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Donders, Y.M.; Laaksonen, A.

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Amsterdam Center for International Law

***Finding ways to measure the cultural dimension
in human rights and development***

Yvonne Donders and Annamari Laaksonen



UNIVERSITY OF AMSTERDAM



Finding ways to measure the cultural dimension in human rights and development

Yvonne Donders and Annamari Laaksonen*

In this paper our intention is to examine the relationship between culture, human rights, in particular cultural rights, and development and to suggest possible indicators to measure and qualify this relationship. Being fully aware that a lot of material has been produced on this theme, our objective is to build on existing results and materials and study the possibility of producing understandable and quantifiable indicators. In this context we will concentrate on the cultural dimension of several specific human rights as included in international human rights instruments accepted by a large majority of States. Overarching the relationship between culture, human rights and development are the principles of equality, access and participation. These human rights are not only moral issues; they are legal obligations that should guide States in all policy-planning, including the drafting of cultural policies. Cultural policies should not be seen as a 'charity' or as derived from voluntarism; they are based on rights of people and the legal obligations of States. In this paper we plead for an integrated approach, whereby the legal framework provides the basis for the development of policies, giving them more continuity and coherence.

Interactive Triangle of Culture, Human Rights and Development

Culture and development are closely linked concepts already due to the fact that *development itself is a culturally related concept*. As both concepts have been exhaustively defined in UNESCO and other United Nations documents there is no need to define them here but instead refer to the interaction between the two, together with human rights. As part of developing indicators concerns facilitating a system to measure and/or determine impact, it is useful to explore how culture, human rights and development overlap.

Earlier studies demonstrate that building indicators is a challenging task. Indicators should be practical, useful and measurable. Following an idea of Helmut Anheier, "*the purpose of the indicator system is to offer an empirical portrait of key dimensions between different elements¹*", in the case of this paper the relationship between culture, human rights and development. This also means that strategies for development and human rights should generate or be supported by follow-up systems and an evaluation of impacts. A human rights approach means taking into account the specific situation in different countries. Consequently, when setting these evaluation systems, the goal cannot be the construction of a universal set of indicators but a framework of indicators to be adjusted to the local or regional/national environment.

Culture ⇔ Development

The cultural dimension made its entrance into development thinking when the production-oriented model of development was not giving desired results and cooperation agents and international organizations started to integrate a more multilateral perspective of development, aimed at taking social and cultural effects into account. Criticism towards development thinking based solely on economic growth demanded a more decentralized and broader understanding on development, and on the concept of culture as a transversal,

* Dr Y.M. Donders is Executive Director of the Amsterdam Center for International Law and Associate Professor of International Law at the University of Amsterdam; A. Laaksonen Mascos, is project coordinator at the Interarts Foundation, Barcelona.

¹ H. Anheier, *Cultures and Globalization Series – Conflicts and Tensions*, 2007.

changeable and fundamental aspect of human life, which made linking the two concepts an essential step for further elaboration on the level of well-being of societies.

In the latter part of the 20th century important milestones were reached. The World Conference on Cultural Policies (Mondiacult, Mexico, 1982) officially acknowledged the relationship between culture and development. Some other decisive elements include the World Commission on Culture and Development (Our Creative Diversity, 1995), and the Intergovernmental Conference on Cultural Policies for Development (Stockholm, 1998); together with many other (mainly UNESCO) documents and instruments. At the same time, however, cultural aspects have been absent from international processes such as defining the Millennium Development Goals.

Today many development organizations find traditional cultural indicators irrelevant since some of the required information is not easily accessible or available. And when there is statistical information available, due to the nature of statistical information, which remains consistent over time, it does not provide the rich policy detail necessary for assessment, evaluation, and policy reform. It is also considered difficult to translate some of the statistical data into policies. Some of international development agencies have constructed different evaluation and indicator sets for project and policy evaluation, but cultural indicators are often lacking in this framework. Some agencies have, though, developed cultural indicator tools for development. One of the most recent examples is the Evaluation of Culture and Development projects of the Spanish Agency for Culture and Development that includes a large set of indicators according to seven priority areas (training of professionals; the political and economical dimension of culture to development; management of heritage; communication and culture in development and cultural rights). The indicators on cultural rights run from the recognition of cultural rights to the fostering of the role of women, cultural minorities and cultural diversity.

Human Rights ⇔ Development

Human rights and development have been, broadly speaking, connected in two forms: the adoption of the right to development as a human right and elaboration of the human rights-based approach to development (HRBA). The General Assembly has adopted the Declaration on the Right to Development in 1986, in which it was determined that the right to development is a human right by virtue of which people(s) are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights can be fully realized. This right is meant to create and maintain conditions in which human rights can be optimally enjoyed and implemented. The right to development has been re-confirmed by States on many occasions, most prominently the Vienna Declaration and Programme of Action (1993, paras. 10 and 11) and the Millennium Development Declaration (2000, paras. 11 and 24). The normative content of the right to development is explored by an Intergovernmental Working Group on the Right to Development, assisted by a High Level Task Force on the Implementation of the Right to Development, composed of independent experts.

