



# **AI, cultural rights and the right to development**

**An analysis of the thematic study by the  
Expert Mechanism on the Right to Development**

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# Introduction

In its recent report,<sup>1</sup> the UN Expert Mechanism on the Right to Development (EMRTD) analysed the implications of artificial intelligence (AI) on cultural rights and the right to development, with particular attention to cultural participation, cultural diversity, creative production, Indigenous peoples and traditional knowledge systems. In preparation of the 63rd session of the UN Human Rights Council (HRC63) happening between 7 September and 9 October 2026 in Geneva, the publication and presentation of the study provides an important opportunity to assess how international human rights standards are responding to the rapid development and deployment of AI, and whether they adequately account for the cultural and structural inequalities embedded in these technologies.

The Association for Progressive Communications (APC) and Derechos Digitales consider the study an important contribution to ongoing efforts to centre human rights, community participation and cultural self-determination in AI governance. Our analysis of the report focuses on the following areas:

- Recognition of cultural rights, cultural self-determination and the right to development as interconnected frameworks for understanding and governing AI.
- Attention to Indigenous peoples, traditional knowledge, cultural diversity and the rights of communities whose culture and cultural knowledge are increasingly incorporated into AI systems, often without consent.
- Recognition of the implications of AI on communities, creative industries, cultural workers and authors' moral and material interests.
- The need for participatory, accountable and rights-based approaches to AI governance, including stronger safeguards for communities, and specific attention to the role of private actors.

## What the report gets right

The report, *Artificial intelligence, cultural rights and the right to development: Thematic study by the Expert Mechanism on the Right to Development*, makes some important contributions in recognising the importance of cultural rights in discussions related to AI governance. It does not treat cultural rights as an isolated

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<sup>1</sup> <https://docs.un.org/en/A/HRC/63/40>

or secondary concern within debates on AI governance. Instead, it places cultural rights within the broader framework of the right to development, and recognises that technological development cannot be separated from questions of equality, participation, self-determination and the distribution of power. This is consistent with the submission that APC and Derechos Digitales made to the process;<sup>2</sup> it recognises that the right to development is interdependent with other human rights, and that AI can either expand or constrain people's ability to participate in and benefit from development.

This framing is particularly essential because it moves the discussion beyond a narrow focus on whether AI systems are ethical, or whether individual harms can be mitigated. The report instead raises questions about whose development AI serves, who has the power to shape technological progress, and who benefits from the value generated by AI trained on cultural data. Its attention to unequal access to AI, the North-South divide, cultural homogenisation and the distribution of technological benefits provides an important basis for challenging development narratives that equate technological adoption with progress.

The emphasis on participation is equally significant, as the right to development cannot just mean ensuring that communities gain access to technologies developed elsewhere. Instead, it requires their meaningful participation in planning, designing and decisions that shape development itself. This opens space for understanding cultural self-determination, community agency and participation in technology governance as substantive dimensions of development, rather than as supplementary safeguards.

This is a strong direction for future AI governance, as it positions AI as more than a tool that operates within existing tech innovation processes, and presents it as part of the infrastructure through which those processes and the distribution of their benefits and harms are increasingly determined.

The report makes an important contribution by recognising that cultural rights cannot be adequately protected through an exclusively individualistic framework. Its acknowledgement of cultural rights, particularly in relation to Indigenous peoples, minorities and other communities, acknowledges that cultural heritage, tradition knowledge, languages and knowledge systems are often built, held,

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<sup>2</sup> <https://www.apc.org/en/pubs/un-expert-mechanism-right-development-study-artificial-intelligence-cultural-rights-and-right>

practiced and transmitted collectively. This is particularly important in the context of AI, where cultural materials can be extracted and reproduced at scale in ways that may cause harm to a community even when no single individual can demonstrate a conventional intellectual property violation. APC and Derechos Digitales highlighted this in their submission by establishing examples from Australian Indigenous communities whose traditional art and patterns were stolen, appropriated and misrepresented by Adobe Suite.<sup>3</sup>

The EMRTD report pointed to a structural limitation in existing legal frameworks by highlighting that communities, linguistic groups and cultural collectives may not be recognised as rights holders with the ability to challenge harms to their culture. Its consideration of collective standing therefore points towards an important area for further development in AI governance. Without mechanisms through which communities can assert their rights and express, reject or revoke consent, consultation, attribution or redress risk remaining largely individualised, and therefore ill-equipped to address collective cultural harms.

