

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

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Preface

The present volume contains various contributions to the final workshop of the working group “Human dignity and human rights” which under the chairmanship of Professor Dr Heiner Bielefeldt organized a series of international dialogue events. Whereas in the beginning the working group focussed on a clarification of the relationship between human dignity and human rights¹, in the contributions to this publication conclusions were developed as regards the practical cooperation the Church has to get involved in on an international level. As Joseph Komakoma says in his contribution, the great importance the Church attaches to the dignity of the human person urgently requires a commitment to human rights. For us this means: “The Christian vision of society is one that is oriented towards establishing the reign of God on earth. This goes beyond working only to cater for our individual needs, or limiting our efforts to the wellbeing of our immediate family, but oriented towards creating conditions in society that allows all humanity to flourish.”

When dealing with the defence of human rights the economic, social and cultural rights are not always sufficiently taken into account. Still they are referred to as the “second generation of human rights”. Not infrequently this implies that these rights are different from civil or political rights and that they are even subordinated. This is contrary to the commitment of the international community which emphasises the indivisibility and the interdependence of all human rights. For this reason it was a matter of great concern to the working group to focus on the defenders of economic and social rights. The contributions presented by Sebastiaan van der Zwaan and Rigobert Minani give special attention to the characteristics of these human rights and they talk about experiences made in the context of ecclesial work. John Kapito and Clement Voulé deal with different possibilities of national and international institutions and organisations aiming at effectively supporting defenders of economic and social rights. Finally Gertrud Chimange and Jan Stuyut talk about the different levels of Church human rights work and from this they deduce specific requirements.

Two articles which only indirectly address questions being raised in the context of human rights work open the volume. Piet Emmer and Leonard Chiti in different ways deal with the colonial burdens of the past which again and again are of importance in international human rights dialogues. Sometimes they are explicitly but more often they are implicitly mentioned, if responsibilities for the situation of the implementation of

¹ Justitia et Pax (ed.), Menschenwürde. Impulse zum Geltungsanspruch der Menschenrechte (Bonn 2013) (=Schriftenreihe Gerechtigkeit und Frieden, Heft 127).

human rights demands not only in the past but also in the present are taken into account. As a result the working group decided to open the conference with a special working module on the significance of the colonial past for the present human rights work. From this module two contributions could be included in the volume.

The volume starts with the final declaration of the participants in the conference as a summary, so to speak. The most important findings are presented briefly and demands to politics and to the Church as an actor for human rights are worded. Here it becomes obvious that in view of the increasing global involvements of states and economic systems also the human rights work of the Church, which in many places of the world is doing an excellent job, should be coordinated systematically and continuously and be highlighted more effectively on all levels of political decision-taking.

Not least the working group "Human rights and human dignity" has made an important contribution going beyond the clarification of factual issues. I would like to thank all of them, especially the chairman Heiner Bielefeldt and, as representatives of our cooperation partners, Fr Leonard Chiti SJ of the Jesuit Centre for Theological Reflection from Zambia as well as Dr Victor Scheffers of the Dutch Justice and Peace Commission for the commitment which was essential for the success of the cooperations. And lastly I'm thankful to Daniel Legutke for coordinating the working group and the preparation of the present publication.

Bishop Dr Stephan Ackermann

President of the German Commission for Justice and Peace

Bonn/Trier, Januar 2015

Final Declaration

Workshop "Defending Human Dignity and Human Rights: A Challenge for International Cooperation", February 2014

The Potential of the Church for Defending Human Rights

"Our journey leads us from dialogue to joint action", declared Church representatives defending human rights and other human rights actors from African and European countries at the workshop "Defending Human Dignity and Human Rights: International Workshop on Human Rights Defenders" in The Hague, that took place from February 5th to 8th 2014. The workshop was the final meeting after previous subsequent workshops on "Human Dignity and Human Rights—Historical Experiences and Present Day Challenges" from May 24th to 25th 2012 in Berlin, and on "Defending Human Dignity and Human Rights—A Challenge for International Cooperation" from February 7th to 9th 2013 in Lusaka, Zambia. The workshop in The Hague provided input for enhanced cooperation, by focusing on the question about how the Church at the grassroots level can promote and strengthen human rights, and how this work can be properly linked to the work at the international level. During this workshop it was stated that "churches and civil society should work together in the promotion of human rights. To this end more systematic and closer cooperation is needed between the respective actors in the North and the South alike to hold States accountable".

This final declaration will function as a recommendation based on the findings in the workshop, by focusing on the joined cooperation in the promotion of human rights, and the important role the Church can play.

I. Human rights in the teaching of the Church

While the concept of human rights—understood as enforceable rights of freedom, equality and solidarity for everyone—is a modern accomplishment, its underlying principles belong to the core teachings of the Church. As testified by the book of Genesis, human beings have an inalienable dignity since they have been created in the image and likeness of God. Respect for this divinely endowed gift must include everyone on an equal footing. It is in this spirit that the encyclicals *Pacem in Terris* and *Populorum Progressio* as well as the Second Vatican Council's pastoral constitution *Gaudium et Spes* embraced modern human rights as a necessary implication of respect for everyone's dignity. Recently the encyclical letter *Deus Caritas est* (DC) spelled out the political implications of respect for human dignity more concretely: "The Church

cannot and must not take upon herself the political battle to bring about the most just society possible. She cannot and must not replace the State. Yet at the same time she cannot and must not remain on the side lines in the fight for justice. [...] Yet the promotion of justice through efforts to bring about openness of mind and will to the demands of the common good is something which concerns the Church deeply" (DC, 28).

The Church understands human rights as an integral part of her pastoral work in the broadest possible sense. She has to give voice to the voiceless. When doing so, the Church reminds States, business corporations and other stakeholders of their duties to safeguard human dignity in a "most just society possible" (DC, 28). The role of the Church includes promotional activities aimed at popularizing human rights norms and instruments, practical support for those whose dignity and rights are violated as well as contributions to building an effective human rights infrastructure at local, regional and international levels. Practical commitment on behalf of human rights is not something merely "external" to the gospel; it constitutes a crucial part of the Church's task to bear witness and thus becomes a case of credible evangelization. When promoting human rights, the Church addresses "all people of good will", thus reaching out beyond her own followers.

