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Daniel Legutke (ed.)

Traditional Values: Facilitating or Obstructing Human Rights?

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German Bishops' Conference Research Group on
International Church Affairs (ed.)

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Traditional Values:
Facilitating or Obstructing Human Rights?

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Editor's Preface

A substantial motivation for the attempt to relate human rights to traditional values and convictions derives from the expectation of a growing ownership of human rights if they could be recognised and acknowledged as living expressions of diverse cultural traditions. Supporting this aim means to counteract the monopolization of the human rights approach by a “western culture”, which would signify a delegitimization of the human rights claim to universality.

Traditions can serve to protect human rights und traditional values can even reveal “blind spots” of the established human rights framework. There are, however, also traditions that are not compatible with human rights entitlements to freedom and equality – some traditions virtually impede the realization of a society based on equal participation. Traditions can be misused for political purposes in Europe and Africa alike.

To understand better the respective relations of human rights and traditions it is useful to start by clarifying the foundation of human rights in human dignity.

These different aspects were part of a conference organized in Lusaka, Zambia, from 25th to 27th June 2015, by the German Bishops' Conference Research Group on International Church Affairs in cooperation with the German Commission for Justice and Peace. The conference focused on the question whether traditional values are facilitating or obstructing human rights. It brought together politicians and academics as well as the members of various Justice and Peace Commissions.

A special point of view for the contributions and discussions was offered by an exposure program right before the conference, organized by the German Commission for Justice and Peace and EDP e.V. in June 2015, in Zambia. Some of the participants had the opportunity to spend some days in families in Zambia to learn more about human rights work in Zambia from a different perspective.

The results of the exposure program – which have been published separately¹ – had shown the big impact of the topic of human rights in daily life in Zambia. This is mirrored in the reports in this publication, which focus on the different dimensions and applications of human rights.

The exposure program and the following conference are the result of long-standing dialogues with partners who deal with human rights and human dignity, initiated by the German Commission of Justice and Peace. During its working period in the years 2009 until 2014 the question of the entrenchment of human rights in African cultures and traditions kept coming up in many conferences and workshops of the commission.

This publication documents the contributions to the conference as well as the final declaration the participants agreed on.

In the context of human rights it is indispensable to bring together all involved actors from politics, society and church to develop common approaches and solutions for specific problems. And that is exactly what our conference intended to demonstrate: Without a dialogue of all participants and especially without a focus on the grassroot level it will not be possible to deal with human rights abuses in a significant way.

Dr. Daniel Legutke

¹ Deutsche Kommission Justitia et Pax (ed.), Traditionelle Werte: Hürde und Basis für Menschenrechte. Erfahrungsberichte eines Menschenrechts-EDP in Sambia (Bonn 2016) (= Schriftenreihe Gerechtigkeit und Frieden; 131).

Conference Proceedings:

Opening

Gertrud Casel, General Secretary of the German Commission for Justice and Peace, Bonn, Germany

We – Fr. Leonard Chiti SJ, the director of the Jesuit Centre for Theological Reflection and me as Secretary General of the German Commission for Justice and Peace– have the privilege to open this International Conference on ‘Traditional Values: Facilitating or Obstructing Human Rights?’.

Our colleagues have been working for almost one year to realise this conference from the first idea to concrete plans and actions. There was lots of communication with Prof Dr Heiner Bielefeldt, the Chair person of the Justice and Peace Working Group on Human Rights, with Leonard Chiti SJ, with some of you in Zambia and in Germany, to come up with the right questions. We wanted to ensure, that we have a common understanding of the key concepts such as tradition, value, culture, human rights or religion. Or at least to make sure that we understand how they are used and connotated in our different societies, more or less secularized. There are differences not only between Europe and Africa, but also between men and women, Christians and Muslims and non religious people. And it was equally important to identify the right actors. Many of you present today wanted to join and there was no need for persuasion. So here we are: once again welcome!

Already in the first workshop of our human rights dialogue with African partners in May 2012 in Berlin traditional values and human rights were one of the crucial topics we agreed to work on. The ambivalence of traditional values and traditional law was discussed. In this we identified a task for the church, for civil society and for politics to transform traditions where they obstruct the implementation of human rights. In The

Hague in February 2014 we closed our international Workshop on ‘Defending Human Dignity and Human Rights’ by a joint declaration “From dialogue to joint action”. Some of you were with us in The Hague and perhaps remember our vivid discussions about the International Criminal Court.²

Traditional values and human rights are burning issues, not only at the UN Human Rights Council in Geneva, or in general in human right politics when dealing with the Russian Orthodox Church. But it’s also vital in Germany where religious and church traditions are looked at rather suspiciously. Often they are perceived more as a risk than as including potentials for the implementation of freedom and human rights. In Africa in some areas traditions are not only deeply rooted in the hearts and minds of people but also in many rules of the society and in local law, although they are sometimes contradicting human rights.

Yesterday 12 people among us returned from an Exposure and Dialogue Program in Monze and from Zambian cities. They bring back experiences from the grassroot level of human rights work and traditional values here in Zambia. Surely they will enrich our debate or perhaps bring it back to practical every day life and its challenges.

It’s a pleasure for me now to give the kick off for our conference.

May the Holy Spirit enlighten us and support our mutual understanding across different languages, different cultures and different traditions. May the pentecostal miracle happen again in the days to come and help us to find ways, so that traditional values really facilitate human rights here in Africa, in Europe and worldwide.

² Deutsche Kommission Justitia et Pax (ed.), *Defending human dignity and human rights: a challenge for international cooperation ; documentation of the International Workshop on human rights defenders in The Hague, February 2014* (Bonn 2014) (=Schriftenreihe Gerechtigkeit und Frieden; 129).

Respecting Identity within and beyond Traditions

Fr. Leonard Chiti SJ, Director of the Jesuit Centre for Theological Reflection, Lusaka, Zambia

Introduction

This paper explores the relationship between identity and tradition. It will suggest that a fuller realisation of one's identity entails going beyond one's traditional understanding of identity, i.e., tradition. To begin with, the paper will engage three key questions that emerge when individuals and groups of individuals face the question of identity. Related to the question of identity is the issue of tradition. This paper will attempt to comment on both in respect of the discourse on human rights and the role of human rights defenders and promoters operating within a faith perspective.

The notion of identity conjures up in many people's minds questions such as:

1. Who am I? Why am I here? Where have I come from?

1.1 Who am I?

A natural response to such a question is to refer to one's personal characteristics, qualities, achievements and background. Frequently, a name, a description of one's character or personality can sum up a person's identity. [In some regions in the world this way of looking at identity is very strong. An individual is recognized as such in his or her own right (methodological individualism)].

In my part of the world one's ethnic association provides further credentials to respond to questions about one's identity.

1.2 Where have I come from?

Responses to such a question invariably refer to geographic origins, to places where one can trace one's roots. One's geographic location can identify one through characteristics such as language, accents and particular cultural traditions and customs.

1.3 Why am I here?

This type of question pre-supposes that every human being has a purpose in life. It engenders notions of a journey from one's birth to one's death. The journey has a beginning and an end. And throughout that journey a person is engaged in a process of self-discovery. It is taken that the realization of purpose or end or arrival at destination leads to a realization of true self/identity.

The fulfillment of such a purpose in one sense confers some form of identity on such an individual. Responses to questions such as the ones raised above could lead us to considering sources if any of a person's identity. Below I cite a few.

2. Traditions as sources of identity

As indicated above answers to questions on identity can be found in many places. This means that there are many sources of identity. However, one important source of identity is tradition. There are many traditions to which people turn to in search of their identity. Traditions shape, influence and forge a person's identity.

In what will follow I have elected to confine my comments on the topic of 'Respecting identity with and beyond traditions' to three traditions on identity. The criteria for such a selection are simply a question of familiarity. I highlight just three sources amongst many. They are *African Christian and Human Rights based*.

2.1 (Some) African traditions on identity

Let me start with a saying that has come to represent some way of talking about identity in an African context.

“I am because we are...We are because you are.”

This proverb attributed to the Akan ethnic grouping in Ghana represents a shared identity in many parts of Africa. In the African traditional system, the identity of an individual is located within a community. Frequently, this community can be one's ethnic grouping. However, it need not be restricted to one's ethnicity.

An individual finds his or her identity by associating oneself very strongly to an ethnic grouping. I am a son of my father and mother. I am also a member of an ethnic grouping, a community that probably share a particular geographic location although with the coming of modern life, one need not reside in a particular region to claim membership in a community.

In terms of strengths, this system is characterized by strong kinship bonds. These bonds lend themselves to nurturing and raising an individual. They extend to helping people who are in need regardless of whether they belong to a particular household or not.

2.2 (Some) Religious traditions

Genesis 1:27 (*imago dei*)

In a religious tradition, such as the Christian faith, one's identity is rooted and drawn from God. It subsists in the creative act of God according to the Christian scriptures as narrated in Genesis 1. It is further solidified in a sacramental ritual such as baptism. A Christian is a child of God. He or she is also a disciple or apostle of God. Believing that God created all of us, makes us all children of God. Christians are members of God's

family. In this sense, we share a common origin and therefore a common identity.

2.3 Human Rights Based Approaches

In this system, one's identity is derived from a common humanity. Every human being by virtue of being human enjoys the same dignity. In this system, values such as universality, indivisibility, interdependence and inter-relatedness as well as equality and non-discrimination point to a universal humanity from which we can all derive our true identity as human beings. The notion of indivisibility implies that no human being is inferior to the other. To my way of thinking, I would say this points to the value of each individual and reinforces his or her identity as person whose value is independent of any circumstances or accomplishments.

