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The Right to Culture in Sweden

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Summary

This thesis is about cultural rights, one of the less discussed categories of human rights.

Although seldom mentioned in the human rights discourse outside of the context of economic, social and cultural rights, cultural rights are important on their own. They are present in many international conventions and declarations, as well as being one of the main areas of concern for UNESCO.

The thesis begins with an introductory chapter, explaining the need to shed light on these neglected rights. There cannot be difference in the valuation of the human rights – they are all interdependent and interrelated (affirmed at the 1993 Vienna Conference). The aim of the thesis is to examine Sweden as a case study and see how this State lives up to the obligations on cultural rights imposed by international law.

The next chapter is about the definition of culture and cultural rights. While culture in itself is too abstract a concept to summarize on a few pages, cultural rights have a clear context – international law – and are defined through the major scholars of that discipline.

I show how cultural rights look in international law. First historically – through the drafting of UDHR and ICESCR and the work of UNESCO and the Committee on Economic, Social and Cultural Rights – and then strictly legally, quoting the provisions of UN instruments that touches upon cultural rights in one way or another. The chapter ends with a similar take on regional human rights instruments.

The method chosen for the examination of Sweden's level of adherence to cultural rights obligations is indicators – concrete checkpoints for measuring human rights – and the indicators used in this thesis are divided into four main indicators and eight sub-indicators.

I present the legislation of Sweden on the area of cultural rights. The Fundamental Laws of the Swedish Constitution, parliamentary acts, ordinances issued by the government, as well as some important policy documents will all be addressed.

I analyze the Swedish legislation and policy documents in the light of the indicators. By using the indicators, I attempt to find out whether Sweden lives up to international standards on cultural rights or not.

The final chapter consists of the author's concluding comments.

Sammanfattning

Den här uppsatsen handlar om kulturella rättigheter, en av de kategorierna av mänskliga rättigheter som det talas mindre om.

Även om de sällan nämns i MR-diskursen utanför kontexten av ekonomiska, sociala och kulturella rättigheter så är kulturella rättigheter viktiga i sig. De finns med i många internationella konventioner och deklARATIONER, och är även ett av UNESCOs huvudområden.

Uppsatsen börjar med ett introduktionskapitel där det förklaras varför det är viktigt med kulturella rättigheter. Det kan inte finnas särskilnad av de mänskliga rättigheterna och olika värdering av dem – alla mänskliga rättigheter är sammankopplade och beroende av varandra (fastslaget vid 1993 års Wienkonferens). Syftet med uppsatsen är att göra en fallstudie på Sverige och undersöka hur denna stat lever upp till de krav som internationell rätt ställer angående kulturella rättigheter.

Nästföljande kapitel handlar om definitionen av kultur och kulturella rättigheter. Medan kultur i sig kan förefalla vara ett begrepp som är för abstrakt för att kunna summeras på några få sidor, har kulturella rättigheter ett tydligt sammanhang – internationell rätt – och kan definieras av auktoriteter inom denna disciplin.

Jag visar hur kulturella rättigheter ser ut i den internationella rätten. Först går jag igenom den historiska biten – hur den Universella Deklarationen över de Mänskliga Rättigheterna och den Internationella Konventionen om Ekonomiska, Sociala och Kulturella Rättigheter författades, insatserna som UNESCO och Kommittén för Ekonomiska, Sociala och Kulturella Rättigheter har gjort – sedan den strikt juridiska biten, med utdrag från de delar av FN:s konventioner och deklARATIONER som har att göra med kulturella rättigheter. Kapitlet slutar med regionala MR-instrument.

Metoden som används för att undersöka hur Sverige sköter sig enligt de kulturella rättigheterna är indikatorer – konkreta frågor som mäter MR-efterlevnad – och de som används här delas upp i fyra huvudindikatorer och åtta underindikatorer.

Jag går igenom Sveriges lagstiftning inom kulturella rättigheter. Grundlag, vanliga lagar, förordningar och styrdokument undersöks. Därefter analyserar jag den svenska lagstiftningen och styrdokumenten i ljuset av indikatorerna. Genom att använda indikatorer försöker jag ta reda på huruvida Sverige lever upp till internationell standard eller ej.

Det sista kapitlet består av författarens slutsatser och kommentarer.

Preface

I dedicate this work to the memory of my brother Christopher Ringskog Ferrada-Noli (1979-1997) who had dreams of becoming a human rights lawyer.

Abbreviations

AfCHPR	African Charter on Human and Peoples' Rights
ed.	editor
eds.	Editors
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ibid.	ibidem, on the same page as the one just mentioned
p.	page
pp.	pages
SFS	Svensk Författningssamling, Swedish Code of Statutes
UN	United Nations
UNDP	United Nations Development Program
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization

1 Introduction – A Vindication of the Right to Culture

All human rights are indivisible and interrelated.¹

Cultural rights is one of the most neglected subjects of international human rights law.²

When it comes to human rights and their status in international politics and international law, there is reason to believe that everyone might not regard the different human rights as equally important. Already in the 1950's, the planned continuation of the Universal Declaration of Human Rights – an international covenant which would elaborate on and expand the rights of UDHR – had to be split up into two projects, a compromise inflicted by the difference of opinion between USA and the Soviet Union. One side regarded civil and political rights as the most important (“what is life worth without freedom of thought?”), while the other thought that economic, social and cultural rights were primary (“who cares about democracy if you haven't got anything to eat?”).³

The Cold War days are over, and today most States have signed both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. However, one can argue that the something changed when the work of the follow-up to UDHR split into two separate covenants. The idea of the human rights as universal and indivisible was, in a way, lost. There is today somewhat of a hierarchy among human rights. Whether just or not, politicians in general are more likely to discuss the prevention of genocide and torture than economic, social and cultural rights. And even when they do, there is perhaps another hierarchy: economic and social rights tend to gain more space and are, in prolongation, considered more important than cultural rights. A look on the priorities of the Committee on Economic, Social and Cultural Rights and its General Comments is a good example of this phenomenon. There are also much more literature written on the subject of economic or social rights than cultural rights.

Cultural rights can thus be said to be a low priority in the human rights discourse. This thesis will advocate these neglected rights which, by status of human rights, deserve increased attention, both by the international

¹ A statement made by the UN General Assembly in a resolution in 1952, repeated many times throughout the years. See A. Eide, C. Krause and A. Rosas (eds.), *Economic, Social and Cultural Rights. A Textbook*. (Martinus Nijhoff Publishers, Dordrecht 2001) p. 3-4

² Mary Robinson (United Nations High Commissioner for Human Rights 1997-2002), foreword to E. Stamatopoulou *Cultural Rights in International Law. Article 27 of the Universal Declaration of Human Rights and Beyond* (Martinus Nijhoff Publishers, Leiden/Boston 2007), p. xv

³ A. Eide, “Economic, Social and Cultural Rights: A Universal Challenge”, *ibid.*, p. 11

community and by individual States. As a case study, the author looks at Sweden, a State known for its progressive democracy in the second half of the 1900's. Sweden has signed and ratified all important conventions in the field of human rights, including ICESCR. But in what way do Swedish legislation and government policies in the field of culture reflect this? My hypothesis, which will be the backbone of this thesis, is that Sweden is a State that lives up to its commitments under international law when it comes to the right to culture.

Critics of economic, social and cultural rights could stress that these rights are less fundamental human rights than, for example, the right to life or the prohibition of torture. There are no Amnesty-like NGOs working for the monitoring of cultural rights. By judging from the priorities of the world's leaders throughout the years – for example, the fact that the US has signed ICCPR but not ICESCR – perhaps these critics are right. But by judging from the international legal documents from which the human rights responsibilities of States are based upon, these critics are wrong – all human rights stem from the notion of human dignity⁴, all human rights have equal value, and the right to culture should be treated with the same care and respect as all other rights.

That being said, the right to culture is not an uncontroversial right. For one thing, cultural rights can be used as an argument for the acknowledgment of minorities and indigenous peoples and their rights, which includes an obligation on the State to fulfill these rights. One other thing is that the word culture – associated with art, literature and recreation – does not really fit in with the standard human rights rhetoric. It is perhaps less evident that a human being needs culture (whatever we mean by that term) than he or she needs basic premises for existence such as food and shelter, freedom of thought and protection from being put to jail without knowing the reason. But these basic premises are not themselves sufficient in defining what being a human is. The concept of human rights, it can be argued, define not only what people need to survive – they define what people need to live. A person can survive without education, religion or expression. A person can survive in jail as long as the treatment of prisoners is not inhumane. But neither of these “life models” are the vision for ideal human conditions that can be read between the lines of UDHR. The inclusion of cultural rights in this Declaration is therefore no oddity. To enjoy cultural rights – be it the enjoyment of artistic creativity or the membership of a cultural community – is to enjoy human rights.

The UN and its dedication to human rights – manifested in UDHR – are, idealistic or not, based upon the notion of human dignity. It is this dignity that separates man from animal, it is a life in dignity that the organization strives to secure that every living person is offered. It is in this context cultural rights must be understood – culture is not luxury, it is a necessity. Imagine a person living a whole life without culture: it is impossible. Every

⁴ Preamble of UDHR

aesthetically structured creation around us – every building, every garden, every picture, every text – is a cultural product. These are objects made by human beings because we enjoy their presence and we feel that we need them. We need culture. That is why culture should be protected, and that is why the right to culture is a human right.

There is another reason to pay more attention to culture as a factor in international law. This is a time of post-9/11 “war on terror”, xenophobia against Moslems in the US and Europe, burning of Danish embassies in the Middle East after the publication of “Muhammad cartoons” in Danish newspapers, the Sunni/Shia conflict in Iraq, the red-hot Palestinian issue in Israel, and more recently, cultural identity as a factor in the armed conflict between Georgia and Russia of August 2008. The politics of the world is marked by culture. It is important not to generalize cultures and dehumanize “the other” in order to legitimize aggression. Therefore, the issue of culture must be taken seriously, and the right to culture carries the message that all cultures are equally valuable and that none can be allowed to be discriminated.⁵

The method of examining Sweden’s legislation and policy documents in this thesis will be that of human rights indicators, a well-known and increasingly applied instrument for reviewing States’ adherence to human rights.⁶ The scope of the research on Sweden is limited to Swedish laws, governmental ordinances, and policy documents including the Government Bill on Culture Policies (proposition 1996/97:3 Kulturpolitik) of 1996 and the Written Communication by the Government on Culture and Participation (Skrivelse 2001/02:176 Kultur och delaktighet) of 2001.

The thesis will begin with the definition(s) of culture and cultural rights, followed by a presentation of the status of cultural rights in international law – where they can be found, and in what form. The following chapter deals with indicators and how this method can be applied to cultural rights; by the end of the chapter, I identify a collection of cultural rights indicators. After a presentation of the protection of culture in Swedish law comes the analysis chapter. This is in effect a synthesis of the previous chapters, using indicators to see how Sweden fit into the existing template for cultural rights according to the international treaties signed by Sweden. The thesis ends with the author’s conclusions.

The thesis does not deal with the science-related aspects of cultural rights – the right to enjoy the benefits of scientific progress and its applications, and the freedom for scientific research. The right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which the person is the author, on the other hand, will

⁵ E. Stamatopoulou (2007), pp. 6-9

⁶ See, for example, M. Green, ‘What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement’ in *Human Rights Quarterly*, vol. 23 (Johns Hopkins University Press 2001), pp. 1062-1097

be addressed, since it deals not only with science but also with artistic creation.

2 Defining Culture and Cultural Rights

2.1 Introduction

With this chapter I go through the different aspects of culture and the rights related to them. Like many authors on the subject before me, I settle for a compromise: culture is not one thing, it is several, and the right to culture must reflect this. Therefore, the tripartite definition of culture (see below, p. 10) will be the basis for the definition of cultural rights, as well as for the indicators, in this thesis.

It is important to define cultural rights, because the definition determines what to search for in international law in order to get credence to the notion that cultural rights exist in practice – which is what I will do in chapter 3. It also sets the frame for the indicators (chapter 4) – like a court that only can judge what the attorney has brought forward, human rights indicators can only ask and answer the questions embodied in the obligations of human rights. Therefore it is important to know what the obligations connected to the right to culture are. In this chapter I show what this right includes.

2.2 The different meanings of the word culture

[Culture is] activity of thought, and receptiveness to beauty and humane feeling.

- Alfred North Whitehead (1929)⁷

Culture means the total body of tradition borne by a society and transmitted from generation to generation. It thus refers to the norms, values, standards by which people act, and it includes the ways distinctive in each society of ordering the world and rendering it intelligible. Culture is ... a set of mechanisms for survival, but it provides us also with a definition of reality. It is the matrix into which we are born, it is the anvil upon which our persons and destinies are forged.

