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## Human Rights Council

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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

### Follow-up and implementation of the Vienna Declaration and Programme of Action

## Workshop on traditional values of humankind

### Report of the United Nations High Commissioner for Human Rights

#### *Summary*

The present report contains a summary of the discussions held during the workshop on traditional values and human rights, which was held in Geneva, on 4 October 2010, in accordance with Human Rights Council resolution 12/21. The workshop, which was opened by the United Nations High Commissioner for Human Rights, saw the participation of experts representing different civilizations and legal systems, as well as delegates from interested States, academics and intergovernmental and civil society organizations.

The workshop focused on the issue of how the traditional values underpinning international human rights contributed to the promotion and protection of human rights in general. Five panels were created: an introductory panel, to frame the issue; a panel on human dignity and equality; a panel on freedom and responsibility through the prism of different cultures and traditions; a panel on practical approaches to take advantage of opportunities and tackle challenges; and a panel for final conclusions.

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## **I. Introduction**

1. The present report is submitted in accordance with Human Rights Council resolution 12/21, in which the Council requested the United Nations High Commissioner for Human Rights to convene, in 2010, a workshop for an exchange of views on how a better understanding of traditional values of humankind underpinning international human rights norms and standards can contribute to the promotion and protection of human rights and fundamental freedoms, with the participation of representatives from all interested States, regional organizations, national human rights institutions and civil society, as well as experts selected with due consideration given to the appropriate representation of different civilizations and legal systems and to present to the Council a summary of the discussions held at the workshop in conformity with the programme of work of the Council.

## **II. Workshop**

2. The workshop was organized by the Office of the United Nations High Commissioner for Human Rights in consultation with Member States, a range of experts and representatives of civil society. The organization of the workshop benefited from a generous financial contribution from the Russian Federation.

3. The workshop was held on 4 October 2010, in the Palais des Nations, Geneva. Translation was provided in the six official languages of the United Nations in order to facilitate a broader discussion. The workshop agenda consisted of five panels: an introductory panel framing the discussion; a panel focusing on human dignity and equality as values underpinning international human rights norms; a panel devoted to the relationship between rights and responsibilities; a panel where opportunities and challenges were discussed; and a panel with concluding remarks. The workshop was well attended by State representatives, members of other United Nations agencies, non-governmental organizations, academics and experts.

### **A. Framing the issue**

4. The workshop and introductory panel were opened by the United Nations High Commissioner for Human Rights. The High Commissioner made reference to her own experiences of cultural diversity as a South African woman of Asian descent, and having embarked on a professional career that started nationally and took her to the international arena. Cultural diversity had showed her many human similarities: the fundamental, irreducible and universal values that transcend geography and know no barriers of culture or gender, class or language. These were the values that underpin human rights. Some of these values, familiar to all peoples, include the desire for liberty, dignity and freedom from fear and want, and form the basis of the Universal Declaration of Human Rights. The Declaration reflected the views of men and women from cultures and traditions across the world.

5. According to the High Commissioner, tradition is a complex notion. No society, regardless of its geographic location or level of economic development, can be said to be represented by a single and comprehensive set of shared values covering all social matters. Traditions and values change over time, and are viewed and interpreted differently by various actors in society. While there were traditions in line with human rights, others were in conflict with them. The aim of the workshop was to focus on the traditional values

underpinning human rights. Doing so meant rejecting those who would seek to juxtapose traditional values against human rights with a view to erode the universal authority and appeal of human rights. While the Vienna Declaration recognized that the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it reaffirmed that is the duty of all States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms. The High Commissioner concluded that understanding the common normative underpinnings of both sides of that equation was important for more effective human rights promotion, and, ultimately, more humane societies.

6. Subsequently, a keynote address was delivered by the Executive Director of the United Nations Population Fund (UNFPA). Her address focused on human rights in a cross-cultural perspective, as reflected in the work of UNFPA worldwide. She pointed out that, in the experience of UNFPA, to internalize human rights, cultural values and beliefs must be clearly identified, contested, negotiated and eventually reconciled from within.

7. The Executive Director stressed that culture mattered because cultural traditions and beliefs were often more strongly rooted than laws: therefore, to get to the roots of human rights issues, there was a need to engage at a cultural level. For instance, discrimination and violence against women and harmful practices such as female genital mutilation and child marriage were illegal in many countries, and yet they persisted because they were deeply rooted within the culture. Violations of human rights happened in families and communities while systems of justice were often at the national level, far away from the violations. It was the mechanisms of the local value system that recognized or ignored such violations. To be effective in eradicating such practices, there was a need to engage at a deeper level to promote human rights in the context of individuals, families and communities at the local level. This required listening and promoting dialogue within communities.