3. Respecting identity in traditions

In attempting to suggest how to respect identity within these systems, I will highlight a few strengths of each system.

3.1 African traditions

African traditions are strong on a communitarian ethic. This is sometimes referred to as *Ubuntu*. A person is valuable because he or she is a member of the community. The community becomes complete and whole when individuals bring their giftedness and accomplishments to the community. In turn the community supplies to those lacking what they need.

3.2 Christian traditions

In the Christian community the love ethic dominates relations between the members of the community. Love comes from God who created everyone. God invites each and every member of the community to love.

Love is not exclusive; it is inclusive. When love is put into action every member of the community attains their full and complete identity.

3.3 Human rights based traditions

The Human rights based traditions recognize an intrinsic dignity of every human being. It posits that by virtue of being human and sharing a common dignity every member of the human family is entitled to respect, nurturing and access to the goods and services that would contribute to the fulfilment of their existence.

It seems to me that 'Respecting identity' drawn from any system implies recognising and appreciating values in the identity being considered. Every system confers value to identity. However, no system is perfect therefore in order to make up for any deficiencies it is imperative to go beyond a given tradition or system. This may entail embracing new/novel elements from other traditions in order to enrich particular traditions. This to me is where the importance of 'going beyond traditions' comes in.

3.4 Beyond traditions

When commenting how we can go beyond the traditions or system I will focus on their limitations. Going beyond traditions or systems in this case entails mitigating against their limitations.

For instance, identities forged in ethnic (African) groupings frequently bring about bias and prejudice. Such attitudes if not checked can lead to unfortunate incidents such as ethnic tensions and in some cases violence against those who are different. Recent violent attacks in some African countries against people carrying a foreign passport and residing in a country different from their origin could be attributed in part to a strong identification to one's ethnic grouping.

In other cases, a strong identification with the group can stifle individual development. For instance, in some African communities there is a fear of being labelled a wizard if a person prospered on account of hard work and exploitation of one's talents. In other cases there is a relaxed approach to wrong doing, in some parts of Kenya vices such as corruption are tolerated if some of the proceeds from such activities go towards improving some aspects of a community where an individual hails from. His or her community members would 'pardon' such an individual if some of the ill-gotten wealth is invested in the community.

In the Christian system, similar attitudes can emerge such as the distinction between a sinner and 'a saved one'. Sinners are to be shunned and cannot mix or interact with the pure. Lepers in the Old Testament were shunned and confined to the margins of society on account of their illness. Happily for the Christian community Jesus reverses this unchristian way of treating people who are different.

In other places the spectre of religious fundamentalism has caused tremendous human suffering as seen by 'religious groups' such as Boko Haram.

In the human rights based system, controversies abound as to the exact extent to which identities can be applied on the basis of indivisibility, non-discrimination, equality characteristics of all human rights. Pressure in some form or other has been applied on some communities to accept and accommodate practices and lifestyles they find alien.

4. Putting it altogether

Identity is a complex matter. It has both personal and universal characteristics. It is both context specific and universal. Even within an individual multiple identities can be found. For instance, one can be an African, a Christian and espouse human rights based approaches to identity. In this sense, one can have multiple identities. In fact we all have multiple identities.

Identity is both personal and communal. Many locate their personal identity in a particular tradition. However, finding one's identity in a tradition can only serve as a foundation. It would seem to me to be a necessary condition but clearly not sufficient.

Traditions sometimes tend to be static and restrictive. It helps to expand our freedom by interfacing with other traditions in order for us to deal with negative elements in our foundational traditions to take us beyond boundaries created by our background and pragmatic characteristics.

It would also help to tap into some traditions that promote respect by practicing charity and love towards all. This ethic is embedded in many religious traditions including our own (Christian).

This to me appears to be a sensible approach predicated on the dignity of an individual. From this insight one can point to some traditions as being helpful. The religious and human rights based approach in this respect help us assume universal dimensions towards treating issues of identity in a broader and sensible way.

Conclusion

Respect of identity in one sense comes from a shared heritage. Respect, however, cannot be confined to a shared heritage only. It needs to go beyond. Going beyond implies going beyond established traditions and embracing new ones in order to enrich one's identity and purify it. If there is such a notion as full identity, it could be that such an identity has been forged by extending one's horizons from personal, community to global dimensions. This suggests going beyond an individual tradition.

How to overcome Violence against Women: Criticism of Cultural Traditions in the Name of Human Rights

*Dr. Stefan Zekorn, Auxiliar Bishop in Münster,
Germany*

In 2014 a survey of the European Fundamental Rights Agency has revealed the ongoing violence against women in Europe. About one third of all women have experienced physical attacks or sexual violence after their age of 15. This number shows clearly, that the spread of violence against women is by far not an African problem. It is a trait of our societies in Europe and Africa as well.

Obviously violence against women is so deeply rooted in our societies that one can speak about a tradition of violence against women. As church we have not only to ask if we did enough to overcome this violence, but also to ask about our part in this.

This essay will highlight four different aspects that are connected to the topic of violence against women. First this essay will pay attention to the ambivalent role of the church in considering the violence against women. A second part will deal with the need of empowerment for the victims of violence to speak out while the third part names an additional value that a human rights perspective can offer on such violence. The fourth part of this essay will explain the need of prevention.

1. The ambivalent role of the church

Of course there are many causes and roots of violence in society. There is no single explanation for such a multi-dimensional phenomenon. It has to be and is analysed carefully and a lot of studies have been published in recent years. But still: do we see our part in this as a church clearly?

In the first 1000 years of the church the Christian faith brought a significant valorisation of the role of women in the church and in the society regarding the Roman and the Germanic right. In the Christian tradition for example it was an infamy and a shame for a man to beat a woman.³ There always have been women and men who referred to St Paul to support the equal dignity of men and women as Paul teaches: “So in Christ Jesus you are all children of God through faith, for all of you who were baptized into Christ have clothed yourselves with Christ. There is neither Jew nor Gentile, neither slave nor free, nor is there male and female, for you are all one in Christ Jesus” (Gal. 3, 26-28).

But the interpretation of the Bible took normally a male perspective for granted and neglected the female one. The understanding for centuries stamped our expectations about the role of women and men in society, with men being perceived as strong and active while women are and have to be weak and passive.

The majority of women internalized subordinate behaviour and often they had to suffer violence from their husbands. Especially dark is the history of sexual abuse of girls and women by men and even also by priests.

These are just a few remarks, by no way exhausting, about our share as a church in violence against women. Only if we see and name it clearly we are able to find the right remedy against structures of violence in the society and within the church.

2. Listening to the victims and speaking out about violence

Having spoken about our accountability for violence against women, one can mention, that the church has learnt how important the perspective of victims is to find remedies and to put an end to violence. Within the

³ Arnold Angenendt, *Toleranz und Gewalt. Das Christentum zwischen Bibel und Schwert*, Münster: Aschendorff² 2007, 159-165.

church the awareness rose, that healing the wounds does not come from forgetting and silencing the remembrance. In dealing with the past, be it the past of countries, of the personal history or of a single man and woman, we have to open spaces where the stories can be told safely. Within us the past is still alive – and we need to accept the presence of past experiences to be able to integrate them into our live, how harmful some experiences might have been.

Violence against women is not a taboo anymore – neither within our society nor within the church. In our church, especially in Germany, Women Associations and the pastoral care for women have a great part in breaking the taboo. In the 90s the oecumenical decade “solidarity with women” set important impulses for open debates.

The German Commission for Justice and Peace dedicated the work of a project group on women and human rights during the years 1995-2005. During the period of about 10 years the group committed a large part of its work to questions of violence against women. They spoke out openly about traditions within our culture that supported such violence and they tried to break the silence within our church on related questions. The subject of violence against women is still – and rightly so – present in the work of our bishops’ conference. The Sub-Commission for Women in the Church and Society brings it to our attention whenever it is necessary. They produce useful booklets, texts and other publications that help us in addressing the problems in the right way.

It’s possible to say that next to the tradition of violence these groups and activists connected their struggle with another tradition within and outside the church: to raise the respect for the equal dignity of each and every person. The conviction of equal dignity of all human beings is the basis for our engagement for human rights – and it belongs to the best parts of our tradition.

Space has thus been created to address this topic. But today we should be careful to not delegate this fight and action against violence to spe-

cialists, like non-governmental organisations or some governmental institutions. We know that the phenomenon is still far too widespread. And because it is a strong violation of the human dignity of every person to fall victim to violence, it is our task to do everything we can to overcome violence against women and to address the necessary resources, be it personal capacity or be it an allocation of funds, to stigmatize violence.

Nevertheless we have to admit, that we still need a strong commitment to really change the society. We have to realize, that the problem of violence is not solved: it is sadly enough part of everyday life for many girls and women in Europe.

3. Human Rights supporting church's action against violence

Supporting respect for human dignity is an essential part of the church's teaching from the beginning through the centuries. During the years within the church rose the awareness that in the formulation of human rights the respect for human dignity finds its modern expression. Therefore Pope John XXIII could praise the Universal Declaration of Human Rights as "a solemn recognition of the personal dignity of every human being".⁴ And Pope John Paul II reaffirmed this commemorating the 50th anniversary of the Declaration. He wrote: "As its fundamental premise, it [the Universal Declaration of Human Rights] affirms that the recognition of the innate dignity of all members of the human family, as also the equality and inalienability of their rights, is the foundation of liberty, justice and peace in the world." And the Pope understands the following articles in the declaration as an unfolding of the promises of its preamble.⁵

The equal dignity of all members of the human family is deeply rooted in the recognition of men and women as an image of god. Human dignity is

⁴ Cf. Pope John XXIII, Encyclical *Pacem in Terris* (1963), No. 144.

