

” The United Nations' Approach to the Protection of Minority Rights
– Religious Minorities as a Model-”

The United Nations' Approach to the Protection of Minority Rights – Religious Minorities as a Model-

نهج الأمم المتحدة في حماية حقوق الأقليات – الأقليات الدينية أنموذجا

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Abstract:

Although international human rights law concerning minorities provides a complex system of provisions that may affect the status of religious groups, the issue remains unsettled and under study. The definition of minorities in general, and religious minorities in particular, is undergoing significant evolution. Accordingly, this paper seeks to shed light on the comprehensive legal framework established under the United Nations and the approach adopted by most human rights bodies and committees to redefine “religious minority” in light of the intersections between different categories of human rights and minority rights. This is done by analyzing the legal sources that protect religious minorities and focusing on a specific issue: the extent to which the cultural identity of the group and the individuals ensures a type of protection for this category of minority. The study concludes that applying a comprehensive approach combining individual and collective rights, recognizing the right to cultural identity on both the individual and collective levels, and mandating positive measures has allowed for better protection of religious minorities.

Key words: Religious minorities – Cultural identity – Collective rights – Principle of non-discrimination – Minority rights

Introduction

Violations of individual human rights based on freedom of religion or belief occur across all regions of the world. Social hostility and governmental restrictions often affect individuals belonging to religious minorities due to their weak social and legal status. Although international human rights law concerning minorities provides a complex system of provisions that may affect the status of religious groups, the issue remains unsettled and under study. The definition of minorities in general, and religious minorities in particular, is undergoing significant development. In this context, the study aims to shed light on the comprehensive legal framework established under the United Nations and the approach adopted by most human rights bodies and committees to redefine the concept of “religious minority,” through the intersections among the various categories of human rights and minority rights. The study focuses on the necessity of recognizing that the idea of belonging to a particular minority cannot be separated from other characteristics that define the identities of individuals and groups, such as origin, language, religion, and culture, etc.

To achieve the intended purpose of the study, the legal sources protecting religious minorities were analyzed based on a recent fundamental approach. This approach assumes that the best way to protect marginalized minorities is by protecting their "cultural identity" through a system that applies the principles of equality and non-discrimination and includes positive action and particularly the recognition of the collective right to cultural identity.

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In pursuit of this objective, the following problem was adopted:

In light of the insufficiency of clear and comprehensive legal texts recognizing the rights of religious minorities, to what extent can the mechanisms and committees of the United Nations contribute to establishing solid foundations for ensuring the enjoyment of minority rights in general, and religious minority rights in particular?

The study is divided into two main chapters:

- **Chapter One:** An overview of the organization of religious minority rights under international human rights law.
- **Chapter Two:** The comprehensive and intersectional approach to ensuring a framework for protecting the rights of religious minorities.

Chapter One

An Overview of the Organization of Religious Minority Rights under International Human Rights Law

The existence of minorities and the recognition of a set of rights for them require a prior understanding of their components and needs. This makes it necessary to investigate the issue of defining them legally (**First section**), followed by a review of the legal framework for religious minority rights from the perspective of international covenants and treaties (**Second section**).

1. The Problem of Establishing a Legal Definition of Minorities

The Office of the High Commissioner for Human Rights stated in 2014 that: *“Religious minority rights are complementary to and go beyond freedom of religion.”*¹

A closer analysis of this statement shows that the issue of religious minorities has long been and continues to be subject to considerable debate regarding its nature, the scope of the rights it entails, and the extent of states' obligations to implement it. Therefore, the existence of religious minorities and their needs for knowledge and understanding is a prerequisite for the state to grant them certain rights. This reflects the core problem of defining them legally.

