

Cultural participation as a human right: holding nation states to account

Abstract

The United Nations Universal Declaration of Human Rights declares participation in the cultural life of the community to be a human right. Over 170 member states of the UN have entered into legal commitments to support this and other rights by ratifying the International Covenant on Economic, Social and Cultural Rights, and are held to account on the commitments under a monitoring and reporting system administered by the UN. This paper examines the operation of this system in regard to cultural participation outcomes and their measurement. It is found that the right to cultural participation is largely neglected in both administration of the system by the relevant UN committee and in the reporting process by member states. Proposals are made to begin the process of rectifying this situation.

Introduction

Cultural participation is a human right. This was established in the Universal Declaration of Human Rights (UDHR) as endorsed by the General Assembly of the United Nations in 1948. The declaration asserts the right to ‘participation in the cultural life of the community’ and to ‘enjoy the arts’ (Article 27). A human right is a claim to receive or to do something to which all human beings are deemed to be entitled on the basis of their humanity alone (Donnelly, 2003, 7). Such claims can become reality, however, only when they are respected, protected and fulfilled by society, notably by governments. The great majority of UN member states have undertaken to do this in ratifying the international treaties associated with the UDHR and overseen by the United Nations Committee on Economic, Social and Cultural Rights (the Committee).

The aim of this paper is to assess the effectiveness of this framework in assuring the right to participation in the cultural life of the community in UN member states. It is divided into the following sections:

- Discussion of the concepts of culture, cultural rights and cultural participation.
- Overview of cultural/arts-related international human and cultural rights declarations.
- Summary of the UN human rights system of accountability and its treatment of the right to cultural participation.
- Exploration 1: an empirical examination of a sample of state reports to the UN.
- Consideration of the need for identification of indicators and a performance assessment model for the right to cultural participation
- Exploration 2: Measuring states’ performance in assuring the right to cultural participation.
- Summary and conclusions.

Concepts of culture, cultural rights and cultural participation

The United Nations Committee on Economic, Social and Cultural Rights sees culture as encompassing:

ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they

give to their existence. (UNCESCR, 2009a, 3-4)

This broad-ranging conceptualisation includes a number of components which, while overlapping, can be seen as distinct domains:

- Ways of life (language, belief systems, rites and ceremonies, food, clothing, shelter, etc.).
- Sport and games.
- The arts (literature, music, song, etc.).
- Heritage: natural and human-created environments.

The ‘ways of life’ domain is very broad. The Committee describes it as ‘a broad, inclusive concept encompassing all manifestations of human existence’ (UNCESCR, 2009a, 3). Upholding the right to participate in *minority cultures* links closely with wider UN preoccupations with self-determination and development so it is understandably accorded considerable emphasis in UN and related discussions of culture (e.g., Shaheed, 2013; Hansen, 2002). It is also reflected in additional UN treaties, notably the 1989 *Convention Concerning Indigenous and Tribal Peoples in Independent Countries* and the 1999 *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities*. Full consideration of the right to culture in this sense is a major undertaking, involving these treaties in addition to the UDHR and ICESCR. This is beyond the scope of this paper. An examination of sport participation as a human right has been examined by Veal (2022) and found to be largely neglected by the formal UN human rights monitoring system. The focus here is therefore on the arts and heritage.

In its brief definition the Committee sees the arts as including ‘oral and written literature, music and song’, it should also include the visual arts, theatre and screen-based media, as reflected in the Committee’s reference to relevant venues and institutions, including: museums, theatres and cinemas (UNCESCR, 2009a, 4). Heritage can also be interpreted more broadly, as including not only monuments and the natural environment but also cultural artefacts and significant works of art.

Cultural and arts-related rights declarations

References to culture in general rights declarations and rights-related features of general cultural documents are listed in Table 1. While the UDHR is preeminent, it is limited to being a statement of principles. These are, however, given legal status in international law by two treaties: the International Covenant for Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (UN, 1966a, b). The two covenants, together with the UDHR, are together referred to as the International Bill of Human Rights (United Nations, 1996). The other declarations listed in Table 1 can be seen as elaborating on the cultural implications of the principles contained in the International Bill of Human Rights.

INSERT Table 1

Independent attempts to promote a more comprehensive, free-standing document on cultural rights comparable to the *Charter for Sport* (UNESCO, 1978/2014) have, however, not succeeded. In the 1990s, a *Cultural Bill of Rights* was drafted by the voluntary USA-based Alliance for Cultural Democracy (1996) but a decade later one of its advocates declared it to be still a ‘distant dream’ (Ivey, 2008, 296). In Australia, cultural commentator Donald Horne (1986, 232-237) published a ‘declaration of cultural rights’ and in a preamble to a 1990s government cultural policy statement, an expert advisory panel recommended the

establishment of a ‘Charter of Cultural Rights’ but this was ignored in the document itself (Commonwealth of Australia, 1994). In Britain in 2004, the Visual Arts and Galleries Association launched a ‘Right to Art’ campaign, arguing that, as a signatory to the UDHR, the British government had a responsibility to make cultural participation for all ‘a reality’, observing that, while current policies preached ‘the principle of universal access to visual art’, this was not being achieved in practice (Hewison and Holden, 2004, 3).

The framework of human rights developed from the UDHR is not without its critics. While the principles of *civil and political* (CP) rights covered by the ICCPR are relatively uncontroversial, this cannot be said of the *economic, social and cultural* (ESC) rights covered by the ICESCR. The two categories are sometimes referred to in generational terms, with CP rights viewed as the *first generation*, with their origins in the eighteenth century French and American revolutions, and ESC rights as the *second generation*, arising from the aftermath of the Second World War and the UDHR. Environmental and cultural rights of identified groups are viewed by some as a *third generation*, coming to the fore most recently (Frezzo, 2015). While this classification is temporal it also reflects the perceived relative status of the second and third generation as rights. The status of ESC rights, particularly those concerned with leisure and culture, has been questioned by some commentators (e.g., Cranston, 1983; Griffen, 2008). Nevertheless, the UN insists that all the rights set out in the International Bill of Human Rights are ‘universal, indivisible and interdependent and interrelated’ (World Conference on Human Rights, 1993, I.5).