⁵ Message of His Holiness Pope John Paul II for the Celebration of the World Day of Peace, 1 January 1999; Respect for Human Rights: The Secret of True Peace.

hurt by acts of violence—not only in the victims but also in the perpetrators. The integrity of the human being is one of the most basic laws, be it domestic or international. The reference to Human Rights can help to support our engagement to end violence against women and to support those traditions that are in line with this aim.

4. Need of prevention

As reaction to sexual abuse against children in the Church and the society in the last years the catholic dioceses of Germany have established a large system of prevention against sexual abuse of children. The state also has established rules for such a system. Within the church this signifies for example that every bishop, priest, deacon and pastoral worker who has to do with children has to make a 2-days-course in which he and she learns how to be sensitive to possible problems of children and how to discover possible sexual abuse. And also every lay person and volunteer who works in the church with children has to make a course - but only one evening.

Maybe that we cannot establish the same system regarding the violence against women in general. But would it not be possible to establish a system in which every bishop, priest, deacon, lay pastoral worker and volunteer in the church and every boy and man learns in the schools and in the different groups and associations how to respect the dignity of women and how to recognize if a girl or a woman needs help because of experiences of violence?

Would it not be an important task for the churches and the states to establish such a system of prevention of violence against women? This task is not too difficult!

How to overcome Violence against Women: Criticism of Cultural Traditions in the Name of Human Rights

*Buti Tlhagale OMI, Archbishop of Johannesburg,
South Africa*

Introduction

The main argument of this paper is that violence against women is based on discrimination against women. The exclusion of women from positions of leadership and authority feeds the mistaken perception that women are inferior and that public life is a man's domain. Inferior beings are treated as property by men. They are treated with violence in order to succumb to men's will and desire. The doctrine that women have an inherent dignity, a right to be respected and a legitimate claim to be treated as equal to men, goes against the grain in the minds and hearts of many men who marshal to their defence cultural norms and practices of times gone by. The privileging of males throughout the generations, has moulded and conditioned the minds and attitudes of men towards women. Such mental conditioning is comparable to the acceptance of racism or of slavery prior to its abolition, or to human trafficking in our day and age. To compound matters, the privileging of males and the exclusion of women is steeped in traditional beliefs that do not take kindly to the revision of established norms, set human relationships and the traditional way of life. Revision invites misfortune, fear of the unknown and retribution.

Even though great strides have been made in recognizing women as inherently equal to men, the sedimentation of culturally sanctioned behaviour-patterns in the past, continue to haunt the present. The denial to women of the twin-right of equality and participation, has a direct bearing on the types of violence classified as domestic violence, namely:

physical abuse, sexual abuse, emotional verbal and psychological abuse, economic abuse, intimidation, harassment, stalking etc. (Domestic Violence Act 116 of 1998, South Africa). There are also other forms of violence such as abduction, human trafficking, rape etc..

The next step is to look at male domination, the privileging of the male and the exclusion of women in both tradition and culture. While recognition is duly given to the fact that legal, cultural and socio-political changes have effectively taken place, it is equally important to note that the previous condition has not been totally overhauled. Hence the ongoing spectre of violence and discrimination against women.

It has often been pointed out that the shortcoming of the international treaties on human rights, has been their failure “to penetrate below”, and radically transform local cultures, customary law and tradition. Alongside this failure, is the lack of conviction and political will of States to commit resources in order to bring about change. Thus the doctrine of the United Nations Human Rights remains by and large, a utopia for those who bear the brunt of discrimination and oppression (Messer, 2009:121).

Socio-political organization

Traditional political structures historically differ from country to country. Historically, these structures have been affected by colonial rule, dictatorial forms of government and more recently by the democratic, modern political dispensation. The hierarchical system of traditional rule has survived the far-reaching political changes in most African countries. Traditional modes of government have been accommodated by the democratic forms of government. Irrespective of the historical formation of a traditional political kingdom, political authority is vested in the King or Chief. “He is at once, ruler, judge, maker and guardian of the law, leader in war, priest and magician of his people” (Schàpera, 1956:176).

Succession to Chieftainship

Chieftainship in most African tribes is inherently a male function. The rightful heir to such a political office is the eldest son of the Chief's "great wife". Among the peoples of Southern Africa, if there is no direct heir, the chief is succeeded by the man next in order of seniority. Women are politically excluded from this role. Traditional chieftainship is an invaluable function and position in the eyes of the people. But it is also inherently discriminatory. The discriminatory male function of the chief is bound up with mystical values which have a direct bearing on the land, fertility, well-being, peace, social order and the prosperity of the inhabitants of the land. The authority of the chief derives from a long line of ancestors. The chief is both a political and a spiritual, religious leader of his people. Writing about the Bemba chiefs, Audrey Richards expresses a view that the "social identification" of an ancestor with his living successor appears "to be particularly complete". Such a reigning chief is believed to possess supernatural powers in his own person (Richards, A. 1970:97). The functioning of the socio-political system is the responsibility of the chief. That structure is vouched for by myths, ritual beliefs and sacred symbols. This socio-political structure, write Fortes and Evans-Pritchard, "is, as it were, removed to a mystical plane, where it figures as a system of sacred values beyond criticism and revision" (Fortes M. and Evans-Pritchard, E. 1970:18).

Like the hereditary position of the King, the positions of the chiefs and headmen are also hereditary in a patrilineal society. They too have a cultic function amongst others. They conduct religious and magical functions on behalf of their people (Schàpera, 1956:58-59). Roles and functions set aside exclusively for males have their origin in the distant past and are believed to enjoy the blessings of ancestral spirits. But such beliefs thrived on what Charles Taylor refers to as an "enchanted world" of spirits and moral forces. It is an environment where people are "open and porous and vulnerable to a world of spirits and powers"; where people have not yet come to a "new sense of the self" and to a belief that "the only minds in the cosmos are those of humans" (Taylor, C. 2007, Chapter

1). Discrimination against women was, and continues to be buttressed by a social structure that is immersed in an “enchanted world” which in turn defies the overhauling of a patriarchal society.

Matrilineal societies

There are some noteworthy exceptions to the male dominated political system. Among the Lobedu tribe in South Africa, the Chief is always a woman and she is succeeded by the eldest daughter of the first wife (Schàpera, I, p.174, 1956). Another exception is that of Mantatisi, the famous chieftainess – regent of the Batlokoa tribe of Lesotho. Mantatisi’s claim to fame was her rare bravery in conducting successful expeditions and her sheer wisdom in dealing with intrigue at the royal kraal (Ellenberger, D. 1992 Chapter IV). Both the examples of the Lobedu and Batlokoa tribes led by chieftainesses are aptly described as exceptional. Even though honour and respect accrue to the women in positions of leadership and authority, such recognition does not have an impact on ordinary women in specific communities. Exceptional female leadership has not changed men’s attitude to women. Men continue to be privileged over women. Recognition of some women in powerful political positions, together with female members of “their lineage” does not translate into recognition of the inherent dignity and of the “equal and inalienable rights” of all women.

Nkiri Nzegwu argues strongly that in an achievement-oriented society of Western Igboland, females can be both wives and husbands at the same time. This “shifting identity” means that Igbo women (Umunwanyi) are “never in either a permanently subordinate or dominant situation”. Furthermore, the same honorific titles are given to both successful men and women. Igbo daughters (as males) enjoy the same authority and privileges as their brothers. Nzegwu’s point is that Igbo culture and tradition do not privilege males but rather recognize the inherent dignity of both males and females. This certainly cannot be said of most patriarchal societies on the African continent (Nzegwu, N. 2004, Chapter 47). The

Lubedu rain Queen was regarded as “male” and had “wives”. But this did not apply to members of her lineage group (Schapera, I, 1956, p.175).

In the matrilineal tribe, as opposed to the patrilineal tribe, descent is based on female ancestry. This is the case among the Bemba of Bemba-land (Tanzania) (Richards A. 1940, p. 7). Chieftainship is based on matrilineal descent. A man’s legal identity, his right to succession to office and his standing, derive from his maternal descent group. Headmanship and councillorship are hereditary offices. The striking feature of the Bemba society is that the balance between the powers of the maternal and paternal relatives (bilateralism) “is a very even one in spite of the legal emphasis on the matrilineal side”. This allows for flexibility and for a broader participation of the members in their society (Richards, P. 1970:89). Now women of the royal household participate in tribal councils and are also heads of villages. This privilege does not extend to ordinary members of the tribe. Even though positions of leadership and authority appear to be largely dominated by men with matrilineal ties, it is men and not women, who are in a privileged position. However, both the Igbo and Bemba societies offer solid examples of local cultures where sexual difference does not loom large in the definitions of roles of men and women. In the case of the Bemba tribe, female descent is the basis of individual identity and in the Igbo case, seniority is a dominant value (i.e. wives are subordinate to both lineage daughters and sons). These two local cultures are open to the recognition of the inherent dignity and equal rights of its members. They can therefore be seen as potentially strengthening and enriching, at local level, the universality of a human rights culture.