The HRBA aims to mainstream human rights into all aspects of the work of the UN, including the Specialized Agencies. According to the Common Understanding on the Human Rights Based Approach to Development, this approach means that all UN agencies are committed to the realization of human rights, which implies that they should use human rights standards and principles in all phases of programming and should build capacities of duty-bearers to meet their obligations and of rights-holders to claim their rights. The human rights principles referred to are: universality and inalienability, indivisibility, interdependence and interrelatedness, equality and non-discrimination, participation and inclusion, and

accountability and the rule of law.² The added value of the human rights-based approach is that it is not only about expanding people's choices and capabilities, but above all about the empowerment of people to decide what the process of development should look like. The HRBA adds the aspect of the *accountability* of States to respect, protect, promote and fulfil all human rights of all people. Another important value of the HRBA is the focus on the most marginalised and excluded in society as their human rights are most widely denied or left unfulfilled.

Culture ↔ Human Rights

The concepts of culture and human rights seem to be best reflected in *cultural rights*. Cultural rights are one of the so-called categories of human rights, next to civil, economic, political and social rights. This categorization was the result of the adoption, in 1966, of two Covenants: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Disadvantage of such labeling is that it creates the false impression that all human rights provisions can be easily placed within one category, thereby undermining the interrelatedness, indivisibility and interdependence of all human rights, which is essential for the right to development and the HRBA.

Which human rights are cultural rights? Since there is no definition of cultural rights in any international human rights instrument, different lists could be drawn up of rights that could be labeled 'cultural rights'. Which rights are included depends on the underlying concept of culture that is used. If culture is considered from a narrow perspective as corresponding to cultural products such as arts, literature and material and immaterial cultural heritage, then cultural rights could include the protection of such cultural heritage, as well as the right to have access to cultural products and heritage in museums, theatres and libraries. If culture is considered from the perspective of the process of artistic and scientific creation, cultural rights would include, for example, the rights to freedom of expression, artistic and intellectual freedom, as well as rights related to the protection of producers of cultural products, including copyright. And finally, if culture is considered as being a way of life, the sum of material and spiritual activities and products of a community, then cultural rights comprise all kinds of rights to maintain and develop cultures, such as the right of self-determination, including cultural development, the rights to freedom of thought, religion and association and the right to education. In this broad sense, cultural rights are sometimes seen as equivalent to *the right to culture*, in the sense of the right to preserve, develop and have access to a culture.

Included in universal human rights instruments are provisions that explicitly refer to 'culture', such as the right to participate in cultural life and the right to enjoy culture for members of minorities, the right to education for children with due respect for their cultural identity, or the right of migrant workers to respect for their cultural identity and their right to maintain cultural links with their country of origin. Apart from these, there are many human rights that have a direct link with culture, such as the right to self-determination, the rights to freedom of thought and religion, freedom of expression, freedom of association and the right to education.³ Cultural rights may also refer to the cultural *dimension* of human rights. Although some human rights, at first glance, may not have a direct link with culture, most of them have important cultural implications. For example, the rights to food and health have an important cultural dimension in terms of crops, ways of farming, use of medicine and ways of medical treatment.

² *The Human Rights Based Approach to Development Cooperation – Towards a Common Understanding among UN Agencies*, adopted by the UNDG Programme Group, 2003.

³ These rights are not only incorporated in widely ratified universal human rights instruments, but also in regional human rights instruments, as well as instruments related to the rights of minorities and indigenous peoples. See the attached list of instruments for details.

On Indicators and Cultural Indicators

Indicators differ from statistics in the sense that whilst statistics provide for descriptive measurements on different issues, indicators have an analytical nature and are linked to a purpose or a concern.⁴ The UNDP Guidebook on Governance Indicators underline that *indicators can help in promoting accountability, transparency and empowerment of citizens*. Furthermore, it states that indicators are essential tools for devising policies and strategies on cultural inclusion.⁵ In the cultural sector while some countries carry out national cultural statistics (mainly on attendance on cultural venues and institutions as well as cultural budgets) in other countries there is no information available on cultural aspects.

The Human Development Report analyses indicators and data in accordance with the Human Development Index as regards a definition of development as enlargement of people's choices. The 2004 Report addressed cultural diversity and freedom and even though no specific indicators on diversity or cultural freedom were included, the mere fact that these issues were included for the first time in a global development comparison marked a welcome feature in development thinking.

There exists a great body of work on cultural indicators and cultural indicators of development from the past thirty years. What these works have in common is the underlining idea of the difficulty of developing universal indicators and the current inexistence of non-value laden comparisons. As the available sources are many and varied our purpose in this paper is to only refer to some of them. Apart from the before mentioned HDR, cultural indicators of development have also received attention in *Our Creative Diversity* (1996) that included a set of standards for evaluating process (including human rights), the UNESCO statistics (six indicator areas in 1997-98⁶, and the cultural statistics of the World Culture Report). In 2002 Colin Mercer presented in his book *Towards Cultural Citizenship: Tools for Cultural Policy and Development* an indicator set that was inclined to producing qualitative data from cultural vitality to lifestyle and identity.⁷ In his other work Mercer states that indicators need to rest on a robust knowledge base, both quantitative and qualitative, which is constantly refreshed by research. He also emphasizes that indicators should be firmly related to or embedded in a policy framework or strategy.

