

Cultural rights and their implications for minority and indigenous communities

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Introduction

The changing definition of culture

The protection and enjoyment of culture is central to minority and indigenous peoples' rights. Unfortunately, in most parts of the world, minority and indigenous cultures are still being suppressed, ignored or undermined. Their restriction is often seen as a tool for the maintenance of social cohesion, yet studies have shown that the opposite is true: repression of minority or indigenous cultures breeds alienation from the society and resentment towards the state, as well as encouraging intolerance among majorities. Current discussions on migration in Europe often undermine minority cultures through over-generalizations, adopting at times simplistic and condescending undertones. Indigenous cultures face very similar concerns. Many indigenous peoples continue to suffer from assimilationist policies and practices. Their art is widely misappropriated and their traditional knowledge is ignored or used without the consent of those affected. Indigenous communities have yet to receive substantial redress for historical injustices, including the brutal removal of indigenous children from their families, and the continuous rejection of their cultural autonomy. Such injustices have left deep wounds in their relationship with the states in which they live. Recent decades have also witnessed the unruly development of projects by transnational corporations that disregard indigenous spiritual values and sites. Such projects often strip both minorities and indigenous peoples of their livelihoods and resources. Also, new waves of tourism 'off the beaten track', lacking the required cultural sensitivity, commodify important minority and indigenous sites. And, of course, current conflicts and political turmoil have seen the vicious destruction of minority and indigenous sites and stolen artefacts in Afghanistan, Guatemala, the Maldives, Mali, Syria and elsewhere, often as part of a deliberate campaign against these communities.

The concept of 'culture' has evolved in the past decades and with it, the scope of cultural rights. For several decades, the understanding of culture fell short of the lived realities of minority and indigenous communities. The

United Nations Educational, Scientific and Cultural Organization (UNESCO), for example, the main international organization charged with the protection of culture, understood it as capital or creativity and so focused on artefacts of outstanding value that belonged either to the state or to the individual. The World Intellectual Property Organization (WIPO) still focuses on the intellectual property of individuals, a concept alien to many communities. Gradually, though, a more inclusive understanding has also emerged, one that includes everyday expressions of one's identity. It is now accepted that, in addition to cultural artefacts, culture:

*'encompasses, 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 and 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 view representing their encounters with the external forces affecting their lives. Culture shapes and mirrors the values of well-being and the economic, social and political life of individuals, groups of individuals and communities.'*¹

This more closely reflects the understanding of culture held by minorities and indigenous peoples. Culture is not only about outstanding beauty, but also a community's way of life. It is not only about tangible objects, but also intangible elements such as languages and oral traditions. And it is frequently connected to nature and the natural environment. Furthermore, it is not just an individual right but can be a collective one too. Culture is also closely linked to other concepts and rights, such as those regarding land, language, education and religion, and can directly affect other areas of a minority or indigenous person's life including health, housing and livelihoods.

As the meaning of culture has broadened, so has the scope of the right to culture. Human rights instruments refer variously to 'cultural rights', 'the right to culture' or the 'right to

take part in cultural life'. The right to culture was initially recognized as an individual right: the language of Article 15 of the International Covenant on Economic, Social and Cultural Rights reflects this. The provision recognizes the individual right 'to take part in cultural life', 'to enjoy the benefits of scientific progress' and to enjoy protection as an author of any scientific or cultural production. However, this and other provisions on cultural rights have benefited greatly from the evolving nature of international law. It is now widely accepted that 'the right to take part in cultural life' also includes the right of members of minorities to practise their own culture (Article 27 of the International Covenant on Civil and Political Rights) and that the realization of the right for non-dominant groups entails positive protection.² Minorities and indigenous peoples have different but overlapping sets of rights under current international law. For example, it is recognized that indigenous peoples' right to culture has a strong collective side. A collective element, but not a full collective right, is also recognized in the cultural rights of minorities.³ Despite such variances, mainly originating in the recognition of indigenous peoples' right to self-determination, both indigenous and minority communities share many concerns, claims and needs when it comes to the enjoyment of their cultural rights.