Traditionally, all initiated males participated in the political life of the Chieftdom. Women were excluded from playing any political role. Some claim that traditional government was governed “by consensus and broad participation” (Deng, F. 2005:503). But this was a consensus of males alone and a participation of males only. Paradoxically the Chief is the dispenser of justice and the protector of all his people. But it never dawned on the outlook of traditional societies that the exclusion of

women was in itself an injustice. Political, jural leadership was exclusively a male function.

Marginality of women

In patriarchal societies, rank is acquired patrilineally, that is, children of one man are considered to be of one blood. Mönnig points out that in spite of being of one blood with their male siblings, women “are always inferior not only to the men of their own blood but to all men” (Mönnig, 1967:268). Men acquire status through political and jural office. Women are traditionally excluded from such roles. Women acquire status through marriage if they get married to a man of high rank and status. Furthermore, Mönnig has this to say about the status of women in Pedi society: “The position of the whole female sex in Pedi society is such that everything which is despicable is usually ascribed to women. Only they can become impure (*ditšhila*) and so contaminate men” (Mönnig, 1967: 271). Jean Comaroff records the same experience about the Tswana women. Women are closely associated with agriculture and have a fragile hold over it because as females, they lack “the innate closure necessary to permit them to act masterfully upon the world”. Women are open to defilement. Their bodies generate heat, “a force that constantly threatened to spill over and infuse other persons and things with its disruptive qualities (Comaroff, 1985:67). This is why women were forbidden to walk across the cattle kraal. Their bodily “heat” would neutralize protective medicine. It was believed that they threatened with their heat, rituals of initiation, rain-making, ancestor veneration and the decisions of the Chief’s court.

Comaroff points out that a prominent index of the marginality of women is cattle possession and cattle management. Cattle, she writes, “provides the single most condensed symbol of the constitution of the body politic among the Tswana (Comaroff, J. 1985:61). Formerly, cattle represented wealth. They were used to transact a marriage. Clients paid with cattle to gain patronage. They were used in ritual sacrifices to appease ancestral spirits. Cattle were central in all major transactions. Such transactions

were a male prerogative. Thus women were not allowed to own cattle, except perhaps a few. Women were excluded from the most valuable activities in the political economy of their society. Essentially, women could not be involved in public transactions because their lack of physical closure potentially threatened existing material, social and spiritual orders. The “polluting heat” of women had to be contained by confining women in space. The “polluting heat” of women leave behind “hot tracks” on public pathways, and these “hot tracks” threatened the health of members of the public (p.81.) Mönnig adds that all night witches are women – for it is believed that “only their sex is capable of such an in-born compulsion to do evil” (Mönnig, 167:271).

Jean Comaroff explains that “yet, at the political centre, communal politico-ritual enterprise stood in constant jeopardy of being ‘spoiled’ (*gosenyega*) by the polluting effect of heat (*bothitho*) carried within the inadequately enclosed female body”. The same principle of exclusion covers other traditional male activities such as hunting, stock management, farming, warfare and iron-smelting. Menstrual taboos apply in all these cases.

In order to reinforce the argument of J. Comaroff, Eugenia Herbert points out that in most iron-smelting areas on the African Continent, the twin-taboo of the “polluting heat” of menstruating women and the prohibition of sexual relations are in force during the production of iron. Women are not allowed anywhere near the foundry; smelters are expected to abstain from sexual relations the day before smelting takes place. The degree of strictness differs from area to area. Herbert writes that in her research in Zaire (Democratic Republic of Congo) there was a strong belief that if a woman ignored the taboo, she would be doomed to “les menstrues infini” (menstruation without end) and in the case of an offending male, he too would be doomed to impotence. Menstrual blood symbolises the failure to conceive. The presence of a “polluting heat” would cause the molten slag to “run from the furnace like the menses of a woman”. Herbert draws attention to the Asante (Ghana) belief that if a woman with “polluting heat” entered a stool room, “her state would

drive away the spirit of the ancestors". And so, sexual taboos (including the prohibition of menstruating women) are observed in order to forestall dangerous situations. Herbert notes that these taboos in no way suggest that there is a revulsion against the body or sexuality "but rather it is because sexuality is too powerful a force socially and cosmologically, to leave unregulated" (Herbert, E. 1993:227). It is preponderantly women's sexuality that is seen by men to be dangerous and therefore in need for control.

Mary Douglas writes that "most activities which custom allocates entirely to one or the other sex are protected by sexual taboos (Douglas, p.6, 1954). Work roles are rigidly categorized according to sex or the quality of age – the older the better. Such rigidity of work roles "tends to preserve power-relationships". For example, some occupations are hereditary; participation in political structures is a male prerogative that excludes women; access to goods, technical skills and ritual performance are generally divided strictly along gender-lines. Herbert points out that "with the passage of time the division of work-roles takes on a timeless authority, valid because this is the way things have always been (Herbert, 222, 1993).

African marriages

Some aspects of African customary marriages are responsible for the serious undermining of the freedom and dignity of women. The fact that they have been in force over a lengthy period of time and that women have tolerated them, does not mean that they should not be overhauled and brought into line with the declarations of the Human Rights doctrine. Customary marriage as an institution survives because of the patrilineal kinship system that privileges the male.

Marriageable age

Poulter in his *Family Law and Litigation in Basotho Society*, points out that "Where the values of any society are in a state of flux the traditional

rules will often appear to many members of the younger generation not only to be outmoded, but positively unjust” (1976 p.58). The age of marriage is a case in point. Some parents still arrange marriages for their teenage daughters and sons. This practice is still in force in some areas even though it is increasingly found to be outmoded. Some parents arrange marriages for their daughters while they are still young in order to prevent them from being deflowered before marriage (Accad, E. 1978:620). Some traditional parents also argue that marriage is between two families rather than between two individuals. In this day and age the marrying off of a girl between the ages of 12 and 16 is repugnant to justice because chances of the girl improving her education become radically curtailed. Besides, the choice of what a father considers to be a suitable partner ignores private and intimate issues such as love, feelings and general compatibility. Reuter in his *Native Marriages in South Africa, According to Law and Custom*, observes that the age of marriage for women, among Africans, is irrelevant because “women as a rule never reach the stage of full age or independence but remain “minors” at law under the guardianship of their father or husband or the lawful heir respectively (p.106, 1963).

Polygamy

Polygamy has not disappeared entirely. It is alive and strong even though it is no longer commonly practised. Polygamy conditions the minds of men. It suggests to men that you can have as many wives or concubines as you can afford. Polygamy flies in the face of monogamy. It contributes towards the undervaluing of women and compromises their individual dignity. Some married men feel entitled to take some other woman as a concubine (nyatsi). The practice of polygamy encourages promiscuity among men who are not in polygamous relationships. The Tswana idiom says: “*Monna ke pôô ga a agelwe lesaka*” (A man, like a bull, cannot be confined). A man’s infidelity is condoned. But a woman’s infidelity is taken seriously and may even lead to domestic violence. This is a case of double-standards. Wives are treated as subordinate to men (Schàpera, 1970:156).

The intentions of polygamy in olden days was to create political alliances, to augment a labour force, to enhance one's standing in the community and to increase one's chances to have a male heir. It was also argued that it was better to have legitimate children within a marriage than children born out of wedlock. Tradition maintained that polygamous relations were inherently valuable to the community. While polygamy is no longer commonly practised, its negative impact is still widely felt. It is also responsible for moulding men's attitude towards women.

Among the Sotho speaking people when a wife died, her sister was expected to replace her as a substitute (*seantlo*) in order to fulfil her family's duty of bearing children to the husband. This practice ignored the independence and the right to choose freely a partner in marriage. This situation brought about humiliation and embarrassment to the wife.

If a wife was unable to have children, custom dictated that the husband could take another wife as a "seed-raiser" (*Mala marriage*). This move was to ensure that the wife retained her position as senior wife. The new wife would then live in the shadow (*seriti*) of the senior wife and would be attached to the house of the senior wife. It was also hoped that the new wife might produce a male heir for the senior house.

A husband could also marry junior wives called daughters-in-law (*lingoetsi*) who were regarded as helpers of the senior wife. "The husband cohabited with the *ngoetsi* if he wished to and they were also lent out to others" (Poulter, 1976:162). Clearly this practice was repugnant to justice and morality. Women were obviously treated as men's property.

These cultural practices, collectively and cumulatively, show that there was an excessive preoccupation with having an heir who would ensure the continuation of the family lineage. Lineage succession is still a major concern among African families. This preoccupation also stems from the belief that the ancestors of a particular lineage that has come to an end would no longer have dependants who would offer sacrifices to them.

The assortment of partnerships referred to above, could hardly have been called marriages. They were family arrangements at best. If one were to stray into religion, these arrangements were a far cry from the assertion of the book of Genesis: “*This is why a man leaves his father and mother and joins himself to his wife and they become one body*” (Gen.2.24). These arrangements highlighted the subordinate status of a woman. Women were at best seen as men’s property. With the passing of time these customary practices have naturally fallen into desuetude. But this does not mean that their disappearance has radically changed men’s attitude towards women. Women are still not treated as equals to men.

Bogadi (ilobolo) Payment (Bride-price)

Bogadi is the payment of cattle or money given to the wife’s parents by the family of the husband. Bogadi is said to be an act of appreciation (têbogo) to the wife’s parents for having brought up their daughter and for the loss of the services she would have offered them in future. It cements a bond between two families. Schapera states that the main function of bogadi is “to transfer the reproductive power of a woman from her own family into the family of her husband”. This transfer makes the marriage legitimate (Schàpera, 1938:139.) The amount paid, traditionally, depended on the affordability or generosity of the husband’s family.