8. The Executive Director offered examples and positive results of UNFPA work regarding women's health, the reduction of high rates of maternal death, the eradication of violence against girls and women and female genital mutilation, the prevention of HIV infection, and humanitarian assistance in societies suffering from emergencies, in contexts where traditional beliefs posed obstacles to such goals. She concluded by stressing that change that contributed to universal human rights in diverse cultural settings could not be imposed from the outside: to be lasting, it must come from within. The principles of human rights must be internalized by communities and individuals, and the key to this was to find the positive values and agents of change that exist in all cultures. Culture was created by people and people could change culture. They could build on the positive and transform the negative aspects of their culture. There were people within every culture who opposed harmful cultural practices and violations of human rights. International actors in the field of human rights must be able to view the field from cross-cultural perspectives. By doing so, they should be able to engage in a dialogue with cultures and mobilize cultural agents of change for development and human rights.

9. The President of the Paris Office of the Institute for Democracy and Cooperation, Natalia Narochinskaya, commended the Human Rights Council for engaging in a discussion of traditional values and human rights. In her view, the protection and promotion of diversity and equality between nations and cultures were the prerequisites for genuine harmony in the relations between civilizations and within any society of our time. The world was interdependent but not homogenous. There was no country or civilization where freedoms, human rights and equality were not of major importance, but there were different perceptions of these issues. She recalled that the Charter of the United Nations combined the recognition and protection of human rights with the recognition of non-interference in the domestic affairs of countries and their sovereign equality. She

encouraged the Council to conduct a study about the interpretation of human rights in different cultures.

10. According to Ms. Narochnitskaya, the very notion of human rights, and the idea that the authority of public officials was bound by legal, traditional and ethical norms could be found in the Greco-Christian concept of natural law and, as such, could be considered traditional. She observed that traditional Christian values, which underscored the value of human dignity, could be identified in several current human rights standards, such as the prohibition of slavery. At the same time, many regimes responsible for gross violations of human rights in the twentieth century overtly declared themselves “anti-traditional”. She also affirmed that the birth of both the Universal Declaration of Human Rights and the European Convention on Human Rights were attempts to give new impetus to values that were deeply rooted in tradition.

11. Ensuring human rights required the protection, not the elimination, of traditional institutions such as the State, the community and the family. Attachment to traditional values was important to ensure that respect for human rights was based not only on fear of legal punishment but also on deeply grounded convictions. Tradition could be one of the best teachers because it influenced behaviour internally and without coercion. Ms. Narochnitskaya warned about the dangers of axiological nihilism and the loss of spiritual inclinations. She therefore advocated for a restoration of the link between human rights and traditional moral values.

## **B. Human dignity and equality**

12. The second panel focused on human dignity and equality as values underpinning human rights, which could be traced in various traditions and cultures. The first panellist, Eckart Klein, law professor at the University of Potsdam, Germany, and former member of the Human Rights Committee, offered a thorough overview of the meaning of the concept of equality in human dignity in international human rights instruments.

13. Mr. Klein pointed out that universal human rights instruments did not frame human dignity as a separate human right, but considered that the recognition of equal and inalienable human rights derived from the inherent human dignity of human beings. Human rights instruments offered indications for the justification of this assertion: the need for the recognition and protection of human rights lay in the reaction against “barbarous acts which have outraged the conscience of mankind”. Human dignity was not defined in human rights instruments. Furthermore, no specific endorsement of a single philosophical, anthropological or religious approach was made by human rights instruments; thus, the recognition of human dignity stood as a founding value, without endorsement of any particular line of justification.

14. Mr. Klein noted the evolution of the place assigned to human dignity in relation to human rights. While the Universal Declaration of Human Rights of 1948 regarded human dignity as an undisputed value that was attributed to the human family, it was the Covenants of 1966 that asserted that human rights derive from human dignity. Human dignity could be conceived as a foundational value of human rights, and thus as a parameter that should guide the interpretation of legally recognized human rights. This was not a superfluous notion, as there was an important relationship between the legitimacy of legal norms and their ethical underpinnings. Moreover, foundational values could also offer guidance when there was a need to interpret the scope of human rights and the acceptability of their limitation or restriction.

15. Several conclusions flowed from the assertion of human dignity as a basis for human rights. Firstly, it required the recognition of human beings as right holders and right

claimers. Secondly, it would be incompatible with human dignity to deprive individuals or groups of individuals of their rights. Thirdly, human dignity was not only an individual but also a societal value; thus, human rights should be understood in the context of human interaction, and that meant a need to respect the human dignity of the others – and the necessary legal protection to ensure such respect. Fourthly, human dignity required the recognition of human freedom: to be able to develop one’s own identity. While international human rights law may allow for limitations or restrictions on rights, human dignity required that such restrictions were not arbitrary and, in some cases – such as the prohibition of torture and cruel or degrading treatment – that no such restrictions were admitted.

