

Circle of Rights

Economic, Social & Cultural Rights Activism: A Training Resource

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SECTION 5- UNDERSTANDING SPECIFIC ESC RIGHTS

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MODULE 17

CULTURAL RIGHTS

USING MODULE 17 IN A TRAINING PROGRAM

The Purpose of Module 17

The purpose of this module is to provide an overview of cultural rights and examine some dilemmas facing ESC rights activists.

The module

- *discusses some of the difficulties activists face in addressing cultural rights issues;*
- *reviews the major international and regional legal provisions guaranteeing cultural rights;*
- *discusses the indivisibility and interdependence of cultural rights with other human rights; and highlights particularly problematic issues associated with cultural rights, including*
 - *"cultural specificity,"*
 - *indigenous peoples and cultural rights,*
 - *women's rights and culture, and*
 - *scientific progress and culture.*

Introduction

Cultural rights should take central place in the consideration of rights issues and the striving towards a more just world order. Such an order would encompass not only distributive justice, but also an inclusive vision that would take cognizance of the many varied expressions of culture as well as an understanding of the interdependence of cultural rights in tandem with other human rights.

Yet cultural rights are the least understood and developed of the rights that have been guar-

anteed under international law. This seeming paradox is due to the complexity of the area and the fact that attention has been given only recently to ESC rights as a whole.

One source of the complexity is the varying understandings of "culture." Definitions include: [\[1\]](#)

- Acquaintance with and taste in fine arts, humanities, and broad aspects of science as distinguished from vocational and technical skills
- The integrated pattern of human behavior that includes thought, speech, action, and artifacts and depends upon man's capacity for learning and transmitting knowledge to succeeding generations
- The customary beliefs, social forms, and material traits of a racial, religious, or social group

Each of these definitions is reflected in different provisions of international human rights law. While culture has been addressed in a number of ways in human rights activism-through concern for freedom of expression, freedom of information and the rights of minorities-it is principally culture as described in the second and third definitions that makes the issue of cultural rights complex and difficult.

Our involvement in culture, as a pattern of thought, speech and action, is largely unconscious. From the moment each of us is born, we are raised within a culture. Unless we are exposed in some significant way to other cultures, we rarely develop an awareness of many of the distinctive characteristics of our own culture. They are, for us, simply "givens." There is thus an inherent difficulty in cultural rights: To think about cultural rights, we need to treat consciously something that is largely unconscious for most of us.

Cultural anthropologists tell us that culture is transmitted through a highly complex process comprising a mixture of material and nonmaterial components. Culture can be reflected and expressed through the type of housing we choose to live in and the people with whom we share the housing; the type of food we grow or eat, and how we grow or eat it; the type of music we play or listen to, and how we play or listen to it; the religion we identify with; and the land-holding patterns in our society. Culture is reflected in and expressed through our relationships with parents, children, relatives, friends and strangers as well as with other cultures and with the physical world around us.

All of these material and nonmaterial aspects of a culture are infused with values that are transmitted to succeeding generations. Addressing cultural rights can be contentious in part because cultural rights are intimately related to these values-to what we believe is important and what unimportant, what is good and what bad. Furthermore, in order to understand cultural values in a specific context (and it is difficult to consider cultural values outside of a specific context), it is essential to understand the often subtle differences between cultural values and religious ideas. There is often considerable confusion in determining if an abuse arises from an impingement on cultural rights or on religious rights; the lack of clarity often leads to problems in addressing specific issues.

Cultural values are intimately related to our sense of identity. Challenges to our culture thus become challenges to the integrity of each of us as a person and to the values that are closest to our hearts. They threaten our understanding of ourselves and of our world. As a result, challenges to culture generate strong, emotionally charged, survival responses.

Issues of self-identity and self-understanding have traditionally fallen within the domain of the psychologist, sociologist or anthropologist. Except when dealing with the psychological effects of torture or other trauma wrought by human rights abuses, human rights activists have seldom directly addressed problems that arise in this essential yet elusive area of self-identity and self-worth. Ironically, it is this lack of familiarity with and understanding about what makes human beings "tick" that is one of the central reasons that activism on cultural rights is problematic.

On Killing a Tree

-Gieve Patel

It takes much time to kill a tree,
Not a simple jab of the knife
Will do it. It has grown
Slowly consuming the earth,
Rising out of it, feeding
Upon its crust, absorbing
Years of sunlight, air, water,
And out of its leprous hide
Sprouting leaves.

