

**HUMAN DIGNITY AND HUMAN RIGHTS –  
AGENDA SETTING FOR AN INTERNATIONAL  
DIALOGUE**

Contributions and Findings of a Workshop  
with African Partners  
May, 24-25, 2012

Bonn, July 2012

---

Deutsche Kommission Justitia et Pax  
German Commission for Justice and Peace  
Kaiserstr. 161  
D - 53113 Bonn  
Fone: ++49-228 - 103-217 – Fax: -318  
E-mail: [Justitia-et-Pax@dbk.de](mailto:Justitia-et-Pax@dbk.de)  
[www.justitia-et-pax.de](http://www.justitia-et-pax.de)

## **PREFACE**

When the German Commission for Justice and Peace decided on the working program on human rights three years ago, the commission voted for two steps. An initial fundamental debate on how to strengthen and justify the concept of human dignity as the basis for human rights should be followed by an international dialogue. While it was seen as necessary to establish a dialogue about the understanding of human rights and human dignity, it was at the same time clear, to reach out beyond European borders with this discussion.

A working group had been set up under the guidance of Prof Dr Heiner Bielefeldt to enter into the dialogue, to promote clarifications and to reduce possible misunderstandings. At the same time the dialogue should support the acceptance and effectiveness of human rights mechanisms at national, regional and international level.

The invitation to our African partners to join the dialogue was due to several reasons. For us as church actors, the conceptual foundations of human dignity and human rights have been clearly defined and justified – at the latest since the time of the Second Vatican Council and by the catholic social teaching. But in the joint commitment to human rights, especially in international contexts, different judgments about priorities and mechanism can be found. Prominent examples are the debates about the International Criminal Court, but also about the Church's' advocacy work in Geneva. Reasons for debates may lay in different political and cultural contexts, but these differences indicate the necessity or at least make it appropriate to debate the meanings of human dignity and the political implementation of human rights. Last but not least, the German commission for Justice and Peace has since long well established cooperation's with different African institutions and faith

based organizations. Thus we invited some of our African partners to join in the dialogue.

It is a crucial point for the German Commission of Justice and Peace that this human rights dialogue with African partners is a joint venture right from the beginning. Therefore this publication summarises the main findings and presents some of the statements of a first workshop with partners. It was a kind of preparatory meeting to be followed by a conference on human dignity and human rights in 2013 in Zambia, where we will explore some of the mentioned problems more in detail – and address a larger public. The workshop was set up as a first step, to get to know and understand each other better and to identify the problems that should be topics in the following international dialogues.

All the papers in the booklet are still in the shape as they have been delivered. Since they mostly are meant to be working-papers to stimulate dialogues it seemed appropriate to make the process of talking and thinking visible to the reader.

*Daniel Legutke*

## CONTENTS

EXECUTIVE SUMMARY 7

REPORT 11  
*Daniel Legutke*

## CONTRIBUTIONS

HUMAN DIGNITY = HUMAN RIGHTS PLUS HUMAN SECURITY 29  
*Gertrude Chimange*

MIGRATION AND HUMAN RIGHTS 35  
*Jacques Dinan*

TRADITIONAL VALUES AND INDIGENOUS CULTURE:  
INSPIRATIONS FOR HUMAN RIGHTS MECHANISMS? 42  
*Florence Simbiri Jaoko*

THE TRUTH AND MORAL VALUES 52  
*Raymond Bernard Goudjo*

REFLECTIONS ON PRIORITY HUMAN RIGHTS ISSUES 55  
*Mike Deeb*

INDIVIDUAL VERSUS COMMUNITY (SOCIAL AND CULTURAL) RIGHTS.  
THE LACUNA IN HUMAN RIGHTS INSTRUMENTS 57  
*Fr Joseph Komakoma*

PROMOTION OF HUMAN RIGHTS BY THE CHURCH IN AMECEA REGION:  
THE MISSING LINKS 59  
*Elizabeth Nduku Nzivu*

PROTECTION OF VICTIMS AND HUMAN RIGHT DEFENDERS. <i>Rigoberto Minani Bihuzo SJ</i>	66
THE WORK OF THE INTERNATIONAL CRIMINAL COURT: AIMS AND METHODS <i>Victor Scheffers</i>	70
HUMAN RIGHTS – COMMITMENT AND OBLIGATION FOR CIVIC EDUCATION <i>Siegfried Grillmeyer</i>	78
<b>Program</b>	84
<b>List of Participants</b>	86

# EXECUTIVE SUMMARY

## 1. AIMS OF THE WORKSHOP

- To identify exemplary topics to be addressed in a human rights dialogue of Justice and Peace Commission with African partners that can help to strengthen the joint engagement of church and non-church actors for human rights.
- To identify misunderstandings and lacunas in international and intercultural dialogue on human rights between African and European actors that hinder unified engagement in human rights protection.
- To think about strategies to overcome possible misunderstandings and confrontations in human rights protection.

## 2. CRUCIAL FINDINGS

(Addressing the Church)

- **Missing links:** The Church is an important actor on the grass-root level in the South and the North. This was impressively shown in many statements. However, the Church did not succeed in bringing her knowledge about human rights abuses and potentials in implementation of rules and standards to the international scene. Neither at the level of AU nor at the UN the wide range of contents and issues of church actors at grass-roots level is visible as an enormous source of experience and knowledge. Existing faith-based organizations can invest much more to join forces to strengthen the protection of human rights at national and different regional levels. Addressing the Church itself, the dialogue should

focus energies on how to gain a more efficient and credible participation and infrastructure of the Church in the promotion of human rights at all levels of political representation, be it national, regional or international.

(Addressing human rights actors)

- **Human rights and cultural biases:** Some participants referred to an interpretation as human rights as an ideology connected with modern Western individualistic lifestyle. Others opposed, claiming this to be a misunderstanding both of the intention and the roots of the human rights as well. These different understandings of human rights, to be met in the North and the South, have to be addressed by starting from one's own experiences in human rights field work. Since human rights are not a theory or mere concepts, but of utmost importance for many people in need, experience in field work is a necessary precondition for talks about strategies of implementation. Such a perspective could possibly match communitarian aspects with individual perspectives in human rights protection. Since the communitarian elements often are not in the foreground in Western societies and the exact meaning of individual perspectives often is disputed in the South, this necessary debate can lead to a better understanding of potentials of a human rights-based approach.

(Addressing the international community of lawyers)

- **Traditional values and human rights:** The role of traditional law was under dispute during the workshop. A strong demand was made to recognise traditional values that could support human rights in specific ways. But on the other side, one should not be afraid to call for changes of practices of traditional law where they are necessary to better the life of people. Furthermore it was called

to identify lacunas of traditional rights and to find appropriate ways to address them – e.g. outside the traditional law. To go deeper into substantial discussions on traditional law and human rights, more work is necessary to widen the knowledge of traditional cultures and laws. At the same time Church, civil society and politics with the support of lawyers have to intensify efforts which help to transform traditions where they obstruct the implementation of human rights.

(Addressing political actors)

- **Political and social rights:** The human rights regime promoted by Western powers is often focussed on political and civil rights. It was often said, that African societies consider it an important task to alleviate social rights. Here again comes in the importance of who we understand human rights. Not to play in an opposition between the two perspectives, the indivisibility of human rights was underlined in the workshop. But addressing the bias on both sides might help to question political priorities. While a dialogue should strengthen the indivisibility of all human rights (political-civil and social, economic, cultural), it should present models for a well-balanced political implementation.

### **3. HOW TO PROCEED FURTHER**

Participants agree that it is worthwhile to go on with the proposed human rights dialogue to improve the human rights engagement of the Church especially at international levels. This should be facilitated along the identified issues and challenges:

- The protection of human rights defenders demonstrates the necessity for a closer cooperation between the North and the

South. The work of the Church and faith-based groups, other civil society movements and governments has to be connected much stronger to offer infrastructure for reliable protection for human rights defenders in danger. The case of human rights defenders might be an opportunity to connect as many of the levels as possible, i.e. the different regional levels and the different levels of faith-based and other actors of civil society.

- Migration as a world-wide phenomenon clearly shows, that the preservation of the dignity of all members of the human family demands a close cooperation of Northern and Southern civil society. In the struggle for the rights of migrants' only mutual and very concrete support between human rights actors from North and South will help to overcome the worst cases of human rights abuses in migration.
- For both topics the social teaching of the Church provides a clear orientation for acting – against the rules of economic and other interests to show the due respect for the dignity of all human beings.

# REPORT OF THE WORKSHOP

*Daniel Legutke*

## 1. INTRODUCTION

*Gertrud Casel* welcomed the participants of the workshop. In her welcoming address she underlined that Justice and Peace wanted to start a human rights dialogue with African partners as a joint venture beginning with an agenda setting workshop. In sustainable development policy of today human rights are playing a more important role than some years before. For the German commission of Justice and Peace this is reflected in strategies for Decent Work. There Justice and Peace is supporting growing international concern for labour standards also in informal work – from a perspective of human rights. To underline her argumentation Casel cited experiences gained by partners in the DR Congo: They expect from western governments and civil society to exert the same pressure on right to health and access to health care as for the capture of Kony.

In his presentation of the intentions of the Justice and Peace Working Group on “Human Dignity and Human Rights”, *Heiner Bielefeldt* pointed at missing links: A lot is being done at the grass-roots level by catholic and other faith-based organizations – but their efforts are not properly linked to the work at international levels, like the UN. In his view, ‘missing links’ should become key words for the conference. Bielefeldt identified them in different settings: “In the conference we have to tell each other what is practically being done already to promote the strengthening of human rights.”, as he was saying, “We should know it”. But the striking absence of the Church in important international

dialogue fora and organizations remains the major challenge for us all, like the workshop participants confirmed.

To open the discussion, Bielefeldt sketched what had been done in the German Working Group of Justice and Peace up to this conference. There the focus was on the challenges regarding Human Dignity in German and European contexts. The working group supports a strong notion of human dignity as the fundament of all human rights – in a memorandum the group speaks of an *axiom* for an effective human rights system. The meaning of human dignity is not only a matter of discussion in domestic debates – more precisely, the unease many feel about such a strong concept of human dignity – but it is also a general topic. Bielefeldt highlighted his experiences in international debates, where an opposition between a rights-based approach and a so-called dignity-based approach is often considered. In his words this shows a complete misunderstanding of human dignity, since all discussion on the protection of human rights should start from the recognition of the due respect of human dignity. As the first sentence of the Universal Declaration of Human Rights clearly states: All rights are based on human dignity.

In his contribution “On the Concept of Human Dignity” *David Kaulem* then gave a glimpse of some debates of the so-called “rights-based-approaches coming to Africa”, as he said. Some people, he continued, think that ‘rights based-approach’ implies that one has to abandon his or her culture to find the right way of dealing with it. For Kaulem this is a sign for handling human rights in a way where instruments are more important than objectives. In other words: the aim of the human rights system, i.e. to protect and strengthen the respect for the dignity of all men, is no longer visible behind the more technical approach of the use of the so called ‘instruments’ of human rights protection. To illustrate this, Kaulem pointed at the debate on the use of the English language by

African writers. For some of them to “expand dignity” could mean to write in English. The use of academic language in their respective countries means, that they reach a much broader public. This is criticised by others, who mainly use their mother-tongue for their writings and reject the language of the former colonial power. But some of the writers using the English language for their work answer: One can bring English into one’s life and adopt it for what one has to tell. It thus can be used as a tool that will enrich the English language by enlarging the meaning of words and phrases. “Could the notion of human dignity be ‘Africanised’ in the same way?”, Kaulem asked at the end. How can we discover and internalise these notions of human rights while considering that they are not rooted in our culture?, should thus be a main problem for a conference. Do we therefore have to neglect the history and our multicultural background?

The following discussion took up the last question and turned it the other way round: Do we have to decontextualize the notion of human dignity – the answer was found in both, yes and no. We have to take a certain distance to the understanding of this notion inherent in certain cultures. But we must be able to translate it into our own culture.

