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DRAFT REPORT

on cultural diversity and human rights in ACP and EU countries

Committee on Political Affairs

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PART B: EXPLANATORY STATEMENT

1. Introduction

“No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor limit their scope.”

UNESCO 2001 Universal Declaration on Cultural Diversity

As a result of globalisation, societies in Europe, Africa, the Caribbean and the Pacific have become increasingly heterogeneous. Cultural diversity is a reality. In the world's nearly 200 countries, numerous different cultures exist. As a consequence, the design of policies should explicitly recognise cultural differences, while ensuring country development as well as the promotion and protection of human rights.

Preserving cultural heritage as the common heritage of mankind is a central concern of our civil society, and the preservation and encouragement of cultural diversity helps to ensure peace, security, stability and development.

This cultural diversity should be more strongly promoted through regional, national and international means. Yet, preservation of cultural diversity and values is sometimes perceived by third parties as an assertion that human values, far from being universal, vary a great deal according to different cultural perspectives (cultural relativism).

Cultural relativism¹ is the assertion that human values, far from being universal, vary a great deal according to different cultural perspectives. Some would apply this relativism to the promotion, protection, interpretation and application of human rights which could be interpreted differently within different cultural, ethnic and religious traditions. In other words, according to this view, human rights are culturally relative rather than universal.

2. International instruments

Human rights are rights inherent to all human beings, whatever our nationality, religion, belief, place of residence, sex, national or ethnic origin, colour, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

Universal and inalienable

The principle of universality of human rights is the cornerstone of the international human rights law. This principle, as first emphasized in the Universal Declaration on Human Rights in 1948, has been reiterated in numerous international human rights conventions, declarations, and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted

¹United Nations Background Note "The Challenge of Human Rights and Cultural Diversity" by Diana Ayton-Shenke, *the United Nations Department of Public Information DPI/1627/HR--March 1995*

that it is the duty of States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems.

All States have ratified at least one, and 80% of States have ratified four or more, of the core human rights treaties, reflecting that these legal obligations are in conformity with their views and giving concrete expression to universality. Some fundamental human rights norms enjoy universal protection by customary international law across all boundaries and civilizations.

Human rights are inalienable. They should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.

Interdependent and indivisible

All human rights are indivisible, interrelated and interdependent, whether they are civil and political rights, such as the right to life, liberty, equality before the law, and freedom of thought and expression; cultural, economic and social rights, such as the right to freedom of conscience or religion, right of an individual to a standard of living adequate for the health and well-being of himself and of his family, right to social protection and education; or collective rights, such as the rights to development and self-determination.

Equal and non-discriminatory

Non-discrimination is a cross-cutting principle in international human rights law. The principle is present in all major human rights treaties and provides the central theme of some of the international human rights conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and the Convention on the Elimination of All Forms of Discrimination against Women.

The principle applies to everyone in relation to all human rights and freedoms and it prohibits discrimination on the basis of a list of non-exhaustive categories such as sex, race, colour, religion, language, political or other opinion, national or social origin, property, birth or other status. The principle of non-discrimination is complemented by the principle of equality, as stated in Article 1 of the Universal Declaration of Human Rights: “All human beings are born free and equal in dignity and rights.”

Both Rights and Obligations

Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights. At the individual level, while we are entitled our human rights, we should also respect the human rights of others.

3. Cultural diversity, development and human rights

Good management of their cultural diversity, and conflict that may arise from it, is a precondition for societies to live in a harmonious environment which is indispensable to support economic growth, health, education and thus being able to eradicate poverty.

Furthermore, it must be emphasised that equality of rights between women and men is to be strictly ensured. Harmful practices that are unacceptable from a human rights perspective, such as female genital mutilation, early and forced marriages, gendercide including girl infanticide or female foeticide, honour crimes, or denial of women to have a proper education amongst others, should therefore be banned and violations of such prohibitions should be severely punished.

