

THE RIGHT TO “TAKE PART IN CULTURAL LIFE” & CENSORSHIP OF QUEER* MEDIA

MEGAN YOUNG-SCHLEE**

I. INTRODUCTION

Queer people around the globe face acts of violence and discrimination based on their sexual orientation¹ or gender identity.² Human Rights Watch reports that at least sixty-seven countries criminalize same-sex relations between consenting

* “Queer” will be used throughout this paper as an umbrella term for sexual orientations and gender identities outside of heterosexual and cisgender. It is used in this paper to be inclusive of the whole LGBTQIA+ community. This author recognizes that some in the community may have negative connotations with the word, but the author also recognizes that the term has been reclaimed by some in the community and is used in scholarship and journalism. See *Stylebook on LGBTQ Terminology*, NLGJA THE ASS’N OF LGBTQ JOURNALISTS (Dec. 2021), <https://www.nlgja.org/stylebook/queer/> [<https://perma.cc/B7ZB-F4EG>] (Dec. 2021); Juliette Rocheleau, *A Former Slur Is Reclaimed, And Listeners Have Mixed Feelings*, NPR (Aug. 21, 2019), <https://www.npr.org/sections/publiceditor/2019/08/21/752330316/a-former-slur-is-reclaimed-and-listeners-have-mixed-feelings> [<https://perma.cc/R9RK-48GF>]; Diane L. Zosky and Robert Alberts, *What’s In a Name? Exploring Use of The Word Queer as a Term of Identification Within the College-Aged LGBT Community*, 26 J. OF HUM. BEHAV. IN THE SOC. EVN’T 597, 597-607 (2016); Lauren Berlant, Michael Warner, Eric Clarke, Dennis Denisoff, Bruce Hainley, Neville Hoad, M. Holmes, Esther Newton, Jeffrey Nunokawa, Andrew Parker, Paul Puccio, Todd Shephard, Wally Sillanpoa & Reed Woodhouse, *FORUM: On the Political Implications of Using the Term ‘Queer,’ as in ‘Queer Politics,’ ‘Queer Studies,’ and ‘Queer Pedagogy’*, 45 THE RADICAL TCHR. 52, 52-57 (Winter 1994).

** J.D. Candidate, 2023, Indiana University Robert H. McKinney School of Law; Master of Arts in Philosophy, 2018, Indiana University, Purdue University –Indianapolis; Bachelor of Arts in Theatre, 2012, Knox College. A special thanks to Professor Lea Bishop and her International Human Rights class for her inspiration and support in developing and publishing this paper. The author would also like to thank Indiana International and Comparative Law Review members, especially Volume XXXIII Editor-In-Chief Jessie Walker, for their support and feedback.

1. “Sexual Orientation” is defined as “each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.” INT’L COMM’N OF JURISTS, *Yogyakarta Principles - Principles on The Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, (Mar. 2007) <http://yogyakartaprinciples.org/principles-en/yp10/> [hereinafter *Yogyakarta*].

2. “Gender Identity” is defined as “each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.” *Id.*

adults with penalties ranging from a few years in prison to the death sentence.³ Only thirty-two countries globally have legally recognized same-sex marriage.⁴ In 2020, at least forty-four transgender and gender non-conforming individuals were killed in the United States.⁵ “Homosexual propaganda” laws, also known as “no promo homo” laws, which intend to “protect” children from discussion and depictions of same-sex relationships, are in force or being considered in countries including Russia,⁶ Lithuania,⁷ and the United States.⁸ In Malaysia, censorship laws restrict queer expression by “prohibit[ing] the distribution, display, or creation of any materials that the government deems ‘obscene’ or ‘against public decency.’”⁹

Advocates and scholars have long discussed queer rights in the context of international human rights.¹⁰ Queer rights are generally presented from the perspective of free speech and expression, nondiscrimination, decriminalization, or marriage equality. From this work, the United Nations (U.N.) began developing information on protecting queer rights. In 2016, the U.N. Human

3. HUM. RTS. WATCH, #Outlawed: “The Love that Dare Not Speak Its Name,” https://internap.hrw.org/features/features/lgbt_laws/#_ftn1 [<https://perma.cc/8WML-84MG>].

4. HUM. RTS. CAMPAIGN FOUND., *Marriage Equality Around the World*, <https://www.hrc.org/resources/marriage-equality-around-the-world> [<https://perma.cc/49UY-JD2D>].