II. The specific potential of the Church for supporting human rights defenders

The greatest asset of the Church for human rights work is her presence on the ground close to the people, evidenced by its various affiliate institutions and organizations dedicated to caring for those in need of support and protection. The Church is also present at regional levels—e.g. in structures of regional bishop's conferences—and the international level, not only through the institutions of the Holy See but also through a multiplicity of international organizations (e.g. religious orders, the worldwide net of faith based organizations, etc.). As a global body the Church brings together people from all regions of the world. Her ability of linking local, regional and international commitment is unique, and it is here where enormous potential lies for making human rights work more effectively.

Numerous people working in the Church see themselves as human rights defenders and manifest this self-understanding in their daily work as teachers, preachers, social workers, lawyers and in many other professional capacities. Additionally ordinary Church members often offer support to those in need. In many countries where the Church provides educational services through school, universities and civic education human rights is incorporated into the curricular.

In their daily work human rights defenders empower people to stand up for their rights and the rights of others, thereby challenging unequal power relations. A human rights based approach rejects any use of arbitrary power and requires that States establish credible institutions to promote and protect the rights of all. The 1993 World Conference on Human Rights has reaffirmed "the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all" (Vienna Declaration and Programme of Action, 1993).

However, despite of this obligation of the State, in many countries human rights defenders live in dangerous conditions. They experience public defamation, blackmail, physical threats and other forms of intimidation. As shown by the UN "a great many human rights defenders, in every region of the world, have been subject to violations of their human rights. They have been the target of executions, torture, beatings, arbitrary arrest and detention. Defenders have been the victims of false accusations and unfair trial and conviction". (UN Fact Sheet No. 29, Human Rights). This situation calls for more systematic work on behalf of the protection of human rights defenders. In other words, those lending their voices to the voiceless need national and international political support to be able to undertake their advocacy activities. Indeed, the need of strengthening human rights defenders has found increased attention in the international human rights debate. In December 1998 during the 50th anniversary of the Universal Declaration of Human Rights, the United Nations passed a declaration specifically dedicated to human rights defenders subsequently establishing the office of the Special Rapporteur on the Situation of Human Rights Defenders. The strategic significance of defending the defenders has also found recognition in other official documents of regional and international human rights bodies.

Although the Church has been giving numerous examples of praiseworthy human rights defence on the ground, the Church has to date not yet systematically explored her potential for protecting human rights defenders politically. The wide range of human rights commitment manifested on a daily basis at grassroots-level is not always adequately reflected in the Church's statements and policies at "higher levels". Existing activities in this area usually seem to remain ad hoc-measures in response to crisis situations. Regional conferences like IMBISA or COMECE and continental organizations like CCEE or SECAM should explore their potential more systematically to back up politically the existing grass-root human rights activists as they exist within the Church. Through the engagement of regional conferences with their political counterparts on questions related to human rights and human rights defenders, they can help to strengthen the position of human rights defenders within and outside the Church, as it has done concerning the right to freedom of religion and belief by European bishop's

conferences. Pope Francis reminds us: "The Church proclaims the Gospel of peace (Eph 6:15) and she wishes to cooperate with all national and international authorities in safeguarding this immense universal good. ... In a culture which privileges dialogue as a form of encounter, it is time to devise a means for building consensus and agreement while seeking the goal of a just, responsive and inclusive society" (Apostolic Exhortation *Evangelii Gaudium*, 239).

III. Enhancing cooperation beyond the Church

Church agencies should also more systematically cooperate with other organizations working on human rights. This naturally includes cooperation with other religious (Christian and non-Christian) organizations. In the face of conflicts in many parts of the world which have or are perceived to have religious dimensions, interreligious cooperation, besides its practical advantages, also assumes a high symbolic significance. National Human Rights Institutes (NHRIs) are emerging as important and significant players in human rights discourse, particularly in Africa. And yet the cooperation and collaboration between NHRIs and the Church has been almost non-existent. It cannot be said how this ambivalent relationship is hurting the course of human rights as well as aggravating the plight of human rights defenders. In addition, there is the broad range of civil society organizations working on human rights. While there is real evidence of cooperation between civil society and the Church on the ground the same is not reflected at international level. In particular catholic organizations are strikingly absent at international or UN related meetings organized by civil society. This observation points to the necessity for the Church to clarify and improve her relations with civil society organizations as well with international institutions. Again Pope Francis pointed to the necessity to engage in fruitful dialogue: "For the Church today, three areas of dialogue stand out where she needs to be present in order to promote full human development and to pursue the common good: dialogue with States, dialogue with society—including dialogue with cultures and the sciences—and dialogue with other believers who are not part of the Catholic Church" (EG, 238). Consequently, the Church should raise its voice and be present in the defence of human rights wherever their presence is needed.

Cooperation with non-Church actors is particularly important for designing and implementing policies aimed at defending human rights defenders. The opportunities created for this purpose frequently are not even known among insiders. They inter alia include the already mentioned UN Declaration on Human Rights Defenders and the 2008 EU Guidelines on Human Rights Defenders by which EU Member States committed themselves to provide practical support for human rights defenders

worldwide. The African Commission on Human and Peoples' Rights by Resolution 69 adopted at its 35th meeting established the Special Rapporteur on Human Rights Defenders whose mandate includes raising awareness and promotion of the UN Declaration on Human Rights Defenders. The EU Guidelines are based on the UN Declaration. Although these declarations and resolutions aim at the wide range of the defence of all human rights, economic, social and cultural rights are often perceived as having a special status—being not in the same way justiciable as civic and political rights. Therefore the "Draft Guidelines and Principles on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights" (November 2011) clarify the understanding of economic, social and cultural rights in African contexts. Taken together these declarations can give clear ideas about the meaning, importance and practice of defending economic, social and cultural human rights and about the responsibility to protect human rights defenders. Those working in embassies and consulates of EU member States abroad have e.g. formal responsibility to network with defenders, to invite them to conferences, to engage in trial observations, to issue emergency visas in crisis situations etc. These pragmatic measures can help broaden the space (currently shrinking in many countries) for human rights defenders to operate. The problem, however, is that in order for the EU Guidelines and the draft Guidelines and Principles of the ACHPR to become effective more information, coordination and cooperation is needed. This is an area in which the Church obviously can take a meaningful role which still needs to be developed.

