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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Development and cultural rights: the international governance

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur in the field of cultural rights, Alexandra Xanthaki, submitted in accordance with Human Rights Council resolution [46/9](#).

* [A/78/150](#).



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

Summary

This is the second of two consecutive reports to the General Assembly presented by the Special Rapporteur in the field of cultural rights, Alexandra Xanthaki, addressing cultural rights in development frameworks. The Special Rapporteur emphasizes that international development and trade organizations are currently failing to respect cultural rights. The reasons she analyses include the rejection by some organizations of their responsibility to respect cultural rights, the lack of understanding of their scope and their linkage with the work of the organizations, and the predominance given to economic development or other interests. Although the Special Rapporteur acknowledges some progress, full implementation of these rights is still lacking. All entities need to work in a comprehensive and inclusive manner to ensure that cultural rights are not violated in development and trade frameworks, and that clear processes advance cultural rights in development, mitigate and prevent their violations, and guarantee effective participation and consultation according to international standards. States have an important role to play in ensuring that the organizations of which they are members endorse cultural development and respect cultural rights in all aspects of their work, so that truly no one is left behind.

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I. Introduction

1. Cultural rights are indispensable to sustainable development. Development can only be sustainable if it is both determined by and infused with the values of the people that it involves and the meanings they give to their existence, takes into consideration their aspirations, protects their resources and incorporates their heritage in all its dimensions – tangible, living and natural. A human rights approach with a strong consideration for cultural rights is both a framework for and a guarantee of success for any development agenda.

2. With respect to cultural rights, there are intrinsic links between the capacities of individuals to develop their own identities and give meaning to their lives, and the broader development processes of society. Both require individuals to have access to, enjoy and meaningfully participate in cultural resources, knowledge and decision-making processes that have an impact on their way of life. There is a continuum between the development of each person's identity and the development of communities, societies and, ultimately, entire nations.

3. In her report to the General Assembly at its seventy-seventh session (A/77/290), the Special Rapporteur laid out the principles that must guide the consideration of culture and the realization of cultural rights in development. She affirmed that sustainable development: (a) includes cultural development; (b) reverses inequalities and stereotypes through, inter alia, the adoption of positive measures;¹ (c) is self-determined and community-led, contextualized to specific cultural environments and seeking to fully align itself with the aspirations, customs, traditions, systems and world views of the individuals and groups most likely to be impacted; (d) is not a one-size-fits-all model; and (e) is a forward-looking, ever-evolving and ongoing process aimed at causing profound transformations in the current system, based on the ecology of knowledge.

4. In the report, the Special Rapporteur noted that these principles had unfortunately been largely sidelined in sustainable development strategies. Through wide consultations with civil society, it was made clear to the Special Rapporteur that the international governance system has an enormous role to play in integrating cultural rights into the development discussion and into the processes, procedures and practices relating to sustainable development., which is what the present report will address.

5. The development that all organizations should aspire to – in human rights terms, the right to development – is self-determined, and shaped by the various contexts, values and world views that individuals share in communities. It is therefore the closest levels of governance – at the local, city and community levels – that are best equipped to hear, adapt and respond to the concrete and specific aspirations for development of the inhabitants, and implement participatory, inclusive and democratic decision-making processes.² The global and international levels of

¹ See Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000), para. 12 (c) and (d); and general comment No. 13 (1999), para. 6 (c) and (d).

² Benin reported that, by increasingly aligning their projects with the national legal and strategic framework, international development and financial organizations helped to strengthen the capacities of cities to take into account the cultural dimension of local development. See the contribution of Benin (2022). See also United Nations Educational, Scientific and Cultural Organization (UNESCO), *Culture and Public Policy for Sustainable Development: Forum of Ministers of Culture 2019* (Paris, 2019), pp. 8 and 9 for the same conclusion. See also the contribution of Ecuador, the contribution of Ireland and the contribution of the United Cities and Local Governments Culture Committee. The contributions received are available on the webpage of the mandate and are referred to throughout the report by naming the submitting stakeholder. See <https://www.ohchr.org/en/calls-for-input/2023/call-inputs-report-cultural-rights-and-governance-development>.

governance, being further away from those participatory spaces, struggle to identify, recognize and include the diversity of all the relevant stakeholders, to grasp the sensitive relationships they may have with each other and their environment, and to adapt their highly standardized rules and mechanisms to meet the aspirations of those they intend to support.

6. To the knowledge of the Special Rapporteur, this is the first comprehensive attempt to analyse the linkages between development and trade organizations and cultural rights. In preparation for the present report, the Special Rapporteur conducted several meetings with experts and development practitioners and issued a questionnaire in March 2023. She thanks all those who have contributed for their insights.

Applicable international law and standards

7. The Special Rapporteur acknowledges that the main duty bearers for the realization of human rights, including cultural rights, are States. As members of the international organizations that are involved with development, they are the ones that should push for the elimination of all the obstacles, weaknesses and challenges identified in the present report concerning cultural rights in development, as well as for the full respect, protection and implementation of cultural rights through international development, in accordance with their international human rights obligations.³ The focus of the present report is not the human rights obligations of the specific organizations, although the Special Rapporteur concurs with the view of many, including the Committee on Economic, Social and Cultural Rights, that as entities of the United Nations, international organizations have the obligation to uphold human rights.⁴ She is encouraged to see international organizations endorse human rights, whether it be silently, pragmatically, indirectly, using different terminology, in a piecemeal way or wholeheartedly.

8. Cultural rights protect the right of each person individually, in community with others and collectively, to develop and express their humanity, their world views and the meanings they give to their existence and their development through, inter alia, values, beliefs, convictions, languages, knowledge and the arts, institutions and ways of life. Cultural rights also protect the cultural heritage of the individual and groups and the resources that allow such identification and development processes to take place.

9. In her most recent report to the General Assembly, the Special Rapporteur mentioned the main provisions of international human rights instruments in which the links between cultural rights and development are recognized, as well as the General Assembly resolutions that have repeatedly made the link between development and cultural rights.⁵ Those instruments remain the basis of her analysis.

³ See the contribution of Switzerland for an example of human rights integration in the international development and cooperation framework.

⁴ This position was stated multiple times by the Committee on Economic, Social and Cultural Rights in its general comments, statements and open letters. See for example, [E/C.12/2016/1](#), para. 8; and general comment No. 21 (2009), para. 76. For businesses, see general comment No. 24 (2017), para. 5; and the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, principle 11 ([A/HRC/17/31](#), annex).

⁵ General Assembly resolutions [65/166](#), [66/208](#), [68/223](#), [69/230](#), [70/214](#), [72/229](#) and [74/230](#).

II. Cultural rights and international governance: positive seeds

A. Department of Economic and Social Affairs

10. The General Assembly has explicitly and repeatedly recognized that cultural rights are important in the implementation of the Sustainable Development Goals, and that the international community should give consideration to the intersection of culture and sustainable development. In 2021, the Secretary-General affirmed that a key driver behind his proposals to reform the United Nations development system was the need for it to better tailor its response to the diverse needs, priorities and circumstances of programme countries. This came from a recognition that for too long, international development assistance, including from the United Nations, had advanced a one-size-fits-all approach and failed to appreciate the diversity of programme countries in terms of income levels, vulnerability, history, culture and more (A/75/905, para. 94).