5. HUM. RTS. CAMPAIGN FOUND., *Violence Against the Transgender and Gender Non-Conforming Community in 2020* <https://www.hrc.org/resources/violence-against-the-trans-and-gender-non-conforming-community-in-2020> [<https://perma.cc/LTE4-TWSF>].

6. Jasmine Anderson, *Russia Passes ‘Answer to Blinken’ Gay Propaganda Law*, BBC NEWS (Nov. 24, 2022) <https://www.bbc.com/news/world-europe-63747732> [<https://perma.cc/NY2C-63CD>].

7. LITH. RADIO AND TELEVISION, *Lithuania’s ‘Gay Propaganda Law’ Lives on Despite Opposition* (Oct. 19, 2021) <https://www.lrt.lt/en/news-in-english/19/1522754/lithuania-s-gay-propaganda-law-lives-on-despite-opposition> [<https://perma.cc/HQD7-JF3D>].

8. EQUAL. TEX., “No Promo Homo” Laws: Harmful and Outdated, <https://www.equalitytexas.org/no-promo-homo-laws/> [<https://perma.cc/3QTR-ERU3>].

9. OUTRIGHT INT’L, *Country Overview: Malaysia*, <https://outrightinternational.org/our-work/asia/malaysia> [<https://perma.cc/D4UA-S9GX>].

10. See Michael T. Tiu Jr., *The Rainbow Flag Among The Flags of Nations: Are LGBTQ Rights International Human Rights?*, 93 PHIL L.J. 56 (2020) (arguing that the inclusive language of international human rights instruments encompasses and includes LGBTQ rights); Jessica Brown, *Human Rights, Gay Rights, or Both? International Human Rights Law and Same-Sex Marriage*, 28 FLA. J. INT’L L. 217 (2016) (looking at the right to marriage under human rights law and national laws); Paula Gerber, Kristin Tay, & Adiva Sifris, *Marriage: A Human Right for All?*, 36 SYDNEY L. REV. 643 (2014) (arguing that the decision in *Joslin v. New Zealand* (Communication No. 902/1999, U.N. Doc. A/57/40 at 214 (2002) that declined to protect same-sex couples’ right to marry is no longer good law under Article 23 of the International Covenant on Civil and Political Rights); David Brown, *Making Room for Sexual Orientation and Gender Identity in International Human Rights Law: An Introduction to the Yogyakarta Principles*, 31 MICH. J. INT’L L. 855 (2010) (evaluating the Yogyakarta Principles’ legal and inspirational capacity to drive the development of human rights law).

Rights Council (HRC) adopted a resolution creating an Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity,¹¹ and in 2019, released the second edition of the report “Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law” which focused on (1) protecting individuals from violence, (2) preventing torture and cruel, inhumane and degrading punishment or treatment, (3) discriminatory laws, (4) preventing discrimination, and (5) freedom of expression, assembly, and association.¹² However, the U.N. is prevented from instituting stronger protections, like treaties, because of the highly varied perspective of individual states towards queer rights. Some nation-states like the United Kingdom and Canada are generally open to the idea of establishing queer rights.¹³ But other states, particularly religious regimes, see queerness, and therefore queer rights, as antithetical to their governmental policy and cultural identity.

One right that has gone largely underdeveloped in queer rights scholarship is the individual right to culture. While not outright ignored, scholars and human rights organizations have spent very little time developing a theoretical framework for the right to culture for the queer community. The right to culture may seem minor when compared to other rights, but cultural erasure is a governmental tool wielded to suppress “unwanted” communities. For example, prior to the Holocaust, the Third Reich confiscated and destroyed what it deemed to be “degenerate art” (Entartete Kunst) as a threat to its cultural vision.¹⁴ An attack on cultural expression is often part of a larger pattern of discrimination.

Cultural rights protect the expression of culture and the enjoyment of cultural and scientific progress.¹⁵ The U.N. Committee on Economic, Social and Cultural

11. Hum. Rts. Comm’n Res. 32/2, U.N. Doc. A/HRC/RES/32/2 (July 15, 2016) (reaffirmed in 2022 in U.N. Doc. A/HRC/RES/50/10). Mandate currently held by Victor Madrigal-Borloz (appointed 2017) and previously held by Vitit Muntarbhorn (2016-2017). See *Independent Expert on Sexual Orientation and Gender Identity*, U.N. HUM. RTS. SPECIAL PROC. <https://www.ohchr.org/en/special-procedures/ie-sexual-orientation-and-gender-identity> [<https://perma.cc/YL9G-3US2>].

