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Chairperson: Mr. TEXIER

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The meeting was called to order at 10.05 a.m.

SUBSTANTIVE ISSUES ARISING ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 3)

Day of general discussion on paragraph 1 (a) of article 15 of the Covenant on the right to take part in cultural life

1. Mr. MARCHAN ROMERO said that the Committee, in its draft general comments on the right of everyone to participate in cultural life (art. 15, para. 1 (a) of the Covenant), would devote itself primarily to analysing the terms “cultural life”, “everyone” and “take part”. The term “cultural life” referred explicitly to the vital nature of culture as a dynamic process embracing all the expressions of human existence and applying them to different geographic and historic contexts. The Committee, while it must not yield to the temptation of proposing its own definition of culture, should take account of other definitions. In fact, for purposes of applying the Covenant, it would be better to define clearly the normative content of the rights targeted rather than try to define the notion of culture, for the legal aspect of these rights lay not in culture itself but in the fact that they allowed everyone to take part in cultural life. As to the term “everyone”, it designated both the individual and the collective subject of the right. Cultural rights must be exercisable both individually and in association with others or collectively. The collective dimension of these rights also implied the obligation of States parties to recognize, protect and respect the culture of minorities. Because the term “take part” had both a passive meaning (“be part of”) and an active meaning (“participate in”), the right to take part in cultural life embraced at least three distinct but intimately linked elements: “take part”, “have access to”, and “contribute”. The terms “take part” or “participate” would be stripped of their meaning if they did not entail the right to have access to culture, which must be guaranteed for all, including those in disadvantaged rural and urban zones. Access for all to culture did not mean giving preference to a mass culture to the detriment of a minimum quality, for the notion of cultural rights referred more to the development of the human personality than to the commercial and large-scale consumption of cultural goods and products. The right of everyone to take part in cultural life also included the right to choose one’s culture, to express it, and to contribute to its development.

2. Paragraph 1 (a) of article 15 of the Covenant set forth the fundamental obligations incumbent upon States. States were required not only to recognize cultural rights but also to take legislative, administrative, financial and other measures to protect and promote the cultural life of all, on a footing of equality. The Committee should therefore, in its comments, devote a chapter to violations of obligations relating to the right to take part in cultural life, and to the consequences that these violations had both for the States parties and for other actors. The comments should also focus on the question of indicators, which were essential for monitoring the implementation of rights and for detecting any attempts to undermine them. It was likely, in fact, that the plan of the general comments prepared by the Committee would be similar to the plan of other general comments: introduction, conceptual framework, normative content, States parties’ obligations, obligations of actors other than States parties, implementation at the national and international levels, violations, and dissemination.

Part one. Definition of cultural life in the context of human rights

3. Mrs. DONDERS (International Law Centre of the University of Amsterdam) said it was difficult to define the content and scope of cultural rights, as the notion of culture was vague and extremely broad. She explained that the scope of the right to take part in cultural life had been expanded over time. When the Covenant was drafted, that right was intended to make cultural accessible to the general population. The term “culture” referred then, primarily, to the national culture and was considered in its narrow sense; it designated cultural works. The Committee, however, had agreed to broaden the notion of “cultural life” which now, consistent with a more anthropological conception, designated the way of life of people and communities and embraced language, costume, customs and traditions. From this viewpoint, the right to take part in cultural life touched upon a whole series of questions, some of which were closely linked to other human rights such as the right to education and the freedom of thought, religion, expression and assembly. It related to copyright and the rights of persons who transmitted culture, and to rights concerning the promotion and protection of cultural life, which dealt notably with education, language and religion. It also involved protection of the cultural heritage and the establishment and reinforcement of cultural institutions such as schools, museums, libraries and archives.

