



SHS Papers in Women's Studies/Gender Research

No. 1

CULTURES, CONVENTIONS, AND THE HUMAN RIGHTS OF WOMEN: EXAMINING THE CONVENTION FOR SAFEGUARDING INTANGIBLE CULTURAL HERITAGE, AND THE DECLARATION ON CULTURAL DIVERSITY

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March 2005

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EXAMINING THE CONVENTION FOR SAFEGUARDING
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“Inequality in the enjoyment of human rights by women throughout the world is often deeply embedded in tradition, history and culture, including religious attitudes. While respect for diversity and for diverse forms of social and cultural expression and identity must guide all human rights principles, equally important is the recognition of the dignity and worth of women as full human beings. International human rights law has repeatedly stressed that women's human rights cannot be violated on the grounds of cultural or religious norms. The Convention on the Elimination of All Forms of Discrimination Against Women requests states to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

Amnesty international²

The Convention for the Safeguarding of the Intangible Cultural Heritage was adopted at the 32nd session of UNESCO's General Conference in October 2003. Following from the Declaration on Cultural Diversity (2001), intangible cultural heritage is recognized as an essential factor in the preservation of cultural diversity in the world, and is defined as “practices, representations and expressions, and knowledge and skills which are transmitted from generation to generation and which provide communities and groups with a sense of identity and continuity.” It encompasses:

- oral expressions and traditions, including language as a vehicle of the intangible cultural heritage;
- performing arts;
- social practices, rituals and festive events;
- knowledge and practices concerning nature and the universe,
- traditional craftsmanship and music;
- cultural spaces: places where population and traditional cultural activities occur in a

¹ The paper reflects the views of the authors and not of UNESCO.

² <http://www.amnestyusa.org/women/economicrights.html> (accessed Nov. 2004.)

concentrated manner.³

The inclusion of “social practices and rituals” as one domain of intangible culture raises a red flag for many feminists, because of the fact that some social practices have been known to be harmful to women and girls. This is why the Beijing Platform for Action makes a reference to “harmful traditional practices” (e.g., paras. 114 (a), 119, 225, 232 (g), 274 (c)). Feminists also have raised questions about the compatibility of some concepts of cultural rights, especially those that imply group or collective rights, such as multicultural policies with women’s rights.⁴ In light of the challenges in promoting women’s rights while preserving cultures, UNESCO held an expert meeting on “Gender and Intangible Cultural Heritage” (8- 10 December 2003), which issued a Final Report. The participants of the meeting discussed the issues from the perspective of their own expertise in the field of intangible cultural heritage. While their approach was a necessary and useful one, there are certain conceptual and political gaps in the report.

This paper seeks to explain why there is a need for attention to the human rights of women when implementing the Convention for the Safeguarding of the Intangible Cultural Heritage and the Universal Declaration of Cultural Diversity. We begin with a brief overview of feminist approaches to human rights, women’s rights, and culture, and then summarize/analyse the Final Report on Gender and Intangible Cultural Heritage. We then turn to a discussion of the UNESCO Universal Declaration on Cultural Diversity, given that the Convention for Safeguarding the Intangible Cultural Heritage is a continuation of the Declaration. We end with some questions for reflection and some recommendations.

Our argument may be summarized as follows: women rights activists/feminists have long argued that in order to end discrimination against women, there must be agreement that “culture” is not a valid justification for gender inequality. When drafting international conventions and declarations, attention must be directed not only to existing human rights instruments but also to those pertaining to women.

Human Rights, Women’s Human Rights, and Culture

The Convention for the Safeguarding of the Intangible Cultural Heritage refers to the international human rights instruments, in particular to the Universal Declaration on Human Rights (UDHR) of 1948, the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, and the International Covenant on Civil and political rights (ICCPR) of 1966. The three

³ See, for example, *The Second Proclamation of Masterpieces of the Oral and Intangible Cultural Heritage of Humanity* (Paris, UNESCO, November 2003).