12. U.N. Off. of the High Comm’r, Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law, U.N. Doc. HR/PUB/12/06/Rev.1 (2019), https://www.ohchr.org/sites/default/files/Documents/Publications/Born_Free_and_Equal_WEB.pdf [<https://perma.cc/7M9K-YTGQ>].

13. Justin McCarthy, *European Countries Among Top Places for Gay People to Live*, GALLUP (June 26, 2015) <https://news.gallup.com/poll/183809/european-countries-among-top-places-gay-people-live.aspx> [<https://perma.cc/R777-NTXA>].

14. See Christoph Zuschlag, “Chambers of Horrors of Art” and “Degenerate Art”: On Censorship in the Visual Arts in Nazi Germany, in *SUSPENDED LICENSE: CENSORSHIP AND THE VISUAL ARTS* 210-34 (A. Samuel & Althea Stroum eds., 1997), https://archiv.ub.uni-heidelberg.de/artdok/5613/1/Zuschlag_Chambers_of_horrors_of_art_and_degenerate_art_1997.pdf [<https://perma.cc/2AAA-3G6S>].

15. See Brain I. Daniels, *Culture, Cultural Rights, and the Right to Assemble*, 83 ANTHROPOLOGICAL Q. 883-896 (examining the relationship between the right to culture and the right to freedom of assembly); Yvonne Donders, *Cultural Rights in International Human Rights*

Rights (CESCR) stated that “[c]ultural rights are an integral part of human rights and, like other rights, are universal, indivisible and interdependent. The full promotion of and respect for cultural rights is essential for the maintenance of human dignity and positive social interaction between individuals and communities in a diverse and multicultural world.”¹⁶ Ignoring cultural rights in any discussion of human rights, including the rights of queer individuals, is an oversight that leaves valuable avenues for maintaining and supporting human rights unexplored.

In a way, queer rights and cultural rights are expanding in parallel. In the 21st century, scholarship around cultural and queer rights has grown but the two are rarely considered together. This paper will address how the right to “take part in cultural life” can be used as an effective human rights mechanism against censorship to protect queer rights and representation. First, it will examine the right to “take part in cultural life” and its application to the queer community. Second, it will look at violations of the right to “take part in cultural life” by censorship. Lastly, it will address issues of cultural relativism and argue that positing censorship as a violation of cultural rights can overcome those issues and broaden protection for the queer community globally.

II. LEGAL FRAMEWORK OF CULTURAL & QUEER RIGHTS

A. Right to Take Part in Cultural Life

The right “to take part in cultural life” can be found in various human rights instruments including the Universal Declaration of Human Rights (UDHR) and

Law: From Controversy to Celebration, 62 JAPANESE Y.B. INT'L L. 61 (2019) (reviewing the development of cultural rights in international human rights law); Stephen A. Hansen, *The Right to Take Part in Cultural Life: Toward Defining Minimum Core of the Obligations Related to Article 15 (1) (a) of the International Covenant on Economic, Social and Cultural Rights*, in CORE OBLIGATIONS: BUILDING A FRAMEWORK FOR ECONOMIC, SOCIAL AND CULTURAL RIGHTS 281 (Audrey Chapman & Sage Russell eds., 2002); Dana Irina, *A Culture of Human Rights and the Right to Culture*, 1 J. FOR COMM'N AND CULTURE 30-48 (Winter 2011) (arguing “for the human rights agenda on culture to reaffirm the universal and overarching importance of culture in advancing respect for human rights and to seek to rebalance the present agenda dominated by a right to cultural identity with an urgent emphasis on the fundamental importance of ‘cultural equipment’ and cultural infrastructure for individual freedom”); Roger O’Keefe, *“Right to Take Part in Cultural Life” Under Article 15 of the ICESCR*, 47 INT'L AND COMPAR. L. Q. 904-923 (1998) (discussing different interpretations of culture and how they contribute to the jurisprudence of the “right to take part in cultural life”); Lea Shaver (now Lea Bishop), *The Right to Science and Culture*, 1 WIS. L. R. 121-84 (2009) (discussing cultural rights as a public good to provide an important rhetorical and legal tool with which to open up new possibilities for sensible IP reform).

