

Substance

Right to culture – article 17(2) & (3)

The right to culture ensures protection of the individual's ability to participate in the cultural life of their community and imposes an obligation on the state to promote and protect the traditional life of the community. This duty goes beyond the negative obligation of the state to refrain from destroying or deliberately weakening cultural minorities but requires the state to respect and protect the cultural heritage essential to a group's identity. In this regard, culture must be construed in its widest sense to encompass the way of life of a particular people including their language, symbols, means of economic survival, and spiritual ceremonies. In the context of indigenous communities, the preservation of their culture is of particular importance given their vulnerability to exclusion, discrimination and forced assimilation (*African Commission on Human and Peoples' Rights v Kenya*, application 006/2012, Judgement, 26 May 2017, paras 177, 178, 179, 180). Stagnation or the existence of a static way of life is not a defining element of culture or cultural distinctiveness as culture changes over time (*African Commission on Human and Peoples' Rights v Kenya*, application 006/2012, Judgement, 26 May 2017, para 185). The right to culture is however not absolute and may be restricted in terms of article 27 of the Charter where there is a justified public interest and the measures adopted are necessary and proportional to the interest sought to be protected (*African Commission on Human and Peoples' Rights v Kenya*, application 006/2012, Judgement, 26 May 2017, para 188).