



**CARISMAND**

Culture And RiSk management in  
Man-made And Natural Disasters

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**D6.3 “Report on Cultural Issues as Provided for within Select  
European States and Their Relevance in Disaster Situations”**

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## Abbreviations

AC/E	Acción Cultural Española
APFR	Association for the Promotion of Women in Romania
AFR	Association of Women in Romania
ADSI	Associazione Dimore Storiche Italiane
CCAS	Centre Communal d'Action Sociale
COBR	Cabinet Office Briefing Room
CFREU	Charter of Fundamental Rights of the European Union
CoE	Council of Europe
DCLG	Department for Communities and Local Government
DCMS	Department for Culture Media and Sport
EC	European Commission
EU	European Union
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
EHRC	Equality and Human Rights Commission
ESC	European Social Charter
FFRC	Friends and Family Reception Centres
FAI	Fondo Ambiente Italiano
HFA	Hyogo Framework for Action
HRA	Human Rights Act
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Social, Economic and Cultural Rights
IASC	Inter-Agency Standing Committee
IANEE	Inter-Agency Network for Education in Emergencies





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MIBAC	Ministry of Cultural Heritage and Activities and Tourism
NGO	Non-Governmental Organisations
NATO	North Atlantic Treaty Organization
NHS	National Health Service
NIFV	Dutch Institute for Physical Security
PPG	Planning Policy Guidance
SMS	Short Message Service
SAIP	Systèmes d'alerte et d'information des populations
TCI	Touring Club Italia
UNCESCR	United Nations Committee on Economic, Social and Cultural Rights
UN	United Nations
UNESCO	The United Nations Educational, Scientific and Cultural Organization
UNISDR	United Nations International Strategy for Disaster Reduction
UNHCR	United Nations High Commissioner for Refugees
UDHR	Universal Declaration of Human Rights
USAID	United States Agency for International Development
UK	United Kingdom
WIPO	World Intellectual Property Organization





## Executive Summary

This deliverable examines how cultural rights have been operationalized in disaster management frameworks, and surveys eleven selected European states to see how their legal systems have addressed salient cultural aspects, specifically, in disaster management. In a broad sense, the goal is to find out among other things, how government policies and instruments make provision for different cultural issues and how cultural rights are translated and implemented in disaster management practices. The outcome assisted in proposing recommendations for policy makers and disaster managers on how to improve cultural aspects from various standpoints.

As a starting point, there seems to be no comprehensive mapping of how cultural elements in disaster management frameworks relate to cultural rights either in Europe or elsewhere. For this report, a literature review and a survey were utilized, and the outcome suggests a possibility of grouping cultural rights into five rubrics from where elements or examples of their operationalization could be identified across several jurisdictions. These rubrics revolve around elements regarding *the right to cultural identity and participating in cultural life; rights protecting cultural heritage and cultural artefacts; right to education; rights that protect against discrimination on cultural grounds and rights protecting certain groups who cultural factors contribute to their vulnerability.*

From the above rubrics, some examples of cultural considerations in disaster management operations were drawn up and tested in these countries to see how they are implemented in policies, guidelines and practices. These examples concern:

- a) Disaster communication in multiple languages including sign language;
- b) Protection of cultural heritage or artefacts;
- c) Provision of dietary and healthcare needs in consideration of cultural diversity;
- d) Consideration of cultural diversity in terms of provisions of facilities for religion/faith manifestation;
- e) Incorporating gender segregation, and/or maintaining the family roles and family cohesion as a cultural practice of the affected community;
- f) Giving special attention or priority to vulnerable groups such as children, women, the elderly, and the sick during disaster operations;
- g) Attention to the needs of ethnic, indigenous, linguistic or other minority groups;
- h) Consultation with local/ethnic communities in the disaster planning and implementation;







- i) Educational aspect including training disaster managers on cultural competencies; and
- j) Protection against discrimination on cultural ground.

## Findings

Issues of culture and how cultural rights have been translated into disaster management practices follow a divergent pattern in the countries surveyed. It is common in all the countries to find some constitutional and other legislative provisions relevant to culture and cultural rights. However, there is divergence on how these cultural rights have been operationalized in disaster management context. Some countries have several guidelines and other policy documents on how to handle cultural aspects in disaster management; others rely on work ethics and practice to cater for some of such issues, while some others do not have evidence of how some issues are resolved or do not consider such issues in their framework.

## Recommendations

To foster a better-articulated consideration of cultural competencies in disaster management, some policy recommendations have been made in this report, focusing on how to integrate some identified good practices into the routine activities of disaster managers, while noting cultural diversity within Europe. These recommendations are targeted at policy makers and disaster managers, and in a nutshell, include:

1. To develop a checklist of cultural issues that could impact disaster management operations in a multi-cultural environment.
2. To develop and integrate modules on cultural competences as part of the training programme of disaster managers and actors.
3. To unify the cluster of sources from where issues of cultural aspects of disaster management could be identified on a national level into guidelines or policy directives.
4. To foster a proactive strategy of consultation with the various cultural stakeholders and communities right from the disaster planning phase.
5. To adopt a rights-based approach in treating cultural issues in disaster management policies, strategies and practices.

In the end, a checklist of cultural considerations for disaster managers is attached as an annex to this report. Given that not all European countries have well-defined policies and guidelines regarding cultural aspects in their disaster management framework, this checklist will afford a handy template for disaster managers who deal with such issues and will contribute to the body of knowledge in this area.





# 1. Introduction

## 1.1. Overview

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In Deliverables D6.1 ‘Report on European Fundamental Rights in Disaster Situations’ and D6.2 ‘Report on Fundamental Rights in Disaster Situations in Selected National Legislations’, the complexity of defining culture, as well as streamlining what amounts to cultural rights was briefly discussed. The present report goes deeper into these issues and includes a methodology on how to classify cultural rights and categorize their operationalization in disaster management. Where necessary, it also looks at the general legal reasoning underpinning national approaches to cultural issues, with a focus on those cultural aspects that could be relevant for better and improved disaster management from a rights-based perspective. This report concentrates on eleven selected European countries — Bulgaria, France, Germany, Italy, Malta, the Netherlands, Portugal, Romania, Spain, Serbia, and the UK.

## 1.2. Methodology

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This report builds upon D6.1 and D6.2. Also, a survey was conducted to find out how cultural issues are reflected in the selected European countries, particularly, how cultural rights issues are considered in disaster management frameworks of these states. Austria and Ukraine which were part of the countries surveyed in D6.2 were not included this time in the survey. The reason being first, to completely align with Work Package 2 ‘Actors, Systems, Processes, Policies in Disaster Management’ which focused only on these eleven countries. Second, because responses from the first survey for D6.2 and literature review conducted for this report do not reveal any unique information concerning cultural aspects from Austria and Ukraine that may affect this report if they are omitted.

The survey contained 15 questions, but the analysis of the responses in Chapter Three below follows two broad concentrations: national integration of cultural aspects in the legal system; and reflection of cultural elements in civil protection with concrete examples of how they are considered in disaster management framework. The questionnaire was distributed to the project partners representing the selected countries, and a sample is annexed to this report. It was completed as follows:





- Leibniz Universität Hannover for Germany; assisted for France and the UK
- Law and Internet Foundation for Bulgaria
- Comune di Firenze and ITTIG-CNR for Italy
- Euro-Mediterranean Seismological Centre for France
- University of Malta for Malta
- The University of Groningen for the Netherlands (with support of the Veiligheidsregio Groningen) and the UK
- Autoridade Nacional de Protecção Civil, Portugal for Portugal
- SMURD Foundation, for Romania
- University of Novi Sad for Serbia
- Valencia City Council-Local Police for Spain.

Apart from the survey, desktop research was also conducted to check the sources provided by the respondents, as well as to review the literature necessary to complete other aspects of this report that the survey did not cover such as categorization of cultural rights. Further correspondences occurred with the respondent partners for clarity and review of a draft of this report.

This report is structured as follows: Chapter Two looks at law and culture and gives a background to the subject of culture and its reflection in legal systems. It also looks at the cultural dimensions of human rights and further attempts to map how culture rights have been operationalized in disaster management frameworks in general. Chapter Three is a compilation of the responses to the questionnaire and presents examples of how cultural aspects are addressed in disaster management frameworks of the selected countries. Chapter Four gives a comparative analysis of the countries surveyed, while Chapter Five contains examples of some good practices as well as suggests some policy recommendations. Chapter Six concludes the report.

Two annexes are attached to this report: a checklist of cultural considerations in disaster management and the questionnaire mentioned above.





## 2. Culture and Law

### 2.1. Culture and Its Reflection in Legal Systems

“Culture is one of the two or three most complicated words in the English language,”<sup>1</sup> even though the concept has been discussed from various perspectives — sociology, anthropology, law, among others. This complexity is partly attributed to the intricate historical development of the word in several languages and its modern usage for important concepts in several intellectual disciplines and systems of thought.<sup>2</sup> While a comprehensive discussion on this complexity is beyond the scope of this report, it is important to note that various definitions of the concept of culture exist, reflecting different perceptions of human interactions, ranging from a narrow to a broad listing of manifestations of human activities.

The UN Committee on Economic, Social and Cultural Rights (UNCESCR) in the General Comment No. 21 notes that “culture is a broad, inclusive concept encompassing all manifestations of human existence.”<sup>3</sup> Thus, the UNCESCR considers culture for the purpose of implementing Article 15 (1) (a) of the International Covenant on Social, Economic and Cultural Rights (ICESCR) as encompassing inter alia:

ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives.<sup>4</sup>

This broad approach arguably attempts to bridge the various perspectives from which issues of culture or cultural rights have been discussed, and offers a pool from where specific aspects could be drawn. For example, the 2014 World Disasters Report 2014 of the International Federation of the Red Cross’s definition of culture in relation to the issues of risk and its perceptions, which the

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<sup>1</sup> Raymond Williams, *Keywords A vocabulary of culture and society* (Revised edition), 1983, p. 87.

<sup>2</sup> *Ibid.*

<sup>3</sup> UN CESCR, *General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)*, 2009, p. 3.

<sup>4</sup> *Ibid.*





CARISMAND project adopts, states that “culture consists of beliefs, attitudes, values and their associated behaviours, that are shared by a significant number of people in hazard-affected places”.<sup>5</sup>

It is, however, important to point out that there is no consensus definition of culture, and this has also reflected in difficulty in categorizing culture or demarcating its dimensions even though many authors have sought to achieve this. Long-Crowell (n.d), for instance, categorizes culture into two: material and nonmaterial culture, with *material* culture including all the physical things that people create and attach meaning to (e.g. clothing, food, tools, etc.). The *nonmaterial* culture he refers to as creations and abstract ideas that are not embodied in physical objects (e.g. social roles, rules, ethics, beliefs, etc., which guide the behaviour of members of a society and interpret their world).<sup>6</sup> Williams (1996) on his part identifies three categories from the definitions of culture: a) *the ideal*, which understands culture as “a state or process of human perfection in terms of certain absolute or universal values”; b) *the documentary*, where culture is seen as the body of intellectual and imaginative work in which human thoughts and experiences are recorded; and c) *the social*, “a description of a particular way of life, which expresses certain meanings and values not only in art and learning but also in institutions and ordinary behaviour.”<sup>7</sup>

Similarly, Stamatopoulou (2007) distinguishes between culture in its material sense as a product, culture as a process of artistic or scientific creation, and culture in its anthropological sense as a way of life.<sup>8</sup> She further identifies three subjects of culture as the individual human being, the group or sub-group, and the state or nation-state. There are other categorizations,<sup>9</sup> and the lack of an exhaustive list of categories also means that the forms of usage of the term (as an independent and abstract noun which describes the works and practices of intellectual and artistic activity) cannot be closed.<sup>10</sup> Today, the term culture is used to represent music, literature, painting and sculpture, theatre and film, and basically, all human endeavours — “high culture”, “popular culture”, “sub-culture”, etc.

Equally, from a legal point of view, there seems to be no universally accepted definition of the term “culture” as pointed out in CARISMAND Deliverable D6.1. Gephart (2015) explains that culture is juristically not very precise because the understanding of what counts as cultural is so

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<sup>5</sup> IFRC, *World Disasters Report 2014 - Focus on Culture and Risk* (Lyon: IFRC, 2014), p. 14.

<sup>6</sup> Erin Long-Crowell, “What Is Culture? - Material and Nonmaterial Culture”, <http://study.com/academy/lesson/what-is-culture-material-and-nonmaterial-culture.html> (accessed 23 May 2017).

<sup>7</sup> Raymond William, *The Long Revolution* (Canada: Broadview press, 2001), p. 57.

<sup>8</sup> Elsa Stamatopoulou, *Cultural Rights in International Law* (Leiden: Nijhoff, 2007), p 109.

<sup>9</sup> For example, Raday Frances, into 2 categories: social culture and ideological culture: See: “Culture, Religion, and Gender”, *International Journal of Constitutional Law* 663 (2003), p.666.

<sup>10</sup> William, *Keywords, Op.cit.*, p. 90.





broad and far from any consensus.<sup>11</sup> Rather, there is a lot of descriptions of what amounts to “cultural rights” in several international and national legal instruments<sup>12</sup> such as the Universal Declaration of Human Rights (UDHR);<sup>13</sup> the ICSECR,<sup>14</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>15</sup> International Convention on the Elimination of All Forms of Racial Discrimination,<sup>16</sup> etc.

Neither the Charter of Fundamental Rights of the European Union (CFREU) or the European Convention on Human Rights (ECHR) defined culture or cultural rights, but they contain various provisions that are relevant for participation in cultural life such as freedom of expression, freedom of thought, conscience and religion, right to non-discrimination, among others. The CFREU goes further to provide that the Union shall respect cultural, religious and linguistic diversity,<sup>17</sup> as well as recognize and respect the rights of the elderly to participate in social and cultural life.<sup>18</sup> The European Social Charter (ESC) equally includes provisions that are relevant regarding cultural rights.<sup>19</sup>

At the national level, several references to culture, cultural heritage and cultural guarantees exist in constitutional and other legislative instruments. Yet, the recognition and enjoyment of cultural rights by individuals and groups is “usually subject to institutional systems and practices characterised by horizontal, unequal relations of power and cultural hegemony between rights holders and law-enforcement authorities.”<sup>20</sup> Such state of affairs, at times, blurs the relationship between culture and law in execution.

However, some scholars have sought to clarify this relationship from a theoretical perspective. Some commentators see “law as culture and culture as law”.<sup>21</sup> This relationship, as Mezey (2001) explains, “might mean emphasising the mutuality and endless recycling between formal legal

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<sup>11</sup> Werner Gephart, From “Natural Law” to “Cultural Law”? “Culture” as a New Source of Normative Validity, <http://www.recht-als-kultur.de/en/download/66/364/1617/Werner%20Gephart%20-%20From%20%E2%80%9CNatural%20Law%E2%80%9D%20to%20%E2%80%9CCultural%20Law%E2%80%9D.pdf> (accessed 3 June 2017).

<sup>12</sup> See Stamatopoulou, *Op cit.*, p. 37ff.

<sup>13</sup> Art. 27.

<sup>14</sup> Art. 15.

<sup>15</sup> Art. 27.

<sup>16</sup> See Art. 5.

<sup>17</sup> Art. 22. See also the Preamble.

<sup>18</sup> Art. 25.

<sup>19</sup> Arts. 2 and 19.

<sup>20</sup> Andrzej Jakubowski, “Culture and Human Rights: Concepts, Instruments and Institutions” in Andreas Wisand et al, (eds) *Culture and Human Rights: The Wroclaw Commentaries* (2016) p. 2.

<sup>21</sup> See, Gephart, From “Natural Law”, *Op. cit.*; Werner Gephart, *Law, Culture, and Society Max Weber’s Comparative Cultural Sociology of Law* (Frankfurt am Main: Vittorio Klostermann, 2015); Franz Reimer, “Law as Culture? Culturalist Perspective in Legal Theory and Theory of Methods”, *German Law Journal* Vol 18 No. 02 (2017); Naomi Mezey, “Law as Culture”, 13 *Yale J.L. & Human*, 35-67 (2001). However, it is noteworthy that the concept of “law as culture” is not without some opponents such as Thomas Gutmann. See Franz Reimer, above.





meaning-making and the signifying practices of culture, demonstrating that, despite their denials and antagonisms, these processes are always interdependent.”<sup>22</sup> Nafziger, Paterson and Renteln (2010) have attempted to establish the concept of “cultural law”, which they refer to as “a set of relationship between law and culture,” encompassing the core themes of linguistic and other cultural rights of fundamental importance to people around the world.<sup>23</sup>

But the pertinent questions in this relationship are: how does law perceive culture within a society? What is culture’s impact in shaping the legal system? Should law protect culture as a legal right - individual right or collective right? What legal guarantees and institutions should be in place to render possible the protection of certain cultural manifestations? Moreover, how should a conflict between cultural right and other rights be resolved?

Legal and social scholars have attempted to answer these questions from various perspectives.<sup>24</sup> One area of agreement seems to be that culture can be influenced by the law and vice versa. Mezey (2001) puts it succinctly: “Therefore, if one were to talk about the relationship between culture and law, it would certainly be right to say that it is always dynamic, interactive, and dialectical—law is both a producer of culture and an object of culture.”<sup>25</sup> Law can encourage certain cultural practices such as the Good Samaritan provision under the German Criminal Law which obliges everyone to assist another in danger in situations that such assistance could be possible.<sup>26</sup> Conversely, a legal prohibition might effectively eliminate a cultural practice such as female circumcision,<sup>27</sup> or the criminalisation of centuries-old Hindu tradition of Chhaupadi, where women are banished from the home during menstruation,<sup>28</sup> or alter how certain practices are carried out in a society such as the prohibition for anyone to conceal their face in public places.<sup>29</sup>

In the same vein, the law does not operate in a vacuum; it is realised within the culture of society as certain legal rules may be ignored or not respected if a community finds them offensive or

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<sup>22</sup> Mezey, “Law as Culture”, *Op. cit.*, p.55.

<sup>23</sup> James Nafziger, Robert Peterson and Alison Renteln, *Cultural Law International, Comparative and Indigenous* (New York: Cambridge University Press, 2010) p. 64.

<sup>24</sup> See Francesco Francioni and Martin Scheinin (eds) *Cultural Human Rights* (Leiden: Nijhoff publishers, 2008), Stamatopoulou, *Cultural Rights in International Law, Op. cit*; Greta Olson, “Introduction: Mapping the Pluralist Character of Cultural Approach to Law”, *German Law Journal*, Vol. 18 No. 02 (2017).

<sup>25</sup> Mezey, *Law as Culture, Op. cit.*, p.46.

<sup>26</sup> Sec. 323c StGB (Criminal Code). See, Deutsche Welle, “Three Germans face court for not helping a stricken pensioner”, <http://www.dw.com/en/three-germans-face-court-for-not-helping-a-stricken-pensioner/a-40556496> (accessed 26 September 2017).

<sup>27</sup> UNFPA, *Driving Forces in Outlawing the Practice of Female Genital Mutilation/Cutting in Kenya, Uganda and Guinea-Bissau*, <https://www.unfpa.org/sites/default/files/resource-pdf/Legislation%20and%20FGMC.pdf> (accessed 12 May 2017)

<sup>28</sup> Deutsche Welle, “Nepal criminalizes centuries-old Hindu tradition of Chhaupadi for women”, <http://www.dw.com/en/nepal-criminalizes-centuries-old-hindu-tradition-of-chhaupadi-for-women/a-40035024> (accessed 12 September 2017).

<sup>29</sup> See generally, Alice Foster, “Where in the world are the burka and niqab banned?”, *Express*, December 7, 2016.





contrary to their culture.<sup>30</sup> Reimer (2017) notes that practitioners of the comparative law point to the fact that “no regulation can really be understood outside the background of its specific tradition and culture.”<sup>31</sup> This observation re-echoes Gephart (2015) suggestion that culture could serve as a primary source of normative validity.<sup>32</sup> An example of where this argument has been made is in the French government’s submission to the European Court of Human Rights’ (ECtHR) supporting the law that bans face covering in public. The French government argues that clothing designed to conceal one’s face in public places is contrary to the values of the French Republic—liberty, equality, fraternity.<sup>33</sup> Such argument also finds expression in the ECtHR’s observation that: “It can thus be said that the question whether or not it should be permitted to wear the full-face veil in public places constitutes a choice of society.”<sup>34</sup>

The interplay between law and culture could also be viewed from the ongoing discussions in India regarding the practice of Triple Talaq (a practice among Muslims where a man could divorce his wife by simply saying “I divorce you” three times) and whether there should be a legal ban on such a practice.<sup>35</sup> This discussion is perhaps summed up by Mezey who remarks: “law shapes individual and group identity, social practices as well as the meaning of cultural symbols, but all of these things (culture in its myriad manifestations) also shape law by changing what is socially desirable, politically feasible, legally legitimate.”<sup>36</sup>

From another perspective, the law is one of the instruments to protect creativity, literary or artistic production arising from culture or cultural heritage. Such instrument, for example, is seen by legal protection of intellectual property in general, or by criminalising intentional acts to destroy wholly or partly national ethnic, racial, or religious groups’ heritage,<sup>37</sup> or destruction of cultural property,<sup>38</sup> as well as the prohibition of trafficking in cultural goods.<sup>39</sup> Instances have

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<sup>30</sup> See Olson, “Introduction:”, *Op. cit.*

<sup>31</sup> Reimer, “Law as Culture?” *Op. cit.*

<sup>32</sup> Gephart, From ‘Natural Law’, *Op. cit.* “If we take account of unwritten law, the *lex non scripta*, among some groups and peoples, all culture form a kind of customary law,” writes Nafziger, Peterson and Renteln (2010).

<sup>33</sup> See *S.A.S. v. FRANCE* (Application no. 43835/11) 1 July 2014.

<sup>34</sup> *Ibid*, p. 57.

<sup>35</sup> Michael Safi, “‘Talaq’ and the battle to ban the three words that grant India’s Muslim men instant divorce”, *The Guardian*, October 20, 2016. See also: *Babu and Ors. v Respondent: A. Naseema and Ors*, MANU/TN/1770/2017. In a recent decision, the Indian Supreme Court has ruled that the triple talaq is unconstitutional. See, BBC, “Triple talaq: India court bans Islamic instant divorce”, August 22, 2017.

<sup>36</sup> Reimer, “Law as Culture?” *Op. cit.*, p. 46.

<sup>37</sup> See the Convention on the Prevention and Punishment of the Crime of Genocide, 1948.

<sup>38</sup> Caroline Ehlert, *Prosecuting the Destruction of Cultural Property in International Criminal Law* (Leiden: Martinus Nijhoff Publishers, 2014).

<sup>39</sup> Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970.







been witnessed in several war trials including the recent conviction of Ahmed al-Faqi by the International Criminal Court (ICC) concerning the destruction of cultural heritage in Timbuktu.<sup>40</sup>

Nafziger, Paterson and Renteln (2010) vividly summarize the relationship between law and culture as follows:

1. Law embodies culture and formalises its norms.
2. Law promotes, protects, conditions, and limits cultural attributes and expressions.
3. Law harmonises cross-cultural differences, confirms cultural rights, and establishes international standards.
4. Culture reinforces legal rules.
5. Culture conditions and constrains the adoption, interpretation, and vitality of legal rules.
6. Cultural expressions and symbols promote legal relationships.<sup>41</sup>

It cannot be denied however, that despite of the above attempts at explaining the interplay between law and culture, an intricate relationship exists between them within any legal system, especially when resolving conflicts that could arise among the subjects of cultural relations of which Stamatopoulou (2007) has identified as majority society, minorities — national, ethnic, religious, and linguistic groups in a classical sense.<sup>42</sup> Such conflict also arises from individuals, as the smallest unit of the society, in their interactions with other individuals and cultural entities. The complex relationship between the state and the cultural entities in most cases generate fascinating scenarios on how the legal systems draw boundaries within cultural walls, as well as operationalize cultural rights in multicultural society and enforce cultural rights-claims.<sup>43</sup>

Although no comprehensive source of this operationalization aspect of cultural rights could be pointed out, Levy's (1997) classification of cultural right-claim and special policies for accommodating ethnic and linguistic pluralism, draw a picture of how this relationship and implementation is formed in a number of legal systems.<sup>44</sup> By sorting cultural rights-claims through concrete policies, he identified eight ways in which legal systems protect cultural rights,

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<sup>40</sup> Jason Burke, "ICC ruling for Timbuktu destruction 'should be deterrent for others'", *The Guardian*, September 27, 2017; Laura Collins, "Protecting Cultural Heritage: The International Criminal Court's Prosecution of Destruction of Cultural Property", *Human Rights Brief*, 2016.

<sup>41</sup> Nafziger, Paterson and Renteln, *Op. cit.*, p. 64.

<sup>42</sup> Stamatopoulou, *Op. cit.* Other sub-cultural groups also exist within the majority and minority cultures.

<sup>43</sup> *Ibid*, p.111-1112.

<sup>44</sup> Jacob Levy, "Classifying Cultural Rights", *Ethnicity and Groups Rights*, vol. 39 (1997).





namely:<sup>45</sup> exemptions,<sup>46</sup> assistance,<sup>47</sup> self-governance,<sup>48</sup> external rules,<sup>49</sup> internal rules,<sup>50</sup> recognition/enforcement,<sup>51</sup> representation,<sup>52</sup> and symbolic claims.<sup>53</sup> While he admits that this is not an exhaustive list, this categorization gives a good example of the practical aspects of the relationship between law and culture and shows various ways that states have operationalized cultural rights to fulfil, respect, and promote their obligations.

In the next section, we will examine the cultural dimension of human rights to see how cultural practices have been differentiated for legal protection, after that, we will investigate how cultural rights have been operationalised in disaster management.

## 2.2. Cultural Dimensions of Human Rights

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In general, there seem to be no standard criteria for determining which cultural practices should be protected as a legal right or which human rights may be considered cultural. As such, there is no strict definition of what elements should be used in defining cultural rights. While Levy's attempt above at classifying cultural right-claim through special policies for accommodating ethnic and linguistic pluralism is a good example of attempts at understanding this phenomenon, it appears limited in scope, as it does not take care of all aspects upon which cultural rights have been discussed. He considered "only the sort of claims which are subject to serious normative dispute".<sup>54</sup>

Because culture is a diverse and dynamic concept that adopts different forms in time and space, differentiating cultural aspects for legal protection is not an easy task from a comparative point of view, considering differences that exist within a state, and among states.<sup>55</sup> As Symonides (1998) puts it, "the scope of cultural rights also depends on the understanding of the very term 'culture'. In the absence of any binding definition, 'culture' may be understood in different ways

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<sup>45</sup> *Ibid*, see the table with examples at page 25.

<sup>46</sup> By creating exemption from laws which penalise or burden cultural practices.

<sup>47</sup> By giving assistance to do those things the majority can do.

<sup>48</sup> By granting self-governance to ethnic, cultural or national minorities.

<sup>49</sup> By making external rules restricting non-members' liberty to protect members culture.

<sup>50</sup> By allowing internal rules for members' conduct enforced by ostracism, excommunication.

<sup>51</sup> By recognising/enforcing of traditional legal code by the dominant legal system.

<sup>52</sup> By representation of minorities in government bodies, guaranteed or facilitated.

<sup>53</sup> By acknowledging the worth, status, or existence of various groups.

<sup>54</sup> Levy, "Classifying Cultural Rights" *Op. cit.*, p. 24.

<sup>55</sup> Valentina Sara Vadi, "Elsa Stamatopoulou. Cultural Rights in International Law", *Eur J Int Law* (2010) 21 (4): 1111-1115.





[...]”<sup>56</sup> Ahrén (2008) re-echoes this thought, pointing out that the term ‘cultural right’ is not self-explanatory and can be divided into many kinds of sub-groups depending on the need.<sup>57</sup>

While this may partly account for why cultural rights have not been adequately addressed in both national and international arena in comparison with other rights, it also suggests why there are different methodologies by which states interpret and implement their legal obligations in the area of cultural and cultural rights. Fragmentation exists in this aspect, often marked by a lack of harmony between various norm-systems and institutions.<sup>58</sup>

From a national point of view, it is often not clear what determines the areas of people’s life that should be protected as cultural rights. Although generally speaking, cultural matters have traditionally been reflected in freedom of conscience, belief and expression in various forms, the tension between protecting individual versus group rights, as well as the time and space dimension of culture, means that state policy on culture is susceptible to constant changes, at least, from a political perspective.

At the international level, the traditional has tended to perceived cultural issues as existing within the exclusive domain of states and their vital and pragmatic interests, as it is thought that cultural rights go against the universality of human rights.<sup>59</sup> However, attitude is changing in this regard, as some cultural matters such as the protection of human creativity and the protection and preservation of cultural heritage, are now vigorously discussed at the international level. Protection of intellectual property and cultural heritage, for example, have seen several international instruments under the auspices of WIPO and UNESCO.

Moreover, if we adopt the view that there is a cultural element inherent in the interpretation of the other rights of political, civil, economic or social character,<sup>60</sup> then international law is a good source in any attempt at categorizing cultural rights. “The cultural dimension also implies a culturally inclusive interpretation of each human right”, argue Meyer-Bisch and Bouchard (2016).<sup>61</sup> “This is particularly true of civil freedoms”, they write, and asking further, “What is a freedom of expression without knowledge and mastering of a language and its writings?”<sup>62</sup> In this

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<sup>56</sup> Janusz Symonides, “Cultural rights: A neglected category of human rights”, *International Social Science Journal*, Vol 50, Issue 158 (1998), p. 560.

<sup>57</sup> Matthias Ahrén, “Protecting Peoples’ Cultural Rights: A Question of Properly Understanding the Notion of States and Nations?” in Francesco Francioni and Martin Scheinin (eds) *Cultural Human Rights* (Leiden: Nijhoff publishers, 2008), p. 92.

<sup>58</sup> Jakubowski, “Culture and Human Rights” Op. cit.

<sup>59</sup> Ibid.

<sup>60</sup> See Patrice Meyer-Bisch and Johanne Bouchard, “Cultural Dimensions of Human Rights” in in Andreas Wisand et al, (eds) *Culture and Human Rights: The Wroclaw Commentaries* (2016).

<sup>61</sup> In this regard, Meyer-Bisch and Bouchard argue that a major condition of each human rights’ effectiveness is that the enjoyment of a right needs to be adapted to the conditions of the subject’s specific environment. Ibid, p. 128.

<sup>62</sup> Ibid.





regard, international law provides a reach source of materials for civil and political rights, as well as socio-economic and “cultural” rights which in some respects, reflects practices common to states.

Although no universally accepted guidelines exist to categorize cultural rights, any such attempt would certainly benefit from important international human rights instruments such as the UDHR, ICCPR, ICESCR, and UNESCO developed treaties, among others, as well as judicial and academic interpretation of their relevant provisions. For example, provisions of Article 27 of the UDHR, Articles 13 and 15 of the ICESCR, Article 27 ICCPR, and commentaries on them, as well as a number of other instruments that aim at protecting culture or cultural heritage such as: the Convention concerning the Protection of the World Cultural and Natural Heritage (1972), the UNESCO Universal Declaration on Cultural Diversity (2001), the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003), UN Declaration on Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) etc., offer some insights into the rubrics of what could be termed cultural rights.

For instance, Article 5 of the Universal Declaration on Cultural Diversity (2001), which refers to cultural rights as an integral part of human rights states:

[...] All persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons are entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.

Furthermore, interpretations by scholars<sup>63</sup> and UN representatives such as the Special Rapporteur in the field of cultural rights<sup>64</sup> equally afford good sources for classifying cultural rights.<sup>65</sup> In the first report of the Special Rapporteur, she notes:

cultural rights relate to a broad range of issues, such as expression and creation, including in diverse material and non-material forms of art; information and communication; language; identity and belonging to multiple, diverse and changing communities; development of specific world visions and the pursuit of specific ways of life; education and

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<sup>63</sup> See Stamatopoulou, *Op. cit.*; Ephraim Nimni “Right to take part in cultural life (article 15 (1) (a) of the Covenant)” <http://www2.ohchr.org/english/bodies/cescr/docs/discussion/EphraimNimni.pdf> (accessed 23 June 2017); Nafziger, Paterson and Renteln, *Op. cit.*, etc.

<sup>64</sup> <http://www.ohchr.org/EN/Issues/CulturalRights/Pages/SRCulturalRightsIndex.aspx> (accessed 23 June 2017).