11. In his report entitled “Progress towards the Sustainable Development Goals: towards a rescue plan for people and planet” (see A/78/80-E/2023/64, para. 56), the Secretary-General acknowledges the importance of culture in sustainable development but also the fact that it has been sidelined:

Culture is a global public good and a critical enabler and driver of progress towards the Goals. Culture serves as a source of knowledge, values and communication, as a contributor to environmental sustainability and as a generator of economic activity and jobs ... Culture and respect for cultural diversity, however, remain undervalued and underutilized in the push for Goals-related progress. Greater consideration of culture’s role in supporting the achievement of the Goals – including within relevant indicators – would generate an important boost for implementation of the Goals between now and 2030.

B. United Nations Educational, Scientific and Cultural Organization

12. The United Nations Educational, Scientific and Cultural Organization (UNESCO) has long been promoting the protection of culture and several of its instruments recognize the importance of culture in development processes. In 2019, UNESCO published a report entitled *Culture and Public Policy for Sustainable Development: Forum of Ministers of Culture 2019*, which contains an overview of the policies, trends and perspectives of cultural policies in the light of the challenges of sustainable development. According to the report, “the purpose of cultural policies is now to promote respect for human rights”⁶ and the missions and prospects of UNESCO are reviewed in this context. It includes information about how the UNESCO standard-setting texts were adapted to better respond to development challenges and explicit recognition of the link between culture and sustainable development.⁷

13. Earlier UNESCO instruments for the protection of heritage did not originally mention an explicit connection between heritage protection and development. However, subsequent interpretations of the texts highlight how they are connected to several Sustainable Development Goals. For example, in the operational guidelines for the Convention for the Protection of the World Cultural and Natural Heritage, it

⁶ UNESCO, *Culture and Public Policy for Sustainable Development: Forum of Ministers of Culture 2019*, p. 7.

⁷ *Ibid.*, pp. 12–16.

is noted that “the protection and conservation of the natural and cultural heritage constitutes a significant contribution to sustainable development”.⁸ “States are encouraged to mainstream into their programmes and activities related to the World Heritage Convention” the UNESCO and United Nations policy documents on sustainable development”.⁹

14. The Convention for the Safeguarding of the Intangible Cultural Heritage is more forthcoming in stating the link between intangible heritage and sustainable development. In its preamble, the importance of intangible cultural heritage is underlined as a guarantee of sustainable development. In article 2.1, it is stipulated that consideration will be given solely to such intangible cultural heritage as is compatible with, inter alia, sustainable development. In chapter VI of the operational directives for this Convention, States parties are advised on how to strengthen the role of intangible heritage as a lever and guarantor of sustainable development and how to integrate the safeguarding of living heritage into the States’ development plans, policies and programmes.¹⁰ The Convention also emphasizes the importance of the participation of individuals and groups concerned in the implementation of these development strategies, as the primary beneficiaries.¹¹ In identifying elements to be inscribed on the Representative List of the Intangible Cultural Heritage of Humanity, criteria R.2 requires the indication of how the nominated element contributes to sustainable development.¹²

15. According to article 2 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions and its operational guidelines, the cultural aspects of development are as important as its economic aspects and cultural diversity is an essential requirement for sustainable development. Article 13 of the Convention contains a call for the integration of culture into development policies, making it an explicit binding commitment by States on the matter¹³ that has been reflected in the monitoring framework of the Convention.

16. Several projects at UNESCO promote the usage of culture for sustainable development. Attention must always be given to whether all phases of such projects adhere to all elements of cultural rights. Knowledge of such dynamic and evolving standards is important, as are time, space and specialist resources to ensure that such standards are applied. States have an essential role to play within the UNESCO structure to push for such standards, as part of their binding human rights obligations.

17. UNESCO has recently tried to improve the visibility of cultural rights in development. The UNESCO World Conference on Cultural Policies and Sustainable Development celebrated cultural policies for and in development. The Mondiacult Declaration and the subsequent UNESCO Executive Board decision refer explicitly to cultural rights and emphasized the call extended to the Secretary-General to integrate culture as a stand-alone goal in its own right in the development agenda beyond 2030.¹⁴ Paragraph 10 of the Mondiacult Declaration commits the Ministers of

⁸ See the contribution of the International Council on Monuments and Sites regarding the integration of a human rights approach into their methods of work. See also the contribution of the Commissioner for Fundamental Rights of Hungary and UNESCO, *Operational Guidelines for the World Heritage Convention* (Paris, 2021), para. 6.

⁹ Ibid., para. 14bis.

¹⁰ UNESCO, *Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage* (Paris, 2022).

¹¹ Ibid., paras.170–173 and 175, as well as chaps. VI.1 Inclusive social development; VI.2 Inclusive economic development; VI.3 Environmental sustainability; and VI.4 Intangible cultural heritage and peace.

¹² Ibid., para. 39.2 (b).

¹³ Contribution of Véronique Guèvremont.

¹⁴ UNESCO, Executive Board, decision 216 EX/11, para. 3.

Culture to foster an enabling environment conducive to the respect and exercise of all human rights, in particular cultural rights, individual and collective. This is an important step forward, as it could potentially strengthen the integration of cultural rights into sustainable development policies across all Goals; and also, because it acknowledges both individual and collective cultural rights.

18. The Declaration has opened up strategic areas of policy engagement for the future, including in terms of cultural rights. The States' commitment in the Mondiacult Declaration to support inclusive access to culture and participation in cultural life, strengthen the economic rights of artists, protect and promote artistic freedom, protect diversity, implement legal and policy frameworks, and expand efforts to promote the protection, return and restitution of cultural property, are all encouraging signs. In the structure of UNESCO, where civil society has more limited involvement than in the United Nations human rights system, States need to be committed to including the implementation of cultural rights in the work of UNESCO. Now is the time for specific actions towards achieving such commitments.¹⁵

19. The close collaboration between UNESCO and the Special Rapporteur could be used as part of efforts to interpret UNESCO conventions in a manner that is consistent with all aspects of cultural rights.

C. World Intellectual Property Organization

20. The mandate of the World Intellectual Property Organization (WIPO) is to enable all countries to use intellectual property for economic, social and cultural development. Its work is closely linked with cultural rights, as it focuses both on protecting the rights of the authors, creators and inventors to their cultural and scientific productions, and on increasing fair, inclusive and effective access to these resources and knowledge for all.¹⁶ The work of WIPO includes: (a) the preservation and safeguarding of cultural heritage; (b) the promotion of cultural diversity; (c) respect for cultural rights; and (d) the promotion of creativity and innovation as ingredients of sustainable economic development.¹⁷ Through the Traditional Knowledge Division, WIPO also focuses on the protection of traditional cultural expressions and expressions of folklore.¹⁸

21. The work of WIPO is consistent with cultural rights as it recognizes that the protection of traditional cultural expressions does not fit a one-size-fits-all approach and that States should provide different options, including the adaptation of existing international property systems to include Indigenous cultures, the establishment of sui generis intellectual property systems and solutions beyond intellectual property law such as cultural heritage preservation laws, customary and Indigenous laws, trade policies and the use of contracts.¹⁹

¹⁵ See UNESCO, Executive Board decision 216 EX/11 for the action points of UNESCO.

¹⁶ For more on this analysis, see the dedicated thematic work of the special procedures mandate holder on the impact of intellectual property regimes on the right to science and culture, available at www.ohchr.org/en/special-procedures/sr-cultural-rights/impact-intellectual-property-regimes-enjoyment-right-science-and-culture. For an example of negative impact due to sanctions, see the contribution of the Organization for Defending Victims of Violence.

¹⁷ World Intellectual Property Organization (WIPO), *Consolidated Analysis of the Legal Protection of Traditional Cultural Expressions/Expressions of Folklore* (2003), p. 9.