To start with, as was said by a participant, we should acknowledge that there is no specific Christian culture, but indeed there is something like a Western culture or a certain African culture. But human rights are elaborated to protect human dignity – not culture. Of course, this could be based on the Christian concept of a person’s dignity. Nevertheless, a participant added, we as Christians have to face the challenge, to translate the meaning of human dignity into secular terms, because a growing number of people will not accept Christian notions any longer.

## **2. KEY ISSUES IN HUMAN RIGHTS POLITICS**

*Gertrude Chimange* in her statement underlined the necessity of the concept of human security for the protection of human dignity. She drew attention to the famous freedom speech of President Roosevelt, in which he mentioned explicitly freedom from fear and freedom from needs. This is understood as the core of the project for human security – to protect basic freedoms. In short, it addresses the full set of human rights. But the fulfilment of social needs is infringed through many structures of violence. Therefore a conference has to deal with such structures of violence with invisible perpetrators, e.g. with international loans and loans policy. Another big issue for some countries then would be how to implement freedom from fear in situations where states are weak.

The important topic of migration and human rights was raised by *Jacques Dinan*. Practical experience with especially female victims of trafficking shows that there is no respect at all for human dignity. This represents one of the worst cases of the violation of rights and dignity. To fight against it a much stronger alliance between Africa and Europe is needed for information and awareness rising. We should disseminate eye-witness accounts of migrants. Caritas has stated since long that dialogue is necessary to facilitate migration – and by the way to reject the term “irregular migration”. Even if migration largely takes place in Africa itself, the phenomenon of migration should also be negotiated between groups of states like the European Union and the African Union. Dinan reminded us that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) has been ratified up to now only by the “sending” and not by the “receiving” side.

*Katrin Gerdsmeier* sees the main reason for European reluctance to deal with migration properly in inner-European politics. The protection of the EU against migrants is still the basic and main aim of EU policy. Therefore some of the concepts of the so called Dublin II regulation were established with regulation principles like so-called 'third state-rule' and 'save countries'. In both cases the individual situation is not taken into account.

The following *discussion* mentioned that sometimes clashes of rights are possible. In that case the right to migrate and the right of sovereign states to protect borders seem to form such a clash. But in this concrete case the answer would be easy: human rights prevail – they are not at the same level as the rights of the state. If there are clashes, one has to be very precise in analysing the kind of clashes. But, as a participant stated, the protection of European borders is not even in the range of sovereignty. Furthermore the sovereign right to protect borders has always been limited, e.g. nowadays by the possibilities of free movement within the EU. Our work would be to explain practical implications of the mentioned guarantees of migration.

To address the problem of migration appropriately, we should start with identifying the different roots of migration and to point at different answers to different roots. The problem in Germany like in many EU countries is that they look at it either as a threat or a help – Europe is in need for skilled workers to bridge the gap of generations in employment. Since migration of certain people has always been accepted (and of others not), we have to raise awareness for this inequality. Those who are migrating without obviously bringing wealth and added value to the country are not welcome.

Often states fail in their responsibility of protection – as a consequence a large quantity of migrants comes from these countries. A conference

should not miss to address governments that do not protect the rights of their people, as Gertrude Chimange said. Political violence forces people to become migrants in their home countries.

The audience confirmed that Caritas' work is impressive. But questions were raised in how far Caritas is involved in human rights education. With the programmes, it was said, human rights workers should make people know more about their rights, so that they are no longer caught in traps of migration. On the other hand more concerted actions of faith-based organizations are necessary for lobbying governments. Caritas has gained a certain status at the EU and at the UN, hopefully soon at the AU too, but this status has not been used sufficiently to attract attention for its work.

The option for the poor is demanding more involvement from the Church. Even if it is true that legal rights are the instrument to preserve human rights – we also should talk about moral rights, following out of human dignity. Legality and morality are interlinked. From that point of view we are able to criticise legal arrangements.

### **3. HUMAN RIGHTS AND TRADITIONAL VALUES**

“Traditional values and indigenous culture: inspirations for human rights mechanisms?” was the question *Florence Simbiri Jaoko* presented to the group. Mrs Jaoko identified the respect for the human person as part of Judaeo-Christian traditions. This legacy of western culture framed the UDHR. It still challenges autocratic systems, and also the Churches which, very similar to states, still make some people feel excluded.

In Africa it often can be heard that human rights are God given, a saying used by many human rights defenders, too. They are viewed as

transcending a specific culture in the sense that every culture has fundamental rites and principles for defending people. It means that even if the state does not meet its responsibility the community comes up for it. Therefore we should recognise traditional values that support human rights. We may look at the purpose of traditional laws and try to bring forward what fits with human rights laws as a protection of individuals. Sometimes this will require changes in often used practices of traditional law. But sometimes it could lead to a positive view of people to written law. It is still necessary to invest more energy in research for systems of human rights protection that can be related to traditional law. At the same time we have to identify and to define the lacunas of traditional rights and to see how to address these lacunas – e.g. outside the traditional law.

When we detect tensions between traditional law and human rights legislative, we have to analyse where resistance comes from, then try to relate the different traditions and finally to address the resistance properly. The human rights-based approach sometimes looks like a mechanical thing. But is a process based on principles. The individual is important and community is important too – with due consideration of both, the community and the rights of the individual, we work for the due respect of each and everyone.

*Raymond Bernard Goudjo's* statement focused on the question of the true identity of people. The identity of course is influenced by the culture in which one is growing up. Identity is never stable – it can even change with the context you life in. Resistance against so-called cultural imports from the West raises in Goudjo's view the question of what we are afraid of. Are we afraid of missionaries, of colonialism? For him, the problem with African identity begins already when we start to read about our culture. Since history was told and first written by Westerners, we

always read with a certain distance only white authors. This might frighten us and our identity.

The statement on the problematic nature of identity was followed by an exemplification. *Mike Deeb* suggested speaking rather of rights associated with life and gender issues since they affect our inner perceptions of right and wrong. Natural rights might be at the heart of our reflections, he stated. "We have to conceive that we have deep rooted prejudices that some people are not worth of the same sort of respect like others. This is a challenge especially because we are all brought up in hierarchies and we all stick to our own traditions." Following Deeb, our task then could be to address areas where the dominant world culture contradicts the social teachings of the Church, where there are blockages. Another field of concern could be the area of economic and social rights, going further to property rights. Within the Church we can rely on the common good which contributes to overcome tensions between individual rights and collective rights.

Reproductive rights are much more complex problems. Within our Church we see many blockages to deal with issues of gender and sexual identity. While the magisterium insists on the equal position of women or homosexuals – in practice things are totally different. Natural law is fixed as an ideology. Many of the problems derive from the fact that often traditional values overwhelm Christian values. We should not avoid to address these issues in international fora. Deeb was clear about the difficulty such topics would meet, "but it's unavoidable to address them", he concluded. "A conference would require a deep reflection on case studies of violations, and on the nature of natural law.", Deeb summarised his proposals.

The question of culture was raised again in the *discussion*. Traditional culture can be quite difficult. Recent developments in Mali were brought up as an example. The rebels want to stop prostitution by forcing women to marry or to go back to their clan. Furthermore the tensions between the written law and the unwritten law were evoked. Nevertheless the problem to be solved is how to get the normative concept of human rights accepted in the culture. We must not disregard the culture of people and therefore it is a difficult but necessary task to acculturate human rights – even better would be to reinterpret culture. Culture can be both, an obstacle to the implementation and a source of human rights.

An aim of the planned conference could be to identify mechanisms, habits and prejudices that impede human rights even in the Church.

Human rights terminology sometimes sounds very technocratic, but human rights protection is not a technique, neither an ideology. It is not a technocratic thing since people have to speak and to take legal steps – but it is not only a matter of law. Human rights obviously do not cover everything and every part of life. When it comes to conflicts between rights, one has to insist on the superiority of certain rights – human rights might help in these situations.

#### **4. Conflicts and misunderstandings in international human rights policy**

“Human Rights Policy in the United Nations. Challenges and Contributions of Africa and the Africans. A German Perspective” was the title of the statement by *Bernd Finke*. He transformed it into the very concrete question, of where the German government pays attention to African countries. Where do African issues play a role in UN policies?

Obviously, a list of human rights issues in Africa could be long. In the dialogue with Africa cultural relativism is never only an abstract argument, but it is very often on the agenda in Geneva at the human rights council. Finke experienced that human rights terminology often sounds hostile and foreign to African ears. Our reaction normally ends in an accusation: you use the cultural argument only to hide human rights violations. There is some reason for that, since the usual resolution on tradition and human rights is submitted by Russia and the resolution on culture and human rights by Cuba – and both find some support from African countries. In the fight against AIDS and the violation of LGBTI rights the role of the Churches often is also problematic. Another issue mentioned already earlier in the workshop is how to deal with failing and failed states. Of course one may reasonably ask if the Europeans are too ambitious and ask too much and to realized too fast from African states. At the same time we have to realise, that in Geneva the Western Group does not have a majority. It has to gain the support of African states. But all too often we see a lack of commitment and ambition.

*Joseph Komakoma* deepened the topic of Bernd Finke when he spoke on “Individual versus Community (Social and Cultural) Rights – The Lacuna in Human Rights Instruments”. He fell back on his experiences in the Zambian process of reworking the constitution. One reason for the long lasting process is the lacuna in terms of the protection of communal rights in the draft document, as it is demanded by many people. That is why Zambia for the last twenty years did not come up with a new constitution. Three attempts failed already, always because social and cultural rights did not go far enough. A very prominent example in Zambian discussion is the quarrel about community rights of access to rivers. The point is how far this right could be infringed by the right of property if shores of the rivers are in private ownership. In the majority’s

view, the communal protection of rights must fulfil the needs of a community and thus overrule the right of property.

The missing links in "Promotion of human rights by the Church in AMECEA region" are of main concern for *Elizabeth Nduku Nzivu*. She concedes the Church of the AMECEA region to be engaged a lot in human rights issues. Many bishops are committed to human rights protection. But, as Sr Nduku explained, during the outbreak of violence in Kenya in 2008 it was difficult to trace what the Church had done in this context. Also at international level the Church is not visible enough with her very important human rights work at grass-roots level. So a conference should elaborate on the structures the Church could use and should identify levels where the Church could be more visible. Furthermore, if we agree that the presence of the Church should be enlarged, questions should be raised concerning the necessary structures.

The *discussion* first focused on cultural relativism. Relativism often identifies human rights with Western lifestyle. But one should realise that the tensions human rights are faced with do not lie between individualism and community but between freedom and authoritarian system. To counter this serious challenge, we could ask which concrete communal rights are endangered by individual rights. For some of the participants, the perception of rights as community based or individualistic rights mainly has to do with the intellectual landscape of socialising. Again the appeal was made, to re- or de-construct the different narratives of socialising – to get a better understanding of the protection, human rights are ought to deliver.

Many of the participants agreed that a conference has to take up this perception of community rights versus individual rights. From the point

of the Church, subsidiarity could be the point to enter into this discussion. But it is to be accepted, that it remains a challenge to do justice in the perception of people. The Kony-case might perfectly illustrate this highly problematic topic – there are negative effects. For many it is obviously not enough to arrest criminals; it even can make dialogue much more difficult. In this context the problem of limitations to the possibilities of human rights was raised again since they are related to the responsibility of states. How do we address the lack of capacity of our states and our leaders?

The other part of the discussion took up the role of the Church. More precisely, it was said, that the Church plays a very good role on the international level – however, it is not enough and we should continue to strengthen the Church. One part of this perception comes from the fact that the Church is too selective in her topics – the focus is on life-questions, LGBTI-rights etc. The hierarchy and the capital do not use the full capacity of the good work that is done by many Catholics and Catholic organizations worldwide.

## **5. Infrastructural potentials and desiderata**

*Christof Hartmann* opens the session on political institutions with a statement on “Human Rights Protection through African Regional Mechanisms”. He started to recall that there are a lot of institutions that are working well, and then moved on to SADC and ECOWAS as actors in human rights politics. African states have committed themselves to protect and fulfil many obligations. SADC has a long list of norms which it underlines. Even if there is no mechanism of complaint the commission of ECOWAS is also very committed to the human rights framework. SADC’s main topics are non discrimination and health issues whereas

ECOWAS is more powerful in civic and political rights. The effectiveness and success of this commitment depends on the engagement of the member states.