<sup>65</sup> Some UN Special Agencies such as UNESCO and WIPO play active role in cultural issues including intellectual property aspects of culture.





training; access, contribution and participation in cultural life; the conduct of cultural practices and access to tangible and intangible cultural heritage.<sup>66</sup>

She also notes that many explicit and implicit references to cultural rights can be found in international instruments and the practice of human rights mechanisms, in particular:

1. The right to take part or participate in cultural life;
2. The right to enjoy the benefits of scientific progress and its applications;
3. The right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which a person is the author;
4. The freedom indispensable for scientific research and creative activity;
5. The right to education;
6. In provisions and instruments relating to minorities;
7. The respect for the cultural identity of migrant workers;
8. The non-discrimination principle;
9. The right of everyone to rest and leisure.<sup>67</sup>

While these thematic areas and other range of issues listed above were not intended to form an “official” categorization of cultural elements to be regarded as cultural rights per se, they offer a good insight into how to map cultural rights in concrete frameworks for implementation within a legal system.

These themes are similar to Stamatopoulou (2007) normative elements of the right to participate in cultural life — non-discrimination and equality, freedom from interference in the enjoyment of cultural rights, freedom to create and contribute to cultural life; freedom to choose in which culture(s) and cultural life to participate, the freedom to manifest one’s culture; freedom of dissemination; freedom to cooperate internationally; right to participate in the definition, preparation and implementation of policies on culture; and other elements connected to the right to cultural life.<sup>68</sup> It is noteworthy that without guaranteeing certain other free-standing rights such as freedom of expression, freedom of religion and belief, freedom of association, right to education, among others, the enjoyment of the right to participate in cultural life may be illusory.

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<sup>66</sup> UNHCR, Legal framework and thematic issues addressed by the Special Rapporteur

[http://www.ohchr.org/Documents/Issues/CulturalRights/Summary\\_thematic\\_issues.doc](http://www.ohchr.org/Documents/Issues/CulturalRights/Summary_thematic_issues.doc) (accessed 20 June 2017).

<sup>67</sup> *Ibid.*

<sup>68</sup> Stamatopoulou, Cultural Rights in International Law, Op. cit., p. 115-148.





Furthermore, in the Fribourg Declaration on Cultural Rights, six substantive articles were proposed: the right to identity and cultural heritage; the right of one's choice to reference to cultural communities; the right to access to and participation in cultural life; the right to education and training; the right to communication; and the right to take part in cultural cooperation and policies.<sup>69</sup> All these point out examples of human activities that are usually considered in cultural rights discussions.

It is important to note also that there has been an ongoing debate about cultural relativism or clash of cultural rights with other rights guaranteed through international human rights instruments. The popular view here is that internationally proclaimed human rights take precedence over cultural practices that tend to violate them.<sup>70</sup> Particularly, the UNCESCR has looked at some situations where this has happened, including cultural attitudes towards women, children, elderly, and immigrants.<sup>71</sup> In general, however, when compared with other rights, cultural rights seem to be underdeveloped, as most jurisdictions see them as political commitments of a programmatic character that create, at most, legitimate expectations or non-justiciable rights.<sup>72</sup>

In sum, it is difficult to identify any standard by which cultural practices or human activities are protected as cultural rights both from a national and international perspective. Similarly, there are no binding criteria for categorizing human rights as cultural rights. It will also be a misnomer, as pointed out by Meyer-Bisch and Bouchard (2016), to reduce the various cultural rights into a global "right to culture", as if culture could be understood as a unified whole.<sup>73</sup> However, the literature has shown how cultural elements have been analysed in the context of human rights from various perspectives. This approach is general captured by Meyer-Bisch and Bouchard's (2016) definition of cultural right as "the rights and freedoms of a person to, individually or collectively, choose and express his or her identity and to access cultural references as the necessary resources needed for his or her process of identification, communication and creation."<sup>74</sup>

The question that remains is how cultural rights have been operationalized in various contexts including in managing disasters? In other words, what elements or considerations have been embedded in disaster management frameworks to ensure a rights-based approach with emphasis on cultural rights? While there is scant evidence of how cultural rights have been operationalised

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<sup>69</sup> Cultural Rights, Fribourg Declaration, <http://hrlibrary.umn.edu/instree/Fribourg%20Declaration.pdf>.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*, pp. 26 -28.

<sup>72</sup> Francesco Francioni, "Culture, Heritage and Human Rights: An Introduction" in Francesco Francioni and Martin Scheinin (eds) *Cultural Human Rights* (Leiden: Nijhoff publishers, 2008), p. 3.

<sup>73</sup> Meyer-Bisch and Bouchard, "Cultural Dimensions of Human Rights", *Op. cit.*, p.127.

<sup>74</sup> *Ibid.*, p. 128.





in some other areas such as in education system management,<sup>75</sup> no comprehensive study could allude to examples in disaster management. Therefore, in the next section, we will attempt to calibrate cultural rights discussions into rubrics in order to look for evidence of how they are operationalized in disaster management framework. In a further step, this calibration will be used to draw a checklist of cultural considerations for disaster managers.

## 2.3. Culture and Its Implementation in Disaster Management

Even though several publications have suggested that culture has an impact on disaster management,<sup>76</sup> the confusing immediacy of disaster situations seems to present little opportunity for disaster managers to consider cultural factors in their response in the absence of a well-articulated strategy.<sup>77</sup> The World Disaster Report 2014, for example, acknowledges that culture plays a significant role in disaster risk perception and concludes among others things that “people’s response to any DRR [disaster risk reduction] initiative is likely to be much greater when their own beliefs are acknowledged and not ignored.”<sup>78</sup> The impact of culture on risk perception has also been underscored in CARISMAND Deliverable D4.1 ‘Mapping Risk Perception Concepts in the Context of Disasters’, suggesting that a mapping of cultural elements in disaster management frameworks is an important venture.

Also, the UNISDR’s Hyogo Framework for Action: 2005-2015 (HFA) notes amongst other things, that “Cultural diversity, age, and vulnerable groups should be taken into account when planning for disaster risk reduction”.<sup>79</sup> Its successor the Sendai Framework for Disaster Risk Reduction 2015 – 2030, also states as one of its guiding principles that “[a] gender, age, disability and cultural perspective should be integrated into all [disaster risk reduction] policies and practices.”<sup>80</sup>

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<sup>75</sup> For example, freedom to receive education in native language, freedom to choose religious education to study, inclusion of social and cultural studies in the curriculum, etc.

<sup>76</sup> See Polymenopoulou, “Cultural Rights During Disasters”, Op. cit.

<sup>77</sup> See Wayne Bergeron, “Cultural Considerations in Consequence Management and Emergency Response” in Denis Čaleta and Paul Shemella (eds) *Managing the Consequences of Terrorist Acts - Efficiency and Coordination Challenges*, (Institute for Corporate Security Studies, 2012).

<sup>78</sup> IFRC, *World Disasters Report 2014*, Op.cit, p.187.

<sup>79</sup> UNISDR, *Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters*, [http://www.unisdr.org/files/1037\\_hyogoframeworkforactionenglish.pdf](http://www.unisdr.org/files/1037_hyogoframeworkforactionenglish.pdf) (accessed 27 July 2017), p.4.

<sup>80</sup> UN, *Sendai Framework for Disaster Risk Reduction 2015 – 2030* [http://www.preventionweb.net/files/43291\\_sendaiframeworkfordrren.pdf](http://www.preventionweb.net/files/43291_sendaiframeworkfordrren.pdf) (accessed 27 July 2017), p.13.





Humanitarian organisations equally endeavour to respect cultural factors in their work. The Sphere Project's Humanitarian Charter and Minimum Standards in Humanitarian Response, for instance, enjoins humanitarian organisations to "Recruit teams with a balance of women and men, ethnicity, age and social background so that the team's diversity is appropriate to the local culture and context." The Charter also emphasises the impact of culture on hygiene promotion, shelter and settlement, clothing and bedding, among others.<sup>81</sup> Furthermore, one of its Six Core Standards – *People-centred Humanitarian Response*, suggests the following key actions to help the humanitarian organisation meet the needs of the victims:

- Support local capacity by identifying community groups and social networks at the earliest opportunity and build on community-based and self-help initiatives;
- Establish systematic and transparent mechanisms through which people affected by disaster or conflict can provide regular feedback and influence programmes;
- Ensure a balanced representation of vulnerable people in discussions with the disaster-affected population;
- Provide information to the affected population about the humanitarian agency, its project(s) and people's entitlements in an accessible format and language;
- Provide the affected population with access to safe and appropriate spaces for community meetings and information-sharing at the earliest opportunity;
- Enable people to lodge complaints about the programme easily and safely and establish transparent, timely procedures for response and remedial actions;
- Wherever feasible, use local labour, environmentally sustainable materials and socially responsible businesses to benefit the local economy and promote recovery;
- Design projects, wherever possible, to accommodate and respect helpful cultural, spiritual and traditional practices regarded as important by local people;
- Progressively increase disaster-affected people's decision-making power and ownership of programmes during the course of a response.<sup>82</sup>

It could be seen that these actions incorporate cultural elements during disaster response which humanitarian agencies should endeavour to implement. Similarly, the Code of Conduct of the International Red Cross and Red Crescent Movement and NGOs in Disaster Response

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<sup>81</sup> The Sphere Project Handbook, *Humanitarian Charter and Minimum Standards in Humanitarian Response* <http://www.spherehandbook.org/> (accessed 27 July 2017). This Handbook is currently undergoing a review and a revised version is expected in 2018.

<sup>82</sup> See the Core Standard 1 – People-centred Humanitarian Response, *Ibid.*







Programmes states that such organisations “will endeavour to respect the culture, structures and customs of the communities and countries” they are working.<sup>83</sup>

However, despite the references to culture above, there seems to be lacking a comprehensive articulation of how to operationalize cultural rights in the events surrounding disasters. Evidence from the literature suggests that only patch works of cultural factors or issues have been considered in different disaster management frameworks.<sup>84</sup> For example, in 1997, the Emergency Preparedness Canada published guidelines for agencies involved in disaster management on cultural diversity and disaster management which contain suggestions on how to overcome cultural and communication barrier before and during an emergency.<sup>85</sup> Similar guidelines could be found in the UK on various subjects of cultural importance.<sup>86</sup> Other countries have different approaches dealing with issues of culture in disaster management ranging from unwritten practices to specific regulations as will be seen in Chapter Three.

In general, author and commentators have approached the issue of operationalizing cultural rights in disaster management from various perspectives. Canto (2015) while commenting on the importance of culture in the ability of disaster managers to provide services and narrating his experiences in the field, identifies some of the cultural elements as follows:

The potential for cultural conflict goes beyond just language barriers and diet. Certain cultures have very strong family ties and are reluctant to separate extended family groups. We saw this in Hurricane Katrina when many families did not evacuate because a family member could not be moved. Many cultures have strong religious beliefs about the disposal of remains. Jewish burial customs require that the deceased be buried as soon as possible; Indian customs require cremation.<sup>87</sup>

Bergeron (2012) also highlights some important cultural considerations in consequence management such as effective communication including multiple language and sign, cultural, religious and death practices relating to funeral rituals, and family roles, responsibilities and support structure.<sup>88</sup> Polymenopoulou (2018: forthcoming) looks at certain normative elements

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<sup>83</sup> ICRC, *Annex VI: The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief*, <https://www.icrc.org/eng/resources/documents/article/other/code-of-conduct-290296.htm> (accessed 27 July 2017).

<sup>84</sup> A recent publication by Eleni Polymenopoulou, “Cultural Rights During Disasters”, *Op. cit.*, appears to be unique in this respect, even though it does not cover all aspects. See also, Lucien Canton, “Is Your Planning Culturally Sensitive?” <http://www.govtech.com/em/emergency-blogs/managing-crisis/Is-Your-Planning-Culturally-Sensitive.html>.

<sup>85</sup> <http://www.publications.gc.ca/collections/Collection/D82-45-1997E.pdf> (accessed 22 June 2017).

<sup>86</sup> See <https://www.gov.uk/government/publications/human-aspects-in-emergency-management>, (accessed 22 June 2017).

<sup>87</sup> Canton, “Is Your Planning Culturally Sensitive?”, *Op. cit.*

<sup>88</sup> Bergeron, “Cultural Considerations”, *Op. cit.*





of cultural rights and identifies safeguarding cultural heritage as a means of promoting cultural identity in disaster management. She also considers how disaster affects group rights and indigenous livelihoods, calling for a more dynamic approach of the international community towards enforcing cultural rights and building cultural resilience for the vulnerable population.<sup>89</sup>

As Polymenopoulou (2018: forthcoming) rightly suggests, culture and how it interacts with disaster prevention and management is still not explicitly part of the international agenda, as most of the relevant soft law documents omitted the issue of cultural rights.<sup>90</sup> However, protection of cultural heritage has appeared at the centre stage of disaster discussions. A UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage was signed in 2003, and UNESCO's collaboration with the international community to protect culture and promote cultural pluralism in emergency situations is also remarkable.<sup>91</sup>

Bridging this piecemeal approach in identifying cultural considerations relevant in disaster management is one of the aims of this report as part of the Work Package tasks of the project looking at citizen's rights. One way of achieving this aim is by developing a matrix of cultural considerations in disaster management, as well as a checklist that will guide disaster managers in assessing cultural impact in their operations. Therefore, in the next section, a mapping of cultural rights elements relevant in disaster management will be drawn based on the previous sections, as well as analysis and review of the literature on disaster management guidelines, policies, legislation, international instruments, and publications on disaster management and humanitarian affairs.<sup>92</sup> The focus is on defining what concrete measures have been utilized for the implementing cultural aspects in disaster management policies and practices regarding rights of victims (focusing mainly on cultural rights), duties of authorities, as well as that of the community where necessary.

### 2.3.1. Mapping Cultural Rights Elements in Disaster Management

As earlier indicated, a comprehensive mapping of cultural rights elements or considerations in disaster management frameworks is lacking. For this purposes, a methodology has been developed for mapping these elements in two main stages: selection of cultural rights, and

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<sup>89</sup> Polymenopoulou, *Op. cit.*

<sup>90</sup> *Ibid*, pp. 4-5.

<sup>91</sup> UNESCO, "Culture in Emergencies", <http://en.unesco.org/themes/culture-risk-0> (accessed 26 July 2017).

<sup>92</sup> For example, see the following: European Convention on the Protection of the Archaeological Heritage (revised), 1992; PDNA Guidelines Volume – Culture, [https://gfdr.org/sites/gfdr/files/WB\\_UNDP\\_PDNA\\_Culture\\_FINAL.pdf](https://gfdr.org/sites/gfdr/files/WB_UNDP_PDNA_Culture_FINAL.pdf); University of Minnesota, Module 17 Cultural Rights, <http://hrlibrary.umn.edu/edumat/IHRIP/circle/modules/module17.htm>; Council of Europe, "Civil protection in diverse societies: migrants, asylum seekers and refugees in the context of major risks prevention and management", <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168049536b> (accessed 26 July 2017).





research on how the identified rights have been operationalized in disaster management practices. Although the normative elements of cultural rights (e.g., those that Stamatopoulou identified,<sup>93</sup> as well as the Special Rapporteur's thematic issues in Section 2.2) were specifically considered, they were not limited to them.

The analysis suggests five cultural rubrics; these were identified by their significance and relevance for disaster management. The grouping of these rubrics is based on the closeness of the elements or examples of cultural expressions under which they were discussed, although this does not foreclose some overlap. These rubrics revolve around right to cultural identity and participating in cultural life; rights protecting cultural heritage and artefacts; right to education; rights that protect against discrimination on cultural grounds such as perceptions regarding gender, nationality, religion, ethnicity, linguistic, belonging to minorities, etc.; and rights protecting certain groups whose vulnerability is contributed by cultural factors among others.

It is important to point out that these rubrics are not intended to be an exhaustive list, as culture is dynamic and new issues may become relevant in the future. Moreover, context-specific elements in each rubric could overlap in certain cases. For example, under the rubrics of participation in cultural life and identity, issues surrounding the protection of rights of a people to profess their tradition and identity, promotion of their languages, protection of their religious freedom, among others, constantly recur. These examples could also be seen under the rubrics of rights that protect against discrimination and exploitation of vulnerability due to cultural perceptions, but differs in the sense that while the former could apply to all groups including the dominant group, the latter targets groups that are in the minority, and as such, share certain vulnerability due to their socio-economic and other weakness (e.g, migrants).

### 2.3.1.1. Rights Regarding Cultural Identity and Participating in Cultural Life

The protection and respect for the right to cultural identity and participation in cultural life<sup>94</sup> take various forms; they encompass the protection of everyone's right to enjoy their culture, profess, and practise their religion; freedom to use their native language in the community and to identify with their ethnic group; freedom to observe traditional practices, etc.<sup>95</sup> The UNCESCR also stresses three interrelated main components of the right to participate in cultural life:

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<sup>93</sup> Polymenopoulou (2018: forthcoming) commenting on these normative elements writes: "It is precisely these 'normative elements' and collective aspects of cultural rights, as well as the preservation of cultural identities that should be included in policy-making and the management of disasters." p. 7.

<sup>94</sup> See Art. 27 ICCPR, Art. 15 ICESCR, Art. 27 UDHR, General Comment 21.

<sup>95</sup> V.T. Thamnilmaran, "Cultural Rights in International Law", 13 *Sri Lanka J. Int'l L.* 63 2001. See also Art. 5 of the Universal Declaration on Cultural Diversity.





- a. the ability of everyone to participate alone or in association with others in the free choice of his or her identity and to seek, develop and share cultural knowledge, expressions and creativity;
- b. access to know and understand his or her own culture and that of others through education and information, and to receive a quality education and training with due regard for cultural identity; and
- c. contribution to the cultural life of the community, which inversely includes the right not to participate.<sup>96</sup>

The UNCESCR equally identifies some elements of this right regarding (i) availability; (ii) accessibility; (iii) acceptability; (iv) adaptability; and (v) appropriateness.<sup>97</sup> Availability is the presence of cultural goods and services that are open for everyone to enjoy and benefit from, including libraries, museums, literature, languages, customs, traditions, beliefs, knowledge etc. Accessibility consists of providing equal opportunities to all persons and communities to enjoy culture fully. Acceptability requires that policies integrating cultural rights should be formulated and implemented in such a way as to be acceptable to the individuals and communities affected by the policy. Adaptability refers to the flexibility and relevance of strategies, policies, programmes and measures adopted by the states in any area of cultural life, which must be respectful of the cultural diversity of individuals and communities. Appropriateness stresses the need to introduce policies that are appropriate from the values contained in the culture of the target groups.

These principles are concretized in recognition of certain cultural practices such as observing holidays during certain religious events, or designing the health system so that gender is respected by allowing preference to health practitioner of the same gender for certain communities in compliance with their cultural codes, as well as take into account cultural values attached to food consumption, the use of water, housing designed, etc., in affected areas.<sup>98</sup>

Because culture is one of the factors that define how people perceive and respond to disasters, cultural life and identity have shown to be important elements in disaster management.<sup>99</sup> As such, operationalizing the right to cultural identity and participation in cultural life in disaster management policies have occurred in various guises such as preserving or protecting cultural heritage during disaster;<sup>100</sup> observation of religious or other cultural rituals and practices during

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<sup>96</sup> General Comment 21, p 4.

<sup>97</sup> General Comment 21, p 4-5.

<sup>98</sup> Ibid. See also Dimitrina Petrova, "Diverse Cultural Identities: The Challenges of Integrating Cultural Rights in Policies and Practices", Working Document presented in Seminar organized by the Office of the High Commissioner for Human Rights, Geneva, 1-2 February 2010.

<sup>99</sup> See CARISMAND Deliverable D 7.3.

<sup>100</sup> Polymenopoulou, *Op. cit.*





disaster response and recovery;<sup>101</sup> modelling disaster communication in consideration of the multiple languages that exist within a given society, among others.

For instance, a communication strategy is important during the preparation and response phases of disaster management regarding issuing of warning or rescuing of victims because concerned communities should get the warning in a language they understand. Communications tools such as sign and special languages (for those who have health challenges) are equally relevant in public information dissemination relating to disasters.<sup>102</sup> It is also common nowadays to use multiple communication channels (SMS, websites and apps) in multiple languages.<sup>103</sup>

In terms of religious or other cultural rituals and practices, considerations such as providing a place for prayers, observing burial rites and ritual for the dead victims, separating men and women where culture demands, assigning them to health facilities where a healthcare worker of the corresponding gender is available, providing dietary needs based on peoples believes and cultural practices, etc., represent elements that operationalize in cultural life in disaster situations.<sup>104</sup> The Sphere Project's Core Standards, for example, states in this regard: "Culturally appropriate practices, such as burials and religious ceremonies and practices, are often an essential element of people's identity, dignity and capacity to recover from disaster."<sup>105</sup> The Standard, however, pointed out that culturally acceptable practices that violate people's human rights (e.g. denial of education to girls and female genital mutilation) should not be supported.

Another aspect of cultural life and identity identified under this rubric relates to observing family roles, responsibility and support structure during disasters. Instances of promoting this include keeping families together in evacuation or relocation scenarios, as well as paying attention to prevailing matriarch or patriarch roles and arrangement in the affected society.<sup>106</sup> While the examples here are not exhaustive, it is notable that in keeping with the principles identified by the UNCESCR, disaster management policies should be flexible and adaptable to accommodate cultural values of the society in which they operate. Such approach arguably will foster the respect of cultural rights and acceptability of disaster policies by the affected community.

### 2.3.1.2. Rights Protecting Cultural Heritage and Artefacts

Cultural heritage comprises two aspects: a tangible entity (e.g., archaeological site, cultural landscape, historic district, historic site, historic building, historic structure, historical object) and

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<sup>101</sup> See the UK Guidance on Human Aspects of Emergence.

<sup>102</sup> Bergeron, "Cultural Considerations", *Op. cit.*

<sup>103</sup> See CARISMAND Deliverables D 3.1 and D3.2.

<sup>104</sup> See the UK Guidance on Human Aspects of Emergence.

<sup>105</sup> Sphere Handbook, *Op cit.*, p 56-57.

<sup>106</sup> Bergeron, "Cultural Considerations", *Op cit.*





cultural practice associated with a way of life (e.g., musical performance, craft production).<sup>107</sup> Protecting cultural heritage and artefacts is a way of safeguarding culture for the present and future generations.

Destruction of heritage sites and cultural properties by natural disasters, for instance, represent a major threat to the culture of the affected community. Floods, earthquakes, fires, environmental fatigue or similar long-term climate effects can cause irreversible damage to cultural heritage by destroying entire areas of both movable and immovable heritage. Natural disasters can also affect the economic livelihood of communities relating to their creative industry. Also, inadequate emergency interventions may affect cultural property and heritage objects in various forms.<sup>108</sup>

Over the years, various organizations (e.g., UNESCO, WIPO) have been working on protecting creativity (regarding personal and collective intellectual property) and cultural heritage at all times. The UNCESCR, for example, reiterated that state parties are obliged to respect and protect cultural heritage in all its forms, in times of war and peace, and natural disasters in order to encourage creativity in all its diversity.<sup>109</sup> Furthermore, there are several international treaties, as well as national instruments (including criminal law) that prohibit the trading on cultural heritage items or destroying them intentionally.<sup>110</sup>

Most countries around the world today have provisions for safeguarding cultural heritage in their disaster management plans either as part of their obligation under international law<sup>111</sup> or specific requirement of the national civil protection laws. The Serbian Law on Emergency Situations, for instance, made several references to the safeguarding of cultural goods. It obligates responsible persons or bodies to assess all the threats to cultural properties and to provide special protection to cultural properties of historical importance.<sup>112</sup> In Germany as well, it is part of the civil protection duties under the Federal Civil Protection and Disaster Aid Act to protect cultural heritage.

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<sup>107</sup> Sandra Fatorić and Erin Seekamp “Securing the Future of Cultural Heritage by Identifying Barriers to and Strategizing Solutions for Preservation under Changing Climate Conditions”, *Sustainability* 2017, 9(11), 2143.

<sup>108</sup> David Alexander, “Cultural Heritage and Disasters”, <https://www.ucl.ac.uk/rdr/hidden-events/heritage-and-disasters/cultural-heritage-and-disasters> (accessed 26 July 2017); UNESCO, *UNESCO’s Response to Protect Culture in Crises* (Paris: UNESCO, 2016).

<sup>109</sup> General Comment 21, *Op. cit.*, p.13.

<sup>110</sup> See for example, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970; the UK Dealing in Cultural Objects (Offences) Act 2003.

<sup>111</sup> For example, Art. 11 of the Convention for the Safeguarding of the Intangible Cultural Heritage requires States Parties to “take the necessary measures to ensure the safeguarding of the intangible cultural heritage present in its territory.”

<sup>112</sup> Law on Emergency Situations, Official Gazette of the Republic of Serbia No. 111/2009, 92/2011, 93/2012.





In practice, protecting cultural heritage has reflected not only in having an inventory of cultural heritage and plans to evacuate movable cultural properties in heritage sites, museums, libraries, etc., when they are threatened by predictable disasters,<sup>113</sup> but also in environmental and architectural laws and policies on construction around certain historical places.

Deliberate destruction of cultural heritage (e.g., in armed conflict) lead to criminal prosecution under both national and international law. Under the Rome Statute of the ICC, for instance, it is a war crime to “intentionally [direct] attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments [...] provided they are not military objectives”.<sup>114</sup> UNESCO engages in several activities including monitoring of damaged cultural heritage via satellite imagery and creating a Heritage Emergency Fund to assist its Member States in protecting cultural heritage from disasters.<sup>115</sup>

### 2.3.1.3. Right to Education

The right of everyone to take part in cultural life is also intrinsically linked to the right to education.<sup>116</sup> Stamatopoulou (2007) notes that “[t]he right to education is itself a cultural right and a precondition of the enjoyment of various other cultural rights, including language rights, the capacity to participate in the arts and other areas.” A plethora of legal instruments recognize the right to education. The UN Convention on the Rights of Child, for instance, obligates state parties to ensure the right of the child to education, also providing that the education of the child shall be directed to the development of respect for the child's cultural identity, language and values, among others.<sup>117</sup> The Geneva Convention, as well as the Rome Statute of the ICC, prohibit targeting schools in armed conflict.<sup>118</sup>

Operationalizing the right to education in the context of disaster takes various forms. Apart from including disaster protection modules in the education plans in some school systems,<sup>119</sup> and in the general civic education, providing education (formal and non-formal) facilities for children as part of disaster management measures in refugee and displacement camps or long-term

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<sup>113</sup> Justin Huggler and Rory Mulholland, “Louvre to close and evacuate artworks amid flood threat”, *The Telegraph*, June 2, 2016.

<sup>114</sup> Art. 8 (2)(e)(iv).

<sup>115</sup> UNESCO, *UNESCO's Response to Protect Culture in Crises* (Paris: UNESCO, 2016).

<sup>116</sup> See Art. 13, 14 ICESCR, Art. 26 UDHR, Arts 28 and 29 CRC, General Comment No. 21.

<sup>117</sup> See Art. 29.

<sup>118</sup> See Art. 52 of the Protocol Additional to the Geneva Conventions of 12 August 1949, And Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977; Art. 8(2)(e)(iv) of the Rome Statutes of the ICC. See also Susan Nicolai, *Education in Emergencies*, (London: Save the Children, 2003).

<sup>119</sup> This is the example seen in Bulgaria.





evacuation centers is another practical instance of implementing this right in crisis situations.<sup>120</sup> The Inter-Agency Standing Committee (IASC) notes in this respect that “As soon as conditions permit, children affected by disasters, whether displaced or not, have the right to receive education [...]”<sup>121</sup>

Sinclair (2007) observes that education in emergencies can help to provide a sense of normality, as well as support psychological healing from traumatic experiences through structured social activities among other values.<sup>122</sup> As also noted in the Inter-Agency Network for Education in Emergencies (INEE) Minimum Standards for Education in Emergencies: “Education in emergencies, and during chronic crises and early reconstruction efforts, can be both life-saving and life-sustaining”.<sup>123</sup> Education reconstruction during recovering is also an important aspect of disaster management to facilitate the return of children to school.

In any case, where ethnic or religious minority communities are involved, introducing bilingual teaching for children, as well as allowing space in the schedule for religious practices, have been adjudged necessary for cultural impact.<sup>124</sup>

Another aspect that reflects the impact of education in disaster management is the training of disaster managers in cultural aspects or competencies. Cultural competence is a set of behaviours, attitudes, and policies fostered in an organization, that enables its professionals to work effectively in cross-cultural situations.<sup>125</sup> Understanding various cultural beliefs and practices is very important to the success of disaster professionals in all phases of disaster management. It assists disaster manager in identifying the risks faced by vulnerable cultural groups, as well as gives them the opportunity to influence certain cultural beliefs that increase disaster risks.<sup>126</sup> A module on cultural competencies, for example, is part of the EU civil protection mechanism introduction course.

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<sup>120</sup> Margaret Sinclair, “Education in Emergencies”, <http://www.cedol.org/wp-content/uploads/2012/02/52-56-2007.pdf> (accessed 26 July 2017).

<sup>121</sup> Inter-Agency Standing Committee (IASC), *Human Rights and Natural Disasters Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster*, (Washington: Brookings-Bern, 2008), p.40.

<sup>122</sup> Ibid.

<sup>123</sup> INEE, *Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction* (London: INEE, 2004), p.5.

<sup>124</sup> Nicolai, *Education in Emergencies, Op. cit.*

<sup>125</sup> Ethnic Communities’ Council of Victoria Inc., “Cultural Competence Guidelines and Protocols” <http://eccv.org.au/library/doc/CulturalCompetenceGuidelinesandProtocols.pdf> (accessed 26 July 2017).

<sup>126</sup> John Scott, “Concept Paper: Importance of Cultural Competency in Disaster Management”, <https://www.hsd.org/?view&did=6108> (accessed 26 July 2017).







## 2.3.1.4. Rights that Protect Against Discrimination on Cultural Grounds

A plethora of international and national instruments in principle prohibit making an unjustifiable distinction between individuals based on certain personal characteristics which have negative consequences for some individuals.<sup>127</sup> Although discrimination is not defined in core international human rights instruments, the UN Human Rights Committee (UNHCR) believes that the term implies:

any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.<sup>128</sup>

These grounds indicate elements of cultural construction, and various human rights laws protect against such elements. Meyer-Bisch and Bouchard (2016) note that cultural construction contributes to the vulnerability or violations of women's rights as well as that of children, old person, migrants and detainees.<sup>129</sup> They conclude that the conception and protection of the rights of persons in disadvantaged situations are essentially a cultural question of major importance for the persons as well as the societies concerned.<sup>130</sup>

The prohibition of discrimination correlates to the principle of equality. However, it has to be noted that the enjoyment of rights and freedoms on equal footing does not mean identical treatment in every instance.<sup>131</sup> As such, the UNHCR "observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant."<sup>132</sup>

The legal standard for non-discrimination is constantly evolving and is shaped by social and cultural changes in time and space of any society. Meyer-Bisch and Bouchard (2016) observe that the obligation to respect also implies the "obligation to observe", which in the context of non-discrimination obliges states "to ensure that systems of observation continuously exist and operate with the participation of all relevant stakeholders of the field concerned." By this way, stakeholders of entities that may be discriminated against will have the opportunity to participate in policies concerning them.

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<sup>127</sup> See for instance

<sup>128</sup> UNHCR, CCPR General Comment No. 18: Non-discrimination, p. 1.

<sup>129</sup> Meyer-Bisch and Bouchard, *Op. cit.*, p. 129.

<sup>130</sup> *Ibid.*

<sup>131</sup> Krzysztof Śmiszek "Discrimination" in Wisend, A. et al, (eds) *Culture and Human Rights: The Wroclaw Commentaries* (Berlin: De Gruyter, 2016).

<sup>132</sup> UNHCR, CCPR General Comment No. 18: Non-discrimination, p. 3.