So hack and chop
But this alone won't do it.
Not so much pain will do it.
The bleeding bark will heal
And from close to the ground
Will rise curled green twigs,
Miniature boughs
Which if unchecked will expand
again
To former size.

No,
The root is to be pulled out-
Out of the anchoring earth;
It is to be roped, tied,
And pulled out-snapped out
Or pulled out entirely,
Out from the earth-cave,
And the strength of the tree

exposed,
The source, white and wet,
The most sensitive, hidden
For years inside the earth.

Then the matter
Of scorching and choking
In sun and air,
Browning, hardening,
Twisting, withering,

And then it is done.

Finally, addressing cultural rights is complex because culture has historically been bound up with questions of power. Throughout human history, dominant cultures in all parts of the world have imposed or tried to impose their own patterns of thought, speech and action on the peoples they have encountered or on weaker members of their own societies. As a result, issues of culture and cultural rights are often associated with historical grievances arising from these impositions.

International human rights law is caught in the conundrum of this history. While the Universal Declaration of Human Rights is a product of the United

Nations, whose member nations represent a broad range of cultures, and most of the values represented in the UDHR are shared by cultures around the world, the preponderant powers in the United Nations at the time of the drafting were the Western nations. As a result, the UDHR to a large extent embodies the cultural values of those powers. In discussing cultural rights, it thus is necessary to examine industrialization, colonization and the liberation struggles in various parts of the world. The extent to which specific cultural values are the product of these historical circumstances has to be kept in view.

The more recent phenomenon of globalization has also had a deep impact on cultural values. While some aspects of globalization, such as greater access to information, have had liberating effects, the consumption-oriented, materialist pattern of development promoted by globalization has systematically eroded notions of equity. Small communities and indigenous groups have lost a great deal of their traditional knowledge and wealth in the onslaught of a culture of materialism and lopsided developmental priorities adopted by governments all over the world. Globalization has had an adverse impact on the ESC rights of people, especially of the vast majority of the world's poor.

Key Legal Provisions on Cultural Rights

International legal provisions

The following legal provisions address culture in general terms; provisions relevant to specific groups are detailed below.

Although later provisions in international law reflect a broader understanding, the direct references to cultural rights in the 1948 Universal Declaration of Human Rights are rather narrow. Article 27 says:

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 15 of the ICESCR, adopted in 1966, is not much more expansive. It says in part:

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

Other relevant international principles or declarations include:

- The Convention on the Prevention and Punishment of the Crime of Genocide (art. 2), which has been interpreted to forbid the deliberate destruction of a people's culture

- UNESCO Principles on International Cultural Co-operation (art.1)

1. Each culture has a dignity and value which must be respected and preserved.

2. Every people has the right and the duty to develop its culture.

3. In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind. [\[2\]](#)

- The UN Declaration on the Right to Development (art. 1):

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. [\[3\]](#)

- The Mexico City Declaration on Cultural Policies (Principle 2), which states, "The assertion of cultural identity . . . contributes to the liberation of peoples. Conversely, any form of domination constitutes a denial or an impairment of that identity." [\[4\]](#)

- The Vienna Declaration and Programme of Action, which in the context of addressing the duty of states to promote and protect human rights, states that "the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind." [\[5\]](#) In addition, part II(3)(38), on the equal status and human rights of women, says:

the World Conference stresses the importance of working towards . . . the eradication of any

conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism . . .

Regional legal provisions

Article 17 of the African Charter on Human and Peoples' Rights [6] guarantees the right of individuals to take part in the cultural life of their community. It also provides that the promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

Article 22 provides for the right to cultural development of peoples and the equal enjoyment of the common heritage of mankind.

Article 13 of the American Declaration of the Rights and Duties of Man states:

Every person has the right to take part in the cultural life of the community, to enjoy the arts, and to participate in the benefits that result from intellectual progress, especially scientific discoveries. [7]

Indivisibility and Interdependence

Because culture affects all aspects of human life, cultural rights illustrate the indivisibility and interdependence of all rights in a more comprehensive fashion than do any other rights. Indeed, it is difficult-perhaps even impossible-to examine cultural rights in isolation; cultural rights are often an inextricable part of other rights. At the same time, cultural rights are often in a state of tension or conflict with other human rights.