The aim of this paper is, however, not to engage with these debates, important as they are, but to explore the implications of the social, political and legal fact that the cultural rights set out in the UDHR have become enshrined in international law, which UN member states have undertaken to uphold.

The UN human rights system and accountability

Ratification and accountability

The ICESCR has been ratified by 171 of the 193 UN member states, that is, it has been legally agreed to by their national elected assemblies.¹ The governments of these states thereby enter into a legal commitment to ensure the recognition and realisation of the stated rights within their own jurisdictions. This includes, *inter alia*, the right to participation in the cultural life of the community and to enjoy the arts.

Following ratification, a government becomes a ‘state party’ to a UN treaty. It is held to account by means of progress reports (or ‘State reports’) which state parties are required to submit to the Committee every six years. The Committee responds with a *List of Issues*, which typically seeks additional information from the state party. The latter then provides a *Reply* to the List of Issues and the Committee presents its *Final Observations*. The only sanction which the UN can impose on states parties with a poor level of performance are ‘naming and shaming’ in the Final Observations, usually with a demand for the state party to address any deficiencies in the next periodic report.

In undertaking this assessment of states’ performance, the treatment of ESC rights differs

¹ In 2020, 25 member states of the UN had *not* ratified the ICESCR. Of these: 17 had a population of less than one million, constituting mainly small island states; six had neither signed or ratified the covenant (Bhutan, Malaysia, Saudi Arabia, Singapore, South Sudan, United Arab Emirates), while two had signed but not ratified it (Cuba, USA), that is, it had not been endorsed by their legislative assemblies (<https://indicators.ohchr.org/>).

from that of CP rights. In the case of CP rights, expected is that the state party will immediately ensure that the relevant rights are enjoyed by ‘all individuals within its territory and subject to its jurisdiction’ (UN, 1966a: Art.1). This typically involves enacting suitable legislation and deploying the means for enforcing it. In regard to outcomes, therefore, performance of the state party tends to be assessed in terms of failures to ensure rights, that is, instances of *violations* of rights in a legal sense.

The treatment of ESC rights, which is our focus here, is very different. A state party is not expected to achieve full implementation immediately but to ‘take steps ... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant’ (UN, 1966b, Art. 2). This more gradual approach is referred to as the principle of *progressive realization* (Corkery and Saiz, 2020; Fukuda-Parr, Lawson-Remer and Randolph, 2015, Box 2.1). The assumption is that a state party’s starting point will typically be short of ‘full realization’, so assessment of performance focusses on *progress towards* full realization. The Committee does, however, indicate that failure to ‘take steps’ can be viewed as a *violation* of cultural rights (UNCESCR, 2009a, 16). ‘Full realization’, however, is not defined.

Guidance on reporting to the UN

The Committee’s guidance on State report content details seven broad categories of information to be supplied (UNCESCR, 2009a). Six of these can be seen as *input-related*, namely, the establishment of: national framework laws, policies and strategies; mechanisms to monitor progress in implementing the latter; mechanisms to ensure conformity with international treaty obligations; relevant enabling laws; and identification of ‘structural and other obstacles’ impeding the full realization of covenant rights (pp. 3-4). Only the seventh category refers to *outcomes*, namely:

statistical data on the enjoyment of each ... right, disaggregated by age, gender, ethnic origin, urban/rural population and other relevant status, on an annual comparative basis over the past five years’ (UNCESCR, 2009a, 4).

This indicates that data should be in three forms: *aggregate*, *disaggregated* and in *trend* form. However, this requirement is not discussed in the more detailed guidelines provided for each individual right later in the guidance document. No further guidance is therefore provided on the details of the required statistical information.

A second source of guidance from the Committee is *The Right of Everyone to Take Part in Cultural Life* (UNCESCR, 2009b), which lists 29 ‘general legal obligations’ and five ‘core obligations’ (pp.11-15). A single four-line paragraph refers to ‘Indicators and benchmarks’, indicating that states parties should ‘identify appropriate indicators and benchmarks, including disaggregated statistics and time frames’ in order to ‘monitor effectively the implementation of the right of everyone to take part in cultural life, and also to assess progress towards the full realization of this right’ (p.17). However, no further guidance is offered on these ‘indicators and benchmarks.’

Other potential sources have emerged from within the UN and independently. In 2012, the Office of the High Commissioner for Human Rights published a report on *human rights indicators* (OHCHR, 2012).² These potentially included cultural indicators, which have a long history and a substantial literature, as reviewed by Madden (2005). Three types of

² A draft version of the study was presented to the UN four years earlier (United Nations, 2008).

human rights indicator were identified, two of which were input-related and one outcomes-related:

- *Structural* indicators provide evidence of the extent to which the government has undertaken formal actions, such as ratification of relevant international treaties and enactment of relevant national legislation (e.g., anti-discrimination laws, establishment and funding of an arts commission).
- *Process* indicators refer to on-going actions to enforce and facilitate rights (e.g., a complaints and compensation process maintained by a human rights commission).
- *Outcome* indicators refer to evidence of rights being enjoyed (e.g., levels of participation in cultural activity). (OHCHR, 2012, 34-38).

While the structural and process categories are clearly of importance, they can be seen as means to an end. Our primary interest here is therefore in outcome indicators, that is, measures of cultural participation.

The OHCHR report presents specific guidance and illustrative examples of the three types of indicator for 14 individual rights. Seven of these are ESC rights but the right to participation in cultural life is not one of them.