The introduction into the "Protection of victims and human right defenders" by *Rigoberto Minani Bihuzo SJ* reminded the audience of the concrete differences human rights can make for people. "Human rights is not a discussion – it is about dead and life", he opened his statement. For him it is important to keep in mind that this question remains present in all talks and reflections. Minani Bihuzo identifies two types of groups of human rights defenders: faith-based groups and activists. Their main business is lobbying and to report human rights abuses, to support victims of human rights abuse; and small groups focus on refining laws. The main Church groups especially in DRC teach human rights, whereas very few only care for the victims. The so-called "Amnesty model" might be the most famous one. According to Minani Bihuzo, it denounces human rights violations by writing reports which might help to change the regime in the end. But he admitted that in DRC for example this change never happened. In the end change suddenly came from other sides – and it was followed by ten years of war. During the war Minani Bihuzo and his colleagues continued to do the same work of reporting human rights abuses.

But with all his experiences he is questioning if he would do the same work again. In spite of all the documentation never the organizations behind the wars were reached – the mining companies, the arms traders and other people behind the wars. The International Criminal Court is also very selective in this. It seems that human rights protection works as a system where only ordinary people can be punished. In the Kony case it is an American organization and not the JP-networks which provided all the information. But why is Justice and Peace not present in Geneva? This has to be seen as a lacuna of our work, that only Amnesty

International or Human Rights Watch and so on are represented there. They allow us to use their accreditations in the Geneva based UN-councils. Therefore Minani Bihuzo calls for the establishment of global national advocacy networks; "Try to relate it to peace and to stability", he said.

"The work of the International Criminal Court: aims and methods" is a special topic, which was elaborated by *Victor Scheffers*. Justice and Peace Netherlands informed the ICC about victims of human rights abuses and the court informed JP about its handlings. While the African Union proclaims African solutions to African problems, Scheffers doubts the practicability and the success for human rights, "it may not work". One should bear in mind that all the cases at the ICC come from the African states themselves. This is partly because the African system of human rights protection is still weak. But some progress is to be observed: The African Union circulates a draft protocol to the African court with the aim to enlarge the mandate. Relating it to the statement by Minani Bihuzo, Scheffers put it into a short sentence: "The fight against impunity is very important but we have to question how to do it."

The *discussion* highlighted once more the importance to bring one's own experiences into the debate: "We have to draw much stronger on experiences", was a phrase many participants underlined. At the same time, it was made clear for the work on international level that we, the Churches, NGO's and even some states, share the strong commitment to human rights protection. But when economic interests enter the scene this commitment seems to fade. Therefore we have to look at the economic situations. Partly even there something is changing, like in SADC. No one is so naïve to think that signing a protocol will change behaviour. But during the last years, in some countries of the South new people came to power who are really devoted to human rights. In the

long run there might be some change resulting from this kind of protocols. Of course we have to cope with ambivalence. There are norms and standards, even in Zimbabwe. But recent history is different. The rhetoric exists and it is even sophisticated; in a long run it might help and unfold its power to change things. We as Church should focus on how to support those who want to transform complaints into sustained institutions be it within or outside of government structures.



# **CONTRIBUTIONS**



## **HUMAN DIGNITY = HUMAN RIGHTS PLUS HUMAN SECURITY**

*Gertrude Chimange*

I concur with an argument that human rights are a child or a mechanism to promote human dignity. In other words human rights and human dignity are two faces of one coin and one can not separate the two. Because when talking about human rights one will be promoting human dignity. However there is also a very thin line between human rights and human security. Human Security and *human rights* are likewise deeply interconnected. Both are concerned to identify a rudimentary set of universal concerns that span poverty and violence. In fact fundamental human rights are arguably an appropriate working set for the “vital core” of human lives.

A critical security approach to human rights opens with a fundamental belief in the indivisibility of security and human rights. How does this „indivisibility“ play out in practice? The human security discourse would maintain, for example, that there can be no security for the individual if their right to life is being threatened by their government. Similarly, security is absent when an individual is denied the rights to subsistence, such as food, clothing and housing. If security is defined as protection from harm, then it is clear that the infringement of fundamental rights signifies the presence of insecurity.

Thus the relationship of these discourses would call for a critical analysis within different government systems, culture, leadership and context. These create a dichotomy or a multifaceted situation when one views human dignity, human rights and human security.

Human security take its shape from the human being: the vital core that is to be protected.

Institutions that undertake to protect human security will not be able to promote every aspect of human well-being. But at very least they must protect this core of people's lives. As far back as June 1945, the U.S. Secretary of State reported this to his government on the results of the San Francisco Conference: The battle of peace has to be fought on two fronts. The first is the security front where victory spells freedom from fear. The second is the economic and social front where victory means freedom from want. Only victory on both fronts can assure the world of an enduring peace. No Provisions that can be written into the Charter will enable the Security Council to make the world secure from war if men and women have no security in their homes and their jobs.

## **DEFINE HUMAN SECURITY**

**"...to protect the vital core of all human lives in ways that enhance human freedoms and human fulfilment.** Human security means protecting fundamental freedoms – freedoms that are the essence of life. It means protecting people from critical (severe) and pervasive (widespread) threats and situations. It means using processes that build on people's strengths and aspirations. It means creating political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity." Human security addresses the full scope of human insecurities. It recognises the multi-dimensional character of security threats – including but not limited to violent conflict and extreme impoverishment – as well as their interdependencies (both sectorally and geographically).

In particular, as an operational approach, human security attributes:

Equal importance to civil, political, economic, social, and cultural rights.

Sets rudimentary thresholds below which no person's livelihood, survival and dignity should be threatened.

Provides a practical framework for the identification of a wide range threats in given crisis and situations.

Addresses threats both within and across borders.

Encourages regional and multilateral cooperation.

## **STRUCTURAL VIOLENCE AND HUMAN INSECURITY**

Structural violence can be expressed in various ways. One such way is a suffering by all or part of society as a consequence of local, national and international exploitive and unjust political, economic and social systems and structures that prevent people from meeting their basic needs. Structural violence impinges on the basic survival needs of individuals and communities and is thus a source of human insecurity.

Many effects of structural violence are devastating in human terms as well as destabilizing in political terms. Economically or politically marginalized populations that suffer from structural violence may breed extremist violence (insurgency or terrorism). In this case structural violence feeds direct violence. Structural violence matters in terms of its immediate impact on human security and its correlation with increasing direct violence.

## **COMPONENTS OF THE HUMAN SECURITY CONCEPT**

- Freedom from fear (personal, political, and community security, etc.)
- Freedom from want (economic, food, health, environmental security, etc.)
- Life in dignity (education, access to freedoms, equality, human rights, community security, political security, etc.)

## **POSSIBLE DIMENSIONS OF INSECURITY**

Economic insecurity

Food insecurity

Health insecurity

Environmental insecurity

Personal insecurity

Community insecurity

Political insecurity

Gender and gender insecurity!!

In other words the central question that always buttresses the argument of this discourse is: within which type of governance, culture, with what type of leadership and within which context can the human rights truly sustain or fully support human dignity?

## **SIGNATORIES AND NOT PRACTITIONERS**

**What is the point in states signing instruments if they do not intend both in principle and in practice to honor their commitments?**

I know that clever politicians, including Ministers for Justice, will say that what is signed at a regional or international level has no status in state law. That is a point of argument. But some kind of obligation exists that what is signed would be embraced as state law, at some stage. Or some effort would be made to amend or moderate national/state law in view of what had been signed at an international level.

**Is there no implementing mechanism at regional or international level to ensure that what is signed in their instruments would be honored at state level?**

I know that monitoring bodies (from the African Union?) came to Zimbabwe to examine allegations of human rights violations and some made reports. But, from my recollection, what they said was largely ignored and forgotten. What can be done in such circumstances? Could these monitoring bodies be strengthened? It reminds me once again that problems in Zimbabwe are as much moral/spiritual - as the Zimbabwe bishops regularly say - as political. When a governing body, as in Zimbabwe, has lost its integrity, evil often succeeds by describing itself as good.

## **WHITHER ZIMBABWE**

**Why has Zimbabwe, especially its ruling elite, over the years succeeded in largely ignoring requirements to conform to regional and international standards? Was it right, in late 2008 to allow a dictator to negotiate his way out of power?**

The answer clearly is 'no' but this is largely what happened in 2008 after the elections, resulting in Mugabe actually retaining power in the new Government of National Unity!

**Why have the other African heads of state, especially over the last ten years, failed to stand up to the Zimbabwe regime?**

What is happening now is too little too late.

## **THE LIMITS OF TRADITIONAL DISCOURSES OF SECURITY**

The fact is that if all states followed the principles and rules of the „international bill of rights“, then there would be no individuals without food, democratic governance, legal protection, education, national identity, property and an adequate standard of living. However, one

major reason why this does not happen, according to proponents of critical security studies, is because states only obey the rules of international society when power and interest make it prudent for them to do so.

Since governments have manifestly failed as guardians of human rights, the question is whether they are “cold monsters”? Or, is it simply that it is too soon to tell whether states can live up to the moral vision that inspired the framing of the Charter?



## **MIGRATION AND HUMAN RIGHTS**

*Jacques Dinan*

### **CATHOLIC SOCIAL TEACHING**

#### **1 RIGHT TO FIND OPPORTUNITIES IN THEIR HOMELAND**

"Every human being has the right to freedom of movement and of residence within the confines of his own country; and, when there are just reasons for it, the right to emigrate to other countries and take up residence there."

"No one would exchange his country for a foreign land if his own afforded him the means of living a decent and happy life."

*Leo XIII, Rerum Novarum 1891, Repeated in Gaudium et Spes #66*

#### **2 RIGHT TO MIGRATE TO SUPPORT THEMSELVES AND FAMILIES**

"The Church recognizes that all goods of the earth belong to all people. When persons cannot find employment in their country of origin to support themselves and their families, they have a right to find work elsewhere in order to survive. Sovereign nations should provide ways to accommodate this right."

*US and Mexican Bishops: Strangers No Longer 2001, #35*

“If conditions are not available to live with dignity, then people have right to migrate.”

*Pius XII: Exsul familia 1952*

“People have the right to emigrate for ‘just reasons’.”

*John XXIII: Pacem in Terris 1963*

“When there are just reasons, every human being must be permitted to emigrate to other countries and take up residence there. The fact that he is a citizen of a particular state does not deprive him of membership in the human family, nor of citizenship in that universal society, the common, world-wide fellowship of human beginning.”

*Gaudium et Spes #66*

### **3. RIGHT OF SOVEREIGN NATIONS TO CONTROL THEIR BORDERS**

“Since land everywhere offers the possibility of supporting a large number of people, the sovereignty of the State, although it must be respected, cannot be exaggerated to the point that access to this land is, for inadequate or unjustified reasons, denied to needy and decent people from other nations, provided of course, that the public wealth, considered very carefully, does not forbid this.”

*Pius XII: Exsul Familia (On the Spiritual Care to Migrants) 1952*

### **4. REFUGEES AND ASYLUM SEEKERS SHOULD BE AFFORDED PROTECTION**

“Refugees have a right to emigrate, especially when in danger of losing their lives.”

*John Paul II: Sollicitudo Rei Socialis 1987*

Refers to world refugee crisis as “the festering of a wound.”

*John Paul II: Sollicitudo Rei Socialis 1987*

Rights of refugees include “right to be reunited with their families and right to a dignified occupation and just wage. The right to asylum must never be denied when people's lives are truly threatened in their homeland.”

*Refugees: A Challenge to Solidarity 1992*

## **5. HUMAN DIGNITY AND HUMAN RIGHTS OF UNDOCUMENTED MIGRANTS TO BE RESPECTED**

“We cannot insist too much on the duty of giving foreigners a hospitable reception. It is the duty imposed by human solidarity and by Christian charity...”

*Paul VI: Populorum Progressio 1967*

“Emigration in search of work should in no way become an opportunity for financial or social exploitation. As regards the work relationship, the same criteria should be applied to immigrant workers as to all other works in the society.”