IV. Encouragement for joint action

During the workshop already existing good practices were highlighted in which potentials of mutual cooperation at the local, national, regional and international level became clear:

- As was already highlighted in this declaration, in many places human rights defenders live in dangerous conditions. For example, they take risks to give physical shelter and support to the marginalised. Often human rights defenders can rely on Justice and Peace Commissions and other faith based organizations but also on networks within wider civil society for protection. Also in Europe asylum seekers are accommodated and supported by the Church and its affiliates; they find shelter in Church asylums, many of the so-called "sans papiers" get advice by faith based organizations. In African countries the Church offers similar services to refugees and internally displaced persons. Churches speak out for the migrants and undocumented people all over the world. For the entire community of human rights activists it was an enormous encouragement, when Pope

Francis visited the Italian Island of Lampedusa and raised a flag on behalf of the dignity of all human beings and against what he called the "globalization of indifference" (EG, 54). This example highlights how religious people working at the grassroots level are encouraged by religious officials in continuing their working for the dignity of others.

- In existing or emerging conflicts the interreligious cooperation of the Catholic Church with Muslims and Muslim organizations opens opportunity to mediate between rival parties. Interreligious cooperation helps to prevent violence and gives shelter to victims and the most vulnerable. Churches in Europe through their close relation with their brothers and sisters in the South can give better clarity and understanding in the North by exposing those who falsely label politically, socially and ethnic motivated conflicts as being religious. Highlighting how religion can be used as a tool to overcome differences will do more truth to the practical value religions have as well.

- In the workshop we heard about successful joint actions at international fora like at the UN Human Rights Council in Geneva: The regular reports of treaty bodies are used as meaningful opportunities to engage Church and faith based organizations with local civil society in the preparation of so called shadow reports. Especially the newly introduced Universal Periodic Review opens up opportunities to address State's responsibility through inputs during the national level process and directly during the report's adoption at the Human Rights Council. More often than not it is international civil society organizations that are present and respond to State reports at the Human Rights Council. Considering the networks that the Church enjoys from the grassroots to its presence at the Human Rights Council through its organizations, the potential and opportunity has not been explored and used to leverage the Church as a critical partner and voice on human rights issues. There is need to exploit the obvious advantage that local voices have over international players in terms of authenticity and authority in these forums; indeed experience has shown that local participation draws more attention and engagement from members of the Human Rights Council. The Church could use her network to facilitate these encounters of local and grassroots actors with international society more often.

We are grateful that in many examples we could discover the potentials of this world-wide network of the Church to defend human rights. A precondition for this joint cooperation of local and national organizations at international or global fora is having confidence in the relevance of experiences and messages we have to share with international society. It was summarised in the appeal of the representative of the Pontifical Council for Justice and Peace, Fr Jan Stuyt SJ, to the participants of the conference: "Don't be shy!". This is the message we want to share with everyone: Don't be shy to stand up for the rights of every human being.

March 2014

Bonn, Lusaka, The Hague

Introduction: The Work of Justice and Peace on Human Dignity and Human Rights

Gertrud Casel

When the German Commission for Justice and Peace decided on the working program on human rights in the year 2009, the commission voted for two steps: An initial fundamental debate on how to strengthen and justify the concept of human dignity as the basis for human rights should be followed by an international dialogue. We invited colleagues from European Justice and Peace Commissions to join us in this approach, among them Victor Scheffers from the Netherlands.

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

The invitation to our African partners to join the dialogue was due to several reasons. For us as church actors, the conceptual foundations of human dignity and human rights have been clearly defined and justified in a worldwide context by the Catholic social teaching since "Pacem in Terris" fifty years ago. But in the commitment to human rights, especially in international contexts, different judgements about priorities and mechanisms can be found also among church actors. Prominent examples are the debates about the International Criminal Court, but also about the Church's advocacy work in Geneva. Reasons for debates may lay in different political and cultural contexts. However, these differences indicate the necessity or at least make it appropriate to debate the meanings of human dignity and the political implementation of human rights. In the first workshop in Berlin in 2012 we touched a wide range of topics. We could hear about the amount of good work the Churches and faith based organizations are doing on the ground to better (improve) the human rights situation. We could identify the different levels of national, regional and international politics where people are struggling for the implementation of human rights. But we also discovered a lot of institutions, focussing all on human rights, which are not or only very loosely connected.

In this complex situation our objective to bring together engagement at local and international level and thus strengthen church commitment for human rights makes this dialogue more meaningful. In the following workshop almost exactly one year ago in 2013 in Lusaka we learned more about the different tasks of Lawyer Associations, National Human Rights Institutes, the different levels of Church Structures, the

Embassies etc. and their engagement for human rights. While speaking about the institutions, we also learned that one of the main problems we are all faced with, is the vulnerability of human rights defenders. They are attacked or harassed, they are criminalized by law. Often the importance of their engagement with human rights is not enough rewarded and supported. Especially when it comes to defenders of economic, social and cultural rights they sometimes not even are perceived nor recognized as human rights defenders. We meet here to speak about the support the different organizations including the Church can lend to such defenders. By doing this we hope to strengthen not only support, but at the same time to sensitize the different organizations for tasks and opportunities that normally are not so much in their focus. Maybe our conference could help to give inspiration and to support cooperation between institutions and people, who are present here in The Hague.

I appreciate The Hague as venue, since the International Criminal Court (ICC) is placed here, an institution where there are some different perceptions, when you look at it from African or European perspective. The Netherlands with their longer colonial history are perhaps deeper involved in shadows and lights of this period, maybe more sensitized for the consequences of this period? We will hear more about it in the following session.

It is crucial for the German Commission of Justice and Peace that this human rights dialogue with African partners is a joint venture right from the very beginning—the time of the common agenda-setting in the Berlin workshop, I already mentioned. With the JCTR and Fr Leonard Chiti SJ we could draw on long standing relationship between his Institute and Justice and Peace. In the course of the last years we could establish new relations and deepen older contacts. I'd like to mention especially Florence Simbiri Jaoko from Kenia, who became a key person in our networking and who enabled us to establish many new relations with African partners. Already now I express my gratitude to my colleague Daniel Legutke who prepared and coordinated the various steps of the working group and of the dialogue. And last but not least I thank Victor Scheffers, who participated in our working group from the beginning and finally took the main part of organizing this conference.

Thank you all for coming and may our efforts be blessed and our discussions inspired and fruitfull.