4. The notion of “cultural life” was so broad that it was difficult to define the fundamental components of the right to take part in cultural life, beyond the principle of non-discrimination. The same held for the States parties’ obligations: the obligations relating to “taking part” and “cultural life” in the broad sense could indeed be numerous. It was also important to consider the link between the right to take part in cultural life and practices that violated human rights. On this point, it should be recognized that States were paying growing attention to protecting the cultures of minorities and of indigenous peoples and that the Committee, in its final comments, had repeatedly expressed its concern over certain customs, traditions and cultural practices that discriminated severely against women and girls. The right to take part in cultural life was based on the need to protect an important component of human dignity. There were many people in need of such protection and it was important to take measures that would allow them to participate in cultural life. The right to take part in cultural life should constitute the legal basis for efforts to put an end to policies of forced assimilation and discrimination against persons and communities.

5. Mr. SOW (Interdisciplinary Centre on Cultural Rights of the University of Nouakchott) said that, while it was very well to draw up provisions relating to the right to take part in cultural life, it was more important to give people the capacity to enjoy their rights in this area. Such enjoyment presupposed a social and democratic space that allowed the expression of cultural plurality. People were frequently prevented from observing their traditions, which were considered not in keeping with the demands of modernity. To exclude people from cultural life was to attack their pride and generate in them a bunker mentality. In terms of giving effect to diversity and participation in cultural life, Mr. Sow regretted that in most African countries this was limited to inviting members of all groups in the national population to turn out with their musical instruments to welcome presidential processions, after which everyone would return home, and to featuring artists from different cultural groups in performances organized by Presidents’ offices. Finally, if there were to be peace and justice in the world, there should be an article banning contempt for others’ cultures, as this encouraged introversion and defensiveness and provided fertile ground for calls to hatred, barbarism, and the denial of others.

6. Mr. SADI, speaking of multiculturalism, wanted Committee members to consider how countries could reconcile their obligation to respect the rights and cultures of the different communities comprising their population with their obligation to protect and promote the principal or main national culture.

7. Mrs. BONOAN-DANDAN mentioned that she came from a country with 110 ethno-linguistic groups and that in the presence of such diversity it was very difficult to determine what was the “main” national culture. Indeed, she feared that to use a term such as “main” might be tantamount to excluding minority groups and marginalizing them. This was an important question, and one that the Committee should consider, especially in light of what Mr. Sow had said about the consequences of exclusion.

8. Mr. PILLAY noted that, in the course of its work, the Committee had adopted a broad conception of culture, and he was troubled by the idea of defining the essential content of the right to take part in cultural life as the principle of non-discrimination, for that principle was not specific and could be applied to any of the rights contained in the Covenant.

9. Mr. COURTIS (International Commission of Jurists) said he agreed essentially with the statement of Mrs. Donders, but would prefer the idea of defining a content that went beyond the principle of non-discrimination, in light of the broader interpretation that the Committee, in its previous general comments, had given to certain rights enshrined in the Covenant, for example the right to food or the right to adequate housing. In the same spirit, a broad conception of culture should be applied in the case of the right to participate in cultural life.

10. Mr. RIEDEL said that if the draft optional protocol relating to the Covenant were ever adopted, allowing the Committee to hear submissions from individuals or groups of individuals, then article 15 would probably play a much bigger role than previously. Mr. Riedel had doubts about the notion of the “main culture” mentioned by Mr. Sadi, as this would be difficult to define and it would not mean the same thing, for example, to a historian, an anthropologist or a member of a minority. The protection called for in the Covenant had three dimensions: not only individuals and groups of individuals, but also the collectivity. In case of conflict between one or more individuals and the collectivity, the principle of non-discrimination and the object of paragraph 1 (a) of article 15 must be borne in mind. It was the Committee’s task to find a satisfactory balance among these three dimensions.

11. Mrs. BRAS GOMES said it was difficult to define a main culture. Most of the world’s countries were today influenced by other cultures. The failure to understand individuals’ attachment to their original culture was often a source of conflict in modern societies. That attachment was all the more important today, because globalization was blurring differences. In its General Comment on the right to take part in cultural life, the Committee must guard against taking a static viewpoint and must adopt a dynamic perspective.

12. Mr. OELZ (International Labour Organization) stressed the importance of the ILO standards for the work of the Committee. The ILO had a broad conception of culture that corresponded to the multicultural nature of present day societies. The drafters of the Covenant had recognized the right of migrant workers to participate in cultural life as well as to maintain ties with their cultural heritage and to develop that heritage. In the same spirit, ILO Convention No. 143 on migrant workers

(supplementary provisions) referred to people's right to education in their mother tongue. The provisions of Convention No. 11 on the right of association (agriculture) were coincident in an important way with the Covenant in recognizing the fact that, for many indigenous minorities, traditional trades and crafts were an integral part of their cultural life.