*John Paul II: Laborem Exersens 1981*

## **MIGRATION TRENDS**

### WORLDWIDE

- 215 million international migrants (*World Bank; UNDESA*)
- 740 million internal migrants (*UNDP*)

### URBANIZATION

- +50% of world's population in urban areas

## FEMINIZATION

- 50% of migrants are women

## FORECAST

- 405 million international migrants in 2050 (at present rate)

## **CHARACTERISTICS OF MIGRANTS**

- Majority – young, able bodied men, most not victims of trafficking
- Growing number of women, with strong suspicion of trafficking
- Movement: both alone and organized
- Facilitated by stretches of desert
- Absence of state institutions
- High potential to suffer violence

## **ROLE OF CARITAS**

- Improve opportunities for the poor so as to reduce forced migration
- Advocate for improved conditions of migration
- Liaise with Caritas in countries at receiving end to find ways and means of helping those in situations of need
- Caritas has been and is still closely involved
  - Supporting and rehabilitating those who are forced to migrate
  - In the rehabilitation of those who are repatriated, who return to their country of origin

## **CHALLENGES FACING CARITAS**

- Daily confronted with tragedies endured by migrants
- Violation of human rights
- No respect for human dignity
- Need to forge alliances amongst African Caritas, between African and European Caritas and with Caritas worldwide
- Play an informative and awareness-raising role
- Disseminate eyewitness accounts and studies on the perils and suffering of migratory routes and the realities of life in transit and destination countries
- Get rid of prejudices
- Overcome the obstacles that prevent them from going back home, without shame even in cases of failure
- Fight racism and xenophobia
- Address problems encountered by female Migrants
- Caritas condemns accusations of “irregular migration” and therefore refutes the criminalisation they give rise to
- Caritas insists on human rights even if it acknowledges the right of States to regulate migration

## **CARITAS VIEWS ON MIGRATION**

- Migration is a resource for both migrants and the countries that know how to welcome them.
- Caritas believes that migration can benefit migrants, host countries and also the countries of origin.

- Migration should be regulated through dialogue between all the partners involved and by associating with civil society.
- The Caritas network plays an informative and awareness-raising role by disseminating eyewitness accounts and studies on the perils and suffering of migratory routes and the realities of life in transit and destination countries.
- Prejudices must be broken down and families helped to overcome the obstacles that prevent them from going home, without shame even in cases of failure.
- Caritas Africa encourages collaboration amongst Caritas organisations to improve their knowledge, practices, coordination and advocacy actions aimed at Caritas and public authorities at local, national and international level.

## **CARITAS RECOMMENDATION TO GOVERNMENTS**

- Countries of origin should give priority to fair and consistent economic policies and good governance.
- All countries should develop a real migration policy. It is their duty to boost the confidence of their young people and give them reasons for hope other than migration.
- Any agreement on migration and/or development should be negotiated between groups of states – for example, between the African Union and the European Union – and not merely operate on a bilateral basis.
- Any negotiation and follow-up process should involve civil society and be transparent.

- No development policy should be held hostage to migration flow management, and nor should it oblige Africa to police Europe's borders.
- All countries involved in migration should sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- The 20th anniversary of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was celebrated on 18 December 2010.
- However, it came into force only 7 years ago!
- This illustrates how difficult it is to agree on matters connected with migration. So far, only 45 countries have ratified this convention, most of them at the "sending" end and not at the "receiving" end.
- Caritas will continue advocate for the ratification of this Convention by countries at both the "sending" end and the "receiving" end.

## **TRADITIONAL VALUES AND INDIGENOUS CULTURE: INSPIRATIONS FOR HUMAN RIGHTS MECHANISMS**

*Florence Simbiri-Jaoko*

First I would like to thank sincerely the organisers of this workshop the Catholic Justice and Peace Commission of Germany for inviting me to participate at this critical meeting. I believe as one who is passionate about human rights that we must endeavour to involve all sectors of society in human rights discourse and in particular those sectors with real following and authority over citizens. My belief is based on the experience that I have had that in order for human rights values to become part and parcel of the lives of citizens, they must be understood and articulated by all citizens, and that whereas we may rely on courts and other formal mechanisms to enforce and ensure redress; sometimes the most effective mechanisms are at the social and cultural level. I believe the Church and other faith based organizations especially in Africa where probably every week almost 80% of the population congregates either at a church or a mosque making them the most powerful medium for communicating shared communal values including human rights principles and standards.

The very basic concept of human rights connotes first and foremost the recognition that human beings are special and therefore are accorded special and specific protection under both international and national laws. Indeed the Universal Declaration of Human Rights emanated from the horrific experiences suffered by and witnessed against the Jews and their German sympathizers during the Second World War and it is for this reason that it sets out very clearly the equality of all human beings and the requirement that they all be treated with dignity and respect. It

is therefore not in doubt that the notion of human rights is based on the concept of human dignity.

The origins and foundations of the UDHR can be found in the Judeo-Christian Social Setting of the Western Countries who were its main drivers. It must also be noted that the League of Nations created after the First World War was also concerned with common values that the family of nations could ascribe to and be held accountable by in particular to ensure peace and avoid future wars. Prior to the First and Second World Wars there had been other historical occurrences such as the French Revolution, the American Independence and the whole renaissance in Western Europe that had laid great emphasis on issues of freedom and democratic governance. Indeed this era was marked by questioning of the very autocratic foundations of both the state and the church. In other words if as Bible indicates all are equal on what basis was the feudal system locking out a majority of citizens from participating in governance processes; why were the clergy and the church as an institution more equal than the faithful in relating to God. It is therefore not surprising that the French revolution, the American Declaration of Independence and indeed the liberation of Africa and other continents from colonialism were marked by great emphasis on individual rights. These aspirations were informed by the oppressive systems of government that existed that were very exclusionary and that had little or no emphasis on the equality and respect of the individual citizen. If anything as subjects of either the State or the Church the individual had none or very little say in how they were governed.

From the above discussion it is clear that there is a direct link between international, regional and national human rights systems to the Judeo-Christian value system. However, the danger of looking at these systems only through this prism has been the counter argument that these rights

therefore are Western ideology that has no place in other cultures such as the African traditional customs and culture. It also does not help that sometimes some of the most contentious interpretations of what are the fundamental rights emanates from the West and is seen to be in direct conflict with "African Culture". Hence the importance of noting that looking at the UDHR which is the mother of all human rights conventions, treaties and declarations that the idea of universality is very central and key to all the rights that are outlined. The universality of human rights means that they transcend culture and customs and hence will be found expressed one way or the other by different communities. Addressed from this perspective the question that arises is whether or not this is a shared understanding.

It should be noted that the debate especially from an African perspective is also coloured by the historical colonial history that Africa shares with the West and the Church. The colonial masters and the Church with their mission of emancipating and civilizing Africans did so by branding most traditional practices and value systems barbaric and uncivilized. Even where they allowed Africans to continue with some of their practices it was with the hope that they would soon abandon those practices and adopt the more civilized western and "Christian" ways. It did not help that there was no clarity on the existence or otherwise of a "Christian" culture. The tragedy for the Church was that it lost its very universal appeal by denouncing practices that were not unnecessarily Christian simply because they were not western. In the British Commonwealth for example where the justice system allowed for African Customary Laws to apply it was with the caveat that they applied as long as they were not repugnant to justice and morality.

However, there was lack of clarity on how some of these practices were repugnant – so for example the African Land ownership system that was

communal in nature was put in direct competition and conflict with the individual land ownership system introduced by the colonial systems; dispute resolutions mechanisms that emphasised restorative justice were seen as inferior to the colonial justice systems that were retributive in nature. Therefore one can understand why African Scholars and political leaders are sometimes hostile to what they consider as Western based human rights values that place emphasis only on the individual at the expense of the community and collective value systems. On the other hand the traditional African values and practices that take away the individual's right to determine their own cause must also be viewed with caution and must be challenged.

The debate and or the question of traditional values and their place in the human rights framework must therefore be seen within the above context; therefore the questions that we need to ask are as follows:

*Are traditional values and culture static?*

In my view we need to distinguish those values that are the core of humanity and their dignity as opposed to practices that respond to social, economic and political needs; an example would be the place of women in society – this has evolved with time – in most traditional settings including in the west women's role was very linked to their reproductive status; hence early marriages and having no say in their reproductive health issues the idea was to produce as many children as possible – and in turn children were also viewed sources of labour – in the primitive agricultural and industrial societies these practices of child labour were not an issue even though the value systems recognized both women and children as weak members of societies that needed protection – protection was paternalised to the advantaged of the stronger dominant male. Hence in my view the value that traditionally is recognised universally is that there are members of society who are

weak or to use a human rights terminology who are vulnerable; secondly that they must be protected against exploitation. Any practices that the communities or society adopts must then be viewed from these values, which must remain constant. Other practices that can be traced as of universal application that were detrimental to this value is that of how most cultures including the West dealt with persons with disabilities.

From the above we can note that there are other emerging values such as participation, non-discrimination, inclusion and equality; individuals matter and are important because without the individuals there is no society. The individual can only be a resourceful and useful member of the community if they are assured that their views and opinions matter that their dignity will be recognized and upheld by the community; in the absence of this the very notion of shared values will evaporate as each and groups of individuals will begin to define the society as belonging to those who matter. The very notions of democracy and social cohesion requires that society has a ways and means of dialogue to ensure that changes and practices do not marginalise individuals as the core of the group.

*Are individual rights dangerous or a threat to the communal rights?*

There is no doubt that individual rights can be in direct conflict or competition to what are perceived as communal rights. In discussions on this matter what often emerges as being described as communal rights seem to be more the idea that the society has a right to control how far the individual can enjoy certain rights. This is not a concept that is contrary to human rights discourse, indeed rights come with responsibilities and to that extent society through legal mechanisms has put in place structures that deal with violations of rights whether by the state or individuals. However difficulties emerge where for example the individual wants to exercise rights that the society does not recognize as

rights or are seen as social deviations such as the debate on lesbian gays bisexual transsexual and intersexual (LGBTI) rights. Unfortunately the African response to this debate has been very emotional including assertions that these practices did not exist in the African culture and yet the truth is that these practices have existed in all cultures and that most cultures did not condone them; even the West that has now been identified by Africans as the home of this "culture" viewed it as a social deviation. The fact of the matter is that this is not a right that has been specifically been identified in the UDHR; but it has evolved in terms of the issues of non discrimination, non violence and equal treatment, and so whereas, clearly allowing violence and open discrimination against such individuals would be contrary to the notion of human dignity – it is also clear that societies must be allowed to dialogue and agree on how to handle issues such as same sex marriage, adoption of children and how service providers who may not agree with such practices will deal with them.

Secondly when individuals claim of rights conflict with the rights of others who should be the arbiter – in the debate of the right to abortion again the reality is that there is a conflict between the right to life of the unborn baby and the right of the mother to chose, often not discussed is also the right of the father; again to some extent one may argue that universally abortion has been accepted where the life of the mother is threatened and to this end one can understand that it is easier to save the life of a known individual rather than the unborn unknown baby.

In these debates the traditional African arguments, the Church and the indeed most religions would be on one side, which unfortunately is sometimes seen only within the prism of morality and ethics and not from a rights perspective, and the dilemma is how to ensure that the very fundamental concepts of human rights and human dignity do not

become relative. The fact that Western countries have also tended to take a high moral ground against the South when it comes to these debates has muddied and made the discussions highly volatile to the extent that it has been reduced to a clear black and white situation without recognizing that issues of morality, ethics and how the law is used to uphold them takes time to evolve and that each society needs the space and time to come to terms with such social evolution.

