

**THE RISE OF CULTURAL RIGHTS IN INTERNATIONAL HUMAN
RIGHTS LAW**

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**Institute for Interdisciplinary Research in Legal sciences (JUR-I)
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THE RISE OF CULTURAL RIGHTS IN INTERNATIONAL HUMAN RIGHTS LAW*

Julie Ringelheim**

Abstract

While cultural rights have long been neglected in human rights theory and practice, they are attracting growing attention today. This chapter examines the sources of this category of rights in international human rights law, describes their evolution, and highlights the major debates their interpretation has given rise to. It discusses more specifically the content and meaning of the right to take part in cultural life, the right to enjoy the benefits of scientific progress and its applications, and the rights of authors and inventors to the protection of their moral and material interests.

1. INTRODUCTION

A certain degree of fuzziness surrounds the notion of cultural rights. The source of the problem lies with the concept of culture itself. In the course of its history, the term 'culture' has been endowed with different meanings, each of which continues to coexist today.¹ First, at the time of the Enlightenment, that is, in the seventeenth and eighteenth centuries, the term culture began to be used in France in a metaphorical sense to mean the cultivation of the mind as well as the result of intellectual development, namely the knowledge of a person who is well versed in arts, letters, and science. During the nineteenth century, in an era of rising nationalism, the German term *Kultur* came to mean the intellectual and moral achievements of a whole nation. This new definition progressively permeated other languages. While in the earlier understanding culture was seen as an individual characteristic of universal relevance—the culture one could acquire was supposed to be common to the whole mankind—this newer conception of culture was a collective phenomenon associated with a particular group. Yet, in both cases, the notion referred to a distinct set of social activities: it only included intellectual, artistic, or moral expressions, in other words 'the life of the mind', to the exclusion of material or technical aspects of social life. A third usage of the term emerged in the late nineteenth century in the nascent field of anthropology. Culture, in this context, was redefined as encompassing all manifestations of the social life of a given

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¹ See Beneton, *Histoire de mots. Culture et civilisation* (Presses de la fondation nationale des sciences politiques, 1975).

population.² This last understanding of the term spread during the twentieth century in common language. Thus conceived, culture became synonymous with the specific way of life of a community.

This plurality of meanings of the concept of culture presents a persistent challenge for the conceptualization of cultural rights.³ The difficulty involved in defining the subject matter of this category of rights partly explains the often-noted fact that cultural rights have long been neglected.⁴ But other factors have also contributed to this neglect. Culture is often seen as a luxury compared to more ‘classic’ human rights issues, such as the right to life or freedom from torture. Besides, the idea of recognizing a right to culture in the anthropological sense has been viewed by many as entailing the risk of legitimizing cultural practices that conflict with particular human rights, such as female genital mutilation.⁵ Attitudes, however, seem to be changing. Since 2000, cultural rights have attracted increasing attention from human rights experts and international bodies. The decision of the UN Human Rights Council in 2009 to appoint an independent expert in the field of cultural rights is a sign of this rising interest.⁶

Among international treaties dealing with human rights, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) is the only one to refer to cultural rights in its title. It is generally considered that cultural rights under this convention include the right to education (Articles 13 and 14) and the rights spelled out in Article 15. The latter provision is inspired by Article 27 of the Universal Declaration of Human Rights (UDHR) which lays down that everyone has ‘the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits’ as well as ‘the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.’ Building upon this provision, Article 15(1) ICESCR recognizes three different rights: the right (1) to take part in cultural life; (2) to enjoy the benefits of scientific progress and its applications; and (3) to benefit from the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he or she is the author. Articles 15(2) to 15(4) provide additional clarifications as to what these rights require from states parties:

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

² The British anthropologist Edward B. Tylor is widely considered as the first author to propose this new definition of culture in *Primitive Culture* (John Murray, 1871).

³ McGoldrick, ‘Culture, Cultures, and Cultural Rights’, in Baderin and McCorquodale (eds), *Economic, Social and Cultural Rights in Action* (OUP, 2007) 447.

⁴ Symonides, ‘Cultural Rights: A Neglected Category of Human Rights’ (1998) 158 *International Social Science J* 559; McGoldrick, n 3, 447.

⁵ Stamatopoulou, *Cultural Rights in International Law. Article 27 of the Universal Declaration of Human Rights and Beyond* (Martinus Nijhoff, 2007) 4–6.

⁶ HR Council Res 10/23 (26 March 2009). In 2012, the Council conferred to the mandate holder the status of Special Rapporteur in the field of cultural rights: HR Council Res 19/6 (16 March 2012).

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

Echoing this provision, the specialized UN human rights conventions—the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (Article 5(e)(iv)); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (Article 13(c)); the Convention on the Rights of the Child (CRC) (Article 31(2)); the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) (Article 43(1)(g)); and the Convention on the Rights of Persons with Disabilities (CPRD) (Article 30(1))—guarantee the right to participate in cultural life without discrimination of the specific categories of people they protect. At the regional level, the right to take part in the cultural or artistic life of the community is recognized in the American Declaration of the Rights and Duties of Man (Article 13), which preceded the UDHR, as well as in Article 14 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. It is also proclaimed in the African Charter on Human and Peoples' Rights (Article 17(2)) as well as in the 2012 ASEAN Human Rights Declaration (Article 32). By contrast, the European Convention on Human Rights (ECHR) contains no similar provision, while the Revised European Social Charter only mentions an obligation for states to take measures to enable persons with disabilities to access cultural activities (Article 15(3)) and elderly persons to play an active part in cultural life (Article 23). The 2015 Inter-American Convention on Protecting the Human Rights of Older Persons guarantees more generally 'the right to culture' (Article 21).

In addition, in the human rights literature, it has become increasingly common to speak of cultural rights when referring to the special rights recognized to minorities and indigenous peoples in order to enable them to preserve their distinct identity.⁷ International instruments relating to these groups, like Article 27 of the International Covenant on Civil and Political Rights (ICCPR), the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, or the Council of Europe Framework Convention on the Protection of National Minorities, do not explicitly label the rights they lay down as cultural rights. Yet, they contain numerous references to the notions of culture, cultural identity, or cultural practices. In particular, Article 27 ICCPR recognizes the right of persons belonging to minorities 'to enjoy their own culture'. The European Charter for Regional or Minority Languages includes an obligation for states to recognize the regional or minority languages 'as an expression of cultural wealth' (Article 7(1)(a)).⁸ As we shall see, the evolution of the understanding of the right to take

⁷ Eg Stamatopoulou, n 5; Francioni and Scheinin (eds), *Cultural Human Rights* (Martinus Nijhoff, 2008); Eide, 'Cultural Rights as Individual Human Rights', in Eide, Krause, and Rosas (eds), *Economic, Social and Cultural Rights. A Textbook* (Martinus Nijhoff, 2001) 289. See also Vrdoljak (ed), *The Cultural Dimension of Human Rights* (Oxford University Press, 2013).

