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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the independent expert in the field of cultural rights, Farida Shaheed

Addendum

Preliminary note on the mission to Austria (4 – 15 April 2011)

Summary

In the present note, the independent expert in the field of cultural rights presents her preliminary observations and recommendations on the official mission that she undertook to Austria from 5 to 15 April 2011 at the invitation of the Government. The main purpose of the visit was to assess measures taken to ensure the right to participate in cultural life and access to cultural heritage of all persons, including people with disabilities, as well as measures to create an open cultural climate and to foster intercultural understanding in the country. The preliminary observations will be developed and explored in more detail in the full report on the mission, which will be submitted for the consideration of the Human Rights Council at its twentieth session.

I. Introduction

1. The independent expert in the field of cultural rights, Farida Shaheed, visited Austria from 5 to 15 April 2011, at the invitation of the Government. The mission was the first official visit to Austria by an expert appointed by the Human Rights Council. During her stay, the independent expert visited Vienna, Graz, Burgenland and Klagenfurt, where she considered initiatives to promote diversity, inclusion and the protection and promotion of cultural rights, especially of minorities and marginalized people. Such groups include, in particular, national, ethnic, religious and linguistic minorities, migrants, as well as persons with disabilities and living on low incomes.

2. During her mission, the independent expert met with senior officials at the federal, State and municipal levels in the areas of culture, education, science and technology, women's issues, minority issues, the media, internal and foreign affairs, as well as with institutions in the field of culture and media, equality and redress. She also interacted with academics, civil society organizations, representatives of minority associations and religious groups, and visited a number of cultural projects and educational institutions.

3. The independent expert thanks the Government of Austria for the opportunity to examine the situation of cultural rights in the country, and also thanks all stakeholders and interlocutors for their time, information and insights.

4. In the present note, the independent expert presents her preliminary observations and recommendations in the spirit of fostering further cooperation and with a view to contributing to the efforts to strengthen cultural rights in Austria. These will be developed and explored in more detail in the final report on the mission.

II. Good practices

5. The independent expert underlines a number of positive initiatives and good practices adopted in Austria for the protection of cultural diversity and the promotion of access to cultural rights by all persons, including marginalized groups. The official recognition of ethnic, linguistic and religious diversity in Austria, predominantly as a result of the State treaty of 1955, provides an important base for promoting cultural diversity and cultural rights. The independent expert welcomes the rights to bilingual schooling and topographical signs and the usage of minority languages in judicial and administrative procedures in particular regions. She also appreciates Government initiatives, such as the especially commendable codification of a Romani language and the introduction in some public media broadcasts of subtitles, sign language and transmissions in official minority languages. Furthermore, she finds encouraging that the national plan of action on integration was adopted in consultation with experts and civil society. A consultative process is also being followed in the preparation of a national plan of action on disabilities. With regard to cultural heritage, significant steps have been taken to increase access to culture, such as the National Agency for Intangible Cultural Heritage tasked with inventorying living cultures; actions to increase access for youth and persons with disabilities; and the ongoing digitalization of cultural heritage. There is a number of excellent initiatives promoting cultural rights, cultural diversity and inclusiveness in Austria, most supported by the Government.

6. The independent expert appreciates the progress made and the positive initiatives taken in the field of cultural rights in Austria, but considers that a number of steps are required to bolster cultural rights for all.

III. Promotion of cultural diversity and of cultural rights of all persons

7. The framework of public policies, regulations and institutions currently available in Austria for the promotion of cultural diversity and the promotion of cultural rights of cultural communities is severely fragmented. Only recognized autochthonous minorities are granted particular rights that, however, they lose outside the specified territories. It is important to note that strict application of the criteria of territoriality, particularly with respect to rights in the field of education, could undermine efforts to safeguard the languages and identity of minorities. Although public authorities have shown some flexibility in financing cultural development, further efforts are recommended to ensure consistency and a more inclusive application of the rights granted to ethnic groups/national minorities throughout the country.

8. Despite efforts to comply with the provisions of the Ethnic Groups Act, “bilingual education” is actually rare. Only a few genuinely bilingual kindergarten and primary level schools exist, particularly in Burgenland and Carinthia, and are highly dependent on the personal efforts of individual teachers and principals to operate effectively. Indeed, minority languages are mostly taught as elective courses, with Hungarian and especially Romani facing considerable challenges. Bilingual primary schools that have been opened in other areas, such as in Graz, are welcomed.

9. A number of impediments, such as the lack of bilingual forms for administrative procedures and of language proficiency among officials, are considered to impede the use of minority languages in local public offices in the regions of ethnic groups.

10. According to the interlocutors met, the fact that few public federal officials – including personnel in prisons and detention centres – speak languages other than German hinders adequate implementation of the rights of non-German speaking sectors of the population, in particular people with a migrant background.

11. The independent expert encourages the Government of Austria to approach cultural diversity as an invaluable resource for the inclusion of all and to take measures to mainstream cultural diversity and the cultural heritage of the country’s diverse populations by, inter alia, incorporating minority cultures and history in all public schooling curricula, media and cultural activities; promoting intercultural competencies in all official institutions; and encouraging competencies in minority languages among civil servants. Special efforts are required to ensure the full inclusion and rights of the Roma.

12. Following previous recommendations by regional and international human rights bodies, the independent expert also urges the Government to consider extending support to linguistic and ethnic groups other than those officially recognized in Austria, and to improve the existing mechanisms for the disbursement of funds for activities of national minorities. Greater accountability and transparency is required for European integration and refugees funds.