Nevertheless, the matrix model devised for these examples, involving the three indicator types and various ‘attributes’, is broadly applicable to any human right. A summary of the dimensions of the model using the example of the right to education is presented in Table 2. It includes 51 indicators, of which 8 are output indicators. However, in addition to these aggregate indicators for a single point in time, the Committee’s three forms also require disaggregation by at least five socio-demographic variables, extended over a five-year period. These additional requirements are not discussed in the OHCHR report. However, Table 2 shows that they imply an additional 580 outcomes indicators, giving, a total of over 600 in the case of, for example, the right to education. Adopting this framework for the estimated 25 separate rights/articles³ in the two covenants implies a total of almost 16,000 items of data.

INSERT Table 2

Although the framework was drawn up following extensive consultation with stakeholders, this total seems unwieldy (see Madden, 2005, 19), both for reporting countries and for the Committee in its task of interpreting and evaluating the information generated. However, the Equality and Human Rights Commission (2011) in the UK seemed to find the model manageable in its *Human Rights Measurement Framework* report which, in over 700 pages, presented UK data for five CP rights and three ESC rights. However, cultural participation was not included.

UNESCO is also a source of possible guidance on indicators, given its long involvement with research on culture. Its *Universal Declaration on Cultural Diversity* adopts a broad definition of culture, as: ‘the set of distinctive spiritual, material, intellectual and emotional features of society or a social group’ encompassing, in addition to art and literature, ‘lifestyles, ways of living together, value systems, traditions and beliefs’ (UNESCO, 2002, 4). However, in a report on *Measuring Cultural Participation*, its specification of six ‘cultural domains’ is more restrictive than that of the Committee, with sport and tourism recognised only as ‘related

³ It has been suggested, however, that there are as many as 64 individual rights in the UN system (Green, 2001, 1069).

domains’:

- A: Cultural and natural heritage
- B: Performance and celebration
- C: Visual arts and crafts
- D: Books and press
- E: Audio-visual and interactive media
- F: Design and creative services

Related domains:

- G: Tourism
- H: Sports and recreation (UNESCO, 2009, 16).

No separate ‘way of life’ conception is identified, but the report advises that ‘traditional practices’ and ‘global migration and cultural diversity’ should be taken into account in data collection for the constituent domains (UNESCO, 2009, 30-32).

This more limited conceptualisation is also evident in UNESCO’s later work on social indicators. Of particular note is its contribution to the UN’s *2030 Agenda for Sustainable Development* (United Nations, 2015, Goal 11.2). While indicators for sustainable development have emerged as an area of UN activity separate from human rights, the two concepts are clearly connected (Portolés and Dragičević Šešić, 2017). A UNESCO (2019) report, *Thematic Indicators for Culture in the 2030 Agenda*, offers 22 cultural indicators in four thematic groups. The framework has some similarities to the format of the OHCHR’s indicator system discussed above.⁴ Given that each indicator involves numerous items of information, being similarly extensive and unwieldy and focussed primarily on structural and process indicators. Indicator 21, *cultural participation*, is the most unequivocally outcome-related. As shown in Table 3, it comprises three ‘sub-indicators’, equivalent to the OHCHR ‘attributes’ (Table 2). The first indicator covers the Committee’s arts and heritage domains, while the second distinguishes between participation as an audience member and as a creative practitioner and the third introduces the use of the internet. Disaggregation is mentioned, but not trend data.

INSERT Table 3

In addition to the guidance from UN/UNESCO sources, frameworks for ESC rights indicators have been put forward by academic groups. The New York-based Center for Economic and Social Rights (2012) developed the OPERA (Outcomes, Policy Efforts, Resources, Assessment) framework, which endorsed the use of indicators but stopped short of providing specifications for individual indicators. Fukuda-Parr et al. (2015) developed the Social and Economic Rights Fulfilment (SERF) index which did provide specifications, for six ESC rights indicators which then form a single composite index. However, the right to cultural participation was not included. Nevertheless, of general note is the methodology developed as part of the SERF model, which relates maximum achieved levels of individual rights indicators to GDP per capita cross-nationally. This establishes an ‘Achievement Possibilities Frontier’ (p.42), which can be seen as an approach to defining ‘full realization’.

In conclusion, with the exception of the UNESCO (2019) *Thematic Indicators* report, the

⁴ Publication was seemingly too late to be reflected in the latest UN annual report on the *Agenda* (UN Development Programme, 2020).

documents examined, from both UN and academic sources, have generally neglected the topic of the right to cultural participation. However, it seemed possible that the available reports may have had some influence on the UN reporting system and prompted individual governments to take the initiative to provide information on cultural participation. This possibility was therefore explored in an examination of recent State reports.

Exploration 1: State reports to the UN

Aim

The aim of this exploration was to examine the treatment of *the right to participation in the cultural life of the community* in a sample of State reports to the Committee. This involved ascertaining the extent to which the reports included ‘statistical data on the enjoyment of each right’, as called for in the Committee’s reporting guidelines (UNCESCR, 2009b, 4), and the extent to which cultural participation was mentioned in the Committee’s communications with states.

Data source

EU member countries were chosen for examination on the pragmatic basis that all EU member states have available the results of survey-based cultural participation data from Eurobarometer surveys conducted on a common basis by the European Commission.

For each EU member, the latest State report (sections on Article 15(1a) of the ICESCR) was examined, together with the associated *List of Issues* from the Committee, the state party’s *Reply* and the Committee’s *Final Observations*.

Individual countries are on different 6-7-year reporting schedules, related in part to their year of joining the United Nations or ratifying the ICESCR. The State reports examined are listed in Table 4 in chronological order of submission.

