

# THE PROBLEM OF CULTURAL RIGHTS

—Rodolfo Stavenhagan—

Cultural rights are referred to in the Universal Declaration of Human rights, the International Covenant on Economic, Social and Cultural Rights, and in other instruments adopted by the General Assembly of the United Nations, and by specialized agencies such as the ILO and UNESCO. Cultural rights are also recognized in such regional documents as the European Convention, the African Charter and the American Charter of Social Guarantees. Yet in these various documents, there is no clear definition of cultural rights. At present, there is an on-going discussion among specialists and interested parties as to whether cultural rights can and should be considered human rights at all. What are cultural rights?

One view is simply that the concept of cultural rights means the right to culture or, as it has generally been interpreted by UNESCO, the right to cultural development. Many governments as well as international organizations have established cultural development as a specific process of cultural change, which some people see as parallel to other forms of development, i.e. economic, political or social development.

The argument is, that if economic development means increasing goods and services, a rising GNP and better distribution thereof among the population, then cultural development means 'more culture' and better access to culture by more categories of people. Very often this is interpreted as more of everything; from more books, to the establishment of more libraries, to more newspapers, museums, TV coverage, and so on. Yet in the cultural policies determined by governments, or in the programs of intergovernmental conferences, very little is said about the quality or nature of such cultural development. It is assumed that there exists a consensus on what "cultural development" is really about.

I do not believe that such a consensus exists. Moreover, I fear that many of the general statements about the "right to cultural development" – implying more of so-called cultural "services" – too often hide the fact that there are underlying cultural conflicts in our societies, just as there are social, political, and economic conflicts. If we refuse to accept this deliberate obfuscation, we have to recognize that the right to culture must be interpreted as "the right to one's own culture", not only to "general" culture. The general culture and one's own culture are not necessarily the same thing.

This raises a number of important issues regarding the rights to culture. For example, in the Universal Declaration and the general instruments of human rights, a fundamental statement is the principle of non-discrimination or equality. During the post-World War II debate on human rights, it was argued that if the principle of non-discrimination were strictly adhered to, then everybody would have an equal chance to all the "goods" in the human rights basket, whether these are the civil and political rights or the economic, social, and cultural rights.

*It became a short run from the notion of the dictatorship of the proletariat to the notion, which is its substantial application in practice, of the dictatorship over the proletariat.*

Nonetheless, a major question in the discussion of cultural rights is whether the principle of non-discrimination is really sufficient to ensure the enjoyment of all of these rights by everybody. Many people believe that the enunciation of the principle of non-discrimination is simply not enough in the structure and processes of present day society to provide all individuals with equal access to all human rights. Moreover, even if true non-discrimination were a reality for everybody (which it is not), this would not necessarily ensure the enjoyment of

specific cultural rights. I would go further and say that it is necessary to develop procedures and mechanisms for the affirmation and enjoyment of specific cultural rights of peoples; for, unless we develop these mechanisms, we will not be able to enjoy cultural rights, notwithstanding the principles of equality and non-discrimination.

The problem can be illustrated by a story about the United States which appeared in the *International Herald Tribune* of May 24, 1989. It begins like this:

When Tracy Lynn Morrow sued her employer two years ago, her complaint was a common one. She said she had been harassed and discriminated against by a supervisor because of the color of her skin. What made the lawsuit less common was that both she and her supervisor are black. Mrs. Morrow said she was discriminated against because her dark-skinned supervisor was prejudiced against light-skinned blacks.

This shows us some of the difficulties encountered when we talk about principles of non-discrimination on the basis of such elements as color or race, principles, which appear not only in the international instruments, but also in national law in many countries, including the United States. When we talk about racial discrimination, we actually refer to cultural values. We are talking about the way people perceive and at-

tach values to certain supposedly biological characteristics. What does light-skinned and dark-skinned mean unless it means something culturally to the people involved? And people use such cultural distinctions even, as in this case, in a lawsuit. This implies that, beyond a simple statement about non-discrimination, we have to search for the cultural values and implications which give rise to stereotypes regarding race, color, creed, way of life, and which consequently condition behavior and interpersonal relations.

A second major question concerning cultural rights is whether the concept of cultural rights can be adequately encompassed by a notion of universal individual rights, or whether a different approach – that of collective rights – is needed. My own opinion is that we need another approach. The principles of non-discrimination and equality, as set out in the Universal Declaration and in the covenant on Civil and Political Rights are basically principles relating to the rights of individuals. However, when we

recognize the specificities of different social groups.