The 2004 Conference on Cultural Rights and Human Development⁸ in Barcelona reassured that indicators and information they could provide are an essential requisite for the further advancement of [cultural] policies and to the recognition of culture as a key element for development. The Final Report of the Conference states that: "*the need to define indicators which suit the perceived development needs of communities and to integrate them in wider development strategies*". The preparatory work prepared for the conference, namely the setting up of a Task Force on Cultural Indicators of Development⁹ displayed the importance of developing regional, local or community-based indicators rather than universal ones in order to link standards and indicators to local-based development. An example on

⁴ P. Pattanaik has described the need for indicators that are more 'evaluative' than 'descriptive', Pattanaik, *Cultural indicators of Well-Being, some conceptual issues*, UNESCO, 1997.

⁵ The checklist for indicator attributes by the UNDP Guidebook on Governance Indicators include validity, reliability, measurement bias, transparency, representativeness, variance truncation, information bias, aggregation problems, consistency over time and space, relevance to policy and accessibility and affordability.

⁶ Global ethics; cultural vitality; diversity; participation in creative activity; access to culture and cultural conviviality

⁷ Mercer divided his indicator set into cultural vitality, diversity and conviviality; cultural access, participation and consumption; culture, lifestyle and identity and culture, ethics, governance and conduct

⁸ 24-27 August, 2004 Barcelona. Organized by the Interarts Foundation, the Spanish Agency for International Cooperation, UNESCO and the Universal Forum of Cultures.

⁹ Set up in an International Seminar on Cultural Indicators of Development in Africa organized by the Interarts Foundation and the Observatori of Cultural Policies in Africa in Maputo, Mozambique in March 2004. The Task Force came up with six indicator fields but no specific indicators were developed.

developing local-based indicators can be found in the work commissioned by UNESCO and the United Cities and Local Governments' Working Group on Culture called "Local policies for cultural diversity." (2006)

In 2005 researcher Christopher Madden produced an overview on existing statistical indicators for art policies that also included current work done on cultural indicators on development. His analysis concludes that there is a considerable confusion on the meaning and purpose on indicators and little contact between agencies that develop cultural indicators. Another example is the analysis on Indicators and Data Systems for the Cultures and Globalization Series by Helmut Anheier that provides an exhaustive overview on indicator suites that is followed by an extensive indicators suite. The indicators are explicitly related to 'culture and globalization' but can be considered in a much larger framework as well covering economic globalization, global civil society and political and legal globalization.

As regards cultural indicators of development one of the failures has been the inability of policy-makers to generate perspective on long-term debates on culture and development. This is summed to the fact that in many times the information the indicators tend to seek is not available or simply not existing. Another weak link is the ambitious nature of some the indicators when trying to measure phenomena that are subjective or difficult to quantify.

On Human Rights Indicators

Since a number of years, international supervisory bodies and academics have been working on the development of indicators in relation to human rights. These indicators are meant to measure the *enjoyment* of human rights by the rights holders (individuals, communities) as well as the *implementation* of human rights by the duty bearers (States). Both are needed as one (implementation) does not necessarily imply the other (enjoyment).

Human rights indicators differ from development indicators in that human rights indicators are based on *international legal standards*, implying that human rights indicators can hold States *accountable*. Whereas development indicators measure *the state* of a situation, human rights indicators measure *the right* to a certain situation. Another difference is that human rights indicators are based on the principles of non-discrimination and equality, *de iure* (in law) and *de facto* (in practice). This implies that only *disaggregated* data – for example into gender, ethnicity, age, disability, region, language etc. – are appropriate to measure the enjoyment and implementation of human rights.

Human rights indicators are linked to the *normative content* – including the State obligations – of the rights as incorporated in the various treaties and as elaborated by the monitoring bodies in their guidelines for State reporting procedures, recommendations to States and General Comments elaborating the normative content of the rights and the concrete State obligations, including the core obligations. Without sufficient clarity on the content of human rights and their corresponding State obligations, their enjoyment and implementation cannot be properly measured.

The content of human rights, in particular economic, social and cultural rights, has been explored through the so-called 4A scheme, reflecting *availability, accessibility, acceptability* and *adaptability*. These items reflect the conditions under which the right could be best enjoyed. The 4A scheme¹⁰ thereby provides an important way of elucidating the corresponding State obligations. *Availability* means that the object of the right, in other words the goods or services such as education, food or health care, have to be available in

¹⁰ The 4A scheme is well-known in relation to the right to education, as it was most extensively elaborated by the late Professor Katarina Tomasevski, Special Rapporteur on the Right to Education, in her preliminary report of 1999 (UN Doc. E/CN.4/1999/49, Preliminary report of the Special Rapporteur on the Right to Education, submitted in accordance with Human Rights Commission resolution 1998/33, 13 January 1999).

sufficient quantity, including operational aspects such as buildings, facilities and materials. *Accessibility* means that the object of the right has to be accessible to everyone, including absence of discrimination, geographical accessibility, economic accessibility (affordability) and access to information. *Acceptability* means that the form and substance of the object, for example education or health care, have to be acceptable, e.g. relevant, culturally appropriate and of good quality. *Adaptability* means that the object should be flexible to be able to adapt to the needs of changing communities and respond to the needs of persons within their diverse social and cultural settings. In later General Comments the item of 'adaptability' was changed into 'quality' and acceptability was no longer used.¹¹ *Availability, accessibility and quality* are components of human rights that should be taken into account while developing indicators.