The ECtHR and the CJEU have in several cases measured whether a distinction is discriminatory and a violation of fundamental rights.<sup>133</sup> Non-discrimination has also been interpreted in different ways in the context of disaster management, and various mechanisms have been identified for practical implementation. The Spheres Project's Humanitarian Charter's Protection Principles 2: Ensure people's access to impartial assistance – in proportion to need and without discrimination, enjoins humanitarian organisations to ensure that "Affected people receive support on the basis of need and are not discriminated against on other grounds."<sup>134</sup> This is also re-echoed in the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief.<sup>135</sup>

To check discriminatory attitudes, one study recommends that disaster managers should assess and understand how and what discriminatory factors apply in the environment they operate and institute measures to check such factors in their operations. The inclusion of vulnerable groups in the process of needs assessment also serves a purpose of bridging the gaps that lead to discriminatory practices.<sup>136</sup>

### 2.3.1.5. Rights Protecting Certain Groups Whose Vulnerability Is Contributed by Cultural Factors

Vulnerable groups in the context of disaster management refer to people considered to have diminished capacity to anticipate, cope with, resist and recover from the impact of a disaster.<sup>137</sup> Their exposure to risk could result from factors such as belonging to a group, gender, ethnic or other identity, age, among other factors. Poverty and its common consequences such as malnutrition, homelessness, poor housing, and destitution is also a major contributor to vulnerability.<sup>138</sup>

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<sup>133</sup> See for example, *Coleman v. Attridge Law* (CJEU 17/07/2008, C-303/06); *E.B. v. France* (ECtHR 22/01/2008, 43546/02).

<sup>134</sup> The Sphere Handbook, *Op. cit.*

<sup>135</sup> <https://www.icrc.org/eng/assets/files/publications/icrc-002-1067.pdf>.

<sup>136</sup> See Lee Macqueen Paul, *Addressing caste discrimination in Humanitarian Response* (New Delhi, 2011).

<sup>137</sup> IFRC, "What is Vulnerability", <http://www.ifrc.org/en/what-we-do/disaster-management/about-disasters/what-is-a-disaster/what-is-vulnerability/> (accessed 1 August 2017).

<sup>138</sup> WHO, "Vulnerable Groups", [http://www.who.int/environmental\\_health\\_emergencies/vulnerable\\_groups/en/](http://www.who.int/environmental_health_emergencies/vulnerable_groups/en/) (accessed 1 August 2017).





In a number of frameworks, children, pregnant women, elderly people, people with disabilities<sup>139</sup> or sick people are particularly considered vulnerable in disaster management.<sup>140</sup> The Sphere Handbook, for instance, stipulates that “special measures to facilitate the access of vulnerable groups should be taken, while considering the context, social and cultural conditions and behaviours of communities.”<sup>141</sup>

Due to their specific needs, vulnerable groups are usually given priority consideration in disaster management operations where necessary, ranging from evacuation procedures to continuity of services after evacuation. Infants and children, for example, need more care; some require special food and items (milk, diapers, etc.). Pregnant women and women, in general, may have specific needs for special products, and the elderly or the sick may need special support to move (e.g. wheelchairs).

The UK Civil Contingencies Act 2004, for example, stresses the need for responders to have regard to the needs of all members of the population they serve, particularly, members of vulnerable and minority groups when formulating their plan. The authorities usually carry out a community or equality impact assessment to meet this obligation. A government guidance on evacuation and shelter, for example, requires emergency planners to consider individuals or groups who may have special requirements such as dietary (halal food), cultural (unisex facilities) or religious (need for prayer facilities).<sup>142</sup>

Other categories of persons that may fall into the categories of a vulnerable group in the context of disaster include the homeless, who may require shelter, and minority groups defined by the United Nations High Commissioner for Refugees (UNHRC) as “an ethnic, religious or linguistic group, significantly fewer in number than the rest of the population, whose members share a common identity.”<sup>143</sup> Minorities are affected by disasters in diverse ways: migrants for instance, often struggle to access resources, services, opportunities and information that are key to

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<sup>139</sup> “[...] to the recognition of their specific cultural and linguistic identity, including sign language and the culture of the deaf; and to the encouragement and promotion of their participation, to the extent possible, in recreational, leisure and sporting activities” General Comment No. 21, p.8; see also Art. 30 of the United Nations Convention on the Rights of Persons with Disabilities, 2006.

<sup>140</sup> See BMZ, *Disaster Risk Management for All The Inclusion of Children, Elderly People and Persons with Disabilities*, (Bonn; BMZ, 2013).

<sup>141</sup> The Sphere Project Handbook, *Op. cit.*, p. 37; see also, pp. 14-17, 39-40.

<sup>142</sup> See the Equality Impact Assessment issued by Tameside and Glossop County Council, [www.tameside.gov.uk/eia/execsupport/eia\\_emergency.pdf](http://www.tameside.gov.uk/eia/execsupport/eia_emergency.pdf) (accessed 22 July 2016).

<sup>143</sup> UNHCR, *Emergency Handbook: Ethnic, Religious or Linguistic Minorities and indigenous Peoples*, Version 1.4, <https://emergency.unhcr.org/entry/94568/ethnic-religious-and-linguistic-minorities-and-indigenous-peoples> (accessed 24 August 2017).





ensuring safety and well-being in the face of hazards due to limited language proficiency; limited knowledge of the legal and social systems of their host community among others.<sup>144</sup>

Such ethnic, indigenous, linguistic and other minorities represent an important group in disaster management because of their weak socio-economic positions in some cases.<sup>145</sup> In this regard, the UNHCR notes that these minorities should be fully included in the emergency response, and their protection concerns addressed through dedicated resources and implementation of specific activities in close consultation with the persons concerned and service providers.<sup>146</sup>

In practice, there are varying mechanisms to protect minorities in disaster situations. These include ensuring that minorities receive disaster information and messages in languages they understand; consulting and collaborating with them in disaster planning and execution; putting in place mechanisms that protect them from discrimination; as well as considering their specific needs such as allowance for religious and ritual practices; keeping them together if they so wish in order to maintain their cultural identity and heritage, among others.<sup>147</sup> Moreover, it is always important to put in place mechanisms to check marginalisation or discrimination against minorities on cultural grounds.

### 2.3.2. Matrix of Cultural Aspects in Disaster Management

From the above analysis, a table is drawn below indicating the cultural rubrics and examples of how cultural rights have been operationalized in disaster management frameworks. These examples will be used to measure how the survey countries considered cultural aspects in their disaster management frameworks in the next chapter.

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<sup>144</sup> Lorenzo Guadagno, Mechthilde Fuhrer and John Twigg (eds), *Migrants in Disaster Risk Reduction Practices for Inclusion* (2017), [http://publications.iom.int/system/files/pdf/migrants\\_in\\_drr.pdf](http://publications.iom.int/system/files/pdf/migrants_in_drr.pdf) (accessed 4 September 2017).

<sup>145</sup> UNHCR, *Emergency Handbook*, *Op. cit.*

<sup>146</sup> *Ibid.*

<sup>147</sup> See UNHCR, *Working with National or Ethnic, Religious and Linguistic Minorities and Indigenous Peoples in Forced Displacement*, (Switzerland: UNHCR, 2011); UNHCR, *Emergency Handbook*, *Op. cit.*; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992, United Nations Declaration on the Rights of Indigenous Peoples 2007; Sphere Project Handbook, *Op. cit.*





SN	Rubrics of Cultural Rights	Possible Rights, Freedoms and Obligations to be Considered	Examples of Operationalisation in Disaster Management
1	<b>Rights regarding cultural identity and participating in cultural life</b>	<ul style="list-style-type: none"> <li>▪ Right to participate in cultural life</li> <li>▪ Freedom of religion</li> <li>▪ Right to private and family life</li> <li>▪ Right to education</li> <li>▪ Right to health</li> <li>▪ Freedom of association</li> </ul>	<ul style="list-style-type: none"> <li>▪ Multiple languages and communication styles;</li> <li>▪ Freedom to religious and ritual practices;</li> <li>▪ Segregation of men and women as cultural practice;</li> <li>▪ Provision of dietary needs and healthcare in consideration of cultural diversity;</li> <li>▪ Respect for family roles and family cohesion.</li> </ul>
2	<b>Rights regarding cultural heritage and artefacts</b>	<ul style="list-style-type: none"> <li>▪ Right to participate in cultural life</li> <li>▪ Intellectual property rights</li> <li>▪ Environmental rights</li> <li>▪ Obligation to protect cultural heritage</li> <li>▪ Prohibition of certain acts on cultural heritage</li> </ul>	<ul style="list-style-type: none"> <li>▪ Plans for evacuation of heritage site and properties;</li> <li>▪ Plans for rehabilitation and restoration of heritage items where necessary.</li> </ul>
3	<b>Right to education</b>	<ul style="list-style-type: none"> <li>▪ Right to education</li> <li>▪ Freedom to disseminate and receive knowledge</li> <li>▪ Right to cultural identity and participation in cultural life</li> <li>▪ Obligation not to target schools during armed conflict</li> </ul>	<ul style="list-style-type: none"> <li>▪ Civic education on disaster issues;</li> <li>▪ Training disaster managers in cultural competencies;</li> <li>▪ Education of children in refugee or displacement camps;</li> <li>▪ Reconstruction of educational institutions after a disaster.</li> </ul>
4	<b>Rights that protect against discrimination on cultural grounds</b>	<ul style="list-style-type: none"> <li>▪ Right against discrimination</li> <li>▪ Minorities rights</li> <li>▪ Rights of the child</li> <li>▪ Women's rights</li> </ul>	<ul style="list-style-type: none"> <li>▪ Consultation with minority communities in disaster planning and execution;</li> <li>▪ Protection against discrimination.</li> </ul>
5	<b>Rights protecting certain groups whose vulnerability is contributed by cultural factors among others</b>	<ul style="list-style-type: none"> <li>▪ Minorities rights</li> <li>▪ Right of the child</li> <li>▪ Women rights</li> </ul>	<ul style="list-style-type: none"> <li>▪ According special and priority attention to women, children, the elderly, the sick and those with disabilities where necessary.</li> </ul>





		<ul style="list-style-type: none"><li>▪ Rights of those with disabilities</li><li>▪ Right of the elderly and old people</li><li>▪ Right against discrimination</li></ul>	<ul style="list-style-type: none"><li>▪ Disaster communication in the language that the minorities understand</li></ul>
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*Table 1: Cultural Rubrics and their Elements in Disaster Management*





## 3. Reflecting Cultural Issues in the Selected European States

Two major tasks carried out for this deliverable are to survey how cultural issues are reflected in the selected European countries with emphasis on disaster management and to conduct a literature review on cultural policies of these countries. While the responses from the survey show examples of how cultural aspects have been reflected in the disaster management frameworks of these countries, literature from sources such as the UN and the Council of Europe databases, among others, were utilized to examine how these countries have integrated cultural policies into their legal systems in general. For example, from the reports submitted to the UNCESCR, several measures implemented for fulfilling state obligations under Article 15 of the ICESCR could be assessed.<sup>148</sup> According to the new guidelines for reporting, each state party is expected to provide information on the institutional infrastructure to promote popular participation in, and access to cultural life within the state, as well as the measures taken to protect cultural diversity, promote awareness of the cultural heritage of ethnic, religious or linguistic minorities, and of indigenous communities, and create favourable conditions for them to preserve, develop, express, and disseminate their identity, history, culture, language, traditions and customs.<sup>149</sup> The following sections reflect the result of the survey and the literature review.

### 3.1. Bulgaria

#### 3.1.1. National Integration of Cultural Aspects in the Legal System

Bulgaria does not have a specific legal definition of culture in the context of human rights, even though there are constitutional provisions with elements reflecting what can be called cultural rights such as: the right to equality and equal treatment before the law (Article. 6); freedom from discrimination (Article 6, Articles. 37-38); freedom of association (Articles 12, 44); freedom of

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<sup>148</sup> See database at

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=29](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=29)  
(accessed 29 July 2017).

<sup>149</sup> UN, Guidelines on Treaty-specific Documents to be Submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2008/2, 24 March 2009.





religion (Articles 13, 37); the right to family and child protection (Articles 14, 46-47); freedom of expression (Article 39); the right to information (Article 41); the right to social security and welfare aid (Article 51); the right to education (Article 53); the right to participate in cultural life (Article 54); the right to healthy environment (Article 55). Importantly, Article 54 (1) stipulates: “Everyone shall have the right to avail themselves of the national and universal human cultural values and to develop their own culture in accordance with their ethnic self-identification, which shall be recognised and guaranteed by the law.” Bulgaria has ratified all the main universal human rights legal instruments such as the UDHR, the ICCPR, and the ICESCR, meaning that the provisions of these instruments relating to cultural rights are applicable in Bulgaria.<sup>150</sup>

It is important to point out that the fundamental right to non-discrimination is further elaborated in the Protection from Discrimination Act.<sup>151</sup> The codification of this fundamental right and its horizontal nature enhance the implementation of various cultural rights as the law guarantees equality before the law, equal treatment and opportunities for participation in public life, as well as effective protection against discrimination. It prohibits any practice of direct or indirect discrimination based on sex, race, nationality, ethnic origin, human genome, citizenship, parentage, religion or faith, education, belief, political affiliation, personal or public status, disability, age, sexual orientation, family status, property or any other characteristics established by a legislative act or by an international agreement to which the Republic of Bulgaria is a party.<sup>152</sup> The Act also establishes a Commission for Protection from Discrimination as an independent specialised state body for prevention of discrimination, protection against discrimination and providing equality. This, in a way, ensures the protection of cultural rights.

Apart from the Constitution, several other laws and policies aim at implementing cultural rights or integrating cultural diversity into the Bulgarian society such as the Protection and Development of Culture Act,<sup>153</sup> the Cultural Heritage Act,<sup>154</sup> the Pre-School and School Education

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<sup>150</sup> In this respect, Art. 5 (4) of the Bulgarian Constitution stipulates that any international instruments ratified in accordance with the Constitution, which have been promulgated and have entered into force, shall be considered part of the domestic legislation and take precedence over provisions of domestic legislation in the event of a conflict.

<sup>151</sup> SG No. 86/30.09.2003, effective 1.01.2004, as amended.

<sup>152</sup> Art. 4 (1).

<sup>153</sup> Protection and Development of Culture Act 1999 as amended.

<sup>154</sup> Cultural Heritage Act, 2009 as amended. This law lists in an exhaustive manner what is considered as cultural heritage: ground, underground and underwater archaeological sites and reserves; historical sites and complexes; architecture sites and complexes; ethnographic sites and complexes; models of park art and landscape architecture; natural valuables (models), including anthropological remains, discovered during field surveys, and remains of paleozoology and cultivated plants; industrial heritage; works of art and applied arts; folk crafts; documentary heritage; audio-visual heritage; oral tradition and tongue; literary and fiction valuables; customs, rituals, feasts, rites and beliefs; music, songs and dances; folk music; cultural ethnologic traditions; folk games and sports. See Art. 6.







Act,<sup>155</sup> among others. The Protection and Development of Culture Act, for example, defines the basic principles and priorities of the national cultural policy, and provides cultural policies to be implemented by the state, regional and municipal authorities. It also notes that one of the basic principles in the implementation of the national cultural policy shall be the “encouragement of the cultural diversity while preserving the unity of national culture”.<sup>156</sup> The Pre-School and School Education Act ensures that every “school child, for whom the Bulgarian language is not mother tongue shall have the right to also learn their mother tongue under the conditions and procedure, provided by this act and under the care and control of the state.”<sup>157</sup> The same Act also promotes the freedom of religion, as it notes that “preschool and school education in the Republic of Bulgaria shall be secular.”<sup>158</sup>

Other laws that encourage and guarantee free artistic, scientific and technological expression, and thus, have relevance to culture include: the Bulgarian Academy of Sciences Act, the Scientific Research Promotion Act, the Industrial Design Act, the Copyright and Neighbouring Rights Act, the Patents Act, the Community Culture Centers<sup>159</sup> Act, the Monuments of Culture and Museums Act, the Artistic Creativity Funds Act, the Film Industry Act, etc.<sup>160</sup>

Additionally, there are several public bodies<sup>161</sup> responsible for monitoring the compliance of strategies and legislative proposals regarding cultural human rights such as: The National Ombudsman of Bulgaria, the Ministry of Culture; the Commission for Protection Against Discrimination, the National Council for Cooperation on Ethnic and Integration Issues; the National Council for Social Inclusion; the National Council for Migration and Integration; the National Council for Activity of the Community Culture Centres; State Institute for Culture at the Ministry of Foreign Affairs. Recently, the Law on Legislative Acts,<sup>162</sup> concerning the content,

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<sup>155</sup> Pre-School and School Education Act, Promulgated, State Gazette No. 79/13.10.2015, effective 1.08.2016.

<sup>156</sup> Art. 2 (6).

<sup>157</sup> Art. 13 (6).

<sup>158</sup> Art. 11.

<sup>159</sup> Community culture centers are regional points offering library services and a space for the local community to conduct discussions, theatrical performances, movie screenings, literature readings, and other cultural activities. The centers have a historic origin and a key role in the Bulgarian National Revival period as vital points for the preservation and dissemination of the Bulgarian national culture.

<sup>160</sup> See the Fourth and fifth periodic reports submitted under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights by Bulgaria, E/C.12/BGR/4-5, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fBGR%2f4-5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fBGR%2f4-5&Lang=en) (accessed August 1 2017).

<sup>161</sup> There are also numerous non-governmental organisations that are primarily engaged in advocacy in cultural rights implementation such as: Bulgarian Lawyers for Human Rights; Bulgarian Helsinki Committee; Transparency International Bulgaria; National Network for Children; Institute for Regional and International Studies; Creating Effective Grassroots Alternatives; Gender Alternatives Foundation.

<sup>162</sup> Law on Legislative Acts, Promulgated State Gazette No. 27/03.04.1973 Amended Official Gazette 34/2016 Decree No 118.





adoption and interpretation of legislative acts, was amended to include a mandatory impact assessment of proposed legislative acts before their adoption, which impliedly includes an assessment of the potential effect of the draft on culture and cultural rights.<sup>163</sup>

Despite their high priority, cultural rights are not absolute and can be restricted within the Bulgarian jurisdiction. For example, during the Bulgarian socialist republic period, many cultural rights were limited such as freedom of information, the state heavily regulated religious freedom and artistic expression.<sup>164</sup> Documents from the National Archives for the 1947-1962 period reveal a picture of the violence and terror to which the government and the State Security Services subjected all religious communities in Bulgaria.<sup>165</sup> Another striking cultural infringement during that period was the forced assimilation of Bulgaria's Muslim minority<sup>166</sup> by changing their Turkish and Arabic birth names to more Bulgarian-sounding ones and forbidding the exercise of their customs and religion and the use of their language between 1984 and 1989.<sup>167</sup>

In recent times, the ban on the practice of Muslim women wearing face coverings such as burqa/niqāb, which is a form of manifestation of religion, has also raised many concerns revolving around the respect of cultural rights in Bulgaria. Due to the growing feeling of insecurity and Islamic radicalism in Bulgaria, a law that prohibits the wearing of garments veiling or covering the face<sup>168</sup> in public spaces was adopted in 2016.<sup>169</sup> Proponents of the legislative decision believe that the adoption of this law will also enhance democratic values, ethnic inclusion, gender equality and overall humanism, as the legislators underlined that no woman should be forced to cover her face entirely or partially. Another example related to cultural rights is the legal circumstance that

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<sup>163</sup> See Art. 18a.

<sup>164</sup> Glenn Curtis, *Bulgaria: A Country Study* (Washington: GPO for the Library of Congress, 1992).

<sup>165</sup> The quoted data covers only the period up to 1962, but religious persecution continued right up to 1989. See Velislav Altanov, *Religious Revitalization among Bulgarians during and after the Communist Time*, Occasional Papers on Religion in Eastern Europe: Vol. 32: Iss. 3 (2012); Alexander Karadjov, *The Turkish Minority in Bulgaria and the 'Revival Process': The Construction of a Political Minority*, Master's Thesis submitted to the Central European University (2011).

<sup>166</sup> Widely known in Bulgarian history as the Revival Process.

<sup>167</sup> As a result of this action more than 800 000 Bulgarian Turks were assigned with new names. Coming to power in 1945, the Communist government found a de-facto segregated, entirely rural, and largely uneducated Turkish-speaking minority, which was the product of nearly 70 years of broad cultural autonomy, but also disregard, suppression, and exclusion by the post-independence governments. These events led to geopolitical tension between the People's Republic of Bulgaria and Turkey. Eventually, in 1989 an agreement between the neighbouring states was reached and more than 320 000 Bulgarian Turks fled to Turkey. As at this time Bulgaria was still part of the Warsaw pact, thus behind the Iron Curtain, the information that Bulgarian official disseminated was that these people were in fact on a holiday trip to visit Turkey. Up until now this event is known to the general public under the euphemism "The Great Excursion". Nevertheless, around 150 000 Bulgarian Turks returned as they could not adapt to the reality in Turkey.

<sup>168</sup> Act Restricting Wearing of Garment Veiling or Hiding the Face, 2016.

<sup>169</sup> Simon Holmes, "Bulgaria bans the burqa: Women no longer allowed to wear veils after nationalist party pushed for law change amid fears of Islamic terrorism", *Mail Online*, October 1 2016.





despite the entitlement of school children with a non-Bulgarian mother tongue to study their native language in school alongside the compulsory Bulgarian language education, students can only sit on the following second languages in their mandatory state graduation exam – English, German, French, Spanish, Italian and Russian.<sup>170</sup>

### 3.1.2. Reflection of Cultural Elements in Civil Protection and Examples of Implementation in Disaster Management

Although there is no dedicated national policy explicitly targeting the implementation or realisation of cultural rights in civil protection, there are many strategic documents which treat culture-related matters in the context of civil protection.<sup>171</sup> The following examples indicate how such cultural aspects have been reflected in the Bulgarian disaster management framework.

#### a) Disaster communication in multiple languages including sign language

According to the Ordinance on the Conditions and Procedure for the Functioning of the National System for Early Warning and Notification of Executive Authorities and the Population during Disasters, and Notification in Case of Air Threat,<sup>172</sup> warning the population in case of disaster is achieved via audible signalling devices (sirens), as well as via the Bulgarian National Television and the Bulgarian National Radio. The press office of the Ministry of Interior publishes timely information about each disaster on its website and prepares a notice for the national media. The National Plan for Disaster Protection<sup>173</sup> provides that messages be broadcasted in English to notify foreign residents about the disaster situation efficiently. Messages distributed by the Bulgarian National Television, where possible, should be accompanied by sign language/translation. The broadcasting of information about a disaster concerning the protective measures and instructions to the population is free of charge (according to the National Plan for Disaster Protection).

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<sup>170</sup>The necessity to have a valid civil marriage in order to participate in religious matrimony ceremony could be considered a cultural limitation to a certain extent according to the respondent.

<sup>171</sup> See the following: Strategic Objectives and Priorities of the Ministry of Culture (2015-2018); Strategy for Risk Management in the Ministry of Culture (2016-2018); National Strategy for Migration, Asylum and Integration (2015-2020); National Programme for Disaster Protection (2014-2018); National Programme for Disaster Protection (2014-2018); Strategy for Sustainable Tourism Development in Bulgaria (2014-2030); National Strategy for Bulgarian Citizens and Historical Bulgarian Communities Worldwide; National Roma Integration Strategy of the Republic of Bulgaria (2012-2020).

<sup>172</sup> Council of Ministers of the Republic of Bulgaria, Ordinance on the Conditions and Procedure for the Functioning of the National System for Early Warning and Notification of Executive Authorities and the Population during Disasters, and Notification in Case of Air Threat (2014).

<sup>173</sup> Council of Ministers of the Republic of Bulgaria, National Plan for Disaster Protection (2012).





## **b) Protection of cultural heritage or artefacts**

The Bulgarian Constitution defines the commitment of the state regarding the conservation of all national monuments of history and culture.<sup>174</sup> The Cultural Heritage Act further elaborates the state's obligation to protect the cultural heritage in cases of natural disasters or armed conflicts.<sup>175</sup> The preservation of culturally-valuable property in case of disaster is achieved with a specific procedure determined by an ordinance of the Council of Ministers proposed by the Minister of Culture, Minister of Defence and Minister of the Interior.<sup>176</sup> Furthermore, this Act defines the main groups of cultural heritage that should be subject to safeguarding measures and the requirements during their further preservation and protection.<sup>177</sup>

Article 52 (2)(6) of the Disaster Protection Act includes evacuation and deconcentration as possible measures to be taken in disaster situations. The Ordinance on the Conditions and Procedures for Conducting Evacuation and Deconcentration<sup>178</sup> addresses, specifically, the preservation of valuable historical and archival documents, scientific and technical documentation, movable cultural property, as well as other movable and culturally valuable property as mandatory activities to be undertaken in disaster situations. Under this Ordinance, evacuation and deconcentration shall be planned at municipal, regional, and national levels. The plan must include specific procedures for the accommodation of evacuees and for ensuring secure storage of the relocated cultural material property (if possible, in the same or closest neighbouring municipality/area).

## **c) Provision of dietary and healthcare needs in consideration of cultural diversity**

The Healthcare Act also provides specific religious and cultural groups' rights in case of disaster. Article 86 stipulates that as a patient every individual is entitled to respect for his/her civil, political, economic, social, cultural and religious rights. In case of hospitalisation, the patient has a right to education and access to activities in accordance with his/her social, religious and cultural needs.

Also, the Ordinance on the Conditions and Procedures for Conducting Evacuation and Deconcentration addresses the specific needs of religious and cultural groups in case of a disaster on a national level. Accordingly, people in need of evacuation are registered in evacuation centres where they can receive psychological assistance, counselling,

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<sup>174</sup> Art 23 of the Bulgarian Constitution.

<sup>175</sup> Art.5.

<sup>176</sup> Art 5.

<sup>177</sup> See Art. 6.

<sup>178</sup> Council of Ministers of the Republic of Bulgaria, Ordinance on the Conditions and Procedures for Conducting Evacuation and Deconcentration (2012).





distribution of essential products and places for accommodation.<sup>179</sup> Pursuant to the Ordinance, the accommodation process shall adhere to the following rules: families are not separated, and the needs of groups with special needs and with different cultural, ethnic or religious identities are considered. These rules are also considered in the individual plans for disaster protection at the municipal level.<sup>180</sup>

**d) Consideration of cultural diversity in terms of the provision of facilities for religious/faith practices**

The above-cited provision of the Ordinance on the Conditions and Procedures for Conducting Evacuation and Deconcentration addresses this element implicitly, as it relates to religious and cultural specifics in disaster situations, especially, by providing rules that religious identities should be considered in the accommodation process.

**e) Incorporating gender segregation, and/or maintaining family roles and family cohesion as a cultural practice of the affected community**

One of the rules in the Ordinance on the Conditions and Procedures for Conducting Evacuation and Deconcentration cited above is that families are not separated during evacuation which reinforces family cohesion and unity which is a fundamental cultural practice in many traditions. As such, this element is addressed in the Ordinance.

**f) Giving special attention or priority to vulnerable groups such as children, women, the elderly, those with disabilities, and the sick during disaster**

The Disaster Protection Act provides for undertaking specific measures in disaster situations for the cares of children and people if such cares cannot be exercised due to the state of disaster by the persons who usually exercise them.<sup>181</sup> Based on this statutory framework, the local authorities have implemented concrete procedures for people in need of special assistance in their municipal plans for disaster protection, explicitly defining the institutions and officials responsible for taking care of such groups (children and disadvantaged people) if such care cannot be undertaken by the persons who usually do them. As such, all plans for disaster protection at the municipal level provide priority care for children, elderly and victims with special needs, including disadvantaged and disabled people.

Another document providing for a special approach towards children in cases of disaster is the “Agreement for cooperation and co-ordination of the work of territorial structures

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<sup>179</sup> Art. 29.

<sup>180</sup> See for instance, Plan for Disaster Evacuation and/or Deconcentration of People, Animals, Cultural and Material Values of Dobrich Municipality, Municipal Council of Dobrich (2015); Plan for Disaster Protection of the Byala Slatina Municipality, Municipal Council of Byala Slatina (2013).

<sup>181</sup> Art. 52 (2)(4).





of child-protection authorities in cases involving children victims of or in risk of being victims of violence and cases of crisis intervention”.<sup>182</sup> The agreement establishes a specific action procedure for crisis intervention to be followed in case of critical events causing high levels of danger and hazard and involving multiple injured or dead persons, such as acts of terrorism, calamities, car accidents, etc.

Furthermore, one of the key priorities of the Bulgarian “Disaster Risk Reduction Strategy 2014-2020”<sup>183</sup> involves raising higher awareness about the specific groups of people that need special assistance in case of disasters by organising and conducting information campaigns, dissemination of information materials, etc. Another key priority is the development of procedures/rules for the assistance of disadvantaged people in the various phases of the disaster management process. Despite the above said, there still is a need for more training and practical courses with the involvement of relevant organisations of and for people with special needs with extensive expertise in this field.

#### **g) Attention to the needs of ethnic, indigenous, linguistic or other minority groups**

The provisions of the Ordinance on the Conditions and Procedures for Conducting Evacuation and Deconcentration addresses this element as well where it provides that the needs of groups with special needs and with different cultural, ethnic or religious identities should be taken into account during evacuation and deconcentration.

#### **h) Consultation with local/ethnic communities in the disaster planning and implementation process**

One of the main priorities considered in the Roadmap for the implementation of the “Disaster Risk Reduction Strategy 2014-2020” is awareness raising and increasing the social participation in activities aimed at reducing the risk of disasters and empowering citizens in the disaster response and recovery phases. The strategy provides for the development of a communication programme for raising awareness and enhancing civil preparedness in the various phases of the disaster management process. The programme must be developed with the active participation of the responsible national institutions, regional and municipal authorities, as well as local NGOs.

Another key point of the strategy is improving the readiness for efficient response and disaster recovery. This includes the establishment of independent voluntary formations as an element of the disaster management framework, as well as strengthening the participation of NGOs in the formation and coordination of these voluntary units. The “Strategy for Development of Voluntary Formations for Disaster Protection, Fires and Other Emergencies 2012-2020” stipulates that voluntary formations are established with

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<sup>182</sup> Signed in 2015.

<sup>183</sup> Council of Ministers of the Republic of Bulgaria, Disaster Risk Reduction Strategy 2014-2020 (2014).





the mayor's approval in compliance with the municipal disaster protection plan or other cases provided by statutory law. Therefore, voluntary units are a result of the bilateral initiative of the local government and individual citizens. The strategy addresses the following target groups:

- Municipalities in Bulgaria in order to encourage them to create voluntary formations as valuable partners in the implementation of the local disaster protection policies;
- Citizens of the Republic of Bulgaria in order to engage them to establish and actively participate in such voluntary formations;
- Institutions and NGOs in order to promote wider participation in the process of civil protection during disasters, fires and other emergencies; to encourage the creation of voluntary formations, and support the work of already established ones.

#### **i) Educational aspect including training disaster managers on cultural competences**

The Disaster Protection Act provides for the education and training of children for disaster protection and first aid in their pre-school and school education period as well as in higher levels of the education system. According to Art. 16 the training on disaster protection must be implemented in compliance with the state educational standards and by extending and integrating the knowledge from the other educational subjects. There is also a specific secondary legislation act - Instruction № 2 of 5 July 2004 for the Education and Training of Children, Teaching, Administrative and Support Staff in Kindergartens on Safe Behaviour in Case of Disasters, Accidents, Emergencies, and Fires.<sup>184</sup> The Disaster Protection Act also emphasizes the role of civic education on disasters and provides that every natural person shall be entitled to information and education about the measures for ensuring protection and the appropriate behaviour and actions in case of disasters.<sup>185</sup>

A key priority considered in the Roadmap for the implementation of the "Disaster Risk Reduction Strategy 2014-2020"<sup>186</sup> is building a culture of disaster protection at all levels of management and society using experience, training, research and innovation. This includes development/update of the training programmes for disaster managers according to the current needs and challenges. The strategy provides for increasing the capacity of vocational training centres at the Ministry of Interior in the country to guarantee more effective training of first responders and officers involved in response and management in case of disaster. The cultural factors addressed in the training

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<sup>184</sup> Instruction № 2 of 5 July 2004 for the Education and Training of Children, Teaching, Administrative and Support Staff in Kindergartens on Safe Behaviour in Cases of Disasters, Accidents, Emergencies, and Fires (2004).

<sup>185</sup> Art. 33 (1).

<sup>186</sup> Council of Ministers of the Republic of Bulgaria, Disaster Risk Reduction Strategy 2014-2020 (2014).





programmes of disaster managers are related to the protection of disadvantaged people in need of special assistance (children, elderly persons and persons with special needs). There are numerous initiatives organised by the Ministry of Interior and the Bulgarian Red Cross at both national and local levels for direct training of disadvantaged people for self-preparation that enables them to respond more adequately in case of disaster.