1.1 Under the League of Nations

An initial solution to this issue can be found during the era of the League of Nations. At that time, international law expressed concern over religious minorities, especially amid the regional changes following World War I. The subsequent peace settlements led to the development of a legal definition that was enshrined in international rules, giving priority to ethnic, linguistic, and religious differences between the majority and minorities.²

As a result, rulings of the Permanent Court of International Justice, particularly concerning the Greek-Bulgarian Convention in 1930 and the status of private religious schools in Albania in 1935, included definitions of minorities. According to the Court's formulation:

*“A community is... a group of persons living in a given country or locality, having their own traditions, religion, language, or customs, forming a unity based on these characteristics — religion, language, or traditions — and feeling solidarity with the aim of preserving their traditions, maintaining their form of worship, ensuring the education of their children in accordance with the spirit and traditions of their group, and assisting one another.”*³

From an analysis of the Court's definition, religion is considered a key criterion for establishing the existence of a minority, while shared identity and solidarity are the **keywords** for describing it.

1.2 Under the United Nations

After World War II, various descriptions of the term “minority” were proposed under the United Nations framework, all revealing the difficulty of defining the social groups to which the minority

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label applies. Proposals included indigenous peoples, workers, or migrants. Questions were raised about the subjective and objective criteria required and the minimum threshold for recognition.⁴ Despite these attempts, the failure to reach an agreement on which groups would be considered minorities and the extent of the rights to be recognized — combined with the negative experiences of minority protection under the League of Nations⁵ — led to the exclusion of any provision on minorities during the drafting of the Universal Declaration of Human Rights in 1948.⁶

In 1966, the issue re-emerged at the United Nations level, leading to the inclusion of a provision addressing ethnic, religious, and linguistic minorities in **Article 27 of the International Covenant on Civil and Political Rights (ICCPR)**.⁷

Article 27 states: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

Legal scholars agree that the Covenant is the first binding multilateral international treaty to define minority rights. Its wording is considered highly significant, a point emphasized in the 2019 report of the United Nations General Assembly: "The wording of Article 27 of the Covenant is extremely important... in that it departs from the limitations and restrictions found in many earlier definitions and descriptions of what constitutes a minority, and also significantly changes the nature and scope of the rights they may claim."⁸

In an attempt to interpret Article 27, the Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities offered, in 1979, a definition that was later adopted in most UN international documents⁹. A minority is defined as: "A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population, and show, even if only implicitly, a sense of solidarity directed towards preserving their culture, traditions, religion or language."¹⁰

It is worth noting that the objective criteria such as "non-dominant status" and the subjective criteria such as the "will" of individuals belonging to the group, along with the desire to preserve shared characteristics and traditions, are deeply interlinked within Capotorti's definition.¹¹

Despite the clarity and importance of this definition, it has not been taken into account in judicial interpretations or the General Comments issued by the Human Rights Committee regarding the International Covenant on Civil and Political Rights.¹²

Efforts to define minorities and overcome the obstacles that hinder the effective realization of the rights of persons belonging to minorities are ongoing. The absence of a precise definition may lead states to treat the issue as an internal matter, thus opening the door to many contradictions regarding the identification of minorities and determining who is entitled to the recognized set of rights.¹³

The 2019 definition proposed by the Special Rapporteur on minority issues marks a practical step forward in clarifying the concept of minority under Article 27 of the ICCPR, and contributes to the legal scholarship of the Human Rights Committee in resolving the inconsistencies and shifts surrounding the notion of minority. It defines a minority as:

"An ethnic, religious or linguistic minority is any group of persons constituting less than half of the population of the entire territory of a State, whose members share common cultural, religious or linguistic characteristics—or a combination thereof. Any person may freely identify as a member of an ethnic, religious or linguistic minority without any requirement of citizenship, residence, official recognition or any other status."¹⁴

This definition refers to the multiple dimensions of minority characteristics through the use of the terms "community" and "individual freedom." It aligns with a comprehensive approach that

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should be adopted when addressing the term “religious minority,” where general “identity” and particularly the group’s “cultural identity” serve as the basis for recognizing other rights. Therefore, a broad understanding of the terms “religion” and “minority” is essential when identifying groups that fall under the scope of religious minorities.¹⁵

2. Religious Minorities in International Human Rights Instruments

In addition to Article 27 of the ICCPR, religious minorities are also covered by provisions in other international treaties or human rights declarations. The following are some illustrative, not exhaustive, examples:

2.1 UN International Convention on the Elimination of All Forms of Racial Discrimination¹⁶

Although the Convention does not define religious minorities—its primary aim being to promote de jure and de facto equality among individuals¹⁷—and although its definition of racial discrimination does not explicitly include religion¹⁸, religious bias can be an indirect result of ethnic discrimination, thus activating the Convention’s provisions¹⁹. The widespread ratification of the Convention by most countries²⁰ signifies broad global acceptance of its core principles across different political cultures.