16. Lastly, Mr. Klein addressed the issue of the universality of human rights. The assertion of human dignity as a foundational value carried an immanent claim of universal validity. The significance of national and regional particularities and various historical cultural, religious and backgrounds might, however, be relevant to the interpretation of human rights in specific contexts, especially of the permissibility of restrictions. Human dignity should always, however, be a yardstick for these interpretations. Cultural traditions could never be a justification for State action or failure to act when human dignity was at stake. Mr. Klein also stressed the need to take into context the evolution of values, which were not fixed or immutable, when interpreting human rights in the light of human dignity. He advocated for both openness and carefulness when doing so.

17. The Human Rights Director of the Tukuí Shimi Foundation and former member of the Ecuadorian Constitutional Assembly, Mónica Chuji, placed the concept of human dignity in the context of the indigenous peoples’ worldview by focusing on the notion of *sumak kawsay* (“good living” or “life in harmony”), which had been incorporated into the new Constitutions of Ecuador and Bolivia (Plurinational State of), together with international human rights instruments and standards. The concept of *sumak kawsay*, which originated in the worldview of Andean indigenous peoples, based the notion of well-being not in the isolated individual, but in the relationship between the individual, the community and nature.

18. *Sumak kawsay* meant to enjoy access to a healthy and fertile land; to cultivate what was necessary and in a diversified way, to keep rivers, forest, mountains and the air clean; to manage collectively the territory, to provide and receive an education on the basis of the community’s own values, to respect the rights of others, and to decide collectively on the priorities of each community. It was based on the respect of those who lived around us and of the ancestral institutions that regulated community life. It was founded on equity, solidarity, reciprocity, discipline, respect, the acknowledgment of difference, conservation and the recognition that all of us are part of nature, part of biodiversity and have the responsibility of looking after our habitat.

19. The concept of *sumak kawsay* had multiple dimensions. It had a philosophical/ethical dimension, focused on the need for an indivisible, respectful and harmonious relationship of individuals and communities with nature. It had a political dimension, linked with self-determination and the collective rights of indigenous peoples to decide on their own development. It had a legal dimension, because it needed to be reflected in binding legal norms, which included customary norms. *Sumak kawsay* was also connected to universally recognized human rights; indeed, it was related to civil, political, economic, social and cultural rights, and to both individual and collective rights. It had economic dimensions, because it offered a basis to assess which economic activities were respectful of nature and not based on the exploitation of either nature or human beings. *Sumak kawsay* promoted diverse, healthy and balanced production, allowing for sharing, consumption of own produce and fair trade. It had a cultural dimension, because it reflected traditional knowledge and values and was open to intercultural dialogue. It had an

environmental dimension, which called for the respect of biodiversity and a balanced relationship with nature. It had a communicational dimension, because it encompassed the process of conveying and transmitting knowledge and values from generation to generation and of articulating them with other knowledge and wisdom. In short, *sumak kawsay* aimed to recover the meaning and deep relationship between human being and nature, and the recognition and respect of the diversity of cultures and worldviews.

20. In the time reserved for comments and questions, Philip Riabykh, representing the Moscow Patriarchate of the Russian Orthodox Church, offered his views of the relationship between human rights and religious traditions. He believed that it was wrong to regard religious traditions as in conflict with human rights, because a religious tradition was a form of embodiment of universal values, including human rights, freedom and dignity, in the experience of a particular nation or a group of people. Mr. Riabykh warned against abstract determinations in the field of human rights. He stated that international authorities, while making human rights interpretations regarding specific countries, should make a thorough examination of the national context. He also underscored the fact that religious traditions were part of peoples' identities, and that the defamation of religion could thus provoke violence and conflicts. He called for an opportunity for religious organizations to participate in the development of human rights, and pointed to the experience of interreligious dialogue as an example to be followed.

21. The representative of Cuba pointed out that, since every legal system drew on customs and traditions, it was essential that traditions and the realities of peoples be taken into account. Human rights had evolved, for example, through the gradual recognition of new rights that were not considered before, such as the right to peace and international solidarity and the right to a healthy environment. Such rights should also be seen as closely linked with human dignity.

22. The representative of Ireland stated that the core international human rights instruments represented an international consensus on what humankind valued: each individual being able to live a life in dignity by being treated equally, free from discrimination of any kind. While values were partly influenced by tradition, tradition itself could not be taken as justification for the perpetration of human rights abuses. Indeed, daring to break with tradition in some instances had made a valuable difference: for example, by allowing the enjoyment of human rights by women who may otherwise not have a chance to take public office or vote, by allowing interracial and interreligious marriages or by granting protection to children who may otherwise be abused by adults. Human rights must not be confined to the bounds of tradition, but rather must remain relevant and therefore applicable to all individuals.

23. Also raised by participants were issues such as the compatibility of human rights and the death penalty and cultural assimilation and religious discrimination suffered by indigenous peoples.

### **C. Freedom and responsibility through the prism of different cultures and traditions**

24. The next panel focused on how different cultures conceive the links between rights and responsibilities as an underlying issue for the universality of human rights.