⁴ See, for example, Susan Moller Okin, *Is Multicultural Bad for Women?* (Princeton University Press, 1999).

instruments contain the principle of non-discrimination based on sex as a core and fundamental requirement to their inception (Stamatopoulou 1995: 37). It should be noted, however, that human rights laws and the associated instruments were created with the notion of public rather than private non-discrimination in mind. This is why women's rights within the private sphere of the family were so long considered outside the purview of human rights legislation.

In a valuable essay, Charlesworth and Chinkin (2000: 218) investigate the generational and hierarchical development of international human rights laws and instruments with the purpose of pointing out the many inadequacies these have posed for women in their particular marginalized and oppressive circumstances. They identify civil and political rights (First Generation Rights) as the most valued in an international framework, while also being the least attendant to women's lives – largely because of their public nature. The 'equality' sought in these and the other 'generation' rights all ignore the way in which power operates within these definitions to favour and condone the invisibility of women's private lives (and abuses in it), as well as their continued inferior position in the public sphere. Moreover, by having to strive for an equality defined by male standards, the unequal, gendered structures inherent in the economic, social, political, cultural, and democratic aspects of life are left intact. This implies a complicit 'adding on' of women into the human rights framework, for if the basic structures are not deconstructed to expose the discriminatory skeletons that lie beneath, then a simple integration fails to carry out the appropriate holistic reinterpretation needed for true societal change (Charlesworth and Chinkin, 2000: 229-231). Similarly, Friedman (1994: 20) argues "...the notion of a universal approach to human rights work cannot be assumed but rather must be negotiated." She, too, is critical of the exclusionary nature of human rights' traditional framework, yet very positive about the way separate active organizing for women can help shape a collaborative, cross-cultural approach to rights that redefines the public/private boundaries previously considered as natural and neutral.

In the 1960s and 1970s, Western feminists argued that "the personal is political", and began to popularise the notion that violence in the family was not acceptable and required legal and policy attention. Midway through the UN's International Decade for Women (1976-85), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted. As the women's movement grew, so did the focus on violence against women. In the 1990s the slogan "women's rights are human rights" became internationalised, largely through the efforts of participants at the UN's World Conference on Human Rights (Vienna, 1993), and at the Fourth World Conference on Women (Beijing, 1995). Today's array of 'women-specific instruments', the most important of which is CEDAW, is the result of a long struggle by women's rights activists and

feminist lawyers.⁵ However, while many member states have ratified CEDAW, it is still the convention with the most reservations, particularly, but not exclusively, in Middle East and Muslim countries, where governments have argued that some articles in CEDAW contravene religious law or cultural norms. Thus family laws in many Muslim countries continue to discriminate against women in the name of religion and culture.

Culture (and religion) often has been used as a justification for discrimination against women. As Tripp (2001: 416) notes, “cultural rationales are used throughout the world to protect the status quo when it comes to advancing women’s rights... even in the United States, which is a democratic country, culture features prominently in arguments against improving women’s rights.”⁶ One well-known example of the clash between culture and women’s rights is the case of female circumcision (also known as female genital mutilation, or FGM). In her important book, *Women and Human Rights*, Tomasovski (1993: 84) observes that “getting the United Nations and its specialized agencies, notable WHO, to address the genital mutilation of women was neither easy nor quick”. She explains that “the twelfth WHO Assembly in 1959 rejected this request on the grounds that: ‘the ritual operations in question are based on social and cultural backgrounds, the study of which is outside the competence of the World Health Organization’.” The list of practices in which women’s bodies are abused in the name of culture is long, and includes foot binding, forced veiling, and “honour killings”. In a few cultures, girls’ bodies are deliberately fattened prior to marriage, while in other countries girls starve themselves to conform to the cultural norm of a thin female body. In many parts of the world, inheritance practices privilege men over women. This has been acknowledged as a problem in a number of African countries. Many Muslim countries privilege men in access to inheritance, and base this discrimination on religious doctrine. Among them, the Islamic Republic of Iran has signed the UDHR, ICCPR, and ICESCR, and yet condones and indeed codifies discriminatory practices on the basis of cultural/religious norms. Iran has not signed CEDAW on the grounds of its contradiction with the country’s cultural and religious practices and laws, but Iranian women’s rights activists and lawyers desire signature, ratification, and full implementation. As Anne Phillips (2000: 2) rightly argues, “norms of justice are not formulated under conditions of gender equality. The ‘society’ that generates and authorizes existing norms is never an innocent subject; on the contrary since no society yet operates under conditions of gender justice, what is considered to be right and just with any given society always must be open to scrutiny.”

