

International framework of Cultural Rights

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Introduction

I would like to thank la Secretaria de la Gobernacion y la Secretaria de la Cultura of Mexico and the UNESCO office in Mexico for the honor of inviting me to this conference on one of the most cutting-edge topics of today.

Following an established cultural protocol we have built around the world, including at the United Nations, I would like to recognize the Indigenous Peoples of this land, the traditional owners of this territory, where this important meeting is taking place.

Just a few days ago, on November 6 2016, Mexico and the whole world lost one of the greatest human beings, Rodolfo Stavenhagen, a son of Mexico and a great friend of Indigenous Peoples. Rodolfo was there at the United Nations in Geneva from the beginning when Indigenous Peoples started coming in the early 1980s. As I was a junior officer in the UN Center for Human Rights then, I remember him supporting these efforts in unwavering solidarity, through his writings (that I now teach at Columbia University) and his personal involvement with the Indigenous movement, including during the 25-year effort of drafting the UN Declaration on the Rights of Indigenous Peoples. Rodolfo became the first UN Special Rapporteur on the Rights of Indigenous Peoples, a position he honored and set the highest standards for. Thank you, Rodolfo, for being my mentor. I salute your spirit and honor your memory.

The first time I visited this beautiful and culturally rich country was at the invitation of the Government in 2000, when, together with the then Chairperson of the UN Working Group on Indigenous Populations, Erica

Daes, we went around Mexico to see the sociocultural situation of Indigenous Peoples. The second time was in 2012 when FIMI (the International Indigenous Women's Forum) held an organizational meeting for its Global School for Indigenous Women's Leadership. So Mexico has been linked with many groundbreaking international initiatives, for new international standards and actions, including the UN Declaration on the Rights of Indigenous Peoples.

Moreover, Latin America is the foremost part of the world, where new ideas are fermenting, largely due to the dynamic interface between states and Indigenous movements around this continent. Latin America produces innovative thinking, because of its tremendous cultural diversity. It is no wonder that some 15 countries have established intercultural bilingual education for example, that many constitutions have recognized indigenous languages and the pluricultural nature of the country, and that interculturality is a concept that countries in Latin America are exploring as the paradigm for a new society. And a concept that becomes especially precious in these times after the results of the recent elections in the US.

So, I have many reasons to be very glad to be here and share in our common passion for cultural rights and diversity.

At the UN General Assembly in New York we recently had a number of inspiring developments for cultural human rights. The new Special Rapporteur on Cultural Rights, Prof. Karima Bennouna, presented her report focusing on the deliberate destruction of cultural

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heritage in time of conflict and in time of peace. It was a report linking the dignity of persons and groups to the preservation and protection of cultural heritage, namely, making the human rights link between people and expressions of culture, underlining the human rights aspects of the destruction of monuments, the change of place names, or the destruction of sacred sites of Indigenous Peoples due to extractive industry projects.

And, yes, the GA in a draft resolution on Indigenous Peoples is now considering to proclaim the year beginning on 1 January 2019 as the International Year of Indigenous Languages, to draw attention to the critical loss of indigenous languages and the urgent need to preserve, revitalize and promote indigenous languages.¹

I am happy to inform you that, starting January 2017, Columbia University will start teaching Nawaatl, and indigenous language of Mexico!

Why are cultural rights especially important today?

We live in a world of unprecedented migratory movements, with some 240 million migrants. Migration and the revolution of the information society are bringing people of diverse origins and cultures in closer contact at an unprecedented speed. And I ask: are our societies and states absorbing these new realities of cultural diversity based on human rights? Are they developing social, legal, cultural and other ways that befit these new realities?