- Robert Murphy (1986)⁸

⁷ A. North Whitehead, *The Aims of Education and other Essays* (The Free Press 1929), p. 1, quoted by S. P. Marks in 'Defining Cultural Rights' from M. Bergsmo (ed.) *Human Rights and Criminal Justice for the Downtrodden: Essays in Honour of Asbjørn Eide*. Kluwer Law International, Dordrecht (2003), p. 294

⁸ R. Murphy, *Culture and Social Anthropology: An Overture* (2nd edition, Englewood Cliffs, NJ: Prentice Hall 1986), p. 14, quoted by Stephen P. Marks (ibid.)

Culture is inseparable from the quality of being human, from the sense of self-respect of a person or a community. Culture is about human relations and thus constant cross-influencing, cross-fertilization, conflict and change are part of culture.

- Elsa Stamatopoulou (2007)⁹

What is culture? Depending on the context – politics, arts, international law – the definition varies a lot. One could say that culture is the same thing as social patterns: traditions, religion (or lack thereof), language, clothing, food – all the things that tie a people together, all the things that unite a society.

¹⁰

But culture is also something that can divide a society, something that separates the individual from the group. It is up to the individual human being to define his or her cultural identity. In some cultures/societies, it is customary to define this individual cultural identity as a member of the larger group – but this is not always the case. The larger the society, the more diverse the culture of its citizens, and the weaker the pressure is on the individual to preserve the culture in which he or she was born. This does not mean that culture in a society like this is “weak”: rather, the norm of letting individuals decide for themselves their cultural identity is in itself a pattern, a custom, a part of the culture of that society.

It is somewhat difficult to discuss culture from a human rights perspective, because the concept of human rights is in itself a cultural product. The human rights of UDHR and its followers target the individual; their message is that *the individual have rights*. This perspective is marked of western history: the Westphalian Peace (a milestone in the right of religion debate), the enlightenment era, the French revolution, the American Constitution, liberalism, industrialism, capitalism, feminism. The progressions of western history have been on the path from a strong community towards a strong individual. It is a world order dependant on rights for the individual. As the western allies were the victors of World War II, it was only logical that the new international peace-keeping institution – the United Nations – would base its activities on these western values. UDHR is not apolitical: it is a strong advocate for the rights of the individual as opposed to the rights of the group. One can compare with the African Charter on Human and Peoples’ Rights (AfCHPR), which already in its title shows a different focus: this is a human rights instrument formulated by people from cultures where the individual is seldom or never more important than the community in which he or she belongs.

The cultural rights of UDHR and ICESCR must be understood in this context. When they were formulated, their main concern was to grant the individual access to cultural life, just like he or she should be granted life,

⁹ E. Stamatopoulou *Cultural Rights in International Law. Article 27 of the Universal Declaration of Human Rights and Beyond* (Martinus Nijhoff Publishers, Leiden/Boston 2007), p. 107 f

¹⁰ A. Eide, C. Krause and A. Rosas (eds.) (2001) p. 89 ff

education and freedom from torture. To be given culture is, in this meaning, to be given access to existing cultural products (art, literature, music, etc) as well as a freedom to produce cultural products without interference (e.g. censorship).

In recent years, several scholars¹¹ have accepted the tripartite definition of culture first presented by Rodolfo Stavenhagen and Asbjørn Eide in their respective essays on the right to culture in the anthology *Economic, Social and Cultural Rights. A Textbook* in the mid-1990's.¹² According to this view, culture can be defined at three levels:

- At one level, culture is *the accumulated material heritage of mankind*, either as a whole or part of particular human groups, including but not limited to monuments and artifacts.
- At another level, culture is *the process of artistic or scientific creation*, and the emphasis is here placed on the process, the creators of culture and their creations (cultural products) – arts, literature, music and so forth.
- At a third level, connected with the science of anthropology, culture is a way of life – *the sum total of the material and spiritual activities of a particular social group*.

The latter is the most wide-ranging definition of culture, and also the most politically charged, since it in effect means that the right to culture is a right for minorities and indigenous peoples to exist and have rights. Acknowledging an individual citizen's right to cultural identity means acknowledging the existence of the individual's cultural group. This is something many States are unwilling to accept.

Of course, an individual can have a cultural identity based solely on cultural markers (traditions, customs, language and other cultural preferences) chosen or created by the individual himself or herself, creating a unique and thoroughly individual cultural identity. But this is rarely the case – or, one can argue, the activity of creating this kind of personal cultural mix is in fact part of the culture of a specific group (a liberal, individualistic society). More often, cultural identity and its clashes with the State are about minorities claiming to be different from the rest of the inhabitants of the State and demanding special treatment in the name of non-discrimination. This can be anything from language education in schools, building religious institutions and freedom for wearing special clothing without being discriminated, to land rights (the “we were here first” argument).

¹¹ E. Stamatopoulou (2007), p. 108 f; S. P. Marks in M. Bergsmo (ed.) (2003), p. 296; R. Adalsteinsson and P. Thórhallson, ‘Article 27’ in G. Alfredsson and A. Eide (eds.), *The Universal Declaration of Human Rights. A Common Standard of Achievement* (Kluwer Law International, The Hague 1999), p. 576

¹² R. Stavenhagen, “Cultural Rights: A Social Science Perspective” in A. Eide, C. Krause and A. Rosas (eds.) (2001) pp. 85-110; E. Eide, “Cultural Rights as Individual Human Rights”, *ibid.*, pp. 289-302

Since the heads of a State usually come from the majority cultural group of the population, there is often a bias towards the own group (whether intentional or unintentional), and the minority group(s) tend to be invisible or discriminated. This happens both in democracies and dictatorships. Since it lies in the interest of all heads of States to have a controlled and unified population – even if the unity is superficial or false – minorities requesting attention are more often than not considered a problem. The human rights system protects the minorities, at least theoretically.

Since this tripartite definition of cultural rights is gaining ground, it will be used as the basis for this thesis. When searching for protection of culture in international human rights law, all three areas of culture will be of interest.

2.3 Identifying the different cultural rights

The right to culture, guaranteed for every human being, is based primarily on these two provisions in international law:

- article 27 of the Universal Declaration of Human Rights (UDHR) of 1948
- article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966.

Together they constitute the foundation for UNESCO, the commitment to cultural rights of the Committee on Economic, Social and Cultural Rights, and they also serve as models for future provisions on cultural rights in international human rights law and in national legislation.

This right to culture is however not one singular, universally applicable right, but rather a set of rights – cultural rights – which, although rather different from each other, are all collected under the same article in both conventions. From here on, the term “the right to culture” shall refer to these cultural rights.

Article 27 of the Universal Declaration of Human Rights of 1948 states that:

1. Everyone has the right to freely 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.

The rights collected here are:

- (a) the right to freely participate in the cultural life of the community,
- (b) the right to enjoy the arts,
- (c) the right to share in scientific advancement,
- (d) the right to share in the benefits of these, and

- (e) the right to the protection of the moral and material interests resulting from scientific, literary or artistic production.

To connect these rights to the tripartite definition of culture, it can be noted that (a), (b) and (e) can be linked to the artistic creation-oriented aspect of culture, while the way of life-oriented aspect connects to (a), (c) and (d). The protection of cultural heritage is vague here, but it can be associated with (a) since enjoying the cultural heritage is a way of participating in cultural life.

Even more cultural rights can be derived from article 15 of the International Covenant on Economic, Social and Cultural Rights, which read:

1. The States Parties to the present Covenant recognize the right of every one:
 - (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.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

Besides the rights in article 27 of UDHR, this provision offers

- (f) the obligation of States Parties to take the steps necessary for the conservation, development and diffusion of science and culture,
- (g) the right to free scientific research and free creative activity, and
- (h) the recommendation for states to cooperate internationally in the fields of science and culture.

The artistic creation dimension of culture is present in (f) and (g), and the conservation of the cultural heritage is very much present in (f). The last right, (h), can be seen as a combination of cultural rights with one of the general goals of the UN, namely to unite nations and peoples and make the world a better place through co-operation and exchange of ideas.¹³

Although all these cultural rights are important, the right for the individual to participate in cultural life has an elevated position, being the firstly mentioned right in both article 27 of UDHR and article 15 of ICESCR. If

¹³ preamble of the Charter of the United Nations

one of the cultural rights can be said to be the main right to culture, this is it. The definition of the right to participate in cultural life calls for elaboration.

In commenting on UNESCO's Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It, Stephen P. Marks points out that free participation in cultural life is related to policy in a wide range of other areas, including (among other things): development in general, life-long education, environment and international co-operation. This holistic view is shared by this author; it is reflected in the choice of cultural indicators (chapter 4 below). Marks also identifies extensive non-discrimination measures as part of the Recommendation's cultural participation definition. This will also be paid attention to in the indicators.¹⁴

A question is whether the right to participate in cultural life should be regarded as a right for the individual – access to cultural products and freedom of creative expression – or as a right for the collective, a protection of the different cultures of the many peoples of the world. This would mean a right for the individual also – if cultural groups and cultural diversity are recognized as subjects of protection in international human rights law, the individual has a right to his/her own culture, a right to cultural identity.

As has been noted, participation in cultural life is associated with all three aspects of the tripartite definition of culture. Depending on the choice between the these, the definition of the right to participate in cultural life changes.

- According to the cultural creation position, the right to culture would mean freedom of cultural expression for the creator, as well as a right for everyone to enjoy free access to the creations (through libraries, museums, etc.).
- With the material heritage position, the right to culture would instead mean the equal right of access by individuals to the cultural heritage.
- The third stance is the most political explosive: if “cultures” (the plural form indicates that there is not one universal culture which everyone has a right to, but instead many different cultures of different size and status) should be protected by the international human rights system, then no discrimination of any minority's culture should be tolerated by any State. Here the line between a minority and its culture blurs, and a State cannot ensure the right for everyone to participate in cultural life without also recognizing and protecting the minority or minorities among the population..¹⁵

The logical stance for a human rights lawyer is to embrace all three perspectives when discussing the right to culture. The different cultural rights fit in the different perspectives; excluding one or two of the perspectives means excluding several cultural rights. This is something that

¹⁴ S. P. Marks in M. Bergsmo (ed.) (2003), pp. 305-306

¹⁵ A. Eide, C. Krause and A. Rosas (eds.) (2001) pp. 91-93

cannot in my view be justified, since the cultural rights are interrelated and interdependent just like human rights are in general.

2.4 Other human rights connected to the right to culture

An important note is that cultural rights, including the right to participate in cultural life, co-exist with and depend on other human rights. According to Eide, the right to education (UDHR article 26; ICESCR article 13) is in part a cultural right. The right to freedom of expression and information (UDHR article 19; ICCPR article 19) includes a right to cultural expression and access to cultural activities. Freedom of religion (UDHR article 18; ICCPR article 18) is closely linked to the right to culture, especially when we talk of culture as a way of life, the sum total of the activities and traditions of a specific group. Also, the freedoms of assembly and association (UDHR article 20; ICCPR articles 21 and 22) are essential to cultural activities.¹⁶

The principle of non-discrimination, enshrined in UDHR article 2, ICCPR article 2 and ICESCR article 2, paragraph 2, is of course of great importance when discussing culture as a collective of cultures. The principle of non-discrimination has a strengthening effect on minority rights, including the right to language. Also, non-discrimination reflects the core values of humanism, which is the air that all artistic expressions breathe, so to speak. And the work of the United Nations stems from the same humanism. Stavenhagen puts it like this:

The right to culture implies the respect for the cultural values of groups and individuals by others who may to share these values: it means the right to be different. How else are we to interpret the fundamental freedoms of thought, of expression, of opinion, of belief, that are enshrined in the Universal Declaration of Human Rights?¹⁷

Another way to put it is that the right to culture can be understood as the end to which the freedoms of thought, expression, assembly and religion are means. More importantly, the intricate web of human rights that cultural rights touch upon proves that the human rights are indeed interdependent: they are not separate rights that are equal in value, they are all connected to each other and *therefore* equal in value.

¹⁶ *ibid.*, p. 292

¹⁷ *ibid.*, p. 93

2.5 Cultural rights as individual rights and as group rights

As mentioned earlier, cultural rights are relevant both for the individual and for the group. This is not only a matter of definition of culture, choosing from the established three definitions. No, there are cultural rights that directly address the group rather than the individual, and vice versa. For instance, the right of the author of a work (UDHR article 27[2] and ICESCR article 15[1]c) is clearly directed towards individual human beings, while other rights, notably freedom of assembly (a related right to the right to culture, as noted by Marks¹⁸) have relevance primarily to collectives.

Author's rights are not only about moral and material interests. They are also about the status of the artists – how important he or she is in society, the question of whether he or she needs special protection or attention. Can artistic talents blossom to their full potential if the State does nothing for them? Maybe not, but the burning question is perhaps if the States *need* the artists? This author argues that they do. Dante Alighieri's *Divina Commedia* was essential in making the Italian language as we know it an acceptable vehicle for high literature, and in prolongation played a part in making the peoples of the Italian states feel as one people, itself a major factor in the uniting of Italy in the 19th century. States also need their artist for reasons of tourism or international status – cultural phenomena like Astrid Lindgren, Ingmar Bergman and ABBA has no doubt helped Sweden becoming more attractive in the global arena. It works the other way around, too – Hitler used the talented film director Leni Reifenstahl to make propaganda films for the Nazi Party in the 1930's, and these were so well-made that they succeeded both in igniting patriotic flames within the German population and scaring the outside world of what was perceived as a perfectly structured, immaculately effective German army. Such is the impact of art.