For these reasons, feminists have argued that cultural claims, as any other claim, must be examined closely to ensure gender equality, despite their apparent normalisation in a specific context

⁵ Three that predate CEDAW are the Convention on the Political Rights of Women; on the Nationality of Women; and on the Consent to Marriage, Minimum Age for Marriage, Registration of Marriages.

⁶ The United States has not signed CEDAW.

(Moghadam 1993). Apart from the question of how culture may be defined and who may decide what constitutes an “authentic” cultural practice, there is also the problem of inclusive versus exclusive participation in cultural practices and institutions.

The Convention for Intangible Cultural Heritage

In this section we discuss the meeting of experts organized by the Intangible Heritage Section of UNESCO in December 2003 to address the challenges posed by gender equality in the safeguarding of the intangible cultural heritage. The meeting has been transcribed in the Final Report.

The Final Report of the expert group meeting gives a real sense of how intangible cultures are practiced in different contexts around the world, in part because the experts were from different parts of the world and drew on their own cultural backgrounds. The report correctly begins by stating that there is a clear need to pay special attention to gender equality in the context of safeguarding the intangible cultures. One suggestion was that “women custodians and researchers should be involved in identifying and documenting intangible cultural heritage, as well as in designing policies for the safeguarding of such heritage” (pg. 1). Many important challenges in safeguarding the intangible cultures were mentioned, such as the rights to ownership, the validity or authenticity of transmitter, and the question of ethics.

The question was posed: Who will benefit from the process of safeguarding: the custodian of the culture, researchers, outsiders, governments, or cultural institutions? It was observed that the Convention might work in contrary ways. Documenting intangible cultural heritage could serve to “freeze” certain practices; conversely, it could end the “secrecy” of certain cultural practices or open them to imitation. From the perspective of gender equality, the consequences could be positive or negative for women. One of the experts noted that storytelling is widely regarded as a feminine practice and therefore marginalized. However, if such intangible art becomes recognized internationally and receives different kind of support, including financial, then the women who practice the art will be empowered. On the other hand, the stories could lose their mystery as well as be copied or plagiarized.

Also discussed were the effects of globalisation and colonization in transmission of intangible cultures in various parts of the world and the ways in which the overall political climate influence cultures. One of the experts argued for the importance of intangible heritage for migrants, even though the cultural practices of such groups can be considered “different”. Cultural practices are central for such groups as a survival method and therefore must be protected by international instruments. Of special relevance to us is that the participants discussed the issue of insider/outsider. Who is a valid judge of cultural heritage? What can be identified as an “authentic” cultural claim? Although not directly addressed, an implicit question was what constitutes a better gender practice in the context of culture, and who has the right to say so. For many feminists, responses to such questions are grounded

in ethics, but also in “communicative action”, leading some feminists to call for an open dialogue between insiders and outsiders (Benhabib, 1999).

In the Final Report, participant Nelia Dias echoed feminist concerns by raising the question of ‘political recognition of gender issues in the act of preservation of intangible cultural heritage’ (Final Report, 5). A recommendation that all participants agreed on was that “any element of this heritage that may seem to reflect gender inequality should be evaluated as part of a cultural canon which, as a whole, may transmit and preserve an overall gender balance” (Final Report, 1). This is an important observation to take into account but should not be used to gloss over gender inequalities or cultural practices and institutions that discriminate against women.