The “Strategy for Development of Voluntary Formations for Disaster Protection, Fires and Other Emergencies 2012-2020”<sup>187</sup> also provides for conducting training activities for volunteers according to preliminary approved by the Ministry of Interior training programmes, which include modules for evacuation of people, animals, cultural and material property in case of disaster. This includes specific measures on the implementation of the above-cited rule for evacuation and accommodation in emergency situations in accordance with the “the needs of certain groups with special needs and with different cultural, ethnic or religious identities”.

#### **j) Protection against discrimination on cultural ground**

The Bulgarian Constitution prohibits discrimination on the grounds of “race, national or social origin, ethnic self-identity, sex, religion, education, opinion, political affiliation, personal or social status or property status.”<sup>188</sup> Discrimination on these grounds are also prohibited under the Protection from Discrimination Act.

## **3.2. France**

### **3.2.1. National Integration of Cultural Aspects in the Legal System**

There is no legal definition of culture in the context of human rights in France, even though the term can be found in many fields of law such as the Constitution, Copyright, Tax law, Private law, among others.<sup>189</sup> In the same vein, cultural rights can be found in many sources, and their content needs to be considered in every single case. There are, however, sociological approaches on how to define culture in France.

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<sup>187</sup> Council of Ministers of the Republic of Bulgaria, Strategy for Development of Voluntary Formations for Disaster Protection, Fires and Other Emergencies 2012-2020 (2012). The responsible institutions for conducting trainings addressed at members of voluntary formations are the Ministry of Interior, the Ministry of Health, and the Bulgarian Red Cross.

<sup>188</sup> Art. 6.

<sup>189</sup> Hubert Faes, “Droits de l’homme et droits culturels”, *Transversalités* 2008/4 (N°108), 85-99; see also <http://www.chronculture.com/fr/ressources/dossiers/definition-culture-francais> (accessed 29 July 2017).







The French Constitution of the Fifth Republic (1958), incorporates the 1789 Declaration of the Rights of Man and the Citizen and the preamble to the 1946 Constitution, both of which provide for a number of cultural rights such as the rights to freedom of religion;<sup>190</sup> freedom of expression, and the right to freely communicate thoughts and opinions,<sup>191</sup> the right to protection of rest and leisure,<sup>192</sup> and for children and adults to have equal access to vocational training and culture,<sup>193</sup> the right to education,<sup>194</sup> and the right against discrimination.<sup>195</sup>

Additionally, France has ratified the UDHR, the ICCPR, and the ICESCR as well as many other international legal instruments that relate to culture or cultural heritage.<sup>196</sup> The rights relating to culture in these instruments become part of the French law once ratified, as all ratified treaties have legal force by virtue of Art. 55 of the French Constitution 1958.

Although there is no specific national policy on cultural implementation or realization of cultural rights, there are however a number of laws that are geared towards this goal. For instance, the Law n° 2016-274 of March 7th, 2016 related to foreigner's rights in France provides that foreigners should follow "a personalized process of Republican integration, aiming at promoting their autonomy and their integration to French society."<sup>197</sup> Also, a number of policies have been initiated aimed at promoting culture such as bilingualism in official records, producing and airing broadcasts in regional languages and highlighting the diversity of the cultural and linguistic heritage of France, teaching of regional languages and native languages in the overseas regions and territories and promotion of arts education and cultural education.<sup>198</sup> Law on freedom of creation, architecture and heritage has the objective to protect and guarantee the freedom of creation and to modernise cultural heritage policies<sup>199</sup>.

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<sup>190</sup> Art. 10, Declaration of the Rights of Man and of the Citizen.

<sup>191</sup> Art. 11, Declaration of the Rights of Man and of the Citizen.

<sup>192</sup> Preamble to the 1946 French Constitution.

<sup>193</sup> Addendum to the second periodic reports submitted by France under articles 16 and 17 of the ICESCR, E/1990/6/Add.27 25 October 2000.

<sup>194</sup> Preamble to the 1946 French Constitution.

<sup>195</sup> Art. 1, Declaration of the Rights of Man and of the Citizen.

<sup>196</sup> See <http://www.herein-system.eu/france-country-profile> <http://www.herein-system.eu/france-country-profile> (accessed 12 August 2017).

<sup>197</sup> See Art. 1.

<sup>198</sup> See the Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights Fourth periodic reports of States parties due in 2011, FranceE/C.12/FRA/4., [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fFRA%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fFRA%2f4&Lang=en) (accessed 12 August 2017).

<sup>199</sup> Law No 2016-925 of 7 July 2016. See also Compendium Cultural Policies and Trends in Europe, Country Profile France, [http://www.culturalpolicies.net/down/france\\_112016.pdf](http://www.culturalpolicies.net/down/france_112016.pdf) (accessed 12 August 2017).





It is important to note that there is a Ministry of Culture and Communication which is charged with managing the development of French cultural life, conduct the policy of safeguarding, protecting and enhancing the cultural heritage in all its components and encourages the creation of works of art and spirit as well as policy on mass media.<sup>200</sup> There are also other non-governmental organisations that promote culture in France such as réseau culture 21.<sup>201</sup> Its observatory—“Paideia”, observes and evaluates how cultural rights are implemented in public politics and publish their results.<sup>202</sup>

No unified approach to cultural impact assessment (l'évaluation des répercussions culturelles) could be seen in France. In general, fundamental rights are limited by other fundamental rights and need to be balanced in each case. A limitation to cultural rights can be seen for example in the Law n° 2004-228 of 15th March 2004 related to the religious signs in public schools and education places which prohibits such signs as such places. Similarly, the prohibition of the covering of face through the wearing of Burqa and Niqab in public places, by Law of 11 October 2010<sup>203</sup> is another instance that may appear as a limitation to certain cultural manifestations, even though it was made for security reasons. The Constitutional Council validated the law in October 2010. In 2014 the European Court of Human Rights equally validated that approach. The law does not explicitly prohibit Burqa and Nigab; rather it states that clothes hiding the face are forbidden in public places.

Recently, there was a discussion on whether the burkini shall be allowed on beaches in several cities in southern France. The Mayor of Villeneuve-Loubet (Alpes-Maritimes), for example, issued an order regulating the use of public beaches in that city to the effect that swimmers clothes are obviously showing a religious affiliation are banned from the beaches on the grounds of public order and peace.<sup>204</sup> While the Administrative Court in Nice dismissed the claim that such an order was a violation of fundamental rights, the Council of State ruled otherwise, ordering the suspension of the order as there was no evidence supporting the argument of the Mayor that wearing such clothing at the beaches threaten public order and peace. The Council of State found that the order was infringing fundamental liberties such as the freedom of movement, religious freedom, and individual freedom.<sup>205</sup> This and other cases bring to the fore the application of the

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<sup>200</sup> <http://www.culturecommunication.gouv.fr/> (accessed 12 August 2017).

<sup>201</sup> <http://reseauculture21.fr/> (accessed 12 August 2017).

<sup>202</sup> It exists since end of 2012 under the auspices of the “Réseau Culture 21” in partnership with the l’Institut interdisciplinaire d’éthique et des droits de l’Homme de l’Université de Fribourg (IIEDH). See <http://droitsculturels.org/paideia4d/> (accessed 12 August 2017).

<sup>203</sup> Law No. 2010-1192 of October 11, 2010 prohibiting the concealment of the face in the public space.

<sup>204</sup> The Conseil D’État, “The Council of State orders a decision banning clothes demonstrating an obvious religious affiliation to be suspended”, <http://english.conseil-etat.fr/Activities/Press-releases/The-Council-of-State-orders-a-decision-banning-clothes-demonstrating-an-obvious-religious-affiliation-to-be-suspended> (accessed 12 August 2017).

<sup>205</sup> Ibid.





“laïcité” principle, a principle that religion will not intervene in state matters and in return the state will not touch religious affairs, in the current French society.<sup>206</sup>

### 3.2.2. Reflection of Cultural Elements in Civil Protection and Examples of Implementation in Disaster Management

It is difficult to find a comprehensive document regarding how cultural sensitivities in disaster management have been operationalized in France. A few examples could be identified from diverse sources as listed below.

#### **a) Disaster communication in multiple languages including signs**

There is a duty to inform and alert populations about disasters in France according to the provisions of the Act No. 2004- 811 of 13 August 2004 on the modernization of civil security.<sup>207</sup> Details of how people should be informed can be found in R741-30 Décret n° 2014-1253 of 27 October 2014. Although there are no specific policy concerning communication in multiple languages, the Mayors who are in charge of informing citizens about risks could decide if they want integrate several languages. Alerts are sometimes broadcast in French and English, and the app, SAIP (system for warning and information of the population), for example, could be downloaded in French or English languages.<sup>208</sup> However, it has to be noted that central website of the government for information about disaster risk is only in French.<sup>209</sup>

#### **b) Protection of cultural heritage or artefacts**

Law No 2004-811 of 13th August 2004 on the modernization of civil protection also makes provision for the protection of the environment and cultural goods and heritage.<sup>210</sup> The Ministry of Culture and Communication also indicates that it is aware of the dangers posed to cultural heritage by disasters and has programmes on prevention, training and remedial action in the area of cultural heritage.<sup>211</sup>

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<sup>206</sup> <https://lilyinparisblog.wordpress.com/2017/10/09/laicite-objectives-and-obstacles/>

<sup>207</sup> See also Code of Domestic Security, Defence Code and general Code of the Territorial Authorities, Code on Environment.

<sup>208</sup> See the download for the SAIP <https://itunes.apple.com/de/app/saip/id1116703676?l=en&mt=8> (accessed 23 August 2017).

<sup>209</sup> <http://www.gouvernement.fr/risques> (accessed 25 October 2017).

<sup>210</sup> See Report by France on the implementation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict – 1954 Hague Convention, [http://www.unesco.org/culture/laws/pdf/france\\_2010natrep\\_HC-P1\\_en.pdf](http://www.unesco.org/culture/laws/pdf/france_2010natrep_HC-P1_en.pdf) (accessed 12 October 2017).

<sup>211</sup> <http://www.culturecommunication.gouv.fr/Thematiques/Circulation-des-biens-culturels/Patrimoines-en-danger>. France has also ratified that the Hague Convention for the Protection of Cultural Property in the Event of





There are guidelines and policies that cover internal risks (e.g. fires), and in practice, major museums, notably “Le Louvres” have been active in the recent years in protecting their collections against flooding. However, in the absence of laws, guidelines and policies, initiatives are often based on the “Blue Shield” international initiative which aims at protecting the cultural heritage threatened by wars and natural disasters.

**c) Provision of dietary and healthcare needs in consideration of cultural diversity**

The “laïcité” principle, a principle that religion or ethnicity will not intervene in state matters and in return the state will not touch religious affairs, does not allow such consideration. This means that the state is neutral to religious and ethnic groups, and as such, even in practice, food distributed during disasters is culturally neutral.

**d) Consideration of cultural diversity in terms of provisions of facilities for religion/faith manifestation**

Similar to the explanation above, faith is not considered in the legal system. In practice, the only time where faith appears is during oecumenical celebrations after disasters or terrorist attacks.

**e) Incorporating gender segregation, and/or maintain the family roles and cohesion as a cultural practice of the affected community**

Similar to the explanation above, this is not considered.

**f) Giving special attention or priority to vulnerable groups such as children, women, the elderly, the sick during disaster**

A general guideline does not exist. Nevertheless, in specific guidelines, such as the one dealing with cold waves, the government specified that vulnerable persons (elderly and children, homeless people, and disabled people, workers for risks such as cold or heatwaves) must be under specific attention.<sup>212</sup> In case of heatwaves, people over 60 can be personally assisted when they address local authorities (mairie or Centre Communal d’Action Sociale, CCAS).<sup>213</sup>

**g) Attention to the needs of ethnic, indigenous, linguistic or other minority groups**

No data was found for this example, which could be explained by the “laïcité” principle above.

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Armed Conflict which makes it applicable and has recently ratified the second protocol. See [http://portal.unesco.org/en/ev.php-URL\\_ID=15207&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=15207&URL_DO=DO_TOPIC&URL_SECTION=201.html).

<sup>212</sup> [http://social-sante.gouv.fr/IMG/pdf/note\\_information\\_interministerielle\\_froid\\_2016.pdf](http://social-sante.gouv.fr/IMG/pdf/note_information_interministerielle_froid_2016.pdf) (accessed 14 July 2017).

<sup>213</sup> [http://social-sante.gouv.fr/IMG/pdf/260\\_09515\\_de\\_leaflet\\_canicule\\_148x210\\_fr.pdf](http://social-sante.gouv.fr/IMG/pdf/260_09515_de_leaflet_canicule_148x210_fr.pdf) (accessed 14 July 2017).



**h) Consultation with local/ethnic communities in the disaster planning and implementation**

No data is found for this example.

**i) Educational aspect including training disaster managers on cultural competencies**

France participates actively in the EU civil protection mechanism and benefits from the training programme that includes a cultural competence. There is also the French Academy for Fire, Rescue and Civil Protection Officers that engages in training and courses for local authorities' representatives, civil protection and government officers, industrial and international experts, among other functions.<sup>214</sup> Creating awareness about major hazards among schoolchildren has been officially included as part of the Education Code since 2004. It is part of the curriculum in both primary and secondary schools.<sup>215</sup>

**j) Protection against discrimination on cultural ground**

The principle of non-discrimination has constitutional value, by virtue of the Preamble to the Constitution of 1946 that prohibits discrimination with regard to criteria of sex, race, belief and trade union activity, and of the current Constitution of 1958 that contains a provision according to which "the nation ensures equality before the law of all citizens, whatever their ethnic origin, race or religion".<sup>216</sup>

## 3.3. Germany

### 3.3.1. National Integration of Cultural Aspects in the Legal System

There is no official legal definition of culture in the context of human rights in Germany, and the term is not explicitly mentioned in the fundamental right part of the German Constitution (Basic Law).<sup>217</sup> A number of articles however, reflect elements of culture such as freedom of faith and conscience (Article 4), freedom of expression, arts and sciences (Article 5), special protection of marriage, the family and children (Article 6), the right of parents and guardians to decide whether their children shall receive religious instruction (Article 7(2)) and Freedom of association (Article

<sup>214</sup> <http://www.ensosp.fr/SP/pages-ENSOSP/uk/ensosp-french-academy-fire-rescue-and-civil-protection-officers> (accessed 25 October 2017).

<sup>215</sup> Frédéric Coste, Elisande Nexon, and Jean-François Daguzan, Country Study: France (2013), [http://anvil-project.net/wp-content/uploads/2014/01/France\\_v1.0.pdf](http://anvil-project.net/wp-content/uploads/2014/01/France_v1.0.pdf), p.3 1, (accessed 25 October 2017).

<sup>216</sup> See Art. 1 of the French Constitution 1958.

<sup>217</sup> German Constitution, [https://www.gesetze-im-internet.de/englisch\\_gg/](https://www.gesetze-im-internet.de/englisch_gg/) (accessed 14 July 2017).





9). Apart from these constitutional rights, Germany has signed and ratified a number of treaties that contain cultural rights as well.<sup>218</sup>

There are other provisions which refer to culture in the Constitution.<sup>219</sup> Article 73, for example, addresses the protection of cultural property, which is defined in the Act on the Protection of Cultural Property (Kulturgüterschutzgesetz, KGSG)<sup>220</sup> as “any movable object or aggregates of things of artistic, historical or archaeological value or from other areas of cultural heritage, in particular of paleontological, ethnographic, numismatic or scientific value”.<sup>221</sup> Furthermore, the Federal Civil Protection and Disaster Assistance Act (Zivilschutz- und Katastrophenhilfegesetz, ZSKG) also refer to the protection of cultural property.<sup>222</sup>

In 2007, politicians tried to include “culture” as a national objective to the German Constitution,<sup>223</sup> but this did not materialise. The German Federal Constitutional Court (Bundesverfassungsgericht, BVerfG) has also referred to “culture” in many cases, without giving a definition, but suggests that it is the common behaviours of a group in the area of religion, science, education or other kinds of values.<sup>224</sup>

It is important to note that according to the Constitution, the German states (Länder) are responsible for protecting and promoting culture.<sup>225</sup> This means that there are sixteen different policies on culture corresponding to the number of states. For example, Article 6 of the Constitution of Lower Saxony provides that: “The state, the municipalities and the counties protect and promote art, culture and sport.”<sup>226</sup> The Constitutions of the other German states include similar provisions. Thus, in general, there are various state policies on the promotion of culture, which means that there is no common policy on culture on the national level. The policies depend on the focused area of culture, current government and state. Some examples of such

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<sup>218</sup> See the Sixth periodic report submitted by the Federal Republic of Germany under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights 2016 Reporting period: 2008 to the end of 2015 (mid-2016 in some cases) and the Annexes; see also <http://www.herein-system.eu/Germany-country-profile> (accessed 23 July 2017).

<sup>219</sup> See Arts. 23 (6), 29 (1), 73 and 89.

<sup>220</sup> English version of the KGSG, [https://www.bundesregierung.de/Content/DE/\\_Anlagen/BKM/2017/2017-04-12-kulturgutschutzgesetz-englisch.pdf?\\_\\_blob=publicationFile&v=2](https://www.bundesregierung.de/Content/DE/_Anlagen/BKM/2017/2017-04-12-kulturgutschutzgesetz-englisch.pdf?__blob=publicationFile&v=2) (accessed 14 July 2017).

<sup>221</sup> See Sec. 2 (1)(10).

<sup>222</sup> See Sec. 1 (1) (7). Sec. 25 also mentions the Act on the Protection of Cultural Property (KGSG).

<sup>223</sup> Printed matter of the German Parliament (BT Drcks. 15/5560), <http://dip21.bundestag.de/dip21/btd/15/055/1505560.pdf> (accessed 23 July 2017).

<sup>224</sup> For instance, see a list of cases in M Naucke, *Der Kulturbegriff in der Rechtsprechung des Bundesverfassungsgerichts* <http://d-nb.info/960144161/04> (accessed 23 July 2017).

<sup>225</sup> Art. 30.

<sup>226</sup> The German version of the Constitution is available at [http://www.voris.niedersachsen.de/jportal/portal/page/bsvorisprod.psml?pid=Dokumentanzeige&showdoccase=1&js\\_peid=Trefferliste&fromdoctodoc=yes&doc.id=jlr-VerfNDV3Art57&doc.part=X&doc.price=0.0](http://www.voris.niedersachsen.de/jportal/portal/page/bsvorisprod.psml?pid=Dokumentanzeige&showdoccase=1&js_peid=Trefferliste&fromdoctodoc=yes&doc.id=jlr-VerfNDV3Art57&doc.part=X&doc.price=0.0) (accessed 22 July 2017).





policies include: the National Action Plan on Integration,<sup>227</sup> an agenda on digital evolution,<sup>228</sup> cultural development concepts of the states,<sup>229</sup> among others.

The protection of scientific, literary or artistic production is mainly covered by the German Copyright Act (Urheberrechtsgesetz, UrhG).<sup>230</sup> Further expressions of cultural rights can be found in various laws such as: the Acts on Schools of the States,<sup>231</sup> Higher Education Acts,<sup>232</sup> the German Social Act,<sup>233</sup> the German Broadcasting Agreement,<sup>234</sup> the Media laws of the states,<sup>235</sup> the General Equality Law,<sup>236</sup> among others. In addition to these laws, there are a number of institutions relating to culture in Germany such as the Joint Committee for Culture, the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany (Kultusministerkonferenz, KMK),<sup>237</sup> and for the German Parliament, an Enquete Commission for “Culture in Germany”.<sup>238</sup> Furthermore, a lot of non-governmental organizations have been established in the area of cultural life in Germany such as the German Cultural Council (Deutscher Kulturrat).<sup>239</sup>

In practice, there is a recognized procedure implemented by the German government since 2002 to assess the implications of proposed legislation on culture. This Cultural Impact Assessment

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<sup>227</sup> The German Government, *National Action Plan on Integration Abridged press version*, [https://www.bundesregierung.de/Content/DE/\\_Anlagen/IB/2012-01-31-nap-kurzfassung-presse-englisch.pdf?\\_\\_blob=publicationFile&v=1](https://www.bundesregierung.de/Content/DE/_Anlagen/IB/2012-01-31-nap-kurzfassung-presse-englisch.pdf?__blob=publicationFile&v=1) (accessed 1 September 2017).

<sup>228</sup> See Die Bundesregierung, *Legislaturbericht Digitale Agenda 2014–2017*, (Frankfurt am Main: Verlagshaus Zarbock GmbH & Co. KG, 2017); BMWi, *Digitale Strategie 2025* (Berlin: Gutenberg Beuys Feindruckerei GmbH, 2016).

<sup>229</sup> E.g. for Lower Saxony

<http://www.mwk.niedersachsen.de/startseite/kultur/kulturpolitik/kulturentwicklung/kulturentwicklungskonzept-niedersachsen-kek-102975.html> (accessed 1 September 2017).

<sup>230</sup> Act on Copyright and Related Rights, [https://www.gesetze-im-internet.de/englisch\\_urhg/index.html](https://www.gesetze-im-internet.de/englisch_urhg/index.html) (accessed 22 July 2017).

<sup>231</sup> See a list of different Acts of school at <https://www.kmk.org/dokumentation-und-statistik/rechtsvorschriften-lehrplaene/uebersicht-schulgesetze.html> (accessed 23 July 2017).

<sup>232</sup> See the Education System of the Federal Republic of Germany, [https://www.kmk.org/fileadmin/Dateien/pdf/Eurydice/Bildungswesen-engl-pdfs/dossier\\_en\\_ebook.pdf](https://www.kmk.org/fileadmin/Dateien/pdf/Eurydice/Bildungswesen-engl-pdfs/dossier_en_ebook.pdf) p. 148.

<sup>233</sup> Including provisions for health care, social security, child and youth care as well as provisions for rehabilitation and participation of disabled people, <http://www.sozialgesetzbuch-sgb.de/> (accessed 24 July 2017)

<sup>234</sup> See <http://www.die-medienanstalten.de/en/legal-basis.html> (accessed 24 July 2017).

<sup>235</sup> E.g. Lower Saxony Media Act,

[http://www.nlm.de/fileadmin/dateien/nlm/NMedienG\\_ab\\_01.03.2016\\_final\\_Stand\\_Ordner\\_1-3-16.pdf](http://www.nlm.de/fileadmin/dateien/nlm/NMedienG_ab_01.03.2016_final_Stand_Ordner_1-3-16.pdf) (accessed 24 July 2017).

<sup>236</sup> <https://www.gesetze-im-internet.de/agg/> (accessed 24 July 2017).

<sup>237</sup> <https://www.kmk.org/kmk/information-in-english.html> (accessed 24 July 2017).

<sup>238</sup> Report on Culture in Germany, (2007), <https://dip21.bundestag.de/dip21/btd/16/070/1607000.pdf> (accessed 21 July 2017).

<sup>239</sup> <https://www.kulturrat.de/> (accessed 21 July 2017).





(Kulturverträglichkeitsprüfung),<sup>240</sup> will be carried out for every proposed legislation and falls within the competence of the Minister of State for Media and Culture, in cooperation with external experts from the cultural council of Germany.<sup>241</sup>

Possible limitations to a fundamental right in Germany depend on the fundamental right in question. In general, limitation of fundamental rights follows the general constitutional principles: Firstly, any action taken by the state needs to be based upon parliamentary law (Art. 20 (3) Basic Law (Grundgesetz - GG) (this applies in particular to any action that limits fundamental rights). Secondly, any such action, as well as the law authorising it is required to be proportionate — a) to aim at a legitimate purpose, b) suitable, c) necessary to achieve the envisaged aim, and d) be adequate in the sense that the resulting impact on fundamental rights shall not be essentially imbalanced towards the aims being pursued. A restriction of one fundamental right can be proportionate, for example, if it is necessary and adequate to protect other fundamental rights (of both the impacted individuals and of third-parties). Thirdly, the essential guarantees of each fundamental right must not be impacted at all. Any law limiting fundamental rights based upon the explicit exemption such as the mentioned exceptions in Art. 11 (2) GG and Art. 13 (7) GG are required to explicitly state that the respective fundamental rights are being (purposefully) limited.<sup>242</sup>

Infringement of cultural rights is always a matter of interpretation. In the recent past, complaints have always been lodged for violating the right to freedom of religion or freedom of expression. In one case relating to the ban on the headscarf, the Federal Constitutional Court of Germany decided that it is impermissible to impose a general ban on the headscarf.<sup>243</sup> Other cases deal with the relationship between freedom of art and personal honour, in particular, whether a form of art is satire or offence.<sup>244</sup>

### 3.3.2. Reflection of Cultural Elements in Civil Protection and Examples of Implementation in Disaster Management

The German legislation on disaster management or civil protection contains no dedicated provisions on cultural rights, and there is no dedicated policy on implementing such rights in

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<sup>240</sup> Report on the Established Cultural Impact Assessment, <http://dip21.bundestag.de/dip21/btd/15/027/1502729.pdf> (accessed 1 September 2017).

<sup>241</sup> The proposing ministries are at least obliged to inform other ministries about their proposed legislation, according to Section 47 (1) Joint Rules of Procedure of the Federal Government and Annex 6. Annex 6 Nr. 15 stipulates the obligation to inform the minister of state for media and culture.

<sup>242</sup> See, Art. 19 (1) GG.

<sup>243</sup> BVerfG, Judgment of the Second Senate of 24 September 2003 - 2 BvR 1436/02.

<sup>244</sup> See Erdoğan ./.. Böhmermann, LG Hamburg, 10.02.2017 - 324 O 402/16.







disaster management frameworks. Rather, cultural elements are more visible in the organizational guidelines for disaster relief,<sup>245</sup> although there is evidence from other sources as well. Below are examples of how cultural elements are considered in the German disaster management framework.

### a) Disaster communication in multiple languages including signs

The Federal law on civil protection and disaster aid (Zivilschutz- und Katastrophenhilfe-Gesetz des Bundes, ZSKG) stipulates that the citizen must be informed about disasters.<sup>246</sup> Further details, about the procedures or communication resources, are equally provided in this law or its state counterparts.<sup>247</sup> A sample disaster relief plan of Hessen lists different communication strategies and methodologies and includes a possibility for the warnings to be provided in different languages and also refers to the use interpreters. In practice, it is common to provide disaster warnings in different languages, at least, in the English language.<sup>248</sup> In the different regions, the known multiple languages (e.g. Turkish) could be used.<sup>249</sup>

There are also different communication channels. At present, disaster warnings and information are disseminated in both analogue (e.g. TV or Radio) and digital channels (Website, Social Media, Apps) in order to reach as many citizens as possible.<sup>250</sup> For example, the KATWARN App has both German and English versions.<sup>251</sup> Similarly, the Guide for Emergency Preparedness and Correct Action in Emergency Situations which is public information on disaster preparedness has both English and German versions.<sup>252</sup>

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<sup>245</sup> These plans are not available to the public. A sample is provided by the State of Hessen. German version of the sample could be accessed from [https://innen.hessen.de/sites/default/files/media/hmdis/sp\\_ab\\_1\\_plan\\_2\\_muster\\_kats-plan.pdf](https://innen.hessen.de/sites/default/files/media/hmdis/sp_ab_1_plan_2_muster_kats-plan.pdf)

<sup>246</sup> See Sec. 6.

<sup>247</sup> For instance, in the Civil Protection Act of the State of Baden-Wurtemberg is in § 18 as well just regulated, that the citizen should be warned about an upcoming disaster.

<sup>248</sup> See for example, The Federal Office of Civil Protection and Disaster Assistance, *Guide for Emergency Preparedness and Correct Action in Emergency Situations* (Bonn: BKK, 2017).

<sup>249</sup> According to one survey, only 7% of affected citizens did not receive any warning of the risk beforehand. See DKKV, *Das Hochwasser im Juni 2013: Bewährungsprobe für das Hochwasserrisikomanagement in Deutschland*, DKKV-Schriftenreihe Nr. 53, 2015.

<sup>250</sup> Bundesministerium des Innern, *Civil Defence Concept (KZV)*, 2016, pp. 20-21

<sup>251</sup> <https://www.katwarn.de/>. See also NINA, which has only a German version, [http://www.bbk.bund.de/DE/NINA/Warn-App\\_NINA\\_node.html](http://www.bbk.bund.de/DE/NINA/Warn-App_NINA_node.html) (accessed 22 September 2017).

<sup>252</sup> The Federal Office of Civil Protection and Disaster Assistance, *Guide for Emergency Preparedness and Correct Action in Emergency Situations Op. cit.*





Post-disaster evaluations are also carried out by the authorities to optimize communication strategy in future.<sup>253</sup>

## b) Protection of cultural heritage

Under the German Constitution, the federal government is responsible for the “Protection of German cultural heritage against emigration abroad”.<sup>254</sup> The Federal Civil Protection and Disaster Aid Act also contains a provision on the protection of cultural heritage as one of the main tasks of civil protection.<sup>255</sup> The Cultural Heritage Protection Act (Kulturgutschutzgesetz, KGSG) defines cultural goods as “any moveable object or combination of artistic, historical or archaeological value or other cultural heritage, in particular paleontological, ethnographic, numismatic or scientific value.”<sup>256</sup> Further, the Act deals with the illegal trade or emigration of cultural heritage.

The protection of the cultural heritage is provided on different levels. The federal states (Länder) are responsible as an agent for the federal republic for the organization of the cultural heritage protection, and the federal office for civil protection and disaster assistance (Bundesamt für Bevölkerungsschutz und Katastrophenhilfe, BBK) is coordinating and supporting the states. At least, the different holder of cultural goods such as libraries, museums and religious communities, are responsible for the actual or immediate protection. Also, the states shall undertake structural and technical protection measures, emergency planning and other appropriate measures to protect these goods against damage and destruction (e.g. preparations for a relocation, setting up mountain rescue rooms).<sup>257</sup>

Measures are also taken by the Federal Government and the states to ensure the federal security of archival materials on microfilm according to selection criteria defined by the federal authorities. Significant and unique works by poets, thinkers, composers and scientists are to be included in the Federal Safety Films (Bundessicherungsverfilmung), as well as important works of the fine arts (Illuminations). Filming technology, backup media and documentation are to be based on state of the art. All films are stored in

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<sup>253</sup> E.g. for Saxony, see *Bericht der Kommission der Sächsischen Staatsregierung zur Untersuchung der Flutkatastrophe 2013* (Dresden: 2013); see also Bundesministerium des Innern, *Krisenkommunikation Leitfaden für Behörden und Unternehmen*, (Niestetal: Silber Druck oHG, 2008) .

<sup>254</sup> See Art. 73 (1)(5)(a).

<sup>255</sup> Secs. 1 (2) (7) and 25 of the Act made reference to the provisions of the Cultural Heritage Protection Act (Kulturgutschutzgesetz, KGSG).

<sup>256</sup> Sec. 2 (1) (10) of the Cultural Heritage Protection Act.

<sup>257</sup> See Bundesministerium des Innern, *Civil Defence Concept, Op. cit.*, p. 41.





stainless steel containers for long-term storage in the Central Location of the Federal Republic of Germany. The central location is under special protection.<sup>258</sup>

### **c) Provision of dietary and healthcare needs in consideration of cultural diversity**

Major disaster management instruments do not explicitly mention the above. It is noteworthy however, that Section 2 (3) of the German Health Care Act provides that religious needs shall be taken into account in health care services.<sup>259</sup>

Non-governmental organizations are, however, regularly involved in disaster management, including faith communities. Some of the religious communities offer special disaster relief programs.<sup>260</sup> But it is notable that all organisations, religious as well, are obliged to help everybody regardless of their religious faith. The religious communities could fulfil religious needs in disaster situations on a voluntary basis. Otherwise, such needs during the acute phase are less considered. However, the most important and well-known beliefs and dietary needs are observed in preparation for disaster, e.g. vegetarian food or alternatives to pork for Muslims.

### **d) Consideration of cultural diversity in terms of provisions of facilities for religion/faith manifestation**

There is no policy for this aspect during the critical phase of a disaster. In practice, however, such facilities could be provided after the first response.

### **e) Incorporating gender segregation, and/or maintain the family roles and family cohesion as a cultural practice of the affected community**

The Civil Defence Concept document considers the capability of relocating and registering evacuees and reuniting family members which implicitly facilitates the element of family cohesion.<sup>261</sup> This is also considered in the draft of the evacuation plan for nuclear disasters. As well, the various state plans recognize that separation during the evacuation may be short-term separations.<sup>262</sup> Furthermore, competent authorities do set up Person Information Desks to reconcile families during disasters. This is also implemented by the different disaster laws of the federal states.<sup>263</sup> Finally, there is a coordination office of the Federal Government for Aftercare, Support for Victims and

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<sup>258</sup> Die Beauftragte der Bundesregierung für Kultur und Medien, *Bestandsaufnahme zu Maßnahmen des Bundes zum Schutz von Kulturgut bei Katastrophen* (Berlin, 2015).