Marks recognizes the importance of the artist's rights in cultural rights, and quotes the Recommendation concerning the Status of the Artist (adopted by UNESCO in 1980) which says that “it is necessary and appropriate for Governments to help create and sustain ... a climate encouraging freedom of artistic expression ...”.¹⁹ That UNESCO takes the freedom of the authors and artists seriously is further evidenced by the article *On the Freedom of the Author and the Artist*, published in the UNESCO anthology *Cultural Rights and Wrongs*. The article brings up many unpleasant examples from history where regime-criticizing authors and provocative artists have been silenced or intimidated by authoritarian regimes.²⁰

¹⁸ S. P. Marks in M. Bergsmo (ed.) (2003), p. 300

¹⁹ Recommendation on the Status of the Artist, 21 C/Res., Annex I, at 147, adopted on 27 October 1980, quoted by S. P. Marks in M. Bergsmo (ed.) (2003), p. 321

²⁰ E. Decaux, 'On the Freedom of the Author and the Artist' in H. Nieć (ed.) *Cultural Rights and Wrongs. A Collection of Essays in Commemoration of the 50th Anniversary of the Universal Declaration of Human Rights*. (UNESCO Publishing / Institute of Art and Law, Leicester, 1998), pp. 21-41

2.6 Concluding remarks

What I have examined in this chapter is how cultural rights in relate to the different definitions of culture. In order to encompass all that culture can mean, the tripartite definition seems to be the best model for approaching cultural rights. This is the definition I use in the following.

It has come to light that the right to participate in cultural rights has a special position among cultural rights, being the first right mentioned in both article 27 UDHR and article 15 ICESCR as well as being the only right relevant to all three definitions of culture.

3 The Right to Culture in International Law

3.1 Introduction

This chapter serves the purpose of proving that the three dimensions of cultural rights defined in chapter 2 – artistic creations, cultural heritage, and sum total of the material and spiritual activities of a particular social group – are, in fact, protected and promoted in international human rights law. Whereas the previous chapter examined what cultural rights look like in theory, this chapter focuses on how they look in the reality of international agreements.

I begin this chapter with a brief history of some important milestones in the field of cultural rights – UDHR, ICESCR, UNESCO and the Committee on Economic, Social and Cultural Rights – which I have included to display the steadily growing importance of cultural rights in the human rights discourse throughout the years. After that comes a thorough exposition of where the cultural rights can be found in international human rights instrument, global as well as regional. This will be the foundation for the indicators chapter 4, as well as for investigating Swedish law and policies in chapter 5.

3.2 History of the Right to culture

3.2.1 The Drafting of article 27 of the Universal Declaration of Human Rights (UDHR)

The origin of UDHR is a story with almost mythical status today, since the document is so crucial in the development of human rights. The drafting began in 1947 by the Commission on Human Rights under the supervision of the Economic and Social Council (ECOSOC). The Commission was composed of representatives from Member States, and the drafting process took place in the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

The first formal drafts of a Bill of Human Rights was submitted to the General Assembly and the Commission by the governments of Chile, Cuba, United Kingdom and Panama. The preliminary draft (the “outline”) was prepared by the Secretariat (the Division on Human Rights). The French representative, Professor René Cassin, then made a draft of concepts, which were to be turned into provisions in the Bill of Human Rights. After further preparations, revisions and discussions, the final version of the Universal

Declaration of Human Rights was adopted by the General Assembly on 10 December 1948.²¹

Of the articles of the Declaration, six dealt with economic, social and cultural rights (articles 22-27), and the last of these was specifically dedicated to cultural rights. As Ragnar Adalsteinsson and Páll Thórhallson point out, article 27 contains several different rights which do not necessarily belong to the same category: freedom of creative activity, the right to enjoy culture, freedom of scientific research, the right to enjoy the results of scientific advancement, and author's rights.²²

Initially (in a proposal of the UDHR by the Chilean delegation), the article focused on science and didn't even have a reference to culture. It was, interestingly enough, the United States delegation that wanted to include the cultural field in this article (interesting because the US have throughout the years been hesitant towards cultural rights, not even signing ICESCR). After involvement from Saudi-Arabia, Bolivia, Brazil, Uruguay and Yugoslavia, a provision was drafted by the Secretariat. According to Yvonne M. Donders, the idea was "that culture was an important aspect of human life. In its classic form including arts and literature, culture had to be made more accessible to the masses."²³

The text that was adopted by the Commission on Human Rights and discussed in the Third committee of the General Assembly was very close to the first paragraph of the final version of article 27: "Everyone has the right to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement." The Peruvian delegate proposed that the word "freely" should be inserted before "participate", which underlined the connection between the right to culture and freedom of thought, and this was accepted in the final text. The words "and its benefits" were also added after "share in scientific advancement", an important move not least in the area of health rights (it can be understood as a right to modern medication).²⁴

According to Ragnar Adalsteinsson and Páll Thorallson, the cultural aspects of the first paragraph of article 27 can be interpreted as follows: every person has the right to participate freely as a creator in all forms of cultural life, and every person has the right to passively enjoy the benefits of the arts. The underlying conception of culture here (at least according to the travaux préparatoires of UDHR) appears to be "high culture" – the creative work of "artists", as opposed to the customs and traditions of a culture.²⁵

²¹ Y. M. Donders, *Towards a Right to Cultural Identity? International and National Perspectives* (Intersentia, Antwerp 2002), p 139 f; this text refers to UN Doc. A/C.3/SR.150, 1948, pp. 617 ff

²² R. Adalsteinsson and P. Thórhallson in G. Alfredsson and A. Eide (eds.) (1999), p. 575; this text refers to GAOR-TC 3, pp.618 ff

²³ Y. M. Donders (2002), p. 141

²⁴ R. Adalsteinsson and P. Thórhallson in G. Alfredsson and A. Eide (eds.) (1999), p. 578

²⁵ *ibid.*, p. 579

The problematic part of article 27 is the phrase “the cultural life of *the community*”. What does this mean? What is a community in this context, and what separates cultural participation within the community from other cultural activities? There are no clear answers, since there never was any discussion over this terminology in the Commission or the General Assembly. In any case, the reference to the community has been dropped in article 15 of ICESCR, which leads us to believe that it might not be so important in the first place. It is unlikely that participation in the cultural life of the community should be understood as a right for the individual to the culture of his or her specific community – in other words, an acknowledgement of the diversity and plurality of culture. Had it been otherwise, the phrase would consequently have been kept or even emphasized in ICESCR – which, as just mentioned, is not the case.

The most drastic change that article 27 underwent during the drafting process was the addition of a second paragraph, covering the right of authors. This was the main focus of the discussion in the Commission and the General Assembly. This is a rather peculiar part of UDHR, as it combines the right to culture with both the right to property (article 17 of UDHR) and copyright – which is not indisputably a human right.²⁶

There is a slight contradiction between the right for the author of a work to the protection of the moral and material interests of this work (paragraph 2 of article 27), and the right for everyone to share in scientific advancement and its benefits (paragraph 1). The latter is clearly a cultural right, while the former is a property right in the area of culture. But in any case paragraph 2 of UDHR fills an important purpose, namely raising the status of the author/artist. While doing so, the work – the art – itself affirms its position among the many areas of concern in the human rights agenda. The message of paragraph 2 of article 27 is loud and clear: culture is important, hence the creators of culture are entitled to not only creative freedom but also a chance to earn money and recognition from their work.

3.2.2 The Drafting of article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

It was intended even from the beginning that UDHR would only be the basic skeleton of human rights, and that a covenant which elaborated on the different human rights would come and provide some flesh for this skeleton. When the General Assembly adopted UDHR in December 1948, it also adopted a resolution which requested ECOSOC to ask the Commission to prepare a draft covenant on human rights. The drafting process started the following year but was broken in two – during the General Assembly’s sixth session (November 1951 to February 1952), a resolution was adapted which requested ECOSOC to ask the Commission to draw to separate human

²⁶ *ibid*, p 578 f

rights covenants. Thus, today we have two covenants – ICCPR and ICESCR – which, together with UDHR, form the International Bill of Rights. What caused the division is another story, but let us at least conclude that the cold war and the two superpowers’ different views on political priorities (the individual’s complete freedom in the west, the State’s responsibility to take care of its citizens in the east) made a single, unified covenant impossible. To this day, the United States have not signed ICESCR, which contain the two covenants’ only reference to cultural rights (article 15).

The work on ICESCR lasted for 14 years, from 1952 to 1966. The project was put on hold between 1957 and 1966, when it was finally finished and adopted. It entered into force in 1976. Drafting the covenant was of course a huge project, and the discussions on cultural rights were limited to the seventh session of the Commission (1951) and the meetings of the Third Committee of the General Assembly, during the Assembly’s twelfth session (1957).²⁷

During its drafting, article 15 underwent several changes, as well as propositions that never made it to any text versions. The USSR wanted to include a right to leisure and culture, Czechoslovakia wanted a right to education and creative expression, and Syria wanted the right to speak one’s own language and to study and develop one’s own culture to be part of the article. UNESCO was very active in the process: the Director-General of UNESCO stated that cultural rights and rights to participate in culture could not be omitted from the draft covenant, and he presented not one, but two alternatives as propositions for preliminary drafts. One main draft, and one which was a shortened version of it.²⁸

The longer of the Director-General’s two drafts is interesting because it is quite specific about actions appropriate for guaranteeing the right to culture. It reads as follows:

The signatory States undertake to encourage the preservation, development and propagation of science and culture by every appropriate means:
by facilitating for all access to manifestations of national and international cultural life, such as books, publications and works of art...;
by preserving and protecting the inheritance of books, works of art and other monuments and objects of historic, scientific and cultural interest;
by assuring liberty and security to scholars and artists...;
by guaranteeing the free cultural development of racial and linguistic minorities.

The alternative text, which is much closer to the final version of article 15, reads as follows:

²⁷ Y. M. Donders (2002), p. 144 ff

²⁸ *ibid.*, p. 146

The signatory States undertake to encourage by all appropriate means, the conservation, the development and the diffusion of science and culture. They recognise that is one of their principal aims to ensure conditions which will permit everyone:
to take part in cultural life;
to enjoy the benefits of scientific progress and its applications;
to obtain protection for his moral and material interests resulting from any scientific or artistic production of which he is the author.

It was this briefer version which was submitted to the Commission, and a similar version, though without the provision on author's rights, was adopted at the Commission's seventh session. The article was to be called article 30 – this was before the separation of the human rights covenant into ICCPR and ICESCR.²⁹

The following years, the discussions in the Commission and in the General Assembly on the Covenant's article on the right to culture were quite similar to each other. The United States wanted an article that was as short and generally formulated as possible. France wanted that author's rights should be included in the article, but was met with opposition. USSR wanted to include a reference to the fact that science and culture should serve the interest of peace and democracy, but were equally unsuccessful since this could be interpreted as giving the State free hands in controlling or censoring the output of culture. In the end, there was a compromise – author's rights were included in the final text of article 15, as well as provision encouraging States to co-operate internationally in the scientific and cultural fields, but it didn't get more political than that.

While arguing over these matters, the key issue – what was meant by cultural rights – was left untouched. Yvonne M. Donders writes that “[l]imited debate took place on the precise content of the right to participate in cultural life. The first broader draft of UNESCO to the Commission referred to access to manifestations of national and international cultural life. The briefer text, which was adopted, merely spoke of cultural life. Which cultural life was meant?”³⁰

The General Assembly adopted the final draft of article 15 during its twelfth session in 1957. Although the ICESCR was not adopted until 1966, the text of this article was left unchanged during the nine years.³¹

One thing that needs to be addressed about ICESCR is the concept of “progressive realization”. The main difference between ICESCR and ICCPR is not only that they protect different categories of human rights, but also that they have different obligations for the States Parties. While ICCPR uses a classical approach (the rights *shall* be respected), ICESCR uses a method more flexible and adaptable to each State. It is logical: the capacity

²⁹ *ibid.*, p. 146 f

³⁰ *ibid.*, p. 149

³¹ *ibid.*, p. 147 ff

for providing economic and social reforms in a given State depends on the level of economy and stability in the State. Therefore, article 2(1) of ICESCR stipulates that:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures

This should not be interpreted as if the rights of ICESCR were of lesser importance. Asbjørn Eide writes: “The words ‘achieve progressively’ have often been misinterpreted. In its General Comment no. 3 (1990) on the nature of state obligations under Article 2(1), the Committee on Economic, Social and Cultural Rights points out that while the concept of progressive realization constitutes a recognition of the fact that *full* realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time, the phrase must be seen in light of the overall objective, which is to establish clear obligations for States Parties to move as expeditiously as possible towards the realization of these rights.”³²

3.2.3 The Work of UNESCO

The United Nations Educational, Scientific and Cultural Organization (UNESCO) has done a lot for cultural rights. Though not being one of the more powerful branches of the UN tree, and with cultural rights as only one third of its mission, the organization has produced an impressive number of declarations and conventions on cultural rights, not to mention its role in the drafting of ICESCR article 15.³³

Of the many standard-setting instruments issued by UNESCO, the ones that are most relevant for cultural rights are:

- Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954)³⁴
- Declaration of the Principles of International Co-operation (1966)
- Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It (1976)
- Recommendation on the Status of the Artist (1980)
- Mexico City Declaration on Cultural Policies (1982)

³² A. Eide, C. Krause and A. Rosas (eds.) (2001), p. 22; General Comment No. 3, Report of the Committee on Economic, Social and Cultural Rights, UN doc E/1991/23, pp. 83-87

³³ E. Stamatopoulou (2007), pp. 76-83

³⁴ This is an important and often overlooked issue. So many objects of immense cultural value have been erased in situations of armed conflict – from the WWII bombings of Berlin which destroyed a great portion of the compositions of Johann Christoph Friedrich Bach (the son of the revered Johann Sebastian Bach) that were kept in Staatliches Institut für Musikforschung, to the bombing of the Al-Askari Mosque in Baghdad in 2006 and 2007, whose legendary golden dome is now gone. And let us not forget the burning of the library in Alexandria!

