

Cultures, Traditions and Violence Against Women: Human Rights Challenges

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Good afternoon everyone.

First let me thank the organizers arranging this session on the human rights challenges posed by the nexus of cultures, traditions and violence against women. I hope to be able to offer some suggestions about how to address the challenges.

In 2005, I was invited to lead a workshop on *Violence Against Women Justified by Culture* at an *International Symposium on Due Diligence & State responsibility for the Human Rights of Women*. I may have disappointed the organizers, because I did not focus on particular societies and cultures since I believe that, regardless of the nature of manifestation, whenever violence against women (and against others) takes place it indicates a degree of legitimization by some elements within the dominant 'culture.' This because

- (1) The dominant culture in virtually all societies is patriarchal and,
- (2) Patriarchal culture seems to inevitably validate violence as an acceptable, sometimes even desirable, attribute of masculinity – while de-valuing feminine attributes and those possessing such attributes, largely women.

Explicit and implicit cultural legitimization for violence against women is found in all societies. All societies contain both traditions and innovations, continuity and change – and what was tradition yesterday may not be a tradition tomorrow, and what is an innovation today, can easily become a tradition in the future.

Giving violence legitimacy increases the acceptability of specific acts of violence against individuals who are socially devalued and discriminated against by the dominant culture. Transformed into 'the norm', acts of violence remain unquestioned, acquiring impunity. In the final analysis, violence against women can only be overcome when the 'culture of

violence' is replaced by a culture of peace¹ and means found to resolve differences peacefully.²

So what is culture?

Culture is not just music, poetry, fine arts and monuments, it is more than the food we eat, how we welcome new life and say farewell to the departed; it is a way of life. It is a prism through which we perceive and respond to the world around us. No society is devoid of culture. The increasing recognition accorded cultural rights, including the establishment of my mandate, testifies to a greater understanding of the role of culture in all aspects of life.

I would like to underline two important aspects regarding culture:

1. **No society ever has a singular culture.** Each society, and every community, has *both* a dominant culture *and* multiple subaltern cultures. The dominant culture reflects the viewpoint and interests of those in power at a particular time; subaltern cultures represent the viewpoints and perspectives of those who do not accept and/or do not live according to the prescribed 'normative' behaviour. Minorities, indigenous peoples and other communities outside the mainstream have their own distinct culture. So do individuals living on the periphery, and the poor who are often not a minority. There are sub-cultures of women and frequently, youth develops its own cultural variation. Communities of shared cultural values include groups who consciously reject the dominant cultural paradigm - the cultures of resistance, including communities of human rights activists, for example.
2. **Culture is never static;** it is produced and reproduced through everyday actions and exchanges in the social, political, and economic arenas. It is not an earthenware pot handed from one generation to another, but a constantly evolving reaffirmation of a sense of self – of the values and modalities considered to be essential from a particular community's understanding of what it means to be human, what nature and life mean. Traditional values and traditions are both ever-evolving.

Part of my mandate is to study the relationship between cultural rights and cultural diversity. In my 1st report I have stressed that "cultural diversity exists not only between groups and societies, but also within each group and society. This internal diversity must be recognized and accorded importance in all efforts to respect, protect and promote cultural diversity. Identities are not singular. Each individual is the bearer of a multiple and complex identity, making her or him a unique being." Individuals identify themselves in numerous ways and hence participate simultaneously in several cultural communities based on affiliations of e.g. ethnicity, descent, religion, beliefs and convictions, language, gender identity, age, class affiliation, profession, ways of life and geographical location...etc.

What does this mean from the perspective of human rights and women's human rights activism?

¹ The United Nations Education, Science and Culture Organisation (UNESCO) started a Culture of Peace Programme in the early 1980s. 2000 was declared the UN International Year for the Culture of Peace and the first decade of the new millennium the UN Decade for a Culture of Peace and Non-violence for the Children of the World (2001-2010) under UNESCO coordination.

² Diane Bretherton, 'Education, Training, Socialization and Research – Learning The Tools for Living Together Peacefully and with Respect for Differences', in: *Asian Women for A Culture of Peace – Report of the Regional Conference for a Culture of Peace, 6-9 December 2000, Hanoi*, UNESCAP-UNESCO, September 2001 pp 76-80.

1. The common set of values found across cultures belonging to humankind in its entirety are inscribed in the Universal Declaration of Human Rights (UDHR) that, incorporating diverse, albeit not all, cultural as well as political traditions and perspectives and adopted by consensus, “represents a common standard of achievement for all peoples and all nations” The UDHR which has evolved as international customary law, provides the essential framework for cross-cultural dialogue and understandings on human rights.
2. Each and every person, regardless of any socio-economic, cultural and personal identity, belief system, political views, or physical location, is entitled to the rights and freedoms recognized in the UDHR
3. All human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing and must be treated in a fair and equal manner and on the same footing, as highlighted in the Vienna Declaration and Programme of Action, as well as all major subsequent international human rights related conferences.
4. Under international law, all States, regardless of their political, economic and cultural systems, have the obligation to promote and protect all human rights and fundamental freedoms for all.