Article 1 defines racial discrimination very broadly to include national or ethnic origin, which closely relates to ethnic, national, and religious minorities.

In the same vein, Article 7 provides: “States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture, and information, with a view to combating prejudices which lead to racial discrimination.”

The Committee on the Elimination of Racial Discrimination (CERD), in its report on the implementation of Article 7, stated: “The Convention pays particular attention to certain minorities that have historically suffered the greatest degree of marginalization and social exclusion²¹.” Thus, a broad interpretation of the Convention’s provisions—and under certain circumstances, special measures in favor of marginalized ethnic groups—further supports the recognition of a collective dimension, including “minority identity,” by emphasizing culture and group identity.²²

Also notable is Article 5(d)(7), which explicitly ensures legal equality in enjoying—among other things—the right to freedom of thought, conscience, and religion, and other fundamental rights, including participation in cultural life and living in accordance with one's convictions²³.

Although individual reports and complaints received by the CERD indicate that non-discrimination and equality provisions have had limited impact on minorities—as they do not address issues related to identity protection—and although the Committee has been cautious about introducing reforms related to minorities, Patrick Thornberry in 2016 highlighted the Committee’s increasingly sensitive approach toward ethnic/religious minority issues: “In most cases where the Committee addresses discrimination in religious practices on ethnic/racial grounds, it invokes the concept of ‘intersectionality’ to support its relevant recommendations.”²⁴

2.2 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

This Declaration ²⁵aims to ensure more effective implementation of international human rights instruments, including the rights of persons belonging to minorities to preserve and develop their collective identity. It is positively inspired by Article 27 of the ICCPR.

Its significance for religious minorities lies in its emphasis on respecting their “religious identity” to help ensure political ²⁶and social stability in the states where they live. Minority protection relies on four requirements: existence, non-exclusion, non-discrimination, and non-assimilation. The right to existence entails preventing the physical exclusion of religious minorities through discriminatory means that force them to leave the country²⁷. It also entails protecting their cultural and religious heritage, places of worship, and sacred sites, all of which are essential to preserving their identity.²⁸

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Even though the rights mentioned apply to individuals²⁹, religious minority groups also have the right (both individually and collectively) to recognize and practice their religion, participate in cultural, religious, social, economic, and public life, form associations of their own, and maintain contact with members of their group as well as with other religious groups.

2.3 Other Relevant International Declarations and Conventions

Among other relevant international treaties protecting religious freedom is the UN Convention on the Rights of the Child. Article 30 affirms the right of children belonging to religious minorities to practice their religion with other members of their group. Article 14 enshrines the child's right to freedom of thought, conscience, and religion. The Committee on the Rights of the Child is also credited with adopting a comprehensive approach and broad interpretation of minority when evaluating discriminatory practices.³⁰

The European Convention on Human Rights does not include a specific provision on minorities like Article 27 of the ICCPR. The only reference is in Article 14, which states that the enjoyment of rights and freedoms set forth in the Convention must be secured without discrimination on any ground such as (...) association with a national minority (...), but it must be read in conjunction with other articles due to its supplementary nature.³¹

It is observed that the protection provided by Article 14 is significantly limited, as individuals belonging to minorities cannot directly resort to the Court to claim the rights of minority groups. The European³² Court of Human Rights—which may consider applications submitted by individuals and groups of individuals who claim to be victims of violations of their rights under Article 34 of the European Convention—has often been reluctant to establish a clear link between the individual and the group. Consequently, it has often remained silent on affirming certain rights, such as the enjoyment of a traditional way of life, and thus the protection of identity, which closely affects minorities³³. The Court frequently fails to take into account the collective dimension of complaints, despite the critical importance of cases involving members of minorities.

