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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Cultural rights and migration

Report of the Special Rapporteur in the field of cultural rights*

Summary

In the present report to the Human Rights Council, the Special Rapporteur in the field of cultural rights, Alexandra Xanthaki, underlines the rights of migrants to have access to and effectively participate in all aspects of cultural lives, both of the host State and their own cultures. The Special Rapporteur recalls that international human rights law provisions protect those rights, regardless of the legal status of migrants, notes the need to ensure substantial equality in protecting cultural rights and emphasises the importance of the effective participation of migrants in all aspects of cultural rights. The Special Rapporteur reflects on overcoming the obstacles that migrant artists face and highlights the need for intercultural exchange and interaction to ensure dynamic, diverse and democratic societies.

* The present report was submitted after the deadline in order to reflect recent developments.

I. Introduction

1. An estimated 280 million people, approximately 3.6 per cent of the world population, currently live outside their country of origin.¹ The reasons for their displacement are numerous: some may have chosen to leave to pursue better opportunities elsewhere; many are compelled to leave for a complex combination of reasons, including poverty, lack of access to health care, education, water, food, housing and the consequences of environmental degradation and climate change; and others are forced to flee persecution and conflicts. Such displacements, and the related loss of security, bearings, properties, networks and relationships, increase their vulnerability to human rights violations, including violations of their cultural rights.

2. The cultural rights of migrants have not been the focus of attention in human rights thus far. Other rights, such as the prohibition of non-refoulement, the right to security and the right to asylum have taken precedence, as they should because of the urgency of the violations committed against them. However, the cultural rights of people must not be undermined or pushed aside.

Importance of the topic

3. Migration often turns individuals from being part of a majority to being part of a minority; from being part of the mainstream society to being part of peripheral and often marginalized communities and hence makes their cultural rights more vulnerable. Migration means that cultural objects of importance are often forcibly left behind, frequently because of the limitations of existing trade law. Migration brings with it the loss of important places, communities and relationships, tools or instruments; the rising costs of goods and services that impact on the ability to continue meaningful heritage practices; the loss of a broader supportive community that fosters intergenerational transmission; and sometimes even resistance or opposition to continuing certain heritage practices in the new home country.² A generational gap between the older generations of migrants, who have strong cultural frameworks from their societies of origin, and the younger generations, who have internalized the cultural values and practices of the host societies, may also have a negative impact on the cohesion of the community. That often creates tensions within communities. The grief stemming from losing the connection with one's familiar cultural environment can lead to cultural bereavement and an identity crisis.³

4. The Special Rapporteur emphasizes that migration also has positive effects for the cultural rights of all involved, as the change of circumstances requires the rethinking and renegotiation of cultural meanings and norms. As cultures are dynamic, such revisions come from the individuals and groups themselves. The process of being open to other cultural frameworks expands horizons, creates innovative ideas and theories through the fusion of cultural references and evolves cultures, individuals and groups to better adapt to current realities, both local and global.⁴ Migration offers at times the freedom to redefine oneself, to choose again or confirm the cultural references and norms that are important.

5. Migration is also positive for the cultural dynamic of host societies. Such societies also experience changes in their cultural norms because of the newcomers. They are also pushed, willingly or not, to face their attitudes, values and ideas and to renegotiate their

¹ See www.ohchr.org/en/migration.

² See submissions by the International Council on Monuments and Sites and the British Institute of International and Comparative Law in response to the Special Rapporteur's call for inputs to the present report. The contributions received are available on the web page of the mandate at <https://www.ohchr.org/en/calls-for-input/2022/call-inputs-report-cultural-rights-and-migration>.

³ Danilo Giglito, Luigina Cioffi and Wolfgang Bosswick, "Building a bridge: opportunities and challenges for intangible cultural heritage at the intersection of institutions, civic society, and migrant communities", *International Journal of Heritage Studies*, vol. 28, No. 1 (2022).

⁴ See, for example, the UNESCO "Arab Latinos" initiative, available from www.unesco.org/en/articles/arab-latinos-initiative-promotes-intercultural-dialogue-social-cohesion.

cultural spaces. Such organic processes may create uncertainty and fear of “the other”, the unexpected and change, and can ultimately create resistance in more fused cultural frameworks.

6. The mixing of communities, contexts and cultural resources that takes place through migration is certainly an enriching and dynamic exercise that promotes the cultural development of all involved. However, such processes need the implementation of cultural rights and their realization for all to be continuously monitored. That involves understanding the wide spectrum of cultural rights and the derivation of specific obligations. The State has the primary role to play in implementing those rights as the main duty bearer of cultural rights.

7. In preparation for writing the present report, the Special Rapporteur invited States, national human rights institutions, academics, civil society organizations and other international organizations to share their views and experiences by responding to a questionnaire, which was sent out in October 2022. Thirty-eight responses were received. The Special Rapporteur thanks all the participants for their valuable contributions.

II. Definitional issues

8. For the purposes of the present report, the Special Rapporteur defines migration in the broadest possible way. She looks at the cultural rights of persons who have arrived at or are based for some time in a host State and their interaction with the cultural rights of local populations. The level of benefits and challenges stemming from migration may differ, but it is the move that raises issues of cultural rights for both migrants and the local population. The report involves migration that has been forced and non-forced; migration that aims at the granting of asylum; migration initiated for socioeconomic reasons, for study or just for love; long-term and short-term migration; migration that has followed conventional or unconventional routes; and migration that is documented and undocumented. All cultural rights are recognized for all those individuals, irrespective of their status and characteristics.

9. The Special Rapporteur is aware of the plethora of different experiences that migration involves. The level of vulnerability of migrants’ cultural rights depends on many factors, including their status, national or social origin, perceived race, ethnicity, colour, gender, sexual orientation, capital (economic, social, cultural) and skills. It also depends on the host State, its policies on migration and human rights in general and its implementation of its international obligations deriving from human rights law. Importantly, it also depends on the host population, their experiences, education, skills and political priorities.

III. Legal framework

10. Cultural rights protect the right of each person individually, in community with others and collectively, to access and participate in the cultural life of the society in which they live and also to maintain and develop their own cultural frameworks, and develop and express their humanity, their world views and the meanings they give to their existence and their development, including through, inter alia, values, beliefs, convictions, languages, knowledge and the arts, institutions and ways of life. Cultural rights protect the artistic freedom of individuals and the cultural heritage of individuals and groups. Cultural rights are therefore essential for the development of each person and community, their empowerment and the construction of their respective identities in a sustainable cultural ecosystem.

11. International human rights law explicitly recognizes cultural rights for everyone, hence any migrant of any background, status and in any situation has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits, as well as to the protection of the moral and material interests

resulting from any scientific, literary or artistic production of which he or she is the author.⁵ The Special Rapporteur would like to emphasize that these provisions now have the status of customary international law binding on all States.