INSERT Table 4

Results

Column B of Table 4, indicates that only one of the State reports, that of Spain, included statistical data on cultural participation.⁵ None of the other 27 State reports offered any excuses for not providing data. The matter was just ignored. This, despite that fact that, apart from Malta and Hungary, all states had access to Eurobarometer data (see Table 4, columns H-J), and for most countries, relevant data from national sources had been posted to the on-line *Compendium of Cultural Policy and Trends* and so could also have been included in State reports (see Table 4, col. K). This is what Spain did in its 2017 State report, which included eight graphics as indicated in Table 5. The data were presented in aggregate form only, but they did partially met the requirement for presenting trends over time. However, they were not accompanied in the State report by any evaluative commentary.

INSERT Table 5

States might be excused for not providing statistical information if their reports were submitted prior to the publication of appropriate guidelines (see Table 4, columns D-G). In the case of the Committee’s reporting guidelines this applies only to Malta and Hungary. In the case of the OHCHR (2012) guidelines on indicators this applies to just Malta and

⁵ This may reflect the fact that the right to access culture is stated in the Spanish Constitution (UNESCO, 2009, 7).

Hungary and five other states. However, only one of the post-2012 reports, Portugal's 2020 report, made any reference to the source. It indicated that it was working on the development of a limited number of ESC rights indicators, but they did not include cultural participation. Nine countries submitted their State reports after the publication of the UNESCO (2019) report on cultural indicators, but none referred to it.

A further surprising feature of the reporting process as a whole is that not one of the Committee's *Lists of Issues* on individual reports drew attention to the lack of cultural participation data. This is particularly puzzling, given that the great majority of the 'issues' were requests for additional information, including statistical information for some rights, but not for cultural participation. It did, however, acknowledge and encourage Portugal's efforts.

It might be expected that the Committee's *Concluding Observations* would provide an overall assessment of a country's performance as revealed by the State report. However, the typical *Concluding Observations* document did not include an overall assessment but, typically, some 20 or 30 recommendations for further efforts. However, comments on cultural participation (ICESCR Article 15-1a) were rare. In ten cases it attracted no comments from the Committee. Of the 18 cases where some comment is made, 16 referred to one topic, the cultural rights of minority ethnic groups, typically in regard to making provision for teaching minority languages.

From 2010 onwards, the Committee's Concluding Observations encouraged state parties to make use of the OHCHR (2012) indicators report in future State reports. However, it did not point out that the OHCHR report does not provide specific guidance on cultural participation indicators. However, as noted, only Portugal has responded to this general encouragement.

This analysis therefore reveals that neither the Committee or 27 out of 28 EU states have seen it as necessary for statistical data to be provided on the outcomes in regard to the realization of the right to cultural participation, even though most states had data readily available which would have served the purpose.

The need for indicators and performance assessment model for the right to cultural participation

The question arises as to the reasons for the neglect of cultural participation in the UN human rights system and hence in the reporting system, particularly in regard to relevant indicators. One possible explanation is the status hierarchy as exemplified by the 'generations' typology of rights discussed above. As Chapman (1996, 2) has put it: 'Despite a rhetorical commitment to the indivisibility and interdependence of human rights, the international community, including the international human rights movement, has consistently treated civil and political rights as more significant, while consistently neglecting economic, social, and cultural rights'. Even within ESC rights, as noted above, priority is given to the six 'core' ESC rights, so that the right to cultural participation it is not included among the ESC rights exemplified in the OHCHR (2012) report on rights indicators or in the SERF index (Fukuda-Parr et al., 2015).

Practitioners, administrators and academics involved with culture are familiar with this state of affairs in regard to the status of the cultural field in public policy discourse generally.

However, while recognising the concerns for other sectors, they have typically urged decision-makers to give an appropriate level of attention to the cultural sector and provided

detailed supporting evidence and arguments. The right to cultural participation is doubly neglected in the research literature. Research focused on the measurement of human rights tends to ignore cultural participation (e.g., Jabine and Claude, 1992; Landman and Carvalho, 2010), while research on cultural participation tends to ignore human rights (e.g., Schuster, 2002). There are other situations where efforts have been made to counter neglect of the cultural, an example being the efforts made to draw attention to economic aspects of culture (e.g., Heilbrun and Gray, 2001; Snowball, 2010). Similar efforts have not been made in relation to cultural participation as a human right. So arguably, one reason why cultural rights indicators have been neglected by the human rights system is that they have been neglected by the cultural sector itself.

This paper is therefore offered as a modest contribution to beginning the process of remedying this situation. There are two components to the contribution: identification of cultural participation indicators and a demonstrating a methodology for using the indicators to assess states' performance in securing the right to cultural participation.

Cultural participation indicators

UNESCO's (2019) three cultural participation indicators discussed above could serve as suitable indicators for our purpose. Although they are not formally part of the ICESCR reporting system and were not referred to in the examined State reports, they cover two of the components of culture recognised by the Committee, namely the arts and heritage. Of the Committee's other two components, the 'way of life' conceptualisation is not included but this could be partially addressed if the surveys used to gather data for cultural participation indicators include ethnicity as a disaggregation variable. As for sport, it is surprising that it is not included among the UNESCO cultural indicators given the long involvement of that organisation with sport (UNESCO, 1978/2014). It could, however, be added, as demonstrated by Veal (2022).

Methodology for performance assessment

How should cultural participation indicators be used to assess states' the performance? One approach is to establish a benchmark indicator which defines the boundary between failure and success. An example in the UN human rights system is the international benchmark for extreme poverty (United Nations, 2015, 17). However, the 'progressive realization' principle adopted in relation to ESC rights seems to preclude this approach, particularly since 'full realisation' of ESC rights is not generally specified. An alternative approach is to use indicators in an inter-state comparative process, preferably taking account of countries' resources. An existing example is the UN's Human Development Index, which ranks countries on the basis of an index combining life expectancy, educational participation and per capita GDP (UN Development Programme, 2020). The progressive realization principle is intended to take account of 'available resources', so some measure of resources, such as GDP per head of population, should be involved. This could involve adopting the approach of the above-mentioned SERF index 'Achievement Possibilities Frontier'.