In its current interpretation, the right to culture of minorities and indigenous peoples contains several key aspects. For instance, the right includes non-discrimination with regard to participation both in the cultural life of the state as a whole, and in minority and indigenous cultures. It also encompasses rights to cultural autonomy, and to the protection of cultural objects, customs, practices, traditions and manifestations. Recently, the right to culture has been discussed as part of the debate on 'cultural heritage', a term appearing more and more in human rights instruments.⁴

Although culture and heritage are closely interlinked concepts and are often used interchangeably, heritage focuses on cultural manifestations coming from the past, whereas culture includes present and future manifestations too. While protecting past cultural manifestations, it is important not to essentialize

Right: Māori *poi* dancers in New Zealand.
RaviGogna.

minority and indigenous cultures. They evolve in the same way as non-indigenous cultures, and as long as this evolution emanates from the community and its members, it adds to their relevance and their richness. Tāreikura, a Māori Arts Academy, incorporates non-indigenous elements to the Māori *poi* dancing, a traditional Māori dance that involves rhythmically swinging handmade balls attached to a rope. Their recent Māori *poi* routine, performed to the tune of the contemporary hit 'Move Your Body' by the renowned African American artist Beyoncé, is an excellent manifestation of the evolving nature of indigenous cultures decided by the indigenous peoples themselves. Cultural rights of minorities and indigenous peoples are closely related to other rights too, such as the rights to language, education and religion, as well as land rights and even economic rights. It is important to recognize such links, but also to maintain the core of the right to culture without diluting it by making it an umbrella right.

Non-discrimination and participation in culture

Respect for minority and indigenous cultures is vital to the general well-being of those communities and the people belonging to them. Studies have shown that a widespread and persistent lack of respect for indigenous identities can contribute to endemic problems of alcoholism, and poor physical and mental health outcomes in indigenous communities. Assimilationist policies or practices, while clearly prohibited in international law,⁵ persist nevertheless and pose a serious threat to the fundamental identity of many minority and indigenous communities. In Europe, Roma continue to suffer the denial of culturally sensitive education, lack of access to housing and other discriminatory policies that have the effect of undermining their fundamental identity.

Of great importance is the principle of non-discrimination in participation in, and access and contribution to, both national and minority cultural life.⁶ The negative dimension of the right to participate in the culture includes



non-interference by the state in 'the exercise of cultural practices and with access to cultural goods and services', while the positive obligation ensures 'preconditions for participation, facilitation and promotion of cultural life, and access and preservation of cultural goods'.⁷ Participation of members of minorities in cultural life has to be 'effective'.⁸ This can take the form of autonomous arrangements. Cultural autonomy is recognized in stronger terms for indigenous peoples, as it is an expression of their right to self-determination. Cultural autonomy can take the form of self-government, the maintenance of the community's cultural institutions,⁹ institutional structures and juridical systems. The hierarchy of systems and who will have the ultimate word on judicial matters are issues that need further exploration. A one-size-fits-all formula is neither possible nor desirable. In any case, the choice of who will interpret minority and indigenous customs lies firmly with the communities themselves. In Palau, for example, the inclusion of chiefs in legislature and government bodies is seen as a good example of balancing non-indigenous and indigenous models of governance.¹⁰

Limitations and conflicts

The possibility of conflicts between cultural practices and human rights standards has repeatedly been used by governments and majority pressure groups to justify restrictions on minority and indigenous peoples' cultural rights. There are cases in which cultural practices, whether of a minority or of a majority, are undoubtedly in conflict with human rights standards. In some instances, such as female genital mutilation (FGM), the abuses are clearly egregious violations of many countries' norms and international standards. In these situations, the protection of fundamental human rights standards must always take precedence. However, there are ways for governments to manage such instances while at the same time meeting their international obligations. First, any affected individuals need to have their rights protected, as well as have their voices heard and respected. Additionally, it is important to recognize that minority and indigenous communities must be the main interpreters of their own cultural practices, giving them ownership over any processes in considering, and if necessary revising, the practices in question. Further, practices

may be curbed, but only if they are in violation of national law and contrary to international standards.¹¹ Limitations to minority and indigenous peoples' cultural rights have to be interpreted restrictively. Moreover, any limitation of cultural rights has to be based on the specific grounds allowed in the relevant provisions, namely to respond to a pressing public or social need, and to be proportionate.