<sup>259</sup> However, no claim can be derived from this provision, see jurisPK-SGBV.

<sup>260</sup> See e.g. Protestant social welfare organisation for disaster relief, Diakonie Katastrophenhilfe [www.diakonie-katastrophenhilfe.de](http://www.diakonie-katastrophenhilfe.de) (accessed 15 September 2017).

<sup>261</sup> Civil Defence Concept, *Op. cit.*, p 22.

<sup>262</sup> See Working Group "AG Fukushima", *Recommendation for the planning and conducting of evacuations* (2014), sec. 3.6.

<sup>263</sup> See for example sec. 37 of the Disaster Protection Act of NRW, sec. 10 of the Disaster Protection Act of Berlin.





their Relatives (NOAH) which supports disaster victims and their families with post-crisis trauma and psychological assistance.

**f) Giving special attention or priority to vulnerable groups such as children, women, the elderly, the sick during disaster**

One of the main tasks in disaster relief is the protection of life, body and health of all affected persons. In catastrophes, it is recognized that vulnerable persons are less protected than other persons, and although it is not explicitly mentioned in the laws, their protection is considered to be a priority.<sup>264</sup> This is the reason why neuralgic places such as retirement places or hospitals are specifically considered in the respective disaster relief plans.<sup>265</sup> Similarly, the inclusion of vulnerable groups such as children, the elderly people and persons with disabilities in disaster management was the focus of the publication of the Federal Ministry for Economic Cooperation and Development where it was acknowledged that this group require special attention in disaster plans.<sup>266</sup>

Also, some of the capabilities under the evacuation and follow-up care of the Civil Defence Concept which is a strategic document of the Federation and the federal states for civil protection include: evacuating persons in need of special care and special facilities, such as hospitals, prisons, psychiatric hospitals, homes for the elderly and those needing long-term care; as well as looking after persons in need of special care (such as the elderly, persons with disabilities, parents with small children, unaccompanied minors).<sup>267</sup>

**g) Attention to the needs of ethnic, indigenous, linguistic or other minority groups**

In Germany, there is no regulation regarding the protection of minorities or differentiation of this groups in disaster cases.<sup>268</sup> The local authorities, who know their population are responsible for this differentiation when it comes to disaster plans. Nevertheless, fundamental rights and human rights protection also apply here, and must

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<sup>264</sup> See Deutsche Rote Kreuz, *Strategische Weiterentwicklung des DRK 2011-2020 Menschen helfen, Gesellschaft gestalten* (Berlin: DRK, 2012).

<sup>265</sup> See sections 10 to 13 of the sample disaster relief plan of the State of Hessen.

<sup>266</sup> BMZ, *Disaster Risk Management for All The inclusion of children, elderly people and persons with disabilities* (Berlin: BMZ, 2013).

<sup>267</sup> Civil Defence Concept, Op. cit., pp. 20 – 23.

<sup>268</sup> As well, in the sample of the State of Hessen, different religious or cultural groups are not mentioned.





be ensured.<sup>269</sup> Among aid organizations, it is widely recognised that the aid is always neutral and no group is disadvantaged.<sup>270</sup>

One study remarks on this issue as follows: “With regard to Germany and Western Europe, a wide range of research needs to be made on all major issues. Especially in Germany, the need to catch up on questions of the interrelations between ethnic-cultural diversity and disaster is high in all its phases and aspects.”<sup>271</sup>

## **h) Consultation with local/ethnic communities in the disaster planning and implementation**

In Germany, there is no common policy on this aspect, as civil protection is divided into different areas. The direct responsibility for the organization of the civil protection is assigned to the local governments and communities. However, local governments can delegate public tasks – such as providing ambulance services – to private companies (e.g. aid organisations such as German Red Cross) by contract. Regardless, most of the helpers and members in these organizations are from the local population. German disaster relief is mainly supported by volunteers. Only a few are professionally involved in the organizations.<sup>272</sup> Through this tradition of voluntary commitment, citizens can actively contribute to the protection of local disasters.<sup>273</sup>

## **i) Educational aspect including training disaster manager on cultural competences**

There is no specialized training for disaster managers in Germany with a focus on cultural integration. However, Germany offers a high range of trainings for disaster managers including the EU Civil Protection training programs, as well as for other actors involved in disaster management. Additionally, for the internal training of the civil protection services, different universities offer study programs to professionalize disaster managers. The University of Hamburg, for example, offers a Bachelor’s Degree in Hazard Control and Rescue Engineering<sup>274</sup>; and the University of Magdeburg-Stendal a Degree

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<sup>269</sup> See Klaas Eller, “Grundrechte im Katastrophenschutz”, [http://fzk.rewi.hu-berlin.de/doc/sammelband/Grundrechte\\_im\\_Katastrophenschutz.pdf](http://fzk.rewi.hu-berlin.de/doc/sammelband/Grundrechte_im_Katastrophenschutz.pdf) (accessed 15 September 2017).

<sup>270</sup> For instance, the principles of the German Red Cross [https://www.drk.de/fileadmin/user\\_upload/PDFs/Das\\_DRK/DRK-Gesetz/Erklaerung\\_Piktogramme.pdf](https://www.drk.de/fileadmin/user_upload/PDFs/Das_DRK/DRK-Gesetz/Erklaerung_Piktogramme.pdf) (accessed 15 September 2017).

<sup>271</sup> Elke Geenen, *Bevölkerungsverhalten und Möglichkeiten des Krisenmanagements und Katastrophenmanagements in multikulturellen Gesellschaften* (Rheinbreitbach: MedienHaus Plump GmbH, 2010).

<sup>272</sup> See, BBK, *Drei Ebenen, ein Ziel: BEVÖLKERUNGSSCHUTZ – gemeinsame Aufgabe von Bund, Ländern und Kommunen* (Bonn: Medienhaus Plump GmbH, 2010), p. 10.

<sup>273</sup> See Civil Defence Concept, *Op. cit.*, p. 15.

<sup>274</sup> See course website <https://www.haw-hamburg.de/bachelor-rettungsingenieurwesen.html> (accessed 15 September 2017).





in Security and Hazard Prevention.<sup>275</sup> Both offer an overall training in professional crisis management on mainly technical basics but also focus on social and psychological aspects and the behaviour of people in crisis situations which implicitly includes the cultural aspects.

A particular emphasis on reaching children and young people is seen through an educational website launched by the BKK in 2011 for children aged seven to twelve to convey knowledge on how to deal with hazards, and also raising awareness on the importance of voluntary work in civil protection.<sup>276</sup>

#### **j) Protection against discrimination on cultural ground**

Article 3 (3) of the Basic Law prohibits discrimination on various grounds including the religion or race of a person. This principle is also reflected in the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz - AGG). The purpose of the Act is, inter alia, to prevent and eliminate discrimination on the basis of skin colour or religion. These provisions also apply to disaster situations.

## **3.4. Italy**

### **3.4.1. National Integration of Cultural Aspects in the Legal System**

There is no specific and rigid definition of culture in the context of human rights in Italy. However, there is a reference to culture in Article 9 of the Italian Constitution: “the Republic promotes the development of culture and of scientific and technical research. It safeguards natural landscape and the historical and artistic heritage of the Nation”. The Italian Constitution further contains fundamental rights reflecting expressions of culture: the right to freedom of religion (Article 19); the rights of the family as a natural society founded on marriage (Article 29); freedom of expression (Article 21); freedom of association (Article 18); among others.

The Code of the Cultural and Landscape Heritage<sup>277</sup> states:

In implementation of Article 9 of the Constitution, the Republic shall protect and enhance the cultural heritage in accordance with the powers set out in Article 117 of the Constitution and according to the provisions of this Code. The protection and enhancement of the

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<sup>275</sup> See course website <https://www.hs-magdeburg.de/studium/bachelor/sicherheit-und-gefahrenabwehr.html> (accessed 15 September 2017).

<sup>276</sup> [www.max-undflocke-helferland.de](http://www.max-undflocke-helferland.de) (accessed 22 August 2017).

<sup>277</sup> Legislative Decree No. 42 of 22 January 2004.





cultural heritage shall concur to preserve the memory of the national community and its territory and to promote the development of culture.<sup>278</sup>

The Code provides that the enhancement of Cultural Heritage consists in the promoting knowledge of the cultural heritage and at ensuring the best conditions for the utilization and public enjoyment of the same heritage.<sup>279</sup> Enhancement further includes the promotion and the support of conservation work on the cultural heritage. The Code also protects cultural property of religious interest.<sup>280</sup>

The Italian legal system does not list cultural rights as a comprehensive and strict framework, and as such, does not establish precise and punctual criteria for determining which cultural expressions are to be regarded as cultural right. However, Article 2 of the Constitution is important in this context because it has made the inclusion of the so-called “New Fundamental Rights” possible. The “New Fundamental Rights” refer to rights which were not foreseen in the Constitution, but were identified by the society's cultural evolution such as environmental protection, the right to housing, the recognition of the life of the unborn and, in recent times, the need of procreation. This article, therefore, acts as an "open clause", and even transforms the rights expressly recognized in the Constitution (e.g., the right to health, personal freedom, protection of landscape, etc.).

It has to be taken into account that fundamental rights in Italy are also deduced from international and supranational human rights sources.<sup>281</sup> Italy has ratified the ICESCR, which is applicable as a domestic law of which the cultural rights in this Covenant are guaranteed and implemented within the Italian legal system.<sup>282</sup> The UDHR, which also contains some culture-relevant provisions, is part of the basis of the Italian Constitution as a programmatic document and applies within the legal system.

In general, the national policy on cultural implementation and realization of cultural rights in Italy is geared towards promoting and protecting cultural rights as part of the development of the cultural goals as defined by the Italian Constitution; sustain the conservation of the cultural heritage and to foster its public enjoyment and enhancement. It envisages a more effective intervention in the “educational and cultural promotion activities”. There is the Ministry of Cultural Heritage and Activities and Tourism (MIBAC) which is concerned with culture, the

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<sup>278</sup> Art. 1 (1).

<sup>279</sup> Art 6.

<sup>280</sup> See Art. 9.

<sup>281</sup> In particular, Art. 10 of the Italian Constitution explicitly concerns general international law and Art. 117 (1) on international legal system and also European Union legal system.

<sup>282</sup> See Art. 15 with respect to cultural right.





protection and preservation of artistic sites and property, landscape, and tourism.<sup>283</sup> A number of non-governmental organisations participate very actively in dissemination, conservation, preservation and enhancement of Italian cultural heritage such as the Associazione Dimore Storiche Italiane (ADSI), Touring Club Italia (TCI), Fondo Ambiente Italiano (FAI), volunteering and social promotion associations (AUSER), among others.

The Italian Constitution also establishes possible limitation to fundamental rights. This depends on the fundamental right itself, specifically, indicated in the article providing each right. If the limitation is necessary, the safeguards of the fundamental rights have to be taken following the principle of the “doppia riserva” (double provision). To limit fundamental rights (such as personal freedom, inviolability of the home, telecommunication privacy, etc.), there is the necessity of the so-called “riserva di giurisdizione” (that is, only a judge may restrict a fundamental right, with a motivated measure) and of the so-called “riserva di legge” (that is, only the law issued by the Italian Parliament can determine when and how a fundamental right may be sacrificed).

There have been judicial cases revolving around cultural rights in Italy such as:

1. Corte costituzionale n. 159, 22 May 2009 (concerning the protection of linguistic minority).
2. Corte costituzionale n. 118, 9 Mar 1990 (concerning the protection of cultural heritage in general).
3. Corte costituzionale n. 94, 28 Mar 2003 (concerning the protection of cultural heritage in general).
4. Case Beyeler c. Italy (European Court of Human Rights, Grand Chamber, 28 May 2002).

### 3.4.2. Reflection of Cultural Elements in Civil Protection and Examples of Implementation in Disaster Management

There are no reference synthesis documents in Italy that explain the management of cultural aspects in catastrophic situations. However, there are some agreement protocols with associations/organizations which consider cultural elements such as disadvantaged groups (for example, Save the Children Protocol). It is important to note that the civil protection system is organized at different levels and on several fronts (from planning to the alert) to offer adequate assistance to all people (including vulnerable people). There is no evidence of regional norms that consider the cultural aspects exclusively. In case of national emergency, assessment is made from time to time regarding the measures to be adopted for the people’s assistance. The above

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<sup>283</sup> <http://www.beniculturali.it/mibac/export/MiBAC/sito-MiBAC/MenuPrincipale/Ministero/La-struttura-organizzativa/index.html> (accessed 20 September 2017).







notwithstanding, the following examples indicate cultural aspects in the general Italian disaster management framework.

**a) Disaster communication in multiple languages including sign language**

Regions and Autonomic Provinces have the responsibility to issue the meteorological alerts for the Civil Protection local systems, and the Majors have to activate emergency plans to inform the citizens on the risk situations and decide the actions to be adopted for supporting the population.<sup>284</sup> Disaster risks messages and alerts could be translated into other languages if there are linguistic minorities on the territory. The Civil Protection Department usually publishes contents in Italian and English on its website. For example, the “Io non Rischio” (I don’t risk) national campaign contents and “le buone pratiche della protezione civile” (good practices in civil defence) are published in Italian and English languages.<sup>285</sup>

**b) Protection of cultural heritage or artefacts**

There is a specific legislation for the protection and valorisation of natural and cultural heritage, both movable and immovable.<sup>286</sup> The MIBAC is responsible for the protection and safeguard of cultural heritage in general, and participates in environmental impact studies to determine the risk and minimize damage or negative impact on cultural heritage.<sup>287</sup> There have been some legal reforms, particularly, about the definition of “cultural heritage” and the attribution of some competences previously reserved to the national government to the region and local authorities. In general, the state, the regions and other government bodies have the responsibility to ensure the safety and conservation of cultural property in their possession. There are procedures defined between the Civil Protection and the MIBAC about the cultural goods management after a catastrophic event, and now every cultural heritage is catalogued. There is also a recognition by the authorities of the need for restoration of damaged private and public structures and infrastructure including cultural property after a disaster.<sup>288</sup>

**c) Provision of dietary and healthcare needs in consideration of cultural diversity**

The DPC Guidelines (Ministry of Health for veterinary action in non-epidermal emergencies (1988) considers this aspect. It provides: “customs and practices relating to

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<sup>284</sup> Law No. 225 of 24.02.1992.

<sup>285</sup> <http://iononrischio.protezionecivile.it/en/homepage-2/>; [http://iononrischio.protezionecivile.it/wp-content/uploads/2015/10/alluvione\\_pieghevole\\_eng.pdf](http://iononrischio.protezionecivile.it/wp-content/uploads/2015/10/alluvione_pieghevole_eng.pdf) (accessed 15 September 2017).

<sup>286</sup> Code of the Cultural and Landscape Heritage - Codice dei beni Culturali e del Paesaggio (D.Lgs 42/2004, reacted on March 2016).

<sup>287</sup> See Art. 26 of the Code.

<sup>288</sup> See Art. 5 of Law No. 225/1992.





food must be considered in the food supply interventions planning for the population affected by the disasters, including cultural and religious items.”

**d) Consideration of cultural diversity in terms of provisions of facilities for religion/faith manifestation**

The usual practice of civil protection in Italy is to create structures to allow the practice of religious rites regardless of which religion, and according to the social demand.

**e) Incorporating gender segregation, and/or maintain the family roles and family cohesion as a cultural practice of the affected community**

Gender segregation and the family unity are two of the basic guidelines for the management of the “host area” and the allocation of emergency housing facilities. They descend from an elaborate combination of normative provisions, but most of all, from a consolidated culture on the subject.

**f) Giving special attention or priority to vulnerable groups such as children, women, the elderly, the sick during disaster**

The reference to persons with special needs and psychosocial assistance is one of the targets of the Healthcare Support Function in the Ministry of the Interior Decree "General criteria for the organization of health care in disasters" (2001). A measure/document specifically for the favour of the vulnerable population is under consideration by the civil protection.

**g) Attention to the needs of ethnic, indigenous, linguistic or other minority groups**

Attention to the needs of ethnic, indigenous, linguistic groups or of other minorities is expressed in the Constitution and implemented through numerous legislative measures of the State and the Regions. Particularly, the Constitution protects the ethnic and linguistic minorities of the Italian State, and in the civil protection, attention is also given to the non-Italian citizens and communities.

**h) Consultation with local/ethnic communities in the disaster planning and implementation**

According to the Article 15 of Law no. 225 of 24.02.1992, the Major is the Civil Protection authority and has to “train and inform” the citizenship on this subject (and especially on the good practices to be adopted in case of catastrophes). So, every Major adopts in its own town hall the necessary measures to fulfil their civil protection plans and duties.

**i) Educational aspect including training disaster managers on cultural competencies**





The Italian Disaster Managers are trained according to the norm UNI 11656:2016.<sup>289</sup> Particularly the ones on the 3<sup>rd</sup> level. Characteristics on cultural manifestation are considered in the catastrophe management on the national, regional and town hall level (from letter a to letter j) in the Norm.

## **j) Protection against discrimination on cultural ground**

The Italian Constitution provides that all citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions.<sup>290</sup> This applies to every situation including disaster situation.

## **3.5. Malta**

### **3.5.1. National Integration of Cultural Aspects in the Legal System**

No definition of culture is provided in the human rights context in the Maltese legal system. The Maltese Constitution, however, provides that: “The State shall promote the development of culture and scientific and technical research.”<sup>291</sup> It also provides for the “Safeguarding of Landscape and Historical and Artistic Patrimony” and the “Protection of Artisan Trades” respectively in Articles 9 and 19. These provisions are, however, under Chapter II of the Maltese Constitution entitled “Declarations of Principles”, which means that they are not enforceable rights, but the state sets a moral obligation to safeguard such principles.

The Constitution however, contain certain rights under Chapter IV (Fundamental Rights and Freedoms of the Individual), which are reflective of cultural expressions: the protection of freedom of conscience and worship (Article 40); the protection of freedom of expression (Article 41); the protection of freedom of assembly and association (Article 42); the protection from discrimination on the grounds of race, etc. (Article 45). Furthermore, the European Convention for the Protection of Human Rights is part of Maltese law.<sup>292</sup> Malta has also signed and ratified several other international instruments are relevant for cultural expressions including the ICESCR, the Convention on the Protection and Promotion of the Diversity of Cultural Expression (Paris

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<sup>289</sup> Non-regulated Professions - Disaster Manager - Knowledge, Skill and Competence Requirements, UNI 11656:2016.

<sup>290</sup> Art. 3.

<sup>291</sup> Art. 8 of the Constitution of Malta.

<sup>292</sup> See the European Convention Act, Cap 319 of the Laws of Malta.





2005), European Cultural Convention, (Paris 1954), European Convention on the Protection of the Archaeological Heritage (Revised), Valletta 1992 (Malta Convention 1992) among others.<sup>293</sup>

In general, there is no criteria indicating which cultural expression shall be made a human right. However, a legal right would be granted by special legislation. For example, the right to culture is provided for under the Cultural Heritage Act, as well as a duty to protect cultural heritage, although not elevated to the status of a fundamental human right.<sup>294</sup> A definition of “cultural heritage” is seen in Article 2 of the Act,<sup>295</sup> while cultural property is defined as “movable or immovable property forming part of the cultural heritage”.<sup>296</sup> Importantly, Article 4 provides:

(2) Every citizen of Malta as well as every person present in Malta shall have the duty of protecting the cultural heritage as well as the right to benefit from this cultural heritage through learning and enjoyment. The cultural heritage is an asset of irreplaceable spiritual, cultural, social and economic value, and its protection and promotion are indispensable for a balanced and complete life.

(3) The State in Malta shall have the duty of establishing and maintaining administrative and regulatory structures of superintendence so as to ensure that this heritage is protected and conserved, as well as such other structures as are required for the management of the care, exposition and appreciation of this heritage.

These provisions are, however, not enforceable in any court of law, they are fundamental principles for the protection of cultural heritage, and the State shall aim to apply them.<sup>297</sup>

Several other laws relating to culture exist in Malta such as the Maltese Language Act,<sup>298</sup> the Copyright Act,<sup>299</sup> the Protection of Antiquities Regulations,<sup>300</sup> the National Archives Act,<sup>301</sup> among

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<sup>293</sup> See the Council of Europe, Compendium Cultural Policies and Trends in Europe - Country Profile Malta, [http://www.culturalpolicies.net/down/malta\\_022015.pdf](http://www.culturalpolicies.net/down/malta_022015.pdf) (access 12 June 2017).

<sup>294</sup> The Cultural Heritage Act, Cap 445 of the Laws of Malta.

<sup>295</sup> “Cultural heritage” means movable or immovable objects of artistic, architectural, historical, archaeological, ethnographic, palaeontological and geological importance and includes information or data relative to cultural heritage pertaining to Malta or to any other country. This includes archaeological, palaeontological or geological sites and deposits, landscapes, groups of buildings, as well as scientific collections, collections of art objects, manuscripts, books, published material, archives, audio-visual material and reproductions of any of the preceding, or collections of historical value, as well as intangible cultural assets comprising arts, traditions, customs and skills employed in the performing arts, in applied arts and in crafts and other intangible assets which have a historical, artistic or ethnographic value.

<sup>296</sup> Art. 2.

<sup>297</sup> Art. 4(1).

<sup>298</sup> Cap 470 of the Laws of Malta.

<sup>299</sup> Cap 415 of the Laws of Malta, as amended up to Act No. IX of 2009.

<sup>300</sup> Subsidiary Legislation 445.01.

<sup>301</sup> Cap 477 of the Laws of Malta.





others.<sup>302</sup> A National Culture Policy was published in 2011 by the Parliamentary Secretariat for Tourism, the Environment and Culture.<sup>303</sup> The policy aims to provide guidelines by which government entities, voluntary organisations and private enterprise articulate their roles and contributions to the culture sector, with an action point of strategic development of culture and the arts among others. There is also a National Cultural Heritage strategy adopted in 2006.<sup>304</sup> Several entities in Malta have a mandate related to culture, including:

- Malta Arts Council (<http://www.maltaculture.com/>)
- Valletta 2018 Foundation (<http://valletta2018.org/>)
- Malta Philharmonic Orchestra (<http://www.maltaorchestra.com/>)
- Manoel theatre (<http://www.teatrumanoel.com.mt/>)
- St James Cavalier (<http://www.sjcav.org/>)
- Pjazza Teatru Rjal (<http://pjazzateatrurjal.com/content/>)
- Zfin Malta (<http://zfinmalta.org/>)
- Heritage Malta (<http://heritagemalta.org/>)

Also, Article 7 of the Cultural Heritage Act provides that: “There shall be a Superintendence of Cultural Heritage, under the responsibility and management of the Superintendent of Cultural Heritage. The mission of the Superintendence is to fulfil the duties of the State to ensure the protection and accessibility of cultural heritage as defined in this Act.” A Cultural Directorate is also set up within the Ministry of Justice, Culture and Local Government.<sup>305</sup> Besides fulfilling a coordinating role between the political and administrative bodies in relation to cultural issues, the Cultural Directorate is also the contact point for the Creative Europe Programme.<sup>306</sup>

The provisions dealing with a particular cultural right could provide for limitations that are correlated to the particular right as stipulated by Article 32 of the Constitution to protect the rights and freedoms of others or the public interest. For example, Article 41 protects freedom of expression, but it could be limited by any law where such law is required in the interests of defence, public safety, public order, public morality or decency or public health.<sup>307</sup>

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<sup>302</sup> See the Council of Europe, *Compendium Cultural Policies*, *Op. cit.*

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<https://www.artscouncilmalta.org/files/uploads/misc/POLICY%20ENG%202011%209%20jun%20low%20res%20.pdf> (accessed 12 September 2017).

<sup>304</sup> Ministry of Tourism and Culture, *National Strategy for Cultural Heritage* (Valletta, 2006).

<sup>305</sup> <https://mjcl.gov.mt/en/culture/Pages/Culture-.aspx> (accessed on 14 September 2017).

<sup>306</sup> <http://www.creativeeuropemalta.eu/> (accessed 14 September 2017).

<sup>307</sup> See Article 41 (2) and (3) of the Constitution of Malta.





### 3.5.2. Reflection of Cultural Elements in Civil Protection and Examples of Implementation in Disaster Management

No instrument that focuses on the implementation of cultural rights in disaster management framework is known of in Malta. However, the Emergency Powers Act makes provision in Article 4, for the President of Malta, acting on advice of the Prime Minister to make such regulations “necessary or expedient for securing the public safety, the defence of Malta, the maintenance of public order and the suppression of mutiny, rebellion and riot, and for maintaining supplies and services essential to the life of the community.”<sup>308</sup>

The Civil Protection Department is currently in the process of reviewing the national disaster plans and to ensure that such are compliant with Human Rights and the Sendai Framework. Some progress has already been registered in this area. Evacuation plans for migrant communities have already been drafted and distributed to the relevant authorities. The following examples could be cited about the cultural aspects of the Maltese disaster management framework.

#### **a) Disaster communication in multiple languages including signs**

The Radiological Emergency (Information to the Public) Regulation provides an obligation on the Director of Civil Protection to provide prior and actual information to the population likely to be affected in the event of a radiological emergency or actually affected in case it occurs about the health-protection measures and other actions they should take in the event of such an emergency.”<sup>309</sup> Although the Regulation does not mention that multiple languages should be used in such cases, in practice, all disaster messages are provided in Maltese and English languages. However, there is a close cooperation and agreements with embassies aimed to ensure messages will be made available in a variety of languages.

#### **b) Protection of cultural heritage or artefacts**

The Cultural Heritage Act provides that the State shall have the duty of establishing and maintaining the structure for the protection, conservation and management of the Maltese cultural heritage. The duty to protect includes the duty to document, conserve, maintain, restore and intervene whenever the Superintendence deemed fit, including in circumstances of misuse, lack of conservation or application of wrong conservation methods.<sup>310</sup> By implication, disaster threats are covered by this provision. Furthermore, Superintendence of Cultural Heritage has published the Operating Procedures and

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<sup>308</sup> Emergency Powers Act, Cap 178 Laws of Malta.

<sup>309</sup> Subsidiary Legislation 411.02. See Arts. 3 and 4.

<sup>310</sup> See Article 4.





Standards for Archaeology Services which provides details of the mechanisms for protecting cultural heritage in Malta.<sup>311</sup>

There are various government entities in charge of cultural heritage which the Civil Protection Department will seek their expertise in times of disaster.

**c) Provision of dietary and healthcare needs in consideration of cultural diversity**

The New National Health Systems Strategy for Malta (2014-2020) published in June 2014 mentions among the reforms to be implemented, the need to "provide culturally appropriate and multi-lingual information for foreigners and trained cultural mediators to increase their access and efficient use of the health services according to their needs".<sup>312</sup> This type of specialized healthcare is already available in the Migrant Health Unit, set up by the Primary Health Care Department in August 2008, which aims to facilitate migrant access to health care services, train healthcare professionals and students in cultural diversities and train cultural mediators on health issues.<sup>313</sup>

**d) Consideration of cultural diversity in terms of provisions of facilities for religion/faith manifestation**

No data was found for this example.

**e) Incorporating gender segregation, and/or maintain the family roles and family cohesion as a cultural practice of the affected community**

No data was found for this example.

**f) Giving special attention or priority to vulnerable groups such as children, women, the elderly, the sick during disaster**

There are no such guidelines yet. However the Civil Protection Department works on the principle that while providing an equal level of care to all, vulnerable persons, inclusive of children, elderly and persons with disability are provided with the necessary care and assistance to be able to evacuate as necessary.

**g) Attention to the needs of ethnic, indigenous, linguistic or other minority groups**

No data was found for this example.

**h) Consultation with local/ethnic communities in the disaster planning and implementation**

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<sup>311</sup> Superintendence of Cultural Heritage, *Operating Procedures and Standards for Archaeology Services* 2013.

<sup>312</sup> Parliamentary Secretariat for Health, *A National Health Systems Strategy for Malta 2014-2020*, (June 2014).

<sup>313</sup> WHO, *Malta: Assessing Health-system Capacity to Manage Sudden, Large Influxes of Migrants* (Copenhagen: WHO, 2015)





The Civil Protection Department maintains close co-operation with the local communities through regular meetings with the local councils which are a very effective way of reaching locals and divulging the necessary information regarding disaster management. The only policy that is documented is the Seveso III Directive which states that local communities are to be integrated and informed of the external emergency plans.

**i) Educational aspect including training disaster manager on cultural competences**

The Civil Protection (Discipline and Association) Regulations which apply to all members of the Assistance and Rescue Force provides that the Director of Civil Protection shall ensure that officers under his command maintain and improve their knowledge and efficiency in civil protection matters by attending courses of in-service training and lectures at suitable intervals.<sup>314</sup>

Personnel from the Civil Protection Department attend EU Civil Protection Mechanism courses on a regular basis, where cultural integration and different religion training is part of the training provided. Furthermore, Malta has a specific Detention Services Group that specializes in cultural differences and religions, and if needed in an emergency, the Civil Protection Department will seek the expertise of such an entity.

**j) Protection against discrimination on cultural ground**

The Maltese Constitution prohibits discrimination on the grounds of “race, place of origin, political opinions, colour, creed, sex, sexual orientation or gender identity”.<sup>315</sup> It also provides exceptions in cases where any law makes provision for according any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or persons of any other such description is reasonably justifiable in a democratic society. In cases of emergency too, authorising the taking of measures that are reasonably justifiable to deal with the situation that exists during that period of public emergency could be a ground for discrimination.<sup>316</sup>

## 3.6. The Netherlands

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<sup>314</sup> Subsidiary Legislation 411.01, Art. 6.

<sup>315</sup> Art. 45.

<sup>316</sup> See Article 45 (4) (d) and (e).







### 3.6.1. National Integration of Cultural Aspects in the Legal System

There is no legal definition of culture in the context of human rights in the Netherlands. The Netherlands is a constitutional State and in this country citizens have in principle the same rights and duties and are subjected to the same laws and other regulations.<sup>317</sup> The Dutch Constitution, however, contains certain rights that reflect cultural aspects. These rights and provisions are the right to freedom of religion. (Article 6); the right against discrimination (Article 1); freedom of expression (Article 7); freedom of association (Article 8); the right to participate in cultural life (Article 22); the right to education (Article 23); the right to the integrity of a person (Article 11); the right to private and family life (Article 10). Article 22 (3) provides that the authorities shall promote social and cultural development, and leisure activities.

There are a number of laws and policies on cultural implementation in the Netherlands. These include: the Cultural Policy Act (Special Purpose Funding) 1993 (Wet op het specifiek cultuurbeleid) which was considered a legal milestone in Dutch policy. It redefines some aspects of cultural policy, especially, as it was needed to ratify specific payments by the government to local authorities and national public cultural funds. It also regulates specific policy and financial relations with the provinces and municipalities.

Cultural education is partly rooted in the legislation on education: Law on primary education (Wet op het primair onderwijs WPO), Law on secondary education (Wet op het voortgezet onderwijs) and Law on higher education and research (Wet op het hoger onderwijs en wetenschappelijk onderzoek). They define the framework for cultural education in primary and secondary education, and the arts education (training of artists and art teachers). The Adult and Vocational Education Act describes the framework for some of the creative vocational training in secondary vocational education (MBO).<sup>318</sup>

There is a guide from the central government on valuation methods for cultural history policies and legislation.<sup>319</sup> Cultural history is increasingly becoming part of the interests weighed in interventions in spatial planning. There are also government institutions responsible for culture such as the Minister of Education, Culture and Science, which is responsible for the cultural portfolio. A Council for Culture (Raad voor Cultuur (RvC))<sup>320</sup> also exists, which is a body established by law to advise the Dutch Government and Parliament on the matters related to arts, culture

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<sup>317</sup> Ministry of Social Affairs and Employment of the Netherlands, *Core Values of Dutch Society*, 20 February 2014, <https://www.prodemos.nl/wp-content/uploads/2016/04/KERNWAARDEN-ENGELS-S73-623800.pdf> (accessed 20 May 2018), p. 3.

<sup>318</sup> (NLD-1995-L-69505) as amended.