The Human Development Report of the UN Development Programme (UNDP) in 2004 was entitled Cultural Liberty in Today's Diverse World gave some figures that show the richness of the human tapestry, the human mobility but also the destructive trends around these. The world's nearly 200 countries are

home to some 5000 ethnic groups. More than 150 countries have significant religious or ethnic minorities. Some 370 million Indigenous Peoples live in more than 90 countries representing more some 5000 languages. Out of the estimated 7000 languages spoken today, 90 por ciento may have become extinct or face extinction in the next 100 years (we can easily see what a great percentage indigenous languages, and therefore cultures, this may represent). About 518 million people face restrictions on religion, language, ceremonies and appearance. In sub-Saharan Africa, only 13 por ciento of children in primary school receive instruction in their mother tongue.

The newspapers daily tell stories that are loud and clear about the need to protect and promote cultural rights. The prevention of cultural expression of migrants and indigenous peoples is one type of story. The prohibition of teaching indigenous languages is another story. The destruction of monuments that represent a culture is another type of story –and this past September 2016 the ICC tried and convicted Ahmad al-Mahdia former junior civil servant in Mali's department of education, for the destruction of 9 small mausoleums made from mud and a mosque in the middle of the desert, what the Chief Prosecutor of the ICC, Fatou Bensouda, called “a callous assault on the dignity and identity of entire populations and their religious and historical roots”. And Irina Bokova, the Director-General of UNESCO, said attacks such as these were “a mark of a genocidal project” as they amounted to the attempted annihilation of the other”..²

I would like to mention the element that may have triggered for some policy-makers an interest in cultural rights in recent years. Issues of conflict catch the human political imagination. From a human rights point of view, it is painful to have to evoke the dangers of conflict and social unrest, so that policy makers pay attention to cultural rights. Ideally, we should care about the respect, protection and fulfillment of cultural rights because of their profound significance for human dignity.

¹ In the US everybody's eyes are turned to the North Dakota Access Pipeline, which, if implemented, risks to contaminate the water of the Standing Rock Sioux. 380 cultural and sacred sites along the pipeline route have been destroyed by work associated with the clearing for the pipeline. While the US Supreme Court has held that it's OK to destroy sacred sites and erase cultural heritage, it is interesting and significant about the new importance that cultural rights gain that President Obama said in the last few days “We are monitoring this closely... I think as a general rule, my view is that there is a way for us to accommodate sacred lands of Native Americans” (NYT, November 3, 2016).

² The Guardian, 21 June 2016, “Islamic extremist's trial over Timbuktu cultural destruction to open at The Hague”, by Ruth Maclean, West Africa correspondent.

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But whatever the motivation for paying attention to this neglected part of human rights, this attention is now welcome and long overdue.

What constitutes the political chessboard on which cultural rights are played or neglected today? Globalization and polarization, the North/South tension, the culturalization of political life and rhetoric, migration and racism, cultural relativism and identity politics, peace and security, the huge economic interests invested in current international patent and intellectual property regimes, the post-September 11th era and its impact on the criminalization of cultures and social justice movements.

I believe that in this critical crossroads of our world, respect for cultural freedom, identities and pluralism within a context of a democratic polity is more urgent than ever. To recognize cultural rights as legal rights is a bold statement and key to state action.

Let me bring out at this point a disciplinary, epistemological challenge that cultural rights pose for us.

Cultural rights, even more than other human rights, require the cooperation—perhaps the marriage—between two fields of knowledge, law and anthropology. Without such cooperation we cannot adequately analyze, understand and discover the normative content of these rights, nor push the state/the governments to take cultural human rights seriously and implement them.

I would like to admit that my dealing with cultural rights puts me often in a difficult position: for jurists things that have to do with culture may seem rather vague (since one of the aims of the law is normative clarity), and in the best of cases jurists may see things related to culture as secondary by comparison to what they see as the hard core of the law; while for anthropologists, juridical discussions may seem very formalistic and superficial.

Imagine now that for “classical” jurists, the field of international human rights law is seen as weak law, semi-law, let us say. For human rights jurists, cultural rights take this position of weakness and vagueness. We can therefore see how low cultural rights are in the hierarchy of understanding and interest—even among human rights experts, in other words, there is awkwardness about these rights.

In my introduction today, I would like to address five questions.

FIRST Why cultural rights as human rights have been neglected until recently

SECOND Why have we seen the beginning of an opening to cultural rights as human rights in the last decade?