16. U.N. ECON. & SOC. COUNCIL, *General Comment No. 21: Right of Everyone to Take Part in Cultural Life (Art 15, Para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/GC/21 para. 1, (Nov. 20, 2009) [hereinafter General Comment 21].

the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Article 27 (1) of the UDHR states that “[e]veryone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”¹⁷ Article 15 of the ICESCR protects rights to culture including the right of everyone “[t]o take part in cultural life”.¹⁸ The Committee on Economic, Social and Cultural Rights (CESCR) describes culture as “a broad, inclusive concept encompassing all manifestations of human existence” and describes cultural life as “an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future.”¹⁹

To understand the right “to take part in cultural life,” it is important to address how the right is an individual right that extends to groups and that it protects the active expression of and passive participation in culture. The right “to take part in cultural life” extends to “everyone”. The CESCR recognizes that “everyone” “may denote the individual or the collective”²⁰ and that “cultural rights may be exercised by a person (a) as an individual, (b) in association with others, or (c) within a community or group.”²¹ However, in a 2008 Day of General Discussion by the CESCR on the right to take part in cultural life, it was stated that the right of the individual should come first since a collective interpretation could “be contrary to the dynamic character of culture and would support the illusion of cultures as monolithic structures. It would allow the monopolization of the definition of ‘culture’ by collective entities, leading to coercion towards cultural conformity instead of safeguarding cultural freedom.”²² Essentially, the right “to take part in cultural life” is held by individuals and, therefore, by groups as a collection of individuals.²³

Scholars have presented the right “to take part in cultural life” as encompassing active expression of culture, as well as passive access to and consumption of culture.²⁴ The right “consists in the ability to consume and create, individually and with others” and therefore, “implies the ability to access, enjoy, engage with and extend the cultural inheritance; to enact, wear, perform, produce, apply, translate, modify, extend and remix; to manifest, share, reinterpret, critique, combine and transform.”²⁵ “To take part in cultural life” is both engaging

17. G.A. Res. 217 (III) A Universal Declaration of Human Rights (Dec. 10, 1948).

18. International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S.; Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19; 6 I.L.M. 360 (1967), art. 15.1(a) [hereinafter ICESCR].

19. General Comment 21, *supra* note 16, para. 11.

20. *Id.* at para. 9.

21. *Id.*

22. U.N. Econ. & Soc. Council, *Day of General Discussion: Right to Take Part in Cultural Life (Article 15 (1) (a) of the Covenant)*, U.N. Doc. E/C.12/40/3 C.3, (May 9, 2008) (background paper submitted by Dr. Christian Groni) [hereinafter *Day of Discussion*].

23. *Id.*

24. *Id.* at D.1.

25. Lea Shaver (now Lea Bishop) & Caterina Sganga, *The Right to Take Part in Cultural*

in artistic and creative expression and also “the dissemination, exposition and performance of any creative or artistic work or production.”²⁶

B. Cultural Rights as Applied to the Queer Community

Cultural rights instruments have no specific reference to the queer community, but as the Vienna Declaration and Programme of Action stated, “[a]ll human rights are universal, indivisible and interdependent and interrelated.”²⁷ The Special Rapporteur for Cultural Rights (Special Rapporteur), in fulfilling her mandate,²⁸ recognizes the queer community as within the scope of cultural rights.²⁹ She recognizes “universality” as one of the “most important principles codified in international law in the twentieth century” and stated that “[u]niversality means that human beings are endowed with equal human rights simply by virtue of being human . . . regardless of their status or any particular characteristics.”³⁰

Beyond the universal nature of human rights encompassing the queer community, some instruments apply specifically to “minorities” in a particular state. Article 27 of the International Covenant on Civil and Political Rights (ICCPR) states that persons belonging to minorities have the right to enjoy their own specific culture.³¹ “In the absence of a generally accepted definition of ‘minority’, the application of article 27 ICCPR might vary considerably, albeit the existence of a minority is not dependent on the decision of a State.”³² This could apply to queer people in certain states. However, Article 15 of ICESCR does not impose a limitation to a specified group so the distinction is largely unnecessary.³³

The interpretation of cultural rights as a “way of life” extends well to the queer community. In this understanding, “culture is not merely an accumulation

Life: On Copyright and Human Rights, 27 WIS. INT'L L. J. 637, 646 (2010).