Africa Felix? Internal and External Factors in the History of African Economic Growth²

Pieter Emmer

In looking for the causes of Africa's problems such as poverty, corruption, and dictatorship, many point to the legacy of colonialism. Often that legacy is blamed for the fact that some African countries have the lowest per capita income in the world and that their economies show little growth. How else to explain that Ghana on the threshold of independence in 1957 had a higher per capita income than South Korea and now is far worse off? And that goes for some other African countries as well. It seems that Africa defies the simple law of demand and supply: as it is so poor, wages in Africa should be extremely low and in turn that should make this continent attractive to international investors. If this principle would apply, Africa should be full of assembly halls, textile factories, fruit and vegetable plantations, cattle raising farms, steel factories and so on, and so on. Why this is not the case, is puzzling.

After more than fifty years of giving money, most donor countries now realize that development aid is not the answer and has not provided Africa with a competitive economy. That is why the aid money that still goes to Africa is no longer expected to bring the African economy on a par with the West, but is donated in order to prevent Africa from falling ever further behind. If anything, the expectations about development over the past half century have been reduced to an all-time low and aid is now mainly provided as emergency relief rather than as a catalyst for economic growth. A "Marshall Plan" for Africa makes no sense. In contrast to Europe that was only temporarily affected by the devastation of WW II as it had its educational, medical, and transport infrastructure still in place, Africa has never possessed a sizeable group of educated administrators and industrialists nor an adequate infrastructure for transport and communication. Only in Western Europe and only during the period 1945-1955 has it been possible to achieve rapid economic growth with an extremely modest amount of outside aid. Strangely, that exceptional economic miracle has become the yardstick by which we measure the economic developments of other continents and we seem to have forgotten how long it has taken the West to arrive at a situation in which economic growth—albeit with ups and downs—has led to mass consumption. The massive destruction caused by WW I and II of buildings, roads and railroads in Europe cannot be

² A previous, much shorter version has been published as Pieter C. Emmer, "Africa Addio? Afrika muss endlich in den Spiegel sehen", in: *Der Überblick* 3(2003), 62-64.

compared to any other area or continent as the ravages of war had not affected literacy, the rule of law, and the educational system. That enabled Europe to quickly return to the *status quo ante*. Those conditions were and are still absent in Africa.

Africa's unresponsiveness to the law of demand and supply has caused many Africanists to resort to "special pleading" in explaining the low economic growth of sub-Saharan Africa. Somehow, Africa must have been more adversely affected by history than other continents and traditionally, many have pointed to the detrimental effects of colonialism rather than to the internal factors inhibiting growth in Africa. After WW II most experts in the capitalist West as well as in the communist block believed that all countries in the world could achieve rapid economic growth resulting in incomes per head of the population that were similar to those in the West, once the obstacles to growth had been removed. That colonialism was one such obstacle was shown by the US, one of the first decolonized countries in the world, that had become one of wealthiest countries in the world. That combination seemed clear proof of the fact that economic growth could only be achieved once the obstacles of colonialism had been removed. Over time, however, the view that colonialism had been a hindrance to economic growth was discredited as many of the countries in Latin America experienced much slower growth than the US, in spite of the fact that they had been decolonised nearly as long. In addition, during the 1960's several Asian countries started to show rapid economic growth while they had been colonized longer than most of Africa. Why then would colonialism in Africa have resulted in more obstacles to economic growth than elsewhere?

In resorting to "special pleading", some experts have argued that Africa could not develop like other continents, because the economic differences in Africa are too large between areas that are industrially developed and areas, where there are still hunter-gatherers. Again, this situation is not typical for Africa. When Europe started to industrialize after 1750, it still counted many regions where the economy was nearly self-sufficient and was hardly connected to the outside world. The Soviet Union is another case in point, where primitive agriculture existed next to a developed technological sector capable of sending manned spacecraft into orbit. In this respect, Africa was and is no exception.

Another argument that is frequently advanced in order to explain Africa's present economic predicament pertains to its borders. By just looking at a map of Africa, it seems obvious that several of these borders are artificial and have been demarcated by the colonial powers, some even with the help of a pencil and ruler, and do not respect ethnic and linguistic divisions. Again, we are faced with an example of special pleading, because continents with "natural" borders do not exist, least of all Europe. In fact, no borders have been so detrimental to peace, so inductive to wars and so unresponsive to

differences in languages and customs as those of Europe, while at the same time lumping together ethnicities with little or no cohesion. Nevertheless, in spite of all these detrimental effects, European borders are one of the factors behind its wealth as they created a collection of small and middle-sized states stimulating development and interstate competition for primacy in education, the arts, economic growth and military strength. Why should borders in Africa only have negative effects and none of the positive ones that helped to create welfare and prosperity in Europe?

But what about the slave trade and slavery? Surely, that must have made Africa stand out. The Europeans alone transported more around 12 million slaves out of Africa. Without that human exodus, it seems obvious that Africa would have developed differently. Europe could only have achieved its high rates of economic growth as it did not have a slave trade and slavery. Africa, on the other hand, could not profit from a free labour market as it was destroyed by the slave traders from Europe. In sum, the Atlantic slave trade seems a key argument in explaining Africa's economic stagnation in the past. Yet, in spite of the fact that after 1500 slavery existed in Africa and not in Europe, the negative consequences of slavery constitute another case of special pleading. Many of the recent insights into the history of slavery and the slave trade do not square with the assumption that slavery always and everywhere stunted economic growth. The growth of the cotton South in North America was based on slave labour and far exceeded the growth rates elsewhere in the Western world, and there is good reason to assume that Africa has also profited from the slave trade and slavery economically. First of all, within Africa there existed an important internal slave trade before the Europeans had made contact and this internal slave trade continued after the Europeans had ended the Atlantic slave trade. The internal slave trade enabled the transfer of people from areas with lower rewards for labour to areas with higher rewards much like the internal migration in Europe at the time. Indeed, free migration would have been even more inductive to growth, but that type of migration did not develop, because of the endemic violence that made long-distance travel for individuals in Africa almost impossible. Slaves, on the other hand, migrated in groups protected by the slave traders and their helpers. When internal migration in Europe is seen as a key element in stimulating economic growth, in saving people from starvation and from the devastation caused by wars and climate changes, why should that be different in Africa? And the same beneficial effects that were the result of internal migrations, also occurred when Africans moved out of Africa in order to work as slaves in the New World or in the Arab World. Europe's economic growth has benefitted strongly from the fact that more than 60 million of its inhabitants moved to overseas shores between 1800 and 1960, because those who stayed behind had to share their resources with fewer people. Without the migration to other continents Europe would have been more densely populated, would

have consumed more and saved less and would have experienced slower economic growth. Why should this have been different in Africa? True, the decision to move either internally or to overseas destinations was not taken by the forced migrants themselves but by their owners, but there is every good reason to suppose that the slave owners in Africa based their decision to retain or sell their slaves on the same grounds as the decision of the Europeans to move or to stay put.