25. Joseph Prabhu, professor at the Philosophy Department of the California State University, United States of America, recalled Mahatma Gandhi's reply to the inquiries from the study of the United Nations Educational, Scientific and Cultural Organization (UNESCO) on the then prospective Universal Declaration of Human Rights. According to Gandhi, if human rights had the pretence of being a universal moral language of the human

community, rights and duties should be inextricably linked. According to Mr. Prabhu, Ghandi's point shows that the universality of human rights might be conceived in many different ways. He therefore stressed that, in order to avoid imposing a particular ethnocentric standard on the rest of the world, there was a need to engage in intercultural dialogue. Through such a dialogue, different ideas could correct and enhance each other.

26. Mr. Prabhu advocated a model that attempted neither to transcend cultural differences nor to solve them by making one culture superior to others, but rather to take the other cultures seriously and attempt an open-minded, meaning-and-truth-seeking dialogue. A tripartite distinction between norms, legal mechanisms and justification could provide the framework within which cross-cultural dialogue proceeded. It allowed for the recognition and acceptance of the fact that there were many human rights cultures around the world, even if not necessarily using those terms; for instance, he pointed out the classical Indian moral notion of *dharma*, which had been invoked in discussions on human rights. *Dharma* did not start with the individual: human reality was not incarnated in the individual only but in the social whole, and the social whole in turn was an expression of a cosmic order whose integrity *dharma* tried to protect. From such a perspective, many of the assumptions underlying Western human rights discourse could be disputed. In addition to a critique of individualism, the tradition of *dharma* would also criticize the idea of rights being separated from responsibilities and the idea of rights applying to humans alone, leaving aside nature and the community.

27. Mr. Prabhu suggested that each tradition might have something to contribute to the development of a global human rights culture. The further evolution of human rights discourse needed to go beyond the limits of what he saw as its original Western-oriented formulation, and should consider different interlocutors, such as civil society organizations, and non-State spaces.

28. Patrice Meyer-Bisch, coordinator of the Interdisciplinary Institute for Ethics and Human Rights at the University of Fribourg, Switzerland, pointed out that the consideration of "traditional values" in the context of human rights raised two main questions: (a) was diversity of values compatible with universality?; and (b) was taking traditions into account compatible with personal freedoms?

29. According to Mr. Meyer-Bisch, it was not possible to consider human rights independently of their cultural context. This did not mean to introduce relativism, but to find in cultural diversity the array of necessary resources to reach a more concrete and demanding universality. Universality was the common challenge: it revealed the human condition by constantly working on our common contradictions. Universality was therefore not opposed to diversity, but channelled it and built its coherence.

30. Freedoms needed cultural resources to be exercises. The analysis of the traditional transmission of values in the light of human rights – especially cultural rights that particularly secured the rights and freedoms to have access to cultural resources, as vehicles to convey identities, values and meanings – placed on each human being duties of observation, interpretation and solidarity. He argued for the need (a) to inform freedoms with all the sources of reason; (b) to regard traditions as cultural heritages, as an object of cultural rights in the indivisible and interdependent human rights' system; (c) to highlight the importance of the responsibilities needed in order to protect the fragile value of traditions; and (d) to reconcile tradition and innovation, and to regard them jointly as common responsibilities and obligations.

31. Informing freedoms with all the resources of reason required ensuring access to cultural resources for all, especially for the most deprived, and acknowledging that traditions had a variety of interpretations. A living tradition was a space of constant interpretation and transmission. Both long-lived experience (tradition) and rational debate

were sources necessary to examine and convey values and reminds all that human rights were themselves a cross-cutting tradition.

32. Traditions could be considered a cultural heritage, cultural references that allowed human beings to identify with them, individually and in common, and to communicate with each other. As such, traditions must be approached with respect, but also with a critical attitude, given that they were not immutable. This “critical respect” towards tradition was the responsibility of all those who shared this reference.

33. Mr. Meyer-Bisch pointed out that the three elements building the scope of human rights comprised in article 1 of the Universal Declaration – freedom, equality in dignity and solidarity – corresponded to some fundamental capacities: of reason and conscience, of freedom and of responsibility. While dignity was always of individuals, it was difficult to conceive of it without collective references and modes of transmission, such as families, communities, heritage, schools and the media.

34. Regarding the relationship between tradition and innovation, Mr. Meyer-Bisch stressed that the development of cultural assets required conditions to allow excellence, valorization and creation. Cultural poverty could be defined as the failure of persons or communities to have access to those cultural resources that are necessary for their identity, freedoms, responsibilities and social ties. Prejudicial practices violating human rights and human dignity could be seen as indicators of cultural impoverishment, and it was the common responsibility of all to criticize them. This process could serve simultaneously as a respectful critique of traditional values and for the restoration of the dignity of persons and communities. Lastly, Mr. Meyer-Bisch suggested that intercultural dialogue may be insufficient to critically reflect on controversial issues and difficulties. Instead, he underscored the importance of intercultural debate as a means to benefit from the diversity of resources of our common reason.