Recent international case law has highlighted the challenges inherent in reaching the right balance. In ruling on the state's prohibition of the wearing of the full-face veil (the *niqab* and the *burqa*) in public, even though the garment was central to the Muslim woman applicant's 'religion, culture and personal convictions', the European Court of Human Rights (ECtHR) relied in *SAS vs. France* on the principle of 'living together'. The Court held that in banning the wearing of the full-face veil in public places, hence restricting the right of minority women to the manifestation of their religion, France protected the 'right of others to live in a space of socialization that makes living together easier'.¹² The judgment has been widely criticized as going beyond the grounds that are normally accepted for restricting human rights. The concept of 'integration' is often used in Europe to nurture negative stereotypes of minorities and weaken minority cultural rights.¹³ Integration can be a positive force, comprising policies supporting multiculturalism, but not in the way the term is widely used today. Recent voices that present human rights values as part of the western 'way of life' draw unhelpful stereotypes and undermine respect for minority cultures. Minority women are especially affected by discussions on cultural rights, as they are often considered (both by their own communities and by majorities) to be the embodiment of their cultures. They therefore risk being called upon to support and/or justify their cultures both within and outside their communities.

Scope and definitions of cultural heritage

Tangible heritage

Minority and indigenous tangible heritage has historically received greater recognition than other forms of heritage. As the world becomes more aware of the concerns of these

Right: Tibetan opera in Lhasa, Tibet.
Gunther Hagleitner.

communities, growing appreciation of minority and indigenous cultural objects has been facilitated by museums and galleries. However, more often than not, the communities that created such objects have no participation in the preparation, exhibiting and benefits from such exhibitions, so their meaning is often lost, distorted or undermined. Very seldom have communities given their consent for the exhibiting of their artefacts. And in many cases, these artefacts are still presented as part of the 'national culture' with no reference to their ancestry or, if this is acknowledged, with no discussion of the importance of the minority and indigenous cultures in the making of these objects or their current importance to those communities. Ethnic tensions and conflicts also have detrimental implications for minority and indigenous cultural objects. Recently the world has witnessed the widespread destruction of minority and indigenous tangible heritage by extremists, such as the destruction of Assyrian artefacts in Iraq and the fifth-century Saint Elian monastery in Syria.

Redress for the misappropriation of minority and indigenous cultural objects is still very scarce. In Poland, much of the cultural heritage of the Jewish minority was destroyed during the Second World War. Although the Law on the Relationship between the State and the Union of Jewish Religious Communities has been in force since 1997, almost twenty years later the process of restituting Jewish communal heritage has only just begun. Moreover, the question of how reclaimed buildings should be maintained by the now very small Polish Jewish community remains largely unaddressed; meanwhile anti-Semitic attacks and vandalism against Jewish cemeteries, synagogues and other monuments remain a pressing issue.

The repatriation of indigenous human remains is of urgent importance for indigenous peoples, and there is now a growing awareness of this among the museums, universities and other authorities which possess them. For example, in 2012, 20 mummified Māori heads were handed back by France to New Zealand as a



result of a 2010 change in legislation following an initiative of the National History Museum of Rouen in 2007. The New Zealand government had first raised the issue in the 1980s. In the US, the Native American Grave Protection and Repatriation Act (NAGPRA) and the National Museum of the American Indian Act (NMAI) are important legislative tools for the protection and restitution of indigenous cultural heritage. In 2012, Australia formed an all-indigenous Advisory Committee for Indigenous Repatriation to advise on policy and programme issues related to indigenous repatriation from Australian and overseas collections.

Interesting questions also arise with respect to minority or indigenous cultural objects or sites that remain hidden from the mainstream. The balance between minority and indigenous control over their own heritage, and the rights of individuals generally to the common culture of mankind, is not always easy to decide upon, especially if those objects or sites may be under threat. But the pendulum clearly has to lean towards the minority and indigenous communities themselves – not least since they are often marginalized and still excluded from the decision-making processes concerning those cultural artefacts.

Indigenous patterns and artefacts are regularly appropriated by non-indigenous designers without any consideration of the meaning of the symbols. In Scandinavia, for instance, Saami costumes have long been used by clothing companies or for employee uniforms in the tourist industry, while imitation Saami handcrafts are being sold en masse in shops all over the region.¹⁴ Tourists' souvenirs often reproduce minority and indigenous cultural objects, while individual majority expressions of art and music can often be heavily influenced by indigenous culture: in both cases, such instances trivialize, disrespect or undermine their meaning and importance for the community in question. But because the international intellectual property system focuses on individual ownership, private entities are able to gain legal title to minority- or indigenous-influenced patterns when ownership should in fact lie with the communities.