Within this framework, I believe it is time for women’s rights activists to shift perspectives and gears on culture and violence; to shift the dialogue from one of culture as obstacle to one of demanding equal cultural rights.

The Universal Declaration on Cultural Diversity avers that:

The flourishing of creative diversity requires the full implementation of cultural rights as defined in article 27 of the Universal Declaration of Human Rights and in articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights. All persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons are entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.

Cultural diversity does not mean cultural relativism, however. While every cultural tradition contributes to building human rights concepts, every cultural community also contains within it a number of manifestations and practices that not in accord with human dignity and human rights norms and standards. I should also say that it is impossible to separate traditional values from traditional practices, since the former are often used to justify and always underlie the latter. Harmful practices and customs that contravene or undermine human rights and dignity, regardless of provenance and sources of justification, must be vigorously challenged and overturned. Processes of negotiation are required to institute change within communities in which every community member must be a full and equal participant.

Given multiple voices within each particular society and community, a key question becomes which voice is given - or acquires - legitimacy as *the* voice of ‘the people’. I have raised the importance of who speaks for the community and who is accepted as ‘the authentic voice’ by decision-makers in my first report. This is of equal importance for the majority community as for minorities. In this respect there seems to be a blind spot even in

democratic dispensations that accept unelected 'leaders' of particular ethnic or religious communities as the authentic and singular voice while requiring people's representatives to be elected as a general rule. The principle of due diligence makes it incumbent on the State to elicit a full compendium of voices from within a particular community of citizens as from within the citizenry at large.

Cultural Rights

1. The first cultural right is the right of every individual to participate in cultural life as enshrined in the UDHR and Article 15 of ICESCR. This right has been further elaborated by the Committee on ESCR in its General comment No 21 as having three distinct aspects:
 - a. The right to access
 - b. The right to take part in
 - c. The right to contribute to cultural life.

For many women the **right to access** starts with the basic right of freedom of movement as well as the right to information without encumbrances; it includes the right to access not only one's own culture but that of others, implying the ability to freely engage with people, ideas and events beyond any particular community

The **right to take part in** cultural life includes the right not to participate in particular traditions, customs and practices that infringe on human dignity and rights. It means the right to choose to be affiliated with one or more cultural communities, to leave and join these at will without fear of violence and punitive actions.

The right **to contribute to** cultural life implies a host of other rights such as the rights to freedom of expression, association and thought as well as the right to education, to be included in cultural activities and to have the means and resources to do so. It means the right to critique existing cultural norms traditions and traditional values and to create new cultural meanings and norms of behaviour, and the right of bodily and intellectual integrity.

CEDAW

The CEDAW convention establishes an international bill of rights for women but so far its provisions relating to women's cultural rights have been ignored while, too frequently, States Parties advance arguments of culture and religion for not giving effect to CEDAW. I refer you to:

Article 3 that obliges

States Parties shall take all appropriate measures, including legislation, in all fields, in particular in the political, social, economic and cultural fields, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 5 provides that

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices

which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

Article 13 provides for

States Parties taking all appropriate measures to eliminate discrimination in areas of economic and social life to ensure, on a basis of equality of men and women, the same rights, in particular:

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

Women's rights advocates and the human rights community in general have made little effort to promote these rights for women.

My current thematic report is on the right to access and enjoy cultural heritage as a human right. I selected the theme because

1. The right to access and enjoy cultural heritage is inextricably linked to the right to participate in cultural life. The importance of having access to one's own cultural heritage, and to that of others has been emphasized in general comment 21 that also stresses the interconnectedness of States' obligations to respect and to protect freedoms, cultural heritage and cultural diversity.³
2. Because cultural heritage is linked to human dignity and identity, accessing and enjoying cultural heritage is an important feature of being a member of a community, a citizen and more widely a member of society.
3. Heritage encompasses things inherited from the past that are considered to be of such value or significance today, that individuals and communities want to transmit them to future generations. Cultural heritage links the past, the present and the future. It is something that has been developed, built or created, interpreted and re-interpreted in history and has been transmitted from generation to generation.
4. Heritage consists of both tangible heritage, including constructed monuments and objects as well as natural sites such as cultural landscapes, and intangible cultural heritage, which includes traditional cultural expressions and traditional knowledge systems, but equally histories of the past, means of expression, practices and customs, i.e. a way of life, as well as the interpretation of both tangible and intangible heritage. Tangible and intangible heritage are not water-tight compartments for heritage is about the *significance* attached to things received from the past, as well as its further development and reinterpretation.