35. After the interventions by the experts, several non-governmental organizations and State representatives made comments. According to the International Commission of Jurists, the international human rights legal framework had been established to ensure that human rights were guaranteed for all human beings everywhere, regardless of whether they belonged to a particular religion or none at all. The content of human rights must thus be determined not in reference to tradition or religion, but to international law as it was interpreted by legal authority and evolved over time. The world’s multiple and multifaceted traditions, cultures and religions offered us many positive and humanistic values and practices. However, some traditions, cultures or religions were not shared by everyone. International human rights law acknowledged the diversity of the human family and the unique nature of every individual through the principles of dignity, universality, non-discrimination and equality before the law. It sought to protect the individual from harmful practices, violence and discrimination whether or not the perpetrators invoked tradition, culture or religion as justifications.

36. The Youth Coalition for Sexual and Reproductive Rights drew attention to the fact that traditional values, such as those surrounding gender, age, disability, race, caste and sexuality, had led to the marginalization of numerous individuals and groups of persons. Examples of human rights violations and abuses included the murder of young women and men who married outside their caste, the denial of contraception to young unmarried people in public health services, the denial of comprehensive sexuality education in public schools and violence against lesbians and gays.

37. The Russian Civic Chamber underscored the fact that some universal human rights did not necessarily fit in with local traditions. For example, the idea of “privacy” was not always easy to translate. In many regions of the Russian Federation, there was a prevalence of communal values over individual values. Some values were the main guarantee of

human rights, such as the rule of law and the principle of justice. These were not always national values or State traditions.

38. The International Service for Human Rights warned about giving legitimacy to a system of values that was not consonant with international human rights norms and thus provided justification for attacks against those who defended human rights. It referred to the attacks suffered by women human rights defenders when perceived as defying traditional cultural, religious or social norms relating to women's role in society.

39. The Global Campaign to Stop Killing and Stoning Women warned against the misuse of culture to condone violations of human rights. Violations were often justified with reference to traditional values and practices that had the effect of subjugating women and girls and abusing their fundamental human rights. The organization sought to end cruel punishment of women caused when "traditions" judged them for having transgressed the "traditional norms", especially those aimed at regulating or controlling their behaviour and sexuality, such as laws that regulated obedience, "modesty" and freedom of mobility, and required a woman's submission to the men in her family or considered women and girls to be the property of their fathers or husbands. The organization affirmed that the Universal Declaration of Human Rights was not only a common standard of achievement for all peoples and all nations, but also a common standard of assessment for all traditional values. The Declaration was the embodiment of positive traditional values that were universally held by the community of nations and were consistent with the fundamental dignity of all human beings.

40. The representative of the Netherlands stated that individuals had multiple identities: their religion, their nationality, their professional status. This brought different value systems with it, and one of the functions of human rights was to protect each individual and to give individuals the opportunity to choose between those identities or to combine them. Human rights were a way of protecting the liberty of the individual to choose his or her own identity. To narrow down the discussion to religious traditions simplified the question and made a caricature out of the individual.

41. According to the Foundation for Gaia, cultural rights were not only individual or collective, but could also be conceived as the rights of future generations. Colonialism had often broken up regional cultures, and they had now become minority cultures in newly created nation States. The organization considered that one could talk about transboundary cultures, and asked whether it was possible to conceive of transboundary cultural rights.

42. The delegate from the United States of America stated that the broad concept of "traditional values" remained a troubling one. The notion of "traditional values", which was alien to human rights law, could undermine the universal principles enshrined in the international human rights instruments, such as women's rights and the rights of minorities and other vulnerable groups. The term "traditional values" has not been clearly defined and understood, and was therefore so vague and open-ended that it could be used to legitimize human rights abuses. The inherent nature of tradition was that it evolved: what was considered to be traditional was constantly being contested and redefined. Slavery and the disenfranchisement of women were once traditions; today, most countries embraced very different traditions with regard to racial minorities and women. The idea of traditional values had been misused by some to justify restrictive and unjust treatment of lesbian, gay, bisexual or transsexual communities. The United States would continue to collaborate to reinforce universal human rights standards, and opposed the distortion of traditional values to support the imposition by States of discriminatory and repressive laws and policies.

43. The Russian Academy of Science pointed out that the problem of the universality of human rights could not be solved in an a priori manner, independently from experience, but a dialogue should be built and articulated.

## D. Opportunities and challenges: practical approaches

44. The panel was devoted to a discussion of opportunities and challenges for the implementation of human rights in a culturally diverse world.

45. Tom Zwart, law professor at the University of Utrecht, the Netherlands, focused on the perspective of the “receptor theory” as a practical approach to promote the implementation of international human rights standards in local contexts. According to the approach, international human rights norms and local cultural practices could and should mutually reinforce each other.