Poulter points out that among the Basotho, *bohali* (bogadi) payment is often a long-drawn out process that unduly delays marriages. At times it is even paid by an heir after his father’s death. *Bohali* debts do not prescribe. This inevitably leads to elopement, subsequent litigation and the demand for compensation according to the laws of Lerothodi (Section 4(2) of Part II, Poulter, 1976:84). The custom of paying *bohadi* (ilobolo) continues to be pivotal in the arrangements of marriages among the African people in Southern Africa. Poulter is right in observing that the *bohadi* custom seems to be generally favoured by women who say they feel “more married if *bohali* has been paid for them” (p.333). *Bohali* is an outmoded custom. It subordinates the wife to the control of the husband’s parents. It definitely curtails the freedom of a young couple to

make their decisions about their future. Increasingly the husband's parents adopt a mercenary attitude towards *bohali*. In North Africa, men pay some money (*mahr*) on signing the marriage contract. But this custom, writes Accad, "has acquired the taint of money, of transaction and bargaining" (Accad, E. 1978:621). *Bohali* has increasingly become unreasonable and an unnecessary burden to those who want to marry. If *bohali* is not paid, the father has no right to his biological children. There does appear to be a need to emancipate women from this onerous tradition of depending on the payment of *bohali* in order for them to get married.

One of the conundrums of lobolo custom is that an unmarried young man may have a child with a girl. He does not have any responsibility towards his child and the mother. Custom dictates that he pays for the damage done. He pays a once-off "inhlawulo" (damage payment). The child becomes the responsibility of the girl and his family. This injustice continues to plague women. Some men neglect to pay maintenance money even if it is a court ruling.

Inheritance

The traditional inheritance rule clearly reflects the subordinate position of women. When a married man dies, the eldest son, if he is of age, takes after his father as head of the family even if there is an older sister. The heir receives a large share of the estate. He then becomes responsible for his mother and siblings. He assumes his father's status, rights and duties. The intention of the customary rule of primogeniture is to guarantee an uninterrupted continuation of the lineage of the deceased, so pivotal in the African value-system. The eldest son becomes the proverbial hen that gathers her chicks under her wings. He ensures the well-being of the family by keeping the family assets undisturbed. These assets might be divided if the estate is allocated according to a will (See Bennett, T.W. Chapter 12, 2004). If a married man dies without having had any son, his estate becomes the responsibility of his younger brother or nearest male relative. Traditionally, the brother of the deceased could, if he so wished,

co-habit with the wife of the deceased with a prospect of raising a son who would then in time become the heir. Or he could also arrange that some other relative co-habit with his brother's wife in order to "raise the seed" (Schàpera and Goodwyn, 1937:163, Schàpera, 1938:232).

The traditional inheritance rule that privileges the eldest son or in the absence of the eldest son, a male relative, is patently repugnant to justice and morality. When the husband dies, the wife becomes subordinate to her own son or to some male relative. This is not just a question of role, this is an obvious discrimination based on sex. The customary rule of male inheritance has effectively changed. *The South African Interstate Succession Act 81* of 1987 considers the customary male inheritance rule inconsistent with the Constitution and therefore discriminatory. The Act specifies the surviving spouse of the deceased as an interstate heir. (Media Release by South African Law Reform Commission, Pretoria. 7 March 2008; Du Toit, F. "The Constitutional Family in The Law of Succession," in *The South African Law Journal*, Vol. 126 (3), 2009 p. 464). Furthermore, *The Recognition of Customary Marriages Act 120* of 1998, grants a wife in a customary marriage, on the basis of equality with her husband, "full status and capacity, including the capacity to acquire assets and to dispose of them, to enter into contracts and to litigate" (Government Gazette, 1 November, 2000).

These pieces of legislation, based on the values of equality and human dignity enshrined in the Constitution, are a breakthrough for women. They have granted women full *locus standi* before the law. Customary Law has been made consistent with the Constitution. However the gap between the law and practice remains. That gap accounts for the continuation of violence against women. In real life, women continue to be treated as "minors" in spite of the declarations of the Constitution and the Bill of Rights.

Domestic violence

Some men beat or punish their wives on the grounds of adultery. Some even go to the extent of suing their wives' paramours. On the other hand, custom tolerates a husband's infidelity. Wives are not in a position to sue their husband's concubines. Traditionally a wife cannot prevent her husband from marrying other women. Some women get killed by their husband. Rape within families is often done by either a member of the family or by somebody known to the family. The toleration of violence against women is largely encouraged by the traditional power-imbalance between men and women. The patriarchal structures favour males. Men have abused the privileges granted to them. Even though some customs have undergone some radical changes, the prevalent attitude of men towards women is that of superiority, hence the assumption that women can be beaten or punished or treated like children.

Repeated domestic violence creates an environment of fear and intimidation. It "seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men" (Fitzpatrick, 1994:534). Violence against women is not just confined to Africa, it is also prevalent in other parts of the world. Take for example the "honour-killings" in Brazil. It is said that instances of domestic violence "can be justified or excused because the actions of a man's wife or lover, allegedly offended his honour" (Roth, 1974:331).

Women and witchcraft

The belief in witchcraft has caused incalculable harm to many communities. Witchcraft accusations have led to family breakdowns, the burning of homesteads, even villages, forced relocations, ghastly retaliations and even mob justice against those suspected of witchcraft. The resilience of witchcraft beliefs is encountered in many African countries. Witchcraft is believed to be the manipulation of supernatural powers or extra-human forces in order to heal, protect, harm or to kill. Witchcraft is also seen as a means of enforcing conformity to social norms and thereby making for

social stability. It is also generally accepted that a daughter receives “the power and inclination to harm” from the mother (Niehaus, 2001:24). Monica Wilson records that “a woman always gives her “Tikoloshe” (familiar) to her daughter”. She goes on to say that “the worst majority of accusations of witchcraft or sorcery are against women” (Wilson, M. 1961:316). Now women appear to have a special relationship with the uncanny. Harriet Sibisi writes that “women are marginal and can thus fulfil the important social role of forming a bridge between the two worlds” (Sibisi, H. 1975:50). Paradoxically, it is this very role that also adds to the exposure of women not only to domestic violence but also to violence from their own communities. The Ralushai Commission (1996) declares that while witchcraft cannot be empirically proven, “no one can (now) argue that witchcraft is a myth which can only exist in the minds of the ignorant”. In other words, those suspected of witchcraft should be put on trial, and if found guilty, be punished. The stubborn persistence of the belief in witchcraft will see many, especially women, exposed to violence based on superstitious beliefs (Harnischfeger, J. 2003:45).

Another sinister belief, not unrelated to witchcraft, is that freshly harvested body-parts (e.g. heart, sexual organs) contain energy or power that can be used to make magic potions in order to “strengthen” or “protect” the user. The killing of people or children for the specific purpose of making medicine potions (muti) is known as “medicine” or “ritual murder”. This illegal practice does not specifically single out women or girls even though they too may become victims (Minnaar, A. 2003:86-91).

HIV/AIDS infections

Another form of serious violence against women (in Southern Africa) is the fact that some women have been infected with HIV/AIDS and sexually transmitted diseases by their partners or husbands. Some men refuse to go for testing in spite of the fact that they know that they have several partners. HIV/AIDS has increased the number of orphans and vulnerable children. It has destroyed families and caused immense human suffering. The brazen attitude of men is attributed to the power

imbalance between men and women. Often some women feel trapped in a situation of poverty and, in the absence of viable alternatives, succumb to their plight. If the “right to be informed of one’s own and one’s partner’s HIV status” were easy to implement, perhaps that might ease the conflict (Viljoen, F. 2012:255).

Genital mutilation

Genital mutilation of women and children in the name of cultural identity is yet another form of women subordination. Its aim is to control the sexuality of women. Fitzpatrick points out that some practise genital mutilation in order to ensure the marriageability of girls (1994,541). But this cultural practice scars women for life.

Human trafficking

The trafficking of women (and children) on the African continent is said to be rife even though reliable comprehensive statistics are hard to come by. Syndicates traffick women for sexual exploitation and for cheap labour. Women become victims of domestic servitude and debt bondage. Some are used as drug-mules by drug syndicates. While it is true that low levels of education, unemployment and abject poverty expose women to the dangers of human trafficking, it is equally true that the deeply entrenched legacy of male domination has facilitated the exploitation of women. The increase of public transportation across the porous boundaries of the African countries has bedevilled a situation already compounded by the lack of a political willpower on the part of governments to implement anti-trafficking legislation. Human trafficking inflicts unbearable mental and physical violence on women (Shelly, L. 2010, 265-293). The kidnapping of women and girls by Boko Haram in Northern Nigeria illustrates the attitude of men who act with impunity towards women. The victims are threatened to be sold to human traffickers in order to humiliate the Nigerian government. To many men, the human rights of women are a figment of the imagination. This attitude continues to be largely informed by traditional cultures.

Other examples of power-imbalance

Power relationships have shaped both the attitudes of men and women. Among the Pedi, women greet all men first with respect. In public their attitude is changing but within families, it is still very much prevalent (Mönnig, 1967, 272). This practice is the opposite of the “ladies first” custom.

Among the Tswana, divorced women have a stigma. Schapera observes that a divorcee is regarded as a typical example of “feminine frailty”. He quotes the Tswana proverb that says: “Letsêlê go tshwarwa la moswêlwa, la motlhadiwa kemogôfe (Seize the breast of a widow, that of a divorced woman is unstable)”.