Generally, State obligations can be divided into *negative and positive obligations*. Negative obligations imply that the State should refrain from action, whereas positive obligations require State action. An important theory with regard to State obligations elaborated to further specify these obligations, is the *tripartite typology* of State obligations. This theory claims that three types of State obligations, namely, to respect, protect and fulfill, can in principle result from all human rights. The *obligation to respect* means that States should refrain from anything that violates the rights and freedoms of individuals. The *obligation to protect* means that the State should take the necessary measures to prevent other individuals or groups from violating the rights and freedoms of individuals. The *obligation to fulfill* means that the State should take measures to ensure for each person within its jurisdiction the rights and freedoms recognized in the human rights instruments. The obligation to fulfill is sometimes divided into the obligation to facilitate and the obligation to provide.¹² The tripartite typology is a functional way of clarifying State obligations in relation to human rights and is therefore often used in elaborating indicators to measure the implementation and enjoyment of human rights.

The Office of the High Commissioner for Human Rights has determined that three *types of human rights indicators* can be distinguished to measure human rights enjoyment and implementation. These three types are complementary and interdependent.¹³

Structural indicators, which reflect the ratification and adoption of international legal instruments, their incorporation into domestic legislation, and the existence of basic institutional mechanisms (judicial and non-judicial) to facilitate the realization of the rights. Structural indicators measure *de jure* compliance with human rights treaties.

Process indicators, which show the State policy instruments and the efforts undertaken by the State to implement human rights. These indicators measure the *de facto* implementation of human rights by States.

Outcome indicators, which measure the result of these efforts undertaken by States, in other words, the efficiency and effectiveness of the policies. These indicators measure the *de facto* enjoyment of the rights.

¹¹ E/C.12/1999/5, General Comment No. 12, Right to Adequate Food (Article 11 of the Covenant), 12 May 1999, paras. 6-13; E/C.12/2000/4, General Comment No. 14, The Right to the Highest Attainable Standard of Health (Article 12 of the Covenant), 11 August 2000, para. 12; E/C.12/2002/11, General Comment No. 15, The Right to Water (Articles 11 and 12 of the Covenant), 12 January 2003, para. 12.

¹² This theory was first elaborated in relation to the right to food, see UN Doc. E/CN.4/Sub.2/1987/23, 1987, *The Right to Adequate Food as a Human Right*, report prepared by Mr. A. Eide, 1987, § 67-69. It is used by the Committee on Economic, Social and Cultural Rights in its General Comments.

¹³ See, *inter alia*, UN Doc. HRI/MC/2008/3, *Report on Indicators for Promoting and Monitoring the Implementation of Human Rights*, 6 June 2008, p. 11-13; G. de Beco, "Human Rights Indicators for Assessing State Compliance with International Human Rights", *Nordic Journal of International Law* 77 (2008), pp. 23-42; M. Green, "What we talk about when we talk about indicators: current approaches to human rights measurement", *Human Rights Quarterly* 23 (2001), p. 1062-1097.

Rights and Indicators

For the purpose of this paper, the following human rights have been selected: the right to take part in cultural life, the right to health and the right to freedom of expression, in particular as regards linguistic diversity. The first two are cultural rights, whereas the third is a human right with crucial cultural dimensions. They further represent aspects of human life – cultural life, health and expression (language) – that are crucial for development. These rights are included in universal and regional human rights instruments¹⁴ ratified by a majority of States and are widely incorporated in national constitutions and national laws.

The indicators proposed further reflect the cross-cutting human rights principles of *equality, participation and access*, which are central to the relationship between human rights, culture and development. These principles reflect the *process* by which States implement the rights and by which people enjoy them. As regards the principle of *equality*, it is important to emphasize that having equal rights is not the same as being treated equally. In fact, equality also entails the recognition of diversity. Equality not only implies that equal situations should be treated equally, but also that unequal situations should be treated unequally. Consequently, difference in treatment is allowed, as long as the criteria for differentiation are reasonable and objective and serve a legitimate aim. *Participation* and *access* are essential in relation to culture, human rights and development. Diversity is impossible to achieve without universal access to and participation in cultural development and decision making. Only with true participation and access are a variety of cultural expressions available and thus options for people to freely choose from.

The rationale of the indicator model proposed in the following pages is to link the indicators to existing policies and policy-making. As expressed earlier, indicators should be linked to a certain purpose and help to *define and evaluate how successful policies are and how short-term and long-term goals are met*. Existing indicators in other fields could be disaggregated to see whether valuable information is provided through them. This could help when proper data collection is lacking and therefore existing data on fields such as gender, discrimination, equality, participation, etc. needs to be used.

As regards the data collection and monitoring, the division between structural, process and outcome indicators shows different levels of availability of information. At the structural level the data is already available and reasonably comparable. Information on ratification of international treaties and of national constitutions and legislation as well as institutions is readily available. At the process level some of the information might be available and quite accessible, including information of non-existing structures that can itself be taken as an indicator whereas there might be a certain grade of challenge at the outcome level. The outcome level indicates also a desirable (future) policy development in cases where the information might not yet be available. Most of the information at the outcome level can be collected through citizen surveys and media/institution records.

Data pertaining to human rights indicators can be divided into several categories:

1. Events-based data, which is information on single events, including the “what, who, where”. Such data is collected through narrative and qualitative reports by governmental organizations (such as Ministries, in particular the US State

¹⁴ The core UN human rights treaties are (in chronological order of adoption): the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 1965); the International Covenant on Civil and Political Rights (ICCPR, 1966); the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966); the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984); the Convention on the Rights of the Child (CRC, 1981); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW, 1990); the International Convention on the Protection of the Rights of All Persons from Enforced Disappearances (2006, not yet in force) and the Convention on the Rights of Persons with Disabilities (CRPD, 2006).