12. Article 15 of the International Covenant on Economic, Social and Cultural Rights also creates specific legally binding obligations on the States parties to the Covenant to recognize the right of everyone: (a) to take part in cultural life; (b) to enjoy the benefits of scientific progress and its applications; and (c) 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. In interpreting this article, the Committee on Economic, Social and Cultural Rights clarified in its general comment No. 21 (2009) that this right includes a collective element. The Committee noted that it is “the right of everyone – alone or in association with others or as a community – to act freely, to choose his or her own identity, to identify or not with one or several communities or to change that choice, to take part in the political life of society, to engage in one’s own cultural practices and to express oneself in the language of one’s choice”. States should not only abstain from violating and unnecessarily restricting the cultural rights of migrants; the Covenant requires that they take specific steps, legal and other, for the full realization of this right for all (art. 15 (2)). Steps must also be taken to guarantee the “freedom indispensable for scientific research and creative activity” (art. 15 (3)) and to “recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields” (art. 15 (4)).

A. Substantive equality

13. The realization of substantive equality in the exercise of migrants’ cultural rights is guided by the International Convention on the Elimination of All Forms of Racial Discrimination: there should be no discrimination in purpose or in effect in the cultural field based on race, colour, descent, or national or ethnic origin (art. 1). The Committee on the Elimination of Racial Discrimination has noted the importance of cultural rights in protecting vulnerable groups to restore the balance of power in society, promote intercultural understanding and tolerance, help deconstruct racial stereotypes, facilitate the free exchange of ideas and offer alternative points of view and counterpoints.⁶ The Convention reaffirms that there should be no distinctions between citizens and non-citizens (art. 1 (2)) and that States should (not merely could) take concrete measures, including positive measures, for the development and protection of the rights of vulnerable groups in the cultural field (arts. 1 (4) and 2 (2)). The Human Rights Committee has also recently urged States to strengthen awareness-raising efforts aimed at promoting respect for human rights and tolerance for diversity, revisiting and eradicating stereotypical prejudices.⁷

14. Of relevance are also the provisions on the protection of members belonging to national or ethnic, linguistic and religious minorities. The recognition of a group as a minority is not determined by the State, but by specific criteria.⁸ It is now rather agreed that citizenship of the host State is not essential in order to be entitled to such protection; this has been confirmed by the Working Group on Minorities.⁹ the Advisory Committee on the Framework Convention for the Protection of National Minorities and academia.¹⁰ The

⁵ Universal Declaration of Human Rights, art. 27.

⁶ Committee on the Elimination of Racial Discrimination, general recommendations No. 30 (2004), paras. 37–38, and No. 35 (2013), paras. 24, 29, 31 and 34.

⁷ [CCPR/C/DEU/CO/7](#), para. 11. See also [CCPR/C/HUN/CO/6](#), para. 17.

⁸ Gudmundur Alfredsson, “A frame an incomplete painting: comparison of the Framework Convention for the Protection of National Minorities with international standards and monitoring procedures”, *International Journal on Minority and Group Rights*, vol. 7, No. 4 (2000).

⁹ [E/CN.4/Sub.2/2005/27](#), sect. VII, C, para. 16 (d). See also [E/CN.4/Sub.2/AC.5/2005/2](#), paras. 10–11.

¹⁰ See Rainer Hofmann, “The Framework Convention for the Protection of National Minorities: an introduction” in *The Rights of Minorities: a Commentary on the European Framework Convention for the Protection of National Minorities*, Marc Weller, ed. (Oxford, Oxford University Press, 2006);

specific time that the migrant is in the host country is also not of importance for the entitlement of minority protection, but only for the specific measures that need to be taken to realize such protection. On members of minorities and minority rights, the Human Rights Committee noted in its general comment No. 23 (1994): “Just as they need not be nationals or citizens, they need not be permanent residents. Thus, migrant workers or even visitors in the State party constituting such minorities are entitled not to be denied the exercise of those rights.”¹¹

15. Article 27 of the International Covenant on Civil and Political Rights requests States parties to ensure that persons belonging to minorities “shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the United Nations Declaration on the Rights of Indigenous Peoples act as interpretative tools for article 27 of the Covenant and confirm the need for positive steps to be taken for the realization of the rights recognized in that article, as well as the right to effective participation. Of course, the specific measures that will need to be taken for the protection of specific migrants may differ. All the instruments cited above set out minimum standards that require to be implemented by States.

16. For migrants, the Global Compact for Safe, Orderly and Regular Migration is of importance in that it reiterates that: “Refugees and migrants are entitled to the same universal human rights and fundamental freedoms, which must be respected, protected and fulfilled at all times.” The States parties also reaffirm that the respect for human rights of migrants must be effective, regardless of their migration status, across all stages of the migration cycle. Commitment No. 16 of the Compact affirms the need for States to empower migrants and communities to achieve full integration and social cohesion. As part of objective 16 of the Compact, they commit explicitly to: “Promote mutual respect for the cultures, traditions and customs of communities of destination and of migrants by exchanging and implementing best practices on integration policies, programmes and activities, including on ways to promote acceptance of diversity and facilitate social cohesion and inclusion”. Objective 17 promotes the abolition of all forms of discrimination and the promotion of evidence-based public discourse to influence public perceptions of migration.¹² Although the Global Compact does not create new rights and obligations, it clarifies how general human rights apply to migrants.

17. Finally, the Special Rapporteur is aware that although the duty bearers of human rights obligations are States, non-governmental organizations or even multinational corporations are often heavily involved in managing migration.¹³ The Special Rapporteur wishes to clarify that even when responsibilities have been passed, formally or not, to other private or international entities or local authorities, ultimately it is the responsibility of the State to ensure that the obligations deriving from international human rights law are fulfilled. When it comes to cultural rights, legislation is only one measure to protect those rights and hence it might often be insufficient on its own.

and Stephanie E. Berry, “Integrating refugees: the case for a minority rights based approach”, *International Journal of Refugee Law*, vol. 24, No. 1 (February 2012).

¹¹ Para. 5.2. See also, Roberta Medda-Windischer, *Old and New Minorities: Reconciling Diversity and Cohesion*, (Baden-Baden, Germany, Nomos Verlagsgesellschaft, 2008); Manfred Nowak, “The evolution of minority rights in international law, comments”, in *Peoples and Minorities in International Law*, Catherine Brölmann, René Lefeber and Marjoleine Zieck, eds. (Dordrecht, Netherlands, Martinus Nijhoff, 1993); Rainer Hofmann, “The Framework Convention for the Protection of National Minorities: an introduction”; Stephanie E. Berry, “Integrating refugees: the case for a minority rights based approach”; and Kristin Henrard and Robert Dunbar, eds., *Synergies in Minority Protection: European and International Law Perspectives* (Cambridge, Cambridge University Press, 2008).

¹² See submission by Qatar.

¹³ See submission by Dalton Price, Oxford University.