- Action Plan on Cultural Policies for Development (1998)

Although the UNESCO conventions and declarations are essentially soft law, the organization is still a major authority on the interpretation of cultural rights. It is also very dynamic and flexible in its definition of culture, as evidenced in the interesting discussions of *Cultural Rights as Human Rights* publication³⁵, which perhaps is a feature that is necessary to suit the elusive and forever changing concept we call culture.

3.2.4 The work of the Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council (ECOSOC) in 1987 and is the main international human rights body that has cultural rights under its mandate. The Committee has to monitor the implementation by State Parties of Article 15 of ICESCR. However, the Committee has tended to focus more on economic and social rights, essentially leaving cultural rights a secondary role. This is not a coincidence; the Committee has implicitly viewed the importance of cultural rights as coming after the other rights of ICESCR.³⁶

The Committee monitors the implementation of ICESCR by the State Parties. This is done by inquiring and commenting on State reports. Another important part of the Committee's work is to adopt General Comments on the interpretation of the articles of ICESCR. A General Comment on the right to participate to culture is long overdue, since it is such a vague yet important concept. But so far the only cultural right that has been given a General Comment is the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph 1c of ICECR). This is General Comment no. 15 and was issued in November 2005. Although one is grateful for the word-by-word interpretation of this provision of the article, the General Comment does not really say anything new. Article 15, paragraph 1(c) is relatively uncomplicated – perhaps this is the reason the Member States could agree on its content. It is interesting, though, to learn that the Committee on Economic, Social and Cultural Rights find that indicators are a necessary method for monitoring the right.³⁷

Once the Committee had a member who felt strongly about the right to culture, Samba Cora Kenate of Senegal. Seemingly the only member of the Committee who felt that cultural rights needed priority, he requested a study on cultural rights in 1992 which led to a day of general discussion on the

³⁵ UNESCO, *Cultural Rights as Human Rights*, 3rd Edition, (UNESCO Publishing, Paris 1977). This publication is essentially a documentation of meeting on 'Cultural Rights as Human Rights' held at UNESCO Headquarters in July 1968. One of the contributors is Boutros Boutros-Ghali, who was later to become Secretary-General of the United Nations.

³⁶ E. Stamatopoulou (2007), p. 48 f

³⁷ General Comment No. 17, Report of the Committee on Economic, Social and Cultural Rights, UN doc E./C.12/GC/17 (12 January 2006), paragraph 49

subject. Konate had many arguments on why the right to culture needed to be expanded and explained, and he was requested by the Committee to draft recommendations on the obligations of States concerning cultural participation. Sadly, he died in 1993, and the Committee's dawning dedication to cultural rights faded quickly. Before he died, however, Konate had prepared a working paper for the day of general discussions in 1992.

Although this working paper has weak status as a legal document, it offers interesting perspectives on how a member of the Committee on Economic, Social and Cultural Rights looked on cultural rights. Konate was clearly into the modern, sociology-inspired "way of life"/cultural identity definition of culture, and he saw socioeconomic development as well as connections to other human rights (such as the right to education) as essential for the fulfillment of cultural rights obligations by the State.³⁸

3.3 Cultural Rights in United Nations Instruments and Regional instruments

Through looking at all the international treaties dealing with cultural rights one way or another,³⁹ I have identified nine different areas in which the legal texts can be categorized:

- Non-discrimination
- Participation in cultural life, including artistic creativity
- Creative freedom
- Author's rights
- Dissemination of culture, including cultural heritage
- Cultural identity/cultural rights for the minority
- Culture in education
- Cultural integration
- International co-operation in the field of culture

The following section deals with these areas, including comments on the connection to the definitions of culture and cultural rights in chapter 2, as well as the treaty texts themselves. This division into nine areas of culture in international human rights law will be used when the legislation and policies of Sweden are examined (chapter 5). All italics in this section are mine.

3.3.1 Non-discrimination

As mentioned in chapter 2.4 above, the principle of non-discrimination is crucial when discussing cultural rights. There can be no cultural diversity without non-discrimination, and the work of UNESCO would be

³⁸ E. Stantaopoulou (2007), pp. 48-54; Y. M. Donders (2002), pp. 151-154

³⁹ It can be noted that the European Convention on Human Rights does not address cultural rights.

meaningless without it. Here is where this rule is found in relation to culture in international law.

- The International Convention on the Elimination of All Forms of Racial Discrimination. Article 1 of the Convention defines “racial discrimination” as

... any distinction, exclusion, restriction or preference based on race, colour, descent or national... or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, *cultural* or any other field of public life.

Article 5 states:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(e) economic, social and cultural *rights, in particular:*

... vi) *the right to equal participation in cultural activities*

(f) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks.

- The Convention on the Elimination of All Forms of Discrimination against Women. Article 5 defines what a violation of the Convention is:

... any distinction, exclusion or restriction made on the basis of sex which has the effect of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, *cultural*, civil or any other field.

Article 13 of the same Convention requires of States to take measures to eliminate discrimination in order to ensure the rights mentioned in article 5, in particular

... (c) *The right to participate in recreational activities, sports and all aspects of cultural life.*

- The Convention on the Rights of the Child. Article 23, which deals with mentally or physically disabled children, states that a disabled child shall have the effective access to and receive

... education, training, health care services, rehabilitation services, and spiritual preparation for employment and recreation opportunities in a manner conducive to the child's achieving the

fullest possible social integration and individual development, including his or her cultural and spiritual development.

- The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. In Article 1, the Declaration establishes the obligation of States to protect the existence of the cultural identity of minorities. According to Article 2, persons belonging to minorities

... have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

3.3.2 Participation in cultural life, including artistic creativity

Cultural participation and artistic expression is not necessarily the same thing – participation in cultural life is much wider than that, see chapter 2.3 – but in international human rights documents they are very often connected to the degree that it is difficult to separate them. Here is where the reference to these rights are found:

- Article 27(1) of UDHR.

Everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits

- Article 15(1)(a) of ICESCR.

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

(a) To take part in cultural life

- Article 31 of the Convention of the Rights of the Child recognizes

... the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

- The American Declaration on the Rights and Duties of Man,⁴⁰ article XIII (Right to the benefits of culture), paragraph 1.

⁴⁰ This Declaration preceded the UDHR by several months when it was adopted in April 1948 at the Ninth Conference of American States. At the same meeting, the Charter of the Organization of American States was adopted, formally creating the OAS. The Declaration

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.

- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, article 14, (Right to the Benefits of Culture), paragraph 1.

The States Parties to this Protocol recognize the right of everyone:

- a. To take part in the cultural and artistic life of the community;

3.3.3 Creative freedom

As mentioned in chapter 2.3 above, freedom of expression is a human right very much connected to cultural rights. Apart from those international conventions and declarations that address this right outside of the cultural context (like UDHR and ICCPR), here is where the right to creative freedom is found in international law:

- Article 15(3) of ICESCR.

The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, article 14(3).

The States Parties to this Protocol undertake to respect the freedom indispensable for scientific research and creative activity.

3.3.4 Author's rights

The cultural right that is perhaps the most clearly associated with the artistic creation aspect of culture is author's rights. Here is where it is enshrined:

- Article 27, paragraph 2 of UDHR

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(1)(c) of ICESCR.

The States Parties to the present Covenant recognize the right of every one:

was superseded by the American Convention on Human Rights, but since some States (including USA and Cuba) haven't ratified the Convention, the Declaration is still important.

... (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.

- American Declaration on the Rights and Duties of Man. Article XIII, paragraph 2 states that every person has the right to

... the protection of his moral and material interests as regards his inventions or any literary, scientific or artistic works of which he is the author.

3.3.5 Diffusion and conservation of culture

Dissemination and conservation of culture are two different things, but in international human rights law they have ended up in the same place. This is not surprising: both require positive actions by the State, and both relate to access to culture. Marks describes them like this:

Conservation relates both to museums and traditional culture and folklore, ... and to protection of monuments, sites and cultural property ... Diffusion relates to the circulation of materials of cultural value.⁴¹

Here is where these two aspects of cultural rights are found:

- ICESCR article 15 (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*.

- The Convention on the Rights of the Child. According to article 17, the State is obliged to

... Encourage the mass media to disseminate information and material of social and cultural benefit to the child.

- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, article 14(2).

The steps to be taken by the States Parties to this Protocol to ensure the full exercise of this right shall include those necessary for the conservation, development and dissemination of science, culture and art.

⁴¹ S. P. Marks in M. Bergsmo (ed.) (2003), p. 307

3.3.6 Cultural identity and cultural rights of minority groups

As mentioned in chapter 2.3 and 2.5, the right to culture can be a right for the collective. In international human rights law, this right is almost always formulated as a right for the individual to cultural identity:

- ICCPR, article 27.

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 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 Bill of Human Rights (the trinity of UDHR, ICCPR and ICESCR) that specifically addresses cultural rights of minorities. In an interesting case, *Lovelace v. Canada*, the Human Rights Committee concluded that a State that denies a person belonging to an ethnic minority the enjoyment of this culture violates article 27 of ICCPR.⁴²

- The Convention on the Rights of the Child. According to article 8, States Parties have an obligation to

... respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without interference. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 30 provides that a child belonging to a minority or who is indigenous

... shall not be denied, in community with other members of his or her group, to *enjoy his or her culture*, to profess and practice his or her religion, or to use his or her language.

- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. According to article 31, States Parties of the Convention have an obligation to

... Ensure respects for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin.

⁴² Sandra Lovelace v. Canada, Communication No. R.6/24 (29 December 1977), UN Doc. Supp. No. 40 (A/36/40) at 166 (1981)

3.3.7 Culture in education

Although education is neither mentioned in article 27 of UDHR, nor article 15 of ICESCR, it is linked to culture in many other places in international human rights law. Marks identifies the right to education as one of the “related rights” to the right to culture, and the foremost among these.⁴³ Here is where the right to culture is mentioned in connection with education in international human rights law:

- The International Convention on the Elimination of All Forms of Racial Discrimination article 7:

States Parties undertake to adopt immediate and effective measures, particularly in the fields of *teaching, culture and information*, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

- Article 29 CRC defines the aims of education as including:

the development of respect for the child’s parents, *his or her own cultural identity*, language and values, for the national values in which the country is living, the country from which he or she may originate, and for civilizations different from his or her own.

- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. According to article 4, States

2 ... shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to *develop their culture*, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.

3 ... should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to *learn their mother tongue* or to have instruction in their mother tongue.

4 ... should, where appropriate, *take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing in their territory*. Persons belonging to minorities should have adequate opportunities to gain knowledge of society as a whole.

⁴³ S. P. Marks in M. Bergsmo (ed.) (2003), p. 300

- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. According to article 45(3), States of employment

... shall endeavour to facilitate for the children of migrant workers *the teaching of their mother tongue and culture* and, in this regard, States of origin shall collaborate whenever appropriate.

... may provide schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.

- The African Charter on Human and Peoples' Rights.⁴⁴ Interestingly, the drafters of AfCHPR chose to include the right to education and the right to culture in the same article, as if the two were inseparable. This article (article 17) states that:

1. Every individual shall have the right to education.
2. Every individual may freely, take part in the cultural life of his community.
3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

3.3.8 Cultural integration

This is another factor in cultural rights that is not explicitly addressed in UDHR or ICESCR. In the politics of States, however, integration and culture are difficult to separate; attention to one means attention to the other, at least if culture is understood as the sum total of the material and spiritual activities of a particular social group. Integration is therefore not uncommonly mentioned in association with cultural rights in international human rights law.