The Report notes that taking into consideration the challenges of time and practicality, works of intangible cultural heritage should be discussed with other sections of UNESCO and other UN agencies that have specialities in gender equality. To do otherwise would be for the Convention to dedicate itself to the area of arts/cultures in a gender-blind fashion, and so unwittingly reproduce or reinforce discrimination and exclusion experienced by women. For instance, UNESCO has published a booklet titled *The Second Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity*, wherein each cultural practice is described in gender-neutral language. It would be useful if the descriptions were more gender-sensitive, that is, if they specified the roles of women and of men in producing, performing and transmitting these cultural heritages. While only in a few cases is it mentioned that the cultural practices are exclusive to men (and several of the practices indeed may be female-exclusive), the booklet’s photographs of cultural performances and practices largely depict men. If the photographs mirror the reality of such practices, this should be clarified and may require some thought as to how to make the cultural practices more inclusive. If these were the choices of the photographers, the text must at least mention that women are also involved in performing and transforming these intangible cultures. On the whole, however, the booklet is ambiguous about women’s role in transmitting, performing and safeguarding the proclaimed cultural practices. (See Appendix Table.)

UNESCO’s Universal Declaration on Cultural Diversity

Prior to the drafting of the Universal Declaration on Cultural Diversity, the principal instrument concerning “cultural rights” was the International Covenant on Economic, Social, and Cultural Rights (ICESCR). However there is only one line in the ICESCR that is specifically dedicated to “culture” and “cultural rights”: Article 15 part (a) states that everyone has the right to “take part in cultural life”.

In the preamble to the Declaration on Cultural Diversity, it is stated that since this declaration was drafted after September 11, 2001, “it was an opportunity for states to reaffirm their conviction that intercultural dialogue is the best guarantee of peace and to reject outright the theory of the inevitable

clash of cultures and civilizations.” The Declaration gives a detailed description of cultural rights where “culture” is defined as: “the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, [encompassing] in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.” The Declaration makes no mention of women’s rights, participation, or equality.

On 8 March 2004, International Women’s Day, UNESCO Director-General Koichiro Matsuura pointed to Article 4 of The Universal Declaration of Cultural Rights stating: “No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope”. He noted that the article “can serve as a valuable instrument for women and organizations fighting practices such as sexual mutilation, child marriages and ‘crimes of honour.’ ” Nevertheless, while in CEDAW the goal is to protect women’s rights in the context of cultural/traditional patterns, in the Declaration the goal is to preserve cultural practices – just as it is for the Convention for Safeguarding of the Intangible Cultural Heritage. Once again, the danger is that a cultural practice might reinforce unequal roles for women and men. For example, Nobel laureate Shirin Ebadi has observed that in the laws and policies of the Islamic Republic of Iran:

“Priority is given to the betterment of women’s status throughout the country, given their supreme dignity and the Muslim woman’s fundamental role in strengthening the foundations of the family, as well as strengthening social, scientific, and artistic projects.

A closer look at the place of women as viewed by cultural policymakers will reveal their emphasis on family values; a woman’s independence, her social situation, and the discriminations levelled against her are never at issue. Policymakers view women as wives and mothers, who need cultural reinforcement and guidance to better fulfil their domestic roles.”⁷

Here one recalls the relevance of the UNESCO statement on Women’s Contribution to a Culture of Peace, which was delivered at the Fourth World Conference on Women in Beijing, China, 4-15 September 1995. The statement explicitly noted that the culture of peace is to “oppose the misuse of religion, cultural and traditional practices for discriminatory purposes”. Similarly, in CEDAW, the rights of women are explained within political, economic, social, cultural and family domains. Article 5 of the Convention addresses the area most ignored by other conventions: “a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women”. Is this compatible with the notion of cultural rights as described in the UNESCO Declaration on Cultural Diversity?

⁷ Shirin Ebadi, *Women’s Rights in the Laws of the Islamic Republic of Iran* (2002), reproduced in the Iranian on-line feminist journal *Badjens*. <http://www.badjens.com/ebadi.html> (last accessed 20 December 2004).

There is a danger that “cultural rights” as understood in the Declaration on Cultural Diversity can diverge from the human rights of women as understood in CEDAW and the Beijing Platform for Action. To ensure women’s participation and rights in the process of implementation of the Declaration on Cultural Diversity and the Convention for the Safeguarding of the Intangible Cultural Heritage, policy makers must stay close to the international instruments that are explicitly dedicated to women’s rights.