B. Recognition of cultural rights at the national level

18. In their respective submissions a number of States, including Azerbaijan, Bahrain, Ecuador, El Salvador and Saudi Arabia, reported that they recognized cultural diversity, cultural rights and the prohibition of discrimination in national legislation. In some cases, cultural rights are recognized in their rightful place alongside the other human rights in constitutions, for example in article 11 of the Constitution of Kenya.¹⁴ That recognition in legislation is important. Unfortunately, some States still address cultural policies to citizens only.¹⁵ In any case, even strong legislative frameworks are not adequate to ensure respect for cultural rights. For example, notwithstanding their recognition in legislation, in November 2022 the Committee on the Elimination of Racial Discrimination noted the violation of the cultural rights of migrants in Bahrain and specifically asked for special measures to be taken to address it.¹⁶

IV. Migrants' access to cultural services and institutions

19. Cultural rights recognize the right of migrants to access the cultural life, resources and services of the society they live in, as well as their own cultural resources and frameworks. Public cultural services and institutions often do not fully cater for the needs of migrants.¹⁷ Reassurances by States that migrants have the same rights as the other residents of the country concerned do not really address the issues, as migrants face additional obstacles in accessing cultural services and institutions.

20. The Special Rapporteur has heard that State administrations in the cultural sector are not familiar with issues of cultural diversity and continue to favour “high arts” rather than inclusive cultural events. There is a lack of understanding concerning the cultural needs of migrants and outreach efforts are often insufficient. Language and cultural barriers, a lack of solid orientation regarding the sector for the newcomers and legal barriers for undocumented migrants may all have a negative impact and impede, directly and indirectly, migrants' effective access to and participation in cultural life.

21. Museums, galleries and bookshops are important cultural institutions, often publicly funded. Exhibits that relate to the cultures of migrants are often underrepresented, as are migrants in such institutions, even when they form a substantial percentage of the population of a country. A positive example is the cultural programme that the Museum of Islamic Art has developed in Qatar for Afghan refugee families. By facilitating art workshops, lectures and movie screenings in several languages, including Farsi, English, Arabic and Urdu, the programme empowers refugees to tell their stories through creative means of expression. The 2021 “Safar” exhibition displayed the history and culture of Afghanistan and highlighted the experiences and stories of Afghan refugees.¹⁸

22. It is important that cultural professionals and practitioners and the cultural sector in general ask themselves how they will become more open to migrant art, more accessible to migrants and employ more migrants. Securing the cultural rights of migrants opens further the imagination and aspirations of the society in which they exist. Training on cultural diversity and intersectionality is important. Migration often brings poverty, alienation and powerlessness, and cultural institutions often intimidate migrants who already feel alienated from the host society. Migrants must be given the opportunities and the tools to enable their voices, visions and aspirations to be included in the bastions of national arts that cultural institutions represent, and these need to adopt a more inclusive understanding of the arts.

23. Employing migrant personnel is essential. In some places, museums have started creating positions of diversity staff, responsible for increasing awareness and the

¹⁴ See submission by Kenya.

¹⁵ See, for example, Ministry of Arts, Heritage, Regional, Rural and Gaeltacht Affairs, Ireland, “Culture 2025. Éire ildánach. A framework policy to 2025” (July 2016).

¹⁶ CERD/C/BHR/CO/8-14, para. 11.

¹⁷ See submission by ARTconnects.

¹⁸ See submission by Qatar.

representation of diversity in the museum. However, cultural diversity must not be the task of one specific agent but must run through all activities by all staff in the sector at all levels. Anonymous recruitment processes for employment may be a way to overcome unconscious bias with respect to migrants. Exhibitions in museums focused on foreign exhibits often remain closed to the migrants who come from those same countries and are blind to their interpretation of the objects. It is rather regrettable to see exhibitions on past colonialism narrated by the colonizers and not by the migrants who suffered under colonialism.

24. Specific sectors of migrant communities face additional challenges to accessing cultural life: for asylum seekers who receive in some countries a residence permit that restricts their movements¹⁹ and persons living in reception centres, access to cultural activities can be very difficult. Undocumented migrants face the most limitations when it comes to accessing cultural services and institutions, as many live in fear or in hiding, are faced with language barriers and have mental health concerns.²⁰

25. Owing to the coronavirus disease (COVID-19) pandemic, many cultural spaces and institutions stopped offering their services and many have not resumed. This needs to be addressed on an urgent basis. In migrant reception centres, the pandemic saw further restrictions on free movement, with residents able to leave only to visit doctors or lawyers, or do grocery shopping.²¹

26. Civil society organizations are doing a remarkable job in bringing cultural events to reception centres, at times on a completely voluntary basis and despite facing the suspicion and distrust of the system. Kakuma Sound, a Kenyan organization, brings traditional musical instruments to the musicians and communities living in Kakuma refugee camp, which has 200,000 residents. Collaborating with the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Educational, Scientific and Cultural Organization (UNESCO), Kakuma Sound has brought in hundreds of instruments from people's home countries and trainers to help instruct musicians and amateurs, especially children, to learn and understand their traditional heritage.²² In Greece, the Network for the Rights of the Child offers a travelling children's library and other cultural activities for migrant children.²³

27. Refugee camps can also be places of culture as places of personal history. Migrants living in camps waiting for their status to be established also have the right to share their history and experiences. The Palestinian Dheisheh refugee camp, for example, is located on the main street of Bethlehem and is rich with stories narrated through its urban fabric. Refugee Heritage is a project that traces, documents, reveals and represents refugee history and initiated the nomination of the Dheisheh camp as a World Heritage Site. Over the course of two years, organizations and individuals, politicians and conservation experts, activists, governmental and non-governmental representatives and proximate residents have gathered to discuss the implications of that nomination.²⁴

28. Notwithstanding the excellent job that civil society organizations do, it is the primary responsibility of the State to ensure that access to and participation in cultural life are guaranteed. As emanations of the State, decentralized authorities and local and municipal actors, have a crucial role to play in implementing those rights for all.

V. Participation of migrants in decision-making on cultural matters

29. The participation of migrants in any programmes, discussions or measures that affect them is an essential aspect of cultural rights. In its general comment No. 21 (2009),

¹⁹ See submission by the German Commission for UNESCO.

²⁰ See submission by the ArtsConnect.

²¹ See submission by Red Noses Clowndoctors International.

²² See submission by Mark LeVine.

²³ <https://ddp.gr/en>.

²⁴ www.e-flux.com/architecture/refugee-heritage/.

the Committee on Economic, Social and Cultural Rights states that cultural rights include the right to take part in the development of the community to which a person belongs and in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person's cultural rights (para. 15 (c)). That right is not fully implemented. The participation of migrants must start at the inception of any measure and not only include them in the delivery. Any such measure must also be regularly evaluated by the migrants themselves. Their effective participation ensures an inclusive society. At the 1995 World Summit for Social Development, participants described inclusive society as "a society for all, in which every individual, each with rights and responsibilities, has an active role to play" and which should be based on the respect "for all human rights and fundamental freedoms, cultural and religious diversity, social justice and the special needs of vulnerable and disadvantaged groups, democratic participation and the rule of law".²⁵

30. Often, other persons speak in the name of migrants, be it experts, State officials or even civil society organizations. It is imperative that migrants share their own experiences and claims. France has specifically been asked by civil society to include people on the move in the State action plan in order to combat prejudice against and stereotyping of them.²⁶ The need for the direct participation of migrants must be guaranteed in the cultural sector, as well as in all other sectors. The infusion of their values, philosophies and knowledge benefits the wider society and its economic, political and social life.²⁷ That interaction, which includes criticism and even rejection, leads to development and innovation and benefits society as a whole.