13. Mr. KERDOUN observed that little had been said so far about the fact that the right to take part in cultural life was one that was applicable essentially vis-à-vis States. In fact, that right was sometimes confiscated by States that imposed an official culture, or the culture of the governing group, and it was very difficult then for some social groups to affirm their existence or to exercise their right to participate in cultural life. Moreover, as culture also involved language and civilization, it was normal that a State should seek to maintain this cultural coherence and that it should be reluctant to open the door too wide. The Committee must not lose sight of the central importance of States.

14. Mr. MEYER-BISCH (University of Freiburg) said it was not the individual who was part of a culture, it was people who chose the many references that constituted their culture. The cultural right was the right of everyone to choose the diversity of references needed to affirm his identity throughout his life. Mr. Meyer-Bisch did not find the usual distinction between the three levels to be very helpful, for there was no symmetry to the human personality: vis-à-vis the individual there was not one collectivity or community, but rather a multiplicity of cultural communities to which the individual could refer. Mr. Meyer-Bisch wondered if the notion of collectivity or community should not be revived today, to refer not to the national community, the interpretation of which might lead to confusion, but to the systematic intermeshing of the professional, linguistic, religious and other communities that exist today.

15. Mr. ABDEL-MONEIM said the problem lay in the fact that cultural life and culture were very broad notions. While from the viewpoint of members of the Committee or of a human rights activist, a broad conception might be preferable, States parties would interpret rights more broadly or more narrowly depending on the time and circumstances. It was well for specialists to have a global and dynamic view of the rights contained in the Covenant so as to take account of their evolution over time, but there was still a problem of knowing to what extent the evolving interpretation of the contents of rights produced binding affects in international law: for example, a State party might consider itself constrained only by the instrument it had ratified.

16. Mrs. DOMMEN (3-D) thought that trying to define culture could be prejudicial to a definition of the right to culture. She proposed that, rather than seeking a definition, the Committee should draw up an exhaustive list of what might constitute culture. She stressed the importance of place and of the natural setting in many cultures, especially indigenous cultures, and the need to protect traditional knowledge systems. The growing monopoly of multinational corporations over cultural production was now a serious problem that must be taken into account. Preserving control over genetic resources such as seeds also constituted a dimension of the right to take part in cultural life, recognizing that farmers had always engaged in trading seeds.

17. Mrs. BARAHONA RIERA considered that the contents of the right to take part in cultural life must go beyond the principle of non-discrimination. It must be recognized that some cultural practices with regard to women, for example, constituted violations of human rights. As an international body, the Committee should adopt a broad view that took account of international concerns. Finally, the

collective dimension of rights must also be taken into account, recognizing that human groups had an identity that they wanted to be able to express.

18. Mrs. DONDERS (International Law Centre of the University of Amsterdam) explained that she had not meant to say that it was impossible to define a minimum content beyond the principle of non-discrimination, but simply that such a definition would be very difficult to work out. While it was preferable not to speak of a main or national culture, reconciling multiple cultures within the same country, and even beyond its borders, was an important question. The strength of culture was its fluid and changing character – it was not fixed in stone. For this reason it might be better not to try to define it. The Committee should instead determine which focus it was going to adopt – broader or narrower – to give States a clear frame of reference. The right to take part in cultural life was obviously linked to other fundamental rights, the content of which was generally a freedom of some kind – freedom of expression, assembly or religion, for example. In the present case, one might speak of an individual freedom either to adhere to one culture or to change cultural affiliation. To reconcile these changing notions, the starting point had been to impose negative obligations upon States, which must recognize cultural rights and respect the fact that a person was free to adhere to a culture or not. It was important to recognize the interdependence between different rights, something the Committee had done for a long time – indeed, it had addressed the cultural dimension of the rights covered by several of its General Comments. Another important aspect raised by one Committee member was to place the emphasis not on collective rights as a legal notion but on the fact that the right to take part in cultural life had an intrinsically collective dimension.