*Are traditional values completely different or at variance with human rights principles and standards?*

From the above discussion it is clear that there are values that are shared across culture and religion that are sometimes challenged from rights based perspective and particularly the individual rights. It is also clear that most societies in the South are still quite cohesive and therefore to a large extent especially for rural communities the individual rights can be endangered by cultural practices. I will use an example of a project that the Kenya National Commission on Human Rights undertook with one of the communities in Kenya. The Commission had received a number of complaints from widows that their male relatives were disinheriting them. Part of the problem was this community also practice wife inheritance which basically meant that once a husband died then one of the clan relatives was identified to inherit the widow so as to ensure that they remained within the clan. In some instances this was done forcibly without the widow's consent and where the widow opted out then she was not allowed to continue residing in the husband's land and home. Since the community still had a structure of elders; the Commission approached the Council of Elders as well as some scholars from the community to conduct a study on this culture of inheritance of widows. After the study it emerged that the custom was intended to protect widows and orphans, secondly that it was not supposed to be imposed on widows and lastly that widows who did not desire to remarry

and or to be inherited by members of the clan were entitled to continue as part of the husband's community. Having established this the Commission agreed with the council of elders that any widow who had been or was under threat of disinheritance would be referred to the local elders who would in turn resettle them back into their communities; and they would do so through a communal process where the families and clan members would be present and symbolic activities such as rebuilding or building afresh of houses for the concerned widow would be undertaken communally under the supervision of the elders. This project and the activities re-emphasised to the community that widows and orphans were vulnerable members of the society and that they required equal and non-discriminatory treatment by the society. It also demonstrated that cultural mechanisms such as elders can be used to protect and enhance the rights of citizens and was actually more effective than the formal judicial process that is often very distant from the realities of most rural Kenyans.

*Are traditional mechanisms for upholding human dignity at variance with human rights principles and standards? How do we avoid gatekeepers in these processes – how do we get the most vulnerable voices on board?*

There are certain traditional mechanisms that can be a variance with human rights principles especially those that do not allow for victims or vulnerable members of society to be heard and instead develop systems of gatekeepers whose role is to determine culture and practice to the exclusion of others. Considering that most cultures have been patriarchal in nature the challenge for human rights practitioners is to use the power of persuasion and not just the big stick of the law to infuse human rights principles. In Kenya for example and this may be true for other countries in Africa, the courts are the recognized mechanisms for addressing violations and offering remedies; however the reality is that courts are often inaccessible to most citizens and as a

result most rural communities still use traditional dispute resolution mechanisms such as elders to resolve even criminal cases. And since in a number of cases they are more responsive and the fact that they are very close to the parties ensures compliance through social mechanism, making them quiet effective. A rights based approach should therefore seek to engage these mechanisms with a view to agreeing on infusing principles that uphold the dignity of all parties including women and children. A very good example of the use of traditional mechanisms to bring justice for human rights violations is the use of Gacaca courts in Rwanda. Notwithstanding shortcomings this mechanism has managed to creatively bring reconciliation between victims and perpetrators – a feat that the formal criminal justice systems would find very difficult to implement and supervise.

*Individual versus communal or group rights – is this only an African perspective?*

As indicated above that a lot has been written and said about the role of Christianity and the Western Culture in altering or even suppressing African Culture that was seen not to be in tandem with “Christian Western Culture”. And it is within this context that individual rights are seen to be “western” or “Christian” and probably more of the protestant variety with its emphasis on individual relationship with God and individual salvation and all the emphasis on individuals is seen to be contrary to the African context of communal relationships the fact that for Africans there is the notion of “I am because we are”. To this extent there was and still exists confusion on whether there is anything called Christian culture – in my view it is safer to think use values as opposed to culture when considering religious standards and belief systems that transcend cultural divides. While social groupings such as communities, tribes can classify these values into concrete culture that binds them and

which can be enforced through various mechanisms i.e. social or legal sanctions.

It is for this reason that the African Charter on Human and Peoples Rights distinguishes itself as an instrument that deals with not just individuals but also people. Again in my view some of the issues that are of communal concern to Africans have also found expression in other human rights documents and in particular what are called third generation rights; the rights relating to the environment, to development for example are rights that call for not just individuals to exercise and enjoy but are shared not only by current but also future generations. In my view at the core of these rights is the understanding that as community of human beings there are rights that we enjoy collectively and that we owe to the next generations to nurture as they were nurtured by the previous generations. Again some of these concepts bring out the notion of universality – if we look at the idea of communal grazing lands, it is clear that not all land can be left in the hands of individuals, and secondly in most communities rivers, lakes, mountains and water frontages are never owned by individuals but are intended for use and enjoyment by all members of the communities where they are situated.

I hope that these thoughts will generate some discussions on this very interesting topic that we have gathered to discuss in the next two days.



ARCHEVÊCHÉ DE COTONOU  
INSTITUT DES ARTISANS DE JUSTICE ET DE PAIX  
CENTRE DE RECHERCHE ET DE FORMATION LE CHANT D'OISEAU  
(I.A.J.P. / C.O.)

« En effet, avec la terre, la principale ressource de l'homme, c'est l'homme lui-même. »  
(Jean-Paul II, Centesimus annus, 32)



## **SOME NOTES ON THE SOCIAL DOCTRINE OF THE CHURCH AND HUMAN RIGHTS**

*Raymond B. Goudjo*

I would like to put some notes on our reflections Humans Rights. It is any citation of the Compendium of the social Doctrine of the Church (CSDC)

1. *The social doctrine is an instrument of Evangelization, and not an instrument to sustain the actual Justice methods.*

“Priests, men and women religious, and, in general, those responsible for formation will find herein a guide for their teaching and a tool for their pastoral service. The lay faithful, who seek the Kingdom of God “by engaging in temporal affairs and directing them according to God's will”, will find in it enlightenment for their own specific mission. Christian communities will be able to look to this document for assistance in analyzing situations objectively, in clarifying them in the light of the unchanging words of the Gospel, in drawing principles for reflection, criteria for judgment and guidelines for action.” (CSDC 11)

“The transformation of the world is a fundamental requirement of our time also. To this need the Church's social Magisterium intends to offer the responses called for by the signs of the times, pointing above all to

the mutual love between human beings, in the sight of God, as the most powerful instrument of change, on the personal and social levels. Mutual love, in fact, sharing in the infinite love of God, is humanity's authentic purpose, both historical and transcendent. Therefore, "earthly progress must be carefully distinguished from the growth of Christ's kingdom. Nevertheless, to the extent that the former can contribute to the better ordering of human society, it is of vital concern to the kingdom of God"." (CSDC 55)

2. *Humans Rights has in Church's teaching a deep moral signification and means more conversion and reconciliation than Tribunal Justice. Humans Rights is linked and included in the Human Dignity and not equal to it.*

"Authentic social changes are effective and lasting only to the extent that they are based on resolute changes in personal conduct. An authentic moralization of social life will never be possible unless it starts with people and has people as its point of reference: indeed, "living a moral life bears witness to the dignity of the person". It is obviously the task of people to develop those moral attitudes that are fundamental for any society that truly wishes to be human (justice, honesty, truthfulness, etc.), and which in no way can simply be expected of others or delegated to institutions." (CSDC 134)

3. *We have to look more into the roots of the injustice and the violation of Humans Rights.*

"Christian salvation is an integral liberation of man, which means being freed not only from need but also in respect to possessions. "For the love of money is the root of all evils; it is through this craving that some have wandered away from the faith" (1 Tim 6:10). The Fathers of the Church insist more on the need for the conversion and transformation of

the consciences of believers than on the need to change the social and political structures of their day. They call on those who work in the economic sphere and who possess goods to consider themselves administrators of the goods that God has entrusted to them." (CSDC 328)

4. *Who is the weak in the eyes of the Church? Who are the victims of injustice and Humans Rights violation? Both: poor and rich, weak and powerful. Why? It's not possible to change the condition of the poor, when we don't work for conversion of the weak and the powerful together. The action in favor of the weak could be unjust against the powerful, and we have to be attentive in our approach to manage Human Rights.*

"Human misery is a clear sign of man's natural condition of frailty and of his need for salvation. Christ the Saviour showed compassion in this regard, identifying himself with the "least" among men (cf. Mt 25:40,45)...

Jesus says: "You always have the poor with you, but you will not always have me" (Mt 26:11; cf. Mk 14:7; Jn 12:8). He makes this statement not to contrast the attention due to him with service of the poor. Christian realism, while appreciating on the one hand the praiseworthy efforts being made to defeat poverty, is cautious on the other hand regarding ideological positions and Messianistic beliefs that sustain the illusion that it is possible to eliminate the problem of poverty completely from this world." (CSDC 183).

"The Church's love for the poor is inspired by the Gospel of the Beatitudes, by the poverty of Jesus and by his attention to the poor. This love concerns material poverty and also the numerous forms of cultural and religious poverty... the practice of charity is not limited to alms-giving but implies addressing the social and political dimensions of the problem of poverty." (CSDC 184)

## **REFLECTIONS ON PRIORITY HUMAN RIGHTS ISSUES**

*Mike Deeb OP*

At the heart of all human rights discourse is a reflection on the natural rights pertaining to any human being. Who is worthy of respect? This is a huge challenge in a world where we all have experiences of evil or of prejudice which make us see certain people as lesser than human and therefore not worthy of respect: offenders/prisoners, ethnic enemies, foreign migrants/inlanders, "sinful people" (prostitutes, homosexuals,...).

At the heart of a Christian reflection on human rights is the recognition that every person, regardless of who they are or what they have done, remains a child of God and is therefore an image of God. Everyone therefore has equal human dignity and is worthy of respect. This is a big challenge in a world and a Church where we are all schooled in hierarchies.

As we struggle for world justice, peace and harmony, different understandings of what constitute human rights are evident. Every culture or tradition has developed its own understanding of what it means to be a person, its own understanding of morality, and its own understanding of who or what is worthy of respect. From a Christian perspective, Jesus' understanding of these issues is clear. He especially wanted to give dignity to those who were regarded as the outcasts, the oppressed, the marginalised (see especially Luke 4:18). Yet so many Christians are so steeped in their own cultures and traditions that they cannot grasp this reality that transcends all cultures.

If we want to make a positive intervention in the struggle for human rights, we therefore need to confront the areas where the dominant consensus is at odds with Catholic Social Teachings. Sometimes there is

a blockage in the dominant world culture, and sometimes there is a blockage in Catholic tradition.

A good example of a blockage in the dominant world culture is in the area of economic rights, especially property rights, which are often portrayed as sacrosanct. Catholic Social Teachings however, insist on the primary rights of the poor to their basic needs which places limits on the right to private property. There is also a blockage in the area of certain rights to life (of the unborn, or of those facing a life of suffering) where the ending of life is judged to be more compassionate for those affected. This is obviously a more complex question, but the problem arises when it is framed in a very individualistic framework.

A good example of a blockage in Catholic tradition is in the area of gender and sexual issues. Despite an insistence on the recognition of women and homosexuals as children of God with equal human dignity, in practice they are still seen as inferior and discrimination against them is justified. Central to this contradiction is the adherence to a particular understanding of Natural Law which is transformed into an ideology, the justification of which is based on readings of the Bible which are increasingly called into question. Many of such understandings are rooted in traditional cultural values that take priority over Christian values.

These are all very emotive issues about which rational discussion is often extremely difficult – if not impossible. It is therefore mostly not useful to confront these issues directly. Points of entry have to be found which will open up perspectives to see such discussion as unavoidable.

A conference of different understandings of human rights from a Christian perspective, therefore, will require deep reflections on case studies of human rights violations, on Scriptural texts used to legitimise discrimination as well as on the nature of Natural law.

# **INDIVIDUAL VERSUS COMMUNITY (SOCIAL AND CULTURAL) RIGHTS**

## **THE LACUNA IN HUMAN RIGHTS INSTRUMENTS**

*Fr. Joseph Komakoma*

Zambia has spent a good part of the last 20 years trying to come up with a National Republican Constitution rooted in democratic values. A key issue that has been at the heart of the constitution debate regards the **Bill of Rights**. Though strengthened and broadened in the Constitutions Drafts of 1991 and 1996 the citizenry still demanded the inclusion of **Social, Economic and Cultural Rights** in the Bill of Rights. The newest Draft (made available to the public on 30 April 2012), finally includes the recognition of progressive social, economic and cultural rights.