31. Recent State initiatives including the active participation of migrants have led to gradual changes within society. In the Dominican Republic, it is reported that since 1992 there has been a new turn towards a decolonialization discourse spearheaded by civil society and feminist organizations, intending to challenge the almost exclusive focus of the country on its Hispanic heritage. That led to the recognition in 2005 of the so-called *guloyas*, traditional carnival characters, as a UNESCO-recognized living patrimony,²⁸ thereby also acknowledging the heritage of the Afro-descendants who were migrants from the anglophone Caribbean in the country's narrative.

VI. Artistic freedom of migrants

A. Enjoying and participating in artistic expression

32. Art constitutes an important vehicle for each person, individually and in community with others, as well as groups of people, to develop and express their humanity, world views and meanings assigned to their existence and development. The right to freedom of artistic expression and creativity includes the right of all persons to freely experience and contribute to artistic expressions and creations, through individual or joint practice, to have access to and enjoy the arts, and to disseminate their expressions and creations.

33. For migrants, creating and developing artistic expressions using different media provides spaces to express their identity and what is important to them, as well as avenues to work through the loss, challenges, grievances and questioning associated with migration and their new life situation in an aesthetic or symbolic manner. That is fundamental at the individual level, to find one's own voice, but is also a powerful tool for building inclusion.

34. Artistic disciplines, such as painting and drawing, music and dance, theatre and circus, photography, architecture and sculpture, performances and public art interventions, all provide spaces where communication, mutual recognition and understanding can occur beyond the mastery of a common language. Having access to and participating in such

²⁵ A/CONF.166/9, para. 66.

²⁶ CERD/C/FRA/CO/22-23, para. 10.

²⁷ See submission by YoSoyElOtro Asociación Cultural.

²⁸ See submission by OBMICA. See also <https://hoy.com.do/los-guloyas-declarados-patrimonio-humanidad/>.

artistic expressions may be critical for migrants, in particular during their first period in a new country. Opportunities to enjoy the arts with others from the host society in schools, at the neighbourhood or local community levels and through institutions contribute to building real ties and relationships. Engaging together in artistic projects provides opportunities to recognize shared humanity, overcome the fears that may be linked to stereotypes and appreciate the differences.

35. In Quebec Province, Canada, the Mozaïk parade brings together more than 1,000 people every year to prepare an artistic parade, which takes over the streets of the city of Vaudreuil-Dorion for a large citizen gathering. The aim is to display their varied colours and interpretation of a common theme, expressed through paintings created by various groups. Through the paintings, each group can express its identity and the message it wishes to convey to the community. During the creation phase, pairs are created: for example, members of the Haitian community are paired with women from the Cercles des Fermières du Québec and elected municipal officials are paired with people from the French language learning centre, which brings together students from over 30 countries.²⁹

B. Challenges of migrant artists

36. As artistic expressions are vehicles to develop and express one's world view, feelings and meanings, they need to be disseminated and made accessible in order to contribute to communication. However, there is a general underrepresentation of migrants in the cultural expressions created, produced and disseminated in most host countries, whether in traditional media or on digital platforms providing cultural content.

37. Migrant artists face significant obstacles in accessing the appropriate resources, means and tools to create, produce and share their cultural expressions, both within their group and within the host society. They often talk about their invisibility in the host society and its arts world. It is reported that when the State promotes international art and culture and even when they promote art on migration and displacement, there are extremely few initiatives that support refugees who are actual artists and whose needs are for professional support as artists.³⁰

38. Sometimes, migrants have difficulties in having their status as artists fully recognized. At times, their precarious financial situation and their difficulties in accessing governmental financial support programmes for the creation and production of cultural expressions restricts those expressions. Some arts councils and cultural ministries have a mandate to offer arts funding only to citizens of their countries.³¹ Panels deciding on scholarships or funding are often comprised of experts in the host country's arts and turn away from foreign or different art. Bias, conscious or unconscious, about what is good art, as well as priorities set by governments, for example to promote national history or specific causes, work against migrants' artistic expressions.

39. Migrant artists also do not often have the cultural networks, knowledge or means to promote their work in a way that is suitable in their new context. Hence, their art continues to be invisible even in the areas where they live. The positive contribution of migrants to the flourishing of diversity of cultural expressions, and of cultural diversity in general, within the territory of a State is not frequently highlighted and cultural policies are rarely mobilized to emphasize this. However, those policies play a fundamental role in the intercultural dialogue between the host society and migrants.

40. Migrant artists have usually fled their countries abruptly and without proper documentation, so they are forced to go into hiding from the authorities and are thus unable to access their host country's social and cultural life. Such migrant artists are in a state of limbo, unable to fully participate in their host country's creative economy. Instead, they are

²⁹ See submission by the UNESCO Chair on the Diversity of Cultural Expressions at Laval University, Quebec.

³⁰ See submission by PEN America.

³¹ See submission by Mary Ann DeVlieg.

struggling to secure legal documentation,³² emergency funding and, for those artists who are in a third country where they remain at risk, seeking to relocate to a country where they are truly safe and secure.³³ The difficulties are often even greater when artists and other migrants settle outside urban centres, as state-of-the-art creative and production tools may be inaccessible. Barriers to accessing and understanding information on dissemination channels and establishing relationships with cultural actors are further amplified by language barriers. Physically accessing places of creation, production or dissemination of cultural expressions can be compromised by fears of experiencing hate crimes, stereotyping or discrimination because of their status.

41. Migrant artists have reported how they are always expected to focus in their work on their suffering resulting from migration or on the reasons for migrating, which limits their artistic freedom. Their participation in cultural events often feels like an expression of tokenism, which hinders their work as true collaborators.³⁴ In addition, migrant artists often find themselves unable to vocalize criticism of the host State and society, as they are then seen as ungrateful or disloyal.

42. There are also barriers in terms of access to artistic training and professional development, as educational qualifications from the countries of origin are often not recognized. The professional development of refugee and migrant artists is also often very difficult in host countries, as they lack the legal status or the specific background that some universities require. Networks and knowledge of the funding structures in the respective countries are essential in order to gain access to performance opportunities and transmit their cultural expressions to a wide public.

43. The need to communicate information relevant to the creation, production and dissemination of cultural expressions is thus heightened when dealing with newly arrived people. That information must not only be available and visible, but it must also make its way to migrants in an appropriate format and language. Internet facilities are important for migrants.³⁵

44. The participation of migrant artists and communities in discussions about ways forward is of paramount importance. Securing the presence of migrants in the State's administration and in strategic positions in culture, their interaction with other artists within the country and their visibility as artists in national cultural centres is important.

