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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Field of cultural rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur in the field of cultural rights, Karima Bennoune, submitted in accordance with Human Rights Council resolution [43/9](#).

* [A/76/150](#).



Report of the Special Rapporteur in the field of cultural rights, Karima Bennoune

Summary

In her final report to the General Assembly, the Special Rapporteur calls for greater recognition of human rights-respecting cultural mixing and syncretism and increased respect for mixed cultural identities, all of which is necessary for the implementation of cultural rights.

I. Introduction

1. To paraphrase the words of Haitian poet Jacques Stephen Aléxis, we are all the children of “an infinity of cultures.”¹ As the Special Rapporteur concludes her mandate, she notes that the need to understand and respond to that reality is a critical task for the field of cultural rights. The task is nothing less than “conceptualizing an international culture, based not on the exoticism or multiculturalism of the diversity of cultures, but on the inscription and articulation of culture’s hybridity.”² That is essential for realizing the cultural rights of everyone without discrimination.

2. Hence, in this, her final report to the General Assembly, the Special Rapporteur addresses the need for a human rights-based approach to questions of mixed cultural identities, cultural mixing and syncretism. Such an approach is grounded in interrelated commitments to the universality of human rights and cultural diversity (see [A/73/227](#)). In recent years, increasingly monolithic notions of culture and identity and purist views of the interrelationships of diverse cultures have taken hold in various sectors across the political spectrum around the world. Such views have been advocated by some Governments and even by some in the field of human rights. This has a range of negative consequences for internationally guaranteed cultural rights. In the present report, the Special Rapporteur calls for greater recognition of human rights-respecting cultural mixing and syncretism, and increased respect for mixed and multiple cultural identities, as well as for intercultural³ ideas and spaces. She does so while recognizing that cultures do not always mix from a position of equality and referencing the contemporary debate about cultural appropriation. Finally, she will make some parting comments about the cultural rights mandate.

3. In preparing the present report, the Special Rapporteur held global virtual consultations, including one co-sponsored by the Institute of Development Studies and the Coalition for Religious Equality and Inclusive Development at the University of Sussex, based in the United Kingdom of Great Britain and Northern Ireland, and one organized with the Malaysian non-governmental organization Pusaka. The Special Rapporteur conferred with experts, cultural practitioners and cultural rights defenders from many regions. She thanks them all.

II. Cultural mixing and syncretism

A. Concepts and examples

4. Cultural mixing and syncretism, or the blending, combining and merging of various cultural elements, representations and meanings, have been constants in the accretion of dynamic human cultures throughout history. Such phenomena have also been described as cultural borrowing, sharing or fusion, and “vernacular cosmopolitanism”.⁴ The precise dynamics and results have been specific to context and time. However, the cross-fertilization and hybridity of human cultures are

¹ Jacques Stephen Aléxis, *Du réalisme merveilleux des Haïtiens* (Présence Africaine, 1956) pp. 8–10. Available from www.jstor.org/stable/24346904.

² Homi Bhabha, “Cultural Diversity and Cultural Differences”, in *Atlas of Transformation* (2011). Available at <http://monumenttotransformation.org/atlas-of-transformation/html/c/cultural-diversity/cultural-diversity-and-cultural-differences-homi-k-bhabha.html>.

³ Defined in the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions as the existence and equitable interaction of diverse cultures and the possibility of generating shared cultural expressions through dialogue and mutual respect. See <https://en.unesco.org/creativity/convention/texts>.

⁴ Homi Bhabha, *The Location of Culture* (Routledge, 1994).

universal.⁵ Culture is integrative in nature. As the Palestinian cultural theorist Edward Said wrote, all cultures are involved in one another; none is simple and pure, all are hybrid, heterogenous, extraordinarily differentiated and unmonolithic.⁶

5. Syncretic practices have been foundational everywhere. For example, the accommodation of cultural and heritage practices has always been an expression of faith.⁷ These are historical facts. They transcend diverse groups and identities. Understanding and acknowledging such patterns is closely related to the promotion of coexistence.

6. Diverse examples of cultural mixing and syncretism from all regions of the world can and should be documented, celebrated and studied, including in the field of human rights. Only a few can be mentioned here. The South Asian notion of *ganga-jamuni tehzeeb*,⁸ or mixing of Hindu and Muslim traditions and cultural practices, is critically important to consider. In Indonesia, one of the Kayan peoples has combined traditional practices of religion with Catholic practice,⁹ singing hymns in a traditional way and maintaining ancestral accents. Nile bathing on Eid al-Ghattas is a popular heritage practice passed on intergenerationally for literally thousands of years as part of the heritage of all Egyptians and has been enjoyed by Coptic Christians to mark Epiphany, together with Muslims, promoting social cohesion through collective immersion.¹⁰

7. Another important example is that of *creolité* or creolization,¹¹ which subverts an originally colonial notion and emphasizes the composite and unpredictable nature of cultural, linguistic and other identities.¹² One of its most famous theorists, Édouard Glissant, explained that “there are cultures... which... are born of the mingling of cultures... and... not only consent to cross-breeding, but proceed from it”.¹³ Glissant’s later work emphasizes the interdependence of the social world, recognizing that there are no absolutes in linguistic or cultural identity.¹⁴ All identities are relational, entangled and changing constantly. From a human rights perspective, his observations remind us that it is essential to consider the cultures and languages of others. Our cultural lives and rights are all connected.

8. Such understandings of syncretism as reflected by *creolité* or *ganga-jamuni tehzeeb* cannot be compartmentalized or divided. They are rooted in the lived reality and practices of people on the ground. They link human rights, ideas and fluid intercultural everyday life. This type of syncretism stands in contrast to assimilation and rejects homogenization and binaries that result in cultural polarization. Moreover, it suggests an acceptance of joy around culture, such as through mixed holiday celebrations, and of diverse forms of love. It reaffirms the potential of intercultural

⁵ Cultural borrowing is “today seen as part of the very nature of cultures”. See Charles Stewart, “Syncretism and Its Synonyms: Reflections on Cultural Mixture”, in *Diacritics*, Vol. 29, No. 3 (Autumn, 1999). Available from <https://muse.jhu.edu/article/9538>.

⁶ Edward Said, *Culture and Imperialism* (London, Vintage, 1993).

⁷ See www.ids.ac.uk/opinions/stop-homogenising-us-mixing-and-matching-faith-and-beliefs-in-india-and-beyond/.

⁸ K. Warikoo, (2010). Religion and Security in South and Central Asia (2010), pp. 86–90.

⁹ See <https://pulotu.shh.mpg.de/culture/kayan#rousseau> 1998; see also A/HRC/46/34/Add.1, para. 45.

¹⁰ See www.ids.ac.uk/opinions/the-grand-egyptian-festival-religion-heritage-and-social-cohesion/.

¹¹ See, e.g., P. Chamoiseau, R. Confiant and J. Barnabé, *Eloge à la Créolité* (Gallimard, Paris, 1993).

¹² “Creole draws attention to the inequities of power that allowed European colonizers to discursively legislate the importance of ‘race’, culture and environment in determining where one fits along a chain of being that placed the Old World homeland and its subjects at the pinnacle.” See Charles Stewart, “Syncretism and Its Synonyms”. See also https://www.migrationinstitute.org/files/news/patrickchamoiseauinterview_f.pdf.

¹³ See <https://sites01.lsu.edu/wp/theglissanttranslationproject/2017/10/20/the-poetics-of-the-world-global-thinking-and-unforeseeable-events/>.

¹⁴ See www.migrationinstitute.org/files/news/patrickchamoiseauinterview_f.pdf.

solidarity. All of these are a core part of the full exercise of cultural rights by all, without discrimination and in the context of the universal human rights framework.

9. The first Special Rapporteur in the field of cultural rights, Farida Shaheed, stressed the role of transnational approaches to history teaching and the need for critical thinking that can “help to overcome a narrow nationalistic, ethnic or microfocused identity”.¹⁵ She warned against monolithic historical narratives. These insights are important for preserving histories of the intermingling of cultures.