Time and again, wars, insurrections, and political unrest are mentioned as obstacles to long-term investments and to economic development. In that respect colonialism can be accused to have slowed growth, because it caused warfare, armed resistance and insurrections such as the Mau Mau movement in Kenya and the Herero rising in Namibia. However, Africa was not unique. European colonialism in Asia also resulted in insurrections, wars and violent repression. Yet, India and Sri Lanka have been fully colonized and now show higher rates of growth than Afghanistan that has not been colonized. That is because colonial rule is known to have not only created violence, but at the same time reduced the violent tensions that had existed in Asia and Africa before the arrival of colonizers. It is even fair to say that—with a few exceptions—colonialism turned Africa into a rather peaceful continent in comparison with Europe, where the violence of the two World Wars far exceeded anything similar in Africa or Asia. Inter-colonial wars were rare, because the benefits of such wars would be small and the costs enormous. With a few exceptions, colonial rule provided law and order and brought public safety to Africa, both vital ingredients for economic growth.

Last, but not least the missionary activities should be mentioned as they seem to have been part and parcel of colonialism and the basis of the present religious clashes in Africa and Asia. To some extent that is true, but had Africa not been colonized, Christian missionaries still would have proselytized much of Africa, while the advance of Mohammedanism in Africa might have been far more extensive and more violent. Like most other continents Africa has been always religiously divided and those divisions seemed to have deepened after decolonisation. That is why there exists no direct link between colonialism and the recent violence between Christians and Muslims in sub-Saharan Africa as similar clashes occur in Egypt, a country that was never formally colonized.

Internal factors inhibiting growth in Africa

If we accept the thesis that the external factors were not the main culprits behind Africa's inadequate economic growth, the dysfunctional administrations, the endemic regional warfare and general lack of public safety, the low investments, and the inadequate infrastructure and health care, which internal factors should we single out in order to

explain Africa's present predicament? Looking at the economic history of the West during the past millennium, I would suggest that we discuss the following factors: private property, the role of the family, agricultural improvements, public safety, schooling, and the role of the elite.

Perhaps the most important difference between the Western world and Africa pertains to the role of the family. It is striking to read how three hundred years ago the captains of Dutch vessels trading on the coast of Africa already indicated that the education of children in Europe differed widely from that in Africa. In Europe, at least ideally, children were part of a two-headed family, and were supervised rather strictly. In Africa, children belonged to an extended family, usually that of the mother, while the father and mother had different sexual partners and, according to the Dutch captains, hardly seemed interested in creating a tightly knit family home. At the time, the African family model seemed better suited to the circumstances than the European family as mortality was very high making a small, two-headed family a very risky model indeed. However, over time mortality declined dramatically in the West and the subsequent period of rapid economic growth the two-headed family seemed the winning institution that prepared the new generations for upward mobility through schooling, the formation of family capital, and family solidarity among a limited number of family members. In Africa, on the other hand, the extended family structure and the ensuing extensive solidarity did not foster saving, the formation of private capital, and the kind of supervision needed to encourage learning. In explaining the economic take-off, the presence of savings to be used for investments as well as a literate population were both vital ingredients of the Industrial Revolution in Europe.

But that is not all, as there were other obstacles to economic growth in Africa. Most arable land in West Africa was communal, not private property. This African arrangement did not stimulate those, who worked the land, to improve its yield. In Europe, on the other hand, the "Industrial Revolution" could not have taken place without an earlier "Agricultural Revolution" improving yields and thus releasing sizeable number of people from working the land and allowing them to move to cities and to the factories. Until recently, Africa was unable to release substantial numbers of its inhabitants from agricultural labour.

The lack of public safety constituted another factor that inhibited economic growth in Africa. In Europe slowly, but gradually more and more states were able to impose public safety in towns and on the roads allowing travellers and goods to move without fear of being killed, robbed or taken hostage. However, wars continued to be fought in Europe causing extensive damage to crops and buildings, and could be so vicious as to cause the depopulation of large areas. The Thirty Years' War (1618-1648) was an extreme example reducing the population in some affected areas by about one third. After the

peace of Westphalia in 1648 whole areas in Central Europe needed to be repopulated. Over time, however, waging war in Europe became the handiwork of a group of professional soldiers, and wars had a clear beginning and end with long periods of peace in between. In Africa, on the other hand, the lack of complicated weaponry might make the impact of wars less detrimental, but that effect was more than offset by the fact that many endless small-scale wars were fought by the male populations at large and not by a professional group of warriors. These endless hostilities were far more detrimental to economic development than clearly demarcated periods of war and peace. Even without wars, the lack of public safety in Africa did not allow for a large-scale bulk trade across long distances. Europe would never have developed an Industrial Revolution with an African level of warfare and public safety.

As far as schooling is concerned, a civilisation without literacy has many more difficulties in introducing techniques and inventions than civilisations based on written documents. That is why Africa never developed anything similar to the new, educated middle classes that were instrumental in introducing and financing new techniques and institutions in Europe. And there is more to add about the exceptional role of the elites in Europe, because in the course of the 19th century these elites started to undermine their own position in society by advocating a general franchise, by stimulating better housing and medical care for all, as well as clean drinking water, sewage systems, and compulsory schooling. In other continents, including Africa, elites were far more self-centred and only tended to look after their own interests not the common good. In that respect European and North American elites were unique and without them the economy of the West would not have shown the exceptional growth curve unknown elsewhere.