19. Mr. SOW (Interdisciplinary Centre on Cultural Rights of the University of Nouakchott) said that in his culture there was no “main culture” or “national culture”; instead, people spoke of “host culture” (*culture d'accueil*). He therefore wanted no further part in the debate on this point, for he did not recognize the concepts of “main culture” or “national culture”.

20. Referring to the statement that some cultural practices violated human rights and human dignity, Mr. Sow said that he would not call these “cultural practices”, but rather “shameful practices”.

Part two. The right to have access and to take part in cultural life

Poverty and access to culture

21. Mrs. OESCHGER (Conference of International NGOs of the Council of Europe) declared that cultural rights had been deepened to a remarkable extent in recent years, but that there were still problems concerning the relationship between poverty and access to culture. The cultural needs of disadvantaged persons were often neglected. Little or no account was taken of them because they were not visible and seemed to be secondary. In fact, a person could have cultural needs even if he had nothing to eat or no roof over his head. This might indeed be the only way left to him to maintain hope. This raised the question as to whether it was possible for anyone to define another person’s basic needs. The approach proposed today was to abandon the hierarchy of needs defined by the Maslow pyramid in favour of a circle that would respect the totality of the human being and would include cultural and spiritual needs on an equal basis with material needs.

22. Minimum or elementary rights sought to ensure the daily survival of the human being and were often proposed as a makeshift solution to forestall something worse. The key to the problem of persistent poverty lay precisely in this narrow vision of the human being living in extreme poverty: such a person was not assumed to have a cultural dimension. Yet without that cultural dimension, the individual could not escape from misery and society could not resolve the problem of poverty.

23. Representatives of international NGOs were constantly speaking about the contempt with which people in situations of vulnerability were treated. It was quite apparent that whole segments of the population wanted nothing to do with disadvantaged communities. It must be admitted, then, that in our societies it was not necessarily accepted that we were all members of the same human family.

24. Some guiding principles had been established in the context of a project called "Extreme poverty and human rights: the rights of the poor". They stressed the "right to participate fully in community life". These principles called upon States to take measures to protect the poor with respect to their dignity, their private life and their integrity, and they insisted upon the right to education and culture. It would be useful for the Committee to consider these guiding principles and to work in cooperation with this project.

25. With reference to the achievements of the Council of Europe's work in this field, article 30 of the revised European Social Charter enshrined the right to protection against poverty and social exclusion and committed parties to the Charter to take measures to promote effective access to employment, housing, training, education and, specifically, culture. The Committee should take careful note of this advance and make use of it.

26. In conclusion, Mrs. Oeschger thought it was quite appropriate today to speak of a cultural crisis, for at a time when the food crisis was being exacerbated by the drama in Myanmar there was a tremendous risk that cultural rights would again be relegated to the background. It must be stressed that the real crisis was not one of food but a cultural one.

27. Mrs. AULA (International Catholic Child Bureau, BICE) said that access to culture for people living in extreme poverty was an issue in which everyone was implicated. Mrs. Oeschger's remarks should cause us to think more deeply and to ask if there were cultural practices common to people living in extreme poverty in different parts of the world. The transmission of cultural practices, good or bad, was interesting because it generated a situation of social interrelationship. It helped to eliminate any difference in terms of status with a view to full realization of the principle of equality. It was in this spirit that access to cultural rights found its meaning.

28. The idea of moving away from the Maslow hierarchy of needs had the merit of reiterating that there was no hierarchy among fundamental rights and freedoms. Yet it was important not to confuse need with sufficiency. In the case of those living in abject poverty, as for other vulnerable groups or people in emergency situations, it had to be recognized that one right preceded the other, in time at least, even if it was not hierarchically superior. Yet it was still true that the objective was to ensure that the need for survival should not take the place of the desire to create meaning. The recent disaster in Myanmar illustrated this point very well, and showed the importance of not chasing the wrong emergency. Culture had to be considered in an emergency, but the one could never substitute for the other.

