Index

access to cultural heritage 59–61, 77–8
see also collections; cultural rights; public museums; UNESCO
5 A’s 67, 68
conditions necessary for 67
cultural right, as 70–71
globalization and 63
human rights issues 62–4
Report 13, 33, 59, 61–2, 70
accessibility in 68
normative content in 68–70
recommendations 69–70, 71
responsibility for 71–4, 76
threats to 63
UNESCO and 59–60
access to knowledge 88, 94, 199, 211, 213
advanced capitalism
see also intellectual property; TRIPS
capitalization of life in 202–3
modality of 203
post-colonial control, and
access to innovations essential for a life with dignity 205–8
right of indigenous peoples and local communities 208–11
production of science and culture under 202–4
advertising 162, 163–4, 165
advertisers 177
commercial/non-commercial differentiation 169–70, 177
commercial speech/propaganda 167–8
defining 166–7
harms of 168, 169
children, to 170–71
cultural displacement 179
deception 172–4
health of system, to 174–7
manipulation of choice 170–72
neuromarketing 173
nudges 173
regulating 175–6
cultural ecology approach to 166, 177–80
enforcement 180
subliminal 173
viral marketing 174
African Commission on human and Peoples’ Rights (ACHPR) 53
Agreement on Trade-Related Aspects of Intellectual Property Rights
see TRIPS
American Association for the Advancement of Science 22, 2013 Report 89
Program for Scientific Freedom, Responsibility and Law 90
ASEAN Declaration on Cultural Heritage (2000) 60
Asian Declaration on Cultural Heritage 60
autochthony 45
avoiding ghettoization 33
Bennoune, K. 6, 55–6
bioinformatics 203
Bosnian genocide 134
Boutros-Ghali, Boutros 6–7
Cameroon 45, 46
CEDAW
art. 5 29, 114
Committee 30–31, 113
General Recommendation on harmful practices 115–16
holistic approach 116
recommendation on female circumcision 115
reservations to 107
CESCR
art. 15(1)(c) 188, 190
Charter of Fundamental Rights of the European Union
art. 17(2) 188
child marriage 113, 116
collections
see also access to cultural heritage
role of 74–7
source communities and 75
collective identities 26
colonialism 139
commercial practices
see also advertising
advertising 162, 163–4, 165, commercial/non-commercial differentiation 169
commercial speech/propaganda 167–8
defining 166–7
harms of 168, 169, 170
competition 164–5
cultural commoditization 162–3
culturalization of commodity 163
impact of 17, 161–2
Committee for Concerned Scientists
90–91
community
concretization of 45–6
cultural rights and 46–7, 117, 161
deconstructing 27
equality within 26, 28
problematic term, as 45–9
reified concept, as 48
socio-legal construction of 46
ubiquitous term 13
Compendium on Cultural Policies and Trends in Europe 110
copyright 17–18, 32, 199–200
commodification of creativity, causing 184
corporate owners 183, 187–8, 194
criticism of 181–2, 183–4
cultural commons, and 197–8
digital technology and 192–4
authorship/collaboration distinction 194–5
author/user distinction 195–6
capital/labour distinction 196–7
product/process distinction 195
human rights and 188–9
impact on artistic freedom 182
indigenous peoples, and 189–92
infringement 192–3
instrument of investment, as 185–7
interest/work conflict 183
private propertization 185–7, 192
realization of cultural rights, and 184–5
right to science, and 181
creationism 95
cross-cultural legitimacy 8
cultural brokers 49
cultural capability 11–12, 83
aspiration 81, 85–6
cultural diversity 40–42, 102, 103
cultural diversity relationship 3–5
cultural ecology 17, 166, 177
cultural heritage 13–14
access to see access to cultural heritage
cultural identity see identity
cultural practice 5–6
customs interplay 13
harmful 115, 116
changing 114, 116–17
cultural relativism 26, 102
cultural relativism relationship 3–5
development and 42–4
promoting 109, 114
UNESCO Declaration on (2001) 40
cultural right, as 70–71
defining 61–2
human rights related to 62–4
importance of 35
intangible 94
cultural rights 37–9
Index