¹⁸ The terms "traditional cultural expressions" and "expressions of folklore" are used interchangeably by WIPO. For an overview of the work of WIPO on these matters, see Silke von Lewinski, "Genetic resources, traditional knowledge and traditional cultural expressions", in *Research Handbook on the World Intellectual Property Organization: The First 50 Years and Beyond*, Sam Ricketson, ed. (Cheltenham, United Kingdom, Edward Elgar, 2020), p. 243.

¹⁹ WIPO, *Intellectual Property and Traditional Cultural Expressions/Folklore* (Geneva, 2005), p. 15.

22. The Special Rapporteur is encouraged to see the progress in the WIPO approach to development but notes the lack of framing of that approach in terms of cultural rights. The Committee on Development and Intellectual Property has just updated a review of implementation strategies and modalities for development²⁰ and an independent review of the technical activities is being discussed.²¹ This opens possibilities for more engagement with the cultural dimension of development, for endorsing the current wider understanding of cultural resources that goes beyond traditional expressions and for renewed interest in a more comprehensive vision of identifying and minimizing the negative impacts of WIPO activities and implementation on cultural rights, both individual and collective.

D. World Bank

23. Although serious concerns have been raised concerning projects funded by the World Bank and their effect on cultural rights, the World Bank has made considerable progress over the past decade in addressing these concerns in its standards and better reflecting cultural rights. In August 2016, the Bank adopted a new set of environmental and social policies called the Environmental and Social Framework, which came into force in 2018. According to the vision statement of the Framework, the activities of the Bank will support the realization of human rights expressed in the Universal Declaration of Human Rights. This represents a major opportunity, even if human rights are not explicitly referred to in the operational work of the Bank. With respect to cultural rights, the reference to the Universal Declaration of Human Rights is important as it commits the Bank to support the realization of cultural rights, as stated in article 27.

24. The 10 Environmental and Social Standards of the Environmental and Social Framework²² relate to cultural rights in several ways and sometimes go quite far in protecting them. For example, Standard 7, entitled “Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities” explicitly recognizes a cultural dimension of development: “the development process fosters full respect for the human rights, dignity, aspirations, identity, culture, and natural resource-based livelihoods” of these peoples/communities. The Bank also requires the free, prior and informed consent of Indigenous Peoples when the project has a significant impact on their cultural and spiritual heritage, and a grievance mechanism which is culturally appropriate and accessible to affected Indigenous Peoples.

25. In addition, Standard 8 recognizes that “cultural heritage, in its many manifestations, is important as a source of valuable scientific and historical information, as an economic and social asset for development, and as an integral part of people’s cultural identity and practice.” It sets out measures designed to protect heritage throughout the project life cycle from the adverse effects of its activities, to support its preservation and specifically “to address cultural heritage as an integral aspect of sustainable development”. The standard requires meaningful consultation with stakeholders on heritage and the equitable sharing of benefits from its use.

26. Given their role in supporting development through financing large infrastructure projects, multilateral development banks are key stakeholders in defining, driving and monitoring the sustainable development process. The recognition by the World Bank of the link between culture and development and its push to protect cultural rights is an important one.

²⁰ WIPO, document CDIP/29/6.

²¹ WIPO, document CDIP/30/3.

²² World Bank, *The World Bank Environmental and Social Framework* (Washington, D.C., 2017).

27. Notwithstanding the effort that the World Bank has put into addressing ongoing criticism, it is important to continuously review whether, in practice, the standards are implemented and clear redress avenues are accessible.

E. World Trade Organization

28. The World Trade Organization (WTO) serves as the bedrock of the multilateral trading system with the overarching objective of regulating and liberalizing trade. WTO provides a set of trade rules and a forum for negotiating trade agreements and resolving disputes among its member states. Unlike the World Bank and International Monetary Fund (IMF), WTO is not a specialized agency of the United Nations, but it is tasked with cooperating with both organizations in the spirit of economic coherence and development.²³

29. WTO continues to be subject to consistent human rights critiques to the effect that the trade organization facilitates and encourages human rights violations.²⁴ Even when WTO rules and agreements successfully facilitate economic growth and development, they can contemporaneously infringe on human rights, including cultural rights. These critiques have only intensified in recent years, including with respect to the intellectual property rights barriers presented by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in securing equal access to coronavirus disease (COVID-19) vaccines.²⁵

30. Although WTO lacks an explicit human rights mandate, at an organizational level, its activities are linked to human rights, as was recognized by the former Director-General of WTO, Pascal Lamy.²⁶ It remains, like other international organizations, bound by any obligation incumbent upon it under general rules of international law. It is therefore obligated to comply with human rights, that are part of customary international law and of the general principles of law.²⁷

31. Generally, there is limited scope for the protection of cultural rights under WTO law. Article XX of the General Agreement on Tariffs and Trade allows states to derogate from obligations under the Agreement and adopt measures for the protection of national policy goals, including “the protection of national treasures of artistic, historic or archaeological value”.²⁸ Article IV also provides an exception for cinematograph films in the form of “screen quotas”.

32. The WTO perceives culture as “goods” or “services”; the preservation of cultural identity, participation in cultural life and access to heritage can only be protected by individual States, to the extent that they produce economic value. Limits to the scope of trade liberalization in cultural industries do not take into account the

²³ According to article III of the Marrakesh Agreement Establishing the World Trade Organization (Marrakesh, 15 April 1994, entered into force 1 January 1995), United Nations, *Treaty Series*, vol. 1867, No. 31874.

²⁴ See, for example, Sarah Joseph, *Blame it on the WTO?: A Human Rights Critique* (New York, Oxford University Press, 2013); and Padideh Ala'i, “A human rights critique of the WTO: some preliminary observations”, *Articles in Law Reviews and Other Academic Journals*, paper 303 (2001).

²⁵ Committee on the Elimination of Racial Discrimination, “Statement on the lack of equitable and non-discriminatory access to COVID-19 vaccines” (2022).

²⁶ Pascal Lamy, “Towards shared responsibility and greater coherence: human rights, trade and macroeconomic policy”, Colloquium on Human Rights in the Global Economy, Geneva, 13 January 2010.

²⁷ Committee on Economic, Social and Cultural Rights, [E/C.12/2016/1](#), para. 7. See also, Marrakesh Agreement Establishing the World Trade Organization.

²⁸ Art. XX (f), General Agreement on Tariffs and Trade (Geneva, 30 October 1947, provisionally applied since 1 January 1948), United Nations, *Treaty Series*, vol. 55, No. 814, p. 187.

protection of the cultural rights of individuals, local communities or Indigenous Peoples. This represents a departure from the way cultural rights and cultural diversity are conceptualized under international human rights law, and as such, from the emerging attention of international organizations on sustainable development.

F. International Monetary Fund

33. Contrary to the previous organizations mentioned, in the case of the IMF, one struggles to find any attempt to address cultural rights even indirectly, quietly or partially. IMF currently has 190 member countries and IMF membership is a prerequisite for membership in the World Bank.²⁹ Pursuant to its Articles of Agreement, the stated purpose of IMF is to promote international monetary cooperation, facilitate the expansion and balanced growth of international trade, promote exchange stability and maintain orderly exchange arrangements among members, among other functions.³⁰ It plays a crucial role in the global economy by promoting economic stability, providing financial assistance, offering technical expertise and fostering international cooperation.