The right to access and enjoy cultural heritage encompasses the right to be part of selecting what constitutes heritage, participating in the interpretation of meanings assigned to heritage and in decisions about what should be passed on to future generations – and with what meaning. Heritage includes elements from the past that reflect a darker side of a community's history, which are to be remembered for the lessons they provide but not necessarily celebrated.

Women rarely - if ever - define the dominant culture, because they do not have the economic, social or political power to do so. I think it is time to see how women can be brought from the margins of subcultures to a central position in defining the overall culture.

³ General comment No. 21, Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), in particular paras. 49(d) and 50.

Taking up women's cultural rights as provided for under various international instruments can provide an important means of supporting the shift from the margins to the centre, and I hope the work of this new mandate can facilitate this.

I would therefore urge you to think about how women's cultural rights can be promoted as a means of overturning violence against women, what actions are needed to give substance to CEDAW articles 3, 5 and 13 in particular?

In closing I would like to reiterate that traditions and the interpretation of these are constantly in flux because culture itself is a constantly evolving process. A number of key issues were discussed, and I think resolved, at last year's Seminar on *The traditional values underpinning international human rights: how can they contribute to promotion and protection?*

The *Report on the traditional values of humankind workshop* acknowledges that "Traditions, traditional values, and culture itself change and evolve over time in response to changing realities.⁴ Traditions are therefore sites of contestation and it is dangerous to make something as undefined and constantly evolving as "traditional values" the yardstick or reference point for human rights standards. It is essential that cultural relativism and traditional values not be used to fragment international human rights into a number of self-contained regimes. It is well to remember that, just because something is said to be traditional does not mean that it is, in fact, traditional and even if it is that it should be accorded sanctity. While drawing upon the richness of cultural diversity, all societies must continuously reinforce the promotion and protection of the human dignity and worth of all members of society through the norms and standards of human rights as developed and accepted by the international community. While positive values exist in all cultures, there is a need to support communities to examine, contest, negotiate and reconcile their values and practices with human rights.

As said, there are often different understandings of what constitutes "traditional values" and of cultural heritage within communities by "the majority and/or power-holders on the one hand and those more marginalized, including minorities, on the other". It is therefore essential to maintain and uphold the right of every individual to accept or challenge traditions and the parameters of culture as I stated in my first report, and to "support communities to examine, contest, negotiate, and reconcile their values and practices in line with human rights", as recognized in last year's workshop.⁵

Change rarely occurs in isolation and always involves a questioning of previously held views practices and values. All efforts must be made to avoid a singular reference point for legitimacy; people should always have the benefit of accessing multiple sources for their actions and beliefs from within and outside their own community and traditions.

The approach must be to focus on "universal values" or "values underpinning international human rights law" since the "common set of values that belong to humankind" are those "inscribed in the Universal Declaration of Human Rights which represent 'a common standard of achievement for all peoples and all nations'.⁶

There is a need to work simultaneously at the level of both society and state. The law itself reflects the dominant cultural beliefs of a society, evident in the text of the law such as the

⁴ Workshop on traditional values of humankind - Report of the United Nations High Commissioner for Human Rights A/HRC/16/37, 13 December 2010. Paragraph 67

⁵ Ibid. Paragraph 7

⁶ Ibid, Paragraph 65

prohibitions or prescriptions and the severity of punishment prescribed for a particular act compared with greater leniency for another, as well as legal silences: acts which a society condones by silence. It is also reflected in the application of law where – largely male – law enforcement agents, lawyers and judges who, consciously or unconsciously, bring to the application of law their particular cultural beliefs and understandings. Sometimes, the cultural viewpoints may be so strong as to overrule the text of the law. Nowhere is this more evident than with respect to gender-based violence.

Legal measures alone rarely suffice. Cultural communities must be encouraged to develop their own philosophical vocabulary that upholds the universality, indivisibility, interdependence and inter-relatedness of human rights. States have a positive obligation to work towards the elimination of harmful traditional or cultural beliefs, values, stereotypes or practices inconsistent with human rights, to promote and protect the rights of the most vulnerable and marginalised persons and groups in society and to ensure the material, social opportunity costs and other conditions necessary to ensure that all members of a community or society are equally able to participate in and contribute to determining and shaping the constantly renewed contours of their particular tradition. States must fulfill their obligations to ensure that the human dignity of every member of society is promoted and protected while respecting diversity of views and practices.

From the perspective of women's rights, I think it is time to change the paradigm from 'culture as obstacle' to 'culture as a right'. In concluding I would like to share an extremely pertinent quotation from indigenous women's organizations in Mexico who said, "We are determined to find paths through which we may view tradition with new eyes, in such a way that it will not violate our rights and restore dignity to indigenous women. We want to change those traditions which diminish our dignity".⁷

⁷ Castillo; p.57 in *When legal worlds...*)