Intangible culture

The traditions, customs and practices of minority and indigenous cultures are linked to the concept of 'intangible heritage', defined as 'the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated

therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage'.¹⁵ Cultural expressions such as Tibetan opera and the Menglian traditional weaving practice in China, or Mayan rituals for good harvest or health and prosperity, are transmitted from generation to generation, are constantly recreated and provide minorities and indigenous peoples with a sense of identity and continuity. Intangible culture can also act as an effective tool for dealing with conflict or with post-conflict trauma. Since 2008, Palestine Community Music has grown to become a multi-faceted programme that empowers young people to express themselves through music and serve their communities in Palestine. Music Bridge uses music to support reconciliation between communities in Derry-Londonderry, Northern Ireland. In Tuzla, Bosnia and Herzegovina, local music and dance workshops act as a therapeutic tool for the Bosniak refugee women who are still haunted by their experiences of violence, displacement and loss during the war, and especially the massacre in Srebrenica.¹⁶

Much of the intangible culture of minorities and indigenous peoples is currently threatened, however. Oral traditions are dying out, because of displacement, assimilationist policies or the homogenizing effects of globalization. In Uganda, for instance, the Koogere oral tradition – part of the collective memory of Kasese's Basongora, Banyabindi and Batooro communities and an essential part of their folk expression – is severely threatened. Storytellers are no longer able to recreate episodes of the Koogere story and gatherings are dominated by other, more modern forms of entertainment. However, carefully designed creative initiatives can allow intangible culture to be maintained. For example, in Mexico, the Xtaxkgakget Makgkaxtlawana (the Centre for Indigenous Arts) has been established in Veracruz to transmit the teachings, art, values and culture of the Totonac people. The centre recreates a traditional settlement, in which each 'house' is devoted to one of the Totonac arts that apprentices can follow.

Natural heritage

The debate regarding minority and indigenous peoples' cultural heritage has highlighted the

importance of natural heritage, as well. It is only relatively recently that UNESCO focused on this concept, namely in 1992 when the World Heritage Committee recognized 'cultural landscapes' as a category falling under the scope of the 1972 World Heritage Convention. The close interconnections between culture and nature, and the relationship between people and places, are particularly relevant to indigenous communities: hence, culture cannot be distinguished from nature. To this day, a recurring narrative promotes a conflict between indigenous communities and the environment, resulting in the former being evicted to supposedly protect the latter. Yet as a result, indigenous cultures have been threatened and their communal and sustainable land use practices have been interrupted, leading to local eco-systems also suffering without traditional systems of stewardship.

Indigenous peoples consider themselves to be the custodians of the environment and have maintained vital eco-systems for centuries. UNESCO had already been declaring natural environments important to indigenous communities as World Heritage sites, including Te Wāhipounamu in New Zealand and Kakadu National Park in Australia. After 1992, indigenous sites have also either been recognized or reinscribed as cultural landscapes; Tongariro National Park in New Zealand became the first, and the famous Uluru-Kata Tjuta National Park in Australia was renamed as such. Often, their designation as World Heritage sites leads to considerable increase in tourism in the area, which does not always benefit the local indigenous communities. While these areas are often essential for traditional activities such as hunting or fishing, conservation management regimes do not always take these practices into account and disrupt the link between the local indigenous community and their natural surroundings. In addition, the free, prior and informed consent of the community, though essential, is very often not respected. In India, the inscription of the Western Ghats as a World Heritage natural site in 2012 was implemented without the consent of the local Adivasi community and without acknowledgement of their rights to their ancestral lands. At the tenth

session of the United Nations (UN) Permanent Forum on Indigenous Issues, in May 2011, over 70 indigenous peoples' organizations and non-governmental organizations presented a joint statement on the continuous violations of the principle of free, prior and informed consent in the implementation of the World Heritage Convention. Still, following the designation of Lake Bogoria in Kenya as a World Heritage site without obtaining the free, prior and informed consent of the Endorois, who are the rightful owners of the land, the World Heritage Committee adopted a decision in 2014 requiring the Kenyan government to 'ensure full and effective participation of the Endorois in the management of Lake Bogoria through their own representative institutions'.