THIRD What is the normative content of cultural rights as individual and as collective rights, including those of Indigenous Peoples and minorities?

FOURTH What is the role of cultural rights in development processes? [Since Mrs Sanz addressed this topic earlier today, I will limit myself to only a few remarks]

FIFTH What is the significance and role of cultural rights protection and promotion in mending historical injustices

FIRST Why have cultural rights been neglected? The reasons for this neglect can be summarized in six points:

- a) The prevalent attitude among many human rights experts, including international law specialists, has been to avoid discussion of cultural rights to avoid the lurking issue of cultural relativism that may undermine the delicate and fragile universality concept that has been painstakingly woven over the last five decades. Therefore, many feel it is better not to talk about cultural rights, but rather to take a low profile approach in order not to “provoke” the ghost of cultural relativism.
- b) Another difficulty lies in that the definition of cultural rights is tied to the concept of culture, which is fluid and changing. UNESCO’s definition of culture has followed the anthropological paradigm (namely culture as “a way of life”. UNESCO understanding of “culture” is: the “set of distinctive spiritual, material, intellectual and emotional features of society or a social group”; it encompasses “in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs”. This understanding of culture, which is

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- the prevalent one, was viewed for a long time as too difficult to base actual rights and obligations on. The challenge of grappling with the definition of cultural rights has partially prevented promotion of these rights.
- c) Cultural rights may even be considered by some as a “luxury”, as something that comes after “bread and water”, as an item only for societies at a certain stage of development. Nobody could deny, by looking at human history throughout the centuries, that economic development generally goes with cultural development, culture represents the soul, the moral edifice, the self-definition and self-esteem of a person or a community without which life loses context and meaning.
 - d) Even as individual rights, cultural rights can be perceived as threatening to the state or the community. One person’s artistic creation outside the norm, outside the traditional culture of the community of which s/he is a member, borrowing elements of other cultures, can be seen as a threat that needs to be suppressed in various ways. New trends are often started by one person and this does not escape the traditional mainstream. Violent crimes against gay people, for example, are only one way in which gay culture is sometimes mocked and rejected by communities.
 - e) One of the most significant difficulties in dealing with cultural rights is that these rights have evoked for governments the scary spectrum of group identities and group rights that they fear could threaten the “nation” state and territorial integrity. The drafting history of Article 27 of the Universal Declaration of Human Rights, which recognizes the right to participate in cultural life, is telling and the same is true for the Convention on the Prevention and Punishment of the Crime of Genocide—both those instruments omitted adequate protection of languages, access to cultural sites and other aspects of what today we are confirming as part of cultural rights. Official state support of cultural rights has often taken the form of promoting for example seemingly innocent folklore while remaining silent or hostile for example to the promotion of minority languages in the education systems and the media. The other side of this coin is that governments may be wary of the threat that majorities may feel from

the promotion of minority cultures which may lead to claims for collective rights.

Taking a holistic approach to cultural rights gives plenty of constructive policy responses to governments, if the political will is present. But in today’s interconnected world of greater expectations for democracy and of rising cultural identities, avoiding the respect for cultural rights can only lead to frustrations in society and the instigation of conflict. In fact, states have learnt hard lessons and seem to be slowly opening up to cultural rights recognition and implementation.

SECOND What is the explanation for this opening onto cultural rights as human rights? What has changed since the adoption of the UDHR and the Convention against Genocide in 1948?

I would like to say from the beginning that there have been three important developments in the last nine years mainly at the United Nations that contribute significantly to the promotion and protection of cultural rights, as human rights, as part of human rights law. These three developments are:

The adoption in 2007 of the UN Declaration on the Rights of Indigenous Peoples: this is the most advanced international human rights instrument in terms of boldly recognizing cultural rights, as international legal norms, both as individual and especially as group rights. This is the boldest recognition of ethnicity in International Law and the most cultural rights-rich international instrument we have—an instrument that can shed light on cultural rights of other parts of society.