Conclusion

In comparing the development of Africa on the one side and that of Europe and North America on the other, it is the remarkable economic growth of the West that stands out. Around 1500 that growth spurt was difficult to imagine as Europeans seemed worse off than the Africans. Europe was plagued by constant warfare, bitter religious strife, and the lengthy struggles for hegemony among the elite of various states, a high population density, rapidly spreading contagious diseases, and a cast-like social structure with little chance for social upward mobility. In comparison, Africans seemed to have a far less hierarchical society even if we take slavery into account. Unfortunately Africa can provide no hard data and it seems difficult to imagine any continent without hunger, warfare and disease at the time, but these ills might well have less impact in Africa as the population density in general was low.

All that changed after middle of the eighteenth century, when the West embarked on a course that deviated from those of all other continents. After an initial period of industrialisation during which life in Europe for the low-income population became even harsher than before, Europe's economy growth started to benefit an increasing share of its population allowing for the development of a welfare state in which contagious diseases, poverty, public violence, and illiteracy have been strongly reduced. Outside Western Europe and North America, the rest of the world continued to develop in a more normal way, i.e. with some economic growth, some decline and no substantial increase in income levels. Seen in this perspective, Africa has not been an exception. There is no need for "special pleading" by pointing to the consequences of the Atlantic slave trade and colonialism for Africa.

When we want an explanation for the fact that at present Africa produces the lowest of all growth curves and not only lags far behind Europe and North America, but also behind the new economic "tigers" in Asia and Latin America, we first need to look at the factors internal to Africa that inhibited and still inhibit growth such as the lack of public security, the low levels of literacy, the self-centred elites, and the weak two-headed family structure. Any effects of the internal and external slave trades in Africa, of colonialism and decolonisation should have worn off by now, while the obstacles to growth internal to Africa seem much more persistent.

Living History in Present Age

Fr Leonhard Chiti SJ

Disclaimer

I have been invited to speak to the notion of a "Burdened past and why the acceptance of the Ambivalence of modern European and African history with Human Rights makes a difference." To begin with I wish to state from the outset that I am not a historian nor a lawyer BUT a development practitioner. I deal with development questions and examine causes and effects that might explain why a given phenomenon affects the citizens of my country Zambia in a positive or negative way.

Given this perspective I want to begin with a couple of anecdotes which I hope to relate to the discourse before us. I will suggest that the Past is certainly useful in appreciating what has gone before and can provide lessons for today and the future. This 'history' clearly needs critical interrogation in order to recover the TRUTH that can then inform our approach to contemporary questions such as development or indeed our discourse Human rights. The past can be a burden if we do not honestly confront it with courage and "flesh out" what is useful and keep it while discarding is not helpful. The past can be enlightening in the sense that it can offer lessons to be embraced or to be avoided. This exercise can sometimes means listening to unfamiliar voices that will speak about the truth in unfamiliar terms that can sometimes unsettle us. However, the truth is rarely comfortable.

Two Anecdotes

Scottish government minister's admission

In January 2014, the Jesuit Centre for Theological Reflection, JCTR, together with its partner, the Kasisi Agricultural Training Centre, KATC, hosted a member of the Scottish government. In his interactions with us he made a startling admission. He posited that the Europeans including his government should shoulder some of the blame for the current problems bedevilling the continent of Africa. He explained that during the time of colonialism many European empires were simply interested in exploiting the natural resources of the continent and cared very little about the development of the colonies. This truth claim is by no means unique. Many development theorists from the past, particularly those hailing from developing nations have said similar things before. What is new is hearing it from a representative of a former colonial master. He could have

been saying this in order to ingratiate himself to his hosts but I think he was candid and honest. What we can draw from this admission is the fact that the current situation of many African countries cannot simply be explained in terms of mistakes, bad governance practices and wickedness on the part of past and current crop of African leaders. The causes can be traced back to colonial times. The man from Scotland is one of those rare European politicians who is willing to explain the problems of Africa in terms of the historical injustices perpetrated by the colonial empires and whose effects are still felt today. I will come back to this point later in my presentation.

A Veteran Zambian civil servant's perspective

At about the same time that the Scottish government minister was visiting Zambia I had a conversation with a retired civil servant who served one of Zambia's former Presidents. This man when asked to comment on what was going wrong in our country placed the blame on the incompetence of the current administration. He looked back to the colonial times and admitted that in spite of their historical injustices there are some good things that the colonial masters bequeathed on nations such as Zambia. He said at the dawn of independence the departing colonial masters taught the incoming administration and bureaucrats on how to conduct government affairs. He claimed that over the course of our independence history we have departed from those sound and effective good governance practices. This, in his view, is partly to blame for the problems the country is facing.

It seems to me this African bureaucrat is doing something that is rarely done in Africa. He explains the problems of our nation in terms of our decisions to depart from standard operating procedures. This was sometimes done in the name of "nationalisation" and sometimes due to sheer incompetence. It is unfashionable to blame local people when it comes to issues of development. The tendency is to point to others.

Two perspectives above are Atypical

The two comments described above are atypical. And they are both interesting in two respects.

The first aspect is the revelation of something that no one talks about a lot these days. This is the notion of a colonial legacy hampering prospects for development and the second aspect speaks about the failures of indigenes to embrace best practices either because of ineptitude or simply for ideological reasons. It seems to me that this is the AMBIVALENCE one can point to in terms of how modern African nation states grapple with how to proceed on the path of development as they look back to the past while

confronting current challenges. The past is frequently dismissed off in negative terms while the present is explained in terms of foreign forces conspiring to limit the ability of nation states to prosper by failing to create conducive conditions to enable developing countries exploit areas of comparative advantage to forge ahead. For instance, many developing countries frequently today bemoan the uneven playing field when it comes to trading practices and complain that the rules of the game are always tilted in favour of the developed north over and against the developing south. In their view this current practice in the trade relations is a continuation of colonialism in another form.

What is typical?

What is typical is that the blaming game which goes in both directions. Europeans blame Africans for their poor governance practices, lack of respect for human rights and sheer ineptitude. Africans blame Europeans for trying to impose a European hegemony and culture on Africa.

Just to provide another angle to the discussion I wish to briefly share an autobiographical note to demonstrate this "ambivalence". When I was growing up in the 1980s every domestic problem was explained in terms of external forces. One common feature of government rhetoric was how the lack of foreign reserves was blamed even on clear mismanagement of state owned enterprises by local heads of such enterprises. The fault was always with the external world. Because many leaders of such enterprises were relatives of the ruling class there was no motivation to perform to expectations when one was appointed to head such an enterprise. When one failed to perform he or she was simply moved to another enterprise. So in a real sense the lack of foreign reserves should be blamed on non performing chief executives. It never was. However the sense we got was it was the fault of foreigners and not locals.