26. *Day of Discussion*, *supra* note 22, at E.2.

27. World Conference on Human Rights, *Vienna Declaration and Programme of Action*, U.N. Doc. A/CONF.157/23, (I)(5) (July 12, 1993).

28. Hum. Rts. Comm'n Res. 10/23, U.N. Doc. A/HR/RES/10/23 (Mar. 26, 2009).

29. *See Country Visits: Special Rapporteur in the Field of Cultural Rights*, U.N. <https://www.ohchr.org/en/special-procedures/sr-cultural-rights/country-visits> <https://perma.cc/R7DC-NVDN>] Mandate currently held by Alexandra Xanthaki (2021-2024). Former mandate holders are Karima Bennouna (2015-2021), and Farida Shaheed (2009-2015). *See Special Rapporteur in the Field of Cultural Rights*, U.N. Hum. Rts. Special Proc., <https://www.ohchr.org/en/special-procedures/sr-cultural-rights> [(last accessed Mar. 24, 2023)].

30. *Universality and Diversity: Special Rapporteur in the Field of Cultural Rights*, U.N. <https://www.ohchr.org/en/special-procedures/sr-cultural-rights/universality-and-diversity> [<https://perma.cc/DT2U-QH33>].

31. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, art. 27 [hereinafter ICCPR].

32. *Day of Discussion*, *supra* note 22, at E.3.

33. ICESCR, *supra* note 18, art. 15.

of works and knowledge which an elite produce, collects and conserves in order to place it within reach of all.”³⁴ The idea of protecting a “way of life” has been used as a basis to support anti-discrimination laws for other explicitly protected groups, like religious and ethnic groups.

Queer rights are undervalued in traditional human rights documents. However, to specifically address how human rights should be applied to queer people, The International Commission of Jurists and the International Service for Human Rights, a group composed of sixty judges and lawyers from all regions of the world,³⁵ undertook “a project to develop a set of international legal principles on the application of international law to human rights violations based on sexual orientation and gender identity to bring greater clarity and coherence to States’ human rights obligations” known as the Yogyakarta Principles.³⁶ Principles 26 and 38 address queer rights to culture. Principle 26 says that:

“States shall: (A) Take all necessary legislative, administrative and other measures to ensure opportunities for the participation in cultural life of all persons, regardless of, and with full respect for, their sexual orientations and gender identities”³⁷

Principle 38 says that:

“States Shall: (A) Ensure the right to practice, protect, preserve and revive the diversity of cultural expressions of persons of all sexual orientations, gender identities, gender expressions and sex characteristics on the basis of the equal dignity of and respect for all.”³⁸

While an important addition to the discussion, the Yogyakarta Principles are unable to overcome the political issues the U.N. faces when protecting queer rights. States that fail to recognize queer rights see their collective culture as incompatible with the existence of queer people. Overall, for the queer community, “participation in cultural life takes the form of an assertion of identity . . . and dignity”³⁹ The right “to take part in cultural life” is the “capability of people to live and be what they choose, with adequate opportunity to consider other options.”⁴⁰

34. *Day of Discussion*, *supra* note 22, at § C.1.

35. *Vision, Mission and Statutes*, INT’L COMM’N OF JURISTS, <https://www.icj.org/about/vision-mission-and-statutes/> [<https://perma.cc/T598-QW9P>]. For information the development of the principles, see Douglas Sanders, *The Role of the Yogyakarta Principles*, SEXUALITY POL’Y WATCH (Aug. 4, 2008), <https://sxpolitics.org/yogyakarta-principles/wp-content/uploads/2009/03/yogyakarta-principles-2-douglas-sanders.pdf>.

36. *Yogyakarta*, *supra* note 1.

37. *Id.*

38. *Id.*

39. General Conference, U.N. Educational, Scientific and Cultural Organization, *Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to It*, UNESCO Doc. CC/CSP/CP/14 (Nov. 26, 1976).

40. *Day of Discussion*, *supra* note 22, § E.1.