34. While originally positioned as strictly a monetary agency, the focus of IMF has gradually migrated to development concerns and objectives, and in 2019 its work on social policy was strengthened.³¹ The activities of IMF are significantly related to human rights, including cultural rights. The former Special Rapporteur on extreme poverty and human rights, Phillip Alston, remarked that IMF was the “single most influential international actor not only in relation to fiscal policy, but also to social protection” (A/HRC/38/33, para. 55). IMF refutes the link between its policies and human rights, let alone cultural rights.³² This is despite its position as a specialized, independent agency of the United Nations, and the voices that stress that it must adhere to the Charter of the United Nations and is otherwise bound by international law.³³

35. Cultural rights are highly relevant to the macroeconomic functions of IMF, and its lending can have indirect implications for cultural rights. For instance, State austerity measures required as a condition of IMF financing in the aftermath of the 2008 global financial crisis have been described as having “profound and long-lasting adverse effects on human rights”.³⁴ The Committee on Economic, Social and Cultural Rights has been clear in highlighting the adverse effects that austerity often has on the rights to work, food, housing and social protection, among others.³⁵ Austerity measures have not only violated economic and social rights, but also cultural rights, including through funding cuts to cultural institutions, infrastructure and programming.³⁶

²⁹ See www.worldbank.org/en/about/history/the-world-bank-group-and-the-imf (accessed 16 June 2023).

³⁰ International Monetary Fund (IMF), *Articles of Agreement of the International Monetary Fund* (1944), available at www.imf.org/external/pubs/ft/aa/index.htm (accessed 16 June 2023).

³¹ IMF, “A Strategy for IMF Engagement on Social Spending”, Policy Paper (2019).

³² Viljam Engström, “Social protection in the mandate of the IMF”, *International Journal of Human Rights* (2022), pp. 1–21.

³³ Daniel D. Bradlow, “The World Bank, the IMF, and human rights”, *Transnational Law & Contemporary Problems*, vol. 6, no. 47 (1996), p. 63.

³⁴ Juan Pablo Bohoslavsky and Francisco Cantamutto, “Not even with a pandemic: The IMF, human rights, and rational choices under power relations”, *Human Rights Quarterly*, vol. 44, no. 4 (2022), pp. 759 and 760.

³⁵ See E/C.12/2016/1.

³⁶ See Bethany Rex and Peter Campbell. “The impact of austerity measures on local government funding for culture in England”, *Cultural Trends*, 31 (3) (2022), pp. 1–24.

36. The organization continues to ignore the obvious, that fiscal and social policies rely a great deal on the priorities, visions and values that people have, and are shaped by their cultural understandings. Article 4 (3) of the Articles of Agreement states that IMF “shall respect the domestic social and political policies of members”. These policies presumably include State human rights commitments, including cultural rights obligations. Recently, IMF has adopted explicit policies and statements on subjects such as gender³⁷ and climate change.³⁸ Hopefully, this indicates an evolving practice that increasingly touches on human rights.

III. Persistent challenges

A. The cultural dimension of sustainable development is still not recognized in discussions

37. A persistent fundamental challenge is the vision that development can happen mainly through the liberalization of trade. The economic dimension of development still overwhelmingly takes up all the space in international governance. The cultural dimension is still invisible, even in the myriad of current discussions and debates, reports, counter-reports, initiatives, programming and actions.

38. This is particularly regrettable in the discussion of the Sustainable Development Goals. There have been many voices highlighting the omission of culture in implementing the Goals, but so far, the difference they have made is limited. In 2021, several members of the #Culture2030 Network noted that culture is an underused accelerator for the implementation of the Goals, both for short-term recovery and long-term sustainable development.³⁹

39. The forthcoming 2023 *Global Sustainable Development Report* does not demonstrate any understanding of the cultural dimension of development. The quadrennial report, drafted by an independent group of scientists appointed by the Secretary-General and supported by a task team of six entities (Department of Economic and Social Affairs, United Nations Conference on Trade and Development, United Nations Development Programme, United Nations Environment Programme, UNESCO and the World Bank), fails to address the importance of cultural frameworks in realizing sustainable development. Interestingly, in the report it is noted that: “a better future does not rest on one source of security, but on all necessary securities, including geopolitical, energy, climate, water, food and social security”.

40. A better future is of course also dependent on cultural security. Strategies to embrace transformation should integrate the principles of cultural understanding as well as respect for cultural diversity.⁴⁰ The *Global Sustainable Development Report* does not bring culture into the discussion of women’s empowerment, or technology and knowledge. The literature from the Department of Economic and Social Affairs on the Goals favours “activities [that] seek to promote cross-cutting approaches and value of stakeholder engagement in planning and decision-making”,⁴¹ but cultural rights are not addressed in any depth.

³⁷ IMF, *IMF Strategy Toward Mainstreaming Gender*, Policy Paper No. 2022/037 (2022).

³⁸ IMF, “IMF Strategy to Help Members Address Climate Change Related Policy Challenges – Priorities, Modes of Delivery, and Budget Implications”, Policy Paper No. 2021/057 (2021).

³⁹ See <https://sdgs.un.org/events/accelerator-under-used-realising-potential-culture-short-term-recovery-and-long-term>.

⁴⁰ Contributions of Chile, annex 1; International Federation of Library Associations and Institutions (2023); Italy; Larsen, Haller and Kothari.

⁴¹ See <https://sdgs.un.org/topics/capacity-development>.

41. Important voices keep cautioning that the omission of culture and cultural rights from the implementation of the Goals is problematic. In June 2023, this omission was acknowledged in the preparatory meetings for the Sustainable Development Goals Summit, during discussions on the draft political declaration to be adopted during the Summit to be held in September 2023. Hopefully, the outcome will bring balance to the discussions and recognize the importance of the cultural dimension of development, being at least on the same level as social development.

42. Cultural development is completely absent from the TRIPS Agreement, the multilateral agreement that provides the minimum standards of intellectual property protection. No attention is paid to the protection of cultural rights, traditional cultural expressions and traditional knowledge. There are no special carve-outs from TRIPS obligations permitted on these matters. United Nations bodies and the Office of the United Nations High Commissioner for Human Rights have repeatedly urged WTO and its member States to take into account cultural rights in the implementation of the TRIPS Agreement.⁴² As highlighted by a previous Special Rapporteur in the field of cultural rights, the obligations of States under intellectual property treaties must not jeopardize the implementation of their obligations under human rights treaties (see [A/70/279](#), para. 89).

43. Cultural development is completely absent from IMF discussions. Not many development projects focusing on cultural development are funded by the World Bank. The organization would counter-argue that States do not ask for projects that focus on the cultural dimension of development, and unfortunately, a survey of the reviews that States have submitted to the Department of Economic and Social Affairs on sustainable development supports such an argument.

B. Cultural rights are still not explicitly addressed in and linked to development

44. On the rare occasions when international organizations include the cultural dimension of development, they do not discuss nor acknowledge cultural rights, even if, indirectly, their work relates to them. The references to cultural rights in the Mondiacult Declaration have renewed the commitment of States to include cultural rights in their cultural policies; now is the time for States to also put cultural rights at the core of and throughout their development plans. In the national voluntary reports⁴³ discussed during the high-level political forum on sustainable development convened under the auspices of the Economic and Social Council held in July 2023, there is no link made between “cultural diversity” (Chile), “social cohesion” (Burkina Faso), “well-being” (Cambodia), “official language of minority communities” (Canada), “universality of human rights” (European Union), “changes in behaviours and lifestyles” (France), “cultural exchange” (Kuwait), “inclusive society” (Singapore), and cultural rights.