The use of the three cultural indicators and the suggested assessment methodology is explored below.

Exploration 2: Assessing states' performance in assuring the right to cultural participation

Aim

The aim of this exercise is to demonstrate the use of the UNESCO cultural participation indicators and a version of the Achievement Possibilities Frontier in an exploratory assessment of states' performance in assuring the right to cultural participation.

Measurement

The Committee reporting guidelines (UNCESCR, 2009b , 4) and the OPERA framework (CESR, 2012, p.13) suggest that measurement of outcomes of human rights policies should comprise three components: (a) aggregate indicators of levels of rights enjoyment; (b) the same indicators disaggregated by socio-demographic variables; and (c) an indication of trends over time.

Data sources

Aggregate indicators for EU member countries can be sourced from two Eurobarometer surveys: the 2013 *Cultural Access and Participation* survey (EC, 2013), with the report including comparison with results from the 2007 *European Cultural Values* survey (EC, 2007), and the 2017 *Cultural Heritage* survey (EC, 2017). The typical Eurobarometer survey involves a sample of 1000 adults in each member country.⁶ Results are published in descriptive reports and the data are publicly available on-line for secondary analysis. Details of the relevant data from surveys used here are provided in Table 6.

INSERT: Table 6

The detailed data on individual activities are combined into a limited number of composite indices of participation for analysis purposes. Measures A, B and C, from Eurobarometer 399, correspond to the three UNSECO indicators (see Table 3).⁷ While cultural heritage items are included in measure A, the 2017 Eurobarometer 462 was entirely devoted to this topic. Since heritage is separately identified in the Committee's broad definition of culture, measure D is also included in this exercise.

Disaggregation variables in the Eurobarometer surveys include: gender, age, education level, occupation, urban/rural residence and self-assessed class position. However, ethnicity is not included. The published reports do not include disaggregated results for individual countries, but these can be obtained by on-line analysis of the data.

Change over time is indicated in the Eurobarometer 399 report by inclusion of comparisons with the results from a 2007 Eurobarometer survey. While this is not the annual data over five years specified in the Committee's guidelines, it is a start.

As a measure of 'available resources', Gross Domestic Product (GDP per capita data were accessed from Eurostat.

Results

The data used in the analysis are shown in Appendix 1, Table A1, with columns A-D corresponding to measures A-D in Table 5. Column E shows the change in cultural participation between 2007 and 2013. Columns F-H refer to annual GDP per capita: for 2013, the change from 2007 to 2013 and for 2017 respectively.

⁶ This sample size means that single country results are subject to the following margins of error: for a finding of 50%: $\pm 3.1\%$; 40% and 60%: $\pm 3.0\%$; 20% and 80%: $\pm 2.5\%$; 10% and 90%: $\pm 1.9\%$.

⁷ This is no coincidence, since the UNESCO report refers to consultation with Eurostat, the EC's statistical arm.

a. Aggregate levels of rights enjoyment

Figures 1-4 show the analysis for the four aggregate output measures of cultural rights realization. They show the levels of cultural participation for each country plotted against GDP per capita. Given the limited number of countries involved in this study, the development of a continuous Achievement Possibilities Frontier Curve, as done for the above-mentioned SERF index, is not appropriate. Instead, a regression line is indicated on the diagrams, indicating, first, that there is a tendency for cultural participation to be positively associated with wealth. Second, for each level of GDP per capita, some countries are at or above the line while others are below it. In the spirit of 'progressive realization' and its relationship to available resources, it can be concluded that, within each income group, those above the line set the standard of what is achievable, while those below the line can be expected and/or assisted to improve performance. If the latter process is successful, this would result in the line itself gradually being lifted, in a gradual progress towards 'complete realization'.

INSERT Figures 1-4

In regard to the individual measures:

- For the cultural index (Fig. 1): overall, 12 of the 27 countries are below the line and 14 on or above it. It is notable that, even in the second highest income group (€30-35k), four out of six countries are below the line.
- For the individual arts activities (Fig. 2): the general pattern is similar, with 14 countries below the line and striking disparities among those in the €30-35k income group.
- For cultural use of the internet (Fig. 3): the general pattern is repeated, with 14 below the line, but with greater disparities among higher income states and less among lower income states.
- For the heritage group of activities (Fig. 4), only 11 countries are below the line and the disparities within groups is generally less.

These indicators, of course, present only one perspective on a state's performance. *Structural* and *process* indicators provide an account of the policies and infrastructure which produce the outcomes. A more extended analysis of information on policies and infrastructure, as provided in the State reports, could therefore compare states within the same income group to see whether those with low scores on outcome indicators can learn from those with high scores. More broadly, comparisons could be made across income groups to determine how infrastructure and processes are related to differences in wealth levels. Such analyses may also contain a feedback mechanism which could suggest changes to the design and scope of indicators to more fully reflect the diversity of the states involved.

b. Disaggregated levels of rights enjoyment

Ideally, analysis would proceed to disaggregate the above indicator scores by at least the variables mentioned by the Committee, namely age, gender, ethnic origin and urban/rural residence (UNCESCR, 2009b, 4), but space precludes the presentation of more than one disaggregation variable here. Arguably ethnic origin would be the most valuable, since it would begin the process of considering the way-of-life concept of culture, but the Eurobarometer does not include ethnic origin as a variable. Gender would also be an obvious choice but, overall, cultural participation is not highly differentiated by gender. Therefore, rural/urban residence is presented. Based on the percentage scoring at least at the 'medium' level on the cultural index, Figure 5 shows the ratio between residents of rural areas compared with large towns. A score of one would indicate that cultural activity was equal in rural and urban areas. Only one score is close to one, with the Czech Republic at

1.02.⁸ The regression line shows that the ratio increases with income, that is, that wealthier countries achieve more equality between rural and urban areas. The greatest disparity is within the €15-20k income group.