10. Different terms are used to describe the dynamics of cultural mixing and hybridity in various regions and fields. While they have important nuances and areas of overlap, the Special Rapporteur underscores the positive potential of each for cultural rights. “Cultural mixing”¹⁶ or “cultural borrowing” helpfully describe intercultural dynamics at the macro and micro levels but are sometimes unhelpfully viewed as positing cultures as separate phenomena that intermingle. “Cultural fusion” and “hybridity” better convey the transformative dynamic of mixing, in which the whole is more than the sum of its parts. However, these may also be less accessible terms. “Syncretism” has especially been used in relation to religions and emphasizes the positive adaptation of religious traditions to local practices and cultures. While syncretism describes the process by which cultures constitute themselves at any given time, the term may also carry pejorative connotations, or overtones of hegemonic cultural expressions that come to digest or eclipse others. Many of these terms have been criticized, including for harmful ways they may have been employed in the past. As noted by Barbara Abou-El-Haj, “we have yet to find a language capable of describing unequal exchange in a world of unequal exchanges”.¹⁷ It is important to carefully consider the meaning and human rights implications of all terms used in this field. The Special Rapporteur will employ a variety of these terms, with awareness both of their imperfections, and their significance.

B. Towards a holistic human rights approach to cultural mixing

11. Discussions of cultural mixing and mixed cultural identities must be firmly rooted in equality and universal human rights. According to article 2 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions of the United Nations Educational, Scientific and Cultural Organization (UNESCO), “cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression as well as the ability of individuals to choose cultural expressions, are guaranteed. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof.”

12. The Committee on Economic, Social and Cultural Rights explained in its general comment No. 21 (2009) on the right of everyone to take part in cultural life, that cultural life “is an explicit reference to culture as a living process, historical, dynamic and evolving”, and “the concept of culture must be seen not as a series of isolated manifestations or hermetic compartments, but as an interactive process

¹⁵ A/68/296, para. 54. For examples of such critical thinking, see T. Joseph, *Early Indians: The Story of Our Ancestors and Where We Came From* (Juggernaut Publication, 2018), and D. Hicks, *The Brutish Museums: The Benin Bronzes, Colonial Violence and Cultural Restitution* (Pluto Press, 2020).

¹⁶ See <https://journals.sagepub.com/doi/abs/10.1177/0022022116670514?journalCode=jcca&>.

¹⁷ Barbara Abou-El-Haj, “Languages and Models for Cultural Exchange”, in *Culture, Globalization and the World System: Contemporary Conditions for the Representation of Identity* (Anthony D. King, ed., 1991).

whereby individuals and communities¹⁸, while preserving their specificities and purposes, give expression to the culture of humanity.” In addressing the relationship between cultural rights and cultural diversity, the first Special Rapporteur on cultural rights noted that, “culture being a living and dynamic process, it is not suggested that barriers between individuals and groups should be raised in order to protect their specificities” (A/HRC/14/36, para. 30). Both Special Rapporteurs on cultural rights have repeatedly stressed that cultures are not fixed or static (A/HRC/14/36, para. 6; and A/HRC/31/59, para. 8). They both engaged with the hybridity of cultures, cultural mixing and the right of individuals to freely develop and be the bearer of multiple and complex identities.¹⁹ Such work should continue and be mainstreamed across the United Nations system.

13. The human rights approach to cultural mixing and mixed and multiple identities needs to be holistic, recognizing the relationship such concepts have with many human rights. Enjoyment of this range of human rights, as described below, requires an open, honest, rights-respecting approach to such cultural dynamics. Conversely, the rejection or denial of rights-respecting cultural mixing and of mixed and multiple identities may represent violations of this range of human rights in and of themselves, and be conducive to other violations of these rights.

14. The impact on cultural rights is enormous, and cultural rights must be at the heart of the needed human rights approach. These cultural rights include the right of everyone to take part in cultural life without discrimination, the right to have access to and enjoy cultural heritage, including the right to benefit from the heritage of others,²⁰ as well as scientific and artistic freedom. Indeed, the rights to mix, borrow, traverse and fuse cultures and to engage in syncretic cultural practice, in a rights-respecting manner,²¹ should be understood as cultural rights themselves. It is impossible to participate fully in cultural life, without discrimination, without such avenues being available. Cultural mixing and openness are among the foundations of cultural rights (A/73/227, para. 3).

15. However, the human rights impacts of the issues covered in the present report are wide-ranging and interconnected across the indivisible and interdependent universal human rights framework, affecting also, inter alia, the rights to development, to education and academic freedom, to freedom of religion or belief, to freedom of expression, and to freedom of peaceful assembly (A/HRC/20/27, para. 12),²² including the right to assemble around cultural practice.

16. The denial of cultural rights or freedom of expression, or of any of the rights enumerated above, hinders the continuation of cultural mixing and its recognition. The ability to speak openly about histories of cultural mixing is essential. The protection of cultural heritage, including syncretic heritage, and the heritage of minorities, including those no longer present, is a vital part of protecting the relevant rights.

17. In order to handle the challenges in this area, a human rights framework needs to be applied that, rather than constraining people by assigning them to narrow

¹⁸ See discussion of the term “community” in A/HRC/31/59, paras. 10–17.

¹⁹ See, e.g., A/HRC/14/36, paras. 10 and 23; A/HRC/25/49/Add.1, paras. 16 and 21; A/HRC/34/56/Add.1, paras. 31 and 51; A/HRC/37/55/Add.1, paras. 61 and 64; A/HRC/17/38, paras. 6, 10; A/68/296, para. 54; A/HRC/31/59, para. 42; A/71/317, para. 12; A/HRC/34/56, para. 85; A/72/155, para. 84; and A/HRC/40/53, para. 18.

²⁰ General comment No. 21 (2009), para. 15 (b).

²¹ The meaning of “rights-respecting” and concerns about cultural appropriation, are discussed in paras. 41–51.

²² For an example of positive potential of assembly around cultural practices, see www.theguardian.com/uk-news/2020/oct/18/ive-never-had-so-much-craic-gaelic-games-come-to-loyalist-east-belfast.

identity categories, recognizes their internal diversities and their agency to engage in cultural exploration and development. This framework should promote the assessment of the impact of such dynamics on cultural rights and the other human rights enumerated above, be firmly grounded in equality and rights-based, be closely related to the rights-respecting teaching of plural histories (A/68/296), encourage the active participation and consultation of all affected constituencies and promote rights-respecting transcultural interactions.

18. The human rights framework for addressing these issues also needs to be informed both by local and global dynamics, recognizing the way a debate in one place in the globalized world may significantly affect developments elsewhere. It should emphasize the importance of arts and culture education, but also prioritize lived experience and engaged theory informed by it.

C. Stories and histories of cultural mixing and mixed cultural identities

19. Cultural mixing and syncretism have resulted both from positive human interactions, cooperation and sharing (A/HRC/14/36, para. 46), but also from inequalities, violence and domination (A/74/321, para. 8). Positive and negative interactions may commingle. The movement of people around the world has facilitated cultural mixing, and hostility to such movement is directly related to rejections of mixing. An honest appraisal of the relevant histories and the underlying structural questions is critical. In any case, if we now imagine pasts when there was no cultural mixing or fusion, or when there was a “pure” culture, we are denying human history. Syncretism and cultural sharing are among the usual forms of cultural production.

20. Although this fact is insufficiently recognized, the very idea and framework of universal human rights itself, of which cultural rights are an integral part, rather than deriving from any one region alone, has itself evolved from and borrowed from many cultures and traditions (A/73/227). Indeed, it is stronger for having done so and especially stronger when this widespread cultural borrowing is recognized.²³

21. Humanity cannot progress without syncretism and rights-respecting cultural borrowing. Cultures cannot flourish or reach their full potential if they are closed to other cultures. Rights-respecting mixing is “not predicated upon the idea of the disappearance of independent cultural traditions but rather on their continual and mutual development.”²⁴ As the former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has noted, “to extrapolate this lesson from biodiversity to harmonious coexistence among peoples we must construct a new social vision based on the understanding and promotion of the value of cross-fertilization between cultures, peoples, ethnic identities and religions as vital ingredients for the vitality, even the survival, of society as a whole” (E/CN.4/2003/24, para. 15). Recognition of cross-fertilization within cultures is as deserving of understanding and promotion.