The report identifies the limitations of existing legal and institutional frameworks where communities, linguistic groups and cultural collectives cannot readily assert claims concerning collective cultural harms. Its attention to collective standing points towards a necessary shift in how AI-related harms are understood and remedied. This is significant because conventional copyright and intellectual property frameworks tend to organise cultural interests around identifiable individual authors and owners, while many cultural practices and knowledge systems are relational, intergenerational and collectively governed. The report therefore creates useful normative space for moving beyond an ownership-based approach towards one grounded in cultural self-determination and community recognition. However, cultural materials that have already been introduced into AI training datasets, and are reproduced and potentially misrepresented through systems operating across jurisdictions, remain a significant challenge.

Nevertheless, the EMRTD report differs from the APC and Derechos Digitales submission in its political framing of feminist intersectionality. The submission places feminist and intersectional analysis at the centre of the understanding of AI and cultural rights, recognising gender and intersecting forms of marginalisation as fundamental to how technological power operates and how cultural harms are

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<sup>3</sup> <https://nit.com.au/10-03-2025/16681/adobe-slammed-for-use-of-ai-generated-images-of-indigenous-people-and-artworks>

produced, experienced and reproduced. The EMRTD report, while recognising intersectional impacts and particular vulnerabilities of women, minorities and persons with disabilities, largely approaches these concerns through established human rights frameworks of equality and non-discrimination. This makes the report broader in its institutional framing, but less explicit about structural and power relations that produce differentiated impacts in the context of how gender, race, sexuality, disability, class, geography and colonial power all shape whose culture is represented, extracted or rendered invisible. It also matters because this intersectionality determines how multiple and overlapping forms of power shape whose knowledge is represented, whose cultural production and participation are possible and valued, and who has the authority to determine how cultural resources are used. Hence, the APC and Derechos Digitales submission offers a more explicitly political analysis of the relationship between AI, culture and structural inequality that the EMRTD can work around.

Despite this gap, the EMRTD report gives considerably more prominence to cultural labour, and this is a valuable expansion of the human rights analysis. The report expands the analysis beyond questions concerning artists' rights over their work to examine how AI is reshaping the conditions under which cultural work is produced and remunerated. Its discussions of casualisation, platformisation, income volatility and vague remuneration systems are particularly important because the effects of automation are not evenly distributed across cultural labour markets. The report also connects these transformations to decent work, social protections and fair payments, bringing labour rights more strongly into the cultural rights and right to development frameworks. This is a significant strength, although the analysis could go further in examining how existing inequalities within cultural labour markets determine who bears the costs of technological transition and who is positioned to profit from it. The report's recognition that AI can expand access to creative tools and support independent artists is useful in this regard, but these possibilities need to be considered alongside the structural conditions that determine whether artists can actually benefit from them.

The report also makes an important conceptual move from examining biased outputs to questioning the underlying structures through which knowledge is produced and shared. Its emphasis on epistemic pluralism recognises that AI systems do not just reproduce neutral information: their classifications, training datasets and knowledge architectures can all privilege certain forms of knowledge while marginalising or rendering others less visible. This deepens the cultural rights analysis considerably, particularly for Indigenous peoples and other

communities whose knowledge systems do not fit into dominant institutional or technological categories. The report situates these concerns within broader questions of data governance and cultural sovereignty. The next step should be to translate this recognition into stronger requirements for pluralistic knowledge governance, so that epistemic diversity is not merely something AI systems are expected to preserve, but a principle that shapes how AI systems are designed, trained, deployed and governed.

The EMRTD report places particular emphasis on corporate concentration, which is one of its most significant contributions, as it places AI governance within the political economy of technology rather than approaching corporate power primarily through the conduct of individual companies. It recognises that concentration of data, infrastructure, capital and market power can reproduce patterns of dependency, particularly for developing countries, with direct implications for cultural participation and the distribution of the benefits of technological development. The recommendations on competition policy, interoperability, public investment, and open or community-based infrastructure are particularly significant in this regard. They mark an important shift from approaches to responsible AI that address corporate ethics and transparency primarily through voluntary commitments, leaving underlying market structures and business models largely unaddressed.

The EMRTD report, however, could go further in examining how corporate concentration translates into political influence and regulatory capture, particularly where states have limited bargaining power in relation to transnational technological companies. The recognition of structural dependency is an important starting point, but challenging it also requires attention to ownership, control, public infrastructure, and the ability of communities and states to determine how technologies are developed.