46. Mr. Zwart challenged the misconception that international human rights norms required States to embrace Western values. Adherence to human rights did not necessarily require ascribing to a Western liberal conception of human rights or considering it to be superior to other conceptions. The international human rights regime was binding on States, not because this was prescribed by a particular philosophy but because it was grounded in positive law: the obligations of States in the area of human rights were legal commitments that resulted from the treaties they had signed up to rather than moral ones. All State parties, regardless of their philosophical views on human rights, had to live up to the human rights obligations to which they had committed. To the extent this legal regime allowed them, they could remain loyal to their own philosophical convictions.

47. Mr. Zwart referred to the assumption that, in order to implement international human rights obligations, States had no other option than to turn them into enforceable rights within their domestic sphere. He maintained that, unless indicated otherwise, States were free to choose their own social arrangements to implement international human rights obligations. Under international law, States enjoyed discretion with regard to the implementation of treaty obligations within the national order. As long as they met the obligations laid down in the respective treaties, they may choose the most appropriate way of doing so at the domestic level, including through the arrangements that already existed when the State signed up to the treaty. Therefore, non-western States can implement treaty obligations without using rights, but by relying on other social arrangements that fit better into their culture and traditions, as long as they meet the standards laid down in the treaties. In these cultures, human rights treaty obligations were pursued through other, non-legal means, such as kinship, group solidarity, respect, restraint, duties and beliefs.

48. Mr. Zwart then outlined the “receptor theory”, which assumed that States could and should rely on local cultural practices to implement international human rights obligations. The receptor approach consisted of three elements: legitimacy; cultural fluidity; and indigenous reform.

49. Legitimacy consisted of respect for and acknowledgement of the equality of every culture. The receptor approach accepted the legitimacy of implementing treaty obligations by putting in place social arrangements, including traditional ones, other than law and rights. The assumption was that, like rational-secular value systems, traditional systems were aimed at achieving fairness and human dignity. Cultural fluidity meant making these social arrangements visible. By acquiring these insights, those applying the receptor approach could assist in mapping the way in which State parties met their treaty obligations through local social arrangements. Academics, policymakers, activists and international monitoring bodies could therefore get a better picture of the efforts being made to implement human rights treaty obligations. Indigenous reform required mapping the social institutions that were in place to meet human rights obligations to guide those who believed that human rights required local reform. The receptor approach was based on the idea that reforms should add to but not replace existing social arrangements. It opposed the introduction of foreign notions into customary law if local remedies could be found which,

while undoing the violation, remained loyal to the social relations existing in that particular society. Changes that added to the existing arrangements stood a far better chance of being supported and carried out by the community than those that were enforced top-down.

50. Lastly, Mr. Zwart announced the creation of a network on traditional values and human rights, comprising academic institutions, civil society organizations and other stakeholders, with the aim of exploring the relationship between traditional values and human rights and suggesting ideas and concepts that could lead to cross-fertilization between them.

51. The Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, offered an overview on how her mandate had addressed the issue of the intersections between traditional and cultural practices and violence against women. The mandate had produced two thematic reports dedicated to this issue, specifically on cultural practices in the family that are violent towards women and intersections between culture and violence against women, and had also addressed it in other reports and communications to Governments.

52. The Special Rapporteur stated that, despite the clear provisions in many human rights instruments, the persistence of practices justified in the name of culture, which violated women's human rights and were contrary to human dignity, was the norm. Widespread impunity was explained by the fact that, in the past, neither the Governments concerned nor the international community challenged the implications of practices that violated the rights to health, life, dignity and personal integrity. These were sometimes regarded as sensitive cultural issues falling within the private sphere of women and the family and thus not the business of the State.

53. In order to counter and transform culture-based discourses that hindered the implementation of women's human rights, it was necessary to (a) interrogate culture as historically constructed and representing diverse positions and interests; (b) apply a political-economy perspective to understanding cultural practices; and (c) approach all forms of violence against women as a continuum and intersectional with other forms of inequality. This required ensuring that diverse women's voices within specific communities were heard, and that the claim for a right to a life free from all forms of violence was not sacrificed in the name of culture.

54. The mandate had documented a number of culturally derived forms of violence against women within the family. Such practices included early and forced marriages, son preference, honour killings, female genital mutilation and practices that violated women's sexual and reproductive rights. It had also explored the linkages between certain harmful practices and the contraction and transmission of HIV/AIDS.

55. The mandate had distinguished between practices that amounted to torture from those that amounted to discrimination. Cultural practices that involved pain and suffering and violation of physical integrity could amount to torture under international law. With regard to discriminatory practices such as unequal family law systems, the mandate had advocated for a range of approaches adopted by different countries to respond to the diversity of contexts, which should ultimately aim at changes in attitude so that social transformation could be led by the community itself.