22. Despite the reality and necessity of cultural mixing and hybridity, what stories are Governments telling their populations, and the world, about who they are? What stories are we telling ourselves and each other? Who and what is left out? Our narratives, our social, legal and human rights categories may be too simple and fail to reflect our fluid lived realities.

²³ See Allison Assiter, *A New Theory of Human Rights* (Rowman & Littlefield 2021).

²⁴ See *The Post-Colonial Studies Reader*, p. 184, B. Ascroft, G. Griffiths and H. Tiffin, eds. (Routledge, London and New York, 2006).

23. While mixing and fusion are constant, purity claims are aberrational, reflecting fantasy rather than reality. Purity and authenticity-based approaches to culture and to relations between (and within) diverse cultures often fail to reflect the complexity of human experience and undermine the reality of cultural heterogeneity with a range of negative consequences for human rights. The insistence on cultural purity can lead to the decimation of those deemed to taint that purity, to violence and obliteration of individuals and groups. Processes of cultural cleansing and cultural engineering have been carried out by an array of nationalist Governments, fundamentalists and extremists, and others aiming to defend such claimed “purity” and eradicate evidence that challenges it (A/71/317, paras. 36–37).

24. Cultural purity is sometimes ascribed to particular groups, especially marginalized groups, even for positive motives. Such approaches may unintentionally purvey stereotypes about such persons and represent them as trapped in the past. Many actors may attempt to police assumed cultural borders they have themselves erected in their imaginations, such as by telling those in their own group who convert to a different religious tradition that they may not simultaneously engage in traditional practices or visit traditional cultural or religious sites. Governments may only or primarily finance cultural projects carried out by members of some ethnic groups or those that are seen to be ethnically based rather than multi-ethnic or intercultural, or promote certain identities and cultural heritages, or “ethnicization,” through cultural policies and programming.

25. Disciplines such as art history and cultural studies, and advocacy by cultural rights defenders, have long grappled with the issues in the present report.²⁵ However, those debates have been insufficiently reflected in the field of human rights and in the United Nations system, which sometimes have purveyed generalizations about identity and culture, even with good intentions.²⁶ Cultural rights discourse and human rights approaches to cultural questions should not assume reified identities or lose the pluralistic sense of being.

26. In recent years, trends in official and popular discourses have sometimes been away from recognizing cultural mixing and mixed cultural identities. In some contexts, any kind of cultural diversity or plurality has been denied, and visions of a claimed homogenous society have been imposed (A/HRC/43/50/Add.1, paras. 27, 35, 43, 89 and 96 (f)). Minority cultural expressions (and those of minorities within minorities) may be repressed, marginalized or unfunded.²⁷ “Ethnic and religious minorities may also suffer from prohibitions such as using a language or artistic style specific to a region or a people” (A/HRC/23/34, para. 43). Mixed people may be erased.

27. One expert described a “passionate desire for homogeneity” at the governmental level. A recent example of this was a 2020 statement by the Deputy Prime Minister of Japan, Taro Aso, that Japan has only one ethnic group and language.²⁸ In February 2018, the Prime Minister of Hungary, Viktor Orbán, stated before elected officials that “we do not want our colour ... to be mixed in with others”, a statement denounced by the former United Nations High Commissioner for Human Rights.²⁹ Steve Bannon, an advisor to former President of the United States of America, Donald Trump, advocated the fictional idea of the United States having one national culture, a

²⁵ See, e.g., Stuart Hall, “The Question of Cultural Identity,” in *Modernity and its Futures: Understanding Modern Societies, Book IV* (Stuart Hall et al, eds., Polity, 1992).

²⁶ See www.ids.ac.uk/opinions/stop-homogenising-us-mixing-and-matching-faith-and-beliefs-in-india-and-beyond/.

²⁷ Freemuse submission.

²⁸ Samuel Osbourne, “Japan’s deputy PM says country only has ‘one ethnic group’”, *Independent*, 14 January 2020. Available at www.independent.co.uk/news/world/asia/japan-deputy-pm-one-ethnic-group-race-ainu-taro-aso-a9283116.html.

²⁹ See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22765&LangID=E.

favourite hallucination of the far right.³⁰ Such political discourses seek to base self-definition on the drawing of fictional “clear” lines.

28. Sectarianism, de facto segregation and assaults on plurality have been on the rise in the context of the current global ethno-nationalist moment, contributing to a larger assault on the core of what it means to be human. Imperialist and ethnonationalist nostalgia has made the complexity of cultural histories inconvenient.³¹ Taken together, all this has promoted attacks on diverse human beings and widespread violations of their universal human rights, including cultural rights.³²

29. In other contexts, and at times in human rights discourse itself, while a notion of diversity is recognized, it takes the form of a thin multiculturalism in which humanity is divided into separate, internally coherent baskets. This is what Amartya Sen labelled “plural mono-culturalism”.³³ Such approaches likewise eclipse cultural hybridity and mixed cultural identities.

30. There have been deliberate attempts to erase histories of fusion and syncretism. The defence of cultural rights requires an intertemporal approach that preserves the histories of these mingling practices and plural identities in the past, and their respect and promotion in the present, and also imagines and constructs futures where they flourish in rights-respecting ways.

31. For example, it is essential to work against the erasure of hybridity in the restoration of cultural heritage sites, in keeping with the Québec Declaration on the Preservation of the Spirit of Place of the International Council on Monuments and Sites, which recognizes sites as having a plural and dynamic character, capable of possessing multiple meanings and singularities, of changing through time, and of belonging to different groups, and emphasizes that a place can have several spirits and be shared.³⁴ Similarly, it is vital to recognize the nuances and syncretic nature of intangible heritage.³⁵ Mono-restorations can be used to support irredentist claims or monolithic fundamentalist narratives about religion, culture and history, or to undercut the cultural rights of minorities and cultural dissenters in the majority. An example has been Saudi-funded reconstruction of Bosnian mosques, which allegedly failed to respect Bosnian Muslim aesthetics and transformed the character of places of worship.³⁶

32. “Authenticity” in historic preservation may have a stultifying and negative impact on living cultures, if the fact that “cultural heritage diversity exists in time and space” is not recognized. “Authenticity must be understood in a manner respectful of heritage diversity.”³⁷

³⁰ Fintan O’Toole, “In the Trump era, artists need to do more than make protest speeches”, *The Irish Times*, 3 March 2017. Available at www.irishtimes.com/culture/stage/in-the-trump-era-artists-need-to-do-more-than-make-protest-speeches-1.2992500. One person responded to Bannon: “Without the “s” in cultures, I do not recognize this country.” See www.nytimes.com/2017/02/24/opinion/give-the-country-back-stephen-bannon-decoded.html.

³¹ Note, e.g., the difficulties faced by the United Kingdom National Trust in seeking to address links between heritage and “colonialism and historic slavery.” See www.nationaltrust.org.uk/%20features/addressing-the-histories-of-slavery-and-colonialism-at-the-national-trust.

³² For example, the destruction of cultural heritage in Mosul by Daesh was a way of “smash[ing] apart ancient bonds of coexistence.” Omar Mohammed, speech at an intersessional workshop on cultural rights and the protection of cultural heritage, 15 June 2021.

³³ Amartya Sen, “The uses and abuses of multiculturalism”, *The New Republic*, 27 February 2006.

³⁴ See www.icomos.org/images/DOCUMENTS/Charters/GA16_Quebec_Declaration_Final_EN.pdf.

³⁵ See <https://anthrosource.onlinelibrary.wiley.com/doi/full/10.1111/j.1548-1425.2012.01393.x>.

³⁶ See www.files.ethz.ch/isn/50179/2008_March_Wahabism.pdf, pages 5–6.

³⁷ See www.icomos.org/charters/nara-e.pdf.