The creation of a UN Special Rapporteur in the field of cultural rights by the UN Human Rights Council, whose main aim is the supervision of the implementation by states of cultural rights, bringing forth good examples and obstacles, and studying the relation between cultural rights and cultural diversity (2009, first SR was Farida Shaheed of Pakistan, the second since 2016 is Karima Bennouna of the USA).

The third development is the adoption by the Committee on Economic, Social and Cultural Rights of the long-awaited General Comment, ie interpretative

comment, on Article 15 of the International Covenant on Economic, Social and Cultural Rights, which is about the right to participate in cultural life. This General Comment, adopted in January 2010 by the expert UN body most appropriate for this issues was indispensable for a more objective, cool-minded and not so politicized understanding of cultural rights (E/C.12/GC/21).

What has changed in the big picture of the world between 1948 and today, I venture say, is three-fold:

- a) The Holocaust during WWII has been followed by other genocides.
- b) The end of the Cold War has seen the rise/or rather allowed the expression of identities in an unprecedented manner, thus obliging states to provide some recognition of those or else face serious political and other consequences. The rise of Indigenous movements around the world has had similar consequences.
- c) Globalization has triggered in people the urge to confirm their own identities.

Examples of recognition of cultural rights include the adoption by the UN in 1992 of the Declaration on the Rights of Persons Belonging to National, Ethnic, Religious or Linguistic Minorities, and, in 2007, of the UN Declaration on the Rights of Indigenous Peoples, and this year, the adoption of the American Declaration on the Rights of Indigenous Peoples. The space for culture and identity recognized by states over time in human rights terms has indeed been particularly dramatic in the case of indigenous peoples.

THIRD What is the normative content of cultural rights as human rights in International Law?

Cultural rights are both individual and collective or group rights. Five human rights are understood as cultural rights under International Law:

- The right to education;
- The right to participate in cultural life;
- The right to enjoy the benefits of scientific progress and its applications;

- The right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which the person is the author, and
- The freedom for scientific research and creative activity.³

Tremendous analytical work has already been done on the right to education, in a major way by UNESCO; also on the protection of the moral and material interests resulting from any scientific, literary or artistic production of which one is the author—generally referred to as intellectual property rights—and the other cultural rights mentioned above, except the right to participate in cultural life, which is the most all-encompassing of cultural rights. All these rights are of course interconnected.

I will therefore focus on the right to participate in cultural life.

The concept of culture

According to the Committee on Economic, Social and Cultural Rights (CESCR) in the General Comment

“11. [...] culture is a broad, inclusive concept encompassing all manifestations of human existence. The expression “cultural life” is an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future.

“12. The concept of culture must be seen not as a series of isolated manifestations or hermetic compartments, but as an interactive process whereby individuals and communities, while preserving their specificities and purposes, give expression to the culture of humanity. This concept takes account of the individuality and otherness of culture as the creation and product of society.

“13. The Committee considers that culture, for the purpose of implementing article 15 (1) (a), encompasses,

³ The right to education is also a social and an economic right and is also, in many ways, a civil and a political right (General Comment No.11 (1999) by the Committee on article 14 of the International Covenant on Economic, Social and Cultural Rights regarding plans of action for primary education, E/2000/22, Annex IV). The UN system's development efforts indeed focus considerably on helping to implement the right to education.

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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.⁴

The normative elements of the right to participate in cultural life as they have emerged from the texts of international treaties and declarations and from the practice of international bodies are:

1. **Non-discrimination and equality**
2. **Freedom to create and contribute to culture.**
This also includes freedom from interference with the enjoyment of cultural life
3. **Freedom to choose in which culture(s) and cultural life to Participate**
4. **Freedom of dissemination**
5. **Freedom to cooperate internationally**

⁴ A definition or, more precisely, an understanding of culture that surfaces from the examination of literature and the work of the UN bodies and that I find useful for examining cultural rights is at three levels:

- a) culture in its *material sense*, as product, as the accumulated material heritage of mankind, either as a whole or part of particular human groups, including but not limited to monuments and artifacts; also includes intangible cultural heritage;
- b) culture as *process* of artistic or scientific creation, i.e. the emphasis being placed on the *process* and on the *creator(s) of culture*; and
- c) culture in its *anthropological sense*, i.e. *culture as a way of life* or, in UNESCO's words, the "set of distinctive spiritual, material, intellectual and emotional features of society or a social group"; it encompasses "in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs" [UNESCO Universal Declaration on Cultural Diversity, Records of the General Conference, Paris, 15 October to 3 November 2001]. In this system-oriented understanding of culture, the individual is seen as a product of a cultural system. So, we have to focus on protecting that system//the society, the community//the group that creates culture.

6. **Right to participate in the definition, preparation and implementation of policies on culture**
7. **In human rights law and theory, human rights (civil, political, economic, social and cultural) are universal, interrelated and interdependent. Freedom of expression, first and foremost, is fundamental for cultural rights to thrive; also, freedom of movement, freedom of thought, conscience and religion, freedom of association, right to health, right to an adequate standard of living, and others.**

Cultural rights of indigenous peoples (UNDRIP and other)

The unique process of drafting of the UN Declaration on the Rights of Indigenous Peoples over 25 years with the direct participation of Indigenous Peoples themselves shed light onto cultural rights for other parts of our societies, for all of us in fact.

The UNDRIP refers explicitly to collective rights as well as to rights of individuals. At least 17 of the 46 articles are about cultural rights; in fact, one can find the cultural rights angle in each article of the Declaration: the right of indigenous peoples and individuals to be free from any kind of discrimination, in particular that based on indigenous origin or identity (art.2); the right to self-determination, by virtue of which indigenous peoples should freely determine their political status and freely pursue their economic, social and cultural development (art. 3); the right to maintain and strengthen their distinct cultural institutions, while retaining their rights to participate fully, if they so choose, in the cultural life of the state (art. 5); the collective right to live as distinct peoples (art. 7); the right not to be subjected to forced assimilation or destruction of their culture, including mechanisms of prevention and redress (art. 8); the right to belong to an indigenous community or nation in accordance with the traditions and customs of the community or nation concerned (art. 9); the right to practice and revitalize their cultural traditions and customs and to receive redress for cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent (art. 11); the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies,

to maintain, protect and have access to their religious and cultural sites, to use and control their ceremonial objects and to have their human remains repatriated (art. 12); the right to revitalize and transmit to future generations their histories, languages, oral traditions, philosophies and to designate their own names for communities, places and persons; and the obligation of states to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings (art. 13); the right to establish and control their education systems and institutions providing education in their own language and in a manner appropriate to their cultural methods of learning and teaching; and the right to have access, when possible to an education in their own culture and provided in their own language (art. 14); the right to have the dignity and diversity of their cultures reflected in all forms of education and public information (art. 15); the right to establish their own media in their own languages and have equal access to all forms of non-indigenous media (art. 16); the right to their traditional medicines and to maintain their health practices (art. 24); the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts; they also have the right to their intellectual property over such cultural heritage, traditional knowledge and traditional cultural expressions (art. 31); the right to determine their own identity or membership in accordance with their customs and traditions (art. 33); the right to their distinctive customs, spirituality, traditions, procedures and practices and, in case they exist, juridical systems or customs in accordance with international human rights standards (art. 34); the right of indigenous peoples divided by borders to maintain and develop contacts, relations and cooperation across borders (art. 36).

- > Education of the broader society about the cultures of minorities and indigenous peoples; the state has the obligation to take measures in this direction

- > This norm has emerged from the assumption that non-discrimination policies must be supported by a participatory and informed civil society. The role of the media has been repeatedly stressed in combating racism and discrimination vis-à-vis indigenous peoples
- > Protection of certain economic activities of Indigenous peoples closely linked to their cultural preservation and development. The state must also respect special cultural rights of indigenous peoples related to the continuation of certain economic activities linked to the traditional use of land and natural resources, such as hunting and fishing
- > States should create the conditions of respect for indigenous peoples' right to pursue their cultural development through their own institutions, through which indigenous peoples will participate in the definition, preparation and implementation of cultural policies that concern them [r. to self-determination inter-complementary to cultural rights of IPs]
- > The right to choose in which culture or cultures to participate [individual right and group right]

FOURTH What is the role of cultural rights as human rights in the context of development processes? What is development with culture and identity?