VII. Migrants' right to have their own ways of life respected

45. Cultural rights also protect the right of migrants to their own ways of life. In its general comment No. 21 (2009) the Committee on Economic, Social and Cultural Rights noted that: "States parties should pay particular attention to the protection of the cultural identities of migrants, as well as their language, religion and folklore, and of their right to hold cultural, artistic and intercultural events."³⁶ States must ensure that the cultures of migrants are maintained. Members of minorities within wider migrant or refugee groups are especially at risk of completely losing their cultural bearings.³⁷ Positive measures are essential to reverse such risks to their identity.

46. More generally, migrants often face the undermining of their cultural values, the uncritical perception that their cultures of origins are of an inferior nature, and ultimately their dehumanization. Cross-national studies have revealed that the experiences, education,

³² See submission by Artistic Freedom Initiative for examples in the United States of America.

³³ See submission by PEN America. See also Manojna Yeluri and others, "Connecting the dots: artist protection & artistic freedom in Asia" (2022).

³⁴ Danilo Giglitto, Luigina Ciolfi and Wolfgang Bosswick, "Building a bridge: opportunities and challenges for intangible cultural heritage at the intersection of institutions, civic society, and migrant communities".

³⁵ See submission by Hong Kong Scots Community Interest Company.

³⁶ Para. 34.

³⁷ See Stephanie E. Berry and Isilay Taban, "The right of minority-refugees to preserve their cultural identity: an intersectional analysis", *Netherlands Quarterly of Human Rights*, vol. 39, No. 3 (2021).

skills and political priorities of the local population are important characteristics that shape their attitude towards migrants and their cultures.³⁸ The State therefore has an important role to play in changing negative attitudes through formal and informal education.

47. In Europe, the Europeanization discourse of human rights maintains and increases the artificial gap between “us, the Europeans”, who represent the noble values of human rights and gender equality, and “the others”.³⁹ “We”, the Europeans, need cultural rights, often in the sense of access to high arts, whereas “they”, the migrants, claim cultural rights to preserve their traditional practices. Populist media, politicians and parts of civil society have joined the chorus about the alleged perils of migrant cultures. That is in stark opposition to the commitment of States in the Global Compact for Safe, Orderly and Regular Migration, which is to “strengthen the welfare of all members of societies by minimizing disparities, avoiding polarization and increasing public confidence in policies and institutions related to migration” (objective 16).

48. Negative representations of migrants are the main engine of current efforts to introduce neo-assimilationist policies.⁴⁰ The criminal activities of any migrant are portrayed as either an inherent part of their culture or the outcome of cultural values; existing problematic cultural practices are singled out; unacceptable hate speech is confused with freedom of speech; and ultimately migrants are dehumanized, which leads to tolerance of discrimination and prejudice against them and suppression of their cultural rights. Ultimately, that can lead to legitimization of widespread and coordinated rights violations, as has been seen by the activities of right-wing criminal organizations.

49. The Special Rapporteur cautions against bias and prejudices, often covered under the repeated phrase “migrants have to adapt to our way of life”.⁴¹ In certain host countries, “our way of life” (not even our ways of life, plural) is considered the “right” interpretation of human rights, implying a kind of ownership of human rights by the host State and ignoring problematic values, practices and even the colonial past of some States.

50. On this flawed basis, integration, a concept and policy celebrated in the last several decades, is seen as a one-way route and used to promote policies that “gently” assimilate migrants, old and new. Overemphasis is put on promoting the national identity and respecting the values of the host State. Expecting members of cultural groups to accept the dominant way of life, a phrase often repeated, translates to excluding them from taking part in the shaping of society and from participating in and even changing and bringing new values to the shared understanding of society.

51. Integration is not only the responsibility of migrants but most importantly, the responsibility of States to ensure that migrants enjoy their cultural rights and intercultural interactions are promoted. Governments must ensure that all levels of the State administration understand the correct meaning of integration. The Organization for Security and Cooperation in Europe (OSCE) Ljubljana Guidelines on Integration of Diverse Societies can act as a guide. The Guidelines note that: “Integration is a dynamic, multi-actor process of mutual engagement that facilitates effective participation by all members of a diverse society in the economic, political, social and cultural life, and fosters a shared and inclusive sense of belonging at national and local levels. ... States should adopt policies that aim to create a society in which diversity and the rights of all are respected” and that ensure the conditions for all members of society to contribute to an inclusive civic identity and take on their share of responsibilities, as these policies benefit society as a whole.⁴²

³⁸ See Lenka Dražanová and others, “Meta-analysis of micro and macro level factors affecting attitudes to immigration” (2021).

³⁹ Alessandro Chechi, “Migration, cultural heritage, and cultural rights: a critical assessment of European Union law and policy” in *Cultural Heritage in the European Union*, Andrzej Jakubowski, Kristin Hausler and Francesca Fiorentini, eds. (Leiden, Netherlands, Brill Nijhoff, 2019).

⁴⁰ Peter Holtz, Janine Dahinden and Wolfgang Wagner, “German Muslims and the ‘integration debate’: negotiating identities in the face of discrimination”, *Integrative Psychological and Behavioral Science*, vol. 47, No. 2 (June 2013).

⁴¹ See, for example, [CERD/C/FRA/CO/22-23](#), para. 9.

⁴² OSCE, *Ljubljana Guidelines on Integration of Diverse Societies* (November 2012), pp. 3–4.

52. In a document issued by the Department of Economic and Social Affairs in 2009, explicit reference is made to migrants as a marginalized group that participates in the integration process. In particular, as part of the integration process for building inclusive societies that the document intends to promote, the lack of recognition of migrants' cultural and linguistic rights is defined as one of the main obstacles to their inclusion.⁴³

53. In that respect, the Special Rapporteur welcomes the measures taken by States to teach migrants the national language, cultural references and history,⁴⁴ but wishes to learn more about the measures taken to teach local groups about the history, cultural resources and languages of migrants. The participation of migrants in the inception, establishment and delivery of such measures is key for an interconnected, intercultural society.

Illiberal practices

54. Concerns are frequently expressed that the cultural norms and practices of migrants sometimes restrict individual human rights, including sexual freedom, gender equality, freedom of speech and individuality.⁴⁵ In Europe, the exercise of cultural rights by migrants coming from more traditional societies is particularly seen as potentially compromising women's and children's rights.

55. On the one hand, the assumption that certain forms of violence against women are cultural practices that cannot or should not be questioned is deeply flawed. For example, practices such as forced or early marriages and lack of education are based on imbalances concerning gender and sexuality, rather than simply being a reflection of cultural values, and are practices that have to be challenged on the basis of human rights. Brave Iranian women are currently showing the world that their oppression cannot be justified in the name of culture. Migrant women do not have to confirm forcibly to the cultural expressions of the majority of the host State.⁴⁶ On the other hand, simplistic and populist kneejerk reactions have the opposite effect of what they claim to serve: instead of promoting their rights, they treat migrant women as minors, take away their voices in the name of liberation and deprive them of other rights, such as education and financial independence. A number of States have prohibited women from wearing specific religious items in public services, educational settings or anywhere in public spaces.⁴⁷ Such prohibitions continue to divide international human rights bodies and need to be reflected upon, bearing in mind a wide range of considerations.⁴⁸ Migrant women's efforts to enable themselves in their new societies and fight intersectional injustice and stereotyping from both the host society and from within their communities must not be undermined by ready-made solutions imposed by others. In the European context, in order to be heard, migrant women often feel that they have to adopt Western thought, reasoning and language⁴⁹ and use the given formal language and vocabulary to express their concerns and wishes.

