

Cultural rights: what they are, how they have developed in Catalonia and what kind of policies they require

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What are cultural rights and how are they defined? How have they been taken into account in cultural policies in Catalonia? How can we develop a critical but useful approach to action regarding these rights? This paper attempts to make a significant contribution to these complex but key questions of cultural policies, without pretending to be exhaustive.

Cultural rights: the state of affairs

Cultural rights are inseparable from human rights. Their value is therefore the result of a historical attribution. Article 22 of the *Universal Declaration of Human Rights* refers to “economic, social and cultural rights” as indispensable to the dignity of the human being. Article 27 states that “Everyone has the right freely to participate in the cultural life of the community” and also refers to access to the arts, participation in scientific progress and authorship rights.

Citizenship, development and sustainability are three key concepts for understanding what we mean when we refer to cultural rights. Practising culture is a core dimension of citizenship. Cultural rights are both individual and collective. They protect the rights of each person in their life in community with others and as groups of individuals (Shaheed, 2012, 2014). Without the right of access to, participation in and contribution to cultural life, any development process runs the risk of not being fully sustainable.

How are cultural rights specified? What are their basic dimensions? Many efforts have been made to define the key components of cultural rights and give shape to what has been considered an underdeveloped category of human rights. The Fribourg Group, composed of leading experts such as Patrice Meyer-Bisch, made the *Fribourg Declaration on Cultural Rights* (2007), which specifies nine groups of rights: 1) to choose one’s own cultural identity, 2) to access cultural heritages, 3) to identify or not to identify with one or several cultural communities, 4) to access and participate in cultural life, 5) to express oneself in the language of one’s choice 6) authorship rights 7) the right to education, 8) the right to information and 9) the right to participate in the drafting, implementation and evaluation of cultural policies.

A complementary approach is to be found in the work of the Special Rapporteur of the United Nations in the field of cultural rights, Farida Shaheed (2014), who identifies three essential and interdependent dimensions of these rights: free creativity, access to cultural heritage, and diversity. The three dimensions are key for sustainable development and inclusive policies.

What, then, are the main milestones of legal and political initiatives related to the promotion of cultural rights? In addition to the creation of the Special Rapporteur in the field of cultural rights by the UN, we must add the initiatives of UNESCO¹ and the *Latin American Cultural Charter* (2006). Another important development was the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008), which has been ratified by more than twenty countries. Though several developed states have not ratified this Protocol, it is considered an important step forward because it establishes mechanisms for reporting and investigating violations of the rights enunciated in the Covenant.²

1 For example, the *Universal Declaration on Cultural Diversity* (2001) and the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (2005).

2 For a legal analysis, see Custodio (2014).

We must also mention the *Agenda 21 for Culture*, approved in 2004, which has been signed by many cities and local governments in the world. At the time of its approval, the local authorities stated that cultural rights are an integral part of human rights. The organization United Cities and Local Governments (UCLG) promoted the implementation of the *Agenda 21* and in 2015 it adopted the new document *Culture 21: Actions*. This document seeks to develop the *Agenda 21* through strategic lines of action and policy implementation. It consists of nine sections of commitments, the first of which is dedicated to cultural rights, as embodied in several achievable and measurable actions. These actions can be divided into four dimensions:³ explicit adopting of the discourse of cultural rights by governments and social organizations; public participation in cultural practice and in the drafting, implementation and evaluation of cultural policies; development of standards to guarantee basic cultural services; and inclusion of cross-cutting objectives in cultural policies (vulnerability, gender).

Cultural rights in cultural policies in Catalonia

Despite a few initiatives, the presence of cultural rights in law and, above all, in cultural policies in Catalonia has been limited. The *Statute of Autonomy* specifies the obligation of public authorities to facilitate participation in cultural life and recognizes the right of peoples to preserve and develop their identity (Article 4). It also devotes an article (Article 22) to rights and obligations in the cultural field, recognizing the right of access to culture and the development of creative skills. Articles 40 and 42 of the Statute stipulate that the public authorities should assume the obligations of promoting, encouraging and facilitating these rights.

The city of Barcelona has a *Citizenship Charter. A Charter of Rights and Duties of Barcelona* (2011), which has a chapter (Chapter 4) dedicated to rights and obligations with respect to culture. These rights and obligations deal with access to culture, language rights, religious pluralism and access to technologies.

With respect to public policy initiatives, action to ensure the fulfillment of cultural rights has been limited mainly to cultural facilities and, in many cases, to the planning phase. The Cultural Facilities Plan of Catalonia (Martinez, 2010) is justified above all in relation to the need to guarantee the right of access to culture. Meanwhile, the so-called “public cultural facilities system” defines itself as one of the main tools of public authorities for guaranteeing the cultural rights recognized in the Statute of Autonomy of Catalonia. This perspective includes the action of local governments and civil society organizations in the development of proximity policies (Barbieri *et al.*, 2012).