⁸ See Mancini and de Witte, 'Language Rights as Cultural Rights: A European Perspective', in Francioni and Scheinin (eds), n 7, 247-84.

part in cultural life under Article 15 ICESCR has provided further support for this usage of the phrase cultural rights.

This chapter focuses on the rights recognized in Article 27 UDHR and Article 15 ICESCR. One notion is central to these provisions, that of 'cultural life'. Section 2 retraces the evolution of the interpretation of this concept. The three sections that follow analyse the content and scope of the three rights protected in these two articles: the right to take part in cultural life (Section 3), the right to science (Section 4), and the right of authors and inventors to the protection of their moral and material interests (Section 5).

2. WHAT IS 'CULTURAL LIFE'?

The travaux préparatoires of the UDHR indicate that for its framers, the notion of 'cultural life' appearing in Article 27 meant intellectual and artistic activities.⁹ More precisely, it was 'high culture' that they had in mind, that is, the traditional canons of literature, music, art, and so on.¹⁰ The provision was primarily aimed at recognizing the right of the masses to access lofty cultural resources, which had so far been the privilege of an elite.¹¹

With time, however, the interpretation of the term 'cultural life' used in Article 27 UDHR and Article 15 ICESCR has undergone a double evolution. First, the notion has been extended beyond high culture to include popular or mass culture. Second, it has been progressively acknowledged that the concept does not only refer to the idea of culture as intellectual and artistic expressions (culture as the life of the mind) but also covers culture in an anthropological sense (culture as a way of life).

2.1. From High Culture to Popular Culture

The work of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) had an important influence on the evolution of the interpretation of 'culture' and 'cultural life' in the context of UN human rights instruments. Departing from the vision of the UDHR drafters, the UNESCO Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It (1976) states that 'culture is not merely an accumulation of works and knowledge which an élite produces, collects and conserves in order to place it within the reach of all'.¹² Rather, it includes 'all forms of creativity and expression of groups or individuals'.¹³ Thus,

by participation in cultural life is meant the concrete opportunities guaranteed for all groups or individuals to express themselves freely, to communicate, act, and engage in creative activities

⁹ Morsink, *The Universal Declaration of Human Rights. Origins, Drafting and Intent* (University of Pennsylvania Press, 1999) 217–19.

¹⁰ O'Keefe, 'The Right to Take Part in Cultural Life under Article 15 of the ICESCR' (1998) 47 *ICLQ* 904, 905.

¹¹ O'Keefe, n 10, 906; Donders, *Towards a Right to Cultural Identity?* (Intersentia, 2002) 141.

¹² Preamble, 5th recital, subpara (c).

¹³ Para 3(a).

with a view to the full development of their personalities, a harmonious life and the cultural progress of society.¹⁴

This text clearly asserts that cultural life is not restricted to high culture but also extends to non-elitist cultural expressions. This broader approach to cultural life was taken up by the Committee on Economic, Social and Cultural Rights. In the Revised Guidelines regarding the reports to be submitted by states under the ICESCR, adopted in 1991, the right to take part in cultural life is described as ‘the right of everyone to take part in the cultural life which he or she considers pertinent’, including popular forms of culture such as cinema and traditional arts and crafts.¹⁵ Under the current Guidelines, drafted in 2008, states are requested to provide information on the measures taken to promote popular participation in, and access to, concerts, theatre, cinema, and sport events, as well as information technologies such as the Internet.¹⁶

¹⁴ Art 2(b). See also UNESCO Universal Declaration on Cultural Diversity (2001).

¹⁵ Revised Guidelines regarding the form and contents of reports to be submitted by states parties under Arts 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, E/1991/23, 88, at 108; O’Keefe, n 10, 913–14.

¹⁶ Revised Guidelines on treaty-specific documents to be submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2008/2, at 15.

2.2. From Culture as the Life of the Mind to Culture as a Way of Life

The second transformation affecting the concept of cultural life was more profound. The inclusion of popular cultural expressions within the notion of cultural life did not modify its basic nature: cultural life was still conceived as a specific sphere of activities within society, relating to creativity, imagination, and artistic or intellectual endeavours. By contrast, the endorsement of an anthropological conception of culture entailed a considerable expansion of its scope: this latter notion of culture basically embraces the whole way of life of a social group. It can encompass any social activity or expression that is specific to a given population: from art, language, or religion to techniques, economic activities, customs, laws, conception of the family, and so on. At the same time, the anthropological approach to culture focuses on traits which are specific to a given community. The right to culture in this latter sense becomes the right to one's own culture. It overlaps with minority protection and indigenous peoples' rights.

UNESCO had a leading role in this evolution. As early as 1982, the Mexico City Declaration on Cultural Policies defined culture as 'the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or social group', including 'not only the arts and letters, but also modes of life, the fundamental rights of the human beings, value systems, traditions and beliefs'.¹⁷ The UNESCO Universal Declaration on Cultural Diversity (2001) embraces the same conception of culture.¹⁸ A similar approach was progressively endorsed by the Committee on Economic, Social and Cultural Rights. During a day of general discussion on the right to take part in cultural life, organized by the Committee in 1992, various members declared that 'culture meant a way of life' and that taking part in cultural life 'embraced all the activities of the individual'.¹⁹ The Committee's General Comment 21 on the right of everyone to take part in cultural life, adopted in 2009, confirms this evolution. Culture is described in it as 'encompassing all manifestations of human existence.'²⁰ For the purpose of Article 15 ICESCR, it includes:

inter alia, ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives.²¹

¹⁷ Para 6. See also *Our Creative Diversity. Report of the World Commission on Culture and Development* (UNESCO, 1995).

¹⁸ Preamble, para 5.

¹⁹ E/1993/22, para 213.