Department and the UK Foreign Office), international supervisory bodies (State reports to treaty bodies, Human Rights Council Universal Periodic Review), truth commissions, National Human Rights Institutions (NHRIs), national Ombudspersons, NGOs (Amnesty International, Human Rights Watch, FIDH, Minority Rights Group) and the media. A well-known method for collecting events-based data is HURIDOCS. The main disadvantage of events-based data is that it does not always provide a complete picture of a situation because of lack of data.

2. Socio-economic data, which is information on economic and social living conditions in a State, which gives a general indication of the average degree to which human rights are enjoyed. Many international organizations gather such data, including the indicators of the Worldbank, the UNDP in its Human Development Index and UNESCO's Bureau of Statistics. There are also regional sources such as the EU Survey on Income and Living Conditions (SILC), Eurobarometer (Eurostat) or others. This information is, however, not specifically meant to measure human rights and therefore may lack a direct link with human rights instruments as well as the disaggregation of data.
3. Household perceptions, which is information on the general public opinion expressed in narrative form. This information is qualitative and subjective, although it can be translated into certain averages. These data are gathered by research institutions, media and NGOs.
4. Expert judgments, which is information from experts, which is also to a certain extent qualitative and subjective. Expert information can be obtained from research institutes, media and NGOs. Well-known sources are Annual Survey of Freedom, Press Freedom Survey, www.humanrightsdata.com.

Below a non-exhaustive list of structural, process and outcome indicators are provided, which could measure the implementation of the selected rights. These indicators are based on the elaboration of their normative content and corresponding State obligations by the treaty bodies (including Guidelines for the State reporting procedure and General Comments), Special Rapporteurs and academic work.

The Right to Take Part in Cultural Life

The right to take part in cultural life is one of the most prominent cultural rights and reflects par excellence the relationship between human rights, culture and development. This right is incorporated in the following universal human rights instruments: Article 27 UDHR, Article 15(1)(a) ICESCR, Article 5 CERD, Article 13 CEDAW, Article 31 CRC, Article 43 ICRMW and Article 30 CRPD. The normative content of this right focuses on the concepts of 'cultural life' and 'taking part'. The concept of cultural life should be broadly interpreted, as a way of life, including cultural products such as arts and literature, as well as the process of culture, reflected in cultural manifestations and expressions as well as systems of meanings, values and symbols. 'To take part' has a passive and an active side. On the passive side, it means to have access to cultural life and to enjoy its benefits, without any form of discrimination. It also means to have access to information concerning cultural life. Taking part in cultural life implies that cultural life be protected and preserved, in particular its cultural and artistic heritage. On the more active side, taking part in cultural life implies the right and freedom to choose and to change a cultural affiliation and to freely contribute to cultural life and its development by means of creative or other activities. Taking an active part in cultural life also implies the right to take part in the decision-making process in relation to cultural life. Language is not only a means of communication, but also an essential element of cultural life, as it forms thoughts, perceptions and emotions. To take part in cultural life therefore also implies the freedom to use and express oneself in the language(s) of one's choice, in private,

and, as much as possible, in public, as well as to freely disseminate cultural information in the preferred language(s).¹⁵

The right to take part in cultural life implies an institutional infrastructure to promote popular participation in and access to cultural life, which includes cultural goods, institutions and activities and should be promoted in school and professional education. Examples of State obligations are: to ensure that access to concerts, theatre, cinema, sport events and other cultural activities is *affordable* for all segments of the population; to enhance access to the *cultural heritage* of mankind, including through new information technologies such as the Internet; to encourage participation in cultural life by *children*, including children from poorer families, and migrant or refugee children; and to eliminate physical, social and *communication barriers* preventing *older persons* and persons with *disabilities* from fully participating in cultural life. Furthermore, States should take measures to protect cultural diversity, promote awareness of the cultural heritage of ethnic, religious or linguistic *minorities* and of *indigenous communities*, and create favourable conditions for them to preserve, develop, express and disseminate their identity, history, culture, language, traditions and customs.¹⁶

The Right to Health

The right to health is incorporated in the following universal human rights instruments: Article 12 ICESCR, Article 5 ICERD, Article 11-12, 14 CEDAW, Article 24 CRC and Article 25 CRPD. Health had been defined by the WHO in its Constitution as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". The right to health accordingly extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment. In other words, the right to health does not mean the right to be healthy. There are evidently non-medical factors and/or factors beyond the control of the State that influence one's health, including natural factors, education and income, as well as one's own behavior. The right to health mainly means that States should create conditions in which everyone can be as healthy as possible. This also implies that the right to health is more than merely the right to health care. Apart from ensuring the availability of health services, other issues should be promoted and protected, such as healthy and safe working conditions, adequate housing and nutritious food, all of which have important cultural aspects. The right to health contains generally two aspects: the *freedom aspect*, for example the freedom from non-consensual treatment and non-consensual participation in clinical trials; and the *entitlement aspect*, for example to a system of health care and protection.