Although a number of local governments in Catalonia use the *Agenda 21 for Culture* in their urban policies, cultural rights have not been developed as a strategy except in actions to promote access to culture. However, we should mention the active role played by the UCLG⁴, based in Barcelona, in promoting the perspective of cultural rights, and in developing a work programme from the document *Culture 21: Actions*.⁵

In short, the role of cultural rights as part of public policies is still limited in Catalonia. Human rights are seldom used to legitimize the actions of actors in the field of culture, and there is a clear lack of knowledge of cultural rights. The social organizations dedicated to the promotion of economic, social and cultural rights (such as the DESC Observatory)⁶ have paid little attention to the reality of cultural rights (Pascual, 2015). Nor, with a few exceptions, has academia systematically analysed cultural rights. In the cultural sector, some groups have criticized the idea of cultural rights because they understand them to be associated with an enlightened perspective that fails to take into account the apparently democratizing effects of industrialization and the dynamics of supply and demand.⁷ This view has been opposed by other groups and organizations, which criticize the implementation of culture as a resource and favour the notion of culture as a right (Rowan, 2014; Martínez, 2015). The second approach has been translated into some electoral programmes of pla-

3 The full document can be consulted at www.agenda21culture.net/.

4 www.uclg.org/.

5 Barcelona is one of the five cities that lead the *Culture 21: Actions* process.

6 <http://observatoridesc.org/>.

7 For a detailed analysis of these discourses, see Barbieri (2012).

tforms and parties running in the Catalan municipal elections of May 24, some of which will govern cities in the coming years. Expectation have thus been raised regarding the translation of the idea of cultural rights into the political and institutional sphere.

A critical perspective that is also useful for action?

The potential of the discourse of cultural rights is obvious, but so are the challenges posed by this discourse, especially in a context where it is necessary to rebuild the public legitimacy of cultural policies.

The problems that must be faced by cultural policies are becoming more complex and uncertain, and they involve risks. But the answers are still based largely on the idea of “culture” as a noun—as objects, products and services—rather than the adjectival form of the word. Public authorities and the cultural sector as a whole continue to seek legitimacy in designing and implementing policies of “culture” rather than “the cultural phenomenon”. Given the profound changes in the type of cultural participation and production, the questioning of the traditional role of political intermediation of public institutions, and the decline in investment, these responses become largely obsolete-- and with them, many of the principles that are the basis of the policy model of access to culture (Barbieri, 2014).

An example of this change is the way of understanding the relationship between cultural rights and facilities. As stated above, faced with the obligation to promote cultural rights, many policies have been limited to building cultural facilities. First, this focus has limited public action to promoting access to products and services. Second, public policies have focused on building the facilities and administering and regulating access to them, and have neglected the (mainly political) implications of their use and their integration into everyday life. In short, they have focused more on culture as a noun than on its adjectival form, the cultural phenomenon. Therefore, in many cases the building of facilities has been far from representing the vision of citizenship and sustainable development implied by cultural rights. Policies on facilities have underestimated the political role of cultural facilities, a role linked to the exercise of rights—not only cultural rights but also, for example, the right to the city.

So how can one face the challenge of developing cultural policies based on a comprehensive concept of cultural rights? What is the relationship between this challenge and promoting policies of the cultural phenomenon? Understanding culture as an adjective means understanding that the cultural phenomenon is what allows us to be actors, protagonists of our social practices.⁸ This is a political view of culture; it emphasizes the political nature of culture, without reducing politics to a simple power game of partisan interests.

Developing public policies based on a comprehensive concept of cultural rights involves considering the extent to which these rights are demanded by citizens. We must thus avoid turning cultural rights into a discourse on the container rather than the content, thereby reproducing the limitations of policies based on culture as a noun. Instead, we must respond to the need for greater legitimacy of these policies and bridge the gap that is now perceived between the cultural sector and the public at large.

A way to build new legitimacy for cultural policy is to “politicize” cultural rights in the broadest and noblest sense of the word; to connect with the political view of culture, and build policies based on the link between the cultural phenomenon and values such as fairness and justice; to shun essentialism and make cultural rights a more self-conscious and legitimate discourse that can be translated into feasible policies.

In this approach, cultural rights means more than offering facilities that provide access to resources, because the political sense of culture and cultural rights connects with a view of culture as part of a current process: reflection and action in the sphere of the commons, and education in sensitivity and participation in the sphere of artistic references.

Developing cultural policies based on a comprehensive concept of cultural rights involves going beyond the right to access goods and services. Likewise, special attention should be paid to the right of access to

⁸ This concept of culture was developed, among others, by Arjun Appadurai, Néstor García Canclini, Alejandro Grimson and Jesús Martín-Barbero.

communities and the right to join and leave these communities when we wish. Finally, in addition to the right to participate in cultural activities, specific measures should be taken to guarantee the right to participate in the construction of the rules and regulations that make commons sustainable.

The key question would be: What resources should be available, what communities must be open and what rules must be built collectively for cultural rights to be effectively guaranteed? And some other questions that are still pending could be: What standards can ensure the availability of basic cultural resources and services? What cross-cutting objectives related to equity must be adopted by cultural policies? What are the indicators of real participation in cultural practice and in the drafting, implementation and evaluation of policies?

The potential of the discourse of cultural rights depends on the ability to define what we mean when we speak of cultural rights and to develop assessment indicators and monitoring mechanisms for ensuring the effective exercise of these rights. This scenario poses a challenge for the type of intermediation that has traditionally been assumed by public authorities, and also for the action of many organizations and groups. The discourse on commons is not without ambiguity. First, governments may tend to shun their duties in the public management of culture; second, exclusion may arise within communities and conflicts may lead to the loss of the public nature of the cultural commons. The responsibilities of cultural policies—and those of many cultural communities—must therefore be redefined (rather than eliminated). In my view, the future importance of cultural rights in public policy largely depends on all of this.

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