Barren women, instead of being looked at with compassion, are regarded with disdain. Traditionally women sat on the floor while men sat on chairs. This reality has changed but attitudes have not. Women by and large have to put up with an inferior status (Schàpera, 1939, 106-107).

Perhaps the most telling outcome of the various forms of discrimination and subjugation of women embedded in the different but internally related cultural forms is the denial of education to African girls. This denial threatens to entrench the inferior status of women. It is a denial bent on confining women to the margins of society and keeping them in subservient positions. Little or no education means that the destiny of women will continue to be determined by men – on whom they will continue to depend for their livelihood. This becomes a vicious circle that impoverishes the self-image of women. African men continue to see women as potential wives and mothers. The image of women as leaders and professionals is extremely distant and vague. School drop-outs and the increase in teenage pregnancies simply play into and maintain the traditional image of women. This state of affairs compels women into a state of silence. Without education women will remain the silent ones, the ones without a voice.

The traditional cultural forms and the African belief-system have conspired to subdue women. Even though many cultural practices are falling into disuse, genuine cultural change takes place at a snail's pace. The roots of culture are deep and stubborn to uproot. Enlightened legislation is difficult to monitor and implement. Women in advanced Western societies still complain about discriminatory practices against them. Hence the feminist movement. Change will therefore be an uphill struggle for the developing countries. It is incumbent upon women - with the cooperation of men - to work towards vigorously removing those aspects of culture that are hostile to women. It is imperative that National governments incorporate into their Constitutions the Human Rights doctrine and commit themselves to implementing these rights. If that happens, African women will be on the threshold of a new dawn.

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Synergies with Traditional Values in Human Rights Works: Key Experiences from the Exposure and Dialogue Program - Right to health (HIV/AIDS)

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In the context of “Traditional Values and Human Rights” the first association would typically not be the reference to the Right to Health. So why is the Right to Health a topic for discussion in the context of this conference?

First one can say that following Article 12 of the International Covenant on Economic, Social and Cultural Rights every person has the right to the highest attainable standard of health.

Second with regard to the Declaration of Alma-Ata of 1978 it can be stated that health “is a fundamental human right and that the attainment of the highest possible level of health is a most important world-wide social goal whose realization requires the action of many other social and economic sectors in addition to the health sector” (Declaration of Alma-Ata, I).

For taking a closer look on these claims the following paragraphs will give a general insight into the topic of HIV and AIDS.

Following the WHO there are almost 78 million people worldwide that have been infected with the HI Virus since the beginning of the epidemic. About 39 million people have died of HIV. Globally, 35 million people were living with HIV at the end of 2013, out of a global population of approximately 7 billion people. And increasingly, demographic trends indicate that poor people and poor regions of the world are disproportionately affected by HIV/AIDS, and least able to deal with it.

Historically, aggressive treatment focused strategies were used to fight communicable diseases inclusive HIV/AIDS. These measures have included identifying infected individuals, tracking, notifying and testing people who may have been exposed; and isolating and quarantining individuals who may pose a risk of infecting others. These strategies have human rights implications such as the rights to privacy and personal autonomy, the right to non-discriminatory treatment, and the freedom of movement and association.

The following examples show how Human Rights are violated by these methods:

First, the criminalization of willful transmission, while it may have had good motivations, led to victimization and suffering of women in failed prevention of mother-to-child transmissions processes. As a result, women started avoiding HIV testing and counseling.

Second, the mandatory testing led to discrimination in recruitment and other opportunities and cause people to suffer and experience emotional and social deaths.

It became increasingly important to address HIV/AIDS from a rights-based approach to protect people living with HIV. Following that today, Human Rights must be applied in addressing three aspects:

First, the HIV prevention, because with increased discrimination the HIV infection flourishes. Secondly, the support care and treatment for people living with HIV and thirdly, the mitigation of the impact for the people who are directly affected, like orphans, widows and poor communities.

A normative definition of the Right to Health contains both freedoms and entitlements. According to this freedoms it includes the right to control one's body and health, including sexual and reproductive freedom and also the right to be free from interference such as free from torture, non-consensual medical treatment and experimentation.

The three following examples refer to the violation of these freedoms. In 2014 the Namibian Supreme Court for example affirmed that HIV-positive women have been forcibly sterilised in public hospitals in Namibia. Also Kapiri men who are suspected of being homosexual are forced to consent medical examination under threats of torture. And in many cases women in general can not decide about these freedoms because their husbands decide for them.

Besides of freedoms also entitlements are part of the highest attainable standard of health. These entitlements include inter alia the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

All the aspects mentioned before entail functioning public health and health-care facilities, goods, and services as well as programmes. Currently the situation is discriminatory, inadequate and characterised by the lack of service for people of different sexual orientations and gender identity. Also in some cases it is discriminatory to single women with regard to the male involvement. The discrimination can also be found in the marginalisation of poor people in far-flung areas and in the poor management, drug stock outs and the limited personnel.

Next to the availability there must be guaranteed an accessibility for everyone to health facilities, goods and services without discriminations. Accessibility has four overlapping dimensions. First the non-discrimination of Lesbian, Gay, Bisexual, Transgender and Intersexual Persons. Second the physical accessibility, which is especially a challenge in remote areas and with maternity cases. Third there is an economic accessibility that contains free services that are adequate. And fourth there is the dimension of information accessibility that includes the right to seek, receive and impart ideas.

To complete the aspects of the entitlements there must be added the acceptability that contains the respect of medical ethics and the culturally appropriate respect of confidentiality and the scientific and medical quality.

To close there will be four submissions on the Right to Health as part of Human Rights in this paper:

1. The need to strengthen mechanisms to increase state accountability on international human rights obligations.
2. The need for increased awareness/popularisation of the broad concept on the right to health – even some human right activists do not understand it fully.
3. The need for increased rights-based approach to HIV prevention, moving away from moralistic approaches.
4. Addressing women's socioeconomic vulnerabilities.

The Challenges of Traditional Values for Development Cooperation

Martin Mauthe-Käter, Federal Ministry of Economic Cooperation and Development, Berlin

With regard to traditional values and development cooperation I have three very simple, very basic messages that I would like to bring to the debate.

1. Development is about values.

Or in other words: Values are the key to sustainable development and peace. I realized this during the last days when I had the chance to participate in the exposure program.

When we went to the traditional authority to pay our respect, I brought him two goats. When I saw how devote and humble people behaved in his presence I asked myself: Is this maybe one reason why the ruling elite in many African countries is seeing political leadership/governing as the right to be served and not as the duty to serve – i.e. to serve the people.

During our conference we heard a lot of other examples.

Our values guide our actions and our actions shape our world. So if we want to make our world a more peaceful, healthier and more equitable place for everyone, if we want to support sustainable development, we need to take values into account.

For too long, the international development cooperation focused mainly on technical and financial aspects.

Klaus Töpfer, the former director of UNEP, recently said: We just forgot about the cultural dimension of sustainability. Mostly we focus on the

economical, ecological and social dimension – but we forget the cultural dimension.

So what we have to realize is this: Unless we address the issue of traditional values within our development cooperation we will not be able to bring about change!

Once again: Values are the key to sustainable development and peace.

And because of that, my second message is:

2. *We need a new and honest dialogue on common values.*

A dialogue that is free of fear, free of prejudices, free of attacking one another and development cooperation should contribute to this dialogue. Because development cooperation is about working together to improve the living conditions of society in concrete projects. So this is the right place to have this new dialogue.

Important for such a dialogue is mutual respect. People can only have an open conversation if they respect each other and accept each other as equals.

What are the values that we all share? What world do we want for our children?

In Germany, our ministry worked with thousands of people from the political arena, civil society and academia to draft a Charter for the Future. At times, that process was very difficult. But we all felt that it was worth it. In that context, we also focused on the importance of culture, tradition and religion and their link with human rights.

One meeting was particularly striking for me:

I had the chance to talk to human rights activists from Pakistan. They fight for the freedom of religion. I was deeply impressed by their work. In their work they draw on local stories and long traditions of inter-faith coexistence. They are trying to sensitize people by building on traditional values that people believe in. This is where development cooperation has a chance to come in. Culture and traditional values are an important basis from which people can be invited to engage in a dialogue about values. If traditional values are ignored, the human rights debate remains a matter for elites.

Sometimes I come across some skepticism about the human rights discourse. Not about the content of human rights as such – everybody likes to freely speak their mind. Everybody values the right to food, water, health and education.

However, the human rights discourse is sometimes criticized. It is said that human rights were an invention of the West. They were a new form of colonialism, an attempt to interfere in countries' internal affairs, an attack on local culture and traditional values.

We need to take these reservations seriously, even if we do not share them. We have to talk to those people who question the universality of human rights by referring to culture and tradition. It is not dialogue that is dangerous; it is absence of dialogue.

On the other hand, cultural diversity and traditional values must not be used by governments as an argument for watering down human rights and restrict their application.

Let me say this very clear – and the German Ambassador also mentioned it: Human rights are enshrined in international law. Governments have to respect, protect and fulfill them regardless of their political, economic and cultural systems.

This is in their own interest. Because human rights are not a threat to cultural diversity. It is a guarantee for cultural diversity. Wherever human rights are violated, cultural diversity is suffering. The most shocking example is the IS terror in Syria and Iraq.