33. The destruction of cultural heritage³⁸ has a deleterious effect on preserving histories of cultural diversity and mixing. Conversely, its preservation in accordance with international standards, in all its hybridity and employing a human rights approach, can help guarantee cultural rights. The Special Rapporteur welcomes new participatory museum and heritage initiatives across the Africa region to this end.³⁹

D. Obstacles, challenges and ways forward

34. Factors that may undermine possibilities for cultural fusions include puritanical and fundamentalist approaches to diverse religions (A/HRC/34/56; and A/72/155), and refusals to allow ideological diversity in contexts of political repression. They include simplistic approaches that fail to take into consideration or document diverse cultural elements, including oral traditions, in a way that reflects the granularity of cultures. Discrimination and refusal to accept the existence of and traces of different identities are a major obstacle.⁴⁰ Past histories of violence, discrimination and repression may render these topics taboo. Narrow authenticity discourses – sometimes advanced ostensibly to protect cultural rights – that are based on static ideas about culture, identities and homogenous pasts are also problematic. Many experts stressed the need to transcend multiculturalism and the segregation it sometimes implies in favour of interculturalism⁴¹ or transculturalism.⁴² The latter concepts evoke sharing and cosmopolitan outlooks. All such paradigms must be embedded in a framework of equality and human rights.

35. Refusal to respect cultural mixing or mixed cultural identities leads to many human rights violations, including some the Special Rapporteur has previously documented. For example, the 2012 destructions of mausoleums by fundamentalist groups in northern Mali were understood by Malian experts to have been carried out because this heritage – which is vital for local religious and cultural practice – represents a mixing of cultures from Africa and the Middle East.⁴³ Rejections of syncretism and mixing has also led to attacks on religious sites and relics important for some Afro-Brazilians, such as the destruction of *terreiros* from Umbanda and Candomblé.⁴⁴ Numerous terror attacks in Afghanistan, such as at a Sikh temple in March 2020, in which 25 people were killed, or at the American University of Afghanistan, reflect similar opposition to mixing.⁴⁵

36. At the same time, the international community must recognize and respond to histories of and ongoing realities of cultural hegemony, cultural assimilation and cultural genocide (A/71/317, paras. 28–29), as well as the commercialization and homogenization of cultures and their impacts, in particular, on indigenous and colonized peoples, and some minorities. Syncretism may be challenged by those who argue that it has not been voluntary in some settings and is hence violative of cultural rights. Corporatized projects of traversing or “borrowing” cultures for commercial purposes, or globalization from above and its cultural effects, can lead to the

³⁸ See www.files.ethz.ch/isn/50179/2008_March_Wahabism.pdf, pages 5–6.

³⁹ See www.theartnewspaper.com/comment/a-new-kind-of-museum-with-narratives-on-equal-terms.

⁴⁰ See www.theartnewspaper.com/news/national-trust-report-colonial-slavery-history-charity-la.

⁴¹ “From conflict to conviviality”, Luísa Santos and Ana Fabíola Maurício, Art and Human Rights Conference, Gulbenkian Foundation (20 May 2021).

⁴² In transcultural approaches, acknowledgment of cultural variation is accepted and perceived as the normative state. See www.eera-ecer.de/ecer-programmes/conference/22/contribution/39868/.

⁴³ See www.icc-cpi.int/RelatedRecords/CR2017_05022.pdf.

⁴⁴ See, e.g., <https://direito.mppr.mp.br/arquivos/File/RelatorioIntoleranciaViolenciaReligiosaBrasil.pdf>.

⁴⁵ See www.aihrc.org.af/home/press_release/8810.

disappearance of many voices in the chorus of humanity by magnifying some and drowning out others.

37. In some instances, fabricated monocultural constructs have been grafted onto post-colonial States that may have been created on the basis of arbitrary colonial administrative boundaries in an effort to solidify their legitimacy.⁴⁶ However, the Special Rapporteur notes that, even in contexts of domination and colonization, cultural mixing/hybridizing has been multidirectional, and mixing of cultural forms has been a tactic of cultural resistance by marginalized peoples facing alien domination.⁴⁷ It has been transformational of identities and cultures of all involved.

38. Cultures and cultural expressions often do not meet and mix on a level playing field. Rights-respecting cultural mixing should happen within a framework of equality. As Patrick Chamoiseau recently remarked at an event about the creolization of the world, “it is not just about singing Kumbaya”.⁴⁸ It is a project that has to be constructed by overcoming inequalities and challenging those cultural consequences of dominant modes of globalization from above that are negative.

39. It is critical to consider who is making choices about cultural borrowing and sharing, and the contexts that shape the choices they feel able to make. Women and cultural dissenters may face the imposition of cultural codes on them that they have no power to determine. The more embattled a group or people is, such as by facing forced assimilation or conversion, the more their human rights are threatened, the less space they may have to welcome cultural openness and sharing.

40. The global market prevents the emergence of the whole-world.⁴⁹ One of the challenges, as Senegalese philosopher Souleymane Bachir Diagne has noted, is “to build a world the market cannot imagine.” To avoid processes of homogenization, commercialization of cultural fusion, corporatizing of cultural borrowing and exploitive models of syncretism, efforts must be made to defend the diversity of cultural expressions in line with international standards and to respect the human rights aspects of intellectual property, as explained by the first Special Rapporteur in the field of cultural rights (A/HRC/28/57; A/70/279; and A/70/279/Corr.1). Cultural rights are a vital part of achieving such goals.

1. Contemporary debates about cultural appropriation and identity politics

41. Careful consideration must be given to the meaning of “cultural appropriation” and how that concept is used. This issue is complex.⁵⁰ In some instances, the critique of cultural appropriation is employed legitimately to advance cultural rights, including by cultural rights defenders, minorities and indigenous peoples, to protect the internationally guaranteed cultural rights of marginalized people, in particular, from commercial exploitation, or from the erasure of their cultural achievements or the outright theft of those achievements. This is particularly important bearing in mind the history of the pillaging of artistic and cultural masterpieces from the Global

⁴⁶ See www.cairn.info/mobutu--9782262049539-page-183.htm.

⁴⁷ *The Post-Colonial Studies Reader*, pp. 203–204, B. Ascroft, G. Griffiths and H. Tiffin, eds. (Routledge, London and New York, 2006).

⁴⁸ Remarks at Reflexion transatlantique sur la créolisation du monde, 8 April 2021 (translated by the Special Rapporteur).

⁴⁹ Ibid.

⁵⁰ There has even been controversy among various indigenous peoples about allegations of appropriation of each other’s cultural practices. See Leyland Cecco, “Canada: one Indigenous group accuses other of cultural appropriation in award row”, *The Guardian*, 9 April 2019. Available at www.theguardian.com/world/2019/apr/09/canada-indigenous-music-awards-inuit-cree-cultural-appropriation.

South and of colonized peoples.⁵¹ The results of that plunder are still on display in some of the world's great museums, an issue which must be redressed.⁵² For example, over 90 per cent of the material cultural legacy of sub-Saharan Africa remains preserved and housed outside of the African continent. The Special Rapporteur supports inventories of such objects and urges appropriate steps be taken as soon as possible toward restitution or repatriation.

42. The concept of cultural appropriation can generate a necessary related debate about exploitation and accountability. This is especially important when the appropriation is for commercial purposes.⁵³ Nevertheless, the debate about appropriation should avoid simplistic moralizing or assumptions about cultural ownership in favour of a specific, contextual debate, including about the material consequences and contexts of borrowing and appropriation.

43. The distinctions between these terms are important to bear in mind. Whereas cultural “borrowing” suggests relatively equal exchange and reciprocity, “appropriation” represents taking in the absence of relational equality, consent or benefit.⁵⁴ Unfortunately, for indigenous peoples and minority populations, cultural exchange often occurs against an unremedied history of oppression and in the absence of equality.⁵⁵ Those who use the iconography and imagery of others should do so in a framework that recognizes their contributions and that involves collaboration, partnership and respect,⁵⁶ as well as careful consideration of who is benefiting from the borrowing of culture.