INSERT Figure 5

c. Progress over time

For the change in the cultural index over time (Fig.6), it should be noted that the period covered, 2007-2013, begins in the year before the Global Financial Crisis of 2008 and ends while its aftermath was still being felt, for example in elevated levels of unemployment. This is reflected in the small and even negative change to GDP per capita in some countries (column H of Table A1), although there is no systematic relationship between the income and cultural participation trends. However, it is not surprising to find that 20 of the 27 countries experienced a decline in levels of cultural participation in the period. Similar disruption of trends is likely to have taken place during the 2020-2022 COVID-19 pandemic.

INSERT Figure 6

In ‘normal times’, the underlying expectation in the principle of ‘progressive realization’ is that participation will improve over time. However, recent history suggests that the concept of ‘normal times’ is losing its utility. Analysis of ‘progress over time’ might therefore need to be accompanied by analysis of the impact of economic and environmental volatility. It might also give rise to questions of how infrastructure and policy processes might include specific actions to cope with such volatility in the cultural sector.

Summary and conclusions

The right to participate in the cultural life of the community is identified as a human right in the UDHR and in the associated ICESCR which is a treaty in international law. Governments – or ‘state parties’ – which ratify the ICESCR enter into commitments to uphold the relevant human rights and can be asked to account for their performance in doing so. This is done through the UN reporting system, which involves submission of periodic ‘State reports’ on progress in realizing ESC rights within national jurisdictions. This paper establishes that the right to cultural participation is neglected in this system in the guidance surrounding the reporting framework and in the consequent response of the state parties. The system is therefore ineffective in monitoring and assessing this human right.

The UN’s Committee on Economic, Social and Cultural Rights sets the guidelines for the contents of State reports and receives and evaluates them. Required contents include statistical data on the *outcomes* of policies to uphold the relevant rights, but the guidelines fail to provide detailed specifications for the data required for the right to cultural participation. Subsequent guidance on ‘human rights indicators’, from the Office of the High Commissioner for Human Rights, includes model examples of indicators but not for cultural participation. Indicator frameworks from academic sources also omit cultural participation. A recent UNESCO report on cultural indicators related to sustainable development provides suitable cultural participation indicators, but these have not been explicitly incorporated into the ICESCR reporting system.

It is therefore not surprising to discover, in an examination of the latest State reports from EU member states, that, with one exception, none of the reports provided statistical data on

⁸ The ratio for Cyprus was 1.7, but this was omitted from the graphic as an unexplained outlier.

cultural participation. This, despite the fact that suitable data were available to EU member states, notably from the EC's Eurobarometer surveys. Furthermore, there has been no reference to this lack of data in UN comments on the State reports.

This paper therefore develops a simple draft model for the presentation of such data and their appraisal, using the UNESCO cultural indicators. The use of the model is demonstrated with Eurobarometer data for EU member states. It shows that, while the level of realization of the right to cultural participation increases with national wealth (as indicated by GDP per capita), there is significant variation between countries with similar wealth levels.

This study has limitations which might be remedied in a more substantial study by:

- extending the scope of 'culture' beyond the arts and heritage to incorporate sport participation and the 'way of life' concept of culture;
- examining the sensitivity of the analytical model to alternative measures of participation (e.g. alternative frequency criteria) and alternative combinations of activities to form composite indices;
- examining the relationship between levels of performance, as indicated by the above analysis of outputs, and different approaches to policy (infrastructural and process-related); and
- extending the analysis beyond the EU – however, this is currently not possible due to the lack on internationally comparable cultural participation data.

In regard to the availability of internationally comparable data, considerable work has been undertaken on measurement of cultural participation and development of indicators by UNESCO (2009, 2019), but there is a need to abstract a succinct set of indicators for use in the context of the UN human rights reporting process. This could also involve the development of a standardised survey instrument comparable to that developed in regard to participation in physical activity by the World Health Organization (nd) and perhaps drawing on UNESCO's (2009, 64-68) 'draft checklist'.

If guidance and assistance on data collection were to be made available it would then be appropriate for the Committee to incorporate guidance on cultural participation output indicators and their analysis in its guidelines on State report content. It would also be appropriate for the Committee to consider how the process of data collection might be implemented in developing countries, particularly in regard to the need for 'international assistance and co-operation' (ICESCR, Art. 2) and 'furnishing of technical assistance' (Art. 22).

Cultural participation is a human right under the terms of the UDHR the ICESCR, but it has been neglected in the systems of accountability associated with these international human rights instruments and by stakeholders in the cultural sector. This paper argues that this neglect can and should be reversed.

INSERT Appendix 1/Table A1

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Table 1. Declarations on cultural rights