13. The security forces play a very important role in ensuring respect for and protection of human rights of all persons living in Austria. The Government should take all necessary measures to ensure the full respect of human rights and cultural diversity by all public officials and security forces, including by expanding its initiatives to include training on human rights and cultural diversity in the mandatory curricula of public officials across the country. The independent expert commends the concerned authorities for actively encouraging persons with migrant backgrounds to join the police in Vienna, and urges the Government to take similar initiatives across the country. To ensure genuine equal opportunities for persons from a migrant background, German language courses provided by public institutions should complement existing language exams.

IV. 2011 census

14. The independent expert is concerned about the data-collection system planned for the 2011 census, which is not intended to include statistical data on national, linguistic and religious affiliation, as was the case in previous censuses. Moreover, the census will be based on the collection of data in existing registers in various institutions, departments or offices, rather than on a new national and comprehensive survey; the need to be cost-effective is put forward as a rationale for the adoption of such a system.

15. In the view of the independent expert, however, the elimination of a comprehensive survey impedes adequate statistical assessments of cultural diversity in terms of linguistic and ethnic minorities, religious communities and migrant backgrounds of Austrian nationals. While she appreciates the sensitivity of the issue, the absence of a statistical basis will impede effective planning to protect and promote cultural diversity as well as cultural rights in Austrian society. Many of those met, including representatives of most minorities, believed that there was a need for such information.

16. The independent expert recalls that concern was expressed in previous censuses at the methods used to collect information (namely, the lack of anonymity in questionnaires, a reported lack of anonymity in rural areas and small cities during data collection and alleged cases of intimidation by local officials) and at the reported bias or misleading nature of the questions asked concerning linguistic affiliation.

17. The independent expert encourages the Government to adopt a non-mandatory and anonymous information-gathering system with a view to allowing the compilation of a database on cultural diversity in Austria, including internal and international migration. Such a system should guarantee privacy and be respectful of the principle of self-identification of all persons regarding their national, linguistic and religious affiliations. Where necessary, the Government should engage with concerned communities in dialogue to strengthen trust and understanding of the purpose of such survey. To that end, the independent expert also recommends that the Government consult with, in particular, civil society organizations and concerned communities with regard to the specific questions to be asked during the census.

V. Institutional framework for the promotion of cultural rights, cultural diversity and intercultural understanding

18. Effective interventions to promote diversity and enhance the implementation of cultural rights remain scattered and poorly known; they lack secure financial support for longer-term planning and an institutional framework that can facilitate upscaling, building on lessons and existing resources. The independent expert therefore recommends that consideration be given to establishing a unified framework and an institutional body, at the Government level, to promote cultural diversity and intercultural understanding, oversee cultural heritage matters and promote the right to participate in cultural life. The independent expert emphasizes the fact that ensuring cultural rights is about empowering individuals and communities to create culture as continuously evolving ways of life, each culture being equally valued. Measures are needed to encourage public and private media to avoid stigmatizing certain communities. Intercultural exchanges among diverse groups would help to overcome ghettoization according to attributes such as language, religion, ethnic background and impairment.

19. While Austria recognizes the value of cultural diversity, it is important that Government policies approach diversity as a resource for building Austrian society as a whole rather than as rights for particular groups. In this regard, it is of concern that

integration affairs are placed within the Ministry of the Interior, which might suggest that “integration” is a matter of law and order rather than an opportunity to benefit from and to enhance the richness of the country’s diverse cultures and cultural traditions. The expert recommends that the Government consider addressing the issue of integration together with cultural diversity, either within a new entity or within the Federal Chancellery.

20. With regard to the field of education, the independent expert is concerned that the parallel schooling system, which divides education after primary school into separate streams of vocational training and general education, has an impact on children according to their background, particularly children with a migrant background, and therefore does not encourage intercultural understanding. The independent expert welcomes the creation of new middle schools and recommends the adoption of an integrated system for compulsory public schools.

VI. Institutional framework for the promotion of all human rights

21. A number of legislative acts and bodies have been established to cover different human rights issues, such as the Austrian Ombudsperson Board, the Equal Treatment Commission and various Ombudsperson offices for equal treatment, people with disabilities, children and youth, and the Human Rights Advisory Council. However, while the commissions and ombudsperson offices are function well, there is no comprehensive institutional and legislative framework for the protection and promotion of human rights in Austria. The lack of a national human rights institution and national human rights plan of action exacerbates this fragmented approach. Combined with the insufficient domestication of international human rights obligations, particularly in the field of economic, social and cultural rights, and highly restricted possibilities for collective action before courts, this weakens the protection of rights. The independent expert therefore recommends that the Government, as a matter of priority, adopt an integrated national human rights plan of action and a human rights institution in conformity with the Paris Principles, mandated to oversee all rights, including those in the field of culture, paying special attention to the needs of more marginalized groups such as persons with disabilities

22. Lastly, the independent expert strongly recommends that the Government of Austria give adequate follow-up to the recommendations made by United Nations human rights treaty bodies and in the context of the country’s universal periodic review before the Human Rights Council.

VII. Conclusion

23. **The independent expert will continue to examine the above issues and others that have been brought to her attention in further detail, including through a thorough review of large amounts of documents that the Government and other stakeholders have undertaken to provide. All of this will be carefully considered in the preparation of the full report to be submitted to the Human Rights Council in June 2012. The independent expert looks forward to continuing engagement and cooperation with the Government of Austria with a view to strengthening the ongoing dialogue on these important issues.**