45. States also have to prioritize projects that put cultural rights at the centre of development and, where necessary, submit them for funding to financial and development agencies. It was reported to the Special Rapporteur that it was hard to convince Governments to borrow for social and cultural development initiatives. International trade and development agencies can only fund the projects submitted to them. If States do not put forward projects that protect the diversity of cultural values and ways of life as part of development or strengthen the capacities of the cultural

⁴² See [E/CN.4/Sub.2/2001/13](#), para. 65; [E/CN.4/Sub.2/2002/9](#); and [E/CN.4/Sub.2/2003/9](#). See also [A/70/279](#), paras. 96 and 107.

⁴³ Available at <https://hlpf.un.org/countries>. See also the contributions of the Russian Federation and Turkmenistan.

sector to ensure everyone's right to take part in cultural life, then such projects will not be funded, and the cultural dimension of development will remain undermined.

46. Although the implementation of development programmes and strategies should respect all human rights and avoid having a negative impact on their enjoyment and ability to be exercised by all, none of the existing planning and monitoring mechanisms for their implementation have a systematic human rights impact assessment. It is left to States and to development agencies to analyse their development work and methodologies in terms of human rights.

47. At the World Bank, this translates into a partial approach to human rights: they are mentioned in the principles and guidelines, but only some of them are truly operationalized in the Environmental and Social Standards. With respect to the rest, the World Bank seeks to avoid adverse impacts and support its member countries as they strive to progressively achieve their human rights commitment.

48. The policies of WIPO are aligned with cultural rights, but do not explicitly integrate them. The 2007 recommendations under the WIPO Development Agenda,⁴⁴ important as they may be in internalizing cultural rights, do not mention them when referring to inclusive and participatory processes, the protection of traditional knowledge and folklore and further access to knowledge.⁴⁵ The independent review of the implementation of the Development Agenda recommendations, in 2016, was a missed opportunity to discuss the effects of the work of WIPO on cultural development and cultural conditions.⁴⁶ The 2023 report on the contribution of WIPO to the implementation of the Goals and their associated targets still does not refer to the cultural dimension of development, nor does it discuss the impact of WIPO development work on cultural resources. In addition, WIPO initiatives only address specific issues, mainly the traditional knowledge and heritage of Indigenous Peoples and local populations. In limiting the scope of culture, they also limit the scope of cultural rights.

49. Culture, as recognized in General Assembly resolution 76/214, represents a source of identity, innovation and creativity for individuals and their communities. Cultural development, from a human rights perspective, encompasses the development of each person's identity, individual and collective, and of their ability to contribute to innovation and express their creativity; the development of practices, ideas and philosophies that can be shared and used in developing other aspects of the individual and groups; and the development of material resources, spaces and conditions that allow the exercise of everyone's right to take part in cultural life and in the decision-making processes that have an impact on it. Focusing only on the cultural development of the most marginalized or with only a heritage perspective limits the potential transformation that can be achieved through a comprehensive understanding of cultural development and rights.

50. In general, one has to bear in mind that although some organizations have declared a welcoming focus on cultural rights, there remain crucial questions about the models that some of these bodies pursue, and whether these lead to the needed paradigm shift.⁴⁷

⁴⁴ Available at www.wipo.int/ip-development/en/agenda/recommendations.html.

⁴⁵ See recommendations 27 and 35.

⁴⁶ WIPO, Committee on Development and Intellectual Property, *Report on the Independent Review of the Implementation of the Development Agenda Recommendations, Eighteenth Session* (CDIP/18/7 (2016)).

⁴⁷ Contribution of International Federation of Library Associations and Institutions (2022).

1. Lack of cultural rights impact assessments

51. Whereas businesses and civil society organizations⁴⁸ benefiting from development aid might be asked to conduct human rights and environmental impact assessments of their projects to justify their funding, the same due diligence requirement does not exist for international organizations. International development and trade organizations seldom have human rights impact assessments, let alone cultural rights impact assessments.

52. Currently, conditionalities placed on IMF loans do not include any sort of human rights impact assessments prior to financing. The potential impact the loan may have on cultural rights is not contemplated prior to lending, even though the organization yields an incredible amount of leverage in what types of policy decisions States must take in order to receive financial assistance.⁴⁹ Still, in the IMF Guidelines on Conditionality, it is explicitly stated that “if feasible and appropriate, any adverse effects of program measures on the most vulnerable should be mitigated”.⁵⁰

53. The World Bank has provided information that demonstrates a shift to requiring impact assessment elements that include cultural rights, but this has happened very recently and does not yet apply to many existing projects. In addition, the urgency of starting projects and collaboration with private bodies are significant barriers to a thorough impact assessment of the projects on cultural rights.

2. A piecemeal cultural rights framework

54. Another consequence of the absence of direct references to cultural rights in development agendas is that the relevant framework for their implementation cannot be integrated into all the relevant phases. Accordingly, what we witness is a piecemeal approach, where cultural rights are referred to after the project is completed, or in some specific initiatives, but not as a general approach guiding the elaboration, implementation and evaluation of actions or policies.

55. One can see this in the piecemeal approach of WIPO or even UNESCO to cultural rights in development. A further example is the market-based model of the Office of the United Nations High Commissioner for Refugees, initiative MADE51, which supports the capacities of refugees to develop and maintain their artisanal skills and crafts, create cooperation and integrate a meaningful value chain.⁵¹ This initiative managed to leverage the exercising of refugees’ cultural rights, their knowledge, know-how and heritage, to contribute to the kind of development that they could see themselves in and could fully contribute to. It does not, however, form part of a systematic policy of the Office relating to project elaboration and support, and therefore may not be sustainable.

⁴⁸ Contributions of Cultural Relief Initiatives, Curating Tomorrow and Comisión Nacional Derechos Humanos de México.

⁴⁹ Juan Pablo Bohoslavsky, “Complicity of International Financial Institutions in violation of human rights in the context of economic reforms”, *Columbia Human Rights Law Review*, vol. 52, 2020, p. 203.

⁵⁰ See IMF, *Revised Operational Guidance to IMF Staff on the 2002 Conditionality Guidelines* (2014).

⁵¹ See www.made51.org.

C. The cultural sector is not just an economic asset

56. Culture and trade are often described as being in inherent conflict with one another.⁵² This recognizes a tension that exists between preserving cultural diversity and liberalizing trade in certain areas. Some of the challenges associated with commercialization and the right to take part in cultural life have been addressed in previous reports, including the misappropriation or distortion of cultural expressions for commercial purposes⁵³ and the constraining of cultural diversity and cultural traditions brought about by the dominance of commercial advertising and marketing.⁵⁴ Similar risks manifest themselves in the realm of international trade, which prioritizes economic development over cultural and diversity considerations.⁵⁵

57. Neither under the General Agreement on Tariffs and Trade, nor under the General Agreement on Trade in Services is there a “cultural exception” clause that would allow States parties, representing the whole of the population, to derogate from their obligations to liberalize trade in services to protect cultural rights. States are permitted to exclude some sectors from their specific commitments to national treatment and market access under the General Agreement on Trade in Services⁵⁶ and have relied on this flexibility to carve out some policy space for the protection of cultural industries, for example, through the provision of subsidies, quotas or restricting market access to foreign service providers. In some trade agreements, issues of culture are only indirectly addressed through the clauses that carve out space for States to pursue their cultural policies, through the protection of commercial activity in cultural industries. Moreover, States have opted to include limited provisions relating to cultural heritage and traditional knowledge in trade agreements.⁵⁷ As those provisions depend on individual State policies and negotiation outcomes in the context of trade agreements, which are often very harsh, their scope and content lack the coherence and consistency necessary to protect universal human rights. Some recent good practices that include broad exceptions for the protection of cultural industries and Indigenous traditional knowledge in trade agreements include the United States-Mexico-Canada Agreement, the Comprehensive Economic and Trade Agreement between Canada and the European Union and its member States, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership and the Regional Comprehensive Economic Partnership.