This approach is clearly evident in the case of **Buckley v. United Kingdom**, where the strict legal approach allowed the state to evade broader criticism for its failure to address the root causes of discrimination in society.³⁴

However, in a later development, it appears that minority protection may be addressed under the European Convention on Human Rights through coordination among several provisions concerning the protection of individuals. This was expressed by the Court in the case of **Denizci v. Cyprus**, stating that: "States are obliged to uphold standards in the field of human rights and minority rights protection."³⁵

Article 8 of the European Convention may also contribute to protecting minority rights, particularly the right to identity, by protecting the identity of individuals belonging to minorities. This will be referred to in our discussion of cultural identity and its role in protecting the rights of religious minorities.

Chapter Two

A Comprehensive and Intersectional Approach to Ensuring a Framework for the Protection of Religious Minority Rights

In light of the clear shortcomings in establishing a full and comprehensive provision on the rights of minorities in general and religious minorities in particular—except for Article 27 of the ICCPR—broad interpretations of the rights to culture and identity have become necessary to achieve some level of protection for minorities. Therefore, it is essential to examine certain concepts related to cultural rights and how they are addressed by human rights bodies, as well as the collective right to cultural identity.

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1. Cultural Rights and Cultural Identity—What Relationship?

1.1 Basic Concepts of Culture and Cultural Identity

Although there is no clear definition of culture in international law³⁶, there is a general understanding of what culture entails and what it signifies. Reference may be made to the definition adopted by the First Conference on Cultural Rights organized by UNESCO in 1968, which defined culture as:

"The total ways by which men devise designs for living... everything that allows humans to be active and practical in their world and to use all forms of expression more freely to establish communication between people."³⁷

It emphasized that the right to culture allows for the preservation and extension of life:

"Culture is understood as everything inherited or transmitted by society... Its individual components are diverse, and it includes not only beliefs, knowledge, feelings, and literature... but also language or other symbolic systems which are its tools, along with other elements such as kinship rules, methods of education, forms of governance, and all fashions used in social relationships."³⁸

Claudia Tavani sees culture as encompassing a wide range of different aspects, including language, religion, customs—including way of life—traditions, beliefs, literature, art, music, educational methods, and forms of governance.³⁹

Cultural identity, meanwhile, is viewed as a manifestation of culture. It means that:

"Each person, alone or with a group, may freely choose their cultural identity in its various aspects, such as language, religion, heritage, and traditions. Each individual may have one or multiple cultural identities and may freely decide whether or not to identify with one or more cultural communities."⁴⁰

1.2 Sources and Components of Cultural Rights

There are multiple sources related to the regulation of the right to culture in international law. In addition to the **Universal Declaration of Human Rights, Article 15** of the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**⁴¹, and **Article 5(e)(6)** of the **International Convention on the Elimination of All Forms of Racial Discrimination**—which address the right to participate equally in cultural activities—**Article 27** (as emphasized by **Capotorti**) states that the objective to be achieved is the preservation and natural development of cultural identity. Therefore, the state is called upon to adopt all necessary means to enforce this.⁴² Compared to Article 15 of the ICESCR, Article 27 does not merely affirm the right to cultural participation in general terms but explicitly asserts the right to the shared enjoyment of a specific culture—something the Human Rights Committee describes in fairly general terms.⁴³

The Human Rights Committee has noted that the protection of cultural rights is:

"Aimed at ensuring the survival and continued development of the cultural, religious, and social identity of the concerned minorities, which enriches the fabric of society as a whole... These rights must be protected as such, and must not be confused with other individual rights granted to everyone under the Covenant."⁴⁴

It has been noted that cultural rights are privileges enjoyed by groups to preserve their way of life. These include members of communities such as minorities who seek to maintain their distinct culture in the face of the state or majority population.⁴⁵

In addition to individual cultural rights for the development of cultures, new collective claims have also emerged, such as the **collective right to protect cultural identity**⁴⁶. These collective cultural rights fall into two categories:

1. **Rights related to cultural identity**, such as the right to preserve and develop one's culture, the right to respect for cultural identity, and the right not to have a foreign culture imposed.

