

Towards a Right to Cultural Identity? |

*To my parents Frans and Marita*

**SCHOOL OF HUMAN RIGHTS RESEARCH SERIES, Volume 15**

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# Towards a Right to Cultural Identity?

Yvonne M. Donders

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Yvonne M. Donders  
Towards a Right to Cultural Identity?

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## ACKNOWLEDGEMENTS

At the start of this research I came across the following quote in a Dutch newspaper: “Culture is too important to be left in the hands of experts only”. It concisely reflects why the topic of a right to cultural identity interests me. Cultural identity affects every individual and community. In fact, everyone and at the same time no one is an expert in this field. In any case, researchers or ‘experts’ should never lose sight of the people that are actually affected by the many complex issues surrounding a right to cultural identity.

This dissertation has provided me with many useful experiences, personally as well as professionally. At this point, I would like to express my gratitude and thanks to all who have helped and encouraged me over the last years.

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## LIST OF ABBREVIATIONS, DOCUMENT SYMBOLS AND WEBSITES

ACM	Adviescommissie Mensenrechten en Buitenlands Beleid / Advisory Committee on Human Rights and Foreign Policy of the Dutch Ministry of Foreign Affairs
CAHMIN	Ad Hoc Committee for the Protection of National Minorities (Council of Europe)
CCR	Committee on Conventions and Recommendations (UNESCO)
CDCC	Council for Cultural Co-operation (Council of Europe)
CDDH	Steering Committee for Human Rights (Council of Europe)
CEACR	Committee of Experts on the Application of Conventions and Recommendations (ILO)
CERD	Committee on the Elimination of Racial Discrimination
CoE	Council of Europe
ECHR	European Convention on Human Rights and Freedoms
ECOSOC	UN Economic and Social Council
ESC	European Social Charter
FGM	Female Genital Mutilation
HRC	Human Rights Committee
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ILO	International Labour Organisation
IWGIA	International Working Group for Indigenous Affairs
NGO	Non-Governmental Organisation
OAS	Organisation of American States
OUA	Organisation of African Unity
OSCE	Organisation for Security and Co-operation in Europe
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNGA	United Nations General Assembly
WGIP	Working Group on Indigenous Populations
WGM	Working Group on Minorities

**United Nations Documents (UN Doc.)**

A/...	General Assembly
A/C.3/...	General Assembly, Third Committee (Social Affairs)
A/RES/...	General Assembly Resolution
CCPR/C...	Human Rights Committee
CERD/C...	Committee on the Elimination of Racial Discrimination
E/...	Economic and Social Council
E/C.12/...	Committee on Economic, Social and Cultural Rights
E/CN.4/...	Commission on Human Rights
E/CN.4/Sub.2/...	Sub-Commission on the Promotion and Protection of Human Rights

**UNESCO Documents (UNESCO Doc.)**

...C/...	General Conference
CLT/...	Documents of the Department of Culture
.../CONF/...	Conferences
.../DG/...	Reports of the Director General
...EX/...	Executive Board
.../PREP.COM/...	Preparatory Commission of UNESCO
...S/...	Secretariat
SS/...	Social Sciences
SHC/...	Documents of the Department of Social and Human Sciences
.../WS/...	Working Series

**Documents of the Organisation of American States (OAS Doc.)**

AG/...	OAS General Assembly
OC/...	Inter-American Court of Human Rights
OEA/Ser...	Inter-American Commission on Human Rights

**Documents of the Council of Europe (CoE Doc.)**

CAHMIN...	Ad Hoc Committee for the Protection of National Minorities
CDCC...	Council for Cultural Co-operation
CDDH...	Steering Committee for Human Rights
CLD-MIN...	European Commission for Democracy through Law

**General abbreviations**

.../NGO/...	Documents containing communications from Non-Governmental Organisations
.../OR/...	Official Records
.../RES/...	Resolution
.../SR/...	Summary Records
.../WG/...	Working Group Document
.../WP/...	Working Paper



List of Abbreviations, Document Symbols and Websites

Council of Europe	<a href="http://www.coe.int">www.coe.int</a>
Council of Europe – Minorities	<a href="http://www.humanrights.coe.int/Minorities/Eng/Sitemap.htm">www.humanrights.coe.int/Minorities/Eng/Sitemap.htm</a>
European Court of Human Rights	<a href="http://www.echr.coe.int">www.echr.coe.int</a>
Fribourg Group	<a href="http://www.unifr.ch/iiedh/recherche/recherche.htm">www.unifr.ch/iiedh/recherche/recherche.htm</a>
IACHR	<a href="http://www.iachr.org">www.iachr.org</a>
Indian Law Resource Centre	<a href="http://www.indianlaw.org">www.indianlaw.org</a>
Inter-American Court of Human Rights	<a href="http://www.corteidh.or.cr/index-ingles.html">www.corteidh.or.cr/index-ingles.html</a>
IWGIA	<a href="http://www.iwgia.org">www.iwgia.org</a>
OAS	<a href="http://www.oas.org">www.oas.org</a>
United Nations	<a href="http://www.un.org">www.un.org</a>
UNESCO	<a href="http://www.unesco.org">www.unesco.org</a>
UN High Commissioner for Human Rights	<a href="http://www.unhchr.ch">www.unhchr.ch</a>

Over the last 20 years, the question as to whether a right to cultural identity should be developed has been the subject of considerable debate. Although the incorporation of cultural identity as a concept in human rights instruments is not entirely new, and the protection of cultural identity has been included in several instruments, no separate right to cultural identity has been adopted. Supporters of adopting such a separate right argue that the existing human rights system, with its individual character and underdevelopment of cultural rights, does not meet the claims of individuals and communities for the protection of their cultural identity. However, the development of a separate right to cultural identity also encounters critics who argue that the concept of cultural identity is too vague to be transformed into a right, and that such a right might cause tension within society and could lead to the approval of intolerable cultural practices. The aim of this research was to examine to what extent a right to cultural identity should be further developed as a separate right within the framework of international human rights law, and what the nature, scope and content of this right could be.

The first chapters include a theoretical analysis of the nature, scope and content of a right to cultural identity, including the clarification of the concept of cultural identity, cultural rights and collective rights, from a social sciences, political sciences and legal perspective. The subsequent chapters contain a study of existing human rights provisions in international instruments that explicitly or implicitly refer to the protection of cultural identity or aspects of cultural identity, including the role of UNESCO in developing cultural rights, the right to participate in cultural life, and rights related to minorities and indigenous peoples, are analysed. Attention is also paid to regional human rights instruments in Europe and the Americas, including an analysis of case law. Finally, an illustration is given of an indigenous people and its cultural identity, namely, the Sami in the Nordic countries.

The conclusion of this study is that no separate right to cultural identity should be developed, because it is neither desirable nor necessary. It is not desirable because translating the vague and general concept of cultural identity into a right would risk abuse or suppression of individual rights and freedoms within a cultural context. It is not necessary because existing cultural rights in the broad sense already offer possibilities to protect cultural identity.