56. International law is clear about possible illiberal practices. The universality of human rights is non-negotiable. Human rights apply everywhere, irrespective of geography. Cultural diversity and cultural rights cannot be used to justify the oppression of individuals.⁵⁰ Importantly, both in assessing whether there is a violation and in devising

⁴³ Department of Economic and Social Affairs, *Creating an Inclusive Society: Practical Strategies to Promote Social Integration* (2009), p. 27.

⁴⁴ See submission by Azerbaijan. The Special Rapporteur has heard State officials equating the process of integration to free language lessons for migrants.

⁴⁵ See Marc de Leeuw and Sonja van Wichelen, "Civilizing migrants: integration, culture and citizenship", *European Journal of Cultural Studies*, vol. 15, No. 2 (March 2012).

⁴⁶ See submission by the Women's Rehabilitation Centre, Nepal.

⁴⁷ See submission by Maat for Peace, Development and Human Rights Association.

⁴⁸ See European Court of Human Rights, *S.A.S. v. France*, Application no 43835/11, Judgment of 1 July 2014, as compared to *Yaker v. France* (CCPR/C/123/D/2747/2016) and *Hebbadj v. France*, (CCPR/C/123/D/2807/2016).

⁴⁹ See Joanne P. Sharp, *Geographies of Postcolonialism* (London, Sage Publications, 2009), p. 111.

⁵⁰ Universal Declaration of Human Rights, art. 30; Vienna Declaration and Programme of Action, para. 5; Universal Declaration on Cultural Diversity, art. 4; Convention on the Protection and Promotion of

measures to eliminate such a possible violation, States have the obligation to be guided by the free and informed opinions of the individuals concerned. Otherwise, there is a risk that an assessment of whether something is a violation or not is informed by national perspectives or interpretations of both the practices and their meaning. States have an important role to play in ensuring that women have the possibility of a free and informed opinion, as well as real choices to opt out of any given practice. That can only happen if they have their right to education and their socio-economic rights materialized so that they can feasibly distance themselves from any cultural framework should they wish to do so.⁵¹

57. In assessing measures to address illiberal cultural practices of migrants (as well as of non-migrants), the State must apply the principles of legality, legitimacy and proportionality and maintain the core of all rights. In restricting cultural rights, States must ensure that such restrictions are not used to undermine, dehumanize or segregate whole cultural groups; rather they must continue to promote respectful co-living. Also, in helping to eradicate illiberal practices, host communities must always be reflective of their own cultural prejudices, stereotypes and practices. These principles must act as a guide in the measures States take to address illiberal practices.

58. The Special Rapporteur also wishes to draw attention to the legislation and practices that discriminate against migrants married to individuals of the host society. Such policies act as important obstacles to cultural diversity, violate human rights and are assimilationist.⁵² It is clear that international law prohibits assimilation. The prohibition of assimilation is proclaimed, among other provisions, in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination and in the opinion of the Special Rapporteur, it constitutes customary international law, so is prohibitive in all States.

VIII. Need for common public cultural spaces

59. The rights of migrants to enjoy and participate in the cultural life of the community (both the host community and the communities they belong to), to artistic freedom, especially for migrant artists, and to access, practice and maintain their cultures can only be achieved through interculturalism and cultural exchanges. Migrants must not be left to celebrate their cultures only in a separate, enclosed system.⁵³ Artistic exhibitions by migrants are often restricted only to areas where they live; their cultural values and practices are not regularly discussed in the media or in the everyday cultural life of the host countries in a positive manner. In many countries, residents can live their entire life without knowing anything about the hundreds of thousands of migrants living in the same city.

60. Creating common spaces where interaction happens organically is essential. For example, between 2014 and 2017 the Göteborg Opera and the Swedish Red Cross collaborated to organize a performance of the Swedish hit musical *Kristina från Duvemåla* reinterpreted to integrate the experiences and songs of a group of people recently arrived in Sweden seeking asylum. It created a public space where migrants and non-migrants interacted through culture.⁵⁴

61. Cities and local authorities may be the best equipped to create meeting places that are conducive to the establishment of a climate of community, trust and proximity between migrants and the host society. Their proximity to the population favours the deployment of initiatives, including cultural policies and programmes, that have the direct effect of

the Diversity of Cultural Expressions, art. 2; Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009), para. 18. See also [A/73/227](#).

⁵¹ See Alexandra Xanthaki, "When universalism becomes a bully: revisiting the interplay between cultural rights and women's rights", *Human Rights Quarterly*, vol. 41, No. 3 (August 2019).

⁵² See, for example, [CERD/C/BHR/CO/8-14](#), para. 21.

⁵³ See submission by the Refugee and Migration Studies Hub, National and Kapodistrian University of Athens.

⁵⁴ See submission about the international choir project of the Göteborg Opera, Sweden.

humanizing, valuing and promoting the cultural contribution of newcomers to the cultural life of a society.⁵⁵

62. Schools are also important spaces for the development of interculturalism. State school curricula often do not refer at all to the history of migration, neither do they provide any understanding of the cultural realities of migrants. In the Dominican Republic, attempts to make the school curriculum more diverse have been reported, with Haitian and Dominican historians trying to negotiate a common historical narrative between the two countries, with a view to reducing negative stereotypes across the island. The Special Rapporteur would welcome more efforts and support so that the outcomes of such collaboration become clear.

63. Libraries are important common spaces where migrants can interact with the local population. Many libraries offer specific services to migrants, including general information about administrative practices, access to information and communications technologies, to community and support networks to counter social isolation, and to a variety of resources for integration, education and cultural enrichment.⁵⁶ Many of these libraries record and disseminate information about the cultural resources of migrants, which helps the local population understand more about the lives of migrants. An example of this is the two-year intercultural storytelling project, *Refugee Lives: a Million Stories*, initiated and led by the Roskilde Libraries in Denmark, in collaboration with the public libraries in Malmö in Sweden and Cologne in Germany and the Future Library in Athens. The project includes more than 600 stories from refugees who have fled to the European Union in recent years, creating a digital library of lived experiences. Similarly, the Services to Immigrants and Refugees team of the Denver Public Library in the United States of America created an audiovisual exhibit entitled *Mementos From Home*, which featured immigrants recording stories about items they had brought with them to the United States and what those objects mean to them.

64. In the global survey on library services for displaced populations, carried out by the International Federation of Library Associations and Institutions,⁵⁷ Veria Central Public Library in Greece reported that it had organized programming that included cooking lessons in the library with families from Greece and the Syrian Arab Republic.