III. CENSORSHIP OF QUEER MEDIA VIOLATES THE RIGHT TO “TAKE PART IN CULTURAL LIFE”

One way in which States are violating the right of the queer community to “take part in cultural life” is censorship of queer media.⁴¹ “[M]easures of censorship can clash with creative freedom as an element of the right to take part in cultural life.”⁴² Censorship limits expression and representation for queer people to “control how they experience personal relationships and how they identify themselves.”⁴³

Queer representation in media is important to self-identification for queer people and the attitudes of the public towards the queer community. As one scholar pointed out, “[t]he ability to . . . engage in expressive conduct that leads to and is consistent with the self-identification of the person is at the heart of the dignity of the individual and is so often identified as the basis for recognizing and protecting human rights in the first place.”⁴⁴ Additionally, several studies have shown that exposure to queer arts and media leads to increased tolerance and improved attitudes toward the queer community.⁴⁵ The censorship of queer media is clearly damaging to the rights of the queer community.

A. Examples of Censorship of Queer Media

Censorship of queer media is prevalent around the globe. In 2017, the Egyptian Supreme Council for Media Regulation released a statement to ban “the appearance of homosexuals or their slogans in the media.”⁴⁶ In 2017, the Ugandan Media Council banned a Dutch film for “glorifying homosexuality.”⁴⁷ The Chinese General Rules for the Review of Network Audio-visual Program Content (2017), “explicitly prohibit content relating to homosexuality, included under the

41. See ILGA WORLD, STATE-SPONSORED HOMOPHOBIA 2020: GLOBAL LEGISLATION OVERVIEW UPDATE 145-63 (Dec. 2020), https://ilga.org/downloads/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2020.pdf. Censorship of media is not the only way the queer community’s right to take part in cultural life is violated but is a valuable example. Other queer cultural expressions include pride parades, pride flags, literature, visual art, music, and performance. For a comprehensive list of legal barriers to freedom of expression on sexual and gender diversity issues see *id.*

42. *Day of Discussion*, *supra* note 22, § F.2.

43. *Yogyakarta*, *supra* note 1.

44. Tiu, Jr., *supra* note 10, at 61.

45. See Cristina Nualart, *Queer Art in Vietnam: From Closet to Pride in Two Decades*, PALGRAVE COMM’NS (Apr. 19, 2016), <https://www.nature.com/articles/palcomms20169#citeas>; Marina Levina, Craig R. Waldo & Louise F. Fitzgerald, *We’re Here, We’re Queer, We’re on TV: The Effects of Visual Media on Heterosexuals’ Attitudes Toward Gay Men and Lesbians*, 30 J. APPLIED SOC. PSYCH. 738 (Aug. 15, 2006), <https://doi.org/10.1111/j.1559-1816.2000.tb02821.x>.

46. STATE-SPONSORED HOMOPHOBIA 2020, *supra* note 41, at 146.

47. *Id.* at 147.

category of “abnormal sexual relations or sexual behaviour.”⁴⁸ In Singapore, The Board of Film Censors Classification Guidelines (2011) groups the “promotion and glamorisation of homosexual lifestyle” with the promotion of racism and glorification of “paedophilia and bestiality.”⁴⁹ Several other nations are less explicit in their censorship of queer content by restricting content that is against “public morals” or “decency.”⁵⁰

The U.N. HRC has adopted country visit reports from different Special Rapporteurs of Cultural Rights that recognized instances of censorship of queer media in several nations. Malaysia has a history of censoring queer content in films. The Malaysian Ministry of Home Affairs states that “[a]pproval from the Film Censorship Board (LPF) shall be obtained prior to the distribution or public viewing of all local and foreign films.”⁵¹ In response to the censorship of gay scenes in *Rocketman*, a member of the board said that “[w]e do not allow any scenes that promote LGBTQ in films that are for public viewing.”⁵² Special Rapporteur, Karima Bennoune, visited Malaysia in 2017 and expressed concerns regarding these issues of censorship.⁵³ Her report stated that “films portraying homosexual or transgender persons in a positive manner have been censored,” and “at least three LGBTI events, including a film screening, were cancelled” in the months leading up to her visit.⁵⁴ The Malaysian government’s hostility towards the queer community “influences law enforcement, judicial outcomes, family behavior, and public discourse in media toward and about LGBT people,” leaving little room for counter narratives.⁵⁵

Censorship by the Russian government of queer media was also a concern in the Special Rapporteur, Farida Shaheed’s 2012 country visit report. The report noted that it was (1) “increasingly difficult for lesbian, gay, bisexual and transgender (LGBT) people in the Russian Federation to use cultural spaces such as film festivals and other events to explore and express that part of their identity safely”; (2) that “[i]n recent years, in several cities, groups trying to organize

48. *Id.* at 151.