²⁰ E/C.12/GC/21 (21 December 2009), para 11.

²¹ General Comment 21, n 20, para 13.

This expansion of the concept of cultural life, while encouraged by many authors,²² has been criticized by some.²³ Critics argue that the definition proposed in the General Comment is so broad that it is very difficult to identify specific individual entitlements and state obligations. Moreover, some fear that the emphasis now put in the context of Article 15 ICESCR on the protection of minorities and indigenous peoples, two subjects already covered by more specialized international instruments, risks reinforcing the traditional neglect affecting what initially was the main objective of this provision: promoting access to and participation of everyone, including the most disadvantaged, to culture in its artistic and intellectual sense.²⁴

3. THE RIGHT TO TAKE PART IN CULTURAL LIFE

The Committee on Economic, Social and Cultural Rights has endeavoured to clarify the content, scope, and implications of the right to take part in cultural life protected by Article 15(1)(a) ICESCR in its General Comment 21. In line with the evolution described in Section 2, it attempts to do this on the basis of what can be termed a ‘bi-dimensional’ conception of culture, as meaning both the life of the mind and particular ways of life.

3.1. The Normative Content of the Right to Take Part in Cultural Life

General Comment 21 distinguishes between three main components of the right to take part in cultural life.²⁵ First, participation in cultural life means the right to freely choose one’s identity and engage in one’s own cultural practices as well as to express oneself in the language of one’s choice. Second, access to cultural life covers the right to know one’s own culture and that of others through education and information, the right to follow a way of life associated with the use of cultural goods and resources such as land, water, biodiversity, language, or specific institutions, and the right to benefit from the cultural heritage and creations of others. Finally, contribution to cultural life refers to the right to be involved in creating the spiritual, material, intellectual, and emotional expressions of the community. This is supported by the right to take part in the elaboration and implementation of policies that have an impact on cultural rights.

The Committee on Economic, Social and Cultural Rights has applied the tripartite distinction—respect, protect, and fulfil—to specify the corresponding obligations of state parties to the right to take part in cultural life. The obligation to respect requires states to refrain from interfering with the enjoyment of the right.²⁶ This entails a duty to guarantee various rights and freedoms inherent in the right to participate in culture: the right to freely choose one’s own cultural identity; the freedom to create, which implies the

²² Eg Stamatopoulou, n 5; Eide, n 7; Stavenhagen, ‘Cultural Rights: A Social Science Perspective’, in Eide, Krause and Rosas (eds), n 7, 85.

²³ McGoldrick, n 3, 450–1; Romainville, *Le droit à la culture, une réalité juridique. Le droit de participer à la vie culturelle en droit constitutionnel et international* (Bruylant, 2014) 355-70.

²⁴ Romainville, n 23.

²⁵ General Comment 21, n 20, para 15.

²⁶ General Comment 21, n 20, para 49.

abolition of censorship of cultural and artistic activities; freedom of expression in the language of one's choice; the right to access one's own cultural heritage and that of others; and the right to take part freely in decision-making processes that may have an impact on cultural rights. Freedom to create and to research is explicitly protected in Article 15(3) ICESCR, under which states must undertake 'to respect the freedom indispensable for scientific research and creative activity.' It can, moreover, be seen as a particular application of the right to freedom of expression. The European Court of Human Rights has indeed acknowledged that freedom of expression under the ECHR covers freedom of artistic expression²⁷ as well as academic freedom.²⁸

To meet their obligation to protect, states must take measures to prevent non-state actors from interfering in the exercise of the right. In addition, the Committee has linked four further sets of concerns to this obligation to protect.

First, states must protect cultural heritage in all its forms at all times, whether in time of war or peace and in case of natural disasters.²⁹ This echoes the numerous international treaties dealing with the preservation of cultural heritage.³⁰ To be sure, these conventions are not human rights instruments: their object is to secure the protection of cultural heritage, not to confer rights to individuals. Yet given that cultural heritage – whether tangible, intangible, or natural – includes resources that are indispensable to allow individuals to enjoy their cultural rights, its preservation is of major importance to make these rights effective.³¹ It was initially in the context of armed conflicts that an international regime of protection was established.³² Later on, other instruments have been adopted to organize the international protection of cultural heritage in time of peace.³³ Relevant instruments have also been adopted at the European level in the Council of Europe, notably the Framework Convention on the Value of Cultural Heritage for Society (2005). According to the UN Special Rapporteur in the field of cultural rights, the prohibition of acts of deliberate destruction of cultural heritage of major value for humanity, whether in time of war or peace, has now reached the level of customary international law³⁴.

A second aspect of the obligation to protect is the protection of cultural heritage of all groups and communities in economic development and environmental policies.³⁵ The General Comment insists

²⁷ *Müller and others v Switzerland* (1991) 13 EHRR 212, para 27.

²⁸ *Sorguç v Turkey*, App no 17089/03, Judgment of 23 June 2009, para 35. See more generally ECtHR, Research Division, *Cultural Rights in the Case-law of the European Court of Human Rights* (Council of Europe, 2011). See also CFREU, Art 13, which recognizes artistic and academic freedom.

²⁹ General Comment 21, n 20, para 50(a).

³⁰ It can also be related to the duty incumbent upon states under ICESCR, Art 15(2) to take the necessary steps to ensure, *inter alia*, the conservation of culture.

³¹ See Report of the independent expert in the field of cultural rights, 21 March 2011, A/HRC/17/38; Francioni, 'Culture, Heritage and Human Rights: An Introduction', in Francioni and Scheinin (eds), n 7, 1-17.

³² Hague Conventions of 1899, Art 56, and 1907, Art 56; Protocol I Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 53; Protocol II Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, Art 16; Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954, Art 4; Rome Statute of the International Criminal Court 1998, Art 8(2).

³³ See i.a. Convention concerning the Protection of the World Cultural and Natural Heritage (1972), Convention on the Protection of the Underwater Cultural Heritage (2001), and Convention for the Safeguarding of Intangible Cultural Heritage (2003), all concluded under the framework of UNESCO

³⁴ Report of the Special Rapporteur in the field of cultural rights, A/71/317 (9 August 2016) para 24. See also the UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, adopted by the UNESCO General Conference, Paris, 17 October 2003.