Cultural rights are the bridge between culture and development. Why? Because cultural rights are about human dignity and they bring the state close to the realities and voices of the people themselves, close to their expression of their culture as they experience it and define it.

Cultural rights require that we unpack the concept of development.

What does development mean? How do we define it? Who defines it? The concept is often highly suspect in communities, indigenous peoples or youth, for example, due to crimes that have impacted their lives in the name of development. We often prefer to speak about well-being, living well/vivir bien/ *sumak kawsay*, *suma qamaña*, when it comes to Indigenous Peoples and, increasingly, the broader society (instead of development). And we are placing value also on subsistence economies, on pastoralism, on hunting and gathering, instead

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of considering them ancient, forgotten or negative socioeconomic practices that should disappear. So, when it comes to actual decisions: Who is to say whether a programme/a project constitutes development for an indigenous or a local community? The UN and its agencies? A rich bilateral government donor? An NGO or a church, a corporation? The government of the country? Or the Indigenous Peoples and the local community?

What is the meaning of Development with Culture and Identity in International Human Rights Law?

The concept of human rights is interlinked and interrelated to that of development—the Charter of the UN in Article 1 establishes exactly that. And in the last 20 years or so the UN and other intergovernmental

organizations have been trying to create a real, practical and operational link between these two concepts.

UNESCO has been a pioneer advocate on the issue of culture and development,, underlining that culture is the context for development. Article 3 of the Universal Declaration on Cultural Diversity states that “cultural diversity widens the range of options open to everyone; it is one of the roots of development, understood not simply in terms of economic growth, but also as a means to achieve a more satisfactory intellectual, emotional, moral and spiritual existence.”

Yet, it is still often forgotten in development debates is that international human rights instruments have for decades provided a comprehensive legal framework of obligations that provides the parameters

of what governments may or may not do in the name of development. These human rights instruments, elaborated by the United Nations in the past seven decades, include but are not limited to the following: the Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; and the UN Declaration on the Rights of Indigenous Peoples (UNDRIPs). These instruments have opened up considerable conceptual space in which to bring together human rights and development, creating what is now known as the human rights-based approach to development (HRBA), accepted since 2003 by the whole United Nations system in its development operations.

What does the human rights-based approach to development mean?

According to the Common Understanding of the Human Rights-Based Approach to Development adopted by the UN Development Group in 2003:⁵

- All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
- Development cooperation contributes to the development of the capacities of ‘duty-bearers’ to meet their obligations and/or of ‘rights-holders’ to claim their rights. *Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.

What are the human rights principles underlying the HRBA to development? universality and inalienability; indivisibility; inter-dependence and inter-relatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law. These six principles are explained below.

- 1 **Universality and inalienability:** Human rights are universal and inalienable. All people everywhere in the world are entitled to them. The human person in whom they inhere cannot voluntarily give them up. Nor can others take them away from him or her. As stated in Article 1 of the UDHR, “All human beings are born free and equal in dignity and rights”.
- 2 **Indivisibility:** Human rights are indivisible. Whether of a civil, cultural, economic, political or social nature, they are all inherent to the dignity of every human person. Consequently, they all have equal status as rights, and cannot be ranked, a priori, in a hierarchical order.
- 3 **Inter-dependence and Inter-relatedness.** The realization of one right often depends, wholly or in part, upon the realization of others. For instance, realization of the right to health may depend, in certain circumstances, on realization of the right to education or of the right to information.
- 4 **Equality and Non-discrimination:** All individuals are equal as human beings and by virtue of the inherent dignity of each human person. All human beings are entitled to their human rights without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.
- 5 **Participation and Inclusion:** Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized.
- 6 **Accountability and Rule of Law:** States and other duty-bearers are answerable for the observance of

⁵ See HRBA UN Portal: <http://hrbportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies#sthash.frQckob8.dpuf>

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human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.

