

**Statement by Ms. Farida Shaheed, the Independent Expert in the field of
cultural rights, to the Human Rights Council at its 14th session
31 May 2010**

Mr. President, Excellencies, distinguished delegates, ladies and gentlemen; I am honored to address the Human Rights Council as the Independent Expert in the field of cultural rights. Let me first thank the Governments and civil society organizations that made this new mandate possible. I also extend my thanks to the Office of the United Nations High Commissioner for Human Rights for unstinting support, as well as to civil society groups and experts for their insights and cooperation.

The heart of this mandate is the relationship between cultural rights, cultural diversity, and the universality of human rights.

Cultural rights, I believe, are pivotal to the recognition and respect of human dignity: they protect the rights of each person -- individually, in community with others, and as groups -- to develop and express their humanity, world visions, meanings assigned to life and understanding of development. They encompass important freedoms connected to identity, such as access to cultural heritage including intangible heritage as outlined in the 2003 UNESCO Convention for Safeguarding of Intangible Heritage and to the resources necessary for identification. They are essential tools for development, for peace and the eradication of poverty, for building social cohesion, mutual respect and understanding between individuals and groups.

And yet, despite numerous references in international instruments and the practice of human rights, the area of cultural rights remains relatively under-developed. My task is to investigate how best to distinguish which rights may be considered cultural and to further define the content of such rights.

One of the challenges is the broad scope of cultural rights and their close linkage with other human rights that sometimes makes it difficult to know where to draw the line.

Hence, a priority on assuming responsibilities in November 2009 has been to explore the meaning and scope of cultural rights. To enable inputs from a variety of viewpoints and concerns, the OHCHR organised a seminar in February 2010 in partnership with the International Organization of La Francophonie and UNESCO, and in collaboration with the Observatory of Diversity and Cultural Rights which, I am happy to report, elicited a high level of interest from States, intergovernmental organisations, national human rights institutions and non-governmental organizations. The diverse opinions and concerns expressed helped to inform my first report. Additionally, General comment No. 21 on the right to take part in cultural life, adopted by the Committee on Economic, Social and Cultural Rights in 2009 has been timely and very useful.

Written some six months into my mandate, this first report presents my preliminary views on the conceptual and legal framework of this new mandate. It focuses on the challenges in defining the scope and content of cultural rights, reviews relevant

provisions in human rights instruments, and develops initial thinking on the interaction among the principle of universality of human rights, the recognition and implementation of cultural rights and the need to respect cultural diversity. The issues addressed in this first report are not exhaustive. New issues are bound to emerge through country missions which I plan to start in the second half of 2010, regional consultations, studies and other activities.

Defining cultural rights and their content

In keeping with General comment No. 21, I view culture not as “a series of isolated manifestations or hermetic compartments,” but as a living, dynamic and evolving process by which individuals and communities give expression to the culture of humanity.

I firmly believe that when grounded in existing norms and principles of international human rights law, cultural rights enrich our understanding of the principle of universality of human rights by taking into consideration cultural diversity.

Cultural diversity is not to be equated, however, with cultural relativism. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope. Not all cultural practices accord with international human rights law and, although it is not always easy to identify exactly which cultural practices may be contrary to human rights, the endeavour always must be to modify and/or discard all practices pursued in the name of culture that impede the enjoyment of human rights by any individual. Universal human rights must be promoted in various cultural contexts by encouraging new thinking and cultural practices for example by “cultural negotiation” within communities; by policies supporting informed, open and participatory debates; and by independent judiciaries and national legal frameworks upholding the universality of human rights.

Relationship between cultural rights and cultural diversity

The full respect for human rights both creates an enabling environment for *and* guarantees cultural diversity. Cultural diversity can only be protected and promoted by safeguarding human rights and fundamental freedoms linked to, for example, freedom of expression; information and communication, language; identity and the pursuit of specific ways of life; education and training; access, contribution and participation in cultural life; access to tangible and intangible cultural heritage of one’s own community and that of others.

It is important to recognise that cultural diversity exists – and must be promoted - not only between groups and societies, but also within each group and society. Identities are not singular. Each individual has a multiple and complex identity that simultaneously allow her or him to be part of several diverse and changing cultural communities on a variety of grounds such as ethnicity, beliefs and convictions, language, gender, age, class affiliation, profession, and ways of life.

Ensuring cultural diversity is less about preserving cultural goods and practices as they exist - which may be inappropriate sometimes – than about ensuring the conditions which make possible the continuous creation and development of cultural goods and practices. The right of every individual to reject practices, to not participate in the

cultural life of a given community, to change communities of affiliation, to challenge and modify existing culture is thus pivotal to cultural rights as well as cultural diversity.

As stressed by General comment No. 21, States' obligations to respect and to protect freedoms, cultural heritage and diversity are interconnected. The right to participate in cultural life entails respecting and protecting cultural heritage in all its forms, including intangible heritage which has special relevance for indigenous peoples and for sustainable development. It means respecting and promoting the rights of all groups and communities as well as creating an environment that supports the enjoyment of cultural rights as well as cultural diversity.

This can be challenging, especially in societies where people feel that their common cultural heritage is under threat, due, for example, to the dominance of other cultures, globalization and development processes and/or the dominant position of corporate actors in the field of culture and leisure. Nonetheless, the common basis of all action must be the principle of universality of human rights.

Complementarity and coordination with other mechanisms

Many other mechanisms include aspects of cultural rights, especially those concerning minorities, indigenous peoples and migrants; and those dealing with expression, religion, racism, education, extreme poverty and violence against women. To avoid duplication, I will consult these mechanisms, seek collaborations, and focus on issues that are unaddressed or require more attention.

Discussions with the CEDAW committee have started, a bilateral meeting with the treaty bodies chairs is scheduled in June, and a meeting with all UNESCO's Sectors has been requested.

I look forward to collaborations with UNESCO and other intergovernmental organizations, with non-governmental organizations, as well as with academic and research institutes. Possible areas of cooperation are, for example, developing appropriate methods and indicators to assess the implementation of cultural rights; and studies on the conceptual and legal framework of cultural rights.

Areas of concern and priority issues for the mandate

Given the wide scope of potential issues relating to cultural rights, and the limitations due to resource constraints, I propose to focus on two broad areas:

- (a) Ensuring cultural rights in globalization and development processes, including issues of media pluralism, and the impact of information technologies; and how to involve communities in formulating and applying best practices
- (b) Issues concerning the right to participate, to access and to contribute to cultural life without any discrimination, starting with cultural rights within the education system, freedom of scientific research and creative activity, and the right to benefit from scientific progress and to access cultural heritage.

Asked to identify best practices as well as potential obstacles in the promotion and protection of cultural rights so as to recommend actions, for each issue, I will seek to

identify good practices since what is considered ‘best’ in one situation may not be appropriate in another, as well as possible obstacles for the realization of cultural rights.

As mandated, I shall ensure a gendered perspective on cultural rights and address the cultural rights of persons with disabilities in both categories. In September, I shall be participating in two events around gender, culture and rights in South Asia: one organised by civil society groups, the other by the Commonwealth Secretariat.

Depending on available resources and opportunities, I propose to organize consultations around cultural rights, especially regional consultations focusing on priority concerns in the area as well as thematic issues. Consultations, missions and studies will provide a solid basis for engaging with States in formulating concrete measures and collaborations to promote and protect cultural rights. I welcome the opportunity to explore with the permanent missions in Geneva the possibility of country visits during this session and during the annual meeting of mandate holders.

I look forward to engaging and working with the Council and with all of you in the future to illuminate the issues surrounding cultural rights.

Thank You