We grew up thinking that in politics and economics all things foreign are bad. This became emblematic of attitude towards our country's foreign relations.

At the same time, many of us dreamed of having a good education that would enable us travel to places such as the United Kingdom, our former colonial masters. The television programmes we liked were imported from the UK and the United States of America. In culture, sports and recreation, everything foreign was good. Even our national leaders frequently flew to European capitals and returned back home laden with many foreign consumption items such as fashionable clothes and electronic devices. Here again we can see some ambivalence in some respects being exhibited in terms of what is good being local and what is bad being foreign. However, in some cases what is foreign is good and what is local is bad.

The truth it seems to me lies somewhere in between the continuum of denial of African contribution to lack of progress and European attempts to perpetuate some form of hegemony not only in Africa but in other parts of the world.

Burdened past and why the acceptance of the Ambivalence of modern European and African history with Human Rights makes a difference

What does the ambivalence represent and what should we do about it?

The two anecdotes described above provide me with an entry point into today's discourse. I wish to state that it is fashionable for externs to point to the failures of domestic leadership for the woes that a developing country is facing. It is equally fashionable for locals to blame external forces for domestic problems. The two men quoted above debunk the notion that foreigners and history are to largely to blame for our current challenges. At the same time the two people also acknowledge that there are some good things that colonialism introduced into Africa.

It must be stated unambiguously that the colonial legacy left Africa and the developing world with some benefits which we continue to enjoy today. The fact that I am addressing this gathering here at the Hague today using a language that is not my own is testament to some of the benefits that came with colonialism. At the same it cannot be denied that by and large the colonial legacy left many developing states with a poor self-identity. It is sometimes ironic to see how many nation states unconsciously strive to "catch up" with the developed world in many aspects such as architecture, culture and recreation to name but a few.

Ambivalence in Human Rights discourse

The ambivalence described above pervades discourse on virtually all aspects of African life. A tension exists in many places which is frequently characterised by resistance, opposition and suspicion. This ambivalence is frequently typified in the following ways:

- Foreign versus local
- Modern versus tradition (culture)
- Religion versus secular

When it suits our national leaders something that is modern is against our traditions and vice versa.

For the purposes of our discussion today, let me quickly move to the issue of human rights. Today, in my country, the notion of human rights is understood in two basic ways. These two ways in some ways mirror the distinction between the first generation

human rights and the second generation human rights. For instance, no one argues against the one set of human rights that contained in the Bill of Rights of our current constitution. Everyone has right to free movement, association, speech etc. There is no dispute on this. However, when speaking about the second generation of human rights such as free access to social services, employment and minority rights, our government officials are reluctant even to discuss these rights openly. And when they do, they either dismiss them as utopian or as foreign impositions.

I think one can see here the ambivalence that has been talked about above. Specifically, many non-state actors have been accused of promoting foreign interests when they advocate for the promotion of minority rights. And yet in human rights discourse all human rights are equal, indivisible, inalienable, interdependent and universal. Our own government has signed up to many international human rights instruments, however when it suits them they reject some of them out rightly because they do not suit our African way of life. In this case to label anything foreign harks back to colonial times.

Another way in which this ambivalence rears its ugly head is the recourse to religion. Once again to use the case of minority rights, many national leaders use religion as an argument against adopting such lifestyles. Religious beliefs are often cited when rejected rights of minorities such as Lesbians, Gays, Bisexuals and transgender while the death penalty is retained on our statutes.

They claim that homosexual lifestyles for instance are against the Christian faith. At the same time, those who use religious arguments participate in corrupt activities depriving millions of Zambians an opportunity to prosper and lead decent lifestyle. In terms of relations between a party in government and opposition parties insults are hailed at those perceived to be against the part in government. The State even uses state institution to limit the enjoyment of civil liberties. So if religion is such an important facet of national life, it certainly is limited only to matters to do with adopting some rights perceived to be of foreign origin. Here again we can discern the same ambivalence displayed above.

From the foregoing it is apparent that the discourse on Human rights is not spared from this tendency to attribute problems to external influences and underplay internal influences. Questions can be asked on where to place emphasis and separate what pertains to modern and tradition, foreign and local and religious and secular.

For example, many Zambians are getting very rich very quickly, and so they want their wealth protected. They want to enjoy the right to private property. However, our traditional values encourages us to share with those who do not have. But when you recall that up to 60% of the population is classified poor then you realise that in this context the modern quest for wealth and security trumps the traditional virtue of community. The right to private property is accepted while the duty to share is cast

aside. In religious terms, many of us gathered here would talk about the common good. So, to argue that some human rights are against religion and therefore we should reject them but ignore the imperative to love your neighbour as yourself smacks of hypocrisy.

What to do with this ambivalence?

The foregoing now brings us to what do about the ambivalence. Is it a question of accepting one and rejecting the other? In an attempt to suggest a way forward I want recall a couple of norms that I frequently employ when faced with tensions of a similar nature in the course of my work. The first norm is Jesuitical and it requires me to practice an attitude and disposition of listening to an argument at face value without rushing to cast judgement on what is being said. I may not be comfortable with what is being said but I suspend my judgement on it. Jesuits are trained to "give the benefit of the doubt" to the other. This is well expressed in the notion of putting a positive interpretation on the words of another. It seems to me that such a tool is useful when we are faced with ambivalences such as the one treated above. The past, in this sense colonialism, cannot be totally bad and the present cannot be totally good. There has to be a give and take.

Secondly, within the wider Christian community, our faith enjoins us to take a both/ and type of approach to conflicting truths. In this respect, there is certainly something valuable in the past and equally something not quite right in the present. So we cannot "throw out the baby with the dirty bath water." Our task is to keep the baby and throw out the dirt water. This is something good in the colonial legacy and it should be embraced. There is something bad in the colonial legacy and it should be rejected.

Equally, there is something good in the local and traditional and it should be retained. However, there is something bad in the local and traditional and it should be rejected.

My position on the topic above is clearly to adopt the Catholic approach (and I dare to say Jesuitical as well) to the ambivalence we have observed between the foreign and frequently colonial and the local and frequently modern African state.