The report importantly broadens the discussion of remedies beyond the assumption that individuals can seek redress for harm through existing legal systems. It explicitly recognises that reliance on private litigation places a disproportionate burden on marginalised individuals and communities, and calls for collective redress, international complaint mechanisms, coordinated enforcement and stronger international cooperation. This is particularly relevant to cultural harms which may be collective and/or cross-border, and may not fit easily into conventional frameworks centred on individual harms.

The EMRTD report also highlights the need for ongoing human rights due diligence, cultural and algorithmic impact assessments, transparency and meaningful consultation. These measures are very relevant from a preventive perspective, as they can help identify and address risks before harm occurs. At the same time, a significant implementation challenge remains. While the report identifies the need for stronger mechanisms, the link between international standards, domestic enforcement and avenues for redress available to affected communities remains underdeveloped. The recommendations therefore establish an important institutional direction, but their effectiveness will depend on whether states create mechanisms that communities can actually access, and whether companies can be held accountable across transnational AI value chains.

## **Where more work is needed**

Among the recommendations that the EMRTD addresses to states and business enterprises, it should more explicitly call for the mitigation of human rights impacts and harms through a people-centred approach. This includes allowing for restrictions and prohibitions on AI technologies when sufficient safeguards for cultural rights are not in place. The former High Commissioner for Human Rights has called for specific measures, such as moratoriums, when AI *a priori* cannot comply with human rights standards, particularly when they deepen discriminatory practices or reproduce structural biases. As argued in the APC and Derechos Digitales contribution, the harms associated with AI biases affect cultural self-determination. When external AI-driven systems shape how culture is represented, accessed and reproduced, communities risk losing agency over their cultural narratives. The report could incorporate moratoriums as concrete policy pathways until adequate safeguards for cultural rights are guaranteed.

The report includes a subtitle about “inequality and intersectional impacts” of AI systems; however, the decision not to explicitly name LGBTQIA+ people when discussing the right of groups and individuals to participate in decision-making processes affecting their cultural rights and cultural self-determination should be reviewed. The report should adopt a human rights-based, gendered and intersectional approach that recognises that societies and cultures are never neutral. LGBTQIA+ people have long been excluded from dominant cultural narratives, and AI risks automating these exclusions at scale. As argued in our joint contribution, AI can disproportionately affect particular groups in the exercise of their right to development. LGBTQIA+ people and their cultural rights must be

recognised among those groups and they should be directly involved in defining and designing AI systems, particularly where culture and language are implicated. Without such engagement, AI risks misrepresenting or erasing cultural diversity, as well as deepening historical exclusions.

The report repeatedly mentions human rights impact assessments of AI, but provides no clarity on what to assess, who should conduct the assessments, how often they should occur, or whether results should be published. If these assessments are to be included in national AI strategies, as the report suggests, they should be accompanied by action plans that assign clear responsibilities, resources and competencies to specific institutions. Without this operational detail, the recommendation may remain abstract.

The EMRTD report should more robustly integrate environmental and cultural rights concerns, explicitly recognising that the exercise of cultural rights is contingent upon a healthy environment. As underscored by Karima Bennoune, the UN Special Rapporteur on cultural rights, safeguarding a liveable environment is fundamental to protecting the conditions that allow people to access, participate in and contribute to cultural life. This connection is essential, as a degraded environment directly undermines cultural practices.

This intersection is particularly critical given that the development of AI is driving an exponential demand for data computing and a consequent boom in mega data centres, which consume vast amounts of energy and water. As argued in our joint contribution, the environmental costs of AI pose a direct and existential threat to the cultures and heritage of all human groups, particularly Indigenous and rural peoples whose identities are intrinsically tied to specific ecosystems. Both cultures and the environment are often place-based, a characteristic that shapes people's understanding of and relationship with their surroundings. The report should stress that AI development frequently comes at the direct expense of fragile ecosystems, and consequently, the well-being of local communities, their cultures and their heritage.

While the APC and Derechos Digitales submission called for an environmental "moratorium on new data centres", the EMRTD report only gestures toward "environmental sustainability" and remains considerably less prescriptive on the material infrastructure foundational to AI. It acknowledges that AI development has ecological consequences, but does not translate this recognition into concrete measures to prevent or halt infrastructure development where significant

environmental and human rights harms are foreseeable. This is a significant gap, given the scale of resources required to operate AI systems and the uneven distribution of these costs, particularly where data centres exhaust water, energy, land and local ecosystems. These impacts cannot be treated as separate from cultural rights, because for Indigenous, rural and other communities, the degradation or appropriation of ecosystems can directly affect the cultural practices, livelihoods, heritage and relationships with land on which cultural life depends.