- Article 15(2) of ICESCR.

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*.

This “development of culture” can be understood as an integration of the minority culture into the mainstream culture of the State or with other minority cultures. (It can of course also be interpreted as encouragement of evolution and invention in the field of art, literature, music, etc.)

⁴⁴ The African Charter on Human and Peoples' Rights differ from many of the human rights treaties issued by the United Nations in that the focus is both on the individual and the community, from which both rights and duties derive. Consequently, the focus on cultural rights in AfCHPR lies more in the area of cultural participation of the collective and within the collective, rather than on author's rights and individual creativity.

- The Convention on the Rights of the Child. Article 20, which is about adoption and similar actions, states that:

.. due regard shall be paid to the desirability of continuing in a child's upbringing and preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible *social integration and individual development, including his or her cultural and spiritual development.*

- The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. According to article 1, persons belonging to minorities have a right to

... establish and maintain, without discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

3.3.9 International co-operation in the field of culture

- Article 15(4) of ICESCR.

The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

- The Convention on the Rights of the Child. According to article 17, the State is obliged to

... Encourage the mass media to disseminate information and material of social and cultural benefit to the child...
Encourage international cooperation in the production, exchange and dissemination of such information and material from a diversity of sources.
 Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous.

- The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, article 14(4).

The States Parties to this Protocol recognize the benefits to be derived from the encouragement and development of international cooperation and relations in the fields of science, arts and culture, and accordingly agree to foster greater international cooperation in these fields.

4 Applying the Indicators Method to the Right to Culture

4.1 Introduction

This chapter is about the method for examining to what extent Swedish legislation and policies (chapter 5) live up to the obligations the State is subordinated to under to international human rights law in the area of cultural rights (chapter 3). The method used here is called indicators, and the indicators chosen for this thesis stem from the definition of cultural rights used in the thesis (chapter 2.3). The analysis – the legislation and policies of Sweden observed through “indicators glasses” – will take place in chapter 6.

4.2 About the method

As the *Human Development Report 2000* states, “Information and statistics are a powerful tool for creating a culture of accountability and for realizing human rights.”⁴⁵ Otherwise, countries that ratify or accede to specific human rights instruments cannot assess their own performance in promoting meaningful realization of the enumerated rights. Further, without effective monitoring, States cannot be held accountable for implementation of, or be made liable for violations of, these rights.

- Audrey R. Chapman⁴⁶

The problem with human rights is not that there are no international treaties covering them (there are) or no States that have ratified these treaties (they have, more or less). Rather, the problem lies in the issue of controlling or measuring whether the States Parties live up to their treaty obligations or not. As a result of this, a method for reviewing results has gained ground as of later years – the use of indicators. Deconstructing the abstract rights into sets of small, concrete questions, indicators enables both human rights organizations as well as the States themselves to see how well the protection of human rights works in practice.

⁴⁵ United Nations Development Program, *Human Development Report 2000* (New York and Oxford: Oxford University Press, 2000), p. 10

⁴⁶ A. R. Chapman, *Indicators and Standards for Monitoring Economic, Social and Cultural Rights*, a report presented at the Second Global Forum on Human Development (Rio de Janeiro, 9-10 October 2000) and published on the UNDP Human Development Reports webpage (hdr.undp.org/docs/events/global_forum/2000/chapman.pdf), p. 1

According to Maria Green, a human rights indicator is a piece of information used in measuring the extent to which a legal right is being fulfilled or enjoyed in a given situation.⁴⁷

Indicators can be of many kinds, for example statistic-based or thematic (non-statistic-based).⁴⁸ It all depends on what is to be measured – quality or quantity. In the case of human rights and the willingness of States Parties of the ICESCR to “take steps”, a qualitative approach might be the wisest one. Since the rights of ICESCR themselves are not of the either/or-type, indicators for measuring the fulfillment of these rights can not be completely static and rigid.

It should be pointed out that the formulation of an indicator depends on the resources available for the indicator-checking actor. A State interested in reviewing its own conduct use different indicators from those used by a student writing a master thesis, even if the object of review is identical. Therefore, the indicators used in this thesis have a smaller scope than those used by a self-monitoring State with the aim of going to the bottom with the obligations of ensuring cultural rights for its population. All aspects of society cannot be monitored here; the author will settle for reviewing major legal and governmental documents concerning culture and cultural rights.

4.3 Main indicators and sub-indicators

In order to identify suitable indicators for the right to culture, I have divided the subject into four “main indicators”, which in turn function as categories for several “sub-indicators”. The four main indicators are called available, accessible, acceptable and adaptable.⁴⁹ Each can be described by a question:

- AVAILABLE – Does the domestic legal framework ensure the availability of the rights in question?
- ACCESSIBLE – Is the practical access to the rights, including to relevant services and mechanisms, secured for everyone without discrimination of any kind?
- ACCEPTABLE – Is the quality of implementation, including relevant services and mechanisms, ensured?

⁴⁷ M. Green, ‘What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement’ in *Human Rights Quarterly*, vol. 23 (Johns Hopkins University Press 2001), p 1065

⁴⁸ *ibid.*, pp. 1076-1080

⁴⁹ This scheme was applied in the Raoul Wallenberg Institute report C. Johnsson et. al., *Gender Justice, Best Practices* (RWI/ILAC, 2007) which was commissioned by the International Legal Assistance Consortium upon request from the Haitian Ministry of Women’s Affairs and Women’s Rights. The scheme was first used by Katarina Tomasevski in her publication *Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable* (RWI/SIDA, 2001). It is also mentioned in M. Green (2001), p. 1072

- ADAPTABLE – Is there a broader perspective on the realization of the rights, i.e. are they coupled with on-going policy-making, integration, evaluation and education?

The division in main indicators and sub-indicators is an important one. By inventing indicators, a researcher can break down human rights into more concrete issues, and by breaking up these indicators into sub-indicators, the researcher can get even closer to real answers. There are other schools of dividing indicators into subgroups – for example, “result indicators” which can be of three kinds (situational or impact indicators, outcome indicators, and output indicators),⁵⁰ or the “SMART” method of selecting indicators (looking for indicators that are Specific, Measurable, Attainable, Relevant and Trackable).⁵¹ However, for this specific take on cultural rights, this author has found the Available, Accessible, Acceptable & Adaptable method to be the best applicable.

4.4 Identifying indicators in the field of cultural rights

UNESCO publishes World Culture Reports (WCR) every second year; this commenced after the 1995 recommendation of the World Commission on Culture and Development. Within this framework, UNESCO has made some efforts in attempting to develop indicators in the area of cultural rights. However, WCR acknowledges that there are difficulties in defining cultural indicators – non-reflection of cultural concerns through existing statistics, lack of uniformity in the coverage of cultural indicators among countries, and reliability of indicators in the WCR given the variety of sources from which data are obtained for the WCR. Still, the Report has managed to identify some indicators which can be considered practical and meaningful: number of books produced, number of books in public libraries, cultural radio and television programs, indicators on performing arts/recorded music/museum personnel, trend data on cinema attendance, feature films produced/imported/leading country of origin, trend data on foreign visitors, indicators on translations and books in foreign languages, foreign students, newspaper circulation daily, and cultural trade.⁵²

Notably, all of these suggestions imply a statistics-based indicator approach. While statistical data certainly can be useful, the abstract nature of culture (and indeed of cultural rights) requires qualitative indicators as well.

The indicators that this author has found most useful considering the purpose and scope of the thesis are presented in the following.

⁵⁰ *RBM in UNDP: Selecting Indicators (Signposts of Development)*, published on the UNDP webpage (<http://www.undp.org/eo/documents/methodology/rbm/Indicators-Paper1.doc>), p. 6 f

⁵¹ *ibid*, p. 12 f

⁵² Stamatapoulou, p. 160

4.5 The Indicators

For main indicator no. 1 (available), I have formulated two sub-indicators.

- *Ratification of international and regional human rights instruments*
The indicator asks the question: have the State signed and ratified the international treaties on the subject? When speaking of cultural rights, this of course means the conventions and declarations of chapter 3.3 of this thesis.
- *Legal framework in line with international standards on cultural rights*
A State can sign and ratify a treaty without actually implementing it in its national legislation. This indicator looks at how the treaty-based obligations on cultural rights take shape in the actual laws of the State, especially in the constitutional laws since they contain the framework for all new laws.

For main indicator no. 2 (accessible), I have formulated the following sub-indicators:

- *Non-discrimination in legislation*
A basic prerequisite for the distribution of any human rights-based services by a State is that the citizens of the State are not discriminated on grounds such as gender, ethnicity, age, and physical disability. See chapter 2.4 and 3.3.1 above. How is this reflected in the legislation of the State in question?
- *Policy on the prevention of discrimination in cultural participation*
Non-discrimination in cultural rights is not only a matter of giving access, it is also about encouraging and involving people from all sides of the population. This is something that is difficult to regulate through laws, but a responsible State will make sure that it has a clear policy for this purpose. The indicator investigates whether such a policy exists or not.

For main indicator no. 3 (acceptable), the sub-indicators are:

- *Quality and diversity of cultural services provided by the State*
The right to participate in cultural life involves an obligation for the State to give the citizens access to culture (see chapter 3.3.5 above). But what kind of cultural output or services are provided? How well is the State doing in providing libraries, museums, concert halls, etc? This also involves the cultural heritage perspective on culture – is the cultural heritage of the State present in the services provided by the State?

The nature of States' obligations in the area of economic, social and cultural rights – “progressive realization” – means that there is not simply and either/or scenario; a time perspective is needed. The future is almost as important as the present in the ensuring of cultural rights in a State,

therefore the State's policy on goals for the future of cultural services is a factor that needs to be paid attention to.

- *Climate for cultural creativity in the State*

Actions by the State for improving cultural participation do not only come in the form of services for culture-consuming citizens. It is also important to create conditions for the creating artists and other producers of cultural activities. The fact that participation in cultural life and artistic creation are closely linked was brought up in chapter 3.3.2 above. This indicator looks on the status of the creator and the creation in the State.

Finally, for main indicator no. 4 (adaptable), the sub-indicators are:

- *Culture and integration – ethnical and educational perspectives*

The modern, minority-conscious perspective on culture – the sum total of the material and spiritual activities of a particular social group – gives the State an obligation to protect the cultures of its minorities. Also, the acknowledgment of a multicultural society obliges the State to take steps in integrating the different cultural groups with each other and in cultural life. See chapter 3.3.8 above.

However, integration is not restricted to the realm of ethnicity. Cultural rights need to be integrated in all facets of society, and education is an important aspect of this project. The right to education is a separate human right and a separate issue (although linked to culture; see chapter 3.3.7 above), but how is culture advocated in the education system of the State?

- *International co-operation – a global perspective on cultural participation*

ICESCR article 15, the most exhaustive of all international legal provisions on cultural rights, explicitly encourages States to co-operate internationally in the field of culture. The work of UNESCO (and indeed, the whole idea behind the United Nations) is in line with this philosophy. The indicator asks what the State does to improve international co-operation in the field of culture.

5 Cultural Rights in Sweden

5.1 Introduction

This chapter deals with Swedish legislation and policy documents concerning cultural rights. After a look on which of the relevant international treaties Sweden is a party of, I will go through the Swedish laws, ordinances and policy documents on culture, using the same system of dividing cultural rights into nine areas that was used for international law in chapter 3. By doing this, I hope to make comparison with international standards easy for the reader and for the analysis, which will take place in chapter 6. The chapter will end with a look on the present Governmental Budget for the area of culture, in order to get a glimpse of the role of culture and cultural rights in today's Swedish politics.

5.2 International Instruments Signed and Ratified by Sweden

Sweden was one of the first members of the United Nations and has been a keen participant ever since, and the Swede Dag Hammarskjöld was one of the organization's most famous secretary-generals. Chapter 3.3 above referred to the many UN declarations and conventions that, in one way or another, deal with cultural rights. Here is a run-through on how Sweden has positioned itself to these documents:

- The Universal Declaration of Human Rights: adopted by the UN General Assembly in 1948
- International Covenant on Civil and Political Rights: signed in 1967, ratified in 1971. Sweden entered a reservation in connection with article 7 (d) of the Covenant in the matter of the right to remuneration for public holidays; however, this has no effect on the cultural rights aspects of the Covenant (article 27).
- International Covenant on Economic, Social and Cultural Rights: signed in 1967, ratified in 1971. Reservations to article 10(3), article 14(7), and article 20(1); none of them related to the cultural rights (article 15).
- Convention on the Elimination of All Forms of Racial Discrimination: signed in 1967, ratified in 1971.
- Convention on the Elimination of All Forms of Discrimination Against Women: signed and ratified in 1980.
- Convention on the Rights of the Child: signed and ratified in 1990.
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: adopted by the UN General Assembly in 1982

- International Convention on the Protection of the Rights of All Migrant Workers and their Families: Sweden has not signed this convention.

