

The Rights of Indigenous Peoples
Comments on Expert Mechanism
Draft Study

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Cultural identity

- Phrasing in the current draft of the study:

‘Cultural identity has been described as “the means by which groups differentiate themselves from others and is determined by shared practices and the “meaning” attributed to such practices”. It has been recorded that a “strong sense of cultural identity contribute positively to economic growth, through cultural affirmation.”’ (p. 40)

First sentence suffers from a tint of essentialism

Second sentence does not appear entirely persuasive as written

Cultural identity: Alternative pointers

- All human beings are cultural beings. We are all socialized into cultural values and ways of being, acting and thinking. This could be called 'enculturalization'.
- Enculturalization could be used as a pendant to the term 'socialization' (which does not capture the emphasis on 'meaning' which is central to enculturalization)

Enculturalization: definition

- Cultural identity refers to the sense of recognition which emerges when human beings happen to have experienced a similar enculturalizing process.
- A shared enculturalizing experience disposes individuals to recognize, understand and often own up to each other's way of interacting socially and orienting themselves to life.

Moving on to group identity

- The sense of recognition which arises out of a similar enculturating process can in turn engender the sense that one belongs to the same group.
- Cultural identity thus provides one means through which human beings operate social groupings.
- Once groupings are established, they can provide a strong sense of identity and of being different from others.

Cultural (un)consciousness

- The cultural mainstream tends to regard its cultural ways as natural, often leading its members to be unreflexive about their culture.
- Such lack of self-consciousness is rarely an option for the members of a minority culture. This explains why indigenous people (amongst others) appear to have a strong cultural identity.
- ‘Mainstream’ people are just as enculturated in their ways of doing, being and thinking, but are not always aware of this.

Complex cultural identities

- The individual's sense of cultural identity can be very complex when she has undertaken various and not necessarily compatible enculturating processes.
- This, in particular, is true of the great majority of indigenous people.

Draft study p. 41

- Quote: 'Culture which is of crucial importance for indigenous identity, is based on the concept of respect for others, mutual support and maintaining integrity. The dignity of all peoples and maintenance of cultural integrity are principles that bind communities together and ensure harmonious relations.'
- Question: is this a general statement or one which is meant to refer to indigenous cultures?

p. 47

- ‘The principle of equality can require that special measures are adopted by the state to promote and protect the cultures of indigenous peoples.’
- Would it be useful to refer to ‘vulnerability’, a concept which in human rights law increasingly points to the need for special measures?
- Central question is: How to protect – and how to re-vitalize?

On change and adaptation p. 52

- Draft study 'Adaptation is a natural process, but it should not change the **essence** [?] of indigenous culture'.
- Suggestion (maybe): it should not extend so far as entailing the loss of the values and practices at the core of indigenous cultures.
- Raises the question: why should indigeneous cultures maintained? This is a very important question. It is not thoroughly self-evident plus it raises further questions (including of conflicts of interest).

Why should indigenous cultures be maintained and revitalized?

I would tentatively suggest three levels of reasons

- At individual level: Respect for the human being – disrespect is painful and a violation of the dignity of the human being, and thus a violation of human rights (see next slide)
- At humankind level: not as a butterfly collection but nonetheless because of the enrichment of diversity (avoiding cultural cloning and drawing – without undue romanticization - on the wisdom of other traditions)
- As a matter of reparation for past violations

On dignity and individual human rights

- Individual dignity cannot be divorced from group/cultural dignity. Respecting the dignity of the individual entails also respecting the dignity of the individual as a being of culture. It is impossible to respect the dignity of the individual outside the recognition of the dignity of collective cultural orientations.

- Lack of respect of cultural orientations can cause extreme suffering to the individual, whose very being is being denied.
- At the same time, forcing an individual to remain in a particular cultural setting is also problematic.
- Dilemmas will arise.

p. 53

- Draft study ‘In assessing whether indigenous peoples’ cultural practices infringe individuals’ human rights, caution is necessary lest the judgment is made from an outsiders’ perspective and with a poor understanding of indigenous peoples’ philosophies or the rationales behind their mores. The perspectives of the alleged victim of the allegedly discriminatory practice should be sought and prioritised. Indigenous women, for example, should not be forced to choose between their cultures and **being a woman [?]**’.

p. 54

- Draft study ‘Moreover, the means to address discriminatory indigenous cultural practices should infringe to the smallest extent possible on indigenous peoples’ cultural rights, as well as their right to self-determination. Thus, in most cases, discriminatory indigenous cultural practices are best addressed by the indigenous peoples themselves. ... Caution: all too often full protection and promotion of indigenous peoples’ cultural rights is undermined by claims that they discriminate’.
- This is fundamental – can we have examples?

Terminological note: what are we talking about?

- 'Indigenous' v. mainstream?
- 'Indigenous' as spirituality and connection to the land?