It is clear that Zambian citizens felt that the Bill of Rights that just stressed the recognition of individual rights was not sufficient to deal with the protection of human dignity, hence the insistence on including social, economic and cultural rights. If the current draft is enacted Zambia will join a growing number of countries in Africa who recognize a justiciable protection of social and cultural rights in their national constitutions.

In coming up with the Charter for Human Rights in Africa, the OAU (Organisation of African Unity) the predecessor to the AU (African Union), went further than the UN's Universal Declaration of Human Rights by choosing to call their 1981 Charter, the **African Charter on Human and People's Rights**. Note the stress on "people's"!

From this background it is clear that, in Africa, one cannot discuss the protection of human dignity through the existing international instruments if those instruments do not encompass the protection of social and cultural rights.

This view is in conformity with the Social Teaching of the Church's stress on the principles of the *Common Good* and *Subsidiarity*.

This for me is an important subject of reflection and dialogue between faith oriented European and African advocates of human dignity, in order to ensure that they all are singing from the same song sheet.

In the common African philosophical parlance this is the famous juxtaposition of Descartes' "*I think therefore I am*" and the *Ubuntu* philosophical concept of "*We are therefore I am*".

## **PROMOTING HUMAN DIGNITY AND HUMAN RIGHTS IN AMECEA REGION: THE MISSING LINKS**

*Elizabeth Nduku Nzivu*

Everyone created in the image and likeness of God (Gen 1;26) has inherent human dignity and rights that have to be upheld and this invites all to be responsible in ensuring that this dignity and rights are promoted and upheld. Every person regardless of race, sex, colour, national origin, religion, economic status, health etc is worthy of this respect since it is not what a person does or what one has that gives a claim on respect, but by the fact that he bears Gods image and likeness. As such the church has taken upon her to ensure that all person rights and dignity are upheld.

In doing this, the church in Africa has challenged some of the African oppressive cultures that do not respect the human rights and dehumanize the person such as early marriage for women, ownership of property, access to social services among others. In addition she continually champions pro-life campaigns and educates people on the sacredness of life that should be respected, nurtured and protected by all means. To ensure that humanity lives a dignified life, the church has and still spearheads development projects to enable her people to have better living standards. To promote the right to health care, the church owns runs, manages and sponsors many health centres, hospitals and dispensaries that offer specialized and quality treatment to the people in their bid to promote human dignity and human right.

If this is the case, where is the missing link, what is it that which is not being done rightly, and how could we dialogue to ensure that human rights and dignity are upheld? Could the problem be in the way the structures are or what exactly is the issue? What advocacy structures

does the church possess and how elaborate are they. Is there a link between the church's structure and that of the state both at national and international level.

## **THE ARGUMENT**

There are two streams of human rights 1) Civil and Political Rights (CPR) internationally contained in the UDHR and the ICCPR and 2) Social Economic and Cultural Rights (SECR) internationally contained in the UDHR and the ICSECR. The UN international human rights system has an elaborate process of advocacy and promotion of human rights through the Universal Periodic Review, Treaty bodies and Special procedures. These processes and mechanisms have been more acceptable to states since they are non coercive and are respective state sovereignty operating in a peer review approach. States internationally wish to give a good impression of how they perform at home in respect to human rights. To avoid embarrassment, they work on improvements or try to explain limitations most of the time.

The Church in the region speaks out against abuses and in some situations has made concrete interventions. The biggest shortfall is that with all its influence, the church's interventions, voice and advocacy have not made its way into the international human rights processes in as far as they affect the countries in this region. Single handed contributions from the Holy See at the Human rights council or the treaty bodies may not be enough to sway pressure on an issue in a country. More of the stakeholder reports to treaty bodies, the UPR and Special procedures ought to have contributions from the Church wherever possible. This cannot take place unless a conscious effort is made to have church influenced and active human rights organizations on the look out in each diocese or country. In this way, the influence and human rights data, which the Church already holds at the grass-roots can be transformed

into international lobby material to transform human rights situations in these countries.

## **ILLUSTRATING THE ARGUMENT CIVIL AND POLITICAL RIGHTS:**

These rights stand out most in the pastoral letters of the pastors in various countries as they relate to the matters of governance, impunity, torture, extrajudicial killings, freedoms of conscience, opinion, press etc....

One example relates to the notoriety of detention and torture in ungazeted/ unauthorized detention places in Uganda. The Bishops have made careful and balanced statements on this situation over the years. The state can afford to ignore their calls because Uganda neither participated nor ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations and Entered into force on 22 June 2006. In this case, the local pressure without international pressure may be limited. While it is the case that some civil society groups have made calls internationally for the end to this practice and the call on the government to ratify this protocol (ratification in part implies acceptance to be audited and to file regular reports), if the voice of the Church was added to this, some progress could be made.

Another example related to the visit to Kenya by Philip Alston, the special rapporteur on extrajudicial killings. It is clear that even though the other human rights groups had more data on these killings, the kidnappings and killings were taking place in areas whether the Church has jurisdiction. It not clear whether the relevant Church organs sought audience with this special rappoteur to share its views. There is no way

of establishing whether any church authority had ever received such information, if so what action was taken, was there or is there a structure of such documentation and follow up .... if not, why? Do the church leaders find themselves incapacitated in this respect?

In another instance in Kenya, the special rapporteur on the rights of internally displaced persons visited Kenya in September 2011. Despite the Church's role in aiding IDPs in Kenya, there is little or no evidence to show that the Church or its relevant organ met with this Rapporteur. The record only shows the office of Justice Peace and Integrity of Creation Franciscans Africa on the prompting of their international partners Franciscans International to seek audience with the rapporteur and even then they only presented advocacy issues on behalf of one refugee camp of about 113 families then.

## **THE RIGHT TO LIFE**

In many of the countries in the region this is a major front for engagement with state authorities. While the human rights instruments package the right to life as a civil and political right, proponents of abortion and other practices adverse to the right to life rely on social economic rights. Today under the right to health emphasis is laid on reproductive health services. These services are also internationally being understood to include but not limited to contraception and in some cases abortion. The proponents of these services rely on "internationally accepted" definitions and interpretations. It would be interesting to find out how much influence the Church in Europe has over the European parliament and commission of perpetuating services, policy and practice that may more often be averse to the right to life of the unborn.

## **SOCIAL ECONOMIC AND CULTURAL RIGHTS**

A Latin American Bishop is quoted to have said: "When I feed the hungry, they call me a saint when ask why they are hungry they call me a communist". The Church in this region is doing a good job through the provision of social services. In fact in most countries the Church is a key player in provision of education and health services. The challenge is that the Church gets pre-occupied with the protection of its property in the schools as the only advocacy issue and ends up forfeiting the bigger call of challenging governments to provide quality and accessible education to its people. The church I would is still struggling with reigning in governments to support the provision of education without surrendering totally control over what is taught and how it is taught.

On account of health, the Church's influence is visible but the question of the right to the highest attainable standard of health is something the church has to join advocacy for. The Church ought to marshal its formidable influence in the health sector to influence governments on faith consistent health care. The proponents of faith adverse health care usually rely on "evidence based" arguments, the church ought to invest in the necessary research to justify for instance why it chooses to promote the billings, or sympto -thermal method in reproductive health over the conventional pharmaceutical driven contraceptive technologies. Fully funded arguments by adversaries are irresistible by the Christians themselves.

## **FOOD SECURITY**

The Church is playing a great role in the area of food security. With the help of various development partners, dioceses are involved in commendable agricultural improvement programs targeted at food security and economic development. The challenge is that either the

influence of the Church is not felt or it has not been used as an advocacy tool for sustainable agriculture. The agribusiness industries have also targeted the same small holder farmers that the Church is working with in the region. The push for the said "green revolution" comes along with genetically modified seed that has terminator genes in it. The dependence it creates among farmers on the seed manufacturer creates insecurity instead. How can farmers be liberated from hunger if they have no control over what they plant, what fertilizer they use or what herbicide. This is not only a human rights issue but a fair trade issue. The question to what extent is the Church in the developed world able to influence policy in its own governments towards a favorable situation for the Church in this region.

### **PROLIFERATION OF SMALL ARMS**

The Church is a major proponent of non-violent approaches to conflict in this region but the belief in violence is pervasive both internationally and locally. The arms that the pastoral communities use against themselves are not manufactured in this region. Protracted conflict that subsides and rises all over again is linked to free trade in arms. The Church in the developed world ought to join more openly in the cessation of the proliferation of small arms. The wars the rustling etc related the prevalence of small arms comes along with displacement and other human rights abuses.

### **EXTRACTION OF NATURAL RESOURCES**

Africa is endowed with a lot of resources which if well managed would lead to the sustainable lives of the people. Unfortunately they have led to conflicts which have in turn claimed many lives. The Church ha a

responsibility to protect the resources and lives of people but their effort are not bearing fruits. They need a backing from their counterparts in the west but the challenge is how to influence their governments to have a different approach on the resources and instead encourage the Africans to use them for their own development.

In conclusion, these reflections emphasize the view that local efforts ought to be synergized by international efforts in a coordinated manner. For this to happen however in respect to human rights, an entire Church influenced movement of human rights practitioners has to be built to continuously join the discourse and the debate both locally within our states and internationally too.

There is dire need to have a structure that involves all the different players so that what is experienced in one region of the Church can be shared all over and have a backing. And if we do this it is good to bear in mind that each region has its unique characteristics and experiences hence the approach will always remain different but with a common end. The approach may be influenced by the different cultures but the uniting factor is that of being Christians and human beings created in the image and likeness of God.



JESAM SOCIAL APOSTOLATE

## **PROTECTION OF VICTIMS AND HUMAN RIGHTS DEFENDERS**

Rigoberto Minani Bihuzo SJ

### **HUMAN RIGHT IST ABOUT DEATH AND LIFE**

- 1 JUIN 2010
- A friend of mine (Floribert Chebeya), runing the voice of voiceless...  
Killed by the DRC police.
- Important to remind that behind the academic discussion....
- Behind Some decision ... there is a number of dead, displaced,  
homeless,....

### **TIME: 20 YEARS**

My experience of almost 20 years in the field of Human Right:

- [www.groupe-jeremie](http://www.groupe-jeremie) (feb. 1992).
- [www.rodhecic.org](http://www.rodhecic.org) (May 1999).

## **ACTIVITIES:**

- Lobbying : Reports on human right abuses.
- Support victims of human right abuses
- Training people to know their rights and to defend them.
- elaboration of law ...
- To Teach... Right education
- To denounce.... Human Rights abuses
- To commit ... for victims

Annoncer.....Denoncer.....s'engager....

## **AMNESTY MODEL**

When we started our activities early in 1992, our target was the dictatorial Mobutu regime.

Human Rights were denouncing:

- To weaken the political regime
- To change the political regime

## **MEANS: HUMAN RIGHTS REPORTS ...**

All the reports were sent to international HR NGO's who were making their own report out of ours. A kind of sub contract agencies. The political change we wished never happen. Others forces came and took advantage from the internal resistance. It opened the way to a decade of war and led to the occupation of the Eastern part of the country.

20 years later I ask to my self: If I now know what would happen, I could not do what I have done again. At least in the way I have done it.

## **TIME OF WAR (FROM 1996 ONWARD)**

We used the same way: Denouncing the war and people sponsoring the war.

The result was deferent. All these people never been touched:

- Arms dealers
- Mining companies
- Customers of Mine
- Political supports of lords war
- Leaders who had sponsored and profit from war

## **WHO IS TARGETED? - THE ICC CASE...**

- Ituri: Thoma Lubanga....not General Salim Saleh, or General Burundi... (true chief from Uganda)
- Bemba not President Patassé
- Bosco Ntaganda not Kagame
- Germain Katanga not Museveni....

Only small and week people are punished.

## **JUSTICE AND PEACE MODEL**

- Broad
- More informations
- Wide (many aspects...)
- But yet almost invisible....
- Ask displomates....

## **HUMAN RIGHTS ARE A DANGEROUS ACTIVITY / DO NOT RESPOND TO OUR BASIC NEEDS**

- When you gather data, people will be in danger. You are not able to protect them.
- Their families are helpless.
- Example: Chebeya and Bazana family. How to explain to Bazana family the choice of the Chebeya family?
- Human right defenders are left to their own, they are alone.