Rights of minorities

Equality and nondiscrimination are fundamental human rights guarantees. Ethnic, religious and other minorities often suffer from discrimination in a number of dimensions of their lives, and their culture is rarely accorded the respect and protection that is extended to the majority culture in a country. Article 27 of the ICCPR makes reference to this problem:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

The 1993 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (art. 1) states:

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2 goes on to detail the arenas covered by this guarantee, including, notably, the right of minority groups to participate effectively in decisions that affect them. [\[8\]](#)

The 1982 Declaration on Race and Racial Prejudice makes specific reference to the culture of minorities:

Culture, as a product of all human beings and a common heritage of mankind, and education in its broadest sense, offer men and women increasingly effective means of adaptation, enabling them not only to affirm that they are born equal in dignity and rights, but also to recognize that they should respect the right of all groups to their own cultural identity and the development of their distinctive cultural life within the national and international contexts, it being understood that it rests with each group to decide in complete freedom on the maintenance, and, if appropriate, the adaptation or enrichment of the values which it regards as essential to its identity. [\[9\]](#)

Self-determination

The 1975 Intergovernmental Conference on Cultural Policies in Africa stated:

Affirmation of cultural identity was considered as an act of liberation, a tool in the struggle for effective independence and the best way for the complete realization of the individual and the harmonious development of society . . . [\[10\]](#)

At the same time, the concept of self-determination, particularly *internal* (within a country) self-determination, is complex and controversial. [11](#) To the extent that cultural rights issues are considered to be related to self-determination, they get caught up in this complexity and controversy. This issue has been addressed in greatest depth in the discussions and debates around the rights of indigenous peoples (see below, and Module 6).

The Importance of Cultural Inclusion in the Education System

San Juan School District, in southeastern Utah in the United States, includes a portion of the Navajo Nation. More than 68 percent of district residents are Native American, primarily Navajo. A law suit was brought against the school district in 1972 alleging that the educational needs of the district's Navajo students were not being met. Several new schools were built on the reservation and an initial bilingual education plan was adopted. Twenty years later the case was reopened, because the plaintiffs felt that the district had not done enough; the district was found to be out of compliance with US civil rights laws. In 1997, all parties signed a court-sanctioned agreement to rectify the situation. The agreement led to the adoption of a Language Development Plan and a Curriculum Plan to set forth specific policies and practices to address the educational needs of all students in the district. The district also received a federal government grant for district-wide bilingual education programs in 1997.

The school district has traditionally faced low academic achievement and high dropout rates, as well as a number of social problems, including underemployment, domestic violence, alcoholism, gang activity, and delinquency. There is a strong correlation between the social

problems and the academic problems, though poverty alone is not necessarily an indicator of academic underperformance.

Since the mid-1990s, the district has undergone a dramatic change in addressing the educational needs of its students. Research has suggested that students tend to be more successful academically if they identify strongly with their cultural heritage. A recent district study confirmed this, stating that it is "important to ensure that the school curriculum is relevant for all students in that it enables them to make connections between what they know and experience in their home communities on a daily basis and what they are learning in school." [12](#)

The district's Language Development Plan recognizes this and establishes implementation of a bilingual education program to "provide learners from linguistically and culturally diverse backgrounds with an equitable and appropriate education, so they will succeed academically, develop pride and appreciation for cultural heritages, and become successful and productive citizens in a global society." [13](#) The district's bilingual education program, funded partially with a federal Title VII Bilingual Education grant, seeks to incorporate Navajo culture and language into the schools through a combination of teacher training, curriculum development, and parental involvement programs.

Implementing bilingual education programs stirred various reactions among both Navajo and European-American parents. While the vast majority of Navajo parents support bilingual education, some felt that Navajo culture would take time away from their children's other studies and would negatively impact their learning. Some parents expressed the opinion that culture did not belong in the schools. The district took the position that, based on the wishes of the majority of Navajo parents and the desire to improve the educational performance of all students, inclusion of Navajo culture and language would create a school environment that is more responsive to the communities and will lead to academic improvement. San Juan School District believes that the schools should reflect the cultures of the communities and respect the differences of language, culture, and history of these communities. [14](#)

Civil and political rights

Virtually all civil and political rights are integrally related and essential to the ability of individuals and communities to learn about, live in, express and perpetuate their cultures, whether culture is understood in its broader or more narrow definition. For example:

- The freedom to think within the particular framework or from the particular perspective of one's culture is protected by provisions related to freedom of conscience and opinion.
- The freedom to believe in the concepts, read the texts and partake in the practices of one's religion is protected by guarantees related to freedom of conscience and religion.
- The freedom to ensure that one's culture can be expressed in the public sphere is protected by the right to political participation, and the guarantees to freedom of expression, assembly and association.