Some deny the validity of this line of reasoning, stating that cultural relativism jeopardizes the concept of human rights. But those who argue in favour of it, point out that the real world is comprised of a multiplicity of culturally distinct groups and peoples; and, unless we recognize the particular issues relevant to each group, we are talking in terms of meaningless abstractions.

Declaration of Human Rights to mankind as a whole.

Finally, the AAA suggested that, only when a statement of the right of men to live in terms of their own traditions is incorporated into the proposed Declaration, then, can the next step of defining the rights and duties of human groups as regards each other be set upon the firm foundation of the present-day scientific knowledge of Man. 1

Thus, even as the Universal Declaration was being drafted over 40 years ago, American anthropologists considered it to be embodying the values of only one culture, and they questioned the automatic applicability of these standards to other cultures. In more recent years, particularly as African and Asian states joined the United Nations, this position has been taken up by many nations of the Third World.

The difference in approach is evidenced, for example, in Article 29 of the African Charter on Human and People's Rights, which does not speak about rights but about duties. This is an interesting counterpoint to the question of rights. Article 29 states that "the individual shall also have the duty...", and then goes on to enumerate such duties. The seventh duty is "to preserve and strengthen positive African cultural values in his (the individual's) relations with other members of the society." If this is spelled out as a duty, then it is understood that there is a countervailing right

***I believe that the New Thinking, without endorsing every nuance and being extremely nervous of the corrupt understanding in Soviet society of the nature of western capitalism, and the process that has begun in the Soviet Union will end in some kind or rebirth of what we understand to be genuine socialism.***

talk about cultural rights, and also many social and economic ones, we are talking about collective rights. These rights pertain not to individuals in the abstract (like Robinson Crusoe alone on his South Sea island), but to individuals in collectivities, to individuals who engage in collective action, who share common values, and who can only be the bearers of these common values by joining with other members of their own group.

This poses the question: what kind of collectivities? Who are the bearers of these rights? Who are the actors, in sociological terms, who can claim these rights and to whom they are applicable? This is a complicated question, because it leads us into the whole discussion of the rights minority groups, cultural groups or peoples, concepts which do appear in the international instruments, but which are rarely adequately defined.

Moreover, when we speak of cultural rights and values, we refer also to the relativity of values; and this, some would say, runs counter to the major thrust of human rights thinking in the world today. That thrust – the major underpinning of basic human rights – is the universality of human rights. All human beings are equal; no matter what distinguishes them, they have the same rights. Yet, when we speak of cultural and collective rights, that very distinction implies a rejection of universality in order to rec-

This was recognized by the American Anthropological Association as early as 1947, when the United Nations Commission on Human Rights was still discussing various drafts of the Universal Declaration. At the time, the Executive Board of the AAA submitted a statement to the Commission, raising the question of how the proposed Declaration could be made to apply to all human beings. The Universal Declaration should not, said the AAA, be conceived only in terms of the values prevalent in Western Europe and America. The AAA argued, first, that the individual realizes his personality through his culture, hence respect of individual differences entails a respect for cultural differences.

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Second, respect of differences between cultures is validated by the scientific fact that no technique of qualitatively evaluating cultures has been discovered.

Third, standards and values are relative to the culture from which they derive so that any attempt to formulate postulates that grow out of the beliefs or moral codes of one culture must to that extent, detract from the applicability of any

to African cultural values. If it is every citizen's duty to strengthen and preserve these values, then every citizen must have the right to enjoy these positive African values.

One should note, first, that Article 29 distinguishes African values as against non-African values. Secondly, it posits a certain unity or homogeneity of African values, since it makes no reference to

possible diversity in African values. And thirdly, if there are positive African values, then by implication there must be negative African or non-African values, which need not be strengthened or preserved. What, however, are these "positive African values" and who defines them? These are very serious questions. From a purely intellectual point of view it is very difficult to interpret what such positive African values are. It is even more difficult to apply the concept legally. Just raising this problem means opening up a Pandora's box of difficulties. Yet the concept appears in a legal instrument on human rights, which is considered to be one of the major international human rights instruments in the world today.