For the purpose of this paper, the focus will be on the *cultural dimension* of the right to health, which has been recognized as implying that all health facilities, goods and services must be culturally appropriate, i.e., respectful of the culture of individuals, minorities, peoples and communities, and sensitive to gender and life-cycle requirements. Moreover, as regards women's right to health, it requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health. States should undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights. Special attention should be paid to minorities and indigenous peoples, who have the right to specific measures to improve their access to health services and care.

¹⁵ Yvonne Donders, "Study on the legal framework of the right to take part in cultural life", in: Y. Donders and V. Volodin (eds.) Human Rights in Education, Science and Culture: Legal Developments and Challenges, UNESCO/Ashgate, December 2007, pp. 231-271.

¹⁶ UN Doc. E/C.12/2008/2, Committee on Economic, Social and Cultural Rights, *Guidelines on treaty-specific documents to be submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, 24 March 2009, paras. 67-69.

These health services should be culturally appropriate, taking into account traditional preventive care, healing practices and medicines.¹⁷

The Right to Freedom of Expression – Linguistic Diversity

Freedom of expression is a fundamental human right that is directly important for culture and development. This right, which includes the right to seek, receive and impart information, is incorporated in Article 19 ICCPR, Article 5 ICERD and Article 21 CRPD. For the purpose of this paper, one particular aspect of freedom of expression is addressed: linguistic diversity. It has been recognized that freedom of expression includes the right to linguistic expression. Consequently, the right to freedom of expression, together with non-discrimination, implies language rights, in particular the use of minority languages. Important in this regard is also Article 27 ICCPR, which includes the right of members of minorities to use their own language, in private and in public, which is meant to ensure the survival and continued development of the cultural identity of minorities.

These rights taken together imply for States several obligations as regards linguistic diversity, which are mainly negative obligations. States should, for example, respect the use of minority languages in private as well as in private conversations in public. States furthermore have to respect, and thus not forbid, the use of minority languages in cultural goods and activities, such as books, songs, theatre plays and festivals. It also implies respect for private broadcasting in minority languages, as well as the establishment and operation of private educational facilities or other associations using a minority language as means of communication. The question remains to what extent States also have positive obligations to guarantee linguistic diversity in public. For some particular communities, such as national minorities and indigenous peoples, it has been recognized that the State should provide facilities for the use and preservation of these languages, also in public administration and justice. Although it has been recognized that States have the obligation to take positive measures to prevent violations, there is no general agreement on these obligations.

In the following pages we present a possible indicator suite for the three indicators. As regards the availability of data, we have selected the most relevant indicators from a possible larger indicator group. The selected indicators are presented within the structure described above.

¹⁷ Committee on Economic, Social and Cultural Rights, *General Comment No. 14 on the Right to the Highest Attainable Standard of Health (Article 12)*, 11 August 2000, paras.12(c), 21 and 27.

Right to Take Part in Cultural Life				
Level	General	Specific (disaggregation)	Right to Information	Likely source of data
Structural (Availability)	❖ Ratification of international and regional human rights treaties, in particular ICESCR, Optional Protocol to the ICESCR on individual communication procedure and UNESCO instruments on cultural heritage and intangible heritage.	❖ Ratification of CEDAW, CRC, CRPD. ❖ Expressed support for the UN Declaration on Minorities and UN Declaration on Indigenous Peoples ❖ Member States of Council of Europe: ratification of Charter on Regional and Minority Languages and Framework Convention on National Minorities	❖ Translation of treaties in national and local language(s) ❖ Wide availability and accessibility of legal instruments (in libraries, via internet)	Office of the High Commissioner for Human Rights www.ohchr.org/english/law/index.htm UN Office of Legal Affairs www.untreaty.un.org/ola/ UNESCO databases at www.unesco.org Office of the High Commissioner for Human Rights www.ohchr.org/english/law/index.htm
The structural indicators on the Right to Take Part in Cultural Life are an instrument for an objective assessment of the will of the countries to fulfill their legal obligations as regards this right. The ratification of international instruments is a classical human rights indicator for which data is easily accessible through data bases of the UN agencies.				
Process (Accessibility)	↪ Existence and number of policies, programmes and plans of action on fostering access and participation in cultural life	↪ Existence of specific cultural and other policies, programmes or plans on action on the access and participation of minority and other groups of specific needs in cultural life	↪ Existence of cultural information points or centers, specific web pages or other resources on access and participation of the public at large and minority and other groups in cultural life	↪ Administrative records on countries ↪ Statistical information on countries (in Europe: Compendium of Cultural Policies in Europe http://www.culturalpolicies.net/web/index.php In Latin America: Guía de la Administración Cultural Iberoamericana: http://www.oei.es/cultura/guia.htm