1948	<i>Universal Declaration of Human Rights (UDHR)</i> ^a Article 27: Everyone has the right freely to participate in the cultural life of the community [and] to enjoy the arts.
1966	<i>International Covenant on Economic, Social and Cultural Rights (ICESCR)</i> ^a Article 15(1a): [Governments should ensure] ... the 'right of everyone ... to take part in cultural life'.
1979	<i>Convention on the Elimination of All Forms of Discrimination against Women</i> ^a Article 13: [And]the right to participate in recreational activities, sports and all aspects of cultural life
1992	<i>European Declaration of Urban Rights</i> ^b Article 8: Citizens of European towns have a right to ... access to and participation in a wide range of cultural and creative activities and pursuits.
1989	<i>Convention on the Rights of the Child</i> ^a Article 31: ... 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.
2001	<i>UNESCO Universal Declaration on Cultural Diversity</i> ^c Article 15: <i>Cultural rights as an enabling environment for cultural diversity</i> : Cultural rights are an integral part of human rights, which are universal, indivisible and interdependent. The flourishing of creative diversity requires the full implementation of cultural rights as defined in Article 27 of the UDHR and in Articles 13 and 15 of the ICESCR. All persons ... have the right to participate in the cultural life of their choice and conduct their own cultural practices.
2005	<i>Council of Europe Framework Convention on the Value of Cultural Heritage for Society</i> ^d Article 4a: everyone, alone or collectively, has the right to benefit from the cultural heritage and to contribute towards its enrichment
2006	<i>Convention on the Rights of Persons with Disabilities</i> ^a Article 30: ... the right of persons with disabilities to take part on an equal basis with others in cultural life.
2007	<i>Cultural rights (Fribourg Declaration)</i> ^e Article 5a: Everyone, alone or in community with others, has the right to access and participate freely in cultural life through the activities of one's choice, regardless of frontiers.
2021	<i>World Leisure Organisation Charter for Leisure</i> ^f Article 4: Everyone has the right to freely participate in the cultural life of the community.

Sources: a. See https://treaties.un.org/Pages/CTCs.aspx?clang=_en. b. Council of Europe (1992). NB. Later European declarations (e.g. the 2000 EU Charter of Fundamental Rights and the 2008 European Urban Charter II) do not give explicit recognition to the right to cultural participation; c. UNESCO (2002). d. Council of Europe (2005); e. Interdisciplinary Institute of Ethics and Human Rights (2007); www.worldleisure.org/charter/ (first edition: 1970, revised 2021).

Table 2 Guidelines on report content and indicators

<p>A. Guidelines on Treaty-Specific Documents (UNCESCR, 2009a)</p> <p>Information required on:</p> <ol style="list-style-type: none">1. National framework laws, policies and strategies.2. Mechanisms to monitor progress in implementing the latter.3. Mechanisms to ensure conformity with international treaty obligations.4. Relevant enabling laws.5. Remedies for victims of rights violations to obtain redress.6. Identification of ‘structural and other obstacles’ impeding the full realization of covenant rights.7. Statistical data on the enjoyment of each ... right, disaggregated by age, gender, ethnic origin, urban/rural population and other relevant status, on an annual comparative basis over the past five years’.
<p>B. General Comment No. 21: Right of Everyone to Take Part in Cultural Life (UNCESCR, 2009b)</p> <p>Governments should: ‘identify appropriate indicators and benchmarks, including disaggregated statistics and time frames’ in order to ‘monitor effectively the implementation of the right of everyone to take part in cultural life, and also to assess progress towards the full realization of this right’ (p.17). No further details provided.</p>
<p>C. Human Rights Indicators (OHCHR, 2012) #</p> <p>Indicators for each right comprise:</p> <ol style="list-style-type: none">1. <i>Structural</i> indicators: information on formal actions, such as ratification of treaties and enactment of national human rights legislation (e.g. for human rights commission).2. <i>Process</i> indicators: on-going actions to enforce/facilitate rights (e.g., complaints, compensation processes).3. <i>Outcome</i> indicators refer to evidence of rights being enjoyed (e.g., levels of participation in cultural activity) (pp. 34-38).
<p># A draft version of the study was presented to the UN four years earlier (United Nations, 2008)</p>

Table 3: State reports on International Covenant on Economic, Social and Cultural Rights, EU member countries

Country	State reports to the UNCESCR ^a			Guidelines/reports availability			Cultural participation data availability				
	Most recent report date	Report history	Article 15 (1a): Cultural participation data?	UNCESCR reporting guidelines (2009)	OHCHR rights indicators reports		UNESCO Cultural Indicators report: 2019	Eurobarometers ^b			Compendium data available ^c
					2008 (draft)	2012		278, 2007	399, 2013	466, 2017	
A	B	C	D	E	F	G	H	I	J	K	
Malta	2003	1st	No								-
Hungary	2005	3rd	No								2000
Austria	2010	4th	No	•	•			•			-
Belgium	2010	4th	No	•	•			•			2004
Slovenia	2011	2nd	No	•	•			•			2011
Greece	2012	2nd	No	•	•			•			2007
Ireland	2012	3rd	No	•	•			•			2006
France	2013	4th	No	•	•	•		•			2008
Sweden	2013	6th	No	•	•	•		•			2012 ^d
UK	2014	6th	No	•	•	•		•			2011 ^d
Netherlands	2016	6th	No	•	•	•		•	•		2016
Estonia	2017	3rd	No	•	•	•		•	•		2017
Germany	2017	6th	No	•	•	•		•	•		2016
Slovakia	2017	3rd	No	•	•	•		•	•		-
Spain	2017	6th	Yes	•	•	•		•	•		2015
Denmark	2018	6th	No	•	•	•		•	•	•	2004
Bulgaria	2019	6th	No	•	•	•		•	•	•	2007
Czechia	2019	3rd	No	•	•	•		•	•	•	2018
Latvia	2019	2nd	No	•	•	•		•	•	•	2018
Lithuania	2020	3rd	No	•	•	•	•	•	•	•	2017
Luxembourg	2020	4th	No	•	•	•	•	•	•	•	-
Portugal	2020	5th	No	•	•	•	•	•	•	•	2009
Finland	2021	7th	No	•	•	•	•	•	•	•	2009
Italy	2021	6th	No	•	•	•	•	•	•	•	2014
Poland	2021	7th	No	•	•	•	•	•	•	•	2018
Romania	2021	6th	No	•	•	•	•	•	•	•	2018
Croatia	2022	2nd	No	•	•	•	•	•	•	•	2000 ^e
Cyprus	2022	6th	No	•	•	•	•	•	•	•	-

a. All reports available under ‘States bodies reporting’, at: www.ohchr.org/en/treaty-bodies/cescr b. See European Commission (2007, 2013, 2017).

