Towards a Right to Cultural Identity?
To my parents Frans and Marita

SCHOOL OF HUMAN RIGHTS RESEARCH SERIES, Volume 15

The titles published in this series are listed at the end of this volume.
Towards a Right to Cultural Identity?

Yvonne M. Donders
This volume is an adapted version of a dissertation defended at Maastricht University on 20 September 2002.

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. First of all, I would like to thank my supervisors, Professor Cees Flinterman and Doctor Fons Coomans, for their input, comments, encouragement and support. It has been a very enjoyable experience to work with both of them, who were always able to remain calm when I had one of my ‘stressful’ days. I would also like to express my appreciation to the members of the reading committee, Professor Menno Kamminga, Doctor Marlies Galenkamp, Doctor Fred Grünfeld, Professor Martin Scheinin and Professor Bruno de Witte, for reading and commenting on my manuscript.

Additionally, I have to thank my colleagues at the Department of International and European Law for their support and co-operation. A special word of thanks to Professor Ellen Vos for applying her critical mind on parts of my book, and then cheering me up over a good dinner. I am also thankful to Eva Rieter for reading parts of my book and providing me with helpful comments. As far as the material realisation of the book is concerned, I am very grateful to Sophie Janssen and Chantal Kuypers for their help in editing the book, and to Chris Engert for correcting the English.

In May 2000, I was given the opportunity to visit the Institute for Human Rights of Åbo Akademi University in Turku, Finland, which included a trip to Lapland. Thanks to the financial support of NWO and the warm welcome of Professor Martin Scheinin and his staff, it was both a wonderful experience and gave me extra insight into my research.

Two other ‘AIO’s’ should be mentioned here, as without them my life as a researcher would have been much more difficult. To Nicola Jägers and Heleen Janssen, I express my thanks for sharing some of the tough moments with me and cheering me up with a good laugh and a drink.
Acknowledgements

A special word of thanks to my ‘paranimfen’. To my sister, Ellen Janssen-Donders, who, after finding out what a ‘paranimf’ actually was, now knows more about procedures and defences than I do. And my thanks also to Marjorie Blagrove for making life in Maastricht so much more comfortable and fun. It was great figuring out life in ‘Mestreech’ together with you.

This book is dedicated to my parents, Frans and Marita Donders, who have always loved and supported me, for which I can never thank them enough. Finally, Hans Lokker, thank you so much for supporting my going to Maastricht and for all the love and hugs when I most needed them. You truly are ‘the wind beneath my wings’.

Maastricht, 25 June 2002
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<td>ACM</td>
<td>Adviescommissie Mensenrechten en Buitenlands Beleid / Advisory Committee on Human Rights and Foreign Policy of the Dutch Ministry of Foreign Affairs</td>
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<tr>
<td>CAHMIN</td>
<td>Ad Hoc Committee for the Protection of National Minorities (Council of Europe)</td>
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<tr>
<td>CCR</td>
<td>Committee on Conventions and Recommendations (UNESCO)</td>
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<tr>
<td>CDCC</td>
<td>Council for Cultural Co-operation (Council of Europe)</td>
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<tr>
<td>CDDH</td>
<td>Steering Committee for Human Rights (Council of Europe)</td>
</tr>
<tr>
<td>CEACR</td>
<td>Committee of Experts on the Application of Conventions and Recommendations (ILO)</td>
</tr>
<tr>
<td>CERD</td>
<td>Committee on the Elimination of Racial Discrimination</td>
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<tr>
<td>CoE</td>
<td>Council of Europe</td>
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<tr>
<td>ECHR</td>
<td>European Convention on Human Rights and Freedoms</td>
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<tr>
<td>ECOSOC</td>
<td>UN Economic and Social Council</td>
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<tr>
<td>ESC</td>
<td>European Social Charter</td>
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<tr>
<td>FGM</td>
<td>Female Genital Mutilation</td>
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<tr>
<td>HRC</td>
<td>Human Rights Committee</td>
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<tr>
<td>IACHR</td>
<td>Inter-American Commission on Human Rights</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
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<tr>
<td>ILO</td>
<td>International Labour Organisation</td>
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<tr>
<td>IWGIA</td>
<td>International Working Group for Indigenous Affairs</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<tr>
<td>OAS</td>
<td>Organisation of American States</td>
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<tr>
<td>OAU</td>
<td>Organisation of African Unity</td>
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<tr>
<td>OSCE</td>
<td>Organisation for Security and Co-operation in Europe</td>
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<tr>
<td>UDHRI</td>
<td>Universal Declaration on Human Rights</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organisation</td>
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<td>UNGA</td>
<td>United Nations General Assembly</td>
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<tr>
<td>WGIP</td>
<td>Working Group on Indigenous Populations</td>
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List of Abbreviations, Document Symbols and Websites

**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
- CDCD/…: 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
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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.