These same civil and political rights provisions, however, can be experienced as being at odds with the preservation of one's culture and related cultural rights.

Economic and social rights

Education: Whether formal or informal, family or community-based, education is essential for the perpetuation of a culture or culture. However, the relationship of the right to education to cultural rights is not simple or straightforward. Education is never value-free, and formal, state-sponsored education is designed to convey the content and perpetuate the values that are important to the state. (See Module 20, p. 395.) That content and those values may be at variance with the values that a

minority culture seeks to perpetuate for itself. Similarly, when seeking to further the culture of one group, education may convey values that are inimical to the rights of other groups-when, for example, the content promotes, explicitly or implicitly, the superiority of one ethnic or racial group over another.

Housing: Housing, which varies from country to country, and often within countries, typically reflects the inhabitants' culture. In its General Comment 4, the CESCR says that adequate housing policies must allow for cultural identity, expression and diversity.¹⁵ As a result, for example, cases of forced eviction may raise issues not only of the right to housing but also of cultural rights. The structure and grouping of the housing in the original location may have facilitated the perpetuation of specific cultural patterns within the community. When the evicted community has not been consulted on the nature of housing made available in an alternative location, and the housing provided does not reflect these cultural patterns, violations of cultural rights may occur. (See text of General Comment 4 on pp. 256-61.)

Food, Women, Globalization and Culture

Kalahandi district is a tribal-dominated area in the State of Orissa, India, which has traditionally been rich in natural resources-forests, streams and plants. Despite this, there is typically a severe drought with accompanying starvation each year. The tribal groups in the area have collected leaves, roots, tamarind, mahua flowers and fruits in the forest for their own use and to sell to generate income. They also have practiced shifting agriculture in the hill slope area, growing ten to twelve varieties of crops (dals, millets, maize, etc.), which they mostly use for their own consumption. In the uplands, they used to cultivate oil seeds, short-period crops, and millets, which provided much-needed food during the drought period. This farming and food collection in the forests have traditionally been done primarily by women,

who thereby were the primary food providers for the community.

In recent years the government has halted the shifting agriculture; those who persist are charged under the forest laws. It has encouraged a move away from traditional to cash crops by providing subsidies for growing cotton and sugar cane. The upland agriculture is now heavily focused on cotton. As a result of these changes in government policy, the groups in the area no longer have control over the foods they eat or the seeds they use. This situation is aggravated by the fact that the government has encouraged the development of eucalyptus plantations and paper mills in the uplands; people are leasing the lands on which they traditionally grew food to the plantations.

In the process the community is losing its traditional knowledge regarding agriculture and forests. Moreover, over the past ten years, as a result of these changes, the women in the area have also lost control over the natural resources they harvested, the crops they farmed, the seeds they harvested and stored, and the land they used. The tribal people in the area are much more vulnerable to the effects of the annual drought, because they have fewer stored food crops and forest resources to rely upon during the period of scarcity.

An NGO in the area, FARR (Friends' Association for Rural Reconstruction), has sought to assist in this matter by helping in the establishment and maintenance of a seed bank in which are stored drought-resistant paddy seeds that have historically been relied upon for food production. Development of this seed bank has been undertaken principally by the women. A small microcredit fund has also been established. The seed bank and loans from this fund have enabled the people in the area to regain some of their self-sufficiency in food and freed them from the local money lenders.

Food: The food a community or people grow and how they grow it, their choice of food, the way they prepare and eat it—all of these are imbued with cultural values. General Comment 12 (included on pp. 235-42) states:

The Committee considers that the core content of the right to adequate food implies: The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture.¹⁶

Traditional Systems of Medicine

Health-seeking behavior in most societies is often marked by a multiplicity of medical or healing systems. Every healing system is a product of a specific world view of a particular group of people. This view keeps changing, leading to corresponding changes in the healing system. In India, although the allopathic system dominates, a number of other traditional systems continue to be widely used. They include scholarly traditions like Ayurveda, Unani

and Siddha and folk systems of medicine. Ayurveda, Siddha and Unani are generally upper class and are more accessible to upper castes. In the case of Unani, access is mostly limited to males. Folk medicine, on the other hand, is accessible to all classes without distinction of caste, sex or age.

In the last two decades, there has been a renewed interest in traditional systems of medicine because of the crass commercialization, neglect of safety and human ethics by the allopathic system. Such commercialization is also slowly becoming part of the traditional systems.