<sup>319</sup> <https://cultureelerfgoed.nl/publicaties/handreiking-cultuurhistorie-in-mer-en-mkba> (accessed 15 September 2017).

<sup>320</sup> <https://www.cultuur.nl/english/item138> (accessed 15 September 2017).





and media. The Council provides recommendations regarding cultural policy in the Netherlands, whether it is requested from them or not.

The Netherlands has ratified a number of international legal instruments relating to culture and cultural rights.<sup>321</sup> In 2012, the Dutch government ratified the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage and assigned the Dutch Centre for Intangible Cultural Heritage the task of implementing it.<sup>322</sup> For this purpose, a National Inventory of Intangible Cultural Heritage was drawn up to support the communities in taking care of their heritage, for which the heritage communities can nominate elements for the inventory.

It has to be noted that cultural rights have their limitations. For example, freedom of expression is not an absolute right; it has its limits, which could be seen as limiting expression of cultural rights (for example, in the area of religion). Freedom of expression is also restricted in criminal law.<sup>323</sup> Acts regarded as criminal offences in this respect include hate speech, insult, threat, etc. The criminal law protects citizens and businesses from careless statements and allegations. Freedom of expression is further limited in civil law. This can be found in the law of torts ('onrechtmatige daad', translated as 'unlawful act').<sup>324</sup> But it should be noted that whether an expression is unlawful or not depends on the circumstances of the case according to case law.

There are very few cases of infringements of cultural rights in the Netherlands. Two of such examples could be seen in the right to education of a specific language and the right of freedom of expression on a culturally sensitive topic. In ECLI:NL:HR:2016:2341, the main legal question was whether the state is obliged to facilitate the education of the Turkish language in a Turkish school. The interest groups felt that the State has breached various international treaties and European legislation by not supporting foreign language education. This stems from the fact that since 2004, the government stopped a (subsidy) program making it possible for municipalities to offer education of foreign languages until 2004. The High Court ruled that although education of the native mother tongue could have certain benefits for immigrant children, the State itself may decide whether the provision of such education is desirable. It is not required to facilitate such education.

In ECLI:NL:RBROT:2009:BI1785, the court condemned two former members of the board of the National Alliance for not removing anti-Semitic and anti-Muslim texts on the Political Party's Internet Forum (now abolished), and a former member of that party for placing those texts. The court imposed a higher conditional penalty than claimed because of the seriousness of the facts, and work sentences than those that were demanded by the prosecutor.

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<sup>321</sup> <https://www.permanentrepresentations.nl/permanent-representations/pr-unesco-paris/the-netherlands--unesco/culture-conventions-the-netherlands-ratified> (accessed 6 October 2017).

<sup>322</sup> <http://www.ichngoforum.org/the-dutch-centre-for-intangible-cultural-heritage-vie/> (accessed 6 October 2017).

<sup>323</sup> Reprimand, blame and insult - Article 261 Dutch Criminal Code.

<sup>324</sup> Illegal expressions - Article 6: 162 Dutch Civil Code.





### 3.6.2. Reflection of Cultural Elements in Civil Protection and Examples of Implementation in Disaster Management

The Netherlands does not have a specific legal instrument that implements cultural rights in disaster management. There are, however, some sources where considerations of cultural aspects could be identified as shown below.

#### **a) Disaster communication in multiple languages including signs**

The Safety Regions Act does not expressly specify in which languages disaster warnings should be communicated, however, by virtue of Section 18 of the Act, there is a possibility of using sign and multiple language communication in crisis situations. Every safety region has its governmental decree which states that all target groups and citizens must be reached with the current security plan.<sup>325</sup>

It is notable that in the Netherlands, there is an air raid system (called WAS) in case of a national disaster, which is tested every first Monday of the month. Everyone in the Netherlands can hear the alarm as it runs for one minute and 26 seconds. It is now being used as a warning system in case there is a national disaster. From 1 January 2020, the sirens will no longer be tested monthly: instead a text message will be pushed to the mobile phones of persons present in a particular location. The trials for this push notification system have started in September 2017.

During a disaster or a crisis, the government can use the website [crisis.nl](http://crisis.nl) as an information channel, where information about a certain event and models for safety could be found. One criticism about this website is that it is not multilingual. The government also brings notification to citizens who are in the immediate vicinity of a (threatening) emergency situation through text messages (e.g., the NL-Alert, a telecom service sending alarm messages via mobile phones). Communication going through the NL-Alert service takes place only in Dutch.<sup>326</sup>

#### **b) Protection of cultural heritage or artefacts**

Based on the Safety Regions Act, each safety region is obliged to weigh the risks in its region and to draw up a regional risk profile in response to this. The Minister of Security

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<sup>325</sup> For example, the Risk Guide prepared under the responsibility of Safety Region Groningen has an English version - [https://www.risicowijzergroningen.nl/print-risicowijzer/copy\\_of\\_RiskGuideGroningenprintversie.pdf](https://www.risicowijzergroningen.nl/print-risicowijzer/copy_of_RiskGuideGroningenprintversie.pdf) (accessed 6 October 2017).

<sup>326</sup> See, for instance, <https://www.veiligheidsregiomwb.nl/-/media/VeilighedsregioV2/Downloads/dossiers/NL-Alert/Vragen%20en%20Antwoorden.ashx?la=nl-NL> and [https://www.gemeentemaastricht.nl/fileadmin/files/GeMa/Doc/00\\_Algemeen/Factsheet\\_NL-Alert\\_\\_vragen\\_antwoorden\\_.pdf](https://www.gemeentemaastricht.nl/fileadmin/files/GeMa/Doc/00_Algemeen/Factsheet_NL-Alert__vragen_antwoorden_.pdf).





and Justice has drafted the Handbook Regional Risk containing guidelines for the safety regions.<sup>327</sup> In this Handbook six vital interests are defined, five of which correspond to the vital interests of the National Security Strategy. The sixth vital importance is the safety of cultural heritage.<sup>328</sup> It is indicated that cultural heritage can be affected by floods, fires and other types of calamity. As such, protection of cultural heritage can require a specific approach, which is not necessarily similar to the traditional activities of safety regions and their partners.

The safety of cultural heritage has been added for application at the regional level, where government, fire brigades and heritage managers encounter each other regarding the safety of cultural heritage. The security services, therefore, coordinate and organize exercises for protecting cultural heritage and provide information about cultural heritage theme. National museums are required to list their collections that are part of the Dutch cultural heritage.<sup>329</sup>

**c) Provision of dietary and healthcare needs in consideration of cultural diversity**

The “National Manual on Decision-making in Crisis Situations – The Netherlands”<sup>330</sup> identifies the forms of healthcare that should be provided in the aftermath of a crisis. It also identifies the provision of food supplies to evacuees and the rest of the population in the situation of a crisis. The National Manual, however, does not distinguish between the types of food or between culturally different recipients of the food supplies or healthcare.

**d) Consideration of cultural diversity in terms of provisions of facilities for religion/faith manifestation**

There are no specific legal rules or policies dealing with this matter that could be identified in this regard.

**e) Incorporating gender segregation, and/or maintain the family roles and cohesion as a cultural practice of the affected community**

Also, this aspect cannot be identified in laws and policies forming part of the legal order of the Netherlands.

**f) Giving special attention or priority to vulnerable groups such as children, women, the elderly, the sick during disaster**

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<sup>327</sup> GHOR Nederland, *Handreiking regionaal risicoprofiel* (2009).

<sup>328</sup> *Ibid*, pp. II-13-14.

<sup>329</sup> Policy Letter Security for Collections (Tweede Kamer, 2004–2005, 29 314, nr. 12).

<sup>330</sup> [https://english.nctv.nl/binaries/national-manual-decision-making-in-crisis-situations\\_tcm32-84092.pdf](https://english.nctv.nl/binaries/national-manual-decision-making-in-crisis-situations_tcm32-84092.pdf).





Although no overarching policy document encompasses this measure, the Minister of Security and Justice has published in the Policy letter “Fire safety reporting and improvement measures - disaster relief” from 2009 additional instructions on how to deal with special target groups such as the elderly and persons with special needs.<sup>331</sup> It provides the following:

As described in the Fire Safety Vision,<sup>332</sup> the responsibility of the government is primarily aimed at the safety of those groups that are dependent on others to be able to get themselves to safety in a fire such as people with reduced self-reliance and people who are not or not sufficiently capable of adequately assessing risks of a fire. These include, for example, people in care and nursing homes, hospitals and prisons and children in childcare and (special) primary schools. [...]

The risk guide of the safety region devotes attention to and allocates additional care for the elderly and people with disabilities.<sup>333</sup> More specifically, Paragraph 4 entitled “Think of people who need extra help” states:

Are there people in your surroundings who maybe cannot look after themselves during an incident or disaster? Children, elderly people, or people with a physical or mental handicap often need extra help. Think how you can help them and talk it over together. If you cannot look after yourself. Are you not able to take care of yourself during an incident or disaster? Then ask family, friends, neighbours or volunteer carers to support you in such a situation.

#### **g) Attention to the needs of ethnic, indigenous, linguistic or other minority groups**

The Safety Regions Act does not prescribe that the safety regions are obliged to take into account the different cultures in the region. It is their primary concern to ensure the safety of the public as a whole. Also, other types of legislation do not specifically address this matter. But in practice, every safety region devotes its attention to the diversity of the public. In cities, such as Rotterdam and Amsterdam, special attention and care are devoted to dealing with different cultures in terms of their language, forms of conduct and general culture. For example, if there is a crisis in a particular district or at an event where many people of immigrant origin are located, they will take into account the fact that men and women are guided separately. In other cities where there is less ethnic diversity, the protocols will be less extensive. As such, each safety region has its own protocol to deal with cultural differences.<sup>334</sup>

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<sup>331</sup> <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vjbmiyvf92x1> (accessed 6 October 2017).

<sup>332</sup> <https://www.rijksoverheid.nl/documenten/rapporten/2009/06/01/visie-op-brandveiligheid> (accessed 6 October 2017).

<sup>333</sup> <https://www.risicowijzergroningen.nl/english> (accessed 6 October 2017).

<sup>334</sup> See also: <http://wetten.overheid.nl/BWBR0027466/2018-09-19>





#### **h) Consultation with local/ethnic communities in the disaster planning and implementation**

The Dutch Institute for Physical Security (NIFV) and the Foundation Netherlands Alert (Stichting Nederland Alert) commissioned a research program for the self-reliance of citizens in the event of disasters and major accidents, commissioned by the Ministry of Interior and Kingdom Relations (BZK). The research program consisted of three "traces" including the Track Citizenship as one of them.<sup>335</sup>

#### **i) Educational aspect including training disaster managers on cultural competences**

The Dutch civil protection personnel participate in the EU Civil Protection training programmes that include a cultural aspect. However, these training programmes are not subjected to specific local policies that can be identified in this regard. There is no legal obligation to train staff for dealing with different cultures or groups. In cities where there is little diversity, less attention is paid to trainings regarding specific groups of people. In cities where more immigrants reside or where populations are more diverse, more attention is paid to the cultural differences. However, security regions from cities with a more diverse population do have a special recruitment program to make their staff as diverse as possible. The idea behind it is to understand, guide and help every target group during a crisis or a disaster.<sup>336</sup>

#### **j) Protection against discrimination on cultural grounds**

One of the core provisions of the Dutch Constitution, Article 1, prohibits discrimination on the grounds of religion, belief, political opinion, race or sex or on any other ground whatsoever. This provision is of a general application and applies also to disaster management situations. In essence, it means that it is prohibited to discriminate individuals on the basis of their culture when disasters occur.

## **3.7. Portugal**

### **3.7.1. National Integration of Cultural Aspects in the Legal System**

There is no legal definition of culture in the Portuguese legal system in the context of human rights, even though there is a clear connection of culture with human rights in the Constitution (a

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<sup>335</sup> The NIFV folder contains a concise version of a literature study entitled "Civilian participation in disasters and major accidents", <http://www.ibis-bi.nl/Burgerparticipatie/> (accessed 6 October 2017).

<sup>336</sup> See also: <http://wetten.overheid.nl/BWBR0027840/2018-10-01>





chapter of the constitution is dedicated to cultural rights and duties) which provides that the state shall promote the democratisation of culture by encouraging and ensuring access by all citizens to cultural enjoyment and creation.<sup>337</sup> There are also specific rights that are reflective of culture in the fundamental rights framework of the Constitution: the right to family, marriage and filiation; freedom of expression and information; freedom of cultural creation; freedom of association; the freedom of conscience, of religion and of form of worship, the right to cultural enjoyment and creation; the right to education; etc.<sup>338</sup> A number of international treaties relating to cultural rights have also been ratified by Portugal.<sup>339</sup>

There are some other culture-relevant laws in Portugal such as the law on Cultural Heritage which pertains to protection, promotion and valuation of culture.<sup>340</sup> Having its roots on the Constitution, this law reproduces most of what relates to citizen's rights on culture creation, access and fruition. It also has deep implications on legislation and regulatory instruments in regards to cultural impacts, and also defines procedures for impact assessment.

There is also a law on Portuguese Museums which defines the principles of national policies for museums.<sup>341</sup> Furthermore, the Law 159/99 defines the framework for the transfer of certain cultural responsibilities to local government.<sup>342</sup> Other laws include: the law on Audio-visual and Cinematographic Art,<sup>343</sup> the Television law<sup>344</sup> and the Radio law,<sup>345</sup> among others.

Cultural policy in Portugal is the remit of the Ministry of Culture. There are five Regional Culture Directorates (North, Centre, Lisbon and Tagus Valley, Alentejo and Algarve) whose aim is to distribute the Ministry's responsibilities more widely and whose missions, in conjunction with the Ministry's main departments, are to: "ensure public access to cultural resources, to monitor the activities of cultural producers funded by the Ministry of Culture, and to monitor heritage conservation measures".<sup>346</sup> Regional Culture Directorates are autonomous in their administration. There are also a number of foundations for the promotion of culture in Portugal such as the Gulbenkian Foundation, the Serralves Foundation, the Arpad Szènes-Vieira da Silva

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<sup>337</sup> See Arts. 2, 70, 73, 78 of the Constitution of the Portuguese Republic.

<sup>338</sup> See Arts. 36, 37, 41, 42, 46, 78.

<sup>339</sup> See [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=139&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=139&Lang=EN) (accessed 22 September 2017).

<sup>340</sup> Law 107/2001.

<sup>341</sup> Law 47/2004.

<sup>342</sup> See Art. 20, see also the Council of Europe, Compendium Cultural Policies and Trends in Europe - Country Profile Portugal, [http://www.culturalpolicies.net/down/portugal\\_062011.pdf](http://www.culturalpolicies.net/down/portugal_062011.pdf) (accessed 14 September 2017).

<sup>343</sup> Law 42/2004 and Law 227/2006.

<sup>344</sup> Law 27/2007.

<sup>345</sup> Law 4/2001 as amended by Law 7/2006.

<sup>346</sup> Council of Europe, Compendium Cultural Policies and Trends in Europe - Country Profile Portugal, *Op. cit.*





Foundation, the Centro Cultural de Belém Foundation, the Museu do Douro Foundation, the Contemporary and Modern Art Foundation – Berardo Collection, etc.<sup>347</sup>

In general, cultural rights could be restricted. Article 18 of the Constitution provides that: “The law may only restrict rights, freedoms and guarantees in cases expressly provided for in the Constitution, and such restrictions must be limited to those needed to safeguard other constitutionally protected rights and interests.” Furthermore, the exercise of the rights, freedoms and guarantees may be suspended in the case of a state of siege or a state of emergency declared in the form provided for in the Constitution.<sup>348</sup>

### 3.7.2. Reflection of Cultural Elements in Civil Protection and Examples of Implementation in Disaster Management

There is no specific regulation or policy on the implementation of cultural rights in disaster management framework in Portugal. A dominant philosophy in the Portuguese civil protection and disaster management framework according to the Portuguese respondent is simply to render equal treatment to all citizens regardless of gender, age, religion or other cultural factors. Relief efforts are carried out in the same fashion. There might, however, be some special consideration based on some characteristics which are born out of a situation assessment and personal sensibility by the relief operatives. By law, there is no such obligation other than to provide good and quick relief and protection to all people with the same standards. Below, however, are examples reflecting cultural elements in this framework.

#### **a) Disaster communication in multiple languages including sign language**

The Portuguese National Authority for Civil Protection has chosen, since 2016, to provide warnings in English, on its website, but there is no obligation to do so. There is a strong commitment to expanding the number of languages (including sign language) on communication channels, but that is solely an organizational intention.

#### **b) Protection of cultural heritage or artefacts**

Law 107/2001 impacts the way responders act during a disaster and provides for the protection of national cultural assets during an emergency or national calamity.<sup>349</sup> There is a duty of warning authorities for the presence of a risk by the owner or holder of a distinct national asset.<sup>350</sup>

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<sup>347</sup> *Ibid.*

<sup>348</sup> Art. 19.

<sup>349</sup> See Arts. 15, 33, 75.

<sup>350</sup> See Art. 32.







### **c) Provision of dietary and healthcare needs in consideration of cultural diversity**

This kind of grouping is rather implied, perhaps based on the situational assessment as under the Constitution, citizens are equal, and their rights are universal. Providing differentiated care under gender or religion groups is a matter of on site evaluation by care providers, should it be needed and applicable.

### **d) Consideration of cultural diversity in terms of provisions of facilities for religion/faith manifestation**

There is no direct obligation to consider different provisions in this regard, but in respect to constitutional rights, care providers will act upon their own assessment on site.

### **e) Incorporating gender segregation, and/or maintain the family roles and cohesion as a cultural practice of the affected community**

Under constitutional rights, care providers are to help to maintain family cohesion.

### **f) Giving special attention or priority to vulnerable groups such as children, women, the elderly, the sick during disaster**

Special care of priority groups is implied. Rather than regulated or legislated, priority groups are considered as such in regard to how quickly they must receive care in the face of any given situation.

### **g) Attention to the needs of ethnic, indigenous, linguistic or other minority groups**

Since the main focus of care providers is to provide immediate and efficient care, adapting to the specificities of minority groups when providing relief is subject to the extent those specificities hinder relief operations or are needed for adequate relief provisioning.

### **h) Consultation with local/ethnic communities in the disaster planning and implementation**

The civil protection fundamental law only goes as far as municipalities in regard to administrative and political authorities. It does consider citizens as civil protection agent but does not refer to any other kind of “in between” organization or local communities. Very recent steps have been taken to address groups of volunteers, but that is yet to be regulated.

### **i) Educational aspect including training disaster manager on cultural competences**

Most disaster managers in Portugal have undertaken the European Civil Protection Mechanism Courses which include lessons on cultural awareness. Apart from that, cultural awareness or integration is not usually part of the local training. There are no specially trained contacts for different cultural groups.





#### **j) Protection against discrimination on cultural ground**

Article 13 of the Portuguese Constitution provides for the equality of every citizen socially and before the law. As such, no one shall be privileged, favoured, prejudiced, deprived of any right or exempted from any duty on the basis of ancestry, sex, race, language, place of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation.

### **3.8. Romania**

#### **3.8.1. National Integration of Cultural Aspects in the Legal System**

A clear and concise definition of culture in the context of human rights does not exist in Romania, but the notion of cultural heritage is defined in Law no. 182/2000.<sup>351</sup> Nevertheless, the Romanian Constitution guarantees a fundamental right to cultural identity as follows:

- (1) The State recognizes and guarantees the right of persons belonging to national minorities to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity.
- (2) The protection measures taken by the Romanian State for the preservation, development and expression of identity of the persons belonging to national minorities shall conform to the principles of equality and non-discrimination in relation to the other Romanian citizens.<sup>352</sup>

The Constitution also provides for other cultural rights such as the right to freedom of conscience (Article 29), freedom of expression (Article 30), guaranteed access to culture (Article 33), freedom of association (Article 40), the right to education (Article 32), and right to information (Article 31), etc.

Apart from the Constitution, other laws that promote culture and cultural rights include Law no. 53/2003 of the Labor Code; Emergency Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished; Law no. 202/2002 on equal opportunities and treatment between women and men, republished; Law no. 217/2003 on the prevention and combating of domestic violence as well as criminal law; Ordinance 43/2000 regarding archaeology; Law 182/2000 regarding movable heritage; Law 422/2001 regarding historical monuments among others. Romania has also ratified a number of international instruments

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<sup>351</sup> Law no. 182 of 25th of October 2000 Regarding the Protection of the movable National Heritage.

<sup>352</sup> Art. 6 of the Constitution of Romania.





relating to culture such as the Framework Convention for the Protection of National Minorities developed by the Council of Europe.

The Romanian Ministry of Culture is the main government body responsible for culture and cultural heritage.<sup>353</sup> There are also national commissions that assist the ministry in its duties such as the National Commission for Historical Monuments, the National Archaeological Commission, and the National Commission for Museums and Collections. Directorates for culture exist in the Counties.<sup>354</sup> A number of organizations also work in the area of promoting culture such as Equality Partnership Center, Association for the Promotion of Women in Romania – APFR, Association of Women in Romania – AFR, Resource Center for Ethnocultural Diversity,<sup>355</sup> Resource Center for Roma Communities, Intercultural Institute Timisoara, among others.

It is notable that although there is no overarching strategy regarding the notion of cultural implementation, there are, however, strategies regarding religious freedoms and minorities<sup>356</sup> and ethnical pathways in the context of human rights.<sup>357</sup>

The Romanian Constitution contains a provision on the restriction of rights and freedoms including cultural rights. Article 53 provides:

(1) The exercise of certain rights or freedoms may only be restricted by law, and only if necessary, as the case may be, for: the defence of national security, of public order, health, or morals, of the citizens' rights and freedoms; conducting a criminal investigation; preventing the consequences of a natural calamity, disaster, or an extremely severe catastrophe.

### 3.8.2. Reflection of Cultural Elements in Civil Protection and Examples of Implementation in Disaster Management

There is no dedicated Romanian disaster management legislation or regulation on implementation of cultural rights in disaster situations. There are, however, some examples, through a combination of legal sources, to show how cultural aspects have been reflected in the Romania disaster management framework as indicated below.<sup>358</sup>

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<sup>353</sup> [www.cultura.ro](http://www.cultura.ro) (accessed 25 September 2017).

<sup>354</sup> See [http://www.herein-system.eu/country?field\\_label\\_en\\_tid=181](http://www.herein-system.eu/country?field_label_en_tid=181) (accessed 25 September 2017).

<sup>355</sup> <http://www.edrc.ro/about.jsp> (accessed 25 September 2017).

<sup>356</sup> Law no. 489/2006 Concerning the Religious Freedom and the General Conditions of the Cults.

<sup>357</sup> See the new civil code law concerning the right to free expression, respect for the privacy and dignity of the human person, respect for the human being and its inherent rights.

<sup>358</sup> See for instance, Law 481/2004 on the organization of civil protection; Law 307/2006 on the organization of fire defence, and Government Emergency Ordinance 88/2001, modified through Government Emergency Ordinance





## **a) Disaster communication in multiple languages including sign language**

Government Decision 548/2008 provides the National Strategy of Communication and Public Information for Emergency Situations, as part of a national campaign which targets risk reduction in case of natural disasters and the preparedness of the people for emergency situations. This strategy distinguishes between targets in the rural area (local public administration authorities, local communities, large families, elderly families, forest and landowners), the urban area (central and local public administration authorities, urban communities, and leaders), business people, and active citizens. Accordingly, the messages must be adapted to each target group, according to their needs, their profile and to the specific type of risks, they are predisposed to.<sup>359</sup>

## **b) Protection of cultural heritage or artefacts**

Law no. 480/2004, reissued in 2008, states that the civil protection will include the protection of the population, material goods and cultural values and artefacts against the effects of disasters.<sup>360</sup> The protection of cultural values and artefacts in case of a military or non-military disaster is also considered in the law.<sup>361</sup> Some government policies for civil protection also include the preservation of cultural values and artefacts such as the National Strategy on the prevention of emergency situations, adopted through Government Decision 762 of 2008. It has, as one of the goals of the national emergency system, the protection of “material and cultural values”.<sup>362</sup>

## **c) Provision of dietary and healthcare needs in consideration of cultural diversity**

Respect for the dietary and healthcare needs of children, elderly people, sick people, and immigrants are observed in Romania, but no official norm regulates this approach. Concerning disaster, no specific provisions for dietary and healthcare needs are made in the legislation on disaster management. However, in a 2005 manual released by the Ministry of Health, there is a recommendation that in cases of refugee crises, their dietary needs must be ensured and that, if possible, “traditional dietary customs” should be maintained.<sup>363</sup>

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25/2004 on the creation of public services for emergency situations, as well as a number of lower level normative acts, such as, Ministerial Order 89/2013 on the prevention of Emergency situations.

<sup>359</sup> Government Decision 548/2008] on the approval of the National Strategy for Communication and Public Information in Emergency Situations.

<sup>360</sup> Art. 3.

<sup>361</sup> See Art. 9 (G).

<sup>362</sup> Government Decision 762 of 2008 on the Approval of the National Strategy on the Prevention of Emergency Situations.

<sup>363</sup> Nicolae Steiner, Dan Mănăstireanu, *Managementul medical al dezastrelor* [The medical management of disasters] , (Bucharest: 2005), p. 323.



**d) Consideration of cultural diversity in terms of provisions of facilities for religion/faith manifestation**

The manifestation of religion and faith is respected by the Romanian authorities, as minority communities can organize places for prayers/ churches. While no mention is made of specific provisions of facilities for manifesting one's religion in the laws on disaster management, the issue emerges in the Interior Ministry's Order 269/2007, which regulates conditions to be met by centres housing refugees. According to Art 2.1, these centres must include libraries, visiting spaces and prayer rooms.<sup>364</sup>

**e) Incorporating gender segregation, and/or maintain the family roles and family cohesion as a cultural practice of the affected community**

There seems to be a common tradition to respect the traditions of minority communities, including family roles and family cohesion in Romania, but not official document stipulates this concretely. However, Interior Ministry's Order 269/2007 mentions that separate sports clubs for men and women can be organized in refugee centres.

**f) Giving special attention or priority to vulnerable groups such as children, women, the elderly, the sick during disaster**

In Romania, common ethics will dictate the prioritization of assistance to children, women, elderly persons and people with special needs, however, it is not stated as such in any official document concerning civil defence.

**g) Attention to the needs of ethnic, indigenous, linguistic or other minority groups**

Minority protection is granted and guaranteed by the Romanian Constitution in all situations (including in disasters).<sup>365</sup>

**h) Consultation with local/ethnic communities in the disaster planning and implementation**

The fact that Romanian government has included in the policies for disaster management the notion of volunteer or active citizens, which could be interpreted to be the start of a more comprehensive integration of the local community into the disaster management plan.<sup>366</sup>

**i) Educational aspect including training disaster manager on cultural competences**

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<sup>364</sup> Order no 269/2007 on the Provision of Material Assistance to Persons Housed in Centres under the Coordination of the Romanian Office for Immigrations.

<sup>365</sup> See Country Report Regarding the Progress of Romania for Integration in the EU, [www.infoeuropa.ro](http://www.infoeuropa.ro) (accessed 6 October 2017).

<sup>366</sup> See Law no. 480/2004 reissued in 2008; Law no. 139/1995, 524/2004, HG 2288/2004.





Training for Romanian disaster managers at both the national level and through the EU Civil Protection Mechanism program includes cultural awareness and cultural integration.

**j) Protection against discrimination on cultural ground**

The Romanian Constitution guarantees the right of equality<sup>367</sup> and provides that “Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin.”<sup>368</sup>

## 3.9. Serbia

### 3.9.1. National Integration of Cultural Aspects in the Legal System

Although the Serbian Constitution from 2006 guarantees different cultural rights to the citizens, the term culture has not been defined explicitly with respect to fundamental rights. Precisely, Part II of the Constitution contains human and minority rights as follows: Basic principles (Articles 18 – 22); Human rights and Freedoms (Articles 23-74); Minority rights (Articles 75-81). Article 48 of the Constitution encourages understanding, appreciation and respect of differences that exist in the context of the ethnic, cultural, language or religious identity of the citizens. It is noteworthy that the Serbian legal system pays special attention to the rights of ethnic minorities due to its historic origin. Serbia has ratified a number of international instruments on culture such as UNESCO Convention on the preservation of intangible cultural heritage (Paris, 2003) (ratified in 2010); Council of Europe Framework Convention on the value of cultural heritage for society (Faro, 2005) (ratified in 2010), etc.<sup>369</sup>

Besides the Constitution, cultural implementation or realization of cultural rights are considered in other laws such as the Law on Heritage Protection;<sup>370</sup> and the Law on the restoration of cultural-historical heritage, and the boosting of the development of Sremski Karlovci,<sup>371</sup> the Law

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<sup>367</sup> Art. 16.

<sup>368</sup> Arts. 4 (2). See also Law No. 48/2002 (16/1/2002) On the Prevention and Sanction of All Forms of Discrimination – (Ordinance Amendments n. 431/2000).

<sup>369</sup> <http://www.herein-system.eu/serbia-country-profile> (accessed 16 September 2017).

<sup>370</sup> RS Official Gazette No 71/94.

<sup>371</sup> RS Official Gazette No 37/91, 53/93, 67/93 and 48/94, as amended.





on the Protection of Rights and Freedoms of National Minorities,<sup>372</sup> the Law on Culture,<sup>373</sup> among others.<sup>374</sup> For example, the Law on the Protection of Rights and Freedoms of National Minorities regulates the implementation of the rights of ethnic minorities and recognizes culture as one of the four basic areas of human rights.

The Law on Culture contains principles of cultural development and the general interest in culture. Under this law, the Republic of Serbia shall ensure the realization of the public interest in culture and the implementation of cultural policy defined as a set of objectives and measures that encourages cultural development based on a number of principles, including: the preservation of cultural and historical heritage; freedom of expression in the cultural and artistic creation; respect for the cultural and democratic values of the European and national traditions and cultural diversity and intercultural dialogue.<sup>375</sup> Article 5 states that the National Minority Councils shall ensure the implementation of the cultural policy of ethnic minorities and, in accordance with the law, participate in the decision-making process or decide independently on certain issues related to their culture, establish cultural institutions and legal entities related to cultural issues. Also, the encouragement of the cultural activity of people with disabilities, as well as the availability of all cultural content to this population, form part of the general interests in culture.<sup>376</sup>

The Autonomous provinces have the right to implement cultural policy in their territory and regulate matters of provincial interest in the field of culture, within the rights and obligations established by the Constitution. Units of local government also have the right to implement cultural policy. Some institutions work to promote culture in Serbia, while the Minister of Culture and Information has the overall responsibility for culture. There is the National Council for Culture as well as the National Councils of Ethnic Minorities. The GRAD European Centre for Culture and Debate is of the NGOs that work in this area.<sup>377</sup>

In general, human and minority rights guaranteed by the Serbian Constitution may be restricted by the law according to the Constitution to the extent necessary to meet the constitutional purpose of restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right.<sup>378</sup> This applies to cultural rights. It is worthy to note that Serbia had a

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<sup>372</sup> Official Gazette of FRY No. 11 of 27 February 2002, Official Gazette of SM No. 1/2003, and Official Gazette of the Republic of Serbia No 72/2009.

<sup>373</sup> RS Official Gazette No 72/2009.

<sup>374</sup> See Council of Europe/ERICarts, "Compendium of Cultural Policies and Trends in Europe, 17th edition", 2015 [http://www.culturalpolicies.net/down/serbia\\_022015.pdf](http://www.culturalpolicies.net/down/serbia_022015.pdf) (accessed 16 September 2017).

<sup>375</sup> See Art. 3.

<sup>376</sup> Art. 6.

<sup>377</sup> [http://www.gradbeograd.eu/info\\_en.php](http://www.gradbeograd.eu/info_en.php) (accessed 16 September 2017).

<sup>378</sup> Article 20 of the Constitution of Serbia.





chequered history of cultural rights violation in the past.<sup>379</sup> Recently, it has been pursuing a cultural policy of transformation in several areas.

One on-going debate relating to culture centres on the media and the languages of ethnic minorities. This emerged in relation to the interpretations of the Law on Public Information and Media from 2014<sup>380</sup> which ordered the mandatory privatization of the remaining state-owned media in Serbia until July 1, 2015. The Coordination of National Councils of 18 national minorities requested from the Ministry of Culture and Information to exempt the local and regional media that broadcast the program in languages of ethnic minorities from the mandatory privatization. The National Councils argued that privatization may lead to the disappearance of media in minority languages, especially in Central Serbia, which would reduce the constitutionally guaranteed minority rights. The Serbian government, however, claimed that there are sufficient guarantees for the survival of the minority media, as well as for the realization of the rights of ethnic minorities to information in their language and the policy will not affect them.<sup>381</sup>

### 3.9.2. Reflection of Cultural Elements in Civil Protection and Examples of Implementation in Disaster Management

There is no specific instrument addressing the implementation of cultural rights in disaster management in Serbia. However, some examples of cultural aspects could be seen in the framework from various sources as shown below.