Embassy will not respond in time to help and human right agencies will take too much time.

Few choices : To hide, to run away....

## **CONCLUSION**

There is need for new approach and new perspectives.

JESAM social apostolate propagates:

- Broad Human Rights approach
- IN GIAN: Global ignatian Advocacy.
- Ecology
- Peace and Human right
- Migration
- Right to education
- Natural resources. ...

Link Human right to Peace and to State Building to address all the generations of human rights.

# **THE HAGUE: THE INTERNATIONAL CITY OF PEACE & JUSTICE**

*Victor Scheffers*

1. The office of Justice and Peace Netherlands is based in The Hague, the political centre of The Netherlands. Over the years The Hague has also acquired importance as an international political centre. Aside from the residence of the Queen, the government and the foreign embassies, it also hosts several international institutions, such as the Permanent Court of Arbitration, the International Court of Justice, the Organisation for the Prohibition of Chemical Weapons, the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Court. The Hague's city council aims to make The Hague known worldwide as "the legal capital of the world" as well as "the international city of peace and justice." Since the 19<sup>th</sup> century, The Hague has played a major role as the global city of justice and peace. For over a century, many states have set their sights on The Hague for a peaceful settlement of their disputes. More recently they were joined by victims of gross violations of international criminal law. This offers us opportunities and challenges.
2. Between 2003 and 2009 Justitia et Pax Netherlands developed and implemented a new programme: The Centre for Justice and Reconciliation (CJR). It was inspired by various religions that promote the importance of peace, justice and reconciliation. The main object of this programme was to promote the assistance of people who suffer from flagrant violations of human rights in finding justice and reconciliation. In doing so, CJR particularly involved the possibilities offered by the International Criminal Court in The Hague. It was connected to a large worldwide network of both faith-based and

secular human rights and humanitarian organisations. Where assistance was wanted, CJR provided training and advice in matters of justice and reconciliation. Today, this programme forms an integral part of the programme of Justice and Peace Netherlands. We continue to carry out activities in the Region of the Great Lakes and in Sudan, and link partners to the International Criminal Court. We inform the ICC of our partners' and victims' needs while at the same time informing our partners of limits and possibilities of the ICC. This includes keeping the expectations realistic and encouraging local methods and means of national and traditional justice through lobby and advisory work.

3. The International Criminal Court (commonly referred to as the ICC) is a permanent tribunal to prosecute individuals for genocide, crimes against humanity, war crimes, and the crime of aggression (although it cannot, until at least 2017, exercise jurisdiction over the crime of aggression).

It came into being on 1 July 2002 - the date its founding treaty, the Rome Statute of the International Criminal Court, entered into force - and it can only prosecute crimes committed on or after that date. The Court's official seat is in The Hague, Netherlands, but its proceedings may take place anywhere.

The Court can generally exercise jurisdiction only in three cases, if the accused is a national of a state party, if the alleged crime took place on the territory of a state party or if a situation is referred to the Court by the United Nations Security Council. It is designed to complement existing national judicial systems: it can exercise its jurisdiction only when national courts are unwilling or unable to investigate or prosecute such crimes. Primary responsibility to investigate and punish crimes is therefore left to individual states.

As of 16 June 2003, the Prosecutor has been Luis Moreno Ocampo of Argentina, who was elected by the Assembly of States Parties on 21 April 2003 for a term of nine years. At the tenth session of the Assembly of States Parties, the then-Deputy Prosecutor Fatou Bensouda of The Gambia was elected as the new Prosecutor on 12 December 2011. She will take her office on 16 June 2012.

4. These days the ICC's biggest opponents are in Africa, which provides the Court with a big group of state parties (31 out of 121), and is the scene of all the cases currently being investigated or prosecuted: in the CAR, Congo, Côte d'Ivoire, Kenya, Libya, Sudan and Uganda. Accusing the Court of unfairly targeting African countries, the African Union is again calling for "African solutions to African problems". It may not work.

The reason so many African cases are before the court is not because of bias; all the ICC cases have been referred to it either by the UN Security Council or by the countries themselves. It is because the standards of justice in Africa are often very poor. Attempts to create an effective regional system of African justice have failed so far. The African human rights system (with the African Charter on Human and Peoples' Rights, the African Commission and the African Court) is still very weak. The African Court for example has never issued a ruling of note. The International Criminal Court (ICC) is a court of last resort. It may not take cases on if the country has a competent, independent justice system ready to prosecute alleged perpetrators and give them a fair trial. It is therefore important to strengthen national capacity to deal with human rights violations.

From 7-15 May 2012, the Ministers of Justice of the member states of the African Union (AU) have met to discuss inter alia a Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, which confers upon the Court international

criminal jurisdiction. The AU envisages the creation of a Prosecutor and a new Chamber of the African Court, which will hold jurisdiction over the classic international crimes of genocide, war crimes, and crimes against humanity. In addition, the draft provides jurisdiction over other crimes, including the unconstitutional change of government, piracy, terrorism, mercenary, corruption, money laundering, trafficking in persons, drugs and hazardous wastes, illicit exploitation of natural resources, aggression and inchoate offences. But I wonder if at the end autocratic African leaders will accept a proposal to strengthen a justice system that one day may be used to sentence them.

## **FACT SHEET**

### **THE HAGUE: THE INTERNATIONAL CITY OF PEACE & JUSTICE**

#### *History*

The Permanent Court of Arbitration in The Hague is the oldest institution for international law dispute resolution.

Since then, international efforts to regulate the conduct of conflict and other international law disputes have resulted in the establishment of several Hague Conventions. Hundreds of countries around the world are party to some — in many cases not all — of the Hague Conventions.

Other notable international law organizations located in The Hague developed in the more than 100 years since the first Peace Conference include:

The International Court of Justice

The International Criminal Tribunal for the Former Yugoslavia

The European Police Office (Europol)

The European Library

The Hague Academy of International Law

The Hague Conference on Private International Law

The NATO Consultation, Command and Control Agency

The Organization for the Prohibition of Chemical Weapons

The Iran-United States Claims Tribunal

The Special Tribunal for Lebanon

The Unrepresented Nations and Peoples Organization

With all of these international law organizations calling The Hague home, it's safe to say The Hague really is the international city of peace and justice

## **THE INTERNATIONAL CRIMINAL COURT**

The International Criminal Court (commonly referred to as the ICC) is a permanent tribunal to prosecute individuals for genocide, crimes against humanity, war crimes, and the crime of aggression (although it cannot, until at least 2017, exercise jurisdiction over the crime of aggression).

It came into being on 1 July 2002 - the date its founding treaty, the Rome Statute of the International Criminal Court, entered into force - and it can only prosecute crimes committed on or after that date. The Court's official seat is in The Hague, Netherlands, but its proceedings may take place anywhere.

The Court can generally exercise jurisdiction only in three cases, if the accused is a national of a state party, if the alleged crime took place on the territory of a state party or if a situation is referred to the Court by the United Nations Security Council. It is designed to complement

existing national judicial systems: it can exercise its jurisdiction only when national courts are unwilling or unable to investigate or prosecute such crimes. Primary responsibility to investigate and punish crimes is therefore left to individual states.

As of April 2012, 121 states are states parties to the Statute of the Court, including all of South America, nearly all of Europe and roughly half the countries in Africa. The Statute will enter into force for its 121<sup>st</sup> state party, Guatemala, on 1 July 2012. A further 32 countries, including Russia, have signed but not ratified the Rome Statute. One of them, Côte d'Ivoire, has accepted the Court's jurisdiction. The law of treaties obliges these states to refrain from "acts which would defeat the object and purpose" of the treaty. Three of these states - Israel, Sudan and the United States - have "unsigned" the Rome Statute, indicating that they no longer intend to become states parties and, as such, they have no legal obligations arising from their former representatives' signature of the Statute. 41 United Nations member states have neither signed nor ratified or acceded to the Rome Statute; some of them, including China and India, are critical of the Court. The Palestinian National Authority, which neither is nor represents a United Nations member state, has formally accepted the jurisdiction of the Court. On 3 April 2012, the ICC Prosecutor declared himself unable to determine that Palestine is a "state" for the purposes of the Rome Statute.

In June 2010, two amendments to the Rome Statute of the International Criminal Court were adopted by the Review Conference in Kampala, Uganda. The first amendment criminalizes the use of certain kinds of weapons in non-international conflicts whose use was already forbidden in international conflicts. It is in force in no state party but will enter into force for its first ratifying state, San Marino, on 26 September 2012 and its second ratifying state, Liechtenstein, on 8 May 2013. The second amendment specifies the crime of aggression. It is in force in no state party but will enter into force for its first ratifying state, Liechtenstein, on

8 May 2013. However, the Court will only have jurisdiction over the crime of aggression after it enters into force for 30 states parties and after the Assembly of States Parties has voted in favour of allowing the Court to have jurisdiction after 1 January 2017.

To date, the Court has opened investigations into seven situations in Africa: the Democratic Republic of the Congo; Uganda; the Central African Republic; Darfur, Sudan; the Republic of Kenya; the Libyan Arab Jamahiriya and the Republic of Côte d'Ivoire. Of these seven, three were referred to the Court by the states parties (Uganda, Democratic Republic of the Congo and the Central African Republic), two were referred by the United Nations Security Council (Darfur and Libya) and two were begun proprio motu by the Prosecutor (Kenya and Côte d'Ivoire).

It has publicly indicted 28 people, proceedings against 23 of whom are ongoing. The ICC has issued arrest warrants for 19 individuals and summonses to nine others. Five individuals are in custody; one of them has been found guilty (with an appeal possible) while four of them are being tried. Nine individuals remain at large as fugitives (although one is reported to have died). Additionally, two individuals have been arrested by national authorities, but have not yet been transferred to the Court. Proceedings against five individuals have finished following the death of two and the dismissal of charges against the other three. While the charges against a fourth suspect were dismissed, the Prosecutor was granted leave to appeal that decision.

As of March 2012, the Lubanga trial in the situation of the DR Congo has ended with the accused found guilty on 14 March 2012. It was the first ruling since the court had been set up. Sentencing and reparations are to be discussed at a later stage. Two trials against three people are ongoing: the Katanga-Chui trial regarding the DR Congo (scheduled to be concluded in May 2012) and the Bemba trial regarding the Central African Republic. A fourth trial, the Banda-Jerbo trial in the situation of Darfur, Sudan, is anticipated to begin in 2012. The charges against four

of the so called "Ocampo Six" in the situation of Kenya (Ruto-Sang and Muthaura-Kenyatta) were confirmed and one single Trial Chamber constituted. The confirmation of charges in the Mbarushimana case in the situation of the DR Congo was declined and Mbarushimana released on 23 December 2011 with the prosecutor granted leave to appeal. The confirmation of charges hearing in the Gbagbo case in the Côte d'Ivoire situation is scheduled to take place in mid-2012.

As of 16 June 2003, the Prosecutor has been Luis Moreno Ocampo of Argentina, who was elected by the Assembly of States Parties on 21 April 2003 for a term of nine years. At the tenth session of the Assembly of States Parties, the then-Deputy Prosecutor Fatou Bensouda of The Gambia was elected as the new Prosecutor on 12 December 2011. She will take her office on 16 June 2012.

Four of the 18 judges of the Court are from African states.

## **ABOUT JUSTICE AND PEACE NETHERLANDS**

Justitia et Pax Netherlands has actively promoted respect for human rights worldwide and in The Netherlands for more than forty years. We cooperate with Justice and Peace commissions, religious groups and institutions, with human rights and other civil society organisations in more than 20 countries worldwide. We support them with training, exchange of knowledge and policy advocacy so they can voice their rights with regional and national authorities and governments, the European Union, the United Nations, the Council of Europe and other international institutions. Also in our own country, we plead with policy makers and politicians for respect and promotion of human rights.