Many human rights contribute to the promotion and protection of cultural diversity. "At the same time, the enjoyment of human rights is promoted by a pluralistic society"¹. The Universal Declaration on Cultural Diversity, adopted by the UNESCO in 2001, states that 'the defence of cultural diversity is inseparable from respect for human dignity' and 'implies a commitment to human rights and fundamental freedoms'. Likewise, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted by the same organisation in 2005 provides that 'cultural diversity can be protected and promoted only if human rights and fundamental freedoms are guaranteed'.

Indeed, the promotion and protection of specific cultural practices may amount to human rights violations. Cultural rights cannot justify torture, murder, genocide, discrimination on grounds of sex, race, language or religion, or violation of any of the other universal human rights and fundamental freedoms established in international law.

"Human rights and cultural diversity are too complex and too dynamic to only be dealt with by law and the State alone"².

The ACP Co-rapporteur wishes to emphasise that we must also recognize that this complexity should require caution in the unilateral universalisation of the practices of certain peoples. It would be dangerous and even disastrous to impose the models of civilization on peoples which are outrageously contrary to their values under the pretext of the universality of human rights.

On the other hand, the EP Co-rapporteur would like to stress that, while every human being has the right to culture, including the right to enjoy and develop cultural life and identity, cultural rights are limited at the point at which they infringe on other human rights. No right can be used at the expense or destruction of another, in accordance with international law. Cultural communities should therefore be more involved in the field as they play an important role in this regard. They constitute important social bodies which are required to take part in the implementation of human rights in order for them to be gradually accepted by the people and respected in practice.

4. Institutional approaches to dealing with diversity

As we currently live in an ever more diverse world, state models ensuring that all diversity is respected need to be developed. Within democratic states in Europe and Africa, the Caribbean and Pacific, an array of very different constitutional and policy solutions are found.

¹Y. Donders, "Human Rights and Cultural Diversity: Too Hot to Handle", *Netherlands Quarterly of Human Rights*, 2012, vol. 30, no. 4, p. 377

² *Ibid.*, p. 381

The choice of developing an enhanced instrument for the preservation and promotion of cultural diversity is an obvious one for the European Union and its Member States. It is also a choice made by more and more countries concerned about the integration of global strategies for sustainable development. The passage from a mere Declaration to a legally binding Convention and from action-oriented capacity building through the Global Alliance for Cultural Diversity to normative action via intergovernmental process is necessary. Such an instrument should have the overall objective of promoting cultural diversity, contributing to cultural dialogue and fostering mutual understanding and respect.

The legitimacy UNESCO acquired in this context is a necessary precondition for success, although by no means a guarantee, since decisions are made by consensus between nearly 200 states. It is also a fortunate element that the Universal Declaration on Cultural Diversity, drawn up by UNESCO, and the Council of Europe's Declaration on Cultural Diversity, undoubtedly the founding texts for a Convention in this area, go beyond the mere trade aspects of educational and cultural services and cultural goods by encompassing specific objectives such as developing viable local cultural industries and improving the distribution of cultural works at global level.

The Union and the European Parliament, therefore, have every interest to take this matter seriously and to ensure coherence between internal and external EU policies and multilateral agreements. The Commission recently reaffirmed the Union's attachment to the multilateral solutions as a fundamental part of its external policy¹. In a context of global uncertainty and various threats to peaceful coexistence and mutual understanding between peoples and cultures, the multilateral approach is to be preferred above a unilateral one. Or, in the words of the Ministers of Culture, at their informal meeting in Thessaloniki under the Greek Presidency: "Europe as a continent of culture can neither accept the threat of cultural homogeneity, nor the threat of the clash of civilisations. The European answer to all of this is to insist on safeguarding and promoting cultural diversity."

5. Conclusion

Cultural diversity in itself is not a problem for development and human rights. On the contrary, human rights and cultural diversity have a mutually interdependent and beneficial relationship. Many human rights such as freedom of religion, thought or expression play a direct role in the promotion and protection of cultural diversity.

¹COM(2003) 526 final