	↗ Existence and number of art and culture networks and cultural associations and organizations	↗ Existence and number of seminars and conferences on art and culture ↗ Number of minority, indigenous people, youth and disabled people's cultural associations and other 3 rd sector actors	↗ Existence of audiovisual or printed material on seminars, conferences and other processes ↗ Information available (web page, information points, professionals, databases) on cultural associations	↗ Global Civil Society Yearbook http://www.lse.ac.uk/Depts/global/yearbook04chapters.htm
As regards the right to take part in cultural life, the process indicators are meant to measure the actions and channels that make it possible to participate in culture. The information is relatively easily accessible in some countries through statistics and information of specialized agencies / ministries and government actions. Information on third sector actors in general is limited in most of the countries.				
Outcome (Quality)	✓ Number and percentage of families with children and young people that agree with the existing offer of cultural services for children and young people ✓ Qualification of exiting services by users that are families with children or adolescents	✓ Number and percentage of families and young people that use and benefit from reduced entrance prices ✓ Number of free activities for families with children and young people	✓ Number of 'hits' on the page or visits to the information point ✓ Existence and frequency of internet traffic of a feedback structure for the participation of families with small children and young people ✓ Number and percentage of visitors that describe the	✓ Statistical and opinion surveys (in Europe: Eurobarometer and Young Europeans, Eurostat statistics – for example Eurostat pocket book)

			service as poor, sufficient or excellent	
<p>The outcome indicators measure what are the expected and experienced social impacts of policies and actions at the local level. The problem with these indicators is the interpretation problem and that they stay valid only a short period of time. However, measuring the effects and impact of cultural participation is very relevant to local development and social capital. The availability of this kind information is still highly limited and local based.</p>				

Right to Health				
Level	General	Specific (disaggregation)	Right to Information	Likely source of data
Structural (Availability)	<ul style="list-style-type: none"> ❖ Ratification of international and regional human rights treaties, in particular the ICESCR, Optional Protocol to the ICESCR on individual communication procedure ❖ Incorporation of the right to health in national constitution and national legislation. 	<ul style="list-style-type: none"> ❖ Ratification of CEDAW, CRC, CRPD. ❖ Ratification of the Convention of Biological Diversity Protocol of San Salvador, Convention 107 and 169 of the International Labour Organisation, Declaration on the Rights of Indigenous People ❖ Existence of national legislation on health in relation to disadvantaged groups, including the elderly, disabled persons and children. 	<ul style="list-style-type: none"> ❖ Translation of treaties in national language(s) 	<p>Via www.ohchr.org; UN treaty bodies – State reports; UN treaty bodies – NGO shadow reports; Human Rights Council – State reports Universal Periodic Review (UPR) National Human Rights Institutions (NHRI)/Ombudspersons</p>
<p>The structural indicators on the Right to Health are used to evaluate and measure the legal performance of the states as related to health. The data is easily accessible through the data bases of different UN agencies.</p>				
Process (Accessibility)	<ul style="list-style-type: none"> ↳ Existence of departments of multicultural health 	<ul style="list-style-type: none"> ↳ Existence of assigned professionals that work in the field of 	<ul style="list-style-type: none"> ↳ Existence of internet sites or information dedicated to the multicultural health care 	<ul style="list-style-type: none"> ↳ Administrative records on countries (for example in Latin America: Pan American Health Organization)

	within the Ministry of Health or other public administration bodies	multicultural health care and with minorities		www.paho.org REPIDISCA http://bases.bireme.br/cgi-bin/wxislind.exe/iah/online/?IsisScript=iah/iah.xis&src=google&base=REPIDISCA&lang=p&nextAction=Ink&exprSearch=43358&indexSearch=ID
	↪ Number of policies, programmes, plans of actions on multicultural or culturally appropriate health, especially in the field of maternal, sexual and reproductive health	↪ Existence of assigned professionals that work in the field of multicultural health care in sexual and reproductive health	↪ Existence of internet sites, leaflets, educational material, studies or other cultural appropriate tools on multicultural maternal and sexual and reproductive health care	↪ Administrative records on countries Others see below

The process indicators are meant to monitor the availability and quality of services and policies related to culturally adequate / intercultural health. These indicators concentrate specifically on the services and policies addressed to minorities, and indigenous and immigrant populations. The Evaluation Report of the International Decade of the World's Indigenous Peoples 1995- 2004 (Informe de evaluación del primer decenio internacional de los pueblos indígenas del mundo 1995-2004) shows that the statistical information gathered on indigenous peoples in the recent years in Latin America is starting to reflect the socioeconomic, political and cultural conditions between indigenous peoples and cultures in the region.

Most of the information gathered by different agencies is still in progress but several national / regional agencies are starting to gather indicators on health that are taking into account variables such as gender, interculturality, ethnic groups, mobility, use of medicinal plants, etc. In many cases this information still needs to be standardized and generalized as countries formulate the questions in a different way (which makes it difficult to run international comparisons).

Information gathered on multicultural health, with special emphasis on sexual and reproductive health is done by organizations such as the United Nations Population Fund

CEPAL (La Comisión Económica para América Latina

(<http://www.eclac.cl/cgi-bin/getProd.asp?xml=/mujer/noticias/paginas/3/29273/P29273.xml&xsl=/mujer/tpl/p18f-st.xsl&base=/mujer/tpl/top-bottom-estadistica.xsl>),

Other sources include Pan American Health Organization (www.paho.org);

REPIDISCA

<http://bases.bireme.br/cgi-bin/wxislind.exe/iah/online/?IsisScript=iah/iah.xis&src=google&base=REPIDISCA&lang=p&nextAction=Ink&exprSearch=43358&indexSearch=ID>

The Center of Reproductive Rights

<http://reproductiverights.org>

Save the Children the State of World's Mothers report

<http://www.savethechildren.org/campaigns/state-of-the-worlds-mothers-report/>

Comisión Andina de Salud Intercultural

Organisamo Andino de Salud

Because I'm a girl. The state of world's girls:

<http://www.comminit.com/en/node/303917>

The State of World Population 2008: Culture, Gender and Human Rights

<http://www.unfpa.org/public/cache/offonce/News/pid/1351.jsessionid=CDB81F767F540408926372D3D06C7270>