The regional treaties mentioned in chapter 3.3 above are not applicable to Sweden for geographical reasons. Since the European Convention on Human Rights does not deal with cultural rights at all, the fact that Sweden is a signatory State is of little importance (apart from the fact that it reflects a general willingness towards international human rights agreements).

5.3 Swedish legislation and policy documents on the Right to Culture

Following is an exposition on cultural rights in Swedish laws (adopted by Riksdagen, which is the Swedish Parliament), ordinances (adopted by the Government) and policy documents. The nine areas' relation to the definition of cultural rights have already been discussed in chapter 3.3 and will not be repeated here. Translations of the Swedish documents are courtesy of the homepage of the Swedish Government and those of the institutions mentioned. All italics are mine.

5.3.1 Non-discrimination

The Instrument of Government (Regeringsformen, SFS 1974:152). This is one of the four Fundamental Laws that form the Swedish Constitution, and it is arguably Sweden's most important law, regulating how the State is run and by who, and which basic rights and freedoms that are guaranteed its citizens.

Chapter 1, article 2, paragraph 1 of the Instrument of Government stipulates that

Public power shall be exercised with respect for the equal worth of all and the liberty and dignity of the private person.

The same article constitutes that there shall be institutions working for the elimination of discrimination:

The public institutions shall promote the opportunity for all to attain participation and equality in society. The public institutions shall combat discrimination of persons on grounds of gender, colour, national or ethnic origin, linguistic or religious affiliation, functional disability, sexual orientation, age or other circumstance affecting the private person.

As evidenced by these provisions, the principles of equality and non-discrimination are important cornerstones the Swedish view of a democratic society. For the purpose of safeguarding groups of society that risk being discriminated, there are ombudsmen for each of these groups – the Equal

Opportunities Ombudsman who monitors the equal treatment of men and women (JämO),⁵³ the Ombudsman Against Ethnic Discrimination (DO),⁵⁴ the Disability Ombudsman (HO)⁵⁵ and the Sexual Orientation Ombudsman (HomO)⁵⁶. There is also the Discrimination (Goods and services) Act (Lag (2003:307) om förbud mot diskriminering) which covers discrimination in other areas than work – for example, sale of goods and services. All four ombudsmen share the supervision of this Act.

Later developments in the work for non-discrimination include two laws prohibiting discrimination against pupils in elementary school and college students. Here, too the supervision is handled by all four ombudsmen.⁵⁷

Recently, it has been decided that all four ombudsmen against discrimination shall merge into one big anti-discrimination institution that will cover all types of discrimination. The changes will be in force from January 1, 2009. The protection against discrimination in Sweden will be even stronger with the new legislation, now also taking in age and gender identity manifestations as possible grounds for discrimination. Also, it will be easier for the discriminated individual, who now only has one institution where he or she can send his or her complaint.⁵⁸

5.3.2 Participation in cultural life, including artistic creativity

One of the most important cultural institutions in Sweden is the Culture Council of the State (Statens Kulturråd). According to chapter 1 of the Instruction for the Culture Council of the State Ordinance (Förordning (2007:1186) med instruktion för Statens kulturråd), the mission of the institution includes to follow the development in the area of culture and assist the government in the fulfillment of the national culture policies, and to supervise requests for state funding of cultural activities and other State actions concerning theatre, dance, music, art, museums, exhibitions, literature, and public libraries. The institution also has a sector responsibility for issues of disabled persons connected to its field of activity.

⁵³ see the Equal Opportunities Act (Jämställdhetslagen, SFS 1991:433)

⁵⁴ see [the Law on the Ombudsman Against Ethnic Discrimination](#) (Lag (1999:131) om Ombudsmannen mot Etnisk Diskriminering)

⁵⁵ see the Disability Ombudsman Act (Lagen (1994:749) om handikappombudsmannen) and [the Prohibition of Discrimination in Working Life of People because of Disability Act](#) (Lag (1999:132) om förbud mot diskriminering i arbetslivet på grund av personer med funktionshinder)

⁵⁶ see the Sexual Orientation Discrimination (Employment) Act (lag (1999:133) om förbud mot diskriminering i arbetslivet på grund av sexuell läggning),

⁵⁷ see the [Equal Treatment of Students at Universities Act](#) (Lag 2001:1286) om likabehandling av studenter i högskolan) and [the Act Prohibiting Discrimination and Other Degrading Treatment of Children and School Students](#) (Lag (2006:67) om förbud mot diskriminering och annan kränkande behandling av barn och elever)

⁵⁸ see the Discrimination Act (Diskrimineringslag, SFS 2008:567) and the [The Law on the Ombudsman Against Discrimination](#) (lag (2008:568) om Diskrimineringsombudsmannen).

There are many receivers of state funding, regulated in different ordinances. The Special Actions in the Area of Culture Ordinance (Förordning (1989:500) om vissa särskilda insatser på kulturområdet) permits state funding (in essence, a salary) for full-time authors, artists, composers and young or experimental filmmaker. The Ordinance on Support for Certain Non-Governmental Cultural Houses (Förordning (1990:573) om stöd till vissa icke-statliga kulturlokaler) regulates the funding of building and rebuilding of museums, theatres and concert halls not owned by the State.

The Ordinance on State Funding for Liberal Adult Education (Förordning (1991:977) om statsbidrag till folkbildningen) regulates the funding of certain educational organizations outside of the national education system. Among such organizations, those who are devoted to the “common body of values” (identified here as the equal worth of all human beings and the equality between men and women), the challenges of the multicultural society, the life-long learning, or simply culture belong to those who deserve special priority (section 2, paragraph 2 of the Ordinance).

Economic support for cultural magazines is regulated in the Ordinance on State Support for Cultural Magazines (Förordning (1993:567) om statligt stöd till kulturtidskrifter); a cultural magazine is defined as a publication that address a general public with societal information or economic, social or cultural debate, or one that is mainly devoted to analysis and presentations of the arts (section 2 of the Ordinance). Regional cultural activities, an important factor in making people all over the country active in cultural participation, are regulated in the Ordinance on State Funding of Regional Cultural Activities (Förordning (1996:1598) om statsbidrag till regional kulturverksamhet). In order to support the cultural and artistic activities of pupils in the early teens, there is an Ordinance on State Funding of Cultural Activities in Schools (Förordning (2007:1436) om statsbidrag till kulturell verksamhet i skolan).

Chapter 5.3.8 below will deal with cultural participation connected to integration.

5.3.3 Creative freedom

Chapter 2 of the Instrument of Government is titled “Fundamental Rights and Freedoms” and these are enumerated in article 1 of the chapter. Among the rights is the freedom of assembly, which is defined as the freedom to organize or attend meetings for the purpose of, among other things, presenting artistic work. Article 2 of the same chapter protects the individual’s integrity in cultural participation and opinion when it states that

Every citizen shall be protected in his relations with the public institutions against any *coercion to divulge an opinion in a political, religious, cultural or other such connection*. He shall furthermore be

protected in his relations with the public institutions against any coercion to participate in a meeting for the formation of opinion or a demonstration or other manifestation of opinion, or to belong to a political association, religious community or other association for opinion referred to in sentence one.

This constitutional normative provision is affirmed in article 12, paragraph 2 of the same chapter, which stipulates that restrictions of basic rights and freedoms through laws may be imposed only if they satisfy a purpose acceptable in a democratic society, that the restriction must never go beyond what is necessary, and that no restriction may be imposed solely on grounds of a political, religious or cultural opinion. According to article 13, in judging what restrictions may be introduced, particular regard shall be had to the importance of the widest possible freedom of expression and freedom of information in political, religious, professional, scientific and cultural matters.

There can be no freedom of cultural creativity without freedom of expression. This freedom, apart from being enumerated in the list of fundamental rights and freedoms in chapter 2, article 1 of the Instrument of Government (it is actually the first right mentioned), is dealt with in two of the other fundamental laws which make up the Swedish Constitution: the Freedom of Press Act (Tryckfrihetsförordningen. SFS 1949:105) and the Fundamental Law on Freedom of Expression (Yttrandefrihetsgrundlagen, SFS 1991:1469). These two regulate printed and broadcast media, respectively.

Chapter 1, article 1, paragraph 2 of the Fundamental Law on Freedom of Expression makes a clear link between this right and cultural rights:

The purpose of freedom of expression under this Fundamental Law is to secure the free exchange of opinion, free and comprehensive information, and freedom of artistic creation.

There are limitations to the freedom of expression: it is, for example, illegal to distribute child pornography in Sweden. And the content of films shall be examined and approved by the National Board of Film Censors prior to showing at a public gathering or entertainment. This type of film censorship is regulated in the Examination and Control of Films and Videograms Act (Lag (1990:886) om granskning och kontroll av filmer och videogram).

5.3.4 Author's rights

Chapter 2, article 19 of the Instrument of Government states another principle for the field of cultural rights: that authors, artists and photographers shall own the rights to their works.

As already mentioned, the Instrument of Government guarantees authors, artists and photographers to the ownership the rights to their works. This

right is further elaborated in the Rights of Authors of Literary or Artistic Works Act (Lag (1960:729) om upphovsrätt till litterära och konstnärliga verk). Chapter 1, article 1 of the Act affirms that the author's rights are equal no matter if the work is a literary or descriptive text, computer program, musical or stage work, film, photographic or other pictorial work, architecture or a work that has been produced in another way. An important section of the Act concern the right of the author not to have his or her artistic material distorted or changed when exposed to the public, for example in a TV broadcast of a movie (chapter 1, article 3). Two Swedish film directors, Vilgot Sjöman and Claes Eriksson, recently sued the Swedish television channel TV4 for violating this provision, and won in the Supreme Court.⁵⁹

The status of artistic works in Sweden is confirmed through the Legal Deposit Copies of Documents Act (Lag (1993:1392) om pliktexemplar av dokument). It requires everyone who duplicates and publishes a printed or electronic document (for example a book, a CD, a DVD or a computer game) that is intended for distribution in Sweden to provide legal deposit copies to the National Library.

5.3.5 Diffusion and conservation of culture

Cultural objects and experiences are disseminated to the citizens by the Swedish State by giving access to libraries, museums and the cultural heritage of Sweden.

Regulations on public library services are found in the Libraries Act (Bibliotekslag, SFS 1996:1596), of which section 2 states:

In order to promote interest in reading and literature, information, enlightenment and education and also cultural activities generally, every citizen should have access to a public library.

The public libraries shall work to ensure that data-based information is made available to all citizens.

Every municipality shall have a public library.

And the first sentence of section 3 reads:

The public shall be able to borrow literature for a specified period from the public libraries free of charge.

The Instruction of World Culture Museums of the State Ordinance (förordning (2007:1185) med instruktion för Statens museer för världskultur) regulates the State institution in charge of the World Culture Museum, the Museum of Ethnography, the East Asia Museum and the Mediterranean Museum. The purpose of the institution (section 1 of the

⁵⁹ Högsta Domstolens dom 18 mars 2008, mål nr T 2117-06

ordinance) is to make the cultures of the world alive and visible and to cast light on the different expressions and conditions of different cultures, as well as cultural meetings throughout history and in today's society.

Cultural heritage is another important issue, according to chapter 1, section 1, paragraph 1 of the Heritage Conservation Act (lag (1988:950) om kulturminnen m.m.):

It is a national concern to protect and conserve our cultural environment.

The Heritage Conservation Act is the core legislation for preservation of Sweden's historic environment. The act protects place names, ancient remains, archaeological finds, historic buildings, ecclesiastical monuments and the export of specified older artifacts. The National Heritage Board is, along with County Administrative Boards all over Sweden, responsible for the supervision of the preservation of ancient monuments and finds. The Board's mission involves promoting collaboration among people and organizations involved in the effort, as well as studying the impact of social change on the historic environment.

The historic environment is also protected through the Environmental Code (Miljöbalken, SFS 1998:808) and the Planning and Building Act (Plan- och bygglag, SFS 1987:10) which prevent destruction of historically and culturally important buildings and sites.

The nature can also be considered to be part of the cultural heritage. The possibility of wandering freely in the nature is an old principle in Sweden, called allemansrätten (the right of public access), which is protected in the Instrument of Government (chapter 2, article 18, paragraph 3). Further regulations on the right of public access can be found in chapter 7, article 1 and chapter 26, article 11 of the Environmental Code. Basically, they say that the right of public access is connected to a responsibility of carefulness.

5.3.6 Cultural identity and cultural rights of minority groups

The constitutional protection for cultural identity can be derived from chapter 2, article 1 of the Instrument of Government, which guarantees every citizen the freedom of worship. Although there are other parameters for cultural identity, religion is one of the most central, at least for persons coming from non-secular societies.

The Sami are native Swedes, a minority with a long history of cultivating the land in northern Sweden. Sami culture is protected through the Sami Council Act (Sametingslag, SFS 1992:1433) which stipulates that there shall be a special "miniature parliament" for the Sami population, whose

mission is mainly to guard issues related to Sami culture in Sweden (chapter 1, section 1 of the Sami Council Act).