As we see, the HRBA stresses participation. And, it is through democratic popular participation, that culture is expressed. Please let us note this as a key point. If development is not to be seen as a top-down but a bottom-up process, then peoples' wishes and expressions of their cultural particularities should find resonance in the development policies, programs, and budgets of their governments and those of international development actors.⁶

Therefore, according to the international normative human rights framework, development is far from a single-model concept.

When it comes to the UN Declaration on the Rights of Indigenous Peoples, two normative pillars of the Declaration underpin Development with Culture and identity (DCI): the set of rights defining indigenous peoples' full and effective participation, and the set of rights defining indigenous peoples' cultural rights. In other words, the Declaration requires new approaches to development, and encourages the building of genuine partnerships with indigenous peoples.

So, we see that humanity's thinking has walked along a critical path in the past seven decades:

We have transitioned from viewing development as a macroeconomic concept, to the concept of sustainable development (to signify environmental sustainability), to human development (following Amartya Sen's concept that the well-being of the human being is at the center of development), then to human sustainable development (putting together the human being and the environment),

to the human rights based approach to development (that contributes concrete human rights concepts to development) and, now, to development with culture and identity.

Cultural human rights and the SDGs: a new opportunity

So, where do the Sustainable Development Goals stand on human rights, including cultural rights?

There is no doubt that the SDGs are a stronger framework than the MDGs for the pursuance of human rights, including cultural rights. One of its overarching goals is to "to realize the human rights of all".

The SDGs are committed to cultural diversity. For example, we see references to some of the basic philosophical approaches of Indigenous Peoples underlying the document and alluding to other possible paradigms of development than the dominant one, which has proven unsustainable for the planet as well as unjust and feeding inequalities among States and within States. Of course, Agenda 2030 does not represent a paradigm shift in the area of development. Despite that, we have to welcome conceptual references to the possibility of another model including: the reference to improved modes of production and consumption, references to harmony with nature and to Mother Earth.

The Agenda has an overall focus on reducing inequalities. Indeed, equality remains quite a radical concept still today. Equality will be an important entry point for cultural diversity. It is gratifying to find that, even where cultural diversity or Indigenous Peoples are not explicitly mentioned, other references in the SDGs are of direct relevance to these, including references to ethnicity, culture, women, vulnerable groups (although this term is critiqued), data collection and of course human rights.

How are we going to measure the success of the SDGs? Here I could not stress enough the significance of data collection and disaggregation as well as of indicators: these are human rights matters.

What are some recommendations for action to make the SDGs effective for cultural diversity?

If I were to respond in one sentence, I would say to each government, 'bring the people to the table, they represent cultural diversity'. And our conference will discuss this topic.

There is a need to raise awareness of cultural rights

⁶ The right to self-determination is recognized in the common article 1 of both International Human Rights Covenants mentioned above and in the UNDRIps, stating that peoples have the right to self-determination and that, by virtue of this right, they freely pursue their economic, social, and cultural development.

regarding the SDGs,[such as the effort of this conference] and to build communities' capacity on this so they can participate effectively in SDGs processes.

Cultural rights and cultural diversity issues should be included in national reporting on the SDGs. Couldn't the Latin American region set a good example for that?

FIFTH What is the significance and role of cultural rights protection and promotion in addressing historical injustices?

Last but not least, a difficult and painful issue that can be addressed through the respect of cultural rights is that of remedying historic injustices. Groups claim cultural rights as collective rights vis-à-vis the majority society, with corresponding obligations, both negative and positive, which are necessary to preserve and develop the cultural integrity of the group, often in order to remedy historical injustices.

