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DAY OF GENERAL DISCUSSION

Right to take part in cultural life (article 15 (1) (a) of the Covenant)

Friday, 9 May 2008

The right to take part in cultural life*

Comments submitted by the International Labour Organization

* Reproduced as submitted.



Committee on Economic, Social and Cultural Rights

Day of General Discussion on
“The right to take part in cultural life”
(Article 15 of the ICESCR)

9 May 2008

ILO Comments

1. *Definition of ‘culture’*. The ILO supports a wide understanding of the concept of ‘culture’, in line with the definition provided by the UNESCO Declaration on Cultural Diversity. This Declaration defines culture as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, encompassing, in addition to art and literature, lifestyles, *ways of living together*, *value systems*, traditions and beliefs.¹ Such a wide understanding is also reflected in Human Rights Committee’s General Comment No. 23 on the rights of minorities², according to which “culture manifests itself in many forms, including a particular *way of life associated with the use of land resources*, especially in the case of indigenous peoples”. During the General Discussion on the Right to take part in cultural life, held by CESCR at its seventh session in 1992, it was stated that culture meant a *way of life*.³

‘Culture’ and ILO standards. The Indigenous and Tribal Peoples Convention, 1989 (No. 169) also embodies a broad understanding of culture. Illustrative in this regard is Article 13(1) of the Convention which provides that governments shall respect the special importance that indigenous peoples’ relationship with their lands or territories has for the *culture* and *spiritual values* of these peoples. In the same vein stands Article 7(3) which requires ratifying States to ensure that appropriate studies are conducted in order to assess the social, spiritual, *cultural* and environmental impact on indigenous peoples of development

¹ UNESCO Declaration on Cultural Diversity, UNESCO General Conference, 31st Session, 2 November 2001, preamble.

² UN Doc. CCPR/C/21/Rev.1/Add.5, 8 April 1994.

³ UN Doc. E/C.12/1992/2, para. 213.

activities. Accordingly, in a 2006 direct request addressed to Ecuador, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) focused on the need for consultation of indigenous peoples with regard to plans and programmes of exploration and exploitation of non-renewable resources which could affect their environment and *culture*.

2. *The right to take part in cultural life and the safeguard of cultural diversity.* The right to take part in cultural life as enshrined in Article 15 of the ICESCR is closely related to the safeguard of cultural diversity. In fact, under the *Reporting Guidelines* to the Covenant, State Parties are to describe, among other things, the measures taken to promote *cultural identity* as a factor of mutual appreciation among individuals, groups, nations and regions. More explicit on this point is the abovementioned report of the *General Discussion on the Right to take part in cultural life* stating that, in their reports concerning the implementation of article 15, States should pay attention to the ‘non-discrimination between cultures, since no hierarchy of cultures exist, all being equal and therefore having an equal right to protection’⁴.

2.1 *Cultural diversity and ILO standards.* As well known, the main objective of the revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107) through the adoption of Convention No. 169, was to overcome the assimilationist approach embodied in the 1957 Convention. In fact, the preamble of Convention No. 169 now clearly refers to the “distinctive contributions of indigenous and tribal peoples to the *cultural diversity* and social and ecological harmony of humankind”. It also recognizes “the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live”. The Convention’s provisions as a whole are thus aiming at protecting indigenous peoples and their specific cultural identity.

3 *Participation in cultural life under Article 15 of the Covenant.* As it is spelt out in the report of the *General Discussion on the Right to take part in cultural life*, the concept of participation in cultural life has two components. On the one hand, it refers to the right to *create* cultural values. On the other hand, it encompasses the right to *benefit* from cultural values created by the individual or the community⁵.

3.1 *Specific relevant ILO standards.* As indicated above, the provisions of Convention No. 169 as a whole are all relevant to protect indigenous peoples’ cultural identity and ensure that they enjoy their culture. Nevertheless, some specific provisions should be highlighted in particular in connection with article 15 of the Covenant.

Article 4 of the Convention requires ratifying States to adopt special measures in order to safeguard the persons, institutions, property, labour, *cultures* and environment of the peoples concerned. Article 5 spells out that, in applying the provisions of the Convention, the social, cultural, religious and spiritual values and practices of indigenous peoples shall be

⁴ UN Doc. E/C.12/1992/2, para.220.

⁵ *Ibidem*, para. 217.

recognised and protected. In addition, article 7 stipulates that indigenous peoples have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. Furthermore, according to Article 8, indigenous peoples have the right to retain their own customs and institutions, provided that they are in line with fundamental human rights.

With regard to education, Article 27 provides that education programmes must be developed and implemented in co-operation with indigenous peoples so that they incorporate indigenous histories, knowledge, technologies, value systems and social, economic and cultural aspirations. Indigenous peoples' right to establish their own educational institutions and facilities is also recognized (Art. 27 (3)). Moreover, under Article 28, indigenous children shall be taught to read and write in their own indigenous languages, besides being accorded the opportunity to attain fluency in national languages. Article 31 provides that efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of indigenous peoples.

Finally, it is worth recalling that Article 6 is the core provision of the Convention. Under this article, States are called to consult the peoples concerned, in good faith and through appropriate procedures, in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly.

In addition to Convention No. 169, it should be noted that the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) can also be relevant in respect of Article 15 of the Covenant to the extent that it provides for the principle of equality of opportunities and treatment in education and as regard access to particular occupations, including traditional occupations which play an important role in the cultural life of indigenous peoples.

More generally, Convention No. 111 is intended to protect from discrimination in employment and occupation based on, inter alia, race, colour and national extraction. According to the ILO supervisory bodies, these prohibited grounds include discrimination based on ethnicity, language and indigenous identity.