58. UNESCO has pushed for development projects where the cultural sector contributes in a non-economic manner.⁵⁸ Notably, since 2019, the UNESCO Art Lab for human rights and dialogue, in collaboration with Office of the United Nations High Commissioner for Human Rights, has supported projects involving humanitarian and development agencies that allow marginalized individuals or communities to assert their voices and claim their role as stakeholders in development

⁵² See, for example, Ivan Bernier, “Trade and culture” in Patrick FJ Marcory, Arthur E Appleton and Michael G Plummer, eds., *The World Trade Organization: Legal, Economic and Political Analysis* (2005), p. 2331; and Patricia M Goff, “Trade and culture: the ongoing debate”, *International Journal of Cultural Policy*, vol. 25 (2019), p. 547.

⁵³ See [A/HRC/28/57](#).

⁵⁴ See [A/69/286](#).

⁵⁵ See Achilles Skordas, Gábor Halmai and Lisa Mardikian, eds., *Economic Constitutionalism in a Turbulent World* (Elgar Publishing, 2023).

⁵⁶ Specific commitments relate to providing market access and not discriminating against foreign service providers (national treatment rule).

⁵⁷ Susy Frankel, “Attempts to protect Indigenous culture through free trade agreements” in Christoph Graber, Karolina Kuprecht and Jessica Lai, eds., *International Trade in Indigenous Cultural Heritage* (Edward Elgar, 2002), p. 118.

⁵⁸ Positive examples at the national and regional levels: the contributions of Brazil, Chile (annex 1), European Union, Mauritius; and negative example: contribution of Association Djazairouna.

priorities. The contribution of this and similar initiatives⁵⁹ to the achievement of development goes far beyond the creation of economic wealth that could be measured by the salary of the artists and facilitators involved. Avenues need to be found for such relevant initiatives to be included and accounted for in the international development apparatus.

D. International organizations fail to respect cultural rights

59. Since cultural rights are not explicitly addressed nor fully understood, they are very often disregarded in the work of international development and trade organizations.

60. The one-size-fits-all economic policies of IMF hinder the enjoyment of the rights of communities to implement their philosophies and priorities and often have deep and lasting adverse effects on cultural rights and on the levels of inequality in the populations of debtor countries. The liberalization policies of IMF have often required that borrowers privatize the ownership of social service industries. In sub-Saharan Africa, these policies resulted in increased tuition fees for schools, with no exemption for poor or vulnerable populations, often leading to the exclusion of women and girls.⁶⁰ The IMF Strategy Toward Mainstreaming Gender (2022) acknowledges widening gender disparities, and that allowing communities to lead processes could have avoided such effects.⁶¹ In addition, the widespread effects of IMF conditionality policies disproportionately fall on the cultural sector, which is often considered a luxury. When investments in institutions are reduced, cultural institutions are usually the first to be cut.⁶²

61. In some countries, special economic zones have been promoted by the United Nations Development Programme, the United Nations Conference on Trade and Development and the World Bank as effective mechanisms for facilitating economic growth, despite violations of the cultural rights of concerned populations.⁶³ It is reported that some development projects in China that claimed to boost tourism and local cultural resources have been conducted without consultation with, the free, prior and informed consent of, or the sharing of the benefits with the populations concerned, resulting in a commodification of local heritage and a misuse of UNESCO heritage instruments.⁶⁴

62. The World Bank has acknowledged negative impacts on cultural rights in several projects. For example, a hydroelectrical project financed by the World Bank that severely affected the cultural identity and heritage of the community members living in Chamoli District, Uttarakhand, in India, has shown the importance of

⁵⁹ Contributions from the Dominican Republic; International Organization for Migration; Cox's Bazar (Bangladesh); and International Teaching Artist Collaborative.

⁶⁰ See Fatma Osman Ibnouf, "Impact of the World Bank and IMF policies on rural women's human rights in Sub-Saharan Africa", *Agenda: Empowering Women for Gender Equity*, No. 28 (2008), p. 32.

⁶¹ IMF, *Strategy Toward Mainstreaming Gender*, p. 6.

⁶² See the contribution of Observatorio Nacional de Derechos Humanos (Bolivarian Republic of Venezuela).

⁶³ See the contribution of Natural Justice and Earthlife Africa (2022). See also Lara Domínguez and Colin Luoma, "Decolonising conservation policy: how colonial land and conservation ideologies persist and perpetuate Indigenous injustices at the expense of the environment", *Land*, vol. 9, no. 3 (2020), p. 65.

⁶⁴ See the contribution of the International campaign for Tibet. See also Uyghur Human Rights project, available at <https://uhrp.org/report/the-complicity-of-heritage-cultural-heritage-and-genocide-in-the-uyghur-region/>.

implementing the Environmental and Social Standards.⁶⁵ The Bank recognized that the transmission line had indeed affected the cultural identity and heritage of the local population, who were not informed nor consulted. The project adversely affected homes, schools, cultural and religious sites, agricultural lands, the environment, and economic activities, and threatened their health and safety as well as the ability of the local populations to maintain and improve their livelihoods.⁶⁶ In Kenya, the World Bank accepted the State definitions of “Indigenous Peoples” that excluded the Cherangany people, resulting in the denial of their rights.⁶⁷ The Bank must ensure that its standards always apply and are informed by international human rights principles and definitions.

63. The Bank’s opaque system as well as the challenging procedures to file complaints sometimes act as an additional burden in identifying cultural rights violations. Many affected populations have to rely on more knowledgeable intermediaries to take their concerns further. Most of these civil society intermediaries do not specialize in cultural rights, so these issues are underrepresented compared with environmental issues or Indigenous issues. In addition, relying on intermediaries results in a double unequal power situation: with respect to the World Bank, and to the civil society intermediary, often also operating at the international level. The agency of communities to claim their cultural rights is correspondingly weakened.

E. Ensuring participation and consultation

64. A prerequisite of a human rights approach is to ensure wide participation and the meaningful involvement of all concerned parties in relevant decisions. For the international governance of development, this continues to be a challenge, as it operates at a level that tends to be further from the local dynamics. The standards for participation applied across development agencies are not consistent and often fall short of international standards: some only demand simple consultation or consent; others require the free, prior and informed consent, while others still are content with free, prior and informed consultation. International human rights law is very clear on the requirement of free, prior and informed consent in relation to projects that directly affect Indigenous and local communities. Trade organizations must ensure that the standards apply, that their staff know and require their application, and that clear and structured processes exist to ensure their effective implementation. Failing to meet such standards must mean the interruption of the project.

65. For example, between 2020 and 2022, the Intangible Cultural Heritage Fund of UNESCO supported a community-based inventory of living heritage in Albania,⁶⁸ a methodology in line with a human rights approach and suitable for the exercise of cultural rights. There are still instances, however, in which the work of UNESCO does not meet the standard of free, prior and informed consent of Indigenous Peoples but remains at the level of consultation.⁶⁹ In the Mondiacult Declaration, States affirmed their commitment to implement frameworks that uphold collective cultural identity, heritage rights and Indigenous rights,⁷⁰ but the Declaration does not emphasize the necessary participation of Indigenous Peoples in this endeavour, which would be consistent with the UNESCO policy on engaging with Indigenous Peoples (2017) and the United Nations Declaration on the Rights of Indigenous Peoples.