I want to be very clear on this: there can be no "cultural proviso", no "cultural veto" when it comes to human rights. Culture, traditional values or religion cannot be an excuse for human rights abuse. This goes for women, people with disabilities, and also ethnic, religious and sexual minorities.

The international community – and this is not only the Western countries – once more committed itself to the human rights 20 years ago through the Vienna Declaration. They again highlighted the universality of human rights.

So, human rights are a guiding principle for Germany's development policy. They guide my Ministry's goals, programs and procedures. The most important thing about our human rights-based approach is the change of perspective: Governments have obligations, people have rights.

The German development cooperation wants to support governments to live up to their human rights obligations. And we want to support people to assert their rights. In that, civil society – also faith-based organizations – play a crucial role. They can give voice to the disadvantaged and marginalized.

Once more: We need a new and honest dialogue on common values. Development cooperation should contribute to this dialogue. But, how can we *first*, pay greater attention to values in development cooperation and, *second*, support a new dialogue on common values? For this, we need to have those players on board who have influence on values in their society. We need the value stakeholders.

In most societies in the world, religion is a central source of values. That is why my final message is: *Thirdly*, Religion matters!

Let me give an example: For many years now, we have been working against harmful traditional practices such as female genital mutilation (FGM). In many cases, FGM is firmly rooted in society. It is considered a social norm and often even a religious commandment. And yet it is clear that FGM is a human rights violation.

In Mauritania and other African countries, it has been possible to get Muslim and Christian scholars to support the fight against this practice. If we want to protect women and girls, it is important that religious authorities condemn the practice.

This example shows that we are often more successful if we join forces and work with religious leaders. That is why my ministry set up a special task force on religion and development.

In future, we want to better include the potential of religion for sustainable development. We also launched a broad debate on this within Germany. And we put this issue on the international agenda. Two weeks from now, I will be accompanying our State Secretary to Washington, where we are co-organizing an international conference on religion and development together with the World Bank, the United Nations, the governments of the UK and of the U.S., and many NGOs.

Religion has an influence on many people's lifestyles and civic engagement. It has a strong influence on social life. Religion helps people to understand, to build understanding and to change things.

Of course, there is also some negative potential to religion – aspects that are a barrier to development. But even then international development cooperation cannot ignore religious actors. Wherever religion is part of the problem, it must also become part of the solution.

To close, I want to come back to my experience in the exposure. The idea of human rights gives encouragement to my host during the exposure to fight for clean water – to fight for clean water for more than ten years now. By telling his neighbors, his community about human rights he changed their perspective. Even the women’s group started a protest march to the local chief. They didn’t do this because a western donor or NGO told them to do so. They did it because they know it’s their right; because they feel in their hearts that this is the right thing to do.

And this – after all – is the challenge: Not just to have human rights as an abstract concept somewhere in our constitution. But to root them in our hearts and live accordingly.

Final Declaration

We, the participants at a conference on “Traditional Values: Facilitating or Obstructing Human Rights?” held in Chaminuka Lodge (Lusaka, Zambia) from 25 to 27 June 2015, have aspired to explore the complex relationship between human rights and cultural practices in various traditions. The conference brought together participants from a number of African countries as well as from Germany. Among those present were representatives of the Church, human rights activists, lawyers, diplomats, scientists (academy), representatives of the African Commission for Human and People’s Rights, UN bodies and persons working in other international organizations. Taking stock of some basic insights gained within an ongoing dialogue, supported by experiences of some participants in an exposure and dialogue program in Zambia immediately before the conference, we would like to highlight the following points:

1. Human rights are norms of universal validity, not the exclusive heritage of any particular region. Their normative basis is the due “recognition of the inherent dignity and the equal and inalienable rights of all members of the universal human family” (preamble of the 1948 Universal Declaration of Human Rights). The term ‘tradition’ refers in general to sets of convictions, cultural practices, values etc. Since the Banjul Charta rightly avoids any sharp definition of tradition it refers to in its respective articles, the term necessarily remains open for different use and aims by people. Its content permanently changes.
2. Right holders are all human beings prior to any particular group memberships, such as citizenship in a particular nation, membership in a particular ethnic grouping, membership in a particular religious community etc. Although held by each and every individual human being, they are always exercised in a commu-

nity. The community-dimension is relevant for the understanding of all human rights, both from an African as well as a European perspective.

3. While human rights provide an international normative framework across cultural, religious and other traditions, they do not intend to replace the wealth of diverse traditions. Rather, they empower people – as individuals and in community with others – to participate actively in the further development of their various traditions. Therefore, reference to culture and tradition could never justify human rights violation.
4. Human rights can only flourish through many people taking active ownership of these rights. For this to be possible human rights must find an echo in people's everyday life-world, which is composed by various traditional cultural practices, including rituals, ceremonies, collective narratives, music and dancing, rules of politeness, ethical values, religious beliefs etc.
5. Efforts to raise awareness for the potentials of a closer relation of human rights and traditional cultural practices are therefore imperative. 'Antagonistic' readings of these two concepts would render the aspiration of developing a sustainable human rights culture utterly hopeless.
6. Simply mixing or merging human rights and 'traditional values' does not do justice to the complexity of the task ahead of us. Moreover, such a merger could lead to the loss of normative precision brought about by internationally binding human rights standards. At the same time, it would mean playing down challenges, as they may arise from the liberating profile of human rights summarized in the profession that "all human beings are born free and equal in dignity and rights" (Art. 1, first sentence of the UDHR).

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7. Traditional cultural practices have always changed over time, as did the aims and intentions of those, who tried to define and fix its content. Such changes may nowadays inter alia be inspired by human rights standards which have become globally more and more influential. By taking roots within various cultural traditions, including religious beliefs, human rights can fully unfold their humane potential, also beyond the sphere of legal and political implementation.
 8. The key principle underneath human rights, i.e. the profession of every human being's inherent dignity, resonates profoundly in various religious, philosophical and cultural traditions. With a view to human dignity, it seems possible to identify substantive normative overlaps between human rights and many traditions. At the same time, it should be borne in mind that by institutionalizing respect for everyone's equal freedom and participation, human rights draw new and partially challenging consequences from the insight in human dignity, for instance in the area of gender equality.
 9. In any attempts to bring together human rights and traditional ethical values, Protestant Churches and the Catholic Church as well are in crucial position. Deeply rooted in many people's traditional life-world and being committed to promoting respect for every human being as an image of God (Genesis 1:27), they can exercise a bridge-building function towards broadening the ownership of human rights, even beyond her immediate followers. Following the example set by Jesus, Churches have a particular mission to outreach towards vulnerable, marginalized and stigmatized people.
 10. In discussions about the (sometimes complicated) relationship between traditional cultural practices and modern human rights, it should not be overlooked that human rights abuses have man-

ifold root-causes, including economic poverty, lack of good governance, difficult historic legacies etc. Blaming ‘tradition’ in toto for problems arising in the implementation of human rights usually originates from stereotypes.

11. Commitment on behalf of human rights may be impeded by lack of credibility of State agencies or Non-Governmental Organizations, including faith-based organizations, when denying self-critical discussions of ‘double standards’ in their assessments or of unintended side-effects of human rights activities.
12. Progress concerning human rights does not seem viable without the tireless work of human rights defenders, many of whom operate under conditions of personal risks. Policies of ‘defending the defenders’, to be designed in close communication with those working on the ground, is a main task, in fulfilment of obligations of solidarity towards people under threat as well as in the interest of enhancing the prospects of human rights implementation in general. The possibilities of Churches to develop a more systematic commitment in this regard should be further explored. There are good reasons to assume that there is an enormous potential based on the Churches’ profession of human dignity from which they draw their teaching on human rights, their traditional commitment to people in need and their infra-structural presence at the parish levels as well as globally.

Lusaka/Bonn, June 2015

Program of Work

International Conference, June 25 – 27, 2015
At Chaminuka Lodge, Lusaka, Zambia

A substantial motivation for the attempt to relate human rights to traditional values and convictions derives from the expectation of a growing ownership of human rights if they could be recognised and acknowledged as living expressions of diverse cultural traditions. Supporting this we aim to counteract monopolization of human rights approach by a “western culture” which signifies a delegitimization of the human rights claim to universality. Furthermore we get sight of those traditions which are not compatible with human rights entitlements to freedom and equality – some traditions virtually impede the realization of a society based on equal participation. Those traditions can be misused for political purposes in Europe and Africa alike. Finally it has to be examined how recourse to traditions can serve to protect human rights – or how traditional values can reveal “blind spots” of the established human rights framework. To better understand the respective relations of human rights and traditions it can be useful to start by clarifying the foundation of human rights in human dignity.