see also access to cultural heritage; culture; human rights
acceptance of 35
access to culture 5, 25, 62–4
  protecting 27, 28
ambiguity over 21
barrier to equality, as 108
  collective and individual 25
  contributing to culture 25, 33
  cultural diversity relationship 3–5
cultural identity
culture, distinguishing 28
empowering, as 6–9, 34
gender, and see gender; women’s
cultural rights
global society, in 64–6
legal basis for 2
limitations on 113–14
normative content of 66–7
parameters of 23–6, 31–4
participation in culture 25, 33
  right not to participate 29, 179
paucity of work on 22, 23
promoting 33
  relationship 7
respect for 102
rights holders 68, 71
scepticism over 22–3
significance of 34–5
soft, as 34
state obligations 68–9
UN mandate 5, 21, 23
  developing 23–4
universal 3
welfare services, and 33–4
women’s see women’s cultural
  rights
culture
  collective production, as 184
cultural rights, distinguishing 28
dominant 26
dynamic process, as 24, 26, 111
ethnicized 47
heterogeneous, as 111
human construct, as 40
lack of protection for 209–10
negative effects of 112
obstacle to women’s human rights,
as 100–101
patriarchy, protecting 30
power link 26
privatization of 184
rights to see cultural rights
science links see science/culture
  links
decolonization 138
discrimination see also gender, stereotypes
gender 106, 107
  non- 106
  sex 106–7
  structural 109–10
dowry killings 115
dowry killings 115
education
  importance of 96
  right to 96–7
  science/religion clash 94–5
Egypt
  18-day uprising (2011) 120, 121
  2014 Constitution 15, 122
  customs used to deny freedom of
  expression 123–4
  state censorship in 120–22, 123
  General Directorate for the
  Censorship of Artistic Works
  122–3
equality
cultural rights as barrier to 108
discrimination/different treatment
differentiation 108–9
gender 106
Islam in 121
  within communities 26, 28
ethnic entrepreneurs 49
ethnicity 51
exclusion 45
perpetuating 46
EurActiv 110
European Convention on Human rights (ECHR) 103, 129
art. 1 129–30
European Court of Human Rights (ECtHR) 103
European FARO Framework Convention on the Value of Cultural Heritage in Society 60
Europeana 75
female genital mutilation (FGM) 100, 113, 115, 116
forced abortion 115
forced male guardianship 115
forced marriage 100, 113, 116
forced prostitution 100
forced sterilization 115
freedom of expression 114, 120
artistic 15–16, 31–2, 182
blasphemy laws, and 125
censorship
challenges to 123–4
Egypt, in see Egypt
factors imposing restrictions on 125
importance of 123
intellectual property law and 125–7
Plesner Cases see Nadia Plesner v. Louis Vuitton
protection of corporate interests 125–6, 131
Freemuse 90
Fribourg Group
Declaration on Cultural Rights (2007) 22
gender 15
see also women; women’s cultural rights
central to all cultures 29–30, 104, 110
cultural and social construct, as 30, 104
cultural identity, and 105
culture/rights relationship 101, 104
discrimination 106, 107
dynamic concept 105
equality 106
relations 110–11
stereotypes 104–5, 111
Geneva Convention IV (1949)
Protocol II 63
global governance 64
Global Impact Program (1999) 66
governance gap 73
Hague Convention (1954) 63
Hague Regulations (1907) 63
historians 143–4
archives
access to 144, 145
preservation of 144–5
cultural/linguistic turn, and 147–8
gatekeepers, as 157–9
government control of 143, 157
source criticism 147, 148
history 16–17, 31, 160
see also memorialization processes contested 133–4, 143, 152
first encounters 146
memorialization relations 140–43
memory boom/fever 138–9
mobilization of past 141
multi-perspective 154–5
safeguarding 156–7
multi-voiced 135, 153, 154
challenge to status quo, as 153–4
new perspectives on 146–7
oral 145
bias in 147
neglect of 146
national/general balance 155–6
post-colonial critique 145
problematic 152–3
revision of 150
right to 135–7
control of relics 145
shaping identity 134
subaltern studies 145–6
wars (Australia) 150
written
primacy of 145
honour crimes 113, 116
human rights
Index