⁶⁵ World Bank Inspection Panel, case 156, 1 March 2022.

⁶⁶ World Bank Inspection Panel, case 154, 18 October 2021.

⁶⁷ World Bank Inspection Panel, case 152, 21 June 2021.

⁶⁸ Contribution of Albania.

⁶⁹ Communication TZA 3/2021.

⁷⁰ Mondiacult Declaration, para. 10.

66. The World Bank has also included the free, prior and informed consent standards in its policies, a major development, but several cases have been reported in which these standards were not implemented. For example, the case in 2018 involving Santhal people in Jharkhand, India, where the World Bank acknowledged its failure to apply the Bank's policy on physical cultural resources and free, prior and informed consent, but could not stop the construction and repair the damage.⁷¹ More attention will hopefully be given to the World Bank's community-driven development projects, which implement a bottom-up approach and can therefore better ensure the cultural adequacy of the objectives, methodologies and results. For such projects, systematically integrating human rights principles, including cultural rights, would help orient the projects, avoid any cultural relativism and ensure coherence between development and human rights objectives.

67. WIPO has institutionalized specific avenues for stakeholder participation in its work on traditional knowledge, traditional cultural expressions and genetic resources. Accredited civil society organizations representing Indigenous Peoples and local communities have been granted observer status and can participate in the sessions of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.⁷² Ad hoc expert groups are also appointed by States and the Indigenous Caucus⁷³ to address, in their personal capacities, legal, policy and technical issues in relation to the work of the Intergovernmental Committee. The draft texts of the Committee are reviewed by Indigenous experts.⁷⁴ Fellowship opportunities for Indigenous persons are offered and a voluntary fund has been established to support the participation of Indigenous Peoples and local communities in the intergovernmental discussions. These are remarkable steps that must be extended to other marginalized groups and civil society in general.

F. Strengthening accountability mechanisms

68. An additional pillar of a human rights approach is accountability. The World Bank's accountability mechanism is twofold: an Inspection Panel (since 1993) and the newly created Dispute Resolution Service (operationalized in 2023). Since its creation, the Inspection Panel has adjudicated nearly 250 human rights complaints in more than 60 countries.

69. Although there has been no holistic assessment, several of the cases included alleged violations of cultural rights. Studies across multilateral development banks show that not all development banks have adopted policies that include heritage in their policies. This neglects the right to access and enjoy heritage. Accordingly, the treatment of the impact of multilateral development bank projects on heritage resources is often unsatisfactory, with failures to carry out adequate consultations resulting in adverse consequences for the affected communities, and/or for the projects themselves.⁷⁵ To date, the punishment of perpetrators is exceedingly rare, even when the harm to the affected communities is formally acknowledged. Studies suggest that complaints alleging involuntary resettlement, which causes a huge loss of cultural resources, are more likely to result in an order for compensation, rather

⁷¹ World Bank Inspection Panel, cases 128 and 129, 21 September and 12 December 2018.

⁷² For more on the participation mechanisms, see www.wipo.int/tk/en/engagement.html.

⁷³ The collective representation of Indigenous Peoples in that organization. The Caucus can select Indigenous representatives to participate in expert groups and advisory committees.

⁷⁴ See WIPO/GRTKF/IC/46/INF/8 (2022). See also WIPO/GRTKF/IC/32/INF/8 (2016), annex, paras. 4–6.

⁷⁵ Contributions of British Institute for International and Comparative Law (2022) and Interarts.

than in harm acknowledgment or project change.⁷⁶ And although it is gradually improving, several agreements between the parties are still not made public by the World Bank.

70. Other important international entities are still lacking appropriate accountability mechanisms. There is no redress, that is to say no existing mechanism to directly challenge the decision-making of the IMF.⁷⁷ And as the technical expert review for WIPO revealed, effective mechanisms for redress should be provided to local communities where cultural and intellectual property has been misused or misappropriated without the free, prior and informed consent of the concerned communities.⁷⁸

G. Looking within international governance

71. In conducting her study, the Special Rapporteur noted that some challenges also existed within the structure of the respective international agencies, which may hinder their ability to deliver on cultural diversity and cultural rights.

72. One such challenge seems to lie in the presence, and not mere representation, of cultural diversity in the international governance system itself. The Secretary-General noted in his recent report on progress towards the Sustainable Development Goals that the international financial architecture would need “deep reforms” to enhance the “voice and participation of developing countries in the governance of international financial institutions” (A/78/80-E/2023/64, para. 20). The international governance of development is still suffering from the context of its creation, and efforts must be made to ensure that all countries can fully take part in it. As States are the first duty bearers accountable for the respect, protection and realization of human rights, it is of the utmost importance that Governments and their respective public bodies be fully involved in the international governance of development and have the ability to uphold their human rights obligations through development cooperation and with the support of the international financial architecture. Although cooperation with private bodies, as partners of development projects, might be necessary and desirable, these stakeholders should never replace public bodies.

73. In addition, some countries have also asked for diversity among the staff of international bodies. Efforts to increase cultural diversity on the basis of passports are very simplistic in this globalized world, do not take into account the variety of cultural backgrounds within the States which amount to different world views, and do not take into account intersectionality, involving a diversity of socioeconomic and academic backgrounds, sensitivities and experiences. Diversity has to be multidimensional and multilayered. Based on statistics on countries of origin, it will not have the transformational results of inclusion but will continue to maintain dominant viewpoints and to harbour inequalities and discrimination.

74. Another challenge lies in the lack of reference to cultural rights in the human rights resources shared by United Nations entities, as well as in their capacity-building tools. Even the United Nations inter-agency common learning package on a human rights-based approach, which should strengthen the capacity of United Nations staff to apply this approach to country programming, fails to include thorough

⁷⁶ Kelebogile Zvobgo and Benjamin A. T. Graham, “The World Bank as an enforcer of human rights”, *Journal of Human Rights*, vol. 19, no. 4 (2020), pp. 425–448.

⁷⁷ Willem van Genugten, Paul Hunt and Susan Mathews, eds., *Tilburg Guiding Principles on World Bank, IMF and Human Rights* (2002), para. 22.

⁷⁸ WIPO/GRTKF/IC/46/INF/8 (2022), annex, paras. 14–17.

references to cultural rights.⁷⁹ This of course greatly impedes their capacities to include cultural rights in their planning and monitoring schemes.

IV. Ways forward

A. The right to development approach

75. As long as States continue to compartmentalize their obligations as members of different organizations and participants in different international regimes, the international development and trade governance system will remain highly fragmented, and cultural rights, which affect every aspect of life and development, will not be easily and fully implemented. The disconnect that exists between development structures and human rights allows for the disregard of States' binding human rights obligations while pursuing trade negotiations.⁸⁰ States must take into consideration human rights concerns at all stages of the development and trade processes. Only then can cultural rights have a chance of being implemented in a comprehensive manner in sustainable development. Looking at international development and trade organizations without recognizing the role that States play in the actions of such organizations does not address the core of the issue.

76. The right to development approach is the basis of solidarity and cooperation in States' collective actions in international organizations or in other global or regional partnerships.⁸¹ Under the right to development approach, fulfilling civil and political rights is as important as fulfilling cultural, economic and social rights, in their substantive, constitutive and interdependent roles. A violation of any right is tantamount to a failure to realize the right to development.