³⁵ General Comment 21, n 20, para 50(b).

that 'particular attention should be paid to the adverse consequences of globalization, undue privatization of goods and services and deregulation on the right to participate in cultural life.'³⁶ It is often observed that economic globalization tends to favour cultural products and models of wealthier countries, resulting in the standardization of culture and marginalization of cultural expressions of poorer or smaller countries. The World Trade Organization (WTO) and international trade agreements concluded under its auspices have been criticized for undermining the ability of governments to maintain policies aimed at sustaining national cultural industries and creation.³⁷ This fear prompted the adoption of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which aims 'to give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning' (Article 1(g)). Crucially, state parties 'reaffirm their sovereign rights to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions' (Article 5(1)). The Committee on Economic, Social and Cultural Rights' preoccupation, however, goes beyond the protection of states' national cultures in international trade: the General Comment stresses the need to protect in particular the cultural heritage of 'the most disadvantaged and marginalized individuals and groups' in economic development.³⁸ It thereby suggests that the protection of the right to take part in cultural life requires intervention by the state to regulate culture-related economic activities and support certain forms of cultural production with a view to ensuring that all groups and individuals, within their population, are able to maintain the cultural heritage they cherish.

A third dimension of the obligation to protect the right to take part in cultural life lies with the duty to defend the cultural productions of indigenous peoples, notably their traditional knowledge, natural medicines, folklore, and rituals. This includes protecting their lands and resources from illegal or unjust exploitation by state entities and private companies.³⁹ The Inter-American Court of Human Rights has established that when dealing with major development or investment plans that may have a profound impact on the traditional territory of an indigenous people, states must not only carry out prior consultation with this people, but also obtain their free, prior, and informed consent, in accordance with their traditions and customs.⁴⁰ This principle has also been endorsed by the Human Rights Committee in the context of Article 27 ICCPR.⁴¹

³⁶ General Comment 21, n 20, para 50(b).

³⁷ Morijn, 'The Place of Cultural Rights in the WTO System', in Francioni and Scheinin, n 7, 285-316; Voon, *Cultural Products and the World Trade Organization* (CUP, 2007).

³⁸ General Comment 21, n 20, para 50(b).

³⁹ General Comment 21, n 20, para 50(c).

⁴⁰ *Case of the Saramaka People v Suriname*, IACtHR Series C No 172 (28 November 2007) para 137. In *Kichwa Indigenous People of Sarayaku v Ecuador*, IACtHR Series C No 245 (27 June 2012), the Court asserted that states' obligation to carry out prior consultation with indigenous communities on the exploitation of natural resources in their territory is a general principle of international law (para 164).

⁴¹ HRC, General Comment 23, HRI/GEN/1/Rev.9 (Vol I) 207, para 7; *Angela Poma Poma v Peru*, CCPR/C/95/D/1457/2006 (27 March 2009) para 7.6.

Finally, the Committee on Economic, Social and Cultural Rights also mentions, as part of the obligation to protect, the duty to prohibit discrimination based on cultural identity and incitement to discrimination, hostility, or violence on the basis of national, racial, or religious features.⁴²

The obligation to fulfil entails a duty for states to take appropriate legislative, administrative, budgetary, judicial, and other measures necessary for the full realization of the right. This level of obligations includes an obligation to facilitate and promote the right as well as, in some circumstances, to provide conditions under which the right can be enjoyed:

- To facilitate the exercise of the right to participate in cultural life, states should establish and support public cultural institutions, develop adequate policies for the protection of cultural diversity, and grant assistance to individuals or organisations engaged in creative and scientific activities (artists, cultural associations, science academies, etc). They should also support minorities and other communities in their efforts to preserve their culture.⁴³
- The obligation to promote requires states to ensure appropriate education and public awareness concerning the right to take part in cultural life, particularly in rural and deprived urban areas, as well as in relation to minorities and indigenous peoples.⁴⁴
- Finally, states must provide individuals with the means necessary for the enjoyment of the right when, for reasons outside their control, they are unable to realize this right by themselves. The Committee ranks in this category the duty to preserve and restore cultural heritage; the duty to include cultural education, including history, literature, music, and teaching of other culture, in school curricula; and the obligation to guarantee access for all, including disadvantaged groups, to cultural institutions (museums, libraries, cinemas, theatres, etc.) and activities. Effective mechanisms should moreover be established to allow persons, individually, in association with others, or within a group, to participate effectively in decision-making processes.⁴⁵ The Inter-American Court of Human Rights has especially insisted on the duty of states to carry out prior consultation with indigenous communities on the exploitation of natural resources in their territory. It considers this obligation to be a general principle of international law.⁴⁶

Among these elements, the Committee on Economic, Social and Cultural Rights identifies ‘core obligations’, that is, minimum essential levels of the right which all states must implement immediately, by contrast with other obligations that may be achieved progressively, depending on available

⁴² General Comment 21, n 20, para 50(d).

⁴³ General Comment 21, n 20, para 52.

⁴⁴ General Comment 21, n 20, para 53.

⁴⁵ General Comment 21, n 20, para 54.

⁴⁶ *Kichwa Indigenous People of Sarayaku v Ecuador*, n 40, para 164. The HRC has also inferred from ICCPR, Art 27 a duty for states to take measures to ensure effective participation of indigenous peoples in decisions affecting their right to maintain a particular way of life associated with the use of land resources. See General Comment 23, n 41, para 7; *Angela Poma Poma*, n 41.

resources. States must at least create and promote an environment within which people can participate in the culture of their choice. This entails the immediately applicable obligations to guarantee non-discrimination and gender equality in the enjoyment of the right to take part in cultural life; to respect the right of everyone to identify or not identify with one or more communities; to respect and protect the right of everyone to engage in their own cultural practices, while respecting human rights; to eliminate barriers or obstacles to people's access to their own culture or other cultures; and to allow and encourage the participation of members of minorities, indigenous peoples, or other communities in the design and implementation of laws and policies affecting them.⁴⁷

⁴⁷ General Comment 21, n 20, para 55.

3.2 Groups Requiring Special Attention

For different reasons, certain groups require particular attention in the implementation of the right to take part in cultural life.