44. However, the concept of cultural appropriation is also used increasingly today in some contexts to restrict cultural rights, to police claimed cultural borders and to oppose cultural exchange and mixing, without clear contemplation of the human rights consequences of doing so.⁵⁷ Young people may be told it is inherently offensive to wear the dress of others⁵⁸ or to engage in artistic borrowing and mixing and may be shamed on social media for doing so. This is a serious concern. In this process, some cultures are sometimes mistakenly framed as property or coded as fixed or pure things that belong to certain people, rather than recognizing the social construction of culture. There has been a conflation of the material and the cultural in such debates, with less emphasis on resource extraction and land rights than on moralistic claims to the ownership of a static culture. “Cultural engagement does not take place on a level

⁵¹ See <https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1003&context=articles>.

⁵² See e.g. http://restitutionreport2018.com/sarr_savoy_fr.pdf. See also www.glasgowtimes.co.uk/news/viralnews/19272003.germany-return-benin-bronzes-looted-colonial-era/.

⁵³ See www.flavorwire.com/344807/what-a-native-american-expert-thinks-about-that-controversial-no-doubt-music-video.

⁵⁴ See <https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1003&context=articles>.

⁵⁵ Ian Austen, “‘Horrible History’: Mass Grave of Indigenous Children Reported in Canada”, *New York Times*, 28 May 2021. Available at www.nytimes.com/2021/05/28/world/canada/kamloops-mass-grave-residential-schools.html.

⁵⁶ See Adrienne Keene, “The Benefits of Cultural ‘Sharing’ Are Usually One-Sided”, *New York Times*, 4 August 2015. Available at www.nytimes.com/roomfordebate/2015/08/04/whose-culture-is-it-anyhow/the-benefits-of-cultural-sharing-are-usually-one-sided.

⁵⁷ See www.vice.com/en/article/jmakbx/is-western-yoga-cultural-appropriation-obviously-but-that-doesnt-mean-you-cant-practice-it. Yoga has occasioned a paradoxical debate, banned by some Christian and Muslim fundamentalists. See also www.nbcnews.com/news/us-news/alabama-bans-yoga-public-schools-hindu-religious-might-change-n1151551. It is touted as an achievement by Hindu fundamentalists, and sometimes subject to a critique of “cultural appropriation” when practised in the West.

⁵⁸ Amy Qin, “Teenager’s Prom Dress Stirs Furor in U.S. — but Not in China”, *New York Times*, 2 May 2018. Available at www.nytimes.com/2018/05/02/world/asia/chinese-prom-dress.html.

playing field. Racism and inequality shape the ways in which people imagine others. Yet, it is difficult to see how creating gated cultures helps promote social justice.”⁵⁹

45. The misuse of concerns about cultural appropriation to punish legitimate cultural borrowing and mixing has given rise to a discourse purportedly in the name of cultural rights that actually at times undermines the exercise of those rights. Much human invention, creativity and scientific achievement has resulted from genuine cultural borrowing and sharing. Unfortunately, that fact has regularly been overlooked, or in the process the contributions of some have either been ignored, or others have taken credit for them or even patented them, so as to constitute appropriation. As experts note, cultural borrowing in a positive sense requires acknowledgement of past cultural harms, the guarantee of current cultural rights and a cultural pluralism that allows for fair exchange. The multiple layers must be carefully considered.

46. There are real issues of economic exploitation of aspects of cultures, not by individual artists or people seeking to engage with or enjoy such cultures who have a human right to do so, but by global culture industries and other profit-making enterprises that may commodify mixing. The reality of the expropriation and extraction of cultural practices and expressions of minority, indigenous and other subaltern cultures for the profit of such industries, and the capitalizing on the traditions and practices of others without remunerating them, without cultural recognition or agreements, or without contextualizing the cultures involved, is of genuine concern. The material aspect receives a limited amount of attention and must be addressed, including by protecting the collectively practiced traditions and cultures of minority and indigenous populations from proprietary usage by others without respect for their cultural and economic rights, and without their free, prior and informed consent, where relevant.⁶⁰ However, there may also be less legitimate opposition to the use of symbols by others, which may restrict freedom of expression in accordance with international standards, such as in the name of “blasphemy”.

47. Weaving the disparate strands together, it is clear that the concept of cultural appropriation needs to be applied carefully, taking into account the positive nature of genuine cultural mixing, which is itself a human right, the negative impact of actual cultural exploitation on human rights, the cultural rights and other international human rights of everyone without discrimination and the histories of subjugation – including through the theft of cultural resources – experienced by some groups. In some limited circumstances “cultural appropriation” may be a tool for limiting the use of cultural resources and protecting intellectual property rights, but it should primarily be a concept that facilitates open debate about cultural rights, rather than shaming those genuinely engaging in personal not-for-profit cultural voyaging or experimentation.

48. Full application should be made of the Guiding Principles on Business and Human Rights where relevant, including by understanding that the obligation that business enterprises should respect human rights, avoid infringing on the human rights of others and address adverse human rights impacts with which they are involved, should be clearly understood to include cultural rights, in accordance with international standards.⁶¹ The human rights due diligence required must include an assessment of cultural rights impacts. The first Special Rapporteur in the field of cultural rights expressed concern over “the practice of misappropriation of indigenous

⁵⁹ Kenan Malik, “In Defense of Cultural Appropriation”, *New York Times*, 14 June 2017. Available at www.nytimes.com/2017/06/14/opinion/in-defense-of-cultural-appropriation.html?action=click&module=RelatedLinks&pgtype=Article.

⁶⁰ United Nations Declaration on the Rights of Indigenous Peoples, arts. 10, 11, 19 and 28.

⁶¹ See www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

and local communities' innovations through patents" (A/70/279, para. 27). Many indigenous peoples have their own standards about how to share their cultures, standards that reflect their autonomy and resistance to histories of dispossession.⁶²

49. Moreover, some experts expressed concern to the Special Rapporteur about the role of the State in cultural appropriation, through the commercialization of aspects of culture, including for the purposes of tourism, or seeking UNESCO status without adequate consultation of groups closely connected to the heritage in question. These challenges must be addressed by considering the cultural rights of all, including related to cultural mixing and sharing, and other relevant human rights, including economic rights. Solutions must be sought through consultation with and participation of affected constituencies.

50. The equal participation of everyone, across many identities and ideologies, in artistic and cultural fields is a critically important cultural rights goal. Many voices are still excluded. Discrimination remains rampant in many cultural fields. Especially considering the underrepresentation of marginalized perspectives, thoughtful approaches must be taken when seeking to interact artistically with the experiences and histories of others. At the same time, the Special Rapporteur is concerned about the potential impact on cultural rights of recent suggestions that only translators from the same racial group as the writer should be able to translate their work, or that artists should be prohibited from depicting the suffering of those of different identity groups.⁶³ She is convinced by the words of the Congolese writer Alain Mabanckou that "literature becomes greater because it crosses frontiers." She is persuaded by the Cuban-American artist Coco Fusco that "the decolonization of art institutions ... entails critical analysis of systemic racism coupled with a rigorous treatment of art history and visual culture," but that at the same time "reasoned assessment involves more nuanced evaluative criteria, ones that do not essentialize racial identity, [or] impute intent".⁶⁴ Such complex moral issues must not be oversimplified. Those who sometimes seek to police their own imagined cultural borders often do not consult a diversity of cultural practitioners on the ground in relevant contexts who may have a variety of views.

51. While the struggles against discrimination in the field of cultural rights, and for the representation of diverse voices in the cultural fields, remain essential human rights struggles, without which cultural rights for everyone cannot be achieved, the Special Rapporteur also warns of the cultural rights consequences of narrowly constructed identity politics. According to the former Special Rapporteur in the field of cultural rights, "recognizing and protecting multiple identities helps to resist and overcome political forces, in particular identity politics, which seek to deny any possibility of pluralism within self and society, as well as gender equality" (A/67/287, para. 13). The late Jamaican-British cultural theorist Stuart Hall reminded us of "the extraordinary diversity of subjective positions, social experiences and cultural identities"⁶⁵ within any group.