absolute 7

cultural see cultural rights
decolonization relationship 8
equal enjoyment of 115
freedom of expression see freedom of expression
freedom of movement 115
governance 65–6
individual 62–3
interrelatedness of 34
not to be subjected to inhumane or degrading treatment 115
protecting within communities 117
responsibility for protection of 72
right to enjoy the benefits of scientific progress 14
right to life 115
right to property
limitations on 200
soft law, governed by 64–5
universality 102–3
not implying uniform application 103
transformative dialogue, as 103
Human Rights Council
Resolution 10/23 1
Resolution 19/6 23
ICESCR 34
art. 13 3
art. 15 2, 12, 22, 31, 60, 80, 81–2, 88, 93, 182–3, 201–2
para. 1 11, 61, 67, 82, 91–2
para. 2 82
para. 3 82
para. 4 82
para. 32 200
Committee
general comment No. 14 73
general comment No. 17 25
general comment No. 21 3, 23, 24–5, 68, 180
preamble 72–3
identity
biological sex and 105
collective 28
commodification of 43
concretization 49
factors informing 106
gender and 105
individual 28, 49
not binary 27–8
personal 105
social construct, as 48, 139
indigeneity
becoming indigenous 52–5
cultural particularity linking 51–2
indigenous peoples
identity construct, as 139
individual rights/group rights
relationship 5–6
intangible 193
offensive/positive use of 209
patents see patents
protection 93–4
corporate interests, of 125–6
public domain 182,
traditional knowledge in 209
right to science, and 91–2
third-party obligations 92
intellectual property 32–3, 204,
213–14
see also advanced capitalism
barrier to access, as 85
control as a power regime 202
copyright see copyright
creative commons 182, 197–8
defensive use of 209
equitable sharing 92
fair dealing 92
fair use 92
freedom of expression and see freedom of expression
generic competition 93
human rights tension 199, 203
infringement 126–7
Inter-American Court of Human Rights 108
International Bill of Human Rights (2007) 9, 71–2, 73
International Centre for the study of the Preservation and Restoration of Cultural Property (ICCROM) 62
International Committee on Museums (ICOM) 75
International Council on Monuments and Sites (ICOMOS) 62
International Covenant on Civil and Political Rights (ICCPR) 3, 22, 34
art. 27 60
International Covenant on Economic, Social and Cultural Rights see ICESCR
International Labour Organisation Convention No, 169 concerning Indigenous and Tribal Peoples in Independent Countries 60
internet, the 65

*jus cogens* equality and non-discrimination 106–7, 108

Kenya
2007–8 post-election violence 49, 55
cultural brokers/ethnic entrepreneurs’ part in 55
commodification of culture in 43
concretization of culture in 46
constitution (2010) 41
Embu ethnic group 47–8
Endorois people 53–4
ethnicizing culture 47
Gikuyu ethnic group 52–3
Kalenjin people 54
land as cultural right in 46
Maasai land alienation 37
Mau Mau rebellion 37
peace museums movement 43
reifying specific cultures 41
Tugen people 54
knowledge as human capital 211

Maastricht Guidelines (1997) 66
memorial entrepreneurs 142, 157
silencing traumatic memories 150
memorialization processes 16, 31, 133, 148–9, 151, 157

see also history
challenges 159–60
changing 149
collective memory 141–2, 159
contested 134–5, 149
cults of martyrdom 149
cultural memory 142
history relations 140–43
instant amnesia 150
memorial tyrannies 149
memory boom/fever 138–9
multi-voiced 135
problematic 149–50
public 149–50
revenge, desire for, and 149
right to 137–8
right to forget 148, 152
slavery, and 139–40
social memory 142
trauma, of 150–51
victim cultures 149
virtual sites of 159–60

Millennium Development Goals see UN, Millennium Development Goals
Minority Rights International Group (MRG) 54
monocultures of the mind 203
multinational corporations (MNCs) 73

Myriad Genetics case 206

Nadia Plesner v. Louis Vuitton 16, 125, 126, 127–9, 131
Court of The Hague ruling 129–31