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2. **Rights related to cultural heritage**, such as the right of a people to its cultural heritage. Thus, viewing culture in a comprehensive way—which includes language, religion, lifestyle, traditions, and beliefs—is essential, since most of these rights are exercised collectively in practice. Their overall aim is to give communities the opportunity to develop, protect, and preserve their cultural identity.⁴⁷

2. UN Efforts to Link Cultural Identity, Positive Action, and Religious Minority Protection

The Human Rights Committee (HRC), during its discussion of Article 27 of the ICCPR, noted that it is directed toward ensuring the survival, continuity, and development of the cultural, religious, and social identity of the concerned minorities.⁴⁸

In its General Comment No. 23, the Human Rights Committee observed that Article 27 provides a right specifically granted to individuals belonging to minorities—distinct from all other rights they enjoy under the Covenant.⁴⁹

It also stated:

"The persons entitled to protection are those who belong to a group and share a culture, religion, or language."⁵⁰

Accordingly, in the cases of **Ominayak** and **Lubicon Lake Band v. Canada**, the Committee linked certain economic and social activities to the culture of the local community⁵¹. The Committee noted that the state's obligation is not limited to non-interference with the activities of minority individuals—it may also be required to adopt measures that actively assist the minority. In this sense, when the religion, language, and culture of the majority are overwhelmingly dominant, simply leaving a minority to its own devices may amount to a form of **forced assimilation**.⁵²

For these reasons, the Committee has interpreted Article 27 on several occasions as imposing **positive obligations** in favor of minorities. After emphasizing the value of culture for minorities, the Committee also highlighted the importance of taking measures aimed at preserving their "**cultural identity**"—and whether such measures are necessary to end discrimination in housing and education, or to consult with them on issues of direct concern.⁵³

The Human Rights Committee also reiterated the need to take into account the **cultural identity of minorities** when assessing their specific educational needs.⁵⁴

In the case of **Sandra Lovelace v. Canada**, the HRC emphasized the importance and value of cultural identity in protecting minorities, noting that the Committee faces a difficult task in balancing the interests of the individual and the minority group. It observed that not every restriction of rights under Article 27 results in a violation, as states have a certain **margin of discretion** in applying it⁵⁵. However, the permitted restrictions must be reasonable, objectively justified, and consistent with the other provisions of the Covenant—especially when the aim is to protect the "**identity of the group**."⁵⁶

It is also relevant here to mention the **intersection** between the issues raised in **Article 1** and **Article 27** of the Covenant. In this regard, the HRC in the case of **Apirana Mahuika** noted that the provisions of Article 1 may be relevant for interpreting the rights protected under the Covenant, particularly Article 27.⁵⁷

Conversely, the Human Rights Committee stated that it is **not within its jurisdiction** under the individual complaint procedure to express an opinion on Article 1, as it involves **collective rights**. When an individual complaint is based on Article 1, it is considered **inadmissible**.⁵⁸

In **Lubicon Lake Band v. Canada**, the HRC reiterated that under the Optional Protocol, it receives claims from individuals or groups of individuals concerning alleged violations of rights under Articles 6 to 27.⁵⁹

States may also vary in their treatment of religious minorities, depending on the group's nature, its territorial presence, or the spread of its traditions—provided the measure is not discriminatory. A

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large portion of the Committee’s jurisprudence under Article 27 thus far concerns **indigenous peoples**⁶⁰. Despite the usual lack of religious cases, these precedents may have **positive implications** for religious minorities, especially when they involve the participation of religious communities in decisions that affect them.⁶¹

Overall, analysis of the jurisprudence, General Comment No. 23(50), and the Concluding Observations of the Human Rights Committee indicates that the Covenant is a **useful tool** for protecting minorities⁶²—especially because it explicitly recognizes the right to enjoy culture in community with others, a right that is similar to the right to cultural identity. This is in contrast to the European Court and Commission on Human Rights, which have limited themselves to emphasizing the importance of cultural identity **only within the individual's private life**.⁶³

Conclusion:

The process of defining the concept of religious minority faiths is marked by clear difficulty. The primary reason lies in the uncertainty surrounding the notions of religion and belief, both of which have significantly expanded beyond any traditional meaning. Consequently, United Nations bodies and committees have sought to clarify the issue and establish the foundational pillars that would enable religious minorities—like linguistic or ethnic minorities—to exercise their rights and affirm their existence.