⁶² See, e.g., www8.nau.edu/hcpo-p/ResProto.pdf. Note also the advocacy for recognition of collective intellectual property rights by Mayan weavers in Guatemala: <https://intercontinentalcry.org/maya-weavers-propose-collective-intellectual-property-law/>. Collective "intellectual property protection is a fundamental dimension of autonomy."

⁶³ Coco Fusco, "Censorship, Not the Painting, Must Go: On Dana Schutz's Image of Emmett Till", in *Hyperallergic* (17 March, 2017). Available at <https://hyperallergic.com/368290/censorship-not-the-painting-must-go-on-dana-schutzs-image-of-emmett-till/>.

⁶⁴ Fusco, "Censorship, Not the Painting, Must Go".

⁶⁵ See www.worldcat.org/title/black-film-british-cinema/oclc/21912413.

2. Significant constituencies and spaces

52. The relevant work of a range of constituencies central to the Special Rapporteur's mandate is affected by approaches taken to issues covered in the present report. For example, all artistic creators require the possibility of change and transformation and of relations with others and their creative expressions. Artists, including diverse indigenous artists, have created works involving intercultural collaboration, as well as sensitive and thoughtful cultural mixing or use of hybrid mediums as a conscious artistic form, which has served as a mode of critique, of bringing traditions into contemporary contexts and of socially conscious humour, as well as a demand to challenge two-dimensional depictions.⁶⁶ Such borrowing and creativity may be stifled by, for example, galleries having limited views about the cultural horizons available to or authentic for individuals based on their identities. Funding streams may also not be directed in ways that encourage hybrid, intercultural and experimental artistic and cultural practices. A multiplicity of forms of creation and performance should be recognized and supported.

53. The work of cultural rights defenders – defenders of cultural rights in accordance with international standards – is vital in protecting the human rights of persons with mixed identities, collecting histories of cultural mixing and syncretism, preserving sites that reflect these histories and promoting the understanding of rights-respecting cultural mixing and mixed cultural identities, past and present (A/HRC/43/50, paras. 11 and 48). For example, the curators at the National Museum of Afghanistan have used displays of historic artefacts of different groups to underscore contemporary questions of ethnic pluralism that are difficult to address directly in a context of extreme violence.⁶⁷ The Special Rapporteur was pleased to learn of the concern of some Bosniak cultural rights defenders in Novi Pazar, Serbia, with the preservation of the memory of Jewish heritage in their city, despite the resistance they may encounter in addressing this topic. Such work is sometimes dangerous and may result in attacks against the cultural rights defenders or damage to the cultural objects and sites they work to defend. For example, during her mission to Maldives, the Special Rapporteur was concerned to hear that cultural rights defenders promoting awareness of the pre-Islamic cultural heritage in their country on social media had been subjected to online threats (A/HRC/43/50/Add.2, para. 40). Those cultural rights defenders involved in the protection of natural heritage and the land and water rights of indigenous peoples that are essential resources for their cultural lives are among the most threatened human rights defenders (A/HRC/39/17). For example, the Special Rapporteur deploras that, while she was writing the present report, Luis Urbano Dominguez, a 35-year-old Yaqui leader and land and water rights defender, was killed in Mexico.⁶⁸

54. Cultural mixing and respect for multiple and mixed identities are critical issues for the protection of diverse women's equal cultural rights. Conversely, according to UNESCO, "central to the protection and promotion of the diversity of cultural expressions is a commitment to gender equality".⁶⁹ Furthermore, "gender equality analyses consistently emphasize women's diverse identities and related implications" (A/67/287, para. 12). Essentializing cultures and identities and viewing them as static

⁶⁶ See, e.g., www.bunkyeohawk.com/; Shaq Koyok, <https://shaqkoyok.blogspot.com/> and <https://www.friesengallery.com/artists/preston-singletery>.

⁶⁷ Karima Bennoune, *Your Fatwa Does Not Apply Here: Untold Stories from the Fight Against Muslim Fundamentalism* (Norton, 2013), p. 73. See also <https://asiafoundation.org/2013/01/23/in-conversation-with-afghan-museum-director-omara-khan-masoudi/>.

⁶⁸ See <https://news.culturacolectiva.com/mexico/asesinan-luis-urbano-defensor-del-agua-tribu-yaqui-en-sonora/>.

⁶⁹ See <https://unesdoc.unesco.org/ark:/48223/pf0000375706>, p. 5.

or immutable are significant obstacles for achieving gender equality. Unequal gender norms may task women with reproducing dominant interpretations of culture. Women's conformity with gender norms may be incorrectly framed as cultural preservation while women advocating for gender equality may be tainted as "cultural traitors" (A/67/287, paras. 17 and 19). Debates about cultural mixing and openness, perceived cultural borders and mixed and multiple identities are critical women's human rights debates.

III. Mixed cultural identities

55. In many places in the world, people of mixed cultural, ethnic, linguistic, national, racial, religious or other identities are in the majority or are increasing in numbers.⁷⁰ This is recognized and respected to varying degrees.⁷¹ Such people may face multiple exclusions, suffer from what has been called "racial imposter syndrome"⁷² or be forced to simplify their identities in order to belong. Their existence may be denied outright, and they may be socially excluded (E/CN.4/1996/72/Add.1, para. 39). They are sometimes left out even of human rights discourse.

56. In some contexts, due to the imposition of frameworks that hamper self-identification, people with mixed identities are said to be among those facing the most marginalization. The many layers that are hard to unpack of how they identify and interpret their own identities may disappear into simple categories that thwart their ability to enjoy cultural rights without discrimination. They may be labelled, such as on identity cards and documents, and even within the United Nations system, in ways that do not reflect their own understandings and lived realities (A/HRC/17/40/Add.2, para. 34). "Information on ethnicity should always be acquired through self-declaration of the respondent, who should also have the option of indicating multiple or no ethnic affiliations without any negative consequences" (A/70/335, para. 57).⁷³ As the former Special Rapporteur in the field of cultural rights correctly asserted, "it is of vital importance that individuals not be forced to identify themselves in terms of a singular aspect of their identity" (A/67/287, paras. 11 and 35).

57. The quest to ensure the human rights of people with pronounced mixed identities often personifies the issue of cultural mixing. Where those dynamics are not respected, the cultural and other human rights of such persons are harder to realize. When the concept of being mixed is viewed as "impure", they are more likely to be excluded from equal participation in cultural life. They may face discrimination in many fields, including education, employment, marriage and on the basis of phenotype, as well as questioning about where they are from and being labelled as foreigners. Discriminatory attitudes may also lead to hate speech and even violence. Such persons often face various versions of monoracial supremacy or monolingual bias. There may be no recourse for them other than peer-to-peer support, and sometimes not even that, when they face the specificity of cultural rights violations they may experience.

⁷⁰ See, e.g. E/CN.4/2005/18/Add.5, para. 3; A/HRC/35/25/Add.3, para. 96; E/CN.4/2005/18/Add.3, para. 37; and E/CN.4/1996/72/Add.1, paras. 34–39.

⁷¹ On the other hand, in some regions, official rhetoric about hybrid identities has sometimes been reported to be used to conceal discrimination, which must also be guarded against. See A/HRC/32/50, para. 48.

⁷² See <https://choice.npr.org/index.html?origin=https://www.npr.org/section-s/codeswitch/2017/06/08/462395722/racial-impostor-syndrome-here-are-your-stories>.

⁷³ For examples of persons of mixed descent choosing not to affiliate with any groups, see A/HRC/25/49/Add.1, paras. 16 and 21.

58. Meanwhile, their contributions to our understanding of the complexities of identities, of cultural rights and of cultural life and its possibilities are considerable, as they remind us of the reality and potential of cultural fusion and since they may exist in “the gap between languages and cultures with ease”.⁷⁴ One positive example of acknowledging such contributions is the Mixed Remix Festival, a cultural arts festival celebrating stories of mixed-race and multiracial families and individuals.⁷⁵ Another positive model is a recent increase in sharing of perspectives of persons with mixed identities through initiatives such as the online platform and Facebook page for Hāfu or mixed people in Japan.⁷⁶ Such events and forums should be multiplied and supported.

