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FINDING MEANING IN CULTURAL LIFE

by

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Cultural rights are an integral part of human rights which are universal, indivisible and interdependent.¹ To date however, these rights seem to be the least understood and developed of all human rights whether conceptually or legally, even though they are components of many other human rights as well. It is therefore auspicious and appropriate that in the year leading to the celebration of the 60th anniversary of the Universal Declaration of Human Rights, we can look forward to new developments arising from initiatives in international law and practice that address the often complex and delicate issues relating to culture in the field of human rights.

With your permission, let me tell you about one such initiative – the elaboration by the United Nations Committee on Economic, Social and Cultural Rights to which I refer to from this point on as the Committee, of a General Comment on Article 15 (1) (a) of the International Covenant on Economic, Social and Cultural Rights (the Covenant). Article 15(1) (a) enshrines the right of everyone to take part in cultural life, the first paragraph and subparagraph of Article 15 of the Covenant. Allow me to inform you briefly about the Covenant and the work of the Committee on Economic, Social and Cultural Rights for a better understanding and appreciation of the significance of this initiative, as well as the place of cultural rights in the human rights regime.

At the core of United Nations action in protecting and promoting human rights and fundamental freedoms is the International Bill of Human Rights consisting of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The Universal Declaration of Human

Rights was proclaimed in 1948 and the two Covenants were adopted in 1966 by the UN General Assembly. These three documents lay down human rights standards which have inspired other UN human rights conventions that provide the basis for the elaboration of legal norms relating to women's rights, the rights of children, protection against racial discrimination, protection of migrant workers, and many others.

The two Covenants are international legal instruments and as such when Member and non-Member States of the United Nations ratify a covenant and become a State party to it, they are willfully accepting a series of legal obligations to comply with the provisions of the Covenant.² The State party thus becomes accountable to the international community regarding its compliance with its treaty obligations. The number of States parties to the International Covenant on Economic, Social and Cultural Rights presently stands at 157 States.

The human rights which the covenant seeks to promote and protect can be clustered into three. The first cluster of rights are articles 6 to 9, consisting of economic rights – the right to work, the right to just and favorable conditions of work, the right to form and join trade unions and the right to social security and social insurance. The second cluster of rights are social rights, articles 10 to 12 – the right to the protection of the family, the right to an adequate standard of living including the right to adequate food and the right to adequate housing, and the right to the highest attainable standard of physical and mental health. The third cluster of rights are cultural rights, articles 13 to 15 – the right to education, the right to primary education free of charge and the right to take part in cultural life and enjoy the benefits of scientific progress. Two principles underpin these specific rights in the Covenant – the principle of non-discrimination enshrined in Article 2(2) and the principle of the equal right of men and women in the enjoyment of all economic, social and cultural rights which is enshrined in Article 3.

The Committee on Economic, Social and Cultural Rights was established in 1985 by the UN Economic and Social Council (ECOSOC) with the primary task of monitoring the implementation by States parties of their obligations under the Covenant. The Committee holds its three-week sessions twice a year in Geneva to consider States parties reports, examining five such reports in every session. The Committee is composed of eighteen independent "...experts with recognized competence in the field of human rights, serving in their personal capacity, due consideration being given to equitable geographical distribution and to the representation of different forms of social and legal systems."³ Committee members, although nominated by their governments, are not themselves government representatives. They are elected for four-year terms by the ECOSOC and are eligible for re-election if nominated again.

States parties periodically submit reports according to the Committee's reporting guidelines which are intended to facilitate the preparation of reports and to ensure that the issues of principal concern are dealt with in a methodical and informative manner. After the submission of the report, the State party presents it formally to the Committee in a face to face public dialogue discussing specific issues regarding the situation of the State party's compliance with their Covenant obligations.

Since this presentation is not intended to be about the Committee, bear with me just one moment longer to provide you with an overview of a particular responsibility of the Committee – that of clarifying the normative content of the provisions of the Covenant through the elaboration of General Comments which are addressed primarily to States parties as well as to all stakeholders. General Comments – at the moment there are nineteen in all – when adopted constitute the "soft law" of the Committee and it constantly encourages States parties to refer to them to better understand the obligations under the Covenant.