The interconnections between culture and other human rights

As mentioned earlier, the right to culture also underpins a range of other rights, such as education, religion, language and land, which in turn can support or undermine cultural practices and traditions. The linkages between them are explored in further detail in this section.

Education

Education has an important role to play in strengthening and protecting minority and indigenous cultures. The teaching of minority and indigenous peoples' histories, beliefs and traditions helps to counteract prejudice and promote good relations between those communities and other segments of the populations. The teaching of history in particular is an important tool in restoring respect towards minorities and indigenous peoples. In Germany, inter-culturality has been an education policy since the mid 1990s. Results have generally been mixed and the policy remains contested; however, in areas where bilingual schools have long been established they boast higher levels of achievement, especially as far as pupils with migrant backgrounds are concerned. When minorities and indigenous peoples are given the opportunity to participate in the design of tailored or autonomous educational arrangements, the results are typically better. For example, the Inuit of Nunavik have since 1978

managed their own school authority, the Kativik School Board. Among other culturally tailored education practices, Inuit education teaches maths to children in a manner that reflects Inuit culture, including the use of weather patterns. An alternative to mainstream curricula is sometimes appropriate so that the specific needs, aspirations and priorities of minorities and indigenous groups are met. At the same time, schools have to ensure that minority and indigenous children learn about their own cultures, while also fulfilling their right to receive education of as high a quality as the rest of the population.

Unfortunately, access to formal education is very difficult for many minority and indigenous children living in remote areas. Among those who can attend, there is often a high drop-out rate because of the lack of a culturally appropriate curriculum or mother tongue instruction. The cost of travel may also be prohibitive and contribute to high drop-out rates. In many areas, performance differentials between students of different ethnic backgrounds pose a major problem. Scholarships by educational and cultural institutions, such as those provided by the Melbourne Theatre Company and the University of Melbourne to young Aboriginal and Torres Strait Islander individuals, set important foundations for the protection and promotion of cultural rights of the respective communities. Also important is the informal sector of education, particularly vibrant among many minority and indigenous communities, including in-community education in language and cultural traditions. Culture is also used with some success to educate the majority on minority and indigenous cultures and experiences. Performances such as *Truth and Reconciliation* by the Royal Winnipeg Ballet – tackling the legacy of Canada's residential school system, when indigenous children were forcibly taken from their families into boarding institutions – can bring home to non-indigenous audiences the suffering wrought by assimilationist policies on indigenous communities.

Health

Traditional systems related to health are also important elements of minority and indigenous cultures, contributing greatly to community well-



Left: Kallaway traditional healers give a talk at the United States Embassy in Bolivia. *Embajada de Estados Unidos en Bolivia.*

minority legal processes – which often draw on spiritual tenets – not only violates cultural rights, but also undermines the right to practise religion.

Even where religious rights are broadly respected, the violation of cultural rights can have a deep impact on freedom of religion. Although religious rights are widely respected in Europe, attacks by ultra-right wing groups on the cultures of minorities, especially migrants, also affect their freedom to manifest their religion for fear of being attacked. Mosques, *halal* shops, community centres and other cultural sites are among the most common targets in hate crime incidents, while other markers such as the *hijab* may also single out their wearers for attack – a situation that may encourage some to avoid displaying them due to the threat of being targeted.

Languages

The loss of minority and indigenous languages contributes to the erosion of communal identities and the disappearance of their rich culture, traditions and knowledge. In Canada, the 2011 census reported that only 15 per cent of indigenous people still regularly use their original languages. Recent studies have shown that in First Nation communities where the aboriginal language has effectively vanished, the rate of suicides among youth is as much as six times higher than in other communities across the country, where the children are able to speak their mother tongue. Language is an essential element of minority and indigenous cultures, providing these communities with unique identities, enabling their cohesion and giving them a conduit for the practice and dissemination of their cultures. Unfortunately, many minority and indigenous languages are now endangered, meaning that their cultures are also under threat.

By the same token, a cultural revival can also help to restore a declining minority or indigenous language, and vice versa. Indigenous languages in many parts of the world are currently experiencing a period of regrowth. In New Zealand, for example, there has been a

steady increase since the 1990s in the number of children being taught in *te reo Māori*. Policies promoting the recognition of Māori culture and the visibility of Māori identity in the national arena have been a positive factor in the revitalization of the language. In Australia, where the loss of Aboriginal languages has had a profoundly demoralizing effect on the population's well-being, similar efforts are under way to protect and revitalize these endangered languages. One recent measure intended to help achieve this was the announcement in December 2015 that Aboriginal languages would become a new Higher School Certificate subject in the New South Wales educational system.