59. Minority, local and indigenous languages must be present in the media, in education and in cultural programming.⁷⁷ Cultural rights defenders have undertaken creative action, including in courts, to ensure this, such as in a recent victory in Mexico reaffirming that indigenous languages are national languages.⁷⁸

60. Linguistic scholarship increasingly recognizes “multilingual interaction as a norm instead of an exception” and acknowledges practices of language hybridity, including code-switching (when a language is arranged structurally or grammatically in another) and code-mixing (using a word from one language in another).⁷⁹ Human rights and cultural rights discourse and praxis must increasingly recognize “a mosaic of multiple languages and lexical presences.”⁸⁰

61. The cultural rights of multilingual persons and all persons with mixed cultural identities must be recognized fully in keeping with the complexity of their experiences. Moreover, we must recognize that everyone has multiple identities to some degree; this is simply more pronounced or obvious for certain people. “Everyone can be *métis*”.⁸¹ Cultural practices and realities comprise complex combinations of class, gender, linguistic, national, racial, religious and other identities, which are concurrent.

62. As the Barbadian poet Edward Kamau Braithwaite once wrote about Caribbean cultures: “nothing is really fixed and monolithic. Although there is white/brown/black, there are infinite possibilities within these distinctions and many ways of asserting identity.”⁸² It is vital to promote and ensure the flourishing of visible celebrations of a diversity of languages, cultural heritages, artistic expressions, holidays, festivals and practices, in accordance with international standards, as well as to recognize and respect multilingualism, the hybridity of languages and mixed identities.

⁷⁴ Coco Fusco, *English is Broken Here, Notes on Cultural Fusion in the Americas* (The New Press, 1995).

⁷⁵ See www.mixedremixed.org/about-mixed-remixed/.

⁷⁶ Coco Fusco, *English is Broken Here*.

⁷⁷ A/HRC/22/49; see also

https://www.ohchr.org/Documents/Issues/Minorities/SR/LanguageRightsLinguisticMinorities_EN.pdf. For an example of challenges in this area, according to civil society reports, see <https://crimeahrg.org/wp-content/uploads/2021/06/human-rights-situation-crimea-2014-2020-ua.pdf>.

⁷⁸ See www.proceso.com.mx/nacional/2016/1/20/el-poeta-mardonio-carballo-gana-amparo-contraley-telecom-por-discriminacion-linguistica-158031.html.

⁷⁹ See www.colorado.edu/faculty/hall-kira/sites/default/files/attached-files/hall-nilep-2015-code-switching_identity_and_globalization.pdf.

⁸⁰ See www.migrationinstitute.org/files/news/patrickchamoiseauinterview_f.pdf, p. 2.

⁸¹ Remarks at Reflexion transatlantique sur la créolisation du monde, 8 April 2021 (translated by the Special Rapporteur).

⁸² Edward Kamau Braithwaite, “Creolization in Jamaica”, in *The Post-Colonial Studies Reader*, p. 189, B. Ascroft, G. Griffiths and H. Tiffin, eds. (Routledge, London and New York, 2006).

Intermarriage and mixed families

63. Recognition of intermarriage and diverse family relationships (A/HRC/29/40, para. 23) between persons associated with diverse identity groups, and respect for the human rights of those in mixed marriages and families, is essential for enjoyment of cultural rights.⁸³ Adequate measures must be taken to protect and fulfil the cultural rights of intermarried persons and their families. For example, the 2008 Multicultural Families Support Act in the Republic of Korea requires the Ministry of Gender Equality and Family to counter prejudice against and provide education support to such families, one of “numerous efforts made by the Government to support multicultural families... and their children as full members of society” (A/HRC/29/46/Add.1, paras. 27–28 and 48). Such measures should be expanded and replicated elsewhere. Intermarriage may be a positive result of social openness (E/CN.4/2006/16/Add.3, para. 62; and E/CN.4/1992/52, para. 87). Such marriages can promote social cohesion and intercultural understanding (E/CN.4/2005/18/Add.3, para. 37; and E/CN.4/1997/91, para. 16).

64. Intermarried persons often face stigma, discrimination, exclusion and sometimes even violence (A/HRC/17/40, paras. 31 and 39; E/CN.4/2002/73/Add.2, paras. 49 and 117; and A/63/161, para. 37). Diverse fundamentalist groups have circulated conspiracy theories about intermarriages and even intervened to stop mixed weddings (A/72/155, para. 84). Bans on or stigma about intermarriage are often core components of discriminatory and segregationist agendas.⁸⁴ Sometimes the objection made to intermarriage is in the name of preservation of group identity. Yet, experts stress that cultural openness is more conducive to cultural survival.⁸⁵

65. Ensuring the equal rights of intermarried persons is important for the human rights, including cultural rights, of all but has particular impacts on women, whose mixed marriages are too often afforded less respect than those of men (E/CN.4/2000/65, para. 61). The Human Rights Committee has made clear that measures that do not afford equal treatment to the foreign spouses of women and of men constitute prohibited discrimination in violation of the International Covenant on Civil and Political Rights (CCPR/C/12/D/35/1978).

66. The cultural rights of children in intermarried families must also be respected. For example, children of international families whose parents separate may face challenges in their critical stage of identity formation owing to limits on access to the culture of a parent from whom they may be separated.

67. The mandate of the Special Rapporteur on freedom of religion or belief supports interfaith marriages, opposes State restrictions on them and has welcomed progress in lifting restrictions on interfaith marriages of women in Tunisia (A/HRC/40/58/Add.1, paras. 67 and 84). It called for the “aligning of family laws with article 16 (1) of the Universal Declaration of Human Rights, according to which religious difference should not be an obstacle to the right to marry a person of one’s choice” (A/67/303, para. 69 (e); and A/HRC/22/51, para. 45). The Former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has recommended that “a wide-ranging public awareness campaign be conducted to end racism and xenophobia concerning international marriages, including recognizing the benefits that multicultural families bring to society” (A/HRC/29/46/Add.1, para. 72).

⁸³ See *Loving v. Virginia*, 388 U.S. 1 (1967).

⁸⁴ See https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1091&context=nyls_law_review, pp. 179–183.

⁸⁵ Denise Handlarski, *The A-Zs of Intermarriage* (New Jewish Press, 2020).

IV. International legal framework

68. Relevant international standards are reviewed in an annex to the present report, owing to the word limit.⁸⁶

V. Parting reflections on the work of the cultural rights mandate

69. Being a Special Rapporteur is like pushing a glacier uphill with a toothpick. The challenges of, on the one hand, having two full time jobs, minimal staff of whom you are not the supervisor, an underresourced United Nations human rights bureaucracy that sometimes treats you as competition, and, on the other hand, confronting constant, ongoing violations, are tremendous. However, the creativity and dedication of special procedures mandate holders with whom the Special Rapporteur has collaborated, the commitment of civil society partners, the resilience of victims and cultural rights defenders – and cooperation among all these actors – can produce positive results. Just to cite a few examples, the Special Rapporteur is gratified by releases of some cultural rights defenders whose cases the mandate raised and to see that General Assembly resolution [75/258](#) concerning attacks on religious sites employed language from her 2016 report on cultural heritage.

70. However, more work must be done to construct the human rights system we need for the twenty-first century. The greatest challenges for the cultural rights mandate include the following: the lack of accountability for violations of cultural rights; the insufficient commitment to and funding for culture around the world, even in the field of human rights; the attempted misuses of cultural rights to justify violations of human rights; and discrimination. These must be addressed with determination.

71. The Special Rapporteur thanks the Human Rights Council for entrusting her with this important mandate and expresses gratitude to those who supported her work. However, she shares two concerns that need to be addressed. First, she asks the friends of human rights to work to strengthen the independence of the Special Rapporteurs within the United Nations system, including by finding ways to provide direct financial support to them which they are able to access and in accord with the Code of Conduct, allowing them greater participation in staffing and funding decisions, ensuring commitment to implementation of mandate holders' priorities and vision, and ensuring respect for mandate holders' editorial choices in their reports.