56. The Special Rapporteur's next thematic report to be submitted to the Human Rights Council would be devoted to the topic of intersectional and multiple forms of discrimination in the context of violence against women. In the report, she would address, among others, the way in which oppressive practices towards women in the name of culture intersected with other forms of discrimination and contributed to the continuum of violence that women experienced.

57. In the space reserved for questions and comments, the Marangopoulos Foundation for Human Rights reminded participants of the engagement that States undertook in the Vienna Declaration and Programme of Action to eradicate “any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices”. While the Foundation supported the need to understand the traditional values underpinning human rights, it pointed out that the advancement of “traditional values” may have a certain negative effect on the campaign against such practices as sexual abuse of female children in the household, dowry-related violence and female genital mutilation. It urged the Human Rights Council to adopt a resolution in which it reminded States of their international obligations to address effectively all traditional practices resulting in violations of women’s rights, making it clear that traditional values may not be invoked to justify human rights violations and advancing only those values that are consistent with individual human rights law.

58. ARC International expressed concern at the potential of an approach based on traditional values to erode international human rights standards, and at attempts to portray tradition as static and monolithic. Traditional values were invoked to justify past practice or resist change, whereas human rights frequently required changes to ensure conformity with international standards. It pointed out that tradition and culture were pluralistic and evolving and that, while some traditions were consistent with international human rights law, others were not. Tradition could not be seen as simply a reflection of the values of the majority. Much of international human rights law was designed to protect minorities that had been historically marginalized and subjected to abuses by the State or by the majority. States had a positive obligation to eradicate harmful stereotypes, values, traditions and practices that were inconsistent with international human rights law. Tradition and culture may be useful to help promote respect for human rights in our diverse societies by way of human rights education at the national level, but no one could invoke traditional values to justify human rights violations or to restrict the scope of human rights. Given the potential for abuse of an approach based on traditional values, it suggested that it would be more productive in future to refer to “universal values” or “values underpinning international human rights law”.

59. Human Rights Watch pointed out that the discussion on traditional values should be firmly embedded in the implementation of human rights obligations. It stressed that all cultures contained diverse and sometimes clashing traditions and values. In this sense, it recalled that harmful practices were often justified by invoking certain traditional values. It also underscored the fact that there was no clear line separating traditional values, traditional practices and traditional symbols. Such a lack of clear definitions made it difficult to assess their respective impact on human rights. In any case, in cases of human rights violations, human rights must supersede tradition. Currently recognized human rights, such as the universal right to vote, including for women, would not long ago have been seen as in contradiction with traditional values. Finally, those excluded from defining traditions were often the first victims and they should be heard in the discussion.

60. Belgium, speaking on behalf of the European Union, recalled that the European Union had voted against the resolution that allowed for the organization of the workshop because the notion of “traditional values” had a negative connotation and was subject to broad interpretation. This undefined concept might weaken the principles enshrined in international human rights instruments. Cultural diversity should be taken as an opportunity to promote human rights, not as an instrument to undermine them. When traditional values enriched human rights, they deserved protection under human rights law, as was the case with cultural rights and indigenous peoples’ rights. More generally, traditions and values underpinning them were enriching factors for humanity, and were already protected as culture heritage by a number of UNESCO instruments. The absence of a universal definition of the non-legal concept of “traditional values” made it difficult to articulate

them in the language of human rights. The European Union recalled its attachment to the universality of human rights; according to the Vienna Declaration and other instruments, no tradition could justify violations or limitations of human rights. As far as the positive dimension of traditional values that could be accommodated in the framework of the protection and promotion of human rights was concerned, it was already taken into account in international law, mainly through those instruments regarding culture, cultural diversity and cultural heritage. While some of these aspects fell under the competence of UNESCO, the independent expert in the field of cultural rights could also address them in the context of her mandate.

61. The representative of China stated that the concept of human rights should not be monopolized by a few countries, and that it was actually deeply rooted in the traditional value system of every country. China used the traditional value system to promote the development of the notion of human rights; for example, traditional Chinese religious thought emphasized that heaven gave birth to many things, but the most important was the human being. Therefore promoting such a traditional value had a positive effect on the development of human rights. According to China, the universality of human rights should be combined with the traditional values of countries.

62. The Human Rights Law Resource Center pointed out that many traditional values were already protected by human rights law, such as freedom of religion, freedom of expression and freedom of association. These were, however, not absolute rights. The unspoken claim of many asserting traditional values is that, in cases of conflict, traditional values trumped other rights. This was not, however, the position of international human rights law. To allow the automatic prioritization of religious and cultural rights over other human rights perpetuated a false hierarchy of rights and might entrench systemic discrimination and other violations of rights. There was therefore a danger in confusing the recognition of cultural or religious rights with the prioritization of those rights, to the detriment of other rights.