29. As to the work of the Council of Europe, the BICE shared with it the following ideas: the entire and total nature of the human being must be taken into account, and culture was an undeniable element here; culture was the bulwark against dehumanization, and access to culture must be extended to the greatest number without discrimination. However, it must be remembered that certain cultures denied other cultures and the nature of human dignity; these were in fact “bad cultures” that demeaned mankind.

30. Access to cultural rights for all, and especially for the poor and most disadvantaged, and among them the children, remained a constant concern of the BICE in its work.

31. Mr. PILLAY said he did not understand very well what Mrs. OESCHGER had meant concerning the links between the food crisis and the cultural crisis. He hoped for some explanations on this point.

32. Mr. STAMATOPOULOU (Permanent Forum on Indigenous Issues, United Nations Department of Economic and Social Affairs), asked Committee members if they had considered the idea that the cultures of poor populations represented a very powerful cultural expression, which was often threatened by the national culture. This was the case, for example, with the culture produced by the favelas in Brazil. Ways must be found to protect these cultures and the artistic and creative expressions of indigenous communities.

33. Mr. MARCHAN ROMERO said that poor people, even those in abject poverty, had an intrinsic cultural wealth to contribute to society. What they lacked was the means and the capacity to take part in cultural life on a footing of equality.

34. Mrs. DAROOKA (Programme on Women’s Economic, Social and Cultural Rights, PWESCR) wanted to draw the Committee’s attention to the fact that culture was commonly used as an obstacle to women’s rights – in the name of culture, women were being denied certain rights. What this meant, in the end, was that culture was a right but that women’s rights were not respected.

35. Mrs. OESCHGER (Conference of International NGOs of the Council of Europe) considered that every human being in fact had a cultural wealth within him and that the cultural products of the poor or extremely poor had great value and must be protected.

36. The connection between the food crisis and the “cultural crisis” was a double one. First, there was a food crisis because people living in extreme poverty were not included in thinking about the ways to eliminate poverty; second, food crises were concealing the cultural crisis. That being the case, it was going to take several decades to conquer hunger, but there was a need right now to provide cultural assistance to the poor so that each could realize his human potential fully.

37. Mrs. AULA (International Catholic Child Bureau, BICE) said that people living in abject poverty should be enlisted in efforts to promote their access to culture. It was important to transmit and to understand, to pull together, and for everyone to be on a footing of equality in these efforts. The involvement and participation of vulnerable people, including children, were key elements here.

38. The CHAIRPERSON recalled that the Committee had always stressed the importance of the participatory approach, in particular when it came to fighting poverty.

Access to cultural heritage; arts and culture in the context of globalization

39. Mrs. DOFL-BONEKÄMPER (Freiburg Group) said that heritage was always a combination of elements and a social construction. It was not only tangible, but it was also assigned meaning. Its material and formal status could be defined against various criteria: local, legal, social, semantic and temporal.

40. The different elements of heritage, which could be studied according to this analytical grid, were museum objects, buildings and monuments, “intangible” heritage, heritage builders, and heritage communities.

41. While there were different criteria used in analyzing museum objects, the local criterion related to the location and origin of these objects, the legal criterion to the way they were acquired or appropriated and to ownership rights, the semantic criterion to those who defined the meaning of these objects.

42. Heritage communities were communities of individuals who had a sense of belonging to a heritage and formed a community around it. These communities had been defined by the recent Faro Convention adopted by the Council of Europe. The members of a heritage community had a shared responsibility for the preservation of that heritage.

43. In conclusion, the right to cultural heritage was complex, multiple and full of contradictions. It was a social construction which implied social choices.

44. Mr. SMIERS (Utrecht School of Fine Arts) said that the copyright system was the main obstacle to exercising the right to take part in cultural life. In fact, in our Western societies, individuals were forced to be passive consumers and no one had the right to intervene in the production, distribution and promotion of a work. Copyright protection prevented us all from being active consumers. On the other hand, a small number of extremely powerful cultural conglomerates had exclusive rights to hundreds of works and they controlled their production.