65. “Sesame” is an experimental research project led by the Musée de la Civilisation de Québec that aims not only to improve access to the Museum, but also to involve people who experience particular realities (situations of exclusion, marginalization, disability, etc.) in the design of exhibitions. By working and collaborating with the individuals and communities concerned, the Museum documents historical aspects of their reality, develops its collections to reflect them, and sets up contexts for artistic co-creation. As part of this project, L’Espace Rencontres makes it possible to take account of the often unknown reality of people living in particular situations, including migrants.

66. One important way of acknowledging the cultural backgrounds and histories of migrants is through migration museums and other memory, history and cultural heritage institutions. That is already done in numerous countries, but should be encouraged worldwide, not only at a national but also at a local level. Such activities are significant both for migrants themselves (individually and collectively) and for people in the societies to which the migrants have come.

67. Intangible cultural heritage, including oral traditions, histories and life stories, are not valued equally with tangible heritage and are usually performed outside museums and galleries. Music, dance, gastronomy and dress are living, everyday heritage resources that are often disregarded by States. That is a remnant of an outdated dichotomy between high arts and popular arts. Exhibiting cultural expressions, such as oral stories and storytelling, in museums and exhibitions confirms their rightful position next to other cultural outputs and provides opportunities for empathizing with the personal stories of migrants and

⁵⁵ See submission by the Gdansk Municipality, Poland.

⁵⁶ See submission by the International Federation of Library Associations and Institutions.

⁵⁷ The resulting guidelines are to be published.

fostering intercultural understanding. Such visibility of migrant cultures should take place both in generic exhibitions in museums and in exhibitions specifically on the history of migration and events specifically for the migrant communities in question.⁵⁸ The necessity to safeguard the intangible cultural heritage of migrants, a clear obligation of States, pushes for measures to enable migrant communities to counteract their invisibility in the official heritage discourse by encouraging the inclusion of groups holding distinct cultural identities in the wider historical narrative of the societies in which they play a role.⁵⁹

68. Many admirable such activities have recently been created for people displaced from Ukraine. For example, the Provincial Public Library in Krakow, Poland, prepared a library support and assistance plan to support the needs of their Ukrainian community. Such activities included the purchase of Ukrainian literature and films for the library's collection, the organization of Polish language lessons, literary walks around Krakow in Ukrainian, lectures on legal and accounting advice, cultural integration meetings and children's events.⁶⁰ Poland assisted Ukraine in securing the collections of national cultural institutions, museums, state archives and libraries, helped to coordinate cultural resources and protected more than 200 historic objects.⁶¹ Romanian libraries have likewise offered special events geared towards mutual engagement between Ukrainian and Romanian children and adults. Some of these activities were aimed at multicultural exchanges. The Tulcha County Library, for example, held an event in which Ukrainian children were invited to read Ukrainian poems and give song and dance performances. The Special Rapporteur warmly welcomes such initiatives and wishes to see them expanding to all migrants worldwide.

IX. Exercise of cultural rights as a tool of resilience

69. The Special Rapporteur wishes to acknowledge all the important, imaginative and innovative ways that cultural activities and resources are used every day to enable migrants to fully enjoy their rights. In Europe, a report launched by the European Commission in November 2022 references over 300 scientific studies and more than 500 projects, putting the contribution of art and culture at the centre of health and well-being.⁶²

70. Civil society has been very active in using cultural initiatives to protect the rights of migrants. Universities have been joining resources with migrants and human rights organizations in enabling such opportunities.⁶³ For example, Migrant Voice in Glasgow, United Kingdom of Great Britain and Northern Ireland, is a migrant-led organization that has collaborated with the University of Glasgow and initiated media skills training for people with experience of migration.⁶⁴ The Athens refugee project run by Brunel University, United Kingdom, has seen students using cultural activities, including sports and informal education, to promote the well-being of unaccompanied migrant children. This led to the creation of "The Rights Hero", a prototype serious virtual game for migrant children to help them learn and practise their rights, encouraging them to take transformative action that will lead to integration.⁶⁵ Technology can play an important role in the inclusion of migrant communities at risk of sociocultural exclusion, as long as such

⁵⁸ See submission by the Culture Committee of United Cities and Local Governments.

⁵⁹ Danilo Giglito, Luigina Ciolfi and Wolfgang Bosswick, "Building a bridge: opportunities and challenges for intangible cultural heritage at the intersection of institutions, civic society, and migrant communities".

⁶⁰ See submission by the International Federation of Library Associations and Institutions.

⁶¹ See submission by Poland.

⁶² See *CultureForHealth Report. Culture's Contribution to Health and Well-being: a Report on Evidence and Policy Recommendations for Europe* (December 2022), available from www.cultureforhealth.eu.

⁶³ See submission by Michael Culture Association.

⁶⁴ See submission by the UNESCO Chair in Refugee Integration through Languages and the Arts, University of Glasgow.

⁶⁵ See Mariza Dima and others, "The Rights Hero - serious games for human rights education and integration of migrant and refugee children in Europe", *The International Journal of Children's Rights*, vol. 30, No. 1 (February 2022).

initiatives adopt participatory approaches, include continuous evaluation to adapt to the needs of the communities and are facilitated by cultural and technological mediators.⁶⁶

X. Rights of migrants over cultural objects left behind

71. Migration often means that some moveable cultural objects will be left behind when individuals move. International cultural heritage law is connected to national territoriality, so States have the ultimate authorizing power over the meanings and uses of nationally recognized cultural heritage. The issue of whether migrants can take with them their cultural objects is an interesting question linked to cultural heritage as much as the right to leave one's country.

72. That issue was discussed with respect to Jewish migrants leaving Europe after 1945 and after 1968.⁶⁷ There have been cases in which Holocaust victims could not regain possession of their cultural objects looted during the war, even when they could recover the ownership title. In fact, many victims leaving Europe for Israel and the United States were forced to "donate" their properties to territorial States, often those involved in the genocide. A relevant case is that of Maria Altmann and six famous Klimt paintings.⁶⁸ Altmann sued Austria and the Austrian National Gallery in the United States to recover six paintings by Gustav Klimt that the Nazis had taken during the Second World War from her Jewish relatives, Ferdinand and Adele Bloch-Bauer. Although the Supreme Court of the United States lifted the jurisdictional immunity of Austria, the disputants reached an agreement to end the litigation and submit the dispute to arbitration in Austria. The arbitration panel ruled that Austria was obliged to return five of the Klimt masterpieces to Maria Altmann.⁶⁹

73. Irrespective of the acquired rights of others, the original individual owners of cultural objects should still be able to rely on a "heritage title" if there is a continuing cultural link. Whichever way the ownership interests are accounted for in national private law, cultural rights have an important role to play in addressing the individual heritage interests of migrants.⁷⁰ Neither the existing legal framework for the art trade, based on the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, nor regular ownership concepts appear particularly suited to solving title issues relating to contested cultural objects.⁷¹ A human rights approach, where the cultural right of migrants to access and enjoy cultural heritage objects is acknowledged, can act as a bridge in that regard. That is consistent with the position of the Committee on Economic, Social and Cultural Rights in its general comment No. 21 (2009) that: "States parties should not prevent migrants from maintaining their cultural links with their countries of origin" (para. 34). Depriving migrants of personal belongings, including jewellery which may have affective value, should also be eliminated as a practice.⁷²

74. Archives left behind by individuals and ethnic, political or religious groups who are forced to leave their countries or territories, must also be protected and migrants allowed access to them by the State of origin or wherever those archives are kept. All States should respect their obligations to take steps to protect such archives by ensuring safe preservation and secure access, including by the individuals and groups who were forced to leave. That is in line with General Assembly resolution 68/165.