### **Justitia et Pax Nederland**

P.O.Box 16334, NL-2500BH The Hague The Netherlands

T + 31 70 3136800 / [info@justitiaetpax.nl](mailto:info@justitiaetpax.nl) / [www.justitiaetpax.nl](http://www.justitiaetpax.nl)

## **HUMAN RIGHTS – COMMITMENT AND OBLIGATION FOR CIVIC EDUCATION**

*Siegfried Grillmeyer*

- This statement was not presented during the workshop due to time constraints –

CPH<sup>1</sup> academy in Nuremberg is the one of the rare catholic academies in Germany with such a strong emphasize on Human Rights Education. This is - not at least - due to fact of Nuremberg's particular role in historical context during the NS period, the CPH academy claims a strong emphasize on Human Rights in the field of Civic Education with a profound, broad and very differentiated approach. There exists a strong involvement within the local network of Human rights Education in Nuremberg , as the "City of Peace and Human rights" runs a municipal Human Rights Office and our house supports a lively exchange with relevant local research institutions (such as the institute for Human Rights in Erlangen, German Institute for Human Rights; Federal Group for Civic Education; focus Human rights).

In reference to the impetus of the CPH academy in Nuremberg the following 5 aspects deserve closer attention.

### **HUMAN RIGHTS AS FOCUS OF CIVIC EDUCATION**

In his introduction Bardo Fassbender refers to the Universal Human Rights Declaration (UHRD) as basis and standard of international Human Rights protection after WWII. To adopt and to question its basic

---

1 CPH- acronym for Caritas-Pirckheimer-Haus/House; named after the abbess Caritas Pirckheimer of Nuremberg St. Clare's cloister

intention thus deriving a profound and practical knowledge means Civic Education in the best sense.

“Maturity” and “professionalism” - two important keywords for the discourse in Civic Education - describe the range within Civic Education and Human Rights Education takes place.

Civic Education focuses on specific social activities where individuals establish conditions of coexistence and develop social systems on different levels of society in order to regulate significant problems or conflicts for a specific stratum. Moral values, requirements and interests of individuals and groups are of central importance. Civic Education is the vehicle to influence society and targets the “mature citizen”.

The broad framework of Civic Education allows to understand Human Rights Education as a core business of Civic Education and simultaneously as its cross-section – in terms of Human rights mainstreaming. Its compatibility to contemporary national and international programs should be exposed wherever possible.

Only ten years ago Germany (then justly) was referred to as an underdeveloped country in terms of Human Rights Education. Despite didactic teaching material from amnesty international and brochures from the Federal Agency for Civic Education and other specific action. Continuing work at all levels made Human Rights Education a strong field in Civic Education in Germany in the meantime. Not only the institutions in charge but also NGO’s (organized in “Forum Human Rights”) contributed to this process.

Various efforts resulted in a certain consensus in terms of formulating aims and didactic models. All learning processes related to Human Rights Education should include cognitive, social and moral dimensions. The classification adopted from International Human Rights Education says: Human Rights Education is about knowledge and understanding (learning *about* Human Rights), opinions, attitudes, and values (learning

*by* Human Rights) and about competences and abilities (learning *for* Human Rights).

Educational aims are:

1. knowing the own Human Rights and claim for them
2. knowing others Human Rights and stand for them
3. accept human Rights as part of own morality thus having a guiding effect

### **HUMAN RIGHTS AS EDUCATIONAL TOPIC IN A CITY LIKE NUREMBERG CONSIDERING ITS VERY PARTICULAR ROLE IN HISTORICAL CONTEXT DURING NS PERIOD**

Many of the basic ideas that animated the movement developed in the aftermath of the WWII and the atrocities of Nazi era, culminating in the adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations General Assembly in 1948. Since then the world possesses the concept of universal Human Rights.

Our educational offerings are part of the Civic Human Rights Education within a historical context. It is crucial to encourage the process of Human Rights Education especially in view of Nuremberg's particular role in the Nazi Regime. This is an essential part of memory work, memorial education and educational work; aiming in a close link between past and present. The Universal Declaration of Human Rights (UDHR) in general as well as each single article has close connections to the history of suppression and liberation - that could not always be related to the Nazi regime. The Civic Human Rights Education in places such as Nuremberg benefits from an alert historical consciousness and simultaneously it is obvious that the global shock between 1943 and

1945 had given a decisive boost to the United Nations and the Universal Declaration of Human Rights.

## **HUMAN RIGHTS AT A CATHOLIC ACADEMY**

Since the turn of the millennium it is obvious that Human Rights are playing an essential role in Christianity. This could not always be applied to Church's doctrine in history, it rather turns out to be an essential learning process. The final breakthrough was marked by the courageous papal encyclical "Pacem in Terris" (Peace on Earth) issued in 1963, followed by the documents of the Second Vatican Council.

Since then the Church's representatives absolutely assign and increasingly stand for Human Rights. Pope John Paul II and his successor Benedict XVI always emphasized that Church's main task and mission in today's world should focus on the global realization and commitment for Human Rights – in co-operation with all human beings, that "love Peace and Justice" (Encyclical Redemptor Hominis).

This motto appropriately describes CPH's self-perception and commitment in Civic Education. The various offerings at CPH academy in this thematic field contribute to emphasize and shape our educational impetus. Various synergies with established local Human Rights Organizations help realizing our vision and mission, which is to contribute to a culture of Human Rights.

Our starting point is to constantly create public awareness and consciousness to preserve Human Rights in society's collective memory. At the same time we advocate for people, globally and locally, suffering disrespect or violation of Human Rights. The impulses resulting from Human Rights work, are engaged to create tolerance and to prevent xenophobia and racism. Our approach to Human Rights is not limited to

a sole present perspective but designed to pave the way for future development.

## **INTER-RELIGIOUS DIALOGUE**

CPH academy always focusses on an active inter-religious and inter-ethical dialogue in its work and supports a lively exchange with other local religious institutions. This strong involvement helps to create sensitivity on both sides and paves the way for the possibility of different perspectives. In order to achieve this , it is very important not only and exclusively to focus on common or similar characteristics but as well to create space for the specific separating and unique aspects of different religious and ethic approaches and doctrines, leading to positive encouragement of unique perspectives.

After all this is precisely the essence of each understanding. A very fascinating result of this process could be seen in our "global-ethic" project.

## **OFFICIAL PARTNERSHIP BETWEEN THE CPH ACADEMY AND THE JCTR (JESUIT CENTRE FOR THEOLOGICAL REFLECTION) IN LUSAKA, ZAMBIA**

The Academy CPH in cooperation with the Jesuit Mission has deepened the contact with different institutions in Africa for the last years. Beside several activities we have achieved an intensive cooperation with Zambia which culminated in an exposure trip to the country for three weeks in August 2009.

The Jesuit Centre for Theological Reflection can be compared to an institution for social and development studies. The Social Conditions

Programme of the JCTR has for a long time been conducting a monthly survey of the cost of essential food and non-food items for an average family of six living in Lusaka and other Zambian towns. Known as the Basic Needs Basket, the purpose of this activity is to survey and analyse cost of living in order to understand the challenges faced by people to meet basic needs and to advocate for social, economic and political changes to improve human living conditions. Like the CPH, the JCTR tries to emphasize the topic "worldwide solidarity" by professional analysis as well as by realizing projects and campaigns.

On 20<sup>th</sup> of March 2010 the partnership between the CPH academy and the JCTR has officially been signed during the celebration of the "Pirckheimer Day" which as well was the 50<sup>th</sup> anniversary of the CPH.

The partnership's aim is to deepen the existing relations, to inform each other about the activities on both sides and to create and maintain a stable communication. Aside from that the exchange of volunteers and trainees is planned as part of our concept of "worldwide solidarity". An option for Africa, i.e. an enduring dedication to Africa, is the aim of the World Church Commission of the German Bishops' Conference (Commission X) chaired by our Archbishop Dr. Ludwig Schick as well as of the Jesuit order which has given this option a clear vote during its last held General Congregation in the year 2008. Being linked to both organizations the Academy is a good place to pursue that plan.

## **PROGRAM**

### **Thursday, May 24**

12:30 Lunch

Introductory Session

14:00 Welcome and mutual introduction

*Gertrud Casel*

14:15 The JP-Working Group on human dignity and human rights

*Heiner Bielefeldt*

On the concept of human dignity

*David Kaulem*

15:00 Key issues in human rights politics

Human Dignity = human rights plus human security

*Gertrude Chimange*

Migration and human rights

*Jacques Dinan*

Migration as a problem in German politics

*Katrin Gerdsmeyer*

16:30 Coffee break

17:00 Human rights and traditional values

Traditional values and indigenous culture: inspirations for human rights mechanisms?

*Florence Simbiri Jaoko*

The truth and moral values

*Raymond Bernard Goudjo*

Rights associated with life and gender issues.

*Mike Deeb*

18:30 Dinner  
19:30 Evening prayer  
20:00 Conflicts and misunderstandings in international human rights politics

Human Rights Policy in the United Nations. Challenges and Contributions of Africa and the Africans. A German Perspective.  
*Bernd Finke*

Individual versus Community (Social and Cultural) Rights.  
The Lacuna in Human Rights Instruments  
*Fr Joseph Komakoma*

Promotion of human rights by the Church in AMECEA region:  
The Missing links  
*Elizabeth Nduku Nzivu*

21:30 closing remarks

## **Friday, May 25**

07:30 Holy Mass  
08:30 Breakfast

09:00 Infrastructural potentials and desiderata  
Human Rights Protection through African Regional Mechanisms  
*Christof Hartmann*

Protection of victims and human right defenders.  
*Rigoberto Minani Bihuzo SJ*

The work of the International Criminal Court: aims and methods  
*Victor Scheffers*

10:30 Coffee break

11:00 How to proceed further: the next steps

12:30 Lunch and fare well

## LIST OF PARTICIPANTS

Prof Dr Heiner Bielefeldt	Moderator Human Rights at German Commission of Justice and Peace UN Special Rapporteur on Freedom of Religion – University of Erlangen-Nuremberg, Germany
Gertrud Casel	German Commission for Justice and Peace, Bonn, Germany
Gertrude Chimange	The Catholic Commission for Justice and Peace Zimbabwe, Mutare, Zimbabwe
Fr Leonard Chiti SJ	Jesuit Centre for Theological Reflection (JCTR) "Promoting Faith and Justice", Lusaka, Zambia
Fr Mike Deeb OP	Justice and Peace Commission at SACBC Southern African Catholic Bishop's Conference, Pretoria, South Africa
Jacques Dinan	Executive Secretary of Caritas Africa Port Luis, Mauritius
Bernd Finke	Federal Foreign Office – Department Human Rights, Berlin, Germany
Katrin Gerdsmeier	Catholic Parliamentary Liaison Office, Berlin, Germany
Fr Dr Raymond Bernard Goudjo	Institut des Artisans de Justice et de Paix (IAJP), Cotonou, Benin
Dr Siegfried Grillmeyer	Academy of the Archdiocese Bamberg, Germany
Prof Dr Christof Hartmann	International Politics and Development Policy, University of Duisburg Essen, Germany

Prof Dr Marianne Heimbach-Steins	Institute for Christian social sciences University of Münster, Germany
Dr David Kaulem	African Forum for Catholic Social Teaching (AFCAST), Harare, Zimbabwe
Fr Joseph Komakoma	Symposium of Episcopal Conferences of Africa and Madagascar, Secretariat, Accra, Ghana
Dr Daniel Legutke	German Commission for Justice and Peace - Human Rights Desk, Bonn, Germany
Fr Richard Menatsi	IMBISA Centre, The Inter-Regional Meeting of the Bishops of Southern Africa, General Secretary, Harare, Zimbabwe
Dagmar Mensink	Social Democratic Party SPD Department Churches and Religious Community, Berlin, Germany
Fr Rigoberto Minani Bihuzo SJ	Jesuits of Africa and Madagascar Social Apostolate, Nairobi, Kenya
Sr Elizabeth Nduku Nzivu	Catholic University of Eastern Africa, Nairobi, Kenya
Dr Victor Scheffers	Commission for Justice and Peace, Netherlands, Den Haag, Netherlands
Fr Wolfgang Schonecke M.Afr.	Network Africa Germany, Berlin, Germany
Florence Simbiri Jaoko LL.M.	Kenya National Commission Human Rights, Nairobi, Kenya

# NOTIZEN