This study has arrived at several key findings regarding the issue, the most important of which are:

1. The approach of inclusion and intersection between the various human rights instruments—adopted especially by the Human Rights Council and various committees such as the Human Rights Committee and the Committee on the Elimination of Racial Discrimination—indicates that belonging to a religious minority cannot, in most cases, be separated from other characteristics that define personal and collective identities, such as origin, culture, religion, and language. The best way to protect minorities is through the integration of both individual and collective rights, foremost among them being the right to cultural identity.
2. Recognition of the group as an independent entity is the only means by which it can access special measures and positive actions required as obligations of the majority state.
3. Human rights bodies and committees have, in many cases, established a clear link between the right to culture and the rights of minorities to enjoy their identity and existence. The approach outlined in Article 27 is of particular importance, for although other texts exist, they did not add significantly to minority protection—especially in light of the gap observed within the European Convention, which from the outset included a clear exclusion of any minority.

In conclusion, the following recommendation can be made: to ensure effective protection of religious minorities, it is necessary to avoid dividing individual rights from collective rights, since participation involves all groups, their representatives, members, and even dissenters.

Citations:

¹ OHCHR. (2014). *The Inclusion of Religious Minorities in Consultative and Decision-Making Bodies*. Available online:

https://www.ohchr.org/sites/default/files/Documents/Issues/Minorities/Religious_minorities.pdf

² Silvia Angeletti (2021), *Religious Minorities’ Rights in International Law: Acknowledging Intersectionality, Enhancing Synergy*, *Religion* 12, no. 691, pp. 1–20, at p. 2.

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³ *Permanent Court of International Justice*, 1935; *Permanent Court of International Justice*, 1930.

⁴ UN Commission on Human Rights. (1986). *Compilation of Proposals Concerning the Definition of the Term “Minority”*. E/CN.4/1987/WG.5/WP.1. Available online: <https://undocs.org/pdf?symbol=en/E/CN.4/1987/WG.5/WP.1>

⁵ UN General Assembly. (2019). *Effective Promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, Report of the Special Rapporteur on Minority Issues. A/74/160, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/216/28/PDF/N1921628.pdf?OpenElement>

⁶ Scheinin, Martin. (2008). *The United Nations International Covenant on Civil and Political Rights: Article 27 and Other Provisions*. In *Synergies in Minority Protection: European and International Law Perspectives*, edited by Kristin Henrard and Robert Dunbar. Cambridge: Cambridge University Press, pp. 23–45.

⁷ Thornberry, Patrick. (1992). *International Law and the Rights of Minorities*. Oxford: Clarendon Press.

⁸ The *International Covenant on Civil and Political Rights* was adopted and opened for signature, ratification, and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966. It took 10 years before the required 35 states ratified it. became necessary parties to it, and the *International Covenant on Civil and Political Rights* officially entered into force in those states on **23 March 1976**, in accordance with the provisions of **Article 49**.

available at:
<https://www.ohchr.org/sites/default/files/Documents/Publications/CoreTreatiesar.pdf>

⁹ UN General Assembly, *Effective Promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, Report of the Special Rapporteur on Minority Issues, 2019, Seventy-fourth Session (A/74/160), para. 42. Available online:
<https://undocs.org/A/74/160>

¹⁰ Wheatley, Steven. (2005). *Democracy, Minorities and International Law*. Cambridge: Cambridge University Press, p. 18.

¹¹ Capotorti, Francesco. (1979). *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, para. 568, E/CN.4/Sub.2/384/Rev.1.

¹² OHCHR. (2010). *Minority Rights: International Standards and Guidance for Implementation*. HR/PUB/10/3. Available online:
<https://www.refworld.org/docid/4db80ca52.html>:

¹³ Silvia Angeletti (2021), *Op. Cit.*, p. 3.

¹⁴ UN General Assembly (2019), para. 21.

¹⁵ *Ibid.*, para. 59.

¹⁶ Silvia Angeletti (2021), *Op. Cit.*, pp. 3–4.