Articles 13 and 15 of the Covenant are the longest articles in the Covenant, each one composed of four paragraphs and a number of subparagraphs. It is important to emphasize that the entire cultural rights cluster of the Covenant was written with UNESCO as the primary author. This fact explains how and why these rights are more detailed than most of the covenant provisions. Article 13 the right to education deals among other things with primary education compulsory and available free to all, secondary education, technical and vocational education, accessible high education, fundamental education, development of a system of schools at all levels, and private education. Article 15 is concerned with the right to take part in cultural life, to enjoy the benefits of scientific progress and its applications, to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which the individual or individuals is or are the authors. Article 15 is also concerned with the conservation, development and the diffusion of science and culture, the freedom indispensable for scientific research and creative activity and the benefits derived from international contacts and cooperation in the scientific and cultural fields.

When the Committee drafted General Comment No. 13 on the right to education, it invited the input and participation of UNESCO which graciously assisted the Committee throughout the long process of drafting and finally adopting the general comment. UNESCO has supported initiatives in the international level, bringing together independent experts in round-tables and conferences in the year 2002 in Manila, Philippines and in Barcelona, Spain, to identify and discuss issues on and dimensions of cultural rights in general and of the right to take part in cultural life in particular.

The Committee will soon embark, again with the support of UNESCO, on what the daunting and arduous process of elaborating a general comment on the right to take part in cultural life. In May 2008 at its 40th session, the Committee will hold a day of general discussion on the draft general comment where

UNESCO will assist in yet once more bringing together a number of international experts to discuss the contents of the draft with the Committee.

The Covenant does not explicitly define the content and scope of the right to take part in cultural life; therefore each of the elements of article 15(1) (a) requires interpretation. As in all its general comments, the Committee will need to identify the normative content of the right to take part in cultural life by examining the meaning of the words “to take part” and “cultural life”. In so doing, it will have to lay down its own view of what “culture” means. In this regard, UNESCO’s seminal work as contained in its many documents such as the Nairobi Recommendation and its Universal Declaration on Cultural Diversity, will be important references to guide the way of the Committee as it negotiates what is foreseen as a delicate and extremely contentious path.

At the moment only Committee members are privy to the draft and no one is at liberty to discuss the details of the draft in public as it is still in a form that requires substantive revisions before it is ready to be circulated as an initial draft. However, it is not too soon to be able to identify at least some of the challenges that lie ahead – the question of access, equality and non-discrimination, minorities and indigenous peoples including traditional practices, globalization, the gender perspective in cultural life, poverty in the context of participation, preservation of cultural heritage, individual rights and collective rights – these are but a few of the sensitive elements looming in the horizon. Amidst all these, the Committee must clear a path through which it must show the way in boldly stating inter alia, what it considers to be the legal obligation of States parties, what constitutes violations of the right.

At this point in the history of human rights, cultural rights remain a work in progress. All we see right now are difficulties and challenges. We are convinced that we know what the causes are to the problems that confront humanity because we know all too well what the effects are that we see daily happening all

over the world. But do we really understand the intricacies of such causes? Because if we do, why are there no solutions in sight, even only in the conceptual level?

A presentation like these should not end on a negative note, so let me just affirm that in spite of what appears to be rough sailing ahead for cultural rights, our collective determination to forge forward cannot possibly be in vain. I am personally convinced from my many years of experience that humanity is on its way to a brighter future and all the misery we see around us should serve to strengthen our determination towards a world of peace, compassion and love. How do we achieve this? Through education, through scientific advancement, through faith and through a culture of peace. The human rights system of the United Nations is doing all it can within its limited means to protect and promote the entitlements of every human being on this planet but it is UNESCO in particular that should be at the forefront of it all. I congratulate UNESCO for the dedicated work it is doing and I also challenge it to do even greater deeds that I know it has the capacity for, to help build a world where every human being has the freedom to blossom to full potential and live life in dignity and joy.

¹ UNESCO Universal Declaration on Cultural diversity, Articles 4 and 5

² United Nations Fact sheet No. 16(Rev. 1). The Committee on Economic, Social and Cultural Rights, p.24, Geneva, Switzerland, 1996.

³ ECOSOC Resolution 1985/17 of 28 May 1985.