49. *Id.* at 153.

50. *Id.*

51. *Film Censorship*, KEMENTERIAN DALAM NEGERI [MINISTRY OF HOME AFFAIRS], <https://www.moha.gov.my/index.php/en/penapisan-film> [<https://perma.cc/3AJB-8CY4>].

52. Beh Lih Ya, *Malaysia Under Fire over Cuts to Gay Scenes in Elton John's 'Rocketman'*, REUTERS (Aug. 1, 2019, 4:48 AM), <https://www.reuters.com/article/us-film-rocketman-malaysia/malaysia-under-fire-over-cuts-to-gay-scenes-in-elton-johns-rocketman-idUSKCN1UR3ZF> [<https://perma.cc/G8JX-79JE>].

53. Special Rapporteur in the Field of Cultural Rights, *Visit to Malaysia: Report of the Special Rapporteur in the Field of Cultural Rights*, ¶ 40, U.N. Doc. A/HRC/40/53/Add.1 (Jan. 10, 2019).

54. *Id.*

55. Neela Ghoshal, Ryan Thoreson, Thilaga Sulathireh & Kyle Knight, “*I Don’t Want to Change Myself*”: *Anti-LGBT Conversion Practices, Discrimination, and Violence in Malaysia*, HUM. RTS. WATCH (Aug. 10, 2022), <https://www.hrw.org/report/2022/08/10/i-don-t-want-change-myself/anti-lgbt-conversion-practices-discrimination-and> [<https://perma.cc/W7ZV-LA6C>].

festivals to offer a space of interaction between LGBT and others and to promote tolerance and human rights through art and culture have faced great difficulties, including threats and violence”; and (3) “[p]ermissions for exhibitions and screenings have been revoked, allegedly under the pressure of the administration, forcing groups to relocate to more obscure locations.”⁵⁶ Especially concerning is the 2013 “gay propaganda” legislation which banned public access to “propaganda of non-traditional sexual relations.”⁵⁷ The law “establishes responsibility for dissemination of information about ‘nontraditional sexual relations’ punishable by fines (for citizens and officials), fines and suspension of organizational activities (for entities) or fines and deportation (for foreign nationals and stateless persons).”⁵⁸ The Russian Government used the protection of children as a reason for the law but, as the Special Rapporteur pointed out, “it is feared that, in practice, the laws will lead to eliminating any expression of LGBT identity and the dissemination of information or artistic creations addressing LGBT issues.”⁵⁹

B. Censorship is a Violation of the Right “To Take Part in Cultural Life”

States have obligations under the right “to take part in cultural life” to respect, protect, and fulfill an individual’s rights. Under the obligation to respect, States “should refrain from interfering, directly or indirectly, with the enjoyment of the right to take part in cultural life” and “should refrain from interfering in the cultural self-realization of a person’s creative and artistic activities as well as an individual’s equal access to culture.”⁶⁰ Under the obligation to protect, States “are obliged to prevent third parties, be they individuals, groups or corporations, from encroaching upon the right to take part in cultural life.”⁶¹ And under the obligation to fulfill, States must “take positive measures to assist individuals or groups to enjoy the right to take part in cultural life in order to stimulate cultural life by setting an appropriate framework”⁶² Censorship violates all three but primarily the States’ obligation to respect the right “to take part in cultural life.” State-sponsored censorship is a direct violation of the enjoyment of queer people in cultural life and an interference with queer cultural self-realization.

56. Farida Shaheed (Special Rapporteur in the Field of Cultural Rights), *Addendum: Mission to the Russian Federation*, ¶¶ 101-02, U.N. Doc. A/HRC/23/34/Add.1 (Mar. 11, 2013).

57. Alexander Kondakov, *The Censorship Propaganda Legislation in Russia*, 2019 ILGA-EUROPE 213, 213 (2019), https://helda.helsinki.fi/bitstream/handle/10138/304543/ILGA_2019_Propaganda_law.pdf?sequence=1.

