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

Friday, 9 May 2008

Equality and the right to participate in cultural life*

Background paper submitted by the International Women's Rights Action Watch**

* Reproduced as submitted.

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**INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS
ARTICLE 15(1)(a)**

**DAY OF GENERAL DISCUSSION
MAY 9, 2008**

**STATEMENT ON
EQUALITY AND THE RIGHT TO PARTICIPATE IN CULTURAL LIFE**

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INTRODUCTION

1. The International Women's Rights Action Watch (IWRAP) welcomes the opportunity to offer its views on development of a General Comment on Article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights. As a global resource center for women's human rights scholarship and advocacy, IWRAP has provided numerous shadow reports to the Committee on Economic, Social and Cultural Rights and participated in developing several General Comments to the Covenant, most intensively General Comment No.16, on equality between men and women in the enjoyment of economic, social and cultural rights..

2. The right to equal participation in cultural life is one of the more contested, and one of the least understood, principles of economic, social and cultural rights. This is both because the definition of "culture" has multiple aspects, and because "culture" is all too often cited either as a justification for inequality or as inimical to equality. We suggest that, ultimately, equality between men and women is necessary to the full achievement of participation in cultural life as stated in article 15(1)(a).

NORMATIVE CONTENT

3. Scholars and other experts offer multiple definitions of "culture" and "cultural life." Several indicate that the language of "participation in cultural life" was intended at the time of drafting to refer only to cultural life the narrowest (and perhaps most obvious) sense, to include "high culture"--the performing and literary arts, painting and sculpture, historical monuments and the contents of museums.¹ Used in that sense, participation in cultural life would refer to physical and economic access to "high culture."

¹ Yvonne M. Donders, *Towards a Right to Cultural Identity?* (Antwerp: Intersentia, 2002), p. 150;
IWRAP-Equality and CESC Art. 15(1)(a)

4. A considerable literature also exists that explores the distinctions and the relationship between the right to take part in cultural life, a “right to culture,” and a right to cultural identity. A full review of these explorations is beyond the scope of this discussion. Generally speaking, the “right to culture” has been characterized primarily as a collective right, possibly overlapping the definition of the right to cultural identity. The “right to cultural identity” can be both individual—embracing the idea that individuals can choose how to define their relationship with their cultural environment or with a particular cultural (including religious) group—and a group right that includes defining, engaging in, and preserving cultural identity, including language, history, social and religious practices, and internal authority structures. The language of Article 15 does not specifically refer to these formulations, but the Committee’s work since 1990, including the reporting guidelines adopted in 1991, indicates evolution well beyond the narrow sense of “high culture.”²

5. In 1992 the Committee held a Day of General Discussion on Article 15 and cultural rights, for which a member of the Committee, Mr. Samba Cor Konaté of Senegal, prepared a working paper. While a great deal of language has been offered by other commentators since that time, we would start with Mr. Konaté’s definition, which suggested even fifteen years ago that “culture” is to be understood in a broad sense, as a totality of individual and community experience. We suggest, building on that concept, that culture must be seen as continually developing and changing; a culture that does not change is a dead culture. And, once again citing Mr. Konaté, we endorse the view that “the right to participate in cultural life includes the right to have access to culture, to enjoy the benefits and demand their protection, and to contribute freely to its development.”³

6. “Contribut[ing] freely” to the development of cultural life, in its accepted broader sense, must include engaging in the definition of the culture. This means much more than participation in the activities traditionally understood as “cultural,” such as producing artistic and literary works, engaging in traditional cultural practices, and preserving cultural skills and artifacts and teaching them to the next generation. Development of cultural life includes public and private action that shapes the values and behavior of individuals, families, and communities—the total environment of human life. It is at this point that the issue of equality is the most contested.

EQUALITY AND PARTICIPATION IN CULTURAL LIFE

7. Women’s right to participate in cultural life on an equal basis with men is critical to equal enjoyment of all other rights under the Covenant as provided in Article 3. Conversely, as expanded upon in General Comment No. 16, Article 3 requires States parties to provide for equal enjoyment of the right to take part in cultural life.