First of all, for some categories of people, special measures are needed to enable them to effectively access the cultural resources, activities, and infrastructures necessary for the enjoyment of this right. In the case of persons with disabilities, Article 30 CRPD requires steps to be taken to ensure access to cultural materials; television programmes, films, theatre, and other activities; and cultural infrastructures, such as theatres, museums, cinemas, libraries, tourist services, and, as far as possible, monuments and sites of national cultural importance. Moreover, their specific cultural and linguistic identity, including sign language, should be recognized.⁴⁸ The Committee on Economic, Social and Cultural Rights also emphasizes the need to pay particular attention to the promotion of cultural rights of older persons. It refers to the Vienna International Plan of Action on Aging (1982), which encourages governments to support programmes aimed at providing these persons with easier physical access to cultural institutions and calls for the development of programmes featuring older persons as teachers and transmitters of knowledge, culture, and spiritual values.⁴⁹ Additionally, the Committee expresses concern at the situation of persons living in poverty and urges states parties to take concrete measures to bring culture within the reach of all and ensure the full exercise of the right to enjoy and take part in cultural life by persons living in poverty.⁵⁰

Minorities, indigenous peoples, and migrants are in a specific situation from the viewpoint of the right to take part in cultural life because they have a cultural heritage that differs from that of the majority. Accordingly, they are at risk of being subject to assimilation policies by the authorities. The Committee on Economic, Social and Cultural Rights insists that minorities should have the right to take part in the cultural life of the society at large as well as to conserve, promote, and develop their own culture.⁵¹ In line with Article 31 ICRMW, it notes that the protection of cultural identities, language, religion, and folklore of migrants should receive particular attention.⁵² In relation to indigenous peoples, the Committee considers that Article 15(1) ICESCR requires measures to be taken to protect their right to own, develop, control, and use their communal lands and resources as well as to act collectively to maintain and develop their cultural heritage, traditional knowledge, and cultural expressions.⁵³

Finally, women and children must also be given special consideration. The Committee on Economic, Social and Cultural Rights highlights the duty of states to eliminate institutional and legal obstacles as

⁴⁸ General Comment 21, n 20, paras 30–1.

⁴⁹ General Comment 21, n 20, para 28. See Inter-American Convention on Protecting the Human Rights of Older Persons, Art 21.

⁵⁰ General Comment 21, n 20, paras 38–9.

⁵¹ General Comment 21, n 20, para 32.

⁵² General Comment 21, n 20, para 34.

⁵³ General Comment 21, n 20, paras 36–7.

well as those based on customs and traditions that prevent women from participating fully in cultural life, science, education, and research.⁵⁴ As for children, they ‘play a fundamental role as the bearers and transmitters of cultural values from generation to generation.’⁵⁵ The right to take part in cultural life in their case is closely linked to the right to education. States should ensure that education is culturally appropriate, which means that it should enable children to develop their cultural identity and to learn about the culture of their own communities as well as of others.⁵⁶ Accordingly, school curricula for all children should respect the cultural specificities of minorities and indigenous peoples and incorporate their history, knowledge, cultural values, and aspirations.⁵⁷

3.3 Limitations to the Right

As with the other rights set out in the ICESCR, the right to take part in cultural life is not absolute. It may be subject to limitations. Such restrictions must, however, respect certain conditions: they must be determined by law, compatible with the nature of the right, and strictly necessary for the promotion of the general welfare in a democratic society.⁵⁸

Of special concern here are cultural practices that conflict with certain human rights. The extension of the notion of ‘cultural life’ to culture in the anthropological sense has made this problem especially salient. Various practices anchored in cultural traditions are in tension with some human rights, in particular women’s rights. The Committee on Economic, Social and Cultural Rights has emphasized in this regard that limitations to the right to take part in cultural life may be necessary to counter ‘negative practices, including those attributed to customs and traditions, that infringe upon other human rights.’⁵⁹ In another part of General Comment 21, it goes even further and asserts that taking steps to combat customary or traditional practices harmful to the well-being of persons, such as female genital mutilation, would in fact be required by the right to take part in cultural life. Failing to do so would, according to the Committee, constitute a violation of this right insofar as such practices constitute barriers to the full exercise of the right by the affected persons.⁶⁰

Interestingly, in some contexts, conflicts may arise between different aspects of the right to take part in cultural life. For instance, artistic freedom may in principle be limited by the prohibition of incitement to discrimination, hostility, and violence against an ethnic or religious group. Yet, evaluating whether a novel, song, or other work of art constitutes such form of incitement may raise arduous questions. As recognized by the European Court of Human Rights, it is important to take into account the particular

⁵⁴ General Comment 21, n 20, para 25. See CEDAW, Art 2(f).

⁵⁵ General Comment 21, n 20, para 26.

⁵⁶ General Comment 21, n 20, para 26.

⁵⁷ General Comment 21, n 20, para 27.

⁵⁸ ICESCR, Art 4. See General Comment 21, n 20, para 19.

⁵⁹ General Comment 21, n 20, para 19.

⁶⁰ General Comment 21, n 20, para 64.

nature of artistic expression, which can take metaphorical or satiric forms.⁶¹ One must also be mindful of the risk that state authorities instrumentalize the accusation of incitement to hostility or violence to justify censorship of artistic creations that touch upon sensitive issues. In some states, in the name of combating incitement to religious hatred or protection of religious feelings of believers, penal sanctions are imposed on artists who mock or criticize religious doctrines.⁶² But it is in the nature of art to challenge conventions, moral codes, and traditions. Artistic freedom must include the right to create works that ‘offend, shock or disturb the State or any sector of the population’, to use a famous quotation of the European Court of Human Rights.⁶³ This discussion reveals a potential tension between the two approaches to culture now brought together in the interpretation of the right to take part in cultural life. Artistic freedom, which pertains to culture understood as artistic and intellectual activities, has a distinctly individualist character: it includes the freedom of individual artists to question, subvert, or contest dominant social norms and identities. By contrast, the right to enjoy one’s own culture in the anthropological sense has a communitarian and somewhat conservative connotation: it is primarily the right to preserve a community’s traditions and way of life inherited from the past. Finding the right balance between these two dimensions of the right to take part in cultural life may not always be easy.