There are many other minorities in Sweden, since the country has a long history of immigration which accelerated during the second half of the 20th century. In order to protect their cultures, the Ordinance on State Funding of National Minorities (Förordning (2005:765) om statsbidrag för nationella minoriteter) grant economic support for organizations that represent national minorities other than the Sami. Since not all minorities are national minorities – for example, the Kurds or the Roma – the Ordinance on State Funding of Organizations Founded on Ethnic Grounds (Förordning (2008:63) om statsbidrag till organisationer bildade på etnisk grund) give the same right to organizations that represent this kind of minorities.

5.3.7 Culture in education

The Curriculum for the Compulsory School System, the Pre-School Class and the Leisure-time Centre (Lpo 94) is the primary source for identifying the goals of educational policies in Sweden and their relation to cultural rights.

According to the webpage of the Swedish National Agency for Education (Skolverket), the Curriculum shall be based on the following international agreements: the UDHR, the Convention of the Rights of the Child, the UNESCO Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms, the Rio Declaration on Environment and Development and Agenda 21.⁶⁰

The Curriculum that has been in force since 1994 has many references to the importance of culture. It stresses that awareness of one's own cultural origins and sharing a common cultural heritage provides a secure identity, and that the school both a social and cultural meeting place.⁶¹

According to the Curriculum, the school is responsible for ensuring that all pupils completing compulsory school have developed their ability to express themselves creatively and become interested in participating in the cultural activities offered in society, that they have gained knowledge about their national cultural heritage and about the cultures of the national minorities, are able to develop the ability of expression in language, pictures, music, drama or dance, and have developed their understanding of other cultures.⁶²

⁶⁰ <http://www.skolverket.se/sb/d/469>, last checked August 20th 2008

⁶¹ Curriculum for the Compulsory School System, the Pre-School Class and the Leisure-time Centre (Lpo 94), pp. 3-4

⁶² *ibid.*, p. 10

5.3.8 Cultural integration

In the Riksdag year of 1996/97, the first Government Bill on Culture Policies since 1974 was issued and adopted. This major document on the role of culture in today's society has not yet had a successor and is thus still valid. In it, the government formulated five principles which were to constitute the goals for the future policies on culture in Sweden:

- Protect the freedom of expression and create concrete conditions for everyone to use it
- Strive for the equal opportunity of everyone to experience cultural activities and personal creativity
- Fight the negative effects of commercialization and advocate the plurality, artistic innovation and quality of culture
- Conserve and cultivate the cultural heritage
- Encourage international cultural exchange and meetings of different cultures within the country.⁶³

The major change from the older generation of cultural policies of the 1996/97 Bill was the focus on the modern multicultural society and the benefits and responsibilities deriving from it.

The Written Communication by the Government on Culture and Participation was issued with the intention of reviewing the effects of cultural policies in the years that had passed since the Cultural Policy Bill of 1974. The conclusion was in short that things are moving in the right direction – i.e. the barriers between different social groups in cultural participation are breaking down – but a lot still remains to be done.

Many traditional social patterns in cultural activities persisted – women were more active than men, middle aged persons participate more in cultural life than persons in older and younger age groups, persons born in Sweden are more active than immigrants, and with higher socioeconomic status follows a higher level of cultural activity. Still, the development during the years show that differences in cultural activities connected to group belongings have changed and in several cases diminished.⁶⁴

5.3.9 International co-operation in the field of culture

The Instruction for the Swedish UNESCO Council Ordinance (Förordning (2007:950) med instruktion för svenska Unescorådet) regulates the mission of the Swedish UNESCO Council, the link between the work of UNESCO and the Swedish government. The institution gives the government advice on issues related to UNESCO's activities and Sweden's participation in

⁶³ Government Bill on Culture Policies (proposition 1996/97:3 Kulturpolitik), p. 27 f

⁶⁴ Written Communication by the Government on Culture and Participation (Skrivelse 2001/02:176 Kultur och delaktighet), p. 19 f

these activities. It also cooperates with other national institutions and with UNESCO Councils of other States.

In the Written Communication on Human Rights in Swedish Foreign Policy (Skrivelse 2007/08:109 Mänskliga rättigheter i svensk utrikespolitik), issued by the Foreign Ministry, the Swedish government presents its ambitions and priorities concerning the work for human rights in Swedish foreign policy. Although cultural rights are not in the forefront, and never mentioned outside the trinity concept of economic, social and cultural rights, they are present to a certain extent.

One ambition of the Swedish government is to strengthen the freedom of expression internationally. In this section of the document, the government states that the connection between freedom of expression and poverty and lacking respect for economic, social and cultural rights is central. Those who cannot read and write have a hard time practicing their freedom of speech, and the revolutions that new media has brought to the freedoms of expression and opinion cannot be used by those who lack access to these resources. These connections will be paid attention to in the Swedish development program.⁶⁵

Concerning the participation in the United Nations, the government plans to work for the strengthening of the integration of human rights – civil and political rights as well as social, economic and cultural rights – in UN funds, programs and treaty bodies.⁶⁶

5.4 National Budget for 2008 in the Area of Culture, Media, Religious Communities and Recreation

Reading the National Budget Bills is another way to see how the government respects its duties and reviews its efforts in the area of culture. In plain digits, we can see that the dedication to culture is, at least financially, not on the way down: the government proposed 6 123,2 million SEK for the area of culture for 2008, while the prognosis of the previous year showed 5 988,6 million SEK – and the future looked even brighter, with 6 241,4 million SEK as an estimated budget for 2009 and 6 346,8 million SEK for 2010.⁶⁷

⁶⁵ Written Communication by the Government on Human Rights in Swedish Foreign Policy (Skrivelse 2007/08:109 Mänskliga rättigheter i svensk utrikespolitik), p. 12 f

⁶⁶ *ibid.*, p. 44 f

⁶⁷ National Budget for 2008 in the Area of Culture, Media, Religious Communities and Recreation (Proposition 2007/08:1 Förslag till statsbudget, utgiftsområde 17. Kultur, medier, trossamfund och fritid), p. 25

The Budget also reaffirmed that all of the cultural policy goals of the 1996/97 Bill on Cultural Policies were still intact – a noteworthy statement, since the government today consists of a coalition of liberal-conservative parties, as opposed to the Social Democratic Party that ruled between 1994 and 2006, a party with a very different political agenda.⁶⁸

⁶⁸ *ibid.*, p. 26

6 Analysis

6.1 Main Indicator 1 applied to Sweden

6.1.1 Sub-indicator 1: Ratification of international and regional human rights instruments

A list of United Nations instruments signed and ratified by Sweden was found in chapter 5.1 above. The list is quite impressive, as all but one of the United Nations treaties connected to cultural rights has been adopted by Sweden.

The exception is the International Convention on the Protection of the Rights of All Migrant Workers and their Families. While this is regrettable, the Convention is hardly the most important human rights instrument on the right to culture. Still, the Convention is a factor in widening cultural rights as to incorporate a right to cultural identity, and its message cannot be ignored by States that are serious in their devotion to cultural rights and their development.

An interesting note is that not only have Sweden signed the major treaties on cultural rights (indeed, on human rights in general), but the State has not seldom been one of the first signatories of the treaties in question. Both ICESCR and ICCPR were signed in 1967, very soon after the covenants were finished in 1966. The same goes for, for example, the Convention of the Elimination of All Forms of Discrimination Against Women in 1980.

Another piece of information relevant to the significance of ratification of international instruments is whether the State has made reservations or not, and if so, if these reservations have watered down the potential impact of the instrument in question. Sweden made very few reservations upon signing ICESCR and ICCPR; however, none of these concerned cultural rights.

6.1.2 Sub-indicator 2: Legal framework in line with international standards on cultural rights

Sweden's legal framework is the Swedish Constitution, the four Fundamental Laws that attain special status in the hierarchy of the Swedish laws, and that are not so easily amended compared to other laws. Three of these deal with cultural rights – the Instrument of Government (discussed in

chapter 5.2.1 above), the Freedom of Press Act and the Fundamental Law on Freedom of Expression (both discussed in chapter 5.2.2 above). The fourth Fundamental Law (the Act of Succession) deals with the succession of the throne and is of no importance here, but of course it has some fundamental value for society since Sweden is a monarchy.

As mentioned earlier, the Instrument of Government establishes a series of legal principles that are essential for the fulfillment of cultural rights. Although the first chapter of the Instrument of Government has the character of a preamble or a manifestation of political aims, and the second chapter is more specific and concrete in its protection of rights and freedoms, culture is interestingly enough something that is paid respect to in both cases. Chapter 1, article 2 mentions how cultural development for all individuals is a goal for the State, while chapter 2, article 2 stresses the importance of the individual's freedom and integrity in his or her cultural participation. The principles of equality, non-discrimination, freedom of expression and of assembly, freedom of worship, author's rights, and the importance of economic, social and cultural rights in general are all established here.

Also noteworthy is that the term human dignity is used⁶⁹ in this context – a link to the preamble of the Universal Declaration of Human Rights, and indeed a confirmation that the law of Sweden rests on the same notion of human rights as that of the United Nations: that human rights are not only about peace between peoples, they are also about the individual's pursuit of improving his or her living conditions, both externally and internally. Dignity for the individual and cultural enrichment go hand in hand. Human rights are about becoming human.

The Freedom of Press Act and the Fundamental Law on Freedom of Expression both deal with freedom of expression, which is a key element of participation in cultural rights. Without freedom of cultural expression⁷⁰, the output of cultural products and services is limited, and this also affects the passive enjoyment of cultural experiences.

I can conclude that the international standards on cultural rights that are manifested in the Swedish Constitution are:

- The “human rights/human dignity/cultural participation” connection
- Freedom of artistic expression (creative freedom) and assembly (which includes clubs and societies devoted to culture – thus, access to culture)
- Equality and non-discrimination (culture by all, for all)
- Author's rights
- Freedom of worship (connected to minority culture and cultural identity)

⁶⁹ “Public power shall be exercised with respect for the equal worth of all and the liberty and dignity of the private person.” (Chapter 1, article 2, of the Instrument of Government)

⁷⁰ “The purpose of freedom of expression under this Fundamental Law is to secure the free exchange of opinion, free and comprehensive information, and freedom of artistic creation.” (Chapter 1, article 1, paragraph 2 of the Fundamental Law on Freedom of Expression”)

6.2 Main Indicator 2 applied to Sweden

6.2.1 Sub-indicator 3: Non-discrimination in legislation

As already mentioned, the Instrument of Government has a clear stance on discrimination. And there are many grounds for discrimination.⁷¹

The awareness of the importance of combating discrimination, manifested in the Instrument of Government, is reflected in most major public institutions of Sweden, as well as in the fact that special ombudsmen institutions have been established over the last decades – the Equal Opportunities Ombudsman (JämO), the Ombudsman Against Ethnic Discrimination (DO), the Disability Ombudsman (HO) and the Sexual Orientation Ombudsman (HomO).

What is also important is that there is a steady development in the field of discrimination prevention. The word “discrimination” is, just like concepts like “justice” or “human rights”, something that changes over time – the first generation of feminists fought for the liberation of women, not for the liberation of homosexual, bisexual and transsexual persons – and it is the duty of any serious democratic State to adapt to the contemporary society, by refreshing old laws and setting up new institutions. That is just what has happened over the years with non-discrimination legislation in Sweden.

And now, after so many separate anti-discrimination institutions has been set up, the logical step is not to add one more (which could be an alternative, for example an “Ombudsman Against Age Discrimination” or an “Ombudsman Against Discrimination on Account of Subjective Gender Belonging”), but to collect them all into one big “super-ombudsman”. Since it is easier for the individual to send in his or her complaint if there is only one institution to send it to, the change is made in the service of democracy. It remains to be seen, though, how successful the new discrimination ombudsman system will be – a worst-case scenario is that the special know-how of each of the areas will be lost. If it does not work out, nothing is keeping the State from considering yet another solution.

6.2.2 Sub-indicator 4: Policy on the prevention of discrimination in cultural participation

Like laws, policy documents issued by the government is in a way directed by the Instrument of Government since the mission of the Swedish State is explained there, although also just like with laws, the priorities of individuals play a role when policy documents are written and adopted. And

⁷¹ See chapter 5.3.1 above or chapter 1, article 2, paragraph 3 of the Instrument of Government

since non-discrimination and equality is a part of the Instrument of Government, so are the policy documents on cultural participation.

The five principal goals of Swedish cultural policies, first presented in the Government Bill on Culture Policies (Proposition 1996/97:3 Kulturpolitik) and later confirmed in the Written Communication by the Government on Culture and Participation (Skrivelse 2001/02:176 Kultur och delaktighet) and in the National Budget for 2008 in the Area of Culture, Media, Religious Communities and Recreation (Proposition 2007/08:1 Förslag till statsbudget, utgiftsområde 17. Kultur, medier, trossamfund och fritid), were and are:

- Protect the freedom of expression and create concrete conditions for everyone to use it
- Strive for the equal opportunity of everyone to experience cultural activities and personal creativity
- Fight the negative effects of commercialization and advocate the plurality, artistic innovation and quality of culture
- Conserve and cultivate the cultural heritage
- Encourage international cultural exchange and meetings of different cultures within the country.⁷²

Three non-discrimination aspects are revealed here: the equal opportunity of everyone, the fight for plurality, and the meetings of different cultures within the country. It is impossible not to see the removal of racial prejudice barriers and xenophobic skepticism as side-goals to these aims for cultural life. We cannot have one without the other.

