Session 4: Individual and collective dimensions of the right to take part in cultural life
(E/C.12/40/9 and 17)

29. Mr. NIMNI (Queen's University, Belfast, United Kingdom) drew attention to the definition of culture contained in his paper on the collective dimension of the right to take part in cultural life (E/C.12/40/17), which put forward several arguments as to why the concept of collective rights was important. A way had to be found to enable minority cultures to be recognized and participate in the public domain. That was important because when cultural communities felt under threat they tended to close ranks, which explained the rise of fundamentalism, among other things. Such movements could only be defeated through vibrant debate in a democratic context in which minorities had a voice and felt secure using it.

30. The creation and acceptance of the right to culture had to take the form of a charter or treaty. If there were no international provisions for the collective recognition of minority cultures

within a single State, minorities might opt to secede and create a separate State, causing enormous geopolitical turmoil. The formulation of a set of principles through which minority cultures were recognized would not only discourage secession, it would also help to advance human rights within minority cultures.

31. Ms. STAMATOPOULOU (Secretariat of the United Nations Permanent Forum on Indigenous Issues), introducing her paper (E/C.12/40/9), said that the Committee was in a unique position to elucidate the legal specificity of cultural rights as part of human rights, thus cutting through the over-politicization of culture in some United Nations bodies. Under international law, five human rights were generally understood as cultural rights: the right to education; the right to participate in cultural life; the right to enjoy the benefits of scientific progress and its applications; the right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which a person was the author; and the freedom to engage in scientific research and creative activity. The philosophy behind the human rights system was to protect the most vulnerable, including indigenous peoples and minorities, migrants, children, the poor, homosexuals and persons with disabilities.

32. Six normative elements of cultural rights could be identified based on the various human rights instruments and the practices of human rights bodies. The first was non-discrimination and equality. The Committee on Economic, Social and Cultural Rights required positive measures from States parties that would create conditions of real equality in terms of participation in cultural life, but had been cautious in its recommendation given the danger of forced assimilation of minorities.

33. The second element was freedom from interference in the enjoyment of cultural life and freedom to create and contribute to cultural life. Those freedoms created both negative obligations for the State (the obligation to abstain from certain acts) and positive ones (the obligation to protect and promote cultural rights). Protecting cultural rights meant that the State must prevent their violation by third parties. Places of culture must be physically and economically accessible and culturally relevant to those they were meant to benefit.

34. The third normative element was freedom to choose the culture and the cultural life in which one wished to participate. The State must protect individuals' right to participate in cultural life as they chose and to express themselves freely, even when such expression was perceived to be at odds with the traditions of a society or community.

35. The fourth element was freedom of dissemination. Imparting art, knowledge, science and other manifestations of culture was essential for a culture to flourish. Freedom of dissemination included access by the creators of culture to the media and all other means by which culture could be communicated.

36. The fifth element was freedom to cooperate internationally. Participation in cultural life required free contact among people within and beyond national borders, through, inter alia, educational exchanges and media broadcasts.

37. The sixth normative element was the right to participate in the definition, preparation and implementation of policies on culture. As the Committee had repeatedly said, full participation by all segments of society was indispensable to the realization of economic, social and cultural rights.

38. Cultural rights were cross-cutting in nature, as other speakers had noted. They depended on other rights, but the protection of other rights also depended on the implementation of cultural rights.

39. The minimum core obligations of the State were non-discrimination in law and in practice; non-interference in the freedom of cultural expression of individuals and groups; protection of the freedom to participate in cultural life when it was under threat by non-State actors; ensuring representative participation in the definition, preparation and implementation of policies on culture; promoting policies of respect for cultural rights; and taking steps towards the full enjoyment and fulfilment of cultural rights.

40. Far from being a soft agenda, the implementation of minority and indigenous peoples' cultural rights could often result in the transfer of resources to them from the dominant society and thus mend age-old injustices and discriminatory practices, thereby contributing to peace and overall respect for human rights.

41. Mr. DECAUX (University of Paris II) said that the distinction between individual and collective rights had already been made in the Universal Declaration of Human Rights. Article 17 provided that everyone had the right to own property alone as well as in association with others. Very few rights were intrinsically individual, since culture involved interaction with others. He listed some of the formal and informal groups that could exercise rights collectively. Those groups were fluid and it was possible to be a member of several simultaneously by virtue of dual nationality or bilingualism for example.

42. Since all States were now multicultural, identity could not be defined solely on the basis of a national culture. On the question of exclusive identity groups, such as indigenous peoples or national minorities, and whether persons were free to join and leave the groups as they wished, he recalled the Human Rights Committee's case law in Lovelace vs. Canada and European Court of Human Rights case law on sub-groups within the major faiths.

43. Participation in culture must be seen as a long-lasting process affecting future generations and creating the common heritage of mankind.

44. Ms. DOMMEN (3D: Trade, Human Rights, Equitable Economy) said that cultural policy was increasingly being determined in arenas and by actors who were at several removes and it was therefore essential for the Committee to address some of the factors that might impair the ability to participate in cultural life. If it failed to do so, participation in cultural life would become increasingly difficult for everyone, not only for vulnerable groups, and other rights would also be affected. One example of the way other policy areas could impact on the enjoyment of cultural rights was the entry into force of the North American Free Trade Agreement (NAFTA) in Mexico, which had forced hundreds of thousands of farmers off their land because they could not compete with the influx of subsidized maize imports from the United States.