Gender, Health and Development in the Americas (UNIFEM, 2005)

http://unifem.org/materials/item_detail.php?ProductID=54

Several sources on indigenous people and sexual and reproductive health

http://www.culturalrights.net/descargas/drets_culturals251.pdf

<p>Outcome (Quality)</p>	<ul style="list-style-type: none"> ✓ Number and percentage of medical centers applying multicultural norms regulations or culturally appropriate medical norms ✓ Number of users in medical centers reporting knowledge on multicultural health care norms and culturally appropriate medical customs 	<ul style="list-style-type: none"> ✓ Number and percentage of people reporting improvement of understanding on medical procedures after cultural translator has been used 	<ul style="list-style-type: none"> ✓ Number and percentage of minority and indigenous people reporting participation in validation processes of sexual education and multicultural healthcare information 	<ul style="list-style-type: none"> ✓ Specialized studies ✓ User and opinion surveys ✓ Evaluation procedures (commonly used by health – especially reproductive and sexual – organizations when working with indigenous people)
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The outcome indicators on multicultural health care can be used to measure specific services and detect differences in quality. In the collection of outcome indicators the decisive factors are the way the information is collected, the quality of services and the cultural adaptation of the measuring instruments (so that they are understood by the end users of health services). At the moment there are no international statistics available on intercultural medical procedures but information at national level is gathered in many countries.

Freedom of Expression – Linguistic Diversity				
Level	General	Specific (disaggregation)	Right to Information	Likely source of data
Structural (Availability)	❖ Ratification of relevant international and regional human rights treaties, in particular the ICCPR, Optional Protocol to the ICCPR on the individual communication procedure	❖ Member States of Council of Europe: ratification of Charter on Regional and Minority Languages and Framework Convention on National Minorities	❖ Translation of treaties in national language(s) and minority languages ❖ Wide availability and accessibility of legal instruments (in libraries, via internet)	Via www.ohchr.org : UN treaty bodies – State reports; UN treaty bodies – NGO shadow reports; Human Rights Council – State reports Universal Periodic Review (UPR) National Human Rights Institutions (NHRI)/Ombudspersons
	❖ Incorporation of right to freedom of expression and respect for linguistic diversity in national constitution and national legislation.	❖ Formal recognition of minority languages	❖ Translation of national constitution and legislation in minority languages.	Via www.ohchr.org : UN treaty bodies – State reports; UN treaty bodies – NGO shadow reports; Human Rights Council – State reports Universal Periodic Review (UPR) National Human Rights Institutions (NHRI)/Ombudspersons
Structural indicators on the Freedom of Expression and linguistic diversity are intended for monitoring the fulfilment of general international standards. The information is easily accessible through UN data bases and of other international organisations.				
Process (Accessibility)	↳ Existence of newspapers, tv channels or radio stations that broadcast programming on various languages	↳ Existence of newspapers, tv channels or radio stations that broadcast programming on minority or less-used languages	↳	↳ Minority related broadcasting and legislation at OSCE http://www.osce.org/hcnm/item_11_13_547.html ↳ OSCE resources on broadcasting on minority languages http://www.osce.org/hcnm/item_11_31_598.html
	↳ Existence of possibilities of schooling in different languages at different levels	↳ Existence of schooling in minority languages at different levels	↳ Existence on information on different languages on schooling possibilities	↳ State of the World's Minorities and Indigenous People 2009 http://www.minorityrights.org/7948/state-of-the-worlds-minorities/state-of-the-worlds-minorities-and-indigenous-

				peoples-2009.html ↳ OECD report on education http://www.pisa.oecd.org/dataoecd/2/38/36664934.pdf ↳ OSCE report on integration http://www.osce.org/publications/hcnm/2006/07/28647_998_en.pdf ↳ Human Development report http://hdrstats.undp.org/en/indicators/ ↳ In Europe: Eurydice reports http://eacea.ec.europa.eu/education/eurydice/index_en.php/Doc_intermediaire/analysis/en/frameset_analysis.html
<p>The process indicators measure the policies and actions that facilitate the access of minority and immigrant population to information and education. As regards regional or local frameworks information is available for example through Eurydice http://eacea.ec.europa.eu/education/eurydice/thematic_studies_en.php and CEPAL http://www.eclac.org/cgi-bin/getProd.asp?xml=/celade/agrupadores_xml/aes4.xml&xsl=/agrupadores_xml/agrupa_listado.xls</p> <p>For example in the new census elaborated for CEPAL a new question is introduced on how many school children have access to multicultural education.</p>				
Outcome (Quality)	✓ Number of people with sufficient proficiency in all official languages		✓ Number or percentage of minority people reporting lack of policy actions in minority languages	✓ Opinion, user and household surveys
	✓ Number and percentage of people attending schooling in their own language	✓ Number and percentage of minority people attending schooling in their own language	✓ Number and percentage of people reporting accessing information on schooling on different languages	✓
<p>Outcome indicators are meant to tell what to measure when evaluating whether the specific policies and actions are achieving the set goals. Language proficiency is studied in some countries where nearly precise statistics exist on the number and distribution of two or more languages. Information available on languages is adapted to the population size of multilingualistic states and distribution of the speakers. Some of the required information is available through administrative statistics of some countries.</p>				

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