B. More collaboration among entities

77. The Special Rapporteur noted the weakness of the mechanisms for cooperation and knowledge-sharing between the relevant entities. In other words, the conditions for the exercise of cultural rights within the institutions – recognition of and respect for one's own cultural capital and access to the knowledge and creativity of others – are weak. Promising signs emerge in cases where international development agencies coordinate and learn from their respective experiences. For example, to identify the relevant groups in the preparation of a recent project, the World Bank strongly benefited from consulting with the United Nations country team and representatives of the Red Cross, who had a more experience and a wealth of knowledge in the country. These types of consultations, if they are systematically integrated into the policies and processes of international development agencies, could foster a better recognition of the rights holders and their cultural dynamics, and prevent the negative impact of projects on their cultural rights.

78. The institutions leading the international governance of development and trade would benefit from multi-stakeholder and multicultural experiences at the regional, national and local levels. Many of the contributions received by the Special Rapporteur during the preparation of the present report testify to the added value of bringing together persons from multiple perspectives, including the most marginalized, having them interact and discuss the orientations they would want for

⁷⁹ United Nations Sustainable Development Group, *Inter-Agency Common Learning Package on Human Rights-Based Approach to Programming* (2017).

⁸⁰ See Mihir Kanade, *The Multilateral Trading System and Human Rights* (Routledge, 2019), p. 196.

⁸¹ See [A/HRC/51/36](#), para. 7.

the cultural development of and for development projects in their society, or for taking part in their monitoring.⁸²

C. Human rights economy

79. The concept of a human rights economy,⁸³ as put forward by the Office of the United Nations High Commissioner for Human Rights, may be a way forward to place the spotlight on development that better serves global justice and cultural rights. A human rights economy seeks to address the root causes of structural barriers to equality, justice and sustainability, by prioritizing investment in economic, social and cultural rights. Such work acknowledges that economic growth on its own will not redress structural injustices or fulfil people's human rights. The proposed human rights economy model would have as its goal and mission the creation of conditions for people to enjoy peace, justice, equality, freedom, well-being and dignity in a healthy and sustainable environment.

80. In his concept of a human rights economy, which is already being implemented in countries such as Jordan and Kenya⁸⁴ and should be presented in more official terms soon, the United Nations High Commissioner for Human Rights intends to uphold economic, social and cultural rights on an equal footing with civil and political rights, address structural barriers and other impediments to equality, justice and sustainable growth, and ensure that economic, industrial and trade policies, investment decisions, consumer protections and business models are guided by human rights norms and standards. Making that concept a reality will require recognizing the specificity of each context, including the diverse and sometimes harsh legacies of the past.⁸⁵

81. In this model of people-centred cooperation and global partnership, international human rights obligations should be binding parameters of the international system, and it is the hope of the Special Rapporteur that all actors in the international financial system will be reminded of their duty to consider the impact of their operations on human rights, equality and the environment, including in debt sustainability, loan agreements and private sector financing.

V. Conclusions and recommendations

82. International development and trade organizations are currently failing to respect cultural rights: IMF rejects its responsibility to respect cultural rights; WIPO has not fully grasped the wide concept of culture and connections between all its work and cultural rights; the World Bank does not press States to respect cultural rights when they clash with economic development or other interests; WTO prioritizes other rights and interests; UNESCO has not yet fully operationalized cultural rights in its work on the cultural dimension of development; and the Office of the United Nations High Commissioner for Refugees and other organizations have not fully engaged with their possible linkages with cultural rights. Finally, most, if not all, organizations have not yet developed clear processes that mitigate and prevent violations of cultural rights and advance their realization in development. States have an important role to

⁸² Contributions of Bahrain; Cuba; and Grupo de estudio sobre derechos culturales.

⁸³ See www.ohchr.org/en/sdgs/seedling-change-economy-enhances-human-rights-surge-initiative.

⁸⁴ See www.ohchr.org/en/stories/2023/04/supporting-human-rights-economy-kenya and www.ohchr.org/en/stories/2023/04/building-economies-place-peoples-human-rights-center for more details.

⁸⁵ See, for example, the contribution of Maat for Peace.

play in ensuring that the organizations of which they are members do so urgently, so that truly no one is left behind.

83. The Special Rapporteur recommends that States, as members of international organizations:

(a) Adopt all necessary measures to ensure that the policies and decisions of those organizations relating to the field of cultural rights are in conformity with their international obligations, in particular under articles 15, 22 and 23 of the International Covenant on Economic, Social and Cultural Rights;

(b) Refuse to implement any measures that violate cultural rights;

(c) Adopt the right to development approach when working with and within international organizations;

(d) Work towards reforming the global financial system to ensure that it reflects a comprehensive understanding of development, including its cultural dimension, and that it applies the human rights economy model;

(e) Work towards improving the focus of international development and trade organizations on cultural development and cultural rights;

(f) Use human rights indicators and more specifically, cultural rights indicators, in the monitoring and review of progress towards the Sustainable Development Goals, and also for international governance;

(g) Prioritize development projects that include cultural rights and request funding for such projects;

(h) Ensure that their obligations regarding cultural rights are not sidestepped in the name of other interests;

(i) Encourage, through advocacy and resources, collaboration between international organizations in order to create a common comprehensive strategy on development that includes its cultural dimension.

84. International organizations should make it a priority to:

(a) Adopt, within their fields of competence, measures likely to contribute to the progressive implementation of internationally recognized cultural rights;

(b) Conduct studies to fully understand the impact of their work on the cultural rights of all, including marginalized individuals and groups that should be given priority, and act to minimize any negative impact;

(c) Include cultural rights impact assessments in all phases of their projects (before, during and after) with a view to changing the elements of projects that potentially violate the cultural rights of individuals and groups;

(d) Provide trainings on cultural rights for their staff so that they can better know, understand and apply the relevant international standards, including free, prior and informed consent. Resources for cultural expertise should be provided;

(e) Involve experts from the local populations affected by the project they fund and review the understanding of cultural diversity within their organization, which should encompass diversity in cultural backgrounds, gender, education, philosophies, methodologies and sensitivities, beyond purely formal criteria (such as country of origin of staff);

(f) Ensure that any debt conditionalities do not hinder States' ability to deliver on human rights or disproportionately affect the cultural sector;

(g) **Assess investments and projects in accordance with the right to development approach and the concept of the human rights economy;**

(h) **Design and implement intellectual property rules that fully take into account cultural rights and protect cultural expressions and knowledge, including, but not limited to, traditional expressions and knowledge;**

(i) **Develop clear and effective mechanisms of redress when cultural rights are affected by the work of the organization;**

(j) **Ensure effective participation of all interested parties and meaningful consultation, including the free, prior and informed consent of Indigenous Peoples or local communities, according to the current human rights standards;**

(k) **Work closely together in order to ensure that development is applied in an inclusive manner and promote its cultural dimension.**

85. **All interested stakeholders should ensure that the work of international development organizations on development: (a) includes cultural development; (b) reverses inequalities and stereotypes through, inter alia, the adoption of positive measures; (c) is self-determined and community-led, contextualized to specific cultural environments and fully aligning itself with the aspirations, customs, traditions, systems and world views of the individuals and groups most impacted; (d) is not a one-size-fits-all model; and (e) is forward-looking, ever-evolving and an ongoing process aimed at causing profound transformations in the current system, based on the ecology of knowledge.**

86. **The Special Rapporteur encourages further studies and discussions to build on the present report. The aim of leaving no one behind is worth more effort.**