58. *Id.*

59. Shaheed, *supra* note 56, ¶ 104.

60. *Day of Discussion*, *supra* note 22, § G.1.

61. *Id.*

62. *Id.*

IV. CULTURAL RIGHTS AS A MECHANISM TO ADDRESS CENSORSHIP OF QUEER MEDIA

Government censorship of film is often presented as a State’s protection of its cultural values—specifically “traditional values.” States that have strong censorship establishments against queer media do so in the spirit of promoting traditional values like Russia’s anti-gay propaganda law, which is “‘aimed at protecting children from information promoting the denial of traditional family values,’ [by] ban[ning] the ‘promotion of nontraditional sexual relations to minors.’”⁶³ These nations have genuine concerns about imperialism and Eurocentric values. Religious cultures like that in Malaysia blame foreign media for imposing pro-queer narratives into their culture.⁶⁴ While it is true that not all countries have the same queer culture and community, “[s]tates parties are under a core obligation not to establish an official ‘State Culture’, which completely encompasses and defines the contents of culture and the arts.”⁶⁵

The right “to take part in cultural life” begins with the individual. As such, it avoids questions of “traditional” cultures and cultural relativism because it does not undermine the right of those whose culture is “traditional” and also protects the right for queer people. “Traditional” and queer communities should have equal access to participate in cultural life.

“The choice of the phrase ‘cultural life’ rather than simply ‘culture’ uniquely suggests an understanding of cultural life as something vibrant and dynamic, a diverse phenomenon that changes and develops. Whether the society in question is ‘traditional’ or not, cultural life is ever-changing; the result of individual creativity reinterpreting existing knowledge as a cultural resource.”⁶⁶

States must “not . . . discriminate in the cultural field” or assimilate “individuals or groups [into] the predominant society causing the subsequent loss of individual cultural characteristics.”⁶⁷ Using the right to “take part in cultural life” as the basis for rejecting government censorship of queer media undermines any arguments of a specific, preeminent State culture and requires governments to protect queer expression of culture. Cultural rights are specifically not about a State’s dominant culture; these rights protect the ability of individuals within a State to express the culture of any community to which they believe themselves to belong.

63. Michael Garcia Bochenek & Kyle Knight, *No Support: Russia’s “Gay Propaganda” Law Imperils LGBT Youth*, HUM. RTS. WATCH (Dec. 11, 2018), <https://www.hrw.org/report/2018/12/12/no-support/russias-gay-propaganda-law-imperils-lgbt-youth> [<https://perma.cc/3EHJ-3QNH>].

64. Patrick Frater, *After ‘Thor’ and ‘Lightyear,’ Malaysia Government Commits to Banning More LGBT Films*, VARIETY (Aug. 11, 2022, 4:30 AM PT), <https://variety.com/2022/film/news/malaysia-ban-lgbt-films-thor-lightyear-1235338721/> [<https://perma.cc/5NS2-4FHW>].

65. *Day of Discussion*, *supra* note 22, § G.4.

66. Shaver (now Bishop) & Sganga, *supra* note 25, at 644.

67. *Day of Discussion*, *supra* note 22, § G.4.

V. CONCLUSION

When States censor queer media, they are violating the right of queer people “to take part in cultural life” because the right guarantees individuals the freedom to express their culture through arts and media and enjoy the creative expression of others in their cultural community.⁶⁸ States argue that pushing queer rights on them undermines their own culture, but the right “to take part in cultural” life is non-specific. It allows everyone to express their own culture. Without the right “to take part in cultural life,” there is no way to know what a State’s queer culture looks like. Positing censorship as a violation of this specific right undermines arguments of cultural imperialism by allowing all the cultures within a State, including the culture of queer citizens, to be expressed and enjoyed without discrimination.

The “right to take part in cultural life” can serve as a narrow but potentially sturdy foothold for advocates of queer rights in international human rights law. As discussed earlier in the paper, access to culture and media regarding the queer community can often lead to broader acceptance of all queer rights. Advocates in the field of queer rights should push for a thematic report focused on the cultural rights of queer communities by the Special Rapporteur of Cultural Rights and request that the queer community be addressed in all country visits in order to more broadly understand and establish a framework for the cultural rights of the queer community.

68. ICESCR, *supra* note 18, art. 15.