¹⁷ The Convention was adopted on 7 March 1966 and entered into force on 4 January 1969 pursuant to Article 19. See the full text of the Convention at:
https://treaties.un.org/doc/source/docs/A_RES_2106-Eng.pdf

¹⁸ According to Article 1(3), the International Convention on the Elimination of All Forms of Racial Discrimination allows certain forms of differentiation, such as between citizens

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and non-citizens or foreigners, provided that such provisions do not discriminate against any particular nationality.

¹⁹ Garvalov, Ivan (2008). *The United Nations International Convention on the Elimination of All Forms of Racial Discrimination*. In *Synergies in Minority Protection*, edited by Kristin Henrard and Robert Dunbar, Cambridge: Cambridge University Press, pp. 249–277.

²⁰ Thornberry, Patrick (2016). *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary*, Oxford: Oxford University Press, p. 353.

²¹ As of 2 October 2019, 182 states had ratified the Convention. See: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=en

²² Claudia Tavani (2012), *The Protection of the Cultural Identity of Minorities in International Law: Individual versus Collective Rights*, *European Yearbook of Minority Issues Online*, 9(1), pp. 55–92, at p. 61.

²³ Kristin Henrard (2000), *Devising an Adequate System of Minority Protection*, Kluwer Law International, p. 199.

²⁴ *Ibid.*

²⁵ Claudia Tavani (2012), *Op. Cit.*, p. 62.

²⁶ Thornberry, Patrick (2016), *Op. Cit.*, p. 253.

²⁷ *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, UN General Assembly Resolution 47/135 (1992).

²⁸ Silvia Angeletti (2021), *Op. Cit.*, pp. 7–8.

²⁹ *ICERD*, Article 4; *ICCPR*, Article 20.

³⁰ Silvia Angeletti (2021), *Op. Cit.*, p. 8.

³¹ The commentary of the Working Group on Minorities regarding the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities indicates that the rights enshrined in the Declaration may be subject to legal claims by individuals. For further details, see document: **E/CN.4/Sub.2/AC.5/2005/2, para. 14.**

³² Doek, Jaap E. (2008). *The United Nations Convention on the Rights of the Child and Children Belonging to Minority Groups*. In *Synergies in Minority Protection*, edited by Kristin Henrard and Robert Dunbar. Cambridge: Cambridge University Press, pp. 278–296.

³³ In contrast, **Article 1 of Protocol No. 12** to the European Convention on Human Rights contains an explicit provision on non-discrimination as a self-standing right. Although the protocol entered into force in 2005, the majority of EU member states have not yet ratified it. Cases concerning violations of Article 1 of the protocol only began to be presented in **March 2008**, on the occasion of the case **Sejdić and Finci v. Bosnia and Herzegovina**.

³⁴ In theory, non-governmental organizations may submit petitions, as minority groups are eligible as victims to bring applications before the established court. See: Claudia Tavani (2012), *Op. Cit.*, p. 65.

³⁵ Kristin Henrard (2000), *Op. Cit.*, p. 144.

³⁶ *Ibid.*

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³⁷ ECtHR, Appl. Nos. 25316–25321/94 and 27207/95, *Denizci v. Cyprus*, judgment of 23 May 2001.

³⁸ Patrick Thornberry (1991), *International Law and the Rights of Minorities*, Oxford University Press, Oxford, p. 187.

³⁹ UNESCO, *Cultural Rights as Human Rights*, Paris, 1970, pp. 10–12 and pp. 105–106.

⁴⁰ Claudia Tavani (2012), *Op. Cit.*, p. 56

⁴¹ The Committee on Economic, Social and Cultural Rights has affirmed that: “Culture is a broad concept encompassing all manifestations of human existence. [...] Culture [...] includes, among other things, ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rituals and celebrations, sports and games, methods of production or technologies, natural and man-made environments, food, clothing and shelter, the arts, customs and traditions through which individuals, groups and communities express their humanity, the meaning they give to their existence, and build their worldview that represents their encounter with external forces affecting their lives.”