nation states, organic model of 65
patent pools 93
patents 199–202, 215

see also advanced capitalism; TRIPS; universities
access to medicines, and 205–6
compulsory licensing 206
criticism of 200
human rights, and 213–15
inventive step 206
limitations on 207
not being human rights 200
oppressive nature of regime 201
problems of access, creating 211
promoting technological
development, as 214–15
market economy, and 211–12
means of governing science, as
201–2, 203, 204
need for transparency of costs
212
tool for global capitalism, as 204
TRIPS, in 201, 204, 205
politics of belonging 52
polygamy 113, 116
power 110–11
privatization of knowledge 93, 182
property
see also intellectual property;
patents
human cultures conflict 214
rights 213–14
protecting dominant groups 27
public museums
see also access to cultural heritage
ethical standards for 76–7
role of 74–7
source communities and 75
UNESCO Recommendation 76–7
radical consent
right to science 14, 18, 31–2, 79,
97–7
see also intellectual property
access 83–7, 93
conservation of traditional
knowledge clash 94–5
human rights approach 83–4
importance of 81
intellectual property, and 91–2, 93
normative content 79–80, 84, 85,
87, 94
protection of scientific freedom
87–91
right to research and 85–7, 88
science commons 91
science/culture links see
science/culture links
underlying premise 80–81
Ruggie Framework 73
Rwanda
genocide 134, 150–51
outlawing ethnic markers 49–50
Scholars at Risk (SAR) 90
science/culture links 9–12, 32, 80–83,
90
scientist 9–10
self-ascription 13, 49–50, 52
self-description 45
self-identification 52
Shaheed, Farida 1, 12, 21, 36, 82
see also UN Special Rapporteur in
the Field of Cultural Rights
Reports
Issues in focus 79
source communities 68, 69
see also collections; public
museums
museums/collections relation 75
right to grant or withhold access to
cultural heritage 63
South Africa
Khomani San people 46
reifying specific cultures 41
‘Zuluness’ in 48, 50
strategic essentialism 52
traditional knowledge, conservation of
94
Trans-Pacific Partnership Agreement
see TTIP
TRIPS 201
see also intellectual property;
patents
commodification of resources,
allowing 205
-Plus 204–5
TTIP 205
two cultures debate 10–11, 12, 82–3
UN
Charter on Economic and Social
Rights see CESCR
Committee on Economic, Social
and Cultural Rights see
ICESCR Committee
Committee on the Elimination of All Forms of Discrimination Against Women see CEDAW, Committee
Committee on the Rights of the Child (CRC Committee) 113, 114
General Recommendation on harmful practices 115–16
holistic approach 116
Convention on Biological Diversity
art. 8(j) 60
Convention on the Elimination of all Forms of Discrimination Against Women see CEDAW
cross-cutting themes 8
Declaration on Human rights (1948) 71
Declaration on the Rights of Indigenous Peoples (2007) (DRIPS) 5, 60, 63
art. 31(1) 189, 190, 208
Declaration on the Rights of Persons belonging to National, Ethnic, Religious and Linguistic Minorities 60
Diversity of Cultural Expressions Convention (2005) 68–9
Guiding Principles on Business and Human Rights (2011) 73–4
Office of the United Nations High Commissioner for Human Rights (OHCHR) 32, 50
Millennium Development Goals 8
Protect, Respect and Remedy Framework 73
Special Rapporteur in the Field of Cultural Rights
Reports see UN Special Rapporteur in the Field of Cultural Rights Reports
mandate 102
Sustainable Development Agenda (2015) 66–7
Working Group on Minorities 50
UN Special Rapporteur in the Field of Cultural Rights Reports
see also Shaheed, Farida
2010 (A/HRC/14/36) see cultural rights
2011 (A/HRC/17/38) see access to cultural heritage
2012 (A/67/287) see women’s cultural rights
2012 (A/HRC/20/26) see right to science
2013 (A/HRC/23/34) see freedom of expression
2013 (A/68/296) see history
2014 (A/HRC/25/49) see memorialization processes
2014 (A/69/286) see commercial practices
2015 (A/HRC/28/57) see copyright
2015 (A/70/279) see patents
access to cultural heritage see
access to cultural heritage artistic expression 15, 31–2, 182
impact of commercial practices see commercial practices
intellectual property see intellectual property
mandate 12
cultural rights 5, 21, 23
defining 31–3,
memorialization processes see memorialization processes thematic, as 1–2, 6
women’s cultural rights see women’s cultural rights
writing and teaching of history see history
UNESCO
Constitution (1945) 82
Convention Concerning the Protection of the World Cultural and Natural Heritage (1972) 61
Convention for the Safeguarding of Intangible Cultural Heritage (2003) 61
Index

Convention on the Protection of the Underwater Cultural Heritage (2001) 59
Declarations (2015) 14
Declarations on Cultural Diversity (2001) 40
Intangible Cultural Heritage Convention (2003) 59
mandate 5, 28
Museums Recommendation 76–7
preserving archives 145
Recommendation on the protection and promotion of public museums and collections 74–5
World Heritage Convention (1972) 59, 63
United Nations see UN
Universal Declaration of Human Rights (UDHR)
art. 1 103
art. 26 96
art. 27 2, 22, 48, 80, 81, 88, 190
art. 29 72, 113
Universal Declaration on Cultural Diversity (2001) 113
art. 6 165
universities
see also patents
commodification of research 212–13
market actors, as 211, 212
patent holders, as 211–12
Bayh-Dole Act (1980) (USA) 212
Venice Statement on the Right to Enjoy the Benefits of Scientific Progress and its Applications (2009) 85–6, 89
Vienna Declaration (1993) 66
widow cleansing/burning 100, 115
WIPO
Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore 69
women
discrimination against 106, 107, 111
empowering 113
struggle for human rights 112–13
subordination of 110
women’s cultural rights 14–15, 30–31, 34, 35, 100–102, 117, 118–19
non-discrimination, and 106
participation in decision-making 110, 111–12, 117
structural discrimination and 109–10
World Conference on Human Rights (1993) 6
Zimbabwe 49