Thursday, June 25 2015

Human Dignity, Human Rights and Traditions: Misunderstandings and Clarifications

[15:30]

Opening:

Fr Leonard Chiti SJ, Director of the Jesuit Centre for Theological Reflection, Lusaka, Zambia

Gertrud Casel, General Secretary of the German Commission for Justice and Peace, Bonn, Germany

	Words of Welcome <i>Dr. Ngosa Simbyakula</i> , Minister of Justice, Government of the Republic of Zambia
[16:30]	Human Dignity: The Understanding of Human Rights in the Social Teaching of the Church <i>Archbishop Gabriel Yaw Anokye</i> , Vice President of SECAM, Archbishop of Kumasi, Ghana Chair: <i>Fr. Leonard Chiti SJ</i> , Director of the Jesuit Centre for Theological Reflection, Lusaka, Zambia
[17:15]	Coffee
[17:45]	Promoting Human Rights Commitment by Mobilizing Ethical Traditions <i>Prof. Heiner Bielefeldt</i> , Erlangen University, Germany, Member of Justice and Peace Germany, UN Special Rapporteur on Freedom of Religion and Belief Chair: <i>Fr. Leonard Chiti SJ</i> , Director of the Jesuit Centre for Theological Reflection, Lusaka, Zambia
[18:30]	Dinner
[19:30]	Panel with Statements: Tradition and Human Dignity

Respecting Identity within and beyond Traditions

Fr. Leonard Chiti SJ, Director of the Jesuit Centre for Theological Reflection, Lusaka, Zambia

Human Dignity and Christian Ethics in Africa

Prof. Philomena Njeri Mwaura, Director of the Centre for Gender Equity and Empowerment at Kenyatta University, Nairobi, Kenya

Chair: *Dr. Daniel Legutke*, Human Rights Desk at German Commission for Justice and Peace, Bonn, Germany

[21:00]

Closing

Friday, June 26 2015

Strategies to Realize Human Rights – Law Enforcement and Traditional Social Institutions?

[09:00]

Statements and Panel Discussions

Traditions of Violence against Women in Europe

Prof. Dr. Herta Däubler-Gmelin, Lawyer, former Federal Minister of Justice in Germany, Berlin, Tübingen, Germany

How to overcome Violence against Women: Criticism

	of Cultural Traditions in the Name of Human Rights <i>Auxiliar Bishop Dr. Stefan Zekorn</i>, Auxiliar Bishop in Münster, Germany <i>Archbishop Buti Tlhagale OMI</i>, Archbishop of Johan- nesburg, South Africa Chair: <i>Gertrud Casel</i>, German Commission for Justice and Peace
[10:30]	Coffee
[11:00]	Conflicts between Traditional Practices and Health: Presentation of a Study of the German Bishops' Con- ference on HIV/AIDS <i>Dr. Marco Moerschbacher</i>, Missio, Aachen, Germany
[12:00]	Key Experiences from the Exposure Programme: Deal- ing with Traditional Values in Human Rights Work Participants of the Exposure Program Chair: <i>Judith Mulenga</i>, Zambia Civic Education Associ- ation, Executive Director, Lusaka, Zambia
[12:30]	Lunch
[15:00]	Synergies with Traditional Values in Human Rights Works: Key Experiences from the Exposure and Dia- logue Program Working in parallel groups

	<u>WG 1: Working for the Rights of Children</u> <i>Judith Mulenga</i>, Executive Director Zambia, Civic Education Association <u>WG 2: Right to health (HIV/AIDS)</u> <i>Lilian Kiefer</i>, Executive Director, Panos Institute Southern Africa, Lusaka, Zambia <u>WG 3: Access to and Delivery of Land in Zambia</u> <i>Dr. Daniel Legutke</i>, German Commission for Justice and Peace <u>WG 4: Overcoming Violence against Women</u> <i>Gertrud Casel</i>, German Commission for Justice and Peace
[17:00]	Coffee
[17:30]	Reports to the Plenary (three main points from each group) Comments: <i>Bernd Finke</i>, German Ambassador to Zambia, Lusaka, Zambia <i>Florence Simbiri Jaoko</i> , Lawyer, former chairperson of Kenyan National Commission for Human Rights, Nairobi, Kenya Chair: <i>Prof. Andreas Hasenclever</i>, Institute of Political Science, University of Tübingen, Germany
[19:00]	Dinner

Saturday, June 27 2015

Strategies and Actors to Support Best Practices

[09:00] Harmonizing Tensions between Empowerment and Traditions: Pitfalls of the Banjul Charta?
Reine Alapini-Gansou, African Commission for Human and Peoples' Rights, Special Rapporteur for Human Rights Defenders, Cotonou, Benin

The Challenges of Traditional Values for Development Cooperation

Martin Mauthe-Käter, Federal Ministry of Economic Cooperation and Development, Berlin

Chair: *Florence Simbiri Jaoko LL M*, Lawyer, former chairperson of Kenyan National Commission for Human Rights, Nairobi, Kenya

[10:30] Coffee

[11:00] 'Inculturation' of Human Rights in Law and Practice: How to Manage Risks and Potentials of Traditional Values

Dr. Joseph Katema, Minister of Chiefs and Traditional Affairs, Government of Zambia

[11:30] Closing and Wrap up Session

Chair: *Prof. Dr. Heiner Bielefeldt*

[12:30] Lunch and Departure

Participants

International Conference, June 25 – 27, 2015
At Chaminuka Lodge, Lusaka, Zambia

Participant		Organization
Alapini	Reine	African Commission for Human and Peoples' Rights, Special Rapporteur for Human Rights Defenders, Cotonou, Benin
Anokye	Gabriel	SECAM, Vice President, Archbishop of Kumasi, Ghana
Bagonza	Benson	Bishop of Evangelical Lutheran Church in Tanzania (ELCT), Karagwe Diocese, Tanzania
Bielefeldt	Heiner	Member of Justice and Peace Germany, UN Special Rapporteur on Freedom of Religion and Belief, Erlangen University, Germany
Bogner	Daniel	Faculty of Theology, University of Fribourg, Switzerland
Bruchhausen	Walter	Institute for History, Theory and Ethics of Medicine, RWTH Aachen University, Germany
Buhbe	Matthes	Berlin, Germany

Buss	Gregor	Africa Desk, Secretariat of the German Bishops' Conference, Bonn, Germany
Casel	Gertrud	General Secretary, German Commission for Justice and Peace, Bonn, Germany
Chimange	Getrude	Catholic Commission of Justice and Peace, Diocese of Mutare, Zimbabwe
Chiti	Leonard	Jesuit Centre for Theological Reflection, Director, Lusaka, Zambia
Cleophas	Lungu	General Secretary of the Zambian Catholic Bishops' Conference, Lusaka, Zambia
Däubler-Gmelin	Herta	Lawyer, former Federal Minister of Justice in Germany, Berlin, Tübingen, Germany
Dinan	Jacques	Retired General Secretary of Caritas Africa, Port Louis, Mauritius
Finke	Bernd	German Ambassador to Zambia
Goudjo	Raymond	Rector of Grand Séminaire Mgr. Louis Parisot in Tchanvédji, Secretary of the Episcopal Commission Justice and Peace and of the Commission Justice and Peace RECOWA/CERAO Benin

Hasenclever	Andreas	Institute of Political Science, University of Tübingen, Germany
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Kabilika	Eugene	Caritas Zambia, Lusaka, Zambia
Kapito	John	Consumers Association of Malawi, Executive Director, former Chairperson of the Malawi Human Rights Commission, Lilongwe, Malawi
Khumalo	Danisa	Denis Hurley Peace Institute, Pretoria, South Africa
Kiefer	Lilian	Panos Southern Africa, Executive Director, Lusaka, Zambia
Komakoma	Joseph	SECAM, Secretary General, Accra, Ghana
Kretschmann	Lena	Online Editor website www.weltkirche.katholisch.de , Bonn Germany

Legutke	Daniel	German Commission for Justice and Peace, Human Rights Desk, Bonn, Germany
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Menatsi	Richard	IMBISA Centre, The Inter-Regional Meeting of the Bishops of Southern Africa, General Secretary, Harare, Zimbabwe
Minani	Rigobert Bihuzo	Jesuit African Social Centers Network JASCNET, Director, Nairobi, Kenya
Moerschbacher	Marco	Missio, Aachen, Germany
Mpundu	Telesphore	Archbishop of Lusaka, Zambia
Mulenga	Judith	Zambia Civic Education Association, Executive Director, Lusaka, Zambia
Mumba	Mpande	Jesuit Centre for Theological Reflection, Lusaka, Zambia
Mwaura	Philomena	Centre for Gender Equity and Empowerment at Kenyatta University, Director, Nairobi, Kenya
Ndete	Edward	Catholic Parliamentary Liaison Office, Harare, Zimbabwe

Nitschke	Ulrich	Head of Sector Program Values, Religion and Development, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, Bonn, Germany
O'Leary	Sean	Denis Hurley Peace Institute, Director, Pretoria, South Africa
Ondrejka	Martin	Federal Ministry of Economic Cooperation and Development, Berlin, Germany
Peters	Jan-Hendrik	Federal Ministry of Foreign Affairs, Berlin, Germany
Podlinski	Nicole	Catholic Rural Movement, Bad Honnef, Germany
Poniso	Kawanga	Jesuit Centre for Theological Reflection, Lusaka, Zambia
Posiana	Tendai	Jesuit Centre for Theological Reflection, Lusaka, Zambia
Schrowange	Claus	Consultant for Conflict Transformation, Peacebuilding and Human Rights, APRED-RGL, Kigali, Rwanda
Selema	Kabelo	Program Manager at SACBC Justice and Peace Commission, Pretoria, South Africa

Shimilimo	Mwiinga	Jesuit Centre for Theological Reflection, Lusaka, Zambia
Simbiri	Florence	Lawyer, former Chairperson of Kenyan National Commission for Human Rights, Nairobi, Kenya
Simbyakula	Ngosa	Minister of Justice, the Government of the Republic of Zambia
Soko	Michael	Office of UNDP, Lusaka, Zambia
Tlhagale	Buti	Archbishop of Johannesburg, South Africa
Weinbrenner	Sieglinde	Bread for the World, Human Rights Desk, Berlin, Germany
Zekorn	Stephan	Auxiliar Bishop in the Diocese of Münster, Germany