⁴² General Comment No. 21 of the Committee on Economic, Social and Cultural Rights on *the Right of Everyone to Take Part in Cultural Life*, UN Doc. E/C.12/GC/21, dated 21 December 2009, paras. 11–13; See also: Janusz Symonides, “Cultural Rights,” in Janusz Symonides (ed.), *Human Rights: Concept and Standards*, UNESCO, Paris, 2000, pp. 267–278, at p. 189.

⁴³ This right is also affirmed in several regional instruments, including: The American Declaration of the Rights and Duties of Man (Article 13); The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Article 14) & The African Charter on Human and Peoples’ Rights (Article 17), as well as Article 29 of the same Charter, which stresses the duty to preserve African cultural traditions.

⁴⁴ Francesco Capotorti (1979), *Op. Cit.*, para. 599.

⁴⁵ *Ibid.*, paras. 1 and 3.

⁴⁶ Human Rights Committee (1994), *CCPR General Comment No. 23: Article 27 (Rights of Minorities)*, para. 9, CCPR/C/21/Rev.1/Add.5. Available online: [<https://www.refworld.org/docid/453883fc0.html>] (accessed on 21 February 2021).

⁴⁷ Claudia Tavani (2012), *Op. Cit.*, p. 83.

⁴⁸ Yndel V. Prott (1988), “Cultural Rights as Peoples’ Rights,” in James Crawford (ed.), *The Rights of Peoples*, Clarendon Press, Oxford, pp. 93–106, at pp. 95–97.

⁴⁹ Claudia Tavani (2012), *Op. Cit.*, p. 84.

⁵⁰ CCPR General Comment No. 23, *Op. Cit.*, para. 9.

⁵¹ Silvia Angeletti (2021), *Op. Cit.*, p. 6.

⁵² CCPR General Comment No. 23, *Ibid.*, para. 5.1.

⁵³ HRC, Communication No. 167/1984, *Ominayak and the Lubicon Lake Band v. Canada*, Views of 26 March 1990, UN Doc. A/45/40, Vol. II, App. A (1990), para. 33.

⁵⁴ Claudia Tavani (2012), *Op. Cit.*, pp. 63–64.

⁵⁵ Enjoyment of cultural rights under Article 27 may require states to take measures ensuring the effective participation of minority individuals in decisions affecting them, as stated in paragraph 9/5 of General Comment No. 23 of the Human Rights Committee. In

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the case of *Apirana Mahuika v. New Zealand*, the Committee found no violation of Article 27 because the government had conducted extensive consultations with the Māori regarding the use or control of fisheries. For more detail, see:

HRC, Communication No. 547/1993, *Apirana Mahuika v. New Zealand*, Views of 27 October 2000, UN Doc. CCPR/C/70/D/547/1993, paras. 9.3–10.

⁵⁶ HRC, *Concluding Observations of the Human Rights Committee: Czech Republic*, CCPR/C/CZE/CO/2, dated 9 August 2007, para. 17. (This referred specifically to the Roma community.)

⁵⁷ HRC, Communication No. R.6/24, *Sandra Lovelace v. Canada*, Views of 9 December 1977, UN Doc. Supp. No. 40 (A/36/40), para. 15.

⁵⁸ *Ibid.*, para. 16.

⁵⁹ *Apirana Mahuika v. New Zealand*, paras. 9/3–10.

⁶⁰ In the case of *Kitok v. Sweden*, it was stated that “the author, as an individual, cannot claim to be a victim of a violation of the right to self-determination set out in Article 1,” because this “concerns rights granted to peoples as such.”, See: Claudia Tavani (2012), *Op. Cit.*, p.65.

⁶¹ *Ibid.*

⁶² Claims by indigenous peoples often concern the protection of economic activities linked to traditional lifestyles. Regarding this, see the Human Rights Committee, for example: *B. Ominayak v. Canada*, Comm. No. 167/1984, U.N. Doc. CCPR/C/38/D/167/1984 (1990); *J.G.A. Diergaardt v. Namibia*, Comm. No. 760/1997, U.N. Doc. CCPR/C/69/D/760/1997 (2000); *Jouni E. Lämsman v. Finland*, Comm. No. 671/1995, U.N. Doc. CCPR/C/58/D/671/1995 (1996).

⁶³ Silvia Angeletti (2021), *Op. Cit.*, p. 7.