There is another dimension to the problem of cultural rights. We should be concerned not only about respect for variations of cultural values across international boundaries, between different regions and political systems, but also within states themselves. Most of the countries which are signatories of international human rights instruments are themselves mosaics of different cultures. Whether these are the cultures of ethnic groups, minorities, nationalities or nations, in fact, very few countries are culturally homogeneous. What does this diversity mean in terms of human rights and the right to cultural development? If we understand the right to cultural development to mean not only the right to more cultural services (books, TV, newspapers, schools and so forth), but also the right to one's own culture — the culture of the group into which one is born, in which one lives and with which one identifies — then the problem is, again, who defines the objectives of

the villages or the various immigrant groups?

We must perforce come to the question of how to define culture. Everybody now-a-days speaks of "national culture". The process of development in the last 45 years has been a process of nation-building. Yet whose nation and what kind of nation, remains vague. The American political scientist Walker

destruction of other cultures in the country. This is called **ethnocide**, and it occurs all over the world.

This homogenization has become a major issue in contemporary affairs. It is why human rights discourse refers to the right to be different, "le droit à la différence". When we talk about cultural rights, we also mean the right of groups within the country to be able to maintain

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Connor has suggested that the development of modern states has been a process of "nation-destroying" rather than "nation-building" because in the name of the modern nation-state numerous non-state nations have in fact been destroyed or eliminated. 2 As the term has been used in recent history, nation-building generally implies a "melting-pot", or else "national integration" or "amalgamation". And it is usually the groups in power who determine the model to which national culture is to adhere, that is, who decide the form and contents of educational and cultural policies.

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nic group, to be able to develop their own cultures, even (or especially) if these are distinct from the mainstream, distinct from the dominant model of cultural development established by what one author has called "the ethnocratic state". 3

In this context, one should note that in the Covenant on Civil and Political Rights, there is a reference to minorities. When the Universal Declaration was being drafted in the Human Rights Commission, in the years 1946-1948, some states wanted to include specific provisions on cultural rights of minorities. However, the view which prevailed was that this was not a general human rights issue. The American chairperson of the Commission, Eleanor Roosevelt, the widow of the American president, explicitly state this view: minority right, she said, was a purely European matter which had no relevance to human rights in general. 4 Thus, the Universal Declaration does not deal with culture except in a very abstract way.

As a consequence, many people and many countries were dissatisfied. At the same time that the Universal Declaration was adopted, the General Assembly adopted another resolution which is much less known, in which the importance of the question of minorities was recognized, but it was considered to be

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cultural policies? When we speak of more education, what kind of education? When we speak of more museums, what will these museums contain? The trappings of kings and emperors, or the cultural creations of the people in

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so complex and difficult, that the Assembly did not wish to deal with it. It therefore asked the Sub-Commission on the Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights, to devote some time to the question. However, after four decades, there is still no agreement on a definition of minorities and there is still no Declaration on Minority Rights.

signed by states and for use of states, the "how" and "who" obviously reverts to the states and leaves governments free to determine whether their countries do or do not contain minorities. Often states, for their own political interests, deny that there are minorities within their borders, whereas minority groups say "but we are a minority, and we want our cultural rights". For example, for

persons belonging to such minorities "shall not be denied the right." But the Article does not establish any positive, affirmative right. Nor does it establish an obligation or duty on the part of states to carry out policies with the objective of developing these cultural rights. It simply enjoins the state from denying persons these rights.

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One of the few results which has come out of the UN discussions on the question of minorities, is Article 27 of the International Covenant on Civil and Political Rights, which says: "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". This is the only article in the international human rights instruments which specifically addresses the question of the cultural rights of minorities.

many years Latin American states denied there were indigenous minorities in their own countries. Today, they admit that such minorities do exist. Turkey officially does not recognize the Kurds as a distinctive cultural group, calling them the "mountain Turks". Bulgaria has asked its own citizens of Turkish origin to change their names, because it recognizes a Muslim but not a Turkish minority. There are many other examples of governments refusing to acknowledge the existence of minorities within their nations.

This is insufficient as a means of protecting and promoting the cultural rights of minorities since, without state interference, the general historical tendency is towards the destruction of minority rights. The power structure of modern society, the economic structure, the way the mass media are controlled and used, and the way in which publications are produced and educational policies are carried out, all of these tend to destroy minority cultures, even when there is no conscious intent to do so. It is a sad reality that certain structural tendencies in the modern world society operate in this direction. Therefore, unless we take rights of cultural minorities seriously and develop mechanisms for states and international organizations to actively promote, protect and strengthen minority cultures, they will be lost cultures. Unless positive steps are taken, we will indeed witness more and more "nation-destroying" under the guise of "nation-building".