72. Second, she again calls upon States and other relevant entities to implement and monitor the implementation of recommendations in country and thematic reports. Recipients should review all past communications received, ensure full investigation of allegations and take measures to halt violations, ensure remedies and hold perpetrators accountable.⁸⁷ The Special Rapporteur deeply regrets that some of those whose cases she has raised remain in detention, even during the pandemic, or otherwise have not obtained remedies.

73. Great progress has been made around the world in recognizing cultural rights for all without discrimination, and specifically in recognizing those rights as core parts of the universal human rights framework, while rejecting relativism. Yet, grave violations continue. A teacher can still be beheaded for showing a cartoon, a migrant family run down while walking in public space, a cultural rights defender imprisoned indefinitely. This is unacceptable. The special procedures system must be fully

⁸⁶ Available on request from the Secretariat and on the homepage of the cultural rights mandate <https://www.ohchr.org/en/issues/culturalrights/pages/srculturalrightsindex.aspx>.

⁸⁷ During her terms, until 5 July 2021, 293 communications were sent and 126 replies received.

empowered to achieve greater implementation of cultural rights and the entire universal human rights framework, so as to foster not only human survival but also human thriving.

VI. Conclusions and recommendations

A. Conclusions

74. In April 2021, more than a year into the pandemic, Indian medical students Naveen K. Razak and Janaki Omkumar, a man and a woman from different religious backgrounds, made a video of themselves dancing together to the song “Rasputin” by Euro-Caribbean pop group Boney M, which went viral. For daring to dance across cultures, the two young people received an outpouring of support, as well as tirades and hate speech on social media that may have been motivated by Hindu fundamentalism, even accusing them of “dance jihad”. One post suggested there was “something fishy” about them dancing, referencing a woman who had joined Da’esh. In response, a student organization announced a dance competition entitled “something is fishy”.⁸⁸ In our times, those who value the importance of rights-respecting cultural openness and mixing will have to defend it actively and creatively like this. The reply from Naveen and Janaki to the criticism was: “We will still dance together.”⁸⁹ This must be our collective reply.

75. The only way to guarantee the cultural rights of everyone without discrimination is to defend open and multiple understandings of culture and of intercultural relations, spaces and heritage that fully respect cultural rights and other universal human rights for all. It is important to cite the socio-linguist Amelia Tseng, to recognize new hybrid processes, new ways of being, to be in the mixed experience⁹⁰ and to also commit to doing nothing less than learning to be human together. Such an approach should:

(a) Thoughtfully reflect plurality and the diversity of diversities, not only between but within all human collectivities;⁹¹

(b) Consider the question of how we transmit histories of syncretism and cultural mixing that are being lost;

(c) Confront the suppression of cultural dissent. Going forward from the pandemic, it is essential to rebuild cultural connections and renew and enhance cultural sharing and mobility, including by addressing pre-pandemic obstacles to them.

76. As has been stated, “One can only come into a dialogue with the past and future, a dialogue which is necessary, if one ceases to invest in a single (and therefore latent totalitarian) identity.”⁹² This underscores the urgent need to

⁸⁸ See www.newindianexpress.com/cities/kochi/2021/apr/10/dancing-medicos-get-support-online-and-offline-against-religious-bigotry-on-social-media-2288048.html.

⁸⁹ See www.archyde.com/we-will-still-dance-together-janaki-and-naveen-react-to-hate-speech-against-religion/.

⁹⁰ See www.npr.org/transcripts/578447949.

⁹¹ According to Amartya Sen, “The recognition of diversity within different cultures is extremely important in the contemporary world, since we are constantly bombarded by oversimple generalizations about ‘Western civilization,’ ‘Asian values,’ ‘African cultures,’ and so on. These unfounded readings of history and civilization ... add to the divisiveness of the world in which we live.” See www.carnegiecouncil.org/publications/archive/morgenthau/254.

⁹² Kisten Holst Petersen and Anna Rutherford, “Fossil and Psyche”, in *The Post-Colonial Studies Reader*, p. 189, B. Ascroft, G. Griffiths and H. Tiffin, eds. (Routledge, London and New York, 2006).

respect our mixed and multiple identities. We must heed the words of writer Salman Rushdie in his first public statement after the fatwa against him for his novel *The Satanic Verses*:⁹³ Let us all sing “a love song to our mongrel selves.”⁹⁴

77. A central challenge for this mixed and diverse human family, endowed with universal rights and equality, is to find ways for our cultural borrowing and creative fusions to promote those human rights and our co-existence. Then we can all travel a global Silk Road together.

B. Recommendations

78. To respect, protect and fulfil cultural rights for all without discrimination, States, and where relevant other actors, including international organizations, cultural institutions, and civil society should:

(a) Ensure the right of everyone to participate in cultural life, including the rights to participate on a basis of equality in defining and redefining cultures, and specifically ensure these rights for those facing pervasive or historic discrimination, including indigenous peoples, minorities and women;

(b) Create the conditions that enable everyone, including marginalized members of society, to participate in cultural life in a meaningful way, including by dismantling structural barriers, such as poverty and discrimination;

(c) Constantly assess the impact of inequalities and human rights abuses on cultural life and cultural knowledge and work to avoid reproducing inequality in cultural spaces, such as museums and heritage sites;

(d) Respect the value of hybrid artistic and cultural forms and ensure their adequate representation in cultural spaces;

(e) Challenge absolutist and purist approaches to cultural identities;

(f) Recognize and value cultural diversities, including within minority cultures and other groups, respect their free development within the framework of universal human rights and equality, and avoid abusively restricting their expression;

(g) Recognize and respect rights-respecting cultural mixing and syncretism, and space for cultural dissent, as essential foundations of any open society (A/73/227, para. 73);

(h) Ensure that cultural policies reflect and respect the hybridities of culture and mixed cultural identities;

(i) Create frameworks to enhance grass-roots consultation and participation of all relevant actors in discussions and policymaking about cultural mixing and syncretism, including artists and young cultural practitioners;

(j) Make available to all education about and documentation of the diversities and hybridities of cultural practices, cultural heritages and histories of cultural borrowing and mixing;

⁹³ This has been interpreted as a death sentence for expressing diasporic hybridity. Charles Stewart, “Syncretism and Its Synonyms”.

⁹⁴ Salman Rushdie, *In Good Faith*, (London, Penguin, 1990).

(k) Encourage academic research about cultural mixing and fusion and mixed cultural identities, gather disaggregated data and ensure data accessibility;

(l) Engage in intergenerational awareness-raising and bridge-building about the human rights of persons with mixed identities and the importance of rights-respecting cultural mixing;

(m) Consult people with mixed cultural identities in the development of all policies intended to address their human rights and ensure their participation;

(n) Recognize and address monocultural and monolingual biases;

(o) Guarantee freedom of expression about cultural mixing and mixed cultural identities in accordance with international standards, including by abolishing blasphemy laws;

(p) Counter hate speech targeting those engaging in cultural mixing and syncretic cultural practice and persons with mixed identities, in accordance with international standards;

(q) Ratify and fully implement the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, and ensure reporting under the Convention reflects on cultural mixing and hybridities;

(r) Ensure that public and private cultural funding is provided in ways that promote reflection of cultural mixing and hybridities and create space for reflection of mixed cultural identities;

(s) Support the protection of collective intellectual property, including of indigenous peoples and minorities, in the face of cultural extractivist practices, and ensure the full application of the Guiding Principles on Business and Human Rights to corporate use of cultural expressions;

(t) Support intercultural education and grassroots initiatives, especially involving young people, that promote understanding of rights-respecting cultural mixing and mixed cultural identities;

(u) Encourage the media to play a positive role in promoting respect for and understanding of rights-respecting cultural mixing and mixed cultural identities.⁹⁵

79. The United Nations should:

(a) Ensure its relevant bodies and mechanisms reflect the reality of cultural mixing and the hybridity and complexity of cultures and cultural identities;

(b) Engage in thorough grassroots consultations with all relevant constituencies about issues related to cultural mixing and mixed cultural identities.

⁹⁵ A/HRC/20/56/Add.2, para. 73 (e), para. 87; A/HRC/23/56/Add.1, para. 73(e), para. 72.