45. According to Mr. Smiers, the following measures were urgently needed: abolish copyright and royalties, dismantle the cultural conglomerates, and promote active freedom in the cultural domain. The suppression of copyright would allow thousands of small artists, who are now ignored by the culture industry, to express themselves freely and to share in the millions that were invested in popular mass culture. Normalizing the culture market would help establish equal rights for all. We would then see the appearance of a public domain for expression that was free to all. Finally, in the absence of copyright, everyone would regain the right to be an active citizen, to speak out against a work, and in this way to take part in cultural life.

46. Mr. MARCHAN ROMERO asked Mrs. Dolf-Bonekämper if she considered the beauty of the natural landscape as a cultural good deserving protection. He added that he assumed that Mr. Smiers’ critical remarks were aimed at the intellectual property regime and not at copyright royalties, which were closely linked to article 15, paragraph 1 (c) of the Covenant recognizing the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he was the author.

47. Mr. COURTIS (International Commission of Jurists) said that cultural goods could have a collective dimension and value, which meant that States had the special obligation to respect, protect and promote them. In his opinion, then, there was a collective right to participate in cultural life.

48. Mr. MEYER-BISCH (University of Freiburg) defined culture as a set of values and practices that a person chose as a reference. He preferred the notion of common property to that of collective right or collective property. It was individuals who made their communities and their works. Everyone was part of a social fabric. Works were resources that were necessary for individuals as a manifestation of what they really were.
49. Mr. NIMNI (Queen's University of Belfast) asked Mrs. Dolf-Bonekämper what she thought of so-called civilized societies that had built a portion of their culture by denying indigenous cultures, and even calling for their destruction.
50. Mrs. DOLF-BONEKAMPER (Freiburg Group), responding to Mr. Marchán Romero, said that the natural landscape was created in the eye of the beholder. It was a precious creation that clearly was the equivalent of a work of art. Even if it did not involve production as such, a landscape was a work worthy of protection. With respect to the notion of collective right, she recognized that the collective dimension of heritage must be taken into account by any State but, in her opinion, the individual must be at the heart of the right to heritage, recognizing that membership of a heritage was unlimited. In answer to Mr. Nimni, she noted that if the colonists had sometimes built their artistic heritage by destroying that of local peoples, it was nonetheless true that their heritage had a value. In Africa, for example, one might say that the cultural heritage was antagonistic because it was based on very different conceptions.
51. The CHAIRPERSON, speaking as a member of the Committee, found the ideas of Mr. Smiers very interesting, if provocative. In his opinion, the copyright regime should be revised rather than eliminated, for in the latter case it would be impossible to protect individual works.
52. Mr. SHABALALA (Center for International Environmental Law) said that in preparing its General Comment on the right to take part in cultural life, the Committee should not lump the intellectual property regime together with the right to participate in cultural life. He noted moreover that this General Comment would have great importance because it would influence the way other organizations, such as the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO), interpreted the right to take part in cultural life.
53. Mrs. DOMMEN (3-D) shared the viewpoint of Mr. Smiers concerning the elimination of copyright and its privileges, because these were frequently abused by their owners. In Africa, it was often impossible to publish works in a given local language because of copyright considerations and the complete lack of interest on the part of commercial publishing houses. Copyright provisions, then, limited the right of everyone to take part in cultural life.
54. Mr. SOW (Interdisciplinary Centre on Cultural Rights of the University of Nouakchott) said that in his opinion eliminating copyright would favour the plundering of African artistic works and the proliferation of copies, without any recognition of the artistic genius of local African communities.
55. Mr. SMIERS (Utrecht School of Fine Arts) said that the reproduction of copies did not necessarily detract from the value of the original work. He believed there was a real taboo attached to the copyright issue, and the idea that the copyright regime constituted protection for artists was in his view completely false. The financial and economic crisis showed that it was perhaps time to regulate the market in another way. Every artist should have access to the market and everyone should take part in cultural

life, but this was not now the case with the system of copyright. Works should fall into the public domain, and citizens should become once again active members of cultural life. In his opinion, in the absence of copyright, the market would operate more efficiently and no dominant firm could impose its artistic choices. Works would sell better, and they would all be on a footing of equality.

The meeting rose at 1.10 p.m.