Some consider this to be a step towards the recognition of the rights of cultural minorities; they see it as a move away from the abstract and universal consideration of individual human rights towards the idea of collective rights. Many, however, feel that Article 27 falls far short of what is required in international instruments to ensure the protection of minorities and their cultural rights. The following shortcomings are underlined.

The second limitation is that Article 27 refers to persons belonging to minorities rather than to minority groups as such. The bearers of the right set out in the article are the individuals, not the

This leads, finally, to the question of state policies. In most countries where minorities exist, state policies are designed to assimilate or integrate minori-

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First, Article 27 begins with the statement: "in those states in which ethnic, religious, or linguistic minorities exist. . ." This leaves open entirely the question of how to define what minorities exist in what states, and who defines them. In as much as these international instruments are state instruments, drafted and

groups. But it is obvious that such rights can only be enjoyed through the group to which the individual belongs. If the group is denied the right to its collective identity, then the individual's right is limited or denied.

ties into the model of the national culture. In some cases, this might be a shared objective. For example, in immigration, states, where people come from various parts of the world, the immigrants may actually want to shed their traditions and become part of the new "melting pot". However, even in so-

A third drawback is the negative way in which this Article is framed. It states that

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cieties that sustained the idea of the "melting pot" for many generations, this ideal has increasingly come under criticism. Too often, policies of national integration, of national cultural development, actually imply a policy of ethnocide, that is, the willful destruction of cultural groups.

Ethnocide is distinct from genocide, which is the physical destruction of peoples, but it is equally reprehensible. When the Genocide Convention was discussed in the United Nations, there was considerable debate about the need to define "cultural genocide", but the

matter was not pursued because of the difficulties involved. Today, the concept of ethnocide has come to be accepted as the definition of a process of deliberate cultural destruction, although the concept has not yet been incorporated into any international legal instrument.

Now if there is ethnocide, then one could say that there might be a right to "counter-ethnocide" through "ethnodevelopment", that is, policies designed to protect, promote and further the culture of minority ethnic groups within the wider society, within the framework of the nation-state or the multinational state.

Ethnodevelopment might be an aspect of the "right to development" which the United Nations General Assembly proclaimed in 1986.

The cultural development of peoples, whether minorities or majorities, must be considered within the framework of the right of peoples to self-determination, which is considered the fundamental human right, in the absence of which all other human rights cannot really be enjoyed. Let us recall that article one of both the international human rights covenants establishes in identical terms the right of peoples to self-determination. Cultural rights are necessarily a part of this right of self-determination, for if people cannot enjoy collectively their own culture, then all other individual human rights are simply empty shells without contents. While all of this may seem self-evident, the international community is at odds as to who actually possesses the right to self-determination. It is generally assumed that established independent states hold such a right, and in recent years the overseas colonies of metropolitan colonial powers have been granted this right under the process of decolonization. Ethnic and cultural minorities, however, are not generally considered to be the subjects of the right to self-determination, and for that matter, to be considered "peoples" in the legal sense of this term. This is mainly because governments fear that if minority peoples hold the right to self-determination, then existing states might break up through secession, irredentism or the political independence of such groups. State interests thus are still more powerful at the present time than the human rights of peoples. This is the background to the debate on cultural rights in the international community, and it shows that the basic issues have not yet been satisfactorily solved.

NOTES

1. Statement on Human Rights, submitted to the Commission on Human Rights, United Nations, by the Executive Board, American Anthropological Association, June 24, 1947, *American Anthropologist*, Vol. 49, No. 4, October-December 1947

2. Walker Connor, "Nation building or nation destroying?", *World Politics*, 1972, Vol. 24, No. 3.

3. Theodor Vetter, *Nationalitätenkonflikt und Volkgruppenrecht im 20. Jahrhundert*, München, Bayerische Landeszentrale für Politische Bildungsarbeit, 1977.

4. Quoted in Felix Ermacora, *Der Minderheitenschutz in der Arbeit der Vereinten Nationen*, Wien, Wilhelm Braumüller, 1964.