Since every society is unique in its history, culture and political circumstances, there do not seem to exist easy or homogenous answers to such questions. Key, however, is whether or not the descendants of groups to whom historic injustice was done continues or not to suffer discrimination, marginalization and disempowerment by the dominant society.⁷

Attention to cultural rights can have real and practical effects. It can help strengthen public policies for the respect of the identity of groups to whom injustice has been done, for example Indigenous Peoples, and even mend historic injustices towards these communities by the majority population, as well as build positive inter-cultural relations. Since cultural rights impact so deeply on identities, even symbolic acts can have a significant impact in society and set the stage for more positive changes, ones that would go beyond symbolism and moral aspects of policy and also touch on material demands

⁷ International legal thinking has contributed to solutions by addressing the concept of continuing violations of human rights, i.e. injustice that stems from far back, but the effects of which still continue in the present, by promoting positive measures to deal with past discrimination, by developing concepts of truth commissions and transitional justice, and, of course by establishing imprescriptibility for crimes against humanity and gross and systematic violations of human rights and humanitarian law. At the national level, truth commissions and formal apology have been some of the ways of dealing with past injustices and human rights violations.

that some cultural rights entail, such as language rights or the continuation of a number of traditional occupations linked to land and natural resources.

An indispensable condition for such approaches, however, is the full and effective participation of the populations concerned.

Conclusion

In ending this presentation, I ask: Are our societies, our governments ready to embrace intercultural understanding, coexistence and well-being?

In a book published in 2013, Davi Kopenawa Yanomami, the famous Yanomami leader from Brazil was quoted as saying: "I would [also] like [their] *the white people's* sons and daughters to understand our words. I would like them to make friendship with our sons and daughters in order not to grow up in ignorance".⁸

For human rights to have resonance for a person or for a community, for human rights to become part of people's thinking and vision, human rights have to be given cultural specificity, cultural context.

If we look back about 70 years ago when the Universal Declaration of Human Rights was being prepared, and since then, when many other human rights instruments were created, we see that the process of drafting constituted a dialogue among the various civilizations, cultures, religions, regions, legal and political systems that were

⁸ In 1990, I went to Brazil on a human rights mission with the UN, because the Yanomami indigenous people there were facing the threat of extinction due to the influx of gold miners in their area. The Yanomami were at the time the largest un-contacted indigenous tribe. I met their leader Davi Kopenawa Yanomami, who, one year later, in 1991, became the first indigenous leader to meet the UN Secretary General. In 2013, Davi and Bruce Albert published a book called "The Falling Sky: Words of a Yanomami Shaman", where I read these words of Davi: "After they [the white people] have understood my account, I would like the white people to tell themselves: 'The Yanomami are other people than us, yet their words are right and clear. Now we understand what they think. These are words of truth! Their forest is beautiful and silent. They were created there and they have lived in it without worry since the beginning of time. Their thought follows another path than that of merchandise. They want to live their way. Their custom is different..... I would like white people to stop thinking that our forest is dead and placed here without reason. ..May be they will want to defend it with us?. I would also like their sons and daughters to understand our words. I would like them to make friendship with our sons and daughters in order not to grow up in ignorance. For if this forest is entirely devastated, no other forest will ever be born...."

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bringing in their perspectives and values and the UN was synthesizing them. Those diverse perspectives were put in legal language by the drafters-diplomats and lawyers-and adopted by the UN as international human rights instruments. What I am saying now is, that there is a need to return back to the world's diversity what that diversity gave us and we encapsulated in the brief telegraphic language of the human rights instruments. And we have to return back the holistic universal human rights vision to humanity in a culturally specific way. In a way that will have meaning for an indigenous person, a young person, a woman, an older person, a person with disability, a person of a specific sexual orientation.

Grounding human rights in culture means listening to the local, listening to communities, dialoguing with the diversity of our world, bringing the international/universal to the local. I can think of no better way for that than by fostering the genuine participation of local societies, especially the most vulnerable and marginalized ones, and by protecting and promoting cultural rights.⁹

⁹ *Excerpts of ES comments on Human Rights Day, 10 December 2007, "All of it, for All of Us: Toward an Inclusive Human Rights Agenda"*