The report would therefore be stronger if it moved beyond a general commitment to sustainability and recognised that, where AI infrastructure presents serious or potentially irreversible environmental and human rights risk, states should be mandated to impose a moratorium, prohibition or restrictions until adequate safeguards, consultation and impact assessments are implemented.

The EMRTD call to “review and reform intellectual property regimes to ensure that the moral and material interests of creators are effectively protected in the context of AI” is necessary but could be improved. It should also recognise that intellectual property frameworks are not neutral safeguards, since these actively enable extractive practices by AI developers. Traditional intellectual property frameworks permit mass harvesting of protected works, while legal tools such as patent claims and restrictive licensing conditions are used to consolidate control over AI systems and their outputs. This is especially harmful to Indigenous communities, whose cultural expressions are often appropriated for commercial gain without meaningful consent or benefit-sharing, because existing intellectual property rules prioritise individual benefits and fail to accommodate collective rights.

Beyond this, cultural production is a collective, cumulative and socially embedded process, yet traditional copyright and patent frameworks struggle to recognise these characteristics. The result is a structural imbalance across the cultural sector, which the report should address more forcefully. Creators and communities face unequal power, unfair contractual conditions and weak recognition of their contributions, all while many already work in precarious or undignified conditions. The report could therefore go beyond narrow intellectual property reform and advance broader governance approaches aimed at rebuilding shared knowledge and cultural infrastructures.

Meanwhile, in accordance with the UN Guiding Principles on Business and Human Rights, businesses should design and deploy, with multistakeholder participation,

proactive algorithmic transparency mechanisms to identify, prevent, mitigate and respond to the negative consequences of their AI activities and products on cultural rights and the right to development. Specifically, businesses should conduct actual and potential human rights impact assessments of the AI systems they design and sell, and publicly disclose the results. They should also carry out comprehensive studies measuring the potential consequences of those technologies for individuals and communities. Where such assessments identify serious risks to cultural rights, companies should refrain from designing, developing, producing and selling AI technologies that pose those risks.

In addition, the EMRTD could reinforce that businesses should explain how they collect, use, disclose, store and share cultural data from communities. These obligations are essential to ensure that business activities do not undermine cultural rights and that affected communities can meaningfully participate in decisions that affect their cultural heritage and self-determination.

Finally, as the report notes, the global AI ecosystem is characterised by deep asymmetries in data resources, computational infrastructure and capital investment. This concentration of power means a few companies and states exert disproportionate influence over foundational models and digital platforms. Such concentration directly undermines international cooperation aimed at removing obstacles to the right to development, as it limits who defines technological systems and who ultimately benefits from them.

The report, in recommending the strengthening of international cooperation, should therefore explicitly highlight these existing asymmetries between regions and the economic concentration derived from artificial intelligence. At the same time, international cooperation agreements must be transparent with communities whose cultural heritage and cultural data could be compromised. Without such safeguards, international cooperation risks reinforcing existing inequalities rather than reducing them.

## **Conclusion: From recommendations to actions**

The EMRTD thematic study provides an important foundation for advancing a rights-based approach to AI, but its value will ultimately be measured by what follows from it. The next step should be to translate its recognition of cultural self-determination, collective rights, epistemic pluralism, cultural labour and structural inequality into concrete obligations for states and businesses. This means

embedding cultural rights into national AI strategies and regulations and ensuring that there is meaningful participation of affected communities and that ongoing human rights and cultural rights impact assessments are conducted throughout the AI life cycle, with their findings made public and acted upon.

Implementation must also address the structural conditions that determine who has power over AI. States should strengthen public and community-controlled digital infrastructure, address concentration in AI markets and infrastructure, and ensure that international cooperation does not deepen technological inequality in the Global South. Businesses should be required to identify, prevent and remedy harms to cultural rights, including by establishing transparent processes for the collection and use of cultural data, respecting community control over cultural heritage and knowledge, and providing effective and participatory mechanisms for redress and compensation in cases where harm has been caused.

For civil society, the report creates an important opportunity to push these commitments further. The task now is to ensure that cultural rights do not remain a peripheral consideration within AI governance, but that they become part of the standards against which AI systems are designed, financed, produced, deployed and evaluated. This should include stronger protections for marginalised communities, clearer safeguards for cultural and intellectual property, attention to the environmental conditions that sustain cultural life, and enforceable limits where AI poses unacceptable or irreversible harm. The objective should not be limited to making existing AI systems less harmful, but also extend to ensuring that the direction of AI development itself is shaped by human rights, cultural diversity, community agency and the principle that those most affected must have meaningful power over the technologies that redefine their history and heritage and shape their future.