Land rights

Access to ancestral lands, communal grazing areas and other resources underpins the identities of many minorities and indigenous peoples, from forest-dwelling Ogiek in Kenya to reindeer-herding Saami in northern Scandinavia. Yet all too often states fail to take this into account: development projects and other top-down policies frequently lead to wholesale displacement of communities with disastrous effects for their cultures, including separation from sacred sites, the loss of traditional livelihoods and social disruption. Besides the immediate impacts of forced resettlement, development projects often change the social dynamics of an area by attracting large flows of transient workers and other migrants into local communities. Among other pressures, the impacts of these rapid changes can lead to increased demand for housing, higher rents and other social problems such as homelessness, alcoholism and violence. According to its own guidelines, the World Bank has an important role to play in safeguarding guarantees that its funded projects will not expose minority and indigenous communities 'to loss of identity, culture, and customary livelihoods, as well as exposure to disease'. Unfortunately, World Bank-funded programmes have had disastrous consequences for many minority and indigenous communities; the Sengwer who have suffered forced removals in Kenya are just one of many recent examples.

Indigenous cultures in particular also include 'traditional lifestyles relevant for the conservation

being. For instance, the Kallaway traditional healers in the Andes of Bolivia have specific routines and practices regarding childbirth and the treatment of respiratory diseases, digestive conditions and other illnesses. This knowledge continues to be passed down to subsequent generations. In October 2015, UNESCO supported a workshop on the transmission of Kallaway knowledge and practices to young apprentices in Curva. Yet states often ignore or reject such traditional medicine, frequently alienating minority and indigenous patients as a result. In China, the failure of public hospitals to permit the traditional semi-sitting position for childbirth is a major factor in the decision of many minority women to by-pass their services in favour of home births, despite the attendant risks.

Recently, however, there has been a series of initiatives to support traditional health systems and strengthen their status within wider society. One case in point is the bio-cultural community protocol developed in 2009 by traditional health practitioners in the Bushbuckridge area in South Africa, setting out how they expect other stakeholders to engage with them. Yet the interest and respect of outsiders can come at a price: it is not uncommon, for instance, for large

pharmaceutical companies to use indigenous discoveries without acknowledgement or profit sharing. Nevertheless, when minority and indigenous communities have been able to access culturally appropriate medical care – for example, with health workers who speak their native language – this can lead to improved health outcomes.

Religion

At times, the difference between culture and religion or belief is blurred. Customary marriage practices, burial rituals and ceremonies related to the passing on of traditional knowledge or honouring nature are very much linked to a community's spirituality and hence to the right to religion or belief in its collective capacity. The appropriation of important community symbols by non-indigenous individuals, such as the use of traditional Native American head pieces in fashion shows, violates cultural rights but also undermines indigenous spiritual rights, as the two are closely interconnected. Hindu and Sikh communities have informal dispute resolution processes using internal consultation, interpretation and decision-making through local institutions called *panchayats*. Denying such

and sustainable use of biological diversity', protected by the Biological Diversity Convention, which requires the respect and preservation of traditional knowledge and the active involvement of the knowledge holders. Obstacles to traditional activities, including practices of cultivation, agriculture, animal herding and fishing, also constitute obstacles to community cultures, with dire implications for minority and indigenous livelihoods, socio-economic rights and health. Distinct minority and indigenous beliefs about food, its preparation and its consumption also form an important part of rituals and identity. According to the Inuit Circumpolar Council - Alaska:

*'Traditional foods ... provide spiritual, cultural and traditional values, shelter, medicines, energy, identity and more. Over time immemorial, the obtaining, processing, storing and consuming of these foods have involved storytelling, dancing, drumming, art, education, language, traditions and ceremonies.'*¹⁷

Conclusions

Respect for the cultures of particular communities amounts to respect for their identities. By extension, minority and indigenous peoples' rights cannot be realized unless the cultural rights of their communities are also respected. The narrative of integration developed recently has sidelined the importance of securing a cultural framework for the well-being and development of minority and indigenous populations. Such discussions on integration have to use as a starting point the principle of respect for cultural rights. The notion of inter-culturality, although accepted in theory, is still to be realized in many societies.