That these efforts are slowly paying off is evidenced in the Written Communication by the Government on Culture and Participation (Skrivelse 2001/02:176 Kultur och delaktighet), which stated that the social patterns of cultural participation is slowly changing for the better.

The recent budget did also testify to a continued struggle against discrimination and segregation and towards a total representation of the Swedish population in cultural life.

6.3 Main Indicator 3 applied to Sweden

6.3.1 Sub-indicator 5: Quality and diversity of cultural services provided by the State

Quality and diversity go hand in hand when it comes to public service in the area of culture – because lack of diversity means lack of quality. For an immigrant-heavy State like Sweden it is a duty to let all minority cultures be

⁷² Government Bill on Culture Policies (proposition 1996/97:3 Kulturpolitik), p. 27 f

visible and welcome for everyone to explore. And a State that coexist with other States and has a positive attitude towards international trade and global environment issues – which Sweden does and has – should consequently endorse the cultural treasures from all over the world.

It is fitting, then, that Sweden has an institution like the World Culture Museums of the State, with a mission to make the cultures of the world accessible in Sweden through museums. The institution is in charge of the World Culture Museum (residing in Gothenburg), the Museum of Ethnography, the East Asia Museum and the Mediterranean Museum (all three residing in Stockholm). The Swedish State owns a number of other museums as well, including the Modern Museum (Moderna Museet, covering contemporary art) and the National Museum of Natural History (Naturhistoriska Riksmuseet), signaling that there are other factors than world culture that make up the concept of cultural diversity.

Equally important as what is accessible is who has access. Most of the biggest and most popular museums are situated in Stockholm or one of the other major cities of Sweden; museums, however, is not the only arena for providing culture to the people. According to Swedish law, every municipality shall have a library and every county should (sic) have a county library. It is in the State's interest to promote the public interest in reading, literature, enlightenment through information-seeking, and cultural activities generally. Normal loans are free of charge, accessible to all.⁷³

Since culture is not only arts and books, nor only peoples' cultures, but also the cultural heritage of mankind, efforts in making this type of cultural experiences accessible for the citizens is another important duty for every State. In Sweden there is a special law, the Heritage Conservation Act (lag (1988:950) om kulturminnen m.m.), as well as an institution tied to it (the National Heritage Board), to make sure that the historic environment is protected and preserved.

The nature is another part of the cultural heritage. The right of public access gives everyone access to nature, including private property, as long as the visitor maintains a spirit of respect and carefulness.

6.3.2 Sub-indicator 6: Climate for cultural creativity in the State

The right to artistic creativity is the archetype of an economic, social and cultural right – it is basically a freedom from something (censorship or other interference by the State), but it is a freedom that requires positive actions by the State, since most artists *in spe* need financial help to create works without having to succumb to commercial appeal. In other words, a State cannot claim that it protects the right to creative freedom just by not interfering. What does Sweden do?

⁷³ section 2 and 3 of the Libraries Act (Bibliotekslagen, SFS 1996:1596)

As mentioned in chapter 5.2.7 above, the Culture Council of the State funds many of the cultural activities in Sweden through public means. The Council supervises requests for state funding of cultural activities and other State actions concerning theatre, dance, music, art, museums, exhibitions, literature, and public libraries. Through legislation such as the Special Actions in the Area of Culture Ordinance (Förordning (1989:500) om vissa särskilda insatser på kulturområdet) or the Ordinance on State Support for Cultural Magazines (Förordning (1993:567) om statligt stöd till kulturtidskrifter), people can apply for State funding of creative activity – and have their wishes fulfilled, if their ideas are good enough. Those who are devoted to culture without necessarily wishing to be creators themselves can use State funding for building houses for cultural activities, starting up organizations for the promotion of liberal adult education, or increase the cultural activities in the municipality or in schools.⁷⁴

In spite of all these quite generous actions by the State, we must not forget that the freedom of cultural creativity is worth little if it is not free. As mentioned previously, the Swedish Constitution protects the freedom of expression both in the Instrument of Government and in the two media-controlling fundamental laws, the Freedom of Press Act and the Fundamental Law on Freedom of Expression.

Some cultures regard cultural works, such as songs or literature, to belong to everybody. Other cultures draw a clear line between those who have created something and those who simply enjoy the creations. Human rights instruments issued by the United Nations are children of the latter culture, with article 27(2) of UDHR, article 15(1)(c) of ICESCR, and the Universal Copyright Convention of 1952 (in the drafting of which UNESCO played a major part) as the most obvious examples. Sweden belongs to this culture as well, with the rights of the author enshrined both in the Instrument of Government (chapter 2, article 19) and in the Rights of Authors of Literary or Artistic Works Act (Lag (1960:729) om upphovsrätt till litterära och konstnärliga verk).

⁷⁴ see the Ordinance on Support for Certain Non-Governmental Cultural Houses (Förordning (1990:573) om stöd till vissa icke-statliga kulturlokaler), the Ordinance on State Funding for Liberal Adult Education (Förordning (1991:977) om statsbidrag till folkbildningen), the Ordinance on State Funding of Regional Cultural Activities (Förordning (1996:1598) om statsbidrag till regional kulturverksamhet), and the Ordinance on State Funding of Cultural Activities in Schools (Förordning (2007:1436) om statsbidrag till kulturell verksamhet i skolan), respectively.

6.4 Main Indicator 4 applied to Sweden

6.4.1 Sub-indicator 7: Culture and integration – ethnical and educational perspectives

It is wise to pay equal attention to integration among different cultural groups as to integration in the school system. Teaching the children about the plurality of cultures – plurality of traditions, values and also aesthetic ideals – is probably the easiest way reach a multicultural society with a minimum of cultural conflicts.

Though most Swedish school children probably don't know what "cultural rights" are (indeed, few adults know what they are, lawyers included), the Swedish State can hardly be faulted for not paying attention to the value of culture and multicultural communication. The Curriculum for the Compulsory School System, the Pre-School Class and the Leisure-time Centre (Lpo 94) shows evidence of a profound sensibility of the importance of culture in the human rights agenda. This view on the relationship between elementary school and cultural life is mirrored in the Ordinance on State Funding of Cultural Activities in Schools, which enables pupils to apply for State funding of cultural and artistic activities of pupils through the Cultural Council of the State.

Although not evident in the State's legislation, Sweden has problems with integrating the ethnic/cultural groups into Swedish society. And even if the encouragement of international cultural exchange and meetings of different cultures within the country is one of the official goals of the prevailing cultural policy, a lot remains to be done. It should be noted, however, that the responsibility lies not only in the hands of the cultural institutions of Sweden – integration must be a priority for all aspects of national politics in order to succeed.

In the field of cultural activities, the ethnic minorities are at least not forgotten. The Sami culture is protected by the Sami Council Act, and the Curriculum for the Compulsory School System, the Pre-School Class and the Leisure-time Centre (Lpo 94) also has references to the importance of Sami culture in the education of children belonging to the Sami.⁷⁵

State funding for cultural activities of minority groups is another link between Swedish society and minority cultures. The Ordinance on State Funding of National Minorities and the Ordinance on State Funding of Organizations Founded on Ethnic Grounds provides a helping hand for those immigrants (or children of immigrants) who wish to keep their non-Swedish culture alive in Sweden. These laws could be more accessible,

⁷⁵ The Curriculum for the Compulsory School System, the Pre-School Class and the Leisure-time Centre (Lpo 94), p. 11

though – there are probably many immigrants who aren't aware that this possibility exist.

6.4.2 Sub-indicator 8: International co-operation – a global perspective on cultural participation

The legislative actions for improving Sweden's international cultural co-operation are not many. Even if Swedish culture is doing decently in spreading around the world – especially in the field of music, where many Swedish artists are successful in the United Kingdom, the United States, and Japan⁷⁶ – this has more to do with clever marketing (and the quality of the music) than legislative or political measures. Even if the Swedish government has an interest in strengthening international recognition for the State and its culture, this interest tend to be based more on power politics than dreams of a global cultural landscape.

What Sweden does have on the international area of cultural rights is the Instruction for the Swedish UNESCO Council Ordinance, the link between UNESCO and the Swedish government. Also, there is the Written Communication on Human Rights in Swedish Foreign Policy, including statements on the importance of economic, social and cultural rights.

6.5 Comments

How has Sweden managed to implement cultural rights? Let us go through the main indicators one by one.

Available – the cultural rights of the international instruments are there, without doubt. Considering that UDHR and ICESCR are the main instruments on cultural rights, and the other supporters, it is not that important that Sweden has not signed the International Convention on the Protection of the Rights of All Migrant Workers and their Families. The rights are also there in the sense that they are firmly established in the Swedish Constitution. Interestingly, the Instrument of Government was finished in the middle of the 1970's, the same time as ICESCR and ICCPR entered into force. Sweden had signed the two Covenants in 1967 and ratified them in 1971; it is not unlikely that the ideas of the Covenants played a part in the Swedish approach to fundamental rights and freedoms.

⁷⁶ ABBA, Roxette, Ace of Base, The Cardigans, Robyn, The Hives, José Gonzales... Producers and songwriters like Max Martin (collaborations with Backstreet Boys, Britney Spears) and Bloodshy & Avant (also Britney Spears)... The list of contemporary international pop hits with Swedish connections is long, but we should not forget that classical music is also exported from Sweden. Malmö Symphony Orchestra recently toured the world and spread the music of Lars-Erik Larsson, a Swedish composer who is largely unknown outside of Sweden.

Accessible – Sweden has made an impressive amount of efforts on the field of non-discrimination. From provisions in the Constitution to the multiplying formation of Ombudsmen to increasingly detailed laws on discrimination prohibition to non-discrimination as a part of policies in other areas – Sweden can easily be counted as a serious State on this matter.

Acceptable – here is where Sweden really shines, if you ask me. The long-ranging power and possibilities of the Culture Council of the State, coupled with the generous amount of public libraries, ambitious museums, cultural heritage awareness and the public access right make Sweden a country full of high-quality cultural services, both for creation and enjoyment of culture.

Adaptable – the Swedish elementary school has ambitious plans on integrating both human rights in general and cultural participation in education, and it is an attitude one can only applaud. More discouraging is the difficulties Sweden has had in integrating ethnic minorities into the Swedish society, or the relative lack of interest in international cultural co-operation.

To sum up, Sweden is quite successful in living up to the international obligations on cultural rights.

7 Conclusions

Defining culture gets increasingly difficult the more one tries. The definition of cultural rights, however, is approaching a comfortable consensus in the tripartite definition of artistic creation, cultural heritage, and sum total of the traditions, customs and values of a people. Provisions on cultural rights or human rights related to culture are spread all over the international treaty law system. It is the accumulative effect of all these provisions on cultural rights that provides these rights with power.

The next step is the choice of how to attack the question of whether a State lives up to its international obligations concerning cultural rights or not. The indicators method appeared to me as an effective method – in all its simplicity, it is quite brilliant. The message of the increasing attention to indicators is clear: what the international community needs is not another convention, it needs to make the existing conventions work.

Perhaps it is the same philosophy that was behind the decision of Sweden not to sign the International Convention on the Protection of the Rights of All Migrant Workers and their Families. It is only States that really take human rights seriously that are able to turn down a new international human rights treaty – if the resources for implementing and following the treaty aren't sufficient, then it would be dishonest to sign it.

Or perhaps that is just a very optimistic way to legitimize a reluctance to put even more of the State sovereignty in the hands of international agreements. One should not paint everything in black and white and make believe that Sweden is a perfect State in all aspects. That being said, this author was somewhat surprised by the level of willingness of cooperation shown by Sweden in living up to the obligations of cultural rights.

The popular notion is that Sweden is, or was, the ultimate welfare State. What we did not know, or was not so sure of, was that the welfare spirit of Sweden was not limited to social security, health, education and employment. The dedication to implement the provisions on cultural rights from international legal instruments such as UDHR and ICESCR is a serious one.

The example of Sweden shows that it is possible to transform cultural right sfrom idealism to realism.

This thesis also shows that cultural rights intertwine with each other in profound ways. It is difficult, and perhaps meaningless, to isolate cultural rights relating to one dimension of culture (like, for example, artistic creation) from the others. All cultural rights are indivisible and interdependent; they are strong together. Just like human rights themselves.

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Legal Documents

International

Universal Declaration of Human Rights

International Covenant on Economic, Social and Cultural Rights

International Covenant on Civil and Political Rights

International Convention on the Elimination of All Forms of Racial Discrimination

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Convention on the Rights of the Child

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