⁶⁶ See, for example, <https://memexproject.eu/en/resources/policy-briefs>.

⁶⁷ See John Henry Merryman, *Law, Ethics and the Visual Art*, 5 edn, 2007, 140–141.

⁶⁸ See arbitral award - five Klimt paintings, *Maria V. Altmann and others v. Republic of Austria*, 15 January 2006. See also opinion of the Supreme Court of the United States, 7 June 2004, available from www.law.cornell.edu/supct/html/03-13.ZO.html.

⁶⁹ See <https://plone.unige.ch/art-adr/cases-affaires/6-klimt-paintings-2013-maria-altmann-and-austria/case-note-2013-six-klimt-paintings-2013-maria-altmann-and-austria/view>.

⁷⁰ See Lucas Lixinski, "Moving cultures: engaging refugee and migrant culture rights in international heritage law", *Indonesian Journal of International Law*, vol. 16, No. 1 (2018).

⁷¹ Evelien Campfens, "Whose cultural objects? Introducing heritage title for cross-border cultural property claims", *Netherlands International Law Review*, vol. 67, No. 2 (September 2020).

⁷² See submission of the International Council of Archives, Section on Archives and Human Rights.

75. Finally, important directions come from the European Court of Human Rights on migrants' access to immovable objects in their State of origin. In the case of *Sargsyan v. Azerbaijan*, the Court held that Armenian migrants who had forcibly left Azerbaijan because of the war must have access to the graves of their ancestors.⁷³

XI. Recommendations

76. Migration enables individuals, both migrants and the host population, to re-evaluate their cultural frameworks and be positively influenced by other ideas, values and practices. In that process, States must be aware of the vulnerabilities of migrants and take measures to enable them to enjoy their cultural rights, irrespective of their status. Substantive equality requires States to keep looking at ways to protect migrants' rights to access their own cultural frameworks, as much as the cultural life of the host State, without any discrimination, be it on purpose or in effect, in law or in practice. A major principle in this respect is that of the effective participation of migrants in all decisions relating to cultural rights and enhanced participation in all phases of programmes and measures relating to their own cultural rights.

77. The Special Rapporteur recommends that States review the following issues so as to assess the level of implementation of the cultural rights of migrants in their territories on a basis of substantive equality:

(a) The ability of migrants to access their own cultural frameworks, as well as that of others, through, in particular, their right to information, their access to cultural institutions and the Internet, and their right to maintain and transmit their chosen way of life;

(b) Measures adopted to ensure that migrants participate in all aspects of the cultural life of the host State and enjoy enhanced and effective participation in all decision-making processes that have an impact on their cultural rights. Measures must involve enhanced migrant participation in all phases of programmes aimed at the implementation of their cultural rights, from inception to organization and delivery;

(c) The existence and nurturing of common public spaces;

(d) The resources, including financial support, given to persons and groups with migration backgrounds in the fields of art, sport and science. For example, States are encouraged to assess whether sufficient support is given to migrant-led initiatives and projects, to events promoting migrants' cultural activities and creative expressions, and whether migrant cultural and artistic productions are well represented on radio, television and in cultural events;

(e) Migrants' mobility, in particular to attend or participate in cultural activities and the steps taken to facilitate their attendance and full participation in cultural life;

(f) The existence of any restrictions on cultural rights based on the legal status of migrant artists. These must be eliminated.

78. The Special Rapporteur recommends that States:

(a) Review critically their legislation, including asylum legislation, and policies, including cultural policies, to ensure that restrictions on migrants wishing to undertake any form of art and self-expression, to organize and stage cultural events, to carry out practices in private and in public and to disseminate their artistic and cultural productions, are eliminated;

⁷³ Application number 40167/06, 16 June 2015.

(b) Review critically the representation of migrants and their communities in the life of the State, including in the public media, museums and mainstream narratives, and as mediators, educators or guides;

(c) Adopt all measures, including positive measures, necessary to eliminate negative stereotypes of migrants and their cultures among State officials, the media and society in all fields and at all levels;

(d) Consider developing or strengthening mechanisms that ensure rights in situations of intersectional vulnerability in contexts of migration, such as gender identity, women, youth and disability. Representation and the enhanced participation of those sections of migrants in all decision-making bodies is important and must take place according to the wishes and ways of those individuals and groups;

(e) Offer the necessary tools for the revisability of cultural practices by migrant and non-migrant communities in order to eradicate illiberal practices;

(f) Review the representation of diversity in the staffing and decision-making bodies of public institutions and services, with a view to evaluating the ability of persons with migration backgrounds to access such positions on the basis of equality;

(g) Ensure that common public spaces allow for the co-existence and interaction of migrants with all other sections of the host population. Barriers, restrictions and obstacles must be eliminated so that real interculturalism exists;

(h) Assess the presence of cultural diversity in educational curricula and textbooks, including the history of migration flows and of migrants, and the common stories and topics shared by host and migrant communities that are less known. Provide teachers and trainers with material and resources to integrate more diverse material in their teaching;

(j) Devise programmes so that the host population learns about migrants' histories, realities and cultures;

(k) Exercise due diligence with respect to any unequal treatment or discriminatory conduct by private actors, paying special attention to the role of cultural, religious and educational institutions, as well as the media;

(l) Ensure the inclusion of heritage related to migration in mainstream heritage institutions and establish heritage institutions dedicated specifically to the exploration of migration, led by migrant communities;

(m) Integrate services for people on the move into the mission statement of libraries, emphasizing cooperation with multicultural communities and equitable opportunities for support, learning and connection.

79. In view of the positive practices shared in preparation of the present report, the Special Rapporteur would strongly encourage and welcome:

(a) More visibility of and opportunities for engagement between migrants and persons from the host society, including increased support for such initiatives;

(b) Targeted information in various languages and support schemes to increase the ability of migrants to contribute actively to cultural life and to enable migrant artists to continue developing their arts and creativity;

(c) Continuing training and measures that raise awareness in the public services at all levels and of the cultural sector of the full breadth of cultural rights that migrants have under international human rights law.

79. The Special Rapporteur also strongly recommends more engagement with migrants' cultural rights by all United Nations bodies and agencies, especially the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families and the Human Rights Committee, UNHCR, the International Labour Organization and regional human rights mechanisms. She also recommends the use of a full spectrum of

instruments for the protection of the cultural rights of migrants, including instruments on migration, asylum and minorities. Information about migrants' cultural rights should also be included in State reports for the universal periodic review and to the relevant treaty bodies.