#### **a) Disaster communication in multiple languages including sign language**

According to Article 11 of the Law on the Official Use of Languages and Scripts,<sup>382</sup> if the percentage of an ethnic minority on a territory in Serbia reaches 15% of the total population the language of that minority has to be officially introduced into equal official use (including disaster warnings and alerts). For example, on the territory of the Autonomous Province of Vojvodina, besides the Serbian language, the official languages include Hungarian, Slovak, Croatian, Romanian and Ruthenian languages and their respective scripts.<sup>383</sup>

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<sup>379</sup> See Council of Europe/ERICarts, "Compendium of Cultural Policies ", *Op. cit.*

<sup>380</sup> RS Official Gazette No 83/2014, 58/2015, 12/2016.

<sup>381</sup> <http://www.novinarska-skola.org.rs/sr/wp-content/uploads/2015/10/PRIVATIZACIJA-MEDIJA-NA-JEZICIMA-MANJINA.pdf>;

<http://www.slobodnaevropa.org/a/srbija-neizvesna-sudbina-manjinskih-medija/27435652.html>;

<http://www.fairpress.eu/rs/blog/2017/03/04/mediji-civilnog-sektora-alternativa-srbije/> (accessed 28 March 2017).

<sup>382</sup> RS Official Gazette No. 45/91, 53/93, 67/93, 48/94, 101/2005 and 30/2010.

<sup>383</sup> The Statute of the AP Vojvodina ("Official Journal of the APV", No. 20/2014), Art. 24, paragraph 1; Provincial Assembly Decision on regulating certain issues regarding the official use of languages and alphabets of ethnic







The Law on Emergency Situations<sup>384</sup> does not specify disaster warnings on different languages as an obligation. However, Article 5 of this Law states that “Government bodies, autonomous province bodies, and local government units must ensure that the population in the area that is under the risk of a disaster is informed of the danger”. Therefore, in practice, this matter should be resolved within local government units in coordination with emergency headquarters and in line with the Law on the Official Use of Languages and Scripts.

## **b) Protection of cultural heritage or artefacts**

Article 92 of the Law on Emergency Situations provides among others, the need for special protection of cultural property and property of historic importance. The Law further stipulates that during the assessment and early warning phase of the emergency, all the threats to the cultural property need to be reported.<sup>385</sup> Article 62 considers the evacuation of people and removal of the cultural artefacts in the existing shelters, as well as the adaptation of new spaces and areas which could be used as shelters/storage.

## **c) Provision of dietary and healthcare needs in consideration of cultural diversity**

The questions of dietary and healthcare needs in consideration of cultural diversity are not covered by any law or official policy. In most cases, those questions are handled by healthcare institutions with different recommendations, which are not obligatory per se. However, in practice, local government units in cooperation with emergency headquarters try to meet all the needs of people during and after a disaster, including their dietary and healthcare needs.

## **d) Consideration of cultural diversity in terms of provisions of facilities for religion/faith manifestation**

The Law on Emergency Situations does not recognize religious needs of people during/after a disaster and therefore, does not discuss these matters at all. In practice, if people demonstrate such kind of needs, local government units in cooperation with emergency headquarters has jurisdiction to meet those needs.

## **e) Incorporating gender segregation, and/or maintain the family roles and cohesion as a cultural practice of the affected community**

No data regarding this matter is seen from regulation or practice.

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minorities in the Autonomous Province of Vojvodina ("Official Journal of the APV", No. 8/2003, 9/2003, 18/2009). (Also in Preševo, Bujanovac and Medveđa, besides Serbian language, the official language is Albanian; in Dimitrovgrad and Bosilegrad it is Bulgarian and in Novi Pazar, Sjenica, Tutin and Prijepolje it is Bosnian language.

<sup>384</sup> RS Official Gazette No. 111/2009, 92/2011, 93/2012.

<sup>385</sup> Art. 103.





**f) Giving special attention or priority to vulnerable groups such as children, women, the elderly, the sick during disaster**

The Law on Emergency Situations provides for the groups for priority assistance:

1. Mothers with children younger than 15 years old (or persons who are legal custodians of minors under 15 years old)
2. Pregnant women
3. People with health problems, people with special needs and people who need care and help from others
4. People younger than 16 years old, men older than 65 and women older than 60 years.<sup>386</sup>

**g) Attention to the needs of ethnic, indigenous, linguistic or other minority groups**

Article 5 of the Law on Emergency Situations states: “Everyone has the right to protection from accidents and disasters caused by natural or other hazards”, and does not make any difference between the majority and minority groups. There is no precise data on this matter from practice; however, in most of the cases, in areas that are multilingual, first responders do speak the language of the ethnic minority group living in the area.

**h) Consultation with local/ethnic communities in the disaster planning and implementation**

The Law on Emergency Situations does not stipulate that local/ethnic communities should be consulted in the disaster planning and implementation, so that usually does not happen in practice unless their representatives are involved in the political or other form of social life within the local community.

**i) Educational aspect including training disaster manager on cultural competences**

Serbian Sector for Emergency Situations (within the Ministry of Interior) has established the National Emergency Training Centre that trains professional disaster respondents (such as fire-fighting units) as well as citizens participating in the civil protection. Foreign citizens can also be trained within this centre, following the rules established by bilateral or multilateral agreements.<sup>387</sup> It is not clear how far the whole curriculum of the Training

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<sup>386</sup> Art. 57.

<sup>387</sup> Since 2006, the United States Agency for International Development (USAID) provides assistance to this centre. At present, 80 municipalities in the Republic of Serbia participate in the training program.





Centre incorporates cultural aspects, as the focus of the training has been mostly put on standards and skills in saving people and property.<sup>388</sup>

**j) Protection against discrimination on cultural ground**

Article 21 of the Serbian Constitution prohibits all direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability.

## 3.10. Spain

### 3.10.1. National Integration of Cultural Aspects in the Legal System

There is no legal definition of culture in Spain in the context of human rights. The concept of national culture, for instance, is an amalgam of cultures of different social groups related to a series of commonly shared characters. The Spanish Constitution distinguishes culture concepts in two paragraphs under the Preamble, one in the fourth paragraph (particularistic notion) and the other in the fifth paragraph (more general notion):

Fourth paragraph: “Protect all Spaniards and peoples of Spain in the exercise of human rights, of -their culture and traditions, languages and institutions.”

Fifth paragraph: “Promote the progress of culture and of the economy to ensure a dignified quality of life for all.”

The Constitution also contains a number of fundamental rights that are reflective of culture such as: Ideological and religious freedom (Article 16); the right to personal freedom (Article 17); the right to intimacy, inviolability of the home (Article 18); freedom of residency and movement (Article 19); freedom of expression (Article 20); the right to meet (Article 21); the right of association (Article 22); the right to participate (article 23); freedom to teach (article 27).

The majority of the rights recognized in the Constitution that are related to access to culture are not seen as fundamental rights but as guiding principles of social and economic policy as mentioned from Articles 39 to 52. These guiding principles have fewer guarantees than fundamental rights, and they depend on the development of subsequent legislation in order to be enforceable before the ordinary courts. However, Articles 44 and 46 are very important in the context of culture. Article 44 introduces the promotional and the protection principle of access

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<sup>388</sup> The respondent suggested that the cultural competences are not processed unless required by USAID.





the culture. Article 46 for example, states: “The public authorities shall guarantee the preservation and promote the enrichment of the historic, cultural and artistic heritage of the peoples of Spain and of the property of which it consists, regardless of its legal status and its ownership. Offences committed against this heritage shall be punished under criminal law.”

There are also laws that implement and promote cultural integration. Cultural heritage management is regulated by Law 16/1985 on the Spanish Historical Heritage and regional legislation. The 257/2012 Royal Decree on the Basic Structure of the Ministry of Education, Culture and Sport establishes the scope, operation and governing structure related to culture. The Royal Decree 367/2007 establishes the National Commission on the Development and Promotion of Intercultural Dialog, which is responsible for coordinating actions aimed at uniting the society in its diversity, encouraging understanding and mutual knowledge through culture, among others. Other relevant laws include: the Intellectual Property Act, various regional legislation on language, the Cinema Act, among others.<sup>389</sup> Spain has also ratified a number of international instruments on culture such as Convention for the Protection of Cultural Property in the Event of Armed Conflict, European Cultural Convention, Convention Concerning the Protection of World Cultural and Natural Heritage, among others.<sup>390</sup>

In general, responsibility for the promotion of culture is decentralised and shared between the national, regional and municipal authorities. Currently, Ministry of Education, Culture and Sport is responsible for culture policy at the national level, while department on education, culture, etc., have been established for the regions. Various agencies also engage in promotion of culture in Spain such as the Acción Cultural Española (AC/E).<sup>391</sup>

There is a constitutional limitation on certain rights. Article 55 of the Constitution provides:

1. The rights recognised in Articles 17 and 18, clauses 2 and 3, Articles 19 and 20, clause 1, subclauses, a) and d) and clause 5, Articles 21 and 28, clause 2, and Article 37, clause 2, may be suspended when the state of emergency or siege (martial law) is declared under the terms provided in the Constitution. Clause 3 of Article 17 is excepted from the foregoing provisions in the event of the proclamation of a state of emergency.
2. An organic law may determine the manner and the circumstances in which, on an individual basis and with the necessary participation of the Courts and proper Parliamentary control, the rights recognised in Articles 17. Clause 2, and 18, clauses 2 and 3, may be suspended as regards specific persons in connection with investigations of the activities of armed bands or terrorist groups.

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<sup>389</sup> See Council of Europe/ERICarts, "Compendium of Cultural Policies and Trends in Europe, 17th edition", 2015, [http://www.culturalpolicies.net/down/spain\\_032015.pdf](http://www.culturalpolicies.net/down/spain_032015.pdf) (accessed 6 October 2017).

<sup>390</sup> <http://www.herein-system.eu/spain-country-profile> (accessed 6 October 2017).

<sup>391</sup> <https://www.accioncultural.es/en/presentation> (accessed 6 October 2017).





On the other hand, in the Article 16 of the Spanish Constitution, freedom of ideology, religion and worship of individuals and communities is guaranteed, with no other restriction on their expression than may be necessary to maintain public order as protected by law.

Attacks against the cultural rights leading to litigation are rare in the present day Spain. However, there have been some examples in the media where actions have been taken to prevent the construction of a mosque.<sup>392</sup> Anti-bullfighting acts may also be classified as infringement of cultural right since bullfighting is considered intangible cultural heritage

### 3.10.2. Reflection of Cultural Elements in Civil Protection and Examples of Implementation in Disaster Management

#### a) Disaster communication in multiple languages including signs

The 112 emergency service of the Valencian Community has a continuous attention in the official languages of its region and additionally, in English, French and German.<sup>393</sup> According to the European Parliament Resolution 5/10/2011A, access to people with hearing impairment to the 112 service is provided by alternative ways to communicate such as using a sign language interpreter and sign language guide-interpreter service. At the request of the people concerned, this service is provided in both Valencian and Spanish. This service may be applied by any deaf people or public bodies that need a sign language interpreter or a sign language guide-interpreter in Spanish.

#### b) Protection of cultural heritage or artefacts

The National Emergency Plan and Risk Management in Cultural Heritage has three main goals: to devise measures or procedures in order to prevent and protect cultural heritage for the possibility of a catastrophe; to establish in these cases an action methodology to minimize the damages that could occur and to devise the instruments of action and coordination mechanisms within the different institutions involved in emergency situations and those that affect the safety of people and properties.<sup>394</sup>

The specific objectives of the National Emergency Plan and Risk Management in Cultural Heritage include to identify the phenomena and natural hazards that can affect seriously the cultural goods, as well as the probability of occurrence in terms of geographical,

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<sup>392</sup> They buried a pig – an impure animal for Islam - on the plot where a mosque was planned to be built. Events of this type have been recorded, in isolation, in other Spanish regions during the last years. It has always been considered as unrelated incidents. But we must take into account that these crimes are classified as hate crimes and thus are punishable.

<sup>393</sup> Law 3/2010, November 23<sup>rd</sup>, Protection and Emergencies Management.

<sup>394</sup> See Law 2/1985 on Civil Protection.





climatological, geological, biological parameters, and to devise prevention and protection measures of the cultural goods in order to protect them from the risks among others.

**c) Provision of dietary and healthcare needs in consideration of cultural diversity**

No data was found for this example.

**d) Consideration of cultural diversity in terms of provisions of facilities for religion/faith manifestation**

No data was found for this example.

**e) Incorporating gender segregation, and/or maintain the family roles and cohesion as a cultural practice of the affected community**

The Territorial Plan of Emergency of the Valencian Region, incorporates in one of its annexes the protection to the victims' families by facilitating adequate supplies, medical and psychological support, a place to stay for the family and an area for their religious practice.<sup>395</sup>

**f) Giving special attention or priority to vulnerable groups such as children, women, the elderly, the sick during disaster**

There is no legislation. Through internal protocols and social services of the government, this responsibility is carried out. The Government decides on the level of support they need, after the assessment of individual cases.

**g) Attention to the needs of ethnic, indigenous, linguistic or other minority groups**

No data was found for this example.

**h) Consultation with local/ethnic communities in the disaster planning and implementation**

The Law 17/2015 on the National Civil Protection System, strengthens the mechanisms that enhance and improve the functioning of the national citizens' protection system in the event of emergencies and disasters. It also regulates fundamental rights and duties of citizens in the field of civil protection, as well as principles of action of the public authorities with respect to these rights and duties, which will be specified in certain aspects by its development rules. The intention of this regulation and its location in the legal text is to emphasize that the citizen is not only the target of public action aimed at preventing and dealing with emergency situations but the center of the civil protection system and that they have rights and duties mentioned in the Constitution. The law

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<sup>395</sup> See Decree 119/2013 of the Valencian Consell that approves the Territorial Plan of Emergency of the Valencian Region, in its Annex III, 3. Procedures in Emergency Situation with Multiples Victims.





establishes that all citizens have the right to be informed about the important collective risks that affect them, which forces the public authorities to disseminate the available measures to counter them, to recommend conduct to prevent them and to give maximum citizen participation in planning and implementing actions in the face of emergencies, which is also established as a right. The civil protection volunteers have always played an important part in civil protection, which is complementary and auxiliary to the corresponding public functions.

**i) Educational aspect including training disaster manager on cultural competences**

Although this aspect of training could be obtained through the EU Civil Protection Mechanism, there is no dedicated personnel of the emergency management with special training in attending different cultural groups.

**j) Protection against discrimination on cultural ground**

The Spanish Constitution establishes that all citizens are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.

## 3.11. The United Kingdom

### 3.11.1. National Integration of Cultural Aspects in the Legal System

Strictly speaking, there is no uniform legal definition of culture in the UK, rather, culture is recognized as an amorphous concept, having many diverse shades of meaning in different contexts, so that an over-arching attempt to define it legally is not seen as necessary or desirable. In the context of guidelines issued by the UK Cabinet Office in 2005 for instance, on responding to the needs of faith communities in major emergencies, it is defined as: “An evolving mix of values, lifestyles and customs derived from social heritage.”<sup>396</sup> The Human Rights Act 1998 which is the main human right instrument in the UK does not refer to culture or the right to participate in cultural life as used in ICESCR. It, however, contains the following rights that reflect cultural expressions: the right to freedom of religion; the right against discrimination; freedom of expression; freedom of association; the right to education; the protection of minorities. In some cases, common law continues to provide certain rights not recognized as such in the ECHR, for

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<sup>396</sup> Home Office and Cabinet Office, *The Needs of Faith Communities in Major Emergencies: Some Guidelines*, (2005), p.4.





example, the right to trial by jury (deriving from the 1215 Magna Carta) for serious criminal offences.

The Copyright, Designs and Patents Act 1988, also protects cultural expressions by providing authors with a bundle of exclusive rights such as the right to reproduction. Other laws protecting cultural elements include the Dealing in Cultural Objects (Offences) Act 2003; National Heritage Act (1983, amended 2002); Equality Act 2010, Historic Buildings and Ancient Monuments Act 1953 (Part I).

The UK has signed and ratified a number of international instruments relevant to culture including the Granada Convention of 1985 (ratified November 1987); Valletta Convention of 1992 (ratified September 2000); Florence Convention of 2000 (ratified November 2006), among others. It has also signed and ratified the ICESCR, but has not incorporated it into its national law.<sup>397</sup> The UK participates in the periodic review process by the UNCESCR set up under the Covenant concerning the ongoing realization of those rights. It also has established an independent body, the Equality and Human Rights Commission (EHRC), responsible for 'encouraging good practice in relation to human rights'.<sup>398</sup> This role extends to assessing and reporting on the UK's progress in implementing rights in international treaties to which it is a party, i.e. including the ICESCR. However, there is no concrete policy as such to implement cultural rights, which are seen as aspirational and non-concrete in character compared to civil and political rights.<sup>399</sup>

But there are several bodies that work in the area of promotion and protection of culture such as the Department for Culture Media and Sport (DCMS) which is the central UK Government department responsible for policy on arts, media, sport, and the historic environment in England.<sup>400</sup> There is also the Historic England (formerly English Heritage) which is a Non-departmental Public Body sponsored by DCMS and is the Government's statutory adviser on the historic environment.<sup>401</sup> Furthermore, the Department for Communities and Local Government (DCLG) is responsible for policy and legislation on housing, planning, communities and local

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<sup>397</sup> Ed Bates, "The United Kingdom and the International Covenant on Economic, Social and Cultural Rights" in Mashood Baderin and Robert McCorquodale, eds, *Economic, Social, and Cultural Rights in Action* (Oxford: Oxford Scholarship, 2009) 257 at 259.

<sup>398</sup> See s. 9(1)(b) of the Equality Act 2010.

<sup>399</sup> See further the 2004 Report on the ICESCR of the Parliamentary Joint Select Committee on Human Rights, <https://publications.parliament.uk/pa/jt200304/jtselect/jtrights/183/183.pdf> (accessed 9 October 2017); Hasan Bakhshi and Sturat Cunningham, *Cultural Policy in the Time of the Creative Industries* (June 2016) [http://www.nesta.org.uk/sites/default/files/cultural\\_policy\\_in\\_the\\_time\\_of\\_the\\_creative\\_industries\\_.pdf](http://www.nesta.org.uk/sites/default/files/cultural_policy_in_the_time_of_the_creative_industries_.pdf) (accessed 9 October 2017).

<sup>400</sup> <https://www.gov.uk/government/organisations/department-for-culture-media-sport> (accessed 9 October 2017).

<sup>401</sup> <https://historicengland.org.uk/> (accessed 9 October 2017).







government.<sup>402</sup> It relates to heritage as it makes legislation and policy on spatial planning. The Equality and Human Rights Commission is responsible for protecting, enforcing and promoting equality.<sup>403</sup>

Furthermore, legislation is scrutinized for its impact on human rights (including economic social and cultural rights) by the Parliamentary Joint Committee on Human Rights. In addition, under Section 149 of the Equality Act 2010, public authorities are required, when exercising their functions, to “have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it”. The relevant protected characteristics are defined by Section 149(7)) including age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

As noted earlier, the cultural rights set out in the ICESCR are not regarded as being directly enforceable – nor has the UK ratified the Optional Protocol to allow individuals or groups to petition the UNCESCR. Instead, the rights are given partial protection via the incorporation of the ECHR into UK law (under the HRA 1998) and in other national legislation. Although there is the duty on public authorities to consider equality issues in relation to minority or discriminated subgroups under the Equality Act 2010, this duty is only one of due regard – thus they may choose not to implement equality-promoting measures if outweighed by countervailing public interests. Thus, public authorities can interfere with the right to manifest one’s thoughts, belief and religion for example, when they can show that their action is lawful, necessary and proportionate in order to protect public safety, public order, health or morals, and the rights and freedoms of other people.<sup>404</sup>

There have been various cases where an infringement has been found to a right that could be defined as a cultural right. For instance, in *R (Cushnie) v Secretary of State of Health*,<sup>405</sup> a disabled asylum seeker successfully challenged the National Health Service (NHS) charging policy in respect of his NHS medical care, based on the failure of the Department of Health to adequately consider the impact of the policy on disabled persons (as required by Section 149 of the Equality Act 2010). In *Chapman v. The United Kingdom*,<sup>406</sup> where a decision by UK national authorities that

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<sup>402</sup> <https://www.gov.uk/government/organisations/department-for-communities-and-local-government> (accessed 9 October 2017).

<sup>403</sup> <https://www.equalityhumanrights.com/en> (accessed 11 September 2017).

<sup>404</sup> EHRC, “Article 9: Freedom of thought, belief and religion”, <https://www.equalityhumanrights.com/en/human-rights-act/article-9-freedom-thought-belief-and-religion> (access 11 September 2017).

<sup>405</sup> [2014] EWHC 3626 (Admin).

<sup>406</sup> (Application no. 27238/95) (18 January 2001).





denied a Gypsy family permission to site caravan on land they owned was challenged in the ECHR to determine among others whether there was a violation of the right to enjoy the best state of physical and mental health; whether there was a violation of the prohibition of discrimination; and whether there is special obligation on the UK regarding vulnerable and minority groups. The majority accepted that there had been an interference with the enjoyment of a home, as well as with private and family life since what was in issue was a traditional way of life. This way of living includes not only the right to have a certain kind of home but also the right to maintain an identity as a Gypsy and lead a life in accordance with that tradition. The Court held that Article 8 implied positive state obligations to facilitate the Gypsy way of life. However, in the present case, it applied the exception of Article 8 (2) that the interference was “necessary in a democratic society”, since the land inhabited by the Gypsy family was the subject of environmental protection and therefore a wide margin of discretion was to be accorded to national authorities in planning issues.

### 3.11.2. Reflection of Cultural Elements in Civil Protection and Examples of Implementation in Disaster Management

The key UK legislation dealing with emergency/disaster management is the Civil Contingencies Act 2004, which emphasizes decentralized local-level responses by relevant municipal authorities, and the key rescue services (police, fire brigade, ambulance service) to most emergencies. It does not have a dedicated part on implementation of cultural rights in emergency, however, the Humanitarian Assistance Strategic Guidance and the Humanitarian Assistance in Emergencies: non-statutory guidance on establishing Humanitarian Assistance Centres offer important directives on cultural aspects. A key strategic (and for higher level emergencies, tactical) role is accorded to the Cabinet Office Briefing Room (COBR), to coordinate the operations of various government departments, and as part of this coordination, the Cabinet Office (Civil Contingencies Secretariat) has issued detailed non-statutory guidance to the key responders in emergency situations (the rescue services and local authorities), which include inculcating awareness of the humanitarian aspects of emergencies,<sup>407</sup> and offering best practice on a number area that are culturally-related.<sup>408</sup>

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<sup>407</sup> See Cabinet Office, Human Aspects in Emergency Management, October 2016.

<sup>408</sup> See Cabinet Office, Guidance on part 1 of the Civil Contingencies Act 2004, its associated regulations and non-statutory arrangements - Emergency Preparedness, <https://www.gov.uk/government/publications/emergency-preparedness>; National Recovery Guidance: Humanitarian Issues (2013) <https://www.gov.uk/guidance/national-recovery-guidance-humanitarian-aspects#contents>; Human Aspects in Emergency Management Guidance on supporting individuals affected by emergencies (2016); Guidance for staff of responder agencies, particularly senior officers or managers involved in emergency response and recovery preparations - Emergency response and recovery (2013), <https://www.gov.uk/guidance/emergency-response-and-recovery#humanitarian-assistance-meeting-the-needs-of-those-affected>.





## **a) Disaster communication in multiple languages including signs**

The guidance on Emergency Response and Recovery describes two statutory duties to warn/alert in emergency: duty to inform the public about the risks of emergencies affecting a local area and how responders are prepared to deal with them should they occur, and the duty to maintain arrangements to warn the public and provide appropriate advice and information if an emergency is likely to occur or has occurred.<sup>409</sup> Elsewhere, it is provided that "People who have difficulty understanding the message because they use a different language may require pre-prepared print or broadcast messages in their own language."<sup>410</sup> A further consideration of providing interpretations and translators for other languages is included in the Guidance.

## **b) Protection of cultural heritage or artefacts**

There are several approaches to protecting historic environment – buildings, archaeological remains, historic landscapes – and on cultural property contained in museums, art galleries, libraries, archives in the UK's disaster management framework. This include a number of regulations and guidance.<sup>411</sup> The Planning Policy Guidance (PPG) 15: Planning and the Historic Environment, provides government policies for the identification and protection of historic buildings (including the listing of buildings of special architectural or historic interest), conservation areas, and other elements of the historic environment, such as World Heritage Sites, Registered Historic Parks and Gardens, Historic Battlefields, and explains the role played by the planning system in their protection.<sup>412</sup>

Fire and Rescue Authorities are required by the Fire and Rescue National Framework to produce a local Integrated Risk Management Plan that sets out the authority's strategy, in collaboration with other agencies, for reducing the commercial, economic and social impact of fires and other emergency incidents, including on heritage environment and cultural properties.<sup>413</sup> Also, the Business Continuity Planning for Museums and Galleries Guidance includes a plan on having a dedicated recovery team available to evacuate

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<sup>409</sup> A Non-statutory Guidance Accompanying the Civil Contingencies Act 2004 (2013) p. 136-137, see also the Cabinet Office Guidance, Human Aspects in Emergency Management (2016) notes at p. 4.

<sup>410</sup> Cabinet Office, Guidance on part 1 of the Civil Contingencies Act 2004, its associated regulations and non-statutory arrangements (Emergency preparedness), Chapter 7: "Communicating with the Public" (March 2012), p. 36.

<sup>411</sup> See Cabinet Office, National Recovery Guidance: Infrastructure Issues (2013), <https://www.gov.uk/guidance/national-recovery-guidance-infrastructure-issues#historic-environment> (accessed 9 October 2017).

<sup>412</sup> Published 1994.

<sup>413</sup> Department for Communities and Local Government, IRMP Steering Group Integrated Risk Management Planning: Policy Guidance Protection of Heritage Buildings and Structures (2008).





exhibits to a safe location in the event of an incident.<sup>414</sup> A risk assessment of the likelihood of an incident to affect museum or gallery are made by public bodies themselves which would trigger the evacuation.

Furthermore, the publication *Flooding and Historic Buildings* by the Historic England provides guidance for those involved with managing historic buildings on ways to establish flood risk and prepare for possible flooding by installing protection measures. It also recommends actions to be taken during and after a flood to minimise damage and risks.<sup>415</sup>

### **c) Provision of dietary and healthcare needs in consideration of cultural diversity**

The UK's Human Aspects in Emergency Management Guidance for supporting individuals affected by emergencies recognises that an emergency may involve diverse communities with different and specific needs and advice local responders and planners to identify the specific needs of communities who may be affected by an emergency in their area, taking into account factors such as culture, language and faith to ensure that services provided are suitable for all.<sup>416</sup>

Specifically, the Guidelines on the Need of Faith Communities in Major Emergencies states:

To understand the needs of the different faith and belief communities in the event of a major incident, it is important to take into consideration specific features and requirements of the main faith and belief groups in relation to:

- Language
- Diet including fasting
- Dress
- Physical contact, medical treatment, hospital stays, rest centres
- Daily acts of faith and major annual events<sup>1</sup>
- Dying and death customs
- Resources (e.g. important texts, facilities communities can offer)

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<sup>414</sup> Department for Digital, Culture, Media & Sport, Business continuity planning for museums and galleries (2013) <https://www.gov.uk/guidance/business-continuity-planning-for-museums-and-galleries#evacuation-plans> (accessed 9 October 2017).

<sup>415</sup> Historic England, *Flooding and Historic Buildings* (2015).

<sup>416</sup> Cabinet Office, Human Aspects in Emergency Management, *Op. cit.*, p. 4.





- Names.<sup>417</sup>

Also, during an evacuation, the *Evacuation and Shelter Guidance* indicates that the needs of all groups in the community should be considered when providing consumables and that faith communities may be able to advise on, or help with, the provision of food if required.<sup>418</sup>

#### **d) Consideration of cultural diversity in terms of provisions of facilities for religion/faith manifestation**

As indicated above, the UK's Human Aspects in Emergency Management Guidance and the Guidelines on the Need of Faith Communities in Major Emergencies contains provisions that consider the religious and other spiritual aspects of the disaster victims.

Furthermore, the Emergency Response and Recovery Non-statutory guidance accompanying the Civil Contingencies Act 2004 provides that: "Depending on the faith, religion, culture and ethnicity of the deceased or bereaved, there may also be concern about how the deceased are managed, and the timing of funeral arrangements."<sup>419</sup>

#### **e) Incorporating gender segregation, and/or maintain the family roles and family cohesion as a cultural practice of the affected community**

There is a lot of emphasis on assessing the needs of the affected community by the responders and how to channel assistance in the best ways to meet those needs. The Emergency Response and Recovery guidance provides in this regard for setting up a friends and family reception centres (FFRCs) which can help to reunite family and friends with survivors as well as for meeting the needs of family members of the deceased while recovering or investigation is ongoing.<sup>420</sup> Other practices such as separating men and women on the religious or cultural ground also find expression in the various guidelines already cited.

#### **f) Giving special attention or priority to vulnerable groups such as children, women, the elderly, the sick during disaster**

Under the UK's Human Aspects in Emergency Management Guidance, there is a requirement "to consider and plan for the specific needs of vulnerable individuals during and after an emergency."<sup>421</sup> The category of individuals considered here include but not

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<sup>417</sup> Home Office and Cabinet Office, *The Needs of Faith Communities in Major Emergencies: Some Guidelines* (2005), p. 5.

<sup>418</sup> Cabinet Office, *Evacuation and Shelter Guidance* (2014), p. 34.

<sup>419</sup> *Op. cit.*, p. 130.

<sup>420</sup> Cabinet Office, *Emergency Response and Recovery Non-statutory guidance accompanying the Civil Contingencies Act 2004* (2013)

<sup>421</sup> *Ibid.*, p. 4.





limited to: “older people and their carers; those with disabilities and their carers; children and their carers; pregnant women; those with serious or chronic illnesses (including asthma, diabetes, heart conditions, cancer, mental illness); those whose first language is not English.”<sup>422</sup>

There is also guidance for Identifying People Who Are Vulnerable in a Crisis for Emergency Planners and Responders which contains examples of vulnerable people. It also highlights some prerequisites for preparedness such as creating a vulnerability list within a community, and the role of family, friends, neighbours, faith groups and community groups in identifying vulnerable people within local resilience forum warning and informing activity, among others.<sup>423</sup> There is a focus on the principles of identifying and building relationships with bodies responsible for vulnerable people so that the potential scale and mechanism for a response can be agreed before an emergency occurs.<sup>424</sup>

#### **g) Attention to the needs of ethnic, indigenous, linguistic or other minority groups**

The UK’s Human Aspects in Emergency Management Guidance mentioned earlier also take care of this aspect. Local responders and Human Aspect planners are advised to identify the specific needs of communities who may be affected by an emergency in their area, as a first step to catering for their needs.

#### **h) Consultation with local/ethnic communities in the disaster planning and implementation**

Although the provisions of disaster management plans in the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 do not include an explicit obligation to consult with the local communities for preparing such plans, according to policy documents of the UK government, in preparing and planning for emergencies, the government works “in partnership with central and local government, devolved administrations, emergency responders, the private and voluntary sectors”, among others.<sup>425</sup> In this regard, it is noteworthy that the UK Community Resilience policy aims at empowering communities to harness local resources and expertise to help themselves

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<sup>422</sup> Ibid.

<sup>423</sup> Cabinet Office, Identifying People Who Are Vulnerable in a Crisis Guidance for Emergency Planners and Responders (2008).

<sup>424</sup> Ibid.