Indigenous therapeutic traditions have been generally minimized, discriminated against, and thought of as discardable shreds of a distant past. The modernizing world wants to forget its ancestral roots. The medical establishment frowns at so-called "superstitious" beliefs. Decoding their epistemological framework is a basic move towards gaining respect for this "other medicine," whose practices are alive today.

As a result, when a community's food-growing capacity is undercut, when their access to food is threatened or their ability to secure foods that are traditionally part of their diet is curtailed, elements of their culture may also be at risk. Right to food issues may thus go hand in hand with cultural rights issues.

Health: Health as the World Health Organization understands it—a state of complete physical, mental and social well-being—is integrally related to culture and to cultural practices. At the same time, the relationships of cultural rights to the right to health are not simple. A person's place in his/her culture is an essential part of his/her self-identity, so that if a culture is at risk, that person's psychological and emotional health is also at risk. Because of the thrust of urbanization and other developmental imperatives, for example, many traditional communities have been forced

to trade in their lifestyles and change their habitats and eating habits, with the result that they have found themselves impoverished, and the health and well-being of their entire community in jeopardy.

Another intersection of health and cultural rights is in the area of traditional medicine. Traditional healing practices are an important aspect of many cultures, and in the 1978 Declaration of Alma-Ata, WHO recognized the importance of traditional health practices as a component of primary health care.¹⁷

On the other hand, some traditional practices, such as female genital mutilation, are a growing concern, because they endanger the physical and psychological health of individuals. Under article 24(3) of the CRC, states must adopt measures to end those practices that affect children's health. Even though not explicitly mentioned in either the ICESCR or CEDAW, the respective committees both deal with the matter in their reporting practice.

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[USING MODULE 17 IN A TRAINING PROGRAM](#)

NOTES

- [1.](#) Definitions are taken from *Webster's New Collegiate Dictionary* (Springfield, Massachusetts: G. & C. Merriam Company, 1974).
- [2.](#) Declaration of the Principles of International Cultural Co-operation. Proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its fourteenth session on 4 November 1966.
- [3.](#) Declaration on the Right to Development. Adopted by GA Res. on 41/128 of 4 December 1986.
- [4.](#) UNESCO, The Mexico City Declaration on Cultural Policies, adopted by the World Conference on Cultural Policies, Mexico City, 26 July-6 August 1982.
- [5.](#) Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, 14-25 June 1993, UN Doc. A/CONF.157/24 (Part I) at 20 (1993).
- [6.](#) African Charter on Human and Peoples' Rights, *adopted 27 June 1981*, OAU Doc. CAB/LEG/67/3/Rev.5, *reprinted in 21 ILM 58 (1981)*, *entered into force 21 Oct. 1986*.
- [7.](#) American Declaration of the Rights and Duties of Man, OAS Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992). Article 13.
- [8.](#) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, GA Res. 47/135, Annex, 47 UN GAOR Supp. (No. 49) at 210, UN Doc. A/47/49 (1993).
- [9.](#) Declaration on Race and Racial Prejudice, UN Doc. E/CN.4/Sub.2/1982/2/Add.1, Annex V (1982).
- [10.](#) Paragraph 32 of the Declaration of the UNESCO/OAU Intergovernmental Conference on Cultural Policies in Africa. Accra, Ghana, 27 October-6 November 1975.
- [11.](#) Allan Rosas, "The Right to Self-Determination," in *Economic, Social and Cultural Rights: A Textbook*, eds. Asbjorn Eide, Catarina Krause and Allan Rosas (Boston: Martinus Nijhoff Publishers, 1995), 79-83.
- [12.](#) Case study provided by San Juan School District, Title VII Bilingual Education Program, Blanding, Utah, USA.
- [13.](#) C. Shields, *A Study of the Educational Perceptions and Attitudes of Four Stakeholder*

Groups in San Juan School District in 1998. (Utah: San Juan School District, Blanding, 1999), 157.

[14.](#) *San Juan School District Language Development Plan.* (Utah: San Juan School District, Blanding, 1998).

[15.](#) Paragraph 8(g), of General Comment 4, *The right to adequate housing (Art. 11, para. 1 of the Covenant)* (1991), UN Doc. E/1992/23, Annex III, *adopted* by CESCR on 12 Dec. 1991.

[16.](#) CESCR, General Comment 12, *The right to adequate food (Art. 11 of the Covenant)*(1999), UN Doc. E/C.12/1999/5. (See pp. 235-42 for the full text of the General Comment.)

[17.](#) Declaration of Alma-Ata, International Conference on Primary Health Care, Alma-Ata, USSR, 6-12 September 1978, Section 6, para. 7.

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