4. THE RIGHT TO SCIENCE

The right of everyone ‘to enjoy the benefits of scientific progress and its applications’, protected in Article 15(1)(b) ICESCR, has long been overlooked by human rights advocates and institutions.⁶⁴ It was largely perceived as vague and obscure. Yet it was rediscovered in the 1990s in the context of the controversies generated by the expansion of the international intellectual property regime.⁶⁵ Many argued that this latter development restricted the ability of the general public, and especially the most disadvantaged, to benefit from scientific advancements, with a detrimental impact on the enjoyment of various rights (see Section 5). Against this background, the right provided for in Article 15(1)(b) started to attract more attention. Between 2007 and 2009, three expert meetings were convened by UNESCO, with the collaboration of academic institutions, resulting in the Venice Statement on the Right to Enjoy the Benefits of Scientific Progress and its Applications (2009), which attempts to clarify the normative content of this right. Moreover, the UN Special Rapporteur in the field of Cultural Rights published a report on the subject in 2012.⁶⁶ One important question is how to construe the notion of ‘scientific progress’ for the purpose of this provision.⁶⁷ The Venice Statement observes that a human rights-based

⁶¹ *Cultural Rights in the Case-law of the European Court of Human Rights*, n 28, 5–7.

⁶² The ECtHR has admitted that the protection of ‘the right of citizens not to be insulted in their religious feelings’ can constitute a legitimate aim for the purposes of ECHR, Art 10(2) (limitations to free speech): *Otto-Preminger-Institut v Austria* (1995) 19 EHRR 34, para 48. In its later case law it has, however, qualified this principle: see *Tatlav v Turkey*, App no 50692/99, Judgment of 2 May 1996; *Klein v Slovakia* (2010) 50 EHRR 15.

⁶³ *Handyside v UK* (1979–80) 1 EHRR 737, para 49.

⁶⁴ Chapman, ‘Towards an Understanding of the Right to Enjoy the Benefits of Scientific Progress and Its Applications’, (2009) 8 *Journal of HR* 1, 1; Besson, ‘Introduction’, (2015) 4 *European JHR* 403.

⁶⁵ Plomer, ‘The Human Rights Paradox: Intellectual Property Rights and Rights of Access to Science’, (2013) 35 *HRQ* 143, 144.

⁶⁶ The right to enjoy the benefits of scientific progress and its applications A/HRC/20/26 (14 May 2012). In 2013, the High Commissioner for Human Rights organized a seminar aimed at improving the conceptual clarity of this right (A/HRC/26/19).

⁶⁷ Eide, n 7, 296.

approach 'requires that science and its applications are consistent with fundamental human rights principles such as non-discrimination, gender equality, accountability and participation, and that particular attention should be paid to the needs of disadvantaged and marginalized groups'.⁶⁸ Some authors further argue that 'scientific progress' in this context should mean discoveries and technologies that contribute to the enjoyment of human rights, including by the most disadvantaged.⁶⁹ Some technologies, however, can have both positive and negative effects on human development. The rise of environmental concerns epitomizes this problem: technologies which do improve immediate well-being of individuals by making their life more comfortable can have a negative impact on the environment and, therefore, jeopardize their living conditions in the long term. The implementation of the right under Article 15(1)(b) ICESCR is thus bound to raise dilemmas and controversies.

The obligations stemming from the right to benefit from scientific progress and its applications are potentially very wide. The obligation to respect entails that states should not interfere with the freedom of scientists to research, disseminate their results, and collaborate with other researchers across boundaries.⁷⁰ The obligation to protect requires states to safeguard people against harmful applications of scientific and technical progress.⁷¹ Since 2008, the Committee on Economic, Social and Cultural Rights has asked states to indicate in their periodic reports the measures they have taken to prevent the use of scientific and technical progress for purposes that are contrary to the enjoyment of human dignity and human rights.⁷² But the most distinctive contribution of Article 15(1)(b) certainly lies with the third level of obligation, namely the obligation to fulfil the right. This is interpreted as entailing a duty for states to take positive steps 'to ensure affordable access to the benefits of scientific progress and its applications for everyone, including disadvantaged and marginalized individuals and groups'.⁷³ It has been stressed that from a human rights perspective, science should be conceived as a public good rather than in service of profit.⁷⁴

The importance of science and technology for the realization of certain rights is already highlighted in two other provisions of the ICESCR. Under Article 11(2)(a), states must, in order to achieve the right to food:

improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and

⁶⁸ Para 12(b).

⁶⁹ De Schutter, 'The Right of Everyone to Enjoy the Benefits of Scientific Progress and the Right to Food: From Conflict to Complementarity', (2011) 33 *HRQ* 304, 309; Chapman, n 64, 11.

⁷⁰ Chapman, n 64, 18; UN Special Rapporteur in the field of Cultural Rights, n 66, paras 39-41. See also ICESCR, Arts 15(3) and (4).

⁷¹ Venice Statement, para 15. See also the Declaration on the Use of Scientific and Technological Progress, UNGA Res 3384 (XXX) (1975), Arts 2 and 8.

⁷² Revised Guidelines, n 16, para 70(b).

⁷³ Revised Guidelines, n 16, para 70(a); Venice Statement, para 16(2); UN Special Rapporteur in the field of Cultural Rights, n 69, paras 26-38.

⁷⁴ Shaver, 'The Right to Science: Ensuring that Everyone Benefits from Scientific and Technological Progress', (2015) 4 *European JHR* 411, 417; Besson, 'Science without Borders and the Boundaries of Human Rights: Who Owes the Human Right to Science?', (2015) 4 *European JHR* 462; UN Special Rapporteur in the field of Cultural Rights, n 66, para 65.

by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources.

The right to health commands ‘the creation of conditions which would assure to all medical service and medical attention in the event of sickness’ (Article 12(2)(d)). But promoting access to scientific innovations may be important for the realization of various other rights, such as the right to an adequate standard of living, to education, or to water.⁷⁵

There is, however, an important limit to this obligation: Article 2 ICESCR requires states to act only to the maximum of their available resources to realize the rights recognized in the Covenant. Hence, states cannot be obliged to provide access to technologies that are disproportionately costly compared to their financial means.⁷⁶

Beside the issue of cost, the will to ensure affordable access to the benefits of scientific progress and its applications may clash with intellectual property rules. This points towards a wider debate, which is at the core of current discussions on Article 15(1)(c) ICESCR, that of the relationship between intellectual property and human rights law.