² An overview of this topic and the evolution of the Committee’s work on Article 15 is contained in Donders, pp. 149-162. See also Elsa Stamatapoulou, *Cultural Rights in International Law: Article 27 of the Universal Declaration of Human Rights and Beyond* (Leiden and Boston: Martinus Nijhoff, 2007), at 48-50.

³ Samba Kor Konaté, Working Paper on the Right to Participate in Cultural Life, UN Doc. E/C.12/1992/WP4 (25 November 1992), cited in Donders, p. 152. A summary of the discussion is found in UN Doc. No. E/1993/22-E/C.12/1992/2, paras. 202-223.

8. Exercising the right to take part in cultural life involves a number of other rights. Those most often mentioned, with respect to all persons, are freedom of association, of speech, and of belief; the right to choose a profession or other form of labor; the right to education; and the right to have basic physical needs met (adequate standard of living). Discrimination against women in the enjoyment of these rights unquestionably interferes with their right to participate in cultural life.

9. In addition, inequality in the family, gender-specific violence within the household and in the public sphere, harmful traditional practices that affect women's health, and the particular impact of maternity on women's health and employment rights form obstacles to women's participation in cultural life that men do not face.

10. Many of these discrimination issues have been noted in the Committee's other General Comments. Addressing them specifically in the General Comment on Article 15(1)(a), as impediments to the equal enjoyment of the right to take part in cultural life, would provide much-needed clarification and could encourage States parties to confront the difficult issues of equality and culture.

11. Full engagement in activities that develop and define cultural life is essential to enjoyment of the right to participate in it. Women frequently face limitations on their exercise of the rights involved in the definition and development of cultural life on the basis of asserted cultural imperatives. Equality between women and men in the enjoyment of rights is posited by some States and community authorities as contrary to a particular national or community culture. In other words, women are sometimes excluded from full participation in cultural life on the basis of culture, particularly cultural identity. Addressing this somewhat circular phenomenon requires a close examination of the source of the definitions of "culture" that exclude women from equal participation in cultural life. We suggest that the principle of equal enjoyment of economic, social and cultural rights requires that women enjoy equally with men the opportunity to define their culture as well as to develop it.

STATE OBLIGATIONS

12. States parties' obligations with respect to the enjoyment of economic, social and cultural rights consist of the obligation to respect, to protect, and to fulfill rights.⁴ As to the specific issues of equal enjoyment of the right to take part in cultural life, the General Comment might include the following considerations.

13. *The obligation to respect* requires that States refrain from action, such as the adoption of laws, policies, or programs, that constrain women's exercise of any rights related to their participation in cultural life. This would include, for example, restrictions on their participation in performing arts or the public media, or prescriptions as to the content or level of girls' education that differs from that offered to boys. Limiting or requiring choice in dress for women, but not for men, also constitutes a failure to meet the obligation.

⁴ This tripartite typology is discussed at some length in Magdalena Sepúlveda, *The nature of the obligations under the International Covenant on Economic, Social and Cultural Rights* (Antwerp: Intersentia, 2003), pp. 196-209.

14. *The obligation to protect* requires States to regulate the actions of individuals or institutions that would have the effect of limiting women's equal participation in cultural life. Protection of the right to participate in cultural life would include, for example, prohibiting exclusion of women from cultural events or their relegation to space in which they cannot fully participate and prohibiting discrimination against girls and women in admission to educational institutions and to professional education programs. The obligation also requires States to protect women from violence in the household and in public spaces, which limits their mobility and their opportunities to engage in associations and other forms of public activity that are essential to participation in cultural life.

15. *The obligation to fulfill* requires States to support institutions and programs that provide opportunities to participate in cultural life. With respect to equal enjoyment of the right to take part in cultural life, the obligation would include, for example, programs and institutions to promote women's effective participation in civic life and voluntary associations. To meet the obligation to fulfill, States may also have to develop temporary special measures to increase women's access to aspects of cultural life.

16. These suggestions with respect to State parties' obligations are by no means exhaustive. We look forward to working with a comprehensive General Comment that confirms the principle of equal enjoyment, as articulated in Article 3 and General Comment No. 16, as fundamental to the right to take part in cultural life.