Conclusions and Recommendations

UNESCO’s work in the area of culture is justifiably renowned. The project to proclaim masterpieces of the oral and intangible cultural heritage of humanity is itself valuable as well as doubtlessly fascinating for those involved. And yet, some of the caveats raised in this paper should be taken into account before the third proclamation is issued.

The Convention for the Safeguarding of the Intangible Cultural Heritage and the Declaration on Cultural Diversity could be vulnerable to manipulation or dismissal of women’s participation and rights, because of the tension between cultural rights and gender equality, the gender-neutral language of the Convention and the Declaration, and the fact that neither CEDAW nor any other women’s instrument is mentioned. The fact that culture sometimes clashes with women’s rights is what prompted the December 2003 expert meeting at UNESCO on the Intangible Cultural Heritage. Whereas many important issues were discussed in the meeting, there is more to be said on the topic. How can communities, cultural practitioners, and government agencies become more gender-sensitive with regard to tangible and intangible cultural heritage? To what extent are women involved in cultural decision- and policy-making within countries and at the international level? In an era of measurements and benchmarking, what are the appropriate indicators to measure women’s cultural participation and rights? To that end we propose the following measures, most of which can be found in international data sets or in national statistical yearbooks:

- Tertiary students in fine arts and humanities as % of all tertiary students, and % women
- Museum staff (% female)
- Ministry of Culture decision-making staff (% female)
- Number and type of women’s organizations devoted to cultural issues
- Number and type of print and electronic media owned or managed by women devoted to cultural issues.⁸

We have seen that feminists have been sceptical of international human rights instruments

⁸ These indicators of women’s cultural participation and rights form part of a set of indicators, developed by Valentine M. Moghadam and Lucie Senftova, that measure women’s empowerment in civil, political, economic, social and culture domains.

because most of these instruments were first drafted when there was a distinction between rights in the public sphere and those in the private sphere; as such, women's rights within the family were not considered as human rights. Today we have special instruments that address women's rights in a holistic fashion. These instruments, and especially the women's convention CEDAW, should be referred to when new conventions are drafted and when they are implemented – along with the other rights conventions such as the UDHR, ICCPR, and ICSECR. With respect to conventions and declarations regarding culture, a central question for UNESCO should be how preserving intangible culture and promoting cultural diversity could promote gender equality and women's participation.

Appendix Table

Gender Dynamics of the Second Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity

Oral and Intangible Heritage of Humanity	Country	Male-exclusive	Gender neutral	Female exclusive	Gender not specified
Azerbaijan Mugham	Azerbaijan		•		
The carnival of Binche	Belgium				•
The Andean Cosovision of the Kallawayá	Bolivia	•			
The Oral and Graphic Expressions of the Wajapi	Brazil		•		
The Royal Ballet of Cambodia	Cambodia		•		
The Oral Traditions of the Aka Pygmies of Central Africa	Central African republic		•		
The Art of Guqin Music	China				•
The Carnival of Barranquilla	Columbia		•		
La Tumba Francesa	Cuba				•
The Al-Sirah Al-Hilaliyya Epic	Egypt				•
The Kihnu Cultural Space	Estonia				
The Baltic Song and Dance Celebrations (The picture indicates a large group of women participants.)	Estonia, Latvia, Lithuania		•		
The Tradition of Vedic Chanting Brahmin	India				•
Wayang Puppet Theater	Indonesia				•
Iraq Masqam	Iraq				•
The Maroon heritage of Moor Town	Jamaica				•
Ningyo Johuri Bunraku Puppet Theater	Japan		•		

The Art of Akyns Kyrpyz Ebic Tellers	Kyrgyzstan				•
Woodcrafting Knowledge of the Zafimaniry	Madagascar		•		
The Indigenous Festivity dedicated to the Dead	Mexico		•		
The Traditional Music of Morin Khunr	Mongolia		•		
The Pansori Epic Chant	Republic of Korea				
Shashmaqom Music	Tajikistan, Uzbekistan		•		
Lakalaka, Dances and Sung Speeches	Tonga		•		
The Art of the Meddah, Public Storytellers	Turkey				•
Vanuatu Sand Drawings	Vanuatu				•
Nha nhac, Vietnames Court Music	Vietnam		•		
Song Of Sanaa	Yemen				•

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