45. Intellectual property was another policy area that had an impact on cultural life. The Committee should address the issue of bio-piracy, whereby private actors patented traditional communities' knowledge or resources without their consent. Some argued that indigenous communities themselves could use intellectual property rights to protect or exploit their knowledge, but intellectual property systems were inherently individualistic and therefore antithetical to indigenous conceptions of traditions belonging to the community.
46. The Committee should also alert States to the need to maintain their policy space and not enter into international agreements that would prevent them from making exceptions to copyright laws for educational or archiving purposes, for example. Moreover, developments such as technological protection mechanisms that allowed digital content to be erased after a certain period of time were having a serious impact on access to knowledge.
47. She said that the Committee should reiterate the importance of transparency in formulating policy that might negatively affect the right to participate in cultural life. She encouraged it to raise its profile in forums dealing with aspects of intellectual property and trade policy affecting that right.
48. The CHAIRPERSON said that civil society played an important role in making people aware of the Committee's work and disseminating its concluding observations at the national level.
49. Mr. COURTIS (International Commission of Jurists) said that, from a legal point of view, collective rights implied that a single action or omission by the State affected all members of a given group. For example, if a State prohibited the use of a language, it affected the whole group and would require a collective remedy; similarly, any violation of the duty to respect communal goods such as traditional land or sacred sites required a collective remedy. He also noted that the right to representation or consultation was also exercised by an individual on behalf of a group.
50. Mr. KOLOSOV said that it was important not to refer solely to cultural rights; cultural freedoms were also an important aspect of the discussion. He drew attention to problems related to cultural heritage and the fact that many cultural artefacts were on display outside their countries of origin. He asked to what extent the concept of humanity's common heritage was applicable to cultural rights and freedoms.
51. Mr. MARCHÁN ROMERO said that education was a fundamental component of the right to culture and recalled that the Committee had decided to comment on paragraphs (a), (b) and (c) of article 15 separately, but in each case to highlight the interrelation between them and to refer to the Committee's general comment on the right to education.
52. He agreed that the concept of cultural freedoms must not be overlooked. Under article 4 of the Fribourg Declaration everyone was free to identify or not with one or more cultural communities. Individual and collective rights were not contradictory but complementary.
53. Ms. DOLF-BONEKÄMPER (Fribourg Group) suggested that the Committee might find it helpful to review the complex link between the individual and the collective established by Maurice Halbwachs in his definition of collective memory.

54. Mr. LOUARN (European Bureau for Lesser-Used Languages) said that, in France, there seemed to be a mental block in terms of cultural rights and participation as a member of a self-defined group rather than by assimilation. The French National Assembly had just debated the introduction of the concept of linguistic diversity into the Constitution, apparently the eighty-sixth such attempt. The initiative had been rejected yet again, and there continued to be no official recognition of the country's regional languages.

55. Ms. BARAHONA RIERA said that the general comment must address the questions of women's access to culture and cultural practices that violated women's human rights.

56. Mr. VOLODIN (United Nations Educational, Scientific and Cultural Organization (UNESCO)) said that UNESCO was the Committee's natural partner in the task of elucidating the right to participation in cultural life. He outlined plans for cooperation in the elaboration of the general comment, including a small experts' meeting to be held in 2009. Participation in cultural life was of increasing importance in the age of globalization and movement of peoples.

57. Mr. DECAUX (University of Paris II) said that, in terms of the common heritage of mankind, the destruction of the statues of the Buddha at Bamiyan had been an example of a loss not only for Afghanistan and Buddhists, but for humanity in general.

58. Ms. STAMATOPOULOU (Secretariat of the United Nations Permanent Forum on Indigenous Issues) said that, unless account was taken of the human rights aspects of declaring ancestral sites as the common heritage of mankind, there was a risk that those sites would take on a life of their own, and indigenous peoples would no longer have access to them to express their cultures and religions.

59. She hoped that the Committee would liaise with the Permanent Forum once it had completed its draft general comment, and that it would advocate the inclusion of cultural rights aspects in other mechanisms.

60. Mr. NIMNI (Queen's University, Belfast, United Kingdom) said that the participation of groups or minorities in cultural life required the development of the concept of cultural security, because if people felt secure in their own and others' view of their culture, that encouraged inclusion and enhanced cultural debate. He agreed with the comments made on the right to leave a group, but emphasized the relationship of that right with the right to inclusion, and the fact that persons might not be recognized as members of a group despite their wish to be included, as was the case in indigenous communities. The recognition of the culture of indigenous groups was a challenge for everyone. Those communities should have the right to freely define their culture and cultural rights and minorities within the community should have the right to define themselves as members of that community.

61. The question of collective memory was central to an understanding of the continuity of cultures. However, collective memories were always reinterpreted in light of contemporary circumstances, and must be understood as reinterpretations. On humanity's common heritage, he said that cultures learned from and influenced each other, and it was therefore important not to define culture in such a way as to ossify or fossilize cultures.

62. Ms. BONOAN-DANDAN said that she hoped that a rough draft of the general comment would be circulated at the Committee's next session. Since the Covenant referred to the rights of "everyone", the general comment would have to do the same. However, it would include a section identifying vulnerable groups who were prone to violations of their rights. She thanked UNESCO for its support in the endeavour.

63. The CHAIRPERSON thanked all the panellists and participants for their contributions.

The meeting rose at 6.05 p.m.