5. THE RIGHTS OF AUTHORS AND INVENTORS

While the right to take part in cultural life and the right to science concern the whole population, the third right recognized in Article 15 ICESCR concerns a specific category of persons, namely scientists, writers, and artists. Similarly to Article 27(2) UDHR, Article 15(1)(c) ICESCR provides that everyone has the right to ‘the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.’ The insertion of this clause in the UDHR generated vociferous debates during the drafting process. Introduced at the insistence of the French delegation, Article 27(2) was strongly opposed by several delegations, including those of the UK and the US, who contested that intellectual property was a basic human right. Chile pointed out the potential conflict between the protection of intellectual work and freedom of access to literary, artistic, or scientific output. Nevertheless, a majority of states voted in favour of this right.⁷⁷

5.1. Human Rights and Intellectual Property

A crucial question raised by the right under Article 15(1)(c) ICESCR is that of its relationship with intellectual property law, which has been developed largely outside the human rights framework, through domestic legislation, bilateral agreements, and multilateral treaties.⁷⁸ Broadly stated, this body of law

⁷⁵ Venice Statement, para 12(d).

⁷⁶ Eide, n 7, 296.

⁷⁷ Morsink, n 9, 219–22 and Plomer, n 65, 171–5.

⁷⁸ Eg the Paris Convention for the Protection of Industrial Property (1883, last revised 1967); the Berne Convention for the Protection of Literary and Artistic Works (1886, last revised 1971); and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961).

aims to safeguard the producers of intellectual goods or services by granting them certain time-limited rights that allow them to prohibit or authorize the use of those productions by others and to draw financial reward from such use.⁷⁹ Whereas copyright relates to literary and artistic creations (such as books and other writings, music, paintings, or films) and technology-based works like computer programs and electronic databases, industrial property covers the protection of inventions through patents, as well as trademark and industrial design protection. Importantly, a patent holder may benefit from a right of exclusion: once a patent has been granted in a certain country, the patentee can exclude others from making, using, or selling the protected invention in that country.⁸⁰ In all national systems, however, there are some exceptions and limitations to intellectual property rights.

While human rights and intellectual property rights have long developed in relative isolation from each other, this changed radically with the adoption of the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement by the WTO in 1994. TRIPS had the effect of imposing high minimum standards of intellectual property on all WTO member states, including on developing countries where copyright and patent laws were, at that time, absent or very limited. This generated intense criticism. It was observed that strict intellectual property models were likely to significantly disadvantage less developed countries by increasing the costs of development, in a context where industrialized countries hold the overwhelming majority of the patents registered worldwide. Furthermore, it was realized that intellectual property norms could hamper the achievement of various human rights, in particular the rights to health and to food.⁸¹ A number of UN human rights institutions expressed serious concerns about this development. In 2000, the Sub-Commission on the Promotion and Protection of Human Rights adopted Resolution 2000/7 on 'Intellectual Property Rights and Human Rights', stating that 'actual or potential conflicts exist between the implementation of the TRIPS Agreement and the realisation of economic, social and cultural rights'.⁸² The following year, the UN High Commissioner for Human Rights drafted a report on the impact of TRIPS on human rights, focusing on the right to health.⁸³ Also in 2001, the Committee on Economic, Social and Cultural Rights adopted a statement on 'Human rights and intellectual property'.⁸⁴ All these documents insisted on the primacy of human rights obligations over TRIPS and called upon states to ensure that intellectual property regulations correspond with international human rights law.

⁷⁹ World Intellectual Property Organization (WIPO), *Introduction to Intellectual Property: Theory and Practice* (Kluwer, 1997) 3.

⁸⁰ WIPO, *Understanding Industrial Property*, WIPO Publication No. 895(E), 7–8.

⁸¹ Chapman, 'The Human Rights Implications of Intellectual Property Protection', (2002) 5 *Journal of International Economic Law* 861; Cullet, 'Human Rights and Intellectual Property Protection in the TRIPS Era', (2007) 29 *HRQ* 404; Plomer, n 65; Helfer and Austin, *Human Rights and Intellectual Property: Mapping the Global Interference* (CUP, 2011).

⁸² E/CN.4/Sub.2/2000/7 (17 August 2000).

⁸³ The Impact of the Agreement on Trade-Related Aspects of Intellectual Property Rights on Human Rights, Report of the High Commissioner, E/CN.4/Sub.2/2001/13 (27 June 2001).

⁸⁴ 'Human Rights and Intellectual Property: Statement by the Committee on Economic, Social and Cultural Rights', Follow-up to the day of general discussion on Article 15(1)(c), 26 November 2001, E/C.12/2001/15 (14 December 2001).

The tensions between intellectual property rules and human rights are especially acute in the case of the right to health. The standard justification for the intellectual property system is that it creates an incentive for innovation, including in the pharmaceutical field. Yet, whereas affordability of medicines is a central component of the right to health, medical patents result in higher prices for drugs, which restrict access for the poor. The problem became particularly salient in relation to the HIV and AIDS pandemic that predominantly affects the populations of developing countries. Additionally, because it links innovation to commercial motivation, the system of intellectual property entails that research is directed first and foremost towards ‘profitable’ diseases, namely diseases that are prevalent in rich countries, where the return is likely to be the greater.⁸⁵

The impact of intellectual property on the right to food has also become a source of major concern. In order to encourage innovation in agriculture, intellectual property has been extended to new plant varieties in the form of patents and plant breeders’ rights. As a result, a few agricultural corporations have acquired virtual monopolies on the genome of important crops, enabling them to set prices at levels far exceeding actual costs. In consequence, poor farmers experience difficulties in accessing seeds and production resources. This situation, moreover, can lead to higher prices for food, making it less affordable for the poorest.⁸⁶

Another crucial debate concerns the protection of traditional knowledge (relating to medicine, agriculture, etc.) and artistic creations of indigenous communities. These intellectual goods rarely qualify for intellectual property protection, because they are usually considered by the community to belong to the whole group whereas intellectual property rules presuppose a single owner. Accordingly, such knowledge and creations are considered to be part of the public domain, which makes them available for exploitation and appropriation by third parties. This leads to a situation called ‘biopiracy’, ‘whereby traditional knowledge is expropriated and patented by outsiders without the indigenous sources receiving any benefit’.⁸⁷ In an effort to counter this phenomenon, Article 31(1) of the UN Declaration on the Rights of Indigenous Peoples recognizes the right of indigenous peoples ‘to maintain, control, protect and develop their intellectual property over [their] cultural heritage, traditional knowledge, and traditional expressions’.