c. Participation data posted in Compendium of Cultural Policy and Trends (nd) and available at the time of State report submission..

d. Year assumed, since surveys appear to be conducted annually. e. Only limited data

Table 4. Eurobarometer data

<i>Eurobarometer 399: Cultural Access and Participation: 2013</i>	
<i>A. Cultural participation: frequency in last year:</i>	<i>B. Artistic activity in last year, %:</i>
<ul style="list-style-type: none"> • Visiting: <ul style="list-style-type: none"> - ballet, dance, opera - cinema - theatre - concert - public library - historical monument or site - museum or gallery • Watching/listening to cultural program on TV/radio • Reading a book 	<ul style="list-style-type: none"> • Playing a musical instrument • Singing • Dancing • Writing (poem, essay, novel, etc.) • Making a film, doing photography • Other artistic activities, e.g., sculpture, painting, • Handicrafts or drawing • Creative computing, e.g., website/blog design
	<i>C. Using the internet for cultural purposes:</i>
	<ul style="list-style-type: none"> • Buying cultural products • Cultural products/events info. • Listening to radio/music • Cultural blogs • Own cultural content • Read newspaper articles • Creating own cultural website • Downloading music • Playing computer games • Movies, podcasts, TV programs
<i>D. Eurobarometer 462: Cultural Heritage: 2017</i>	<i>E. Eurobarometer 472: Sport & Physical activity, 2017</i>
% Visiting in last year: <ul style="list-style-type: none"> - monuments - museums - libraries/archives. 	% participating in sport at least once a week
Sources: European Commission (2013, 2017, 2018);	

Table 5. UNESCO Cultural indicators

UNESCO (2019): Thematic Indicators for Culture in the 2030 Agenda

Themes:

- Indicators 1-5: Environment & resilience
- Indicators 6-12: Prosperity & livelihoods
- Indicators 13-17: Knowledge & skills
- Indicators 18-22: Inclusion & participation:

Indicator 21: Cultural participation

% participation in last year – survey data:

- A. Cultural attendance: movies/cinema/film festivals; theatre or dance show; live musical performances; historical/cultural parks or heritage sites; museums, art galleries or craft exhibitions.
- B. Practicing individual cultural activities: performing/studying e.g., music, dance; practicing visual arts, craft activities (e.g., painting, sculpture, pottery).
- C. Using the internet for cultural purposes: reading online news; playing/downloading games, images, film or music; listening to web radio; consulting wikis; creating websites or blogs.

Wherever possible, figures to be disaggregated by sex, age group, disability, ethnicity, income, level of education and other variables.

Appendix 1: EU member countries: cultural participation and GDP data

Country	Eurobarometer surveys						GDP/cap, annual €'000s (at 2021 prices)	
	Aggregate measures (whole population)				Disaggregated	Over time	G	H
	2013		2017		2013	2007--2013		
A ^a Cultural index: medium-v. high %	B ^a Artistic activity: % at least one	C ^a Internet use: % 1+ /week	D ^a Heritage index %	E Rural/urban ratio for A	F Change in A	2013 €'000s	2017 €'000s	
Luxembourg ^b	81	57	48	56	0.87	+3	75.2	78.9
Netherlands	84	58	30	64	0.50	-3	35.5	43.1
Sweden	92	68	41	71	0.81	+7	33.0	47.7
Denmark	83	74	39	66	0.93	-5	33.7	51.1
Austria	62	44	17	50	0.79	0	34.6	42.0
Ireland	71	41	32	48	0.85	+1	34.6	61.8
Germany	69	42	23	53	0.81	-3	32.6	39.5
Belgium	66	46	31	47	0.91	-6	31.6	39.1
France	81	51	43	47	0.95	-3	28.5	34.2
UK	79	41	33	59	0.81	-6	28.5	35.7
Finland	77	63	34	61	0.90	+12	29.8	41.1
Italy	51	20	35	40	0.84	-4	25.9	28.9
Malta	73	18	24	37	0.94	-2	22.4	25.5
Slovenia	70	51	22	54	0.90	-2	21.5	20.0
Czechia	68	37	23	49	1.02	-3	22.0	18.3
Slovakia	67	38	24	39	0.87	-7	20.1	21.1
Spain	63	32	33	39	0.84	+1	23.5	25.0
Cyprus	46	43	27	35	1.74^c	0	22.1	23.5
Portugal	41	22	24	30	0.67	-6	20.1	19.0
Estonia	83	50	37	54	0.89	-4	19.8	18.1
Latvia	83	42	38	57	0.94	-6	16.4	13.9
Lithuania	77	29	23	47	0.86	0	19.2	14.9
Croatia	56	21	22	35	0.63	na	15.7	12.0
Hungary	46	21	21	37	0.77	-11	17.6	13.0
Poland	50	32	23	39	0.84	-8	17.6	12.2
Greece	37	26	18	26	0.63	-4	18.8	16.5
Bulgaria	55	14	18	35	0.74	-3	12.0	7.4
Romania	45	26	23	29	0.81	-5	14.3	9.6

na: Croatia not included in 2007 survey. a. Based on data items in Table 4. b. Excluded from analysis due to inflated GDP from corporate tax-haven status. c. Outlier omitted from graphical analyses. Disaggregated Eurobarometer data via www.gesis.org/en/eurobarometer-data-service/survey-series; aggregate and trend data sourced from published reports (EC, 2013, 2018); GDP from Eurostat. Shading relates to €5000 income groups. Numbers in bold in column A lie above the regression line Figure. The same process is followed for columns B-D but graphics not included. In column F positive numbers, i.e., increases, are in bold, graphic not included.