Examples from all over the world show us that culture can be a mobilizing force for change. Furthermore, the effective participation of minorities and indigenous peoples in the design of policies and practices that protect their cultures are important procedural guarantees for the protection of their rights more broadly. To support this, however, existing instruments have to be interpreted in a manner consistent with newer and more up-to-date instruments on cultural rights.¹⁸ In particular, organizations such as UNESCO, WIPO, the World Bank and

others should take into account the emphasis and affirmation that UN instruments and bodies have given to the cultural rights of minorities and indigenous communities.

More inclusive understandings of culture as a way of life better reflect the experiences and values of minorities and indigenous peoples around the world. Culture, religion, language, literature and nature are all intermingled in many minority and indigenous communities. Recently, the debate on the protection of cultural heritage has been enriched by renewed interest in indigenous peoples' rights and the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). However, such debates are overwhelmingly relevant to ethnic, religious and linguistic minorities too, and these communities must also be included in these discussions.

Finally, it must be reiterated that the importance of cultural rights for the enjoyment of other rights has yet to be fully appreciated. Protection of culture, though urgent and necessary in itself, also protects food, livelihoods, education, health, the environment and many other areas. Furthermore, the right to culture serves as a cornerstone for sustainable development. Hence, a clearer framework for cultural rights can also support a broader process of transformative change for minority and indigenous communities. ■

Endnotes

- 1 Human Rights Committee, General Comment No. 21, 'Right of everyone to take part in cultural life (Art. 15, para. 1(a), of the International Covenant on Economic, Social and Cultural Rights)', UN doc. E/C.12/GC/21, 21 December 2009, at II, A 13.
- 2 Committee on the Elimination of Racial Discrimination, General Recommendation No. 32 on 'The meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination', UN doc. CERD/C/GC/32, 24 September 2009, para. 30. Also, Human Rights Committee, General Comment No. 23, Article 27 (Fiftieth session, 1994), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN doc. HRI/GEN/1/Rev.1 at 38 (1994). Also Article 5.1 of the Framework Convention on National Minorities (FCNM); General Comment No. 11 of the Committee on the Rights of the Child.
- 3 UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (UN Declaration on Minorities), Article 1.

- 4 For example, various UNESCO instruments, the FCNM, the Faro Framework Convention on the Value of Cultural Heritage for Society and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).
- 5 FCNM, Article 5.
- 6 International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(e) (vi); Convention on the Elimination of All Forms of Discrimination against Women, Article 13 (c); Convention on the Rights of the Child, Article 31.2; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 43.1(g); Convention on the Rights of Persons with Disabilities, Article 30.1.
- 7 UN International Committee on Economic, Social and Cultural Rights, General Comment No. 21 *supra* note 1, para. 6.
- 8 FCNM, Article 15.
- 9 UNDRIP, Article 5.
- 10 Tobin, B., *The Role of Customary Law in Access and Benefit-sharing and Traditional Knowledge Governance: Perspectives from Andean and Pacific Island Countries*, Switzerland, WIPO and UNU, 2008.
- 11 UN Declaration on Minorities, Article 4.2.
- 12 ECtHR, *SAS v France*, para. 122.
- 13 Xanthaki, A., 'Against integration, for human rights', *International Journal of Human Rights*, forthcoming.
- 14 Nuorgam, P., Presentation in Expert Seminar on Indigenous Peoples' Rights with Respect to their Cultural Heritage, Rovaniemi, February 2015.
- 15 UNESCO Convention for Safeguarding of the Intangible Cultural Heritage (2003), Article 2.1.
- 16 See: <https://www.musicianswithoutborders.org/#ourwork>.
- 17 Inuit Circumpolar Council-Alaska (ICC-AK), *Alaskan Inuit Food Security Conceptual Framework: How to Assess the Arctic from an Inuit Perspective – Summary and Recommendations Report*, Anchorage, AK, ICC-AK, 2015, p. 8.
- 18 UN EMRIP, Advice No 8, A/HRC/30/53, Annex, 2015, para. 7; and Xanthaki, A., 'Indigenous cultural heritage and the international human rights system', in A. Xanthaki, S. Valkonen, P. Nuorgam, L. Heinämäki (eds), *Indigenous Cultural Heritage*, Leiden, Brill, forthcoming 2017.