5.2. The Content and Limitations of the Right Under Article 15(1)(C) ICESCR

Against the backdrop of these controversies, in 2005 the Committee on Economic, Social and Cultural Rights issued a General Comment on the right protected in Article 15(1)(c). At the outset, the Committee asserts that this right ‘does not necessarily coincide with what is referred to as intellectual property rights

⁸⁵ Report of the High Commissioner, n 83, para 38.

⁸⁶ De Schutter, n 69.

⁸⁷ Chapman, n 81, 872–3.

under national legislation or international agreements.’⁸⁸ The right to benefit from the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which she is the author is a human right, which derives from the inherent dignity and worth of all persons, while intellectual property rights are first and foremost means by which states seek to advance societal interests, namely to ‘provide incentive for inventiveness and creativity, encourage the dissemination of creative and innovative productions, as well as the development of cultural identities, and preserve the integrity of scientific, literary and artistic productions for the benefit of society as a whole.’⁸⁹ The right under Article 15(1)(c) is essentially aimed at safeguarding the personal link between authors and their creations and allowing them to enjoy an adequate standard of living, whereas intellectual property regimes ‘primarily protect business and corporate interests and investments.’⁹⁰

The Committee thus distinguishes the right under Article 15(1)(c) from intellectual property rights. Yet the approach developed in the General Comment denotes a conceptual framework that ‘is still largely influenced by existing intellectual property rights frameworks.’⁹¹ According to the Committee, the ‘moral interests’ referred to in the provision include the right of authors to be recognized as the creators of their intellectual productions and to object to any distortion, mutilation, or modification which would be prejudicial to their honour and reputation.⁹² The protection of ‘material interests’ is meant to allow authors to enjoy an adequate standard of living.⁹³ Among the obligations imposed on states lies the duty to ‘prevent the unauthorized use of scientific, literary and artistic productions that are easily accessible or reproducible through modern communication and reproduction technologies.’ This may be achieved ‘by establishing systems of collective administration of authors’ rights or by adopting legislation requiring users to inform authors of any use made of their productions and to remunerate them adequately.’⁹⁴

Furthermore, the Committee asserts that states should take action to effectively protect the interests of indigenous peoples in relation to their intellectual productions, which are often expressions of their cultural heritage and traditional knowledge.⁹⁵ As seen already, a similar obligation has also been derived by the Committee from the right to take part in cultural life, which in its view entails a duty to defend the cultural productions of indigenous peoples, including their traditional knowledge and natural medicines, against unjust exploitation by state entities or private companies.⁹⁶

⁸⁸ CESCR, General Comment 17, HRI/GEN/1/Rev.9 (Vol I) 123, para 2. By contrast with ICESCR, Art 15(1)(c), CFREU, Art 17(2) explicitly protects intellectual property.

⁸⁹ General Comment 17, n 88, para 1.

⁹⁰ General Comment 17, n 88, para 2.

⁹¹ Cullet, n 81, 422.

⁹² General Comment 17, n 88, para 13.

⁹³ General Comment 17, n 88, para 15.

⁹⁴ General Comment 17, n 88, para 31.

⁹⁵ General Comment 17, n 88, para 32.

⁹⁶ General Comment 21, n 20, para 50(c).

The rights of authors, scientists, and inventors can be subject to limitations provided they are compatible with the essential aims of the right, namely protecting their personal link with their creation and allowing them to enjoy an adequate standard of living.⁹⁷ Significantly, the Committee calls for an adequate balance to be struck between state obligations under Article 15(1)(c) and under the other provisions of the Covenant:

In striking this balance, the private interests of authors should not be unduly favoured and the public interest in enjoying broad access to their productions should be given due consideration. States parties should therefore ensure that their legal or other regimes for the protection of the moral and material interests resulting from one's scientific, literary or artistic productions constitute no impediment to their ability to comply with their core obligations in relation to the rights to food, health and education, as well as to take part in cultural life and to enjoy the benefits of scientific progress and its applications, or any other right enshrined in the Covenant.⁹⁸

In particular, states parties 'have a duty to prevent unreasonably high costs for access to essential medicines, plant seeds or other means of food production, or for schoolbooks and learning materials, from undermining the rights of large segments of the population to health, food and education.'⁹⁹

Importantly, the Committee insists that the right to the protection of the moral and material interests resulting from the production of which one is the author is intrinsically linked to the other rights recognized in Article 15, the right of everyone to take part in cultural life, the right to enjoy the benefits of scientific progress and its applications as well as the right to artistic and academic freedom. The relationship between these rights 'is at the same time mutually reinforcing and reciprocally limitative.'¹⁰⁰ The Committee thereby calls for a holistic interpretation of Article 15 ICESCR, implying the search for a fair equilibrium between the rights of authors and inventors to the protection of their private interests and the right of the public to access culture and science.¹⁰¹

6. CONCLUSION

The cultural rights recognized in Article 27 UDHR and Article 15 ICESCR have traditionally been neglected in human rights theory and practice. Today, however, these rights are attracting growing attention. They prove to be particularly relevant to some crucial debates of our time, such as how to protect local cultures in the face of economic globalization; how to safeguard indigenous peoples', minorities', and migrants' rights to preserve their cultural heritage; how to ensure access for all to essential scientific advancements; or how to prevent intellectual property rules from hindering the

⁹⁷ General Comment 17, n 88, para 23.

⁹⁸ General Comment 17, n 88, para 35.

⁹⁹ General Comment 17, n 88, para 35.

¹⁰⁰ General Comment 17, n 88, para 4.

¹⁰¹ See the two reports of the UN Special Rapporteur in the field of cultural rights: Copyright policy and the right to science and culture, A/HRC/28/57 (24 December 2014); Patent policy and the right to science and culture, A/70/279 (4 August 2015).

enjoyment of human rights. Nonetheless, many interpretive questions remain. Two issues in particular are likely to continue to generate discussions in the years to come. One is how to develop an effective protection of cultural life given the very broad conception that has been endorsed by the Committee on Economic, Social and Cultural Rights, as including both culture as intellectual and artistic expressions and culture in the anthropological sense. A second critical question is how to find the right balance between the different components of Article 15 ICESCR, in particular the right of authors and inventors to the protection of their interests, on the one hand, and, on the other hand, the right of everyone to access culture and science.