63. The representative of Egypt pointed out that it was necessary to differentiate between what constituted tradition and what constituted values that were traditional. Societies were always in motion and change; the process of adaptation of what was viewed as human rights norms and principles as they stood, and what was regarded as traditional values in the positive sense, also changed, because values were part of what constituted society. Traditional values should not be confused with traditions or practices that were harmful; these had to be fought within the values upon which societies were built.

64. The representative of the Netherlands doubted that all traditional values were by definition conducive to the promotion of respect, protection and enjoyment of human rights. The lack of a clear differentiation between harmful traditional practices and traditional values would make it difficult to give legal sense to these notions. The Netherlands attached great importance to the universality of all human rights: for example, the protection against torture or extrajudicial killings and of other human rights should be the same everywhere in the world. According to article 5 of the Vienna Declaration, while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be born in mind, it was the duty of States, regardless of their political, economic or cultural system, to promote and protect all human rights and fundamental freedoms.

## E. Conclusion

65. The independent expert in the field of cultural rights, Farida Shaheed, made some concluding remarks on the basis of the discussions that had taken during the workshop. She identified some of the basic agreements in the various presentations:

(a) All cultures shared a common set of values that belonged to humankind in its entirety, and those values had made an important contribution to the development of human rights norms and standards;

(b) Such values were inscribed in the Universal Declaration of Human Rights that, having incorporated diverse, cultural and political traditions and perspectives and having been adopted by consensus, “represents a common standard of achievement for all peoples and all nations”;

(c) Each and every person, regardless of socio-economic, cultural and personal identity, belief system, political view or physical location was entitled to all the rights and freedoms recognized in the Universal Declaration of Human Rights;

(d) All human rights were universal, indivisible, interrelated, interdependent and mutually reinforcing and must be treated in a fair and equal manner and on the same footing;

(e) Under international law, all States, regardless of their political, economic and cultural systems, had the obligation to promote and protect all human rights and fundamental freedoms for all.

66. Even if there was agreement on the universality of human rights, discussions on traditional values tended to focus on how the universality of rights was translated into reality. All human thinking and reasoning was rooted in people’s cultural perspectives and understandings, including the traditions of elaborating the contents of human rights. Therefore, to breathe life into international human rights standards, there must be ownership of these norms and standards among all communities of the world. This implied an acceptance and assimilation of concepts through local lexicons. Equally, however, the continuing development of universal human rights standards was only possible if this was informed by the cultural diversity of the world’s peoples. The interplay between universal standards and understanding and diverse localized realities raised a series of questions that had to be considered. To what extent were cultural notions and value systems in accordance with international human rights? Did international human rights reflect the cultural diversity of the world’s people? And if not, how were we to achieve harmony and a common understanding and therefore, make human rights a living reality? To what extent was it possible to distinguish between traditional values and traditional practices, which are the external, visible manifestations of such values? Was there a common understanding of what, in practical terms, constituted “traditional values”? Who was or should be responsible for defining the parameters and contents of “traditional values”?

67. It was essential to unpack the terms “tradition” and “traditional”, because of the emotive quality and resonance tradition had with cultural identity and the sense of self. Communities had divergent traditions that reflected different values within themselves, by reflecting the views of the majority and/or power-holders on the one hand, and those of the more marginalized, including minorities, on the other. Traditions constantly changed and evolved over time in response to changing realities and as a consequence of interactions and interchanges with other communities. Cultural notions and value systems drew upon both continuity with the past and a projected, imagined future.

68. Dialogues must enable learning as a two-way process in order to facilitate a cross-fertilization of ideas. It was equally important to acknowledge that real differences in perspectives linked to traditional values could present serious challenges. Human dignity lay at the core of human rights. While concepts of human dignity were found in every society and were tied to value systems, ways of living together and beliefs that came together in “culture”, it was equally necessary to recognize that some practices and attitudes at odds with human dignity also derived from traditional values. Attitudes of cultural communities towards particular individuals because of some distinctive characteristic or trait that they possessed could be hugely problematic, denying the human worth of such individuals who were treated without dignity and, sometimes, may even be deprived of life. It was essential to maintain and uphold the right of every individual to accept or challenge tradition, for human rights meant ensuring human dignity as well as equality of all and respect for each person, regardless of any attribute or characteristic.

69. Intercultural dialogue based on the equal respect for the world’s cultures and the protection and promotion of human rights allowed genuine exchanges and was the most valuable tool for enhancing harmony and bridging the gap between the abstract principles of universalism and concrete divergent particularities. Dialogue must take place among and within cultural traditions.

70. Lastly, there was a danger in making something as undefined and constantly evolving as “traditional values” the standard for human rights. While drawing upon the richness of cultural diversity, all societies must continuously reinforce the promotion and protection of human dignity and the worth of all members of society through the norms and standards of human rights as developed and accepted by the international community. Positive values existed in all cultures, but there was a need to support communities to examine, contest, negotiate and reconcile their values and practices with human rights.

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