<sup>425</sup> See e.g. Cabinet Office, Policy paper: 2010 to 2015 government policy: emergency response planning (May 2015).





and their communities to prepare, respond and recover from disruptive challenges like disasters.<sup>426</sup>

Also, the National Recovery Guidance: Humanitarian Issues states that “depending on the nature of the incident, the inclusion of representatives from local faith communities and other relevant groups should be considered, as they can often be the key link to minority groups, especially where there are language difficulties and sensitivity issues.”<sup>427</sup>

#### **i) Educational aspect including training disaster manager on cultural competences**

The requirement to train disaster managers on cultural integration issues can fall under the policy objective which makes it necessary to “consider and plan for the specific needs of vulnerable individuals during and after an emergency.”<sup>428</sup> Further, training can be an important aspect of “[e]arly engagement and planning” in order to satisfy the needs of the diverse communities during and after disasters.<sup>429</sup>

#### **j) Protection against discrimination on cultural ground**

The Equality Act prohibits both direct and indirect discrimination in the UK on the following protected characteristics — age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation.<sup>430</sup>

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<sup>426</sup> See Cabinet Office, Guidance - Community resilience: resources and tools (March 2011), <https://www.gov.uk/government/publications/community-resilience-resources-and-tools> (accesses 12 September 2017).

<sup>427</sup> Cabinet Office, National Recovery Guidance: humanitarian issues, *Op. cit.* See also Cabinet Office, Preparing for Emergencies: Guide for communities (2016).

<sup>428</sup> Cabinet Office, Human Aspects in Emergency Management *Op. cit.*, p. 4.

<sup>429</sup> *Ibid.*

<sup>430</sup> See Sect. 4.





## 4. Discussion and Comparative Analysis

As briefly stated in D 6.1, the idea of cultural diversity is cherished in Europe, and as such, no harmonization of cultural laws, policies or rights has been made in this area by either the EU or the Council of Europe. Rather, both organizations encourage their Member States to promote, respect and safeguard their rich cultural and linguistic diversity, and have as well, engaged in several activities that aim at protecting and promoting culture in Europe.<sup>431</sup> Although dominant regional human rights instruments in Europe (e.g., ECHR, CFREU, ESC) do not define the terms culture or cultural rights, certain rights contained in these instruments include elements that are in general, regarded as a manifestation of culture such as the right to freedom of religion, freedom of expression, freedom of association, etc.

In disaster management, however, it is not immediately clear what cultural aspects or activities are incorporated into the civil protection framework in Europe, as there is no unified policy or guidelines in this regard. It is however notable that both institutions have through legislative, financial, and research activities, participated in several projects for protecting cultural heritage from disaster.<sup>432</sup> The EU Civil Protection Mechanism also includes a module on cultural competencies in its training programme.

At the national level, issues of culture and how cultural elements have been translated into disaster management practices appear to follow a divergent pattern in some respects. On the one hand, it is common to find some constitutional and other regulatory provisions relevant to culture, including fundamental rights provisions guaranteeing or protecting certain cultural expressions such as freedom of religion, freedom of expression, right to education, right to participate in cultural life, right against discrimination on cultural grounds, among others.<sup>433</sup> These constitutional provisions have been relied upon in some cases where no clear guidelines exist for implementing certain cultural aspects in the disaster management operations as pointed out by some respondents, such as the right against discrimination.

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<sup>431</sup> For examples, the Eurovision context.

<sup>432</sup> See European Parliament, Protecting the cultural heritage from natural disasters (Brussels: European Parliament, 2007); European Commission, "Protecting Mediterranean Cultural Heritage during Disasters" (PRO MED HE); Jean Pierre Massue and Max Schvoere, *Protection of Cultural Heritage*, <https://www.coe.int/t/dg4/majorhazards/ressources/pub/handbookfiles/4c.pdf> (accessed 9 October 2017); Aleksandra Mężykowska, "Council of Europe" in Wisend, A. et al, (eds) *Culture and Human Rights: The Wrocław Commentaries* (Berlin: De Gruyter, 2016); Andrzej Jakubowski, "European Union" in Wisend, A. et al, (eds) *Culture and Human Rights: The Wrocław Commentaries* (Berlin: De Gruyter, 2016).

<sup>433</sup> Some countries such as Malta also have directive principles that include cultural aspects that are not enforceable as rights.







It is also common in these countries to find series of legal instruments (national legislation or international law) aimed at promoting and/or protecting cultural heritage, as well as institutions that focus on culture such as ministries of culture and other governmental and non-governmental organizations.

But on the other hand, there are variations in nature, level of detail and granularity of policies or guidelines for identifying which cultural expressions would require legal protection as a right. Such issue appears to be tackled in an unsystematic manner. One example relates to the designation and use of official language. While some countries (e.g., Serbia) include official language(s) in their Constitution, others (e.g., Germany) do not, although such is regulated by other legislation. Serbia even goes further to provide in a legal instrument that if 15% of the population of an area speaks a different language, such a language must be integrated into the official language system. This could have a direct implication in disaster warning systems, for example, by requiring that the multiple official languages be considered in a national disaster communication.

Different rules also operate within each state regarding harmonization of cultural policy. While in some countries (e.g., Malta), a national policy on culture is pursued, in some others (e.g., Germany) cultural policies are decentralized among regional and municipal governments. It is equally important to note that the government in power has a significant impact on how cultural policies are pursued in each country.

Regarding how cultural rights are implemented in disaster management frameworks, there seems to be no overarching policy exclusively targeting cultural competencies or operationalizing cultural rights in the investigated states. There are, however, several guidelines, legislation and practice instructions from which cultural elements could be identified, albeit with varying degree of specificity and details. The UK, Bulgaria, Germany, Italy and the Netherlands rank high in respect of having several sources from where issues cultural aspects could be identified.

The UK presents the country with the most visible evidence of easily accessible guidelines through the Cabinet Office (Civil Contingencies Secretariat) website. Various guidelines focusing on topics that center on cultural aspects of disaster management could be identified from this source such as: “the Needs of Faith Communities in Major Emergencies”, “Identifying People Who Are Vulnerable in a Crisis - Guidance for Emergency Planners and Responders”, etc.<sup>434</sup> Bulgaria equally has a number of strategic documents issued by the Council of Ministers that consider cultural aspects of disaster management. German, Italy and the Netherlands also present examples through multiple sources such as legislation, policies, guidelines and practices.

By contrast, Portugal, Romania and Serbia have less specific guidelines or policies regarding cultural sensitivities arising from managing disaster in a multi-cultural environment. In many

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<sup>434</sup> See Section 3.11 for other guidelines.





instances, consideration of the cultural aspects is simply a matter of ethics or undocumented practice. The Portuguese respondent, however, notes that the civil protection department is still in the process of developing its disaster management framework in terms of a policy framework that will reflect the cultural aspects discussed in this report. While no legal obligation per se exists to consider these cultural aspects in the current disaster management framework, they rely on situational assessment to cater for most of the cultural examples mentioned in this report. The respondent also suggests that disaster managers will still respect constitutional rights of the population regarding cultural diversity in all cases (e.g., respect the right against discrimination based on cultural grounds). It is, however, not clear the nature of reform going on in Romania and Serbia, and how these cultural aspects will be integrated into formal guidelines.

France presents a unique system where the interpretation of the “laïcité” principle in the context of disaster management meant that issues of religion, ethnicity, etc., are not considered, and as such, no concrete guidelines or policy exist for such cultural aspects in practice. This is in line with the age-long French culture of neutrality or separation of political affairs from religious and ethnic affairs according to the respondent.

There are some instances where no data could be seen to support the tested examples from respondents or in the literature review. While it fair to conclude that such examples are not usually considered in the disaster management framework of the affected countries, a margin of error could also exist in this regard. Countries affected here include France, Malta, Serbia, Spain and the Netherlands.

Considering the tested examples in general, there seems to be convergence regarding disaster communications in multiple languages, protection of cultural heritage and non-discrimination based on cultural grounds in all the surveyed countries. There appears to be a common practice to use the English language, at least, as a second language for disaster communication. Some of the apps, websites, or other official documents identified in this regard are published in English. It is also common to find policy document or laws that aim at protecting cultural heritage in disaster scenarios in all countries, possibly also due to their international obligation emanating from international treaties on cultural heritage protection to which they are signatories.

Equally, evidence of protection against discrimination on racial, ethnic or other cultural grounds is common in all the countries. The equality principle, which is closely related to that of non-discrimination is also found applicable in disaster situations, although in general, there could be exceptions in certain cases. But as will be discussed below, there seem to be differences in interpreting the application of the equality principle in disaster management operations in some states.

In Portugal for example, the right to equality, according to the respondent, meant that there is no standing rule on giving priority in disaster situations. Vulnerable groups such as children, women, the elderly, the sick, etc., are assessed by the disaster managers in each case to





determine if priority should be given. As such, no guidelines or policy is identified in this country in this respect. On the contrary, in the UK and some other countries, there seems to be a conscious policy to give priority to those already identified as vulnerable groups in the context of disaster. In the UK for example, there is an official categorization of people who are considered vulnerable in the context of disaster management. The Serbian law on emergency similarly contains such list of vulnerable persons. One benefit, it seems from this approach, is that it allows for a prior assessment of the needs of these persons, and plans put in place to meet those needs should a disaster or emergency occur, unlike an ad hoc arrangement which may result from a situational assessment after the incident.

In summary, from the above discussion, some patterns could be identified reflecting the level of development and experience of the civil protection institutions, the culture of the society and how susceptible the country is to natural or other disaster incidents. Countries with long years of establishment and experience tend to develop or have several policy documents or guidelines that consider cultural aspects in their civil protection and disaster management. Secondly, how often countries witness disasters also tend to affect their experience and level of preparedness, including establishing an assessment routine regarding cultural impact assessment and how to deal with vulnerable groups in disaster operations. Although all the civil protection institutions that belong to the EU also rely on EU civil protection training mechanism, most of the countries with long establishment tend to develop also a strong system including training of the disaster managers and actor. This is for example seen in the Italian Norm UNI 11656:2016 used for catastrophe management on the national, regional and town hall levels that consider a lot of cultural characteristics. Above all, the cultural of the society plays a significant part on how cultural aspect is considered in some instances too.

The table below gives a summary of comparison of the examples in the surveyed countries.

Examples reflecting cultural elements		Selected States										
		BG	FR	DE	IT	MT	NL	PT	RO	RS	ES	GB
1	Multiple language, special/sign language in disaster communication	x	xx	x	xx	xx	x	xx	x	x	x	x
2	Protection of cultural properties, artefacts and heritage including their evacuation of because of disaster	x	x	x	x	x	x	x	x	x	x	x





3	Provision of dietary and healthcare needs in consideration of cultural diversity	x	-	x	x	x	x <sup>435</sup>	xx	xx	xx	-	x
4	Consideration of cultural diversity regarding provisions of facilities for religion/faith manifestation	x	-	xx	xx	-	-	xx	x	-	-	x
5	Incorporating gender segregation, as well as maintain the family roles and family cohesion as a cultural practice of the affected community	x	-	x	xx	-	-	xx	xx	-	x	x
6	Giving special attention or priority to vulnerable groups such as children, women, the elderly, the sick in the disaster planning and execution	x	x	x	x	xx	x	xx	xx	x	xx	x
7	Attention to the needs of ethnic, indigenous, linguistic or other minority groups	x	-	xx	x	-	xx	xx	x	-	-	x
8	Consultation with local/ethnic communities in the disaster planning and implementation	x	-	xx	x	x	x	-	x <sup>436</sup>	-	x	x
9	Educational aspect including training disaster manager on cultural competences	x	x	x <sup>437</sup>	x	x	xx	-	xx	x <sup>438</sup>	xx	x
10	Protection against discrimination on cultural ground	x	x	x	x	x	x	x	x	x	x	x

Table 2: comparison of cultural elements in the disaster management framework of the surveyed states

x: represents the existence of law, regulation, guidelines or other policy documents; xx: represents the existence of organizational practice or ethics

- : represents where no data or sufficient data exists to support the example or where such is not considered in the disaster management framework

<sup>435</sup> The reference document does not distinguish the recipient of service on cultural basis

<sup>436</sup> It is not clear how the reference law mandates consultation with local communities.

<sup>437</sup> Although not concrete national policy was pointed out by the respondent, we interpret the response as going beyond mere practice.

<sup>438</sup> Not clear whether the training program specifically considers cultural competencies.





## 5. Good Practices and Recommendations

The importance of cultural diversity in Europe cannot be ignored when comparing how cultural rights have been operationalised in various states' disaster management framework. As such, the tradition and culture of the environment in question may affect the implementation of any recommendation on this subject. However, one benefit of this inquiry is that common grounds and best practices could be identified by comparative analysis and states could learn from one another when reforming their disaster management policies. Below, we reflect on some good practices that we have identified by comparing the practices in the surveyed eleven countries.

### 5.1. Good Practices

#### **1. Inclusion of disaster protection awareness into the education system as part of a disaster management strategy**

A policy to include disaster protection awareness as part of the education curriculum represents an important disaster preparedness practice across the population. The Bulgarian Disaster Protection Act, for example, contains a provision that integrates disaster protection education and first aid module into the national education system.<sup>439</sup> The Act also emphasizes the education of the population on behaviour and actions necessary for protection in a disaster situation as part of the voluntary education.<sup>440</sup> A similar approach is seen in various forms in other countries such as Germany and France. In France, for instance, creating awareness about major hazards among primary and secondary schoolchildren is part of the Education Code and has been implemented in the curriculum. One advantage of such a policy is that it could be utilized to teach and explain the cultural aspects in disaster situations to all persons who undertake such education.

#### **2. Incorporation of a multi-language disaster communication strategy**

The practice of communicating disaster information in multiple languages including sign and special languages seem common in all the countries surveyed, albeit in different degrees. Such is a good practice that should be sustained and improved with modern

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<sup>439</sup> Article 16

<sup>440</sup> Article 17





technologies. For example, some disaster warning apps (e.g., France, Germany) have an English version as a second language. Similarly, information posted on some of the civil protection websites could be assessed in a second language (at least in English). This gives a higher opportunity for those who are not native language speakers to get the necessary information about civil protection.

### **3. Specific guidelines concerning vulnerable groups**

Having specific guidelines concerning vulnerable groups such as children, women, the elderly, and those with disabilities rather than a policy of onsite assessment post-disaster is a good practice seen in Bulgaria, France, Germany, the Netherlands, Serbia and the UK. This approach is forward-looking, as relying on situation assessment may cause delay for those needing immediate attention during the disaster response phase. Onsite assessment may also affect the level of planning necessary to cater for these groups such as having certain items already in place, for example, items that pregnant women may need or training personnel for the special needs of certain persons before the disaster occurs. Proper planning may also require having an inventory of where certain persons live and what materials they may need in cases of emergency.

### **4. Provisions for protecting cultural heritage and artefacts**

All the surveyed countries have a framework for protecting cultural heritage, even though some policies are more detailed than the others. This is a good policy that should be sustained because it is imperative that cultural heritage is safeguarded for the present and future generations.

### **5. Easily available sources of guidelines on cultural aspects**

For disaster managers and others such as researchers, it is always desirable to find sources of instructions and rules on how to deal with operational issues such as cultural aspects in disaster management. The UK presents the best example where easily available guidelines on cultural aspects could be found through a single source - Cabinet Office website. While there may be similar guidelines or policies in other countries, they are not usually easily found through a single source.

## **5.2. Policy Recommendations**

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Based on the findings and evidence identified throughout this report, the following recommendations are suggested to policy makers, and disaster managers and planners in general. These recommendations seek to develop a better culturally-aware disaster management





framework, as well as build on the good practices already identified above, which should be considered alongside these recommendations.

## **1. Develop a checklist of cultural considerations for disaster management**

Disaster managers should develop a checklist of cultural issues that could impact their work given the multi-cultural environment in which they operate. This checklist should be consulted for conducting a cultural impact assessment of the localities in which they operate, and the outcome of the assessment may also lead to a review of the checklist for the future. A sample checklist is annexed to this report which could serve as a template for disaster managers.

## **2. Develop and integrate a module on cultural competencies for training purposes**

Disaster managers should develop and integrate modules on cultural competences into the existing national training programmes at all levels where none exists. Although there is a EU Civil Protection Mechanism introductory course on cultural competencies, it is important that individual states adapt and build upon such modules for their local environment.<sup>441</sup> The cultural checklist referred to above should also assist in developing such module.

## **3. Unify instructions on handling cultural aspects in disaster management**

Unifying the cluster of regulatory sources from where issues and instructions on cultural aspects of disaster management could be identified is very important. One way of achieving this could be by policy makers in collaboration with disaster managers conducting a research and synthesising identified documents and practices into guidelines and practice directives on operationalizing cultural aspects in disaster management. This will not only help disaster managers and other actors who want to gain such competence, but also the public at large.

## **4. Foster a proactive strategy of consultation with the various cultural stakeholders**

Disaster managers should develop proactive plans and strategies for consultation with the cultural communities and stakeholders that will be affected in the planning and execution of relevant disaster management activities. This will help them in understanding the specific culture and needs of these communities so that the assistance that is planned will be culturally-aware and acceptable. Such a consultation will also be relevant for developing the above-mentioned checklist or for carrying out a cultural impact assessment.

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<sup>441</sup> It is notable that the Italians have the UNI technical standard 11656:2016 targeted at civil protection professional which contains aspects of cultural competencies.





## **5. Adopt a rights-based approach in treating cultural issues in disaster management policies, strategies and practices**

It is also important for policy makers and disaster managers to adopt and incorporate a rights-based approach in treating cultural issues in the context of disaster management. Such an approach will not only focus on respecting the universal principles of human right, particularly, cultural rights, but also will emphasize and recognize the human subjects affected by disasters as individual rights holders who can claim rights from specific duty bearers rather than simply passive beneficiaries and recipients of charity. This approach when operationalized will mean that respect for cultural rights becomes integral in identifying relevant needs and interests of affected persons and ensuring that disaster management meets those needs.







## 6. Conclusion

As reflected in this report, a nation's culture cannot be divorced from its social, economic and political circumstances including civil protection. Moreover, how cultural rights are translated and operationalized in disaster management frameworks is important in understanding the impact of culture in disaster risk reduction and perception. Evidence suggests that disaster manager will perform more effectively if they possess the requisite cultural competencies to navigate within the communities they serve.

The examples in this report have shown how cultural rights have been operationalized in the surveyed countries, albeit divergent approaches adopted in some cases. This report has also articulated examples of good practices among these countries and goes further to suggest some policy recommendations, as well as develop a checklist of cultural considerations for disaster managers.

It is hoped that going forward, the outcome of this report will initiate policy and practice reform and lively discussions on how to integrate a rights-based approach and a culturally-aware disaster management framework not only in Europe but across the globe.





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Cultural Heritage Act, Cap 445 of the Laws of Malta.

Copyright Act, Cap 415 of the Laws of Malta, as amended up to Act No. IX of 2009.

Civil Protection (Discipline and Association), Subsidiary Legislation 411.01.

European Convention Act, Cap 319 of the Laws of Malta.

Emergency Powers Act, Cap 178 Laws of Malta.

Maltese Language Act, Cap 470 of the Laws of Malta.

National Archives Act, Cap 477 of the Laws of Malta.

Protection of Antiquities Regulations, Subsidiary Legislation 445.01.

Radiological Emergency (Information to the Public) Regulation, Subsidiary Legislation 411.02

A National Health Systems Strategy for Malta 2014-2020, (June 2014).

### **Portuguese Laws and Regulations**

Constitution of the Portuguese Republic.

Law 107/2001 on Cultural Heritage.





Law 47/2004 Framework Law Portuguese Museums.

Law 27/2007 on Television.

Law 4/2001 on Radio as amended.

Law 182/2000 on the protection of the movable national heritage.

Law 42/2004 on Cinematographic Art and Audio-visual.

Decree-Law 227/2006 on Cinematographic Art and Audio-visual.

## **Romanian Laws and Regulations**

Constitution of Romania.

Emergency Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished.

Government Decision 548/2008] on the approval of the National Strategy for Communication and Public Information in Emergency Situations.

Government Decision 762 of 2008 on the Approval of the National Strategy on the Prevention of Emergency Situations.

Government Emergency Ordinance 88/2001, modified through Government Emergency Ordinance 25/2004 on the creation of public services for emergency situations.

Interior Ministry's Order 269/2007.

Law no. 182/ 2000 Regarding the Protection of the movable National Heritage.

Law no. 489/2006 Concerning the Religious Freedom and the General Conditions of the Cults.

Law no. 480/2004 reissued in 2008.

Law no. 139/1995, 524/2004, HG 2288/2004.

Law no. 48/2002 (16/1/2002) On the Prevention and Sanction of All Forms of Discrimination – (Ordinance Amendments n. 431/2000).

Law no. 53/2003 of the Labor Code.

Law no. 202/2002 on equal opportunities and treatment between women and men, republished.

Law 217/2003 on the prevention and combating of domestic violence as well as criminal law.

Law 182/2000 regarding movable heritage.

Law 422/2001 regarding historical monuments.





Law 481/2004 on the organization of civil protection.

Law 307/2006 on the organization of fire defence.

Ministerial Order 89/2013 on the Prevention of Emergency situations.

Ordinance 43/2000 regarding archaeology.

Order no 269/2007 on the Provision of Material Assistance to Persons Housed in Centres under the Coordination of the Romanian Office for Immigrations.

## **Serbian Laws and Regulations**

Constitution of Serbia.

Law on Heritage Protection, RS Official Gazette No 71/94.

Law on the restoration of cultural-historical heritage, and the boosting of the development of Sremski Karlovci, RS Official Gazette No 37/91, 53/93, 67/93 and 48/94, as amended.

Law on the Protection of Rights and Freedoms of National Minorities, Official Gazette of FRY No. 11 of 27 February 2002, Official Gazette of SM No. 1/2003, and Official Gazette of the Republic of Serbia No 72/2009.

Law on Culture, RS Official Gazette No 72/2009.

Law on Public Information and Media, RS Official Gazette No 83/2014, 58/2015, 12/2016.

Law on the Official Use of Languages and Scripts, RS Official Gazette No. 45/91, 53/93, 67/93, 48/94, 101/2005 and 30/2010.

Law on Emergency Situations, RS Official Gazette No. 111/2009, 92/2011, 93/2012.

Provincial Assembly Decision on regulating certain issues regarding the official use of languages and alphabets of ethnic minorities in the Autonomous Province of Vojvodina ("Official Journal of the APV", No. 8/2003, 9/2003, 18/2009).

The Statute of the AP Vojvodina ("Official Journal of the APV", No. 20/2014).

## **Spanish Laws and Regulations**

Cinema Act.

Decree 119/2013 of the Valencian Consell that approves the Territorial Plan of Emergency of the Valencian Region, in its Annex III, 3. Procedures in Emergency Situation with Multiples Victims.

Intellectual Property Act.





Law 16/1985 on the Spanish Historical Heritage.

Law 17/2015 on the National Civil Protection System.

Law 3/2010, on Protection and Emergencies Management.

Law 2/1985 on Civil Protection.

Royal Decree 257/2012 on the Basic Structure of the Ministry of Education, Culture and Sport

Royal Decree 367/2007 establishing the National Commission on the Development and Promotion of Intercultural Dialog  
Spanish Constitution.

## **United Kingdom Laws, Regulations and Guidelines**

Civil Contingencies Act 2004.

Copyright, Designs and Patents Act 1988.

Dealing in Cultural Objects (Offences) Act 2003.

Equality Act 2010.

Human Rights Act 1998.

Historic Buildings and Ancient Monuments Act 1953

National Heritage Act 1983, amended 2002.

The Magna Carta.

Cabinet Office, Guidance on part 1 of the Civil Contingencies Act 2004, its associated regulations and non-statutory arrangements:

- Emergency Preparedness (2006);
- National Recovery Guidance: Humanitarian Issues (2013);
- Human Aspects in Emergency Management Guidance on supporting individuals affected by emergencies (2016);
- Guidance for staff of responder agencies, particularly senior officers or managers involved in emergency response and recovery preparations - Emergency response and recovery (2013).

Cabinet Office, National Recovery Guidance: Infrastructure Issues (2013).

Department for Communities and Local Government, IRMP Steering Group Integrated Risk Management Planning: Policy Guidance Protection of Heritage Buildings and Structures (2008).





Department for Digital, Culture, Media & Sport, Business continuity planning for museums and galleries (2013).

Cabinet Office, Emergency Response and Recovery Non statutory guidance accompanying the Civil Contingencies Act 2004 (2013).

Cabinet Office, Identifying People Who Are Vulnerable in a Crisis Guidance for Emergency Planners and Responders (2008).

Cabinet Office, Policy paper: 2010 to 2015 Government Policy: Emergency Response Planning (2015).

Cabinet Office, National Recovery Guidance: Humanitarian Issues.

Cabinet Office, Preparing for Emergencies: Guide for Communities (2016).

Cabinet Office, the Planning Policy Guidance (PPG) 15: Planning and the Historic Environment (1994).

Cabinet Office, Evacuation and Shelter Guidance (2014).

Cabinet Office, Human Aspects in Emergency Management (2016).

Cabinet Office, Guidance - Community Resilience: Resources and Tools (March 2011).

Home Office and Cabinet Office, The Needs of Faith Communities in Major Emergencies: Some Guidelines, (2005).





## Annex A

# A Checklist of Cultural Considerations in Disaster Management Operations

This checklist is drafted in the form of assessments to be made by disaster managers or questions to be answered by them. The outcome of the assessment will determine the cultural elements to be considered in the disaster management framework, as well as assist them in carrying out a cultural impact assessment in general. The following provides a broad overview of the relevant issues and could be adapted by disaster managers to cater for their unique environment.

S/N	Checklist of cultural elements to be considered	Remarks
1	Assess whether the area covered by your operation involves a multi-cultural society, and what predominant languages are spoken within such society.  Consider a communication/warning strategy that incorporates multiple languages including special languages such as sign language for those who are challenged.	The use of translators and interpreters should be integrated where necessary.
2	Assess the risks faced by cultural heritage and cultural properties, and map out a plan for their protection including evacuation, rehabilitation and restoration of items where possible.	The plans for protecting cultural heritage and properties should consider architecture and building regulations to get a holistic and long-term approach.
3	Does your disaster training kit have a module to educate disaster actors such as planners and responders about multi-cultural issues and elements in disaster management and field operations?	The EU Civil Protection Mechanism has an introductory course on cultural competencies which could serve as a basis for developing similar modules tailored to the local environment.
4	As a disaster preparation mechanism, check whether the education system and civic education on disaster and civil protection include cultural aspects.	Consider a proposal for policy reform to the responsible authorities to include such in the education system where it does not exist.
5	Does the disaster management framework encourage participation of the local community and cultural stakeholders, including various minority groups in all the disaster planning and execution phases?  Consider initiating programmes and awareness campaigns that will target the local and minority	Local and minority communities have the best knowledge of their needs and abilities. Their input in disaster planning and execution can add value to the programme.





	communities and consult with them right from the disaster planning phase through the recovery phase.	
6	Does your disaster management framework have in place appropriate system to prevent and respond to violence, exploitation, discrimination or abuse of vulnerable groups including minorities?	Ensure that all programs consider vulnerable groups and that they receive information about the programs they are entitled to access in disaster situations.
7	What culturally sensitive measures need to be built into the healthcare, evacuation, dietary, and other aspects of your disaster management plans?  Consider carrying out a thorough cultural impact assessment to identify relevant measures.	Such measure may include: separating men and women, keeping family members together, assigning same gender healthcare takers to victims, having food plans that accommodate different cultures or religions, etc.  The UNHCR has adopted an Age, Gender and Diversity (AGD) policy for assessment and could be used as a starting point <a href="https://emergency.unhcr.org/entry/95269">https://emergency.unhcr.org/entry/95269</a> .
8	Assess what cultural barriers make children, women, the elderly, and the sick particularly vulnerable, and consider various measures to address these barriers including giving specific and prioritized attention to vulnerable groups where necessary.	Cultural barriers may include the gender roles, patrimony, caste system, etc. Ensure that vulnerable groups are represented in discussions affecting them.
9	Check for discriminatory and biased practices that may be introduced due to cultural perceptions.	This should be covered in the training programme.
10	Device a feedback mechanism from the communities, minorities and vulnerable groups and incorporate the lessons learned from every incident.	Continuous revision of disaster management plans will ensure that lessons learned are implemented.





## Annex B

# Questionnaire

### Background

The CARISMAND project aims among other goals at identifying cultural factors influencing citizens' risk perceptions and behaviour in **disaster situations**. A key factor is exploring **gaps** and **opportunities** in existing disaster management **policies/procedures** to suggest improvements by developing a comprehensive **toolkit**. This will support professionals and voluntary disaster managers in adopting **culturally-aware** policies and procedures.

**Work Package 6** citizens' rights will contribute to this goal by providing a detailed analysis of existing national protection mechanisms for **fundamental rights**, especially, **privacy** rights, and any form of cultural rights, their limitations, and interdependencies in disaster situations within the EU. This questionnaire is designed to explore **cultural issues** in disaster management in selected European states.

For the purposes of this survey, a disaster is defined "any situation which has or may have a severe impact on people, the environment, or property, including cultural heritage",<sup>442</sup> while culture "covers those values, beliefs, convictions, languages, knowledge and the arts, traditions, institutions and ways of life through which a person or a group expresses their humanity and meanings that they give to their existence and to their development."<sup>443</sup>

Please provide, where applicable, a **legal reference(s)** supporting your answer: an **article** of law, a **provision** of a regulatory act, or a **court case** citation, as well as any additional **details**.

**Please kindly provide your answers in Annex A.**

Completed questionnaires should be returned by email to: [wendt@iri.uni-hannover.de](mailto:wendt@iri.uni-hannover.de) and [nwankwo@iri.uni-hannover.de](mailto:nwankwo@iri.uni-hannover.de)

Please note that during the publication of the results of this questionnaire no personal data of the respondent will be revealed.

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<sup>442</sup> Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism, Article 4.

<sup>443</sup> Fribourg Declaration on Cultural Rights, art. 2 (a)







**Information about the respondent**

Institution and country	
Contact person	
Email address	





## Annex A

### *A. National Policy on Cultural Integration*

- i. Is there a legal definition of culture in the context of human rights in your jurisdiction? If not, has it been defined in another context? Please provide a reference.**

- ii. Is there a national policy on cultural implementation or realization of cultural rights in your jurisdiction? Please provide a reference to such policy.**

- iii. Is there a cultural impact assessment policy for legislation and other regulatory instruments in your legal system? Please provide a reference to such policy.**

- iv. Identify which expressions of culture are reflected in your fundamental rights law:**

- a) Right to freedom of religion**
- b) Right against discrimination**
- c) Freedom of expression**
- d) Freedom of association**
- e) Right to participate in cultural life**
- f) Right to education**





**g) Protection of minorities**

Please provide other right(s) that is (are) not reflected here. Also, provide a reference to the law that provides for these rights.

**v. Are there some criteria for determining which cultural expressions are to be considered legal rights?**

**vi. What legal limitations to cultural rights exist in your jurisdiction?**

**vii. Are there any known cases of infringements of cultural rights in the past within your jurisdiction? Please provide references to such cases.**

*B. Cultural Elements in Civil Protection Mechanisms*

**I. Please indicate which of the following cultural characteristics or manifestations are considered in your national, regional or municipal disaster management framework and provide any reference document where they could be found:**

**a) Multiple language communication including signs**

**b) Protection of cultural heritage or artifacts**





- c) Religion and spirituality
- d) Gender-based roles or actions
- e) Age-based roles or actions
- e) Diet and nutrition
- f) Minority protection
- g) Migrants protection
- h) Respect for local customs
- i) Accommodation that respects cultural sensitivities such as gender, religion, etc.
- j) Healthcare provisioning that respects cultural sensitivities such as gender, religion, etc.

**II. What other cultural elements do you suggest will enhance disaster management within your jurisdiction?**

*C. Concrete Measures in Disaster Management Regarding Cultural Elements*

**I. Is there a provision to provide disaster warnings and alerts in several languages? Please specify the rules and state in which languages the warnings are communicated.**

**II. Are there guidelines on prioritizing assistance to children, elderly persons and persons with special needs in your jurisdiction?**





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**III. Are there regulations or guidelines in your disaster management framework addressing characteristics relating to religious or cultural groups regarding accommodation, gender roles, treatment in health facilities, food? Please indicate how these elements are accommodated.**

**IV. Are disaster managers specifically trained on cultural integration in your disaster management framework? Are there specially trained contacts for the different cultures or groups?**

**V. Is there a policy how to deal with cultural artifacts in a disaster? How are these artifacts identified?**

**VI. Is there a policy to consult or integrate the local community into the disaster management plan within your jurisdiction? Please describe and provide this policy or plan.**