We need to enter into a dialogue and listen to both the past and the present. We should be slow to resolve the tension that exist but seek to learn from it. It seems to me that we are not dealing with mutually exclusive issues. And it also seems to me that there is no real opposition between the past and present, foreign and local, modern and traditional as well as religion or secular. We should avoid falling into the trap of extremism and perpetuate the blame game.

Human Rights Defenders in the Self-Understanding of the Church, Her Teachings and Her Mission

Fr Joseph Komakoma

Introduction

Let me hasten to say from the outset, that the subject I have been given to treat is one that all of us in this room are very familiar with, as faith driven activists in the field of human rights, hence I am in the unenviable position of trying to "preach to the converted". In any case, it is always worthwhile to look back on what we already know and believe in, as far as that can hopefully open up space for new debates.

Secondly, it must be appreciated that the issue of human rights and the ensuing Church teaching on the same is a subject that has become very wide and one cannot do absolute justice to it in a 20 min presentation. There is therefore a very clear limitation to my presentation.

Thirdly, I am approaching this topic from the perspective of a pastor and not that of an academic since the defence of our human rights is basically one of our fundamental duties we have as Christians, which requires that we constantly engage in a process of self-reflection regarding our commitment to this aspect of our faith.

With that said, it is my contention that before one begins to discuss the subject of Human Rights Defenders in the context of the Church's self-understanding, one must inevitably go back to the basics of why, in the first place, the Church takes the subject of human rights as constitutive to her mission.

The Church in the Modern World

We all know that the Social Doctrine of the Church, or as it is called in our circles, the Church's Social Teaching (CST) underpins the Church's involvement in socio-economic, cultural and political issues. Needless to say why it is therefore imperative to be very familiar with this teaching if we have to make sense of what would be the Church's stance vis-à-vis human rights defenders.

What we have codified as the CST has been a product of the Church's self-reflection or self-understanding over a long period of time, using the Scriptures as the motivation and basis for reflection and social intervention.

The Church's position in the world, for want of a better term, is the fundamental question that the (Catholic) Church faced some 50, years ago (1963-1965) during the Second Vatican Council. The result of this reflection was the production of a Document

called, *The Pastoral Constitution of the Church in the Modern World, (Gaudium et Spes)*. The famous opening words to this document are well known:

"The joy and hope, the grief and anguish of the men (and women) of our time, especially of those who are poor or afflicted in any way, are the joy and hope, the grief and anguish of the followers of Christ as well."¹

Without belabouring the point, it is clear that the Church cannot disengage from the world. The Church sees itself as being part of the world and shares in the day to day life of the world through the lives of individual Christians. In engaging with the world in the various spheres of human activity, the Church does not come with blue prints, or in other words, its own versions of political, economic, cultural or development models. The Church only plays her rightful role of being the "conscience of society". In other words, the Church applies biblically motivated moral principles to the various spheres of life (political, economic, social cultural...) with the sole interest of ensuring that the human person and the protection of the dignity of human life is at the centre of all social endeavours.

The Order Created by God–Centrality of the Human Person

The Church's involvement in the social sphere, endeavouring to promote social justice, protecting human life and dignity, and preaching solidarity and participation of all, comes from the Church regarding itself as a steward for God's creation. As a good steward, the Church strives to ensure that God's creation is not desecrated by human action.

In his famous Encyclical, "*Pacem in Terris*" (Peace on Earth), Pope John XXIII raised fundamental questions about interpersonal and structural relationships, especially those that encompass **human rights** and **duties** and the relationship between citizens and public authorities. He contended that these were questions that all societies are always confronted with. They therefore need to be constantly evaluated so as to remain relevant.

¹ Gaudium et Spes, #1, see *The Pastoral Constitution of the Church in the Modern World*, Vatican II Documents, in: Flannery Austin, O.P (ed.), *Vatican Council II: The Conciliar and Post Conciliar Documents* (Mumbai, 2004).

The Pope's central theme was that the **peace** that all generations eagerly yearn for, here on earth, can only be firmly established "if the order laid down by God" was "dutifully observed".

What is this order laid down by God?

To fully understand *The Order Laid Down by God* is to realise that we are only **stewards** for God's wonderful creation, hence the need for us to be God-fearing. Once we are critically aware of our stewardship, it becomes possible for us to take good care of the wonderful creation, entrusted to us by God. Unfortunately we humans have sullied God's creation due to our greed, our craving for power and control, our pride, our carelessness, and our self-centredness.

Pope John XXIII reminded us that, regardless of our faults, we human beings are at the core of God's creation. We are there because we share in the image and likeness of God as we are told in the Book of **Genesis (1:26ff)**. Therefore, it goes without saying, that each human being has a special dignity that no other human being, government, or international organisation, can take away.

The Encyclical has remained a must-read document for those who wish to understand the Church's Social Teaching (CST) regarding the rights and duties between individuals, between the citizens and the state, as well as between the states themselves.

The *order laid down by God* can only be attained if we human beings chose to live by Biblical values, values of justice, peace, fairness, love, solidarity, respect for human dignity, protection of the environment, positive tolerance, etc. These values are strengthened by such principles as the **common good** and **subsidiarity**. These are values and principles that make it possible for us to live together as a society.

When societies endeavour to follow this laid down order, peace and human advancement become possible. Failure to follow this order leads to chaos and social upheaval. For me personally, this is what makes action aimed at defending the *Order Laid Down by God*, an imperative for all Christians, let alone human rights defenders. This is what probably prompted the Catholic Bishops meeting in a Synod on the theme of Justice in the World in 1971 to make a famous conclusion, that:

Action on behalf of justice and participation in the transformation of the world fully appear to us as a constitutive dimension of the preaching of the Gospel, or, in other words, of the Church's mission for redemption of the human race and its liberation from every oppressive situation [Art. 6]

Christian Calling—A Call to Action

Indeed, the Church has received from Christ the mission of preaching the Gospel message—The Good News! This is why the Church has a right, and a duty, to courageously proclaim justice and denounce all instances of injustice at interpersonal, social, national and international level.

This Christian calling, which is dedicated to promoting the **Order Laid Down by God** is not a passive way of life. It is one that is active by definition. Christ himself defined his mission as one that was action oriented.

“But you shall receive power when the Holy Spirit has come upon you; and you shall be my witnesses in Jerusalem and in all Judea and Samaria and to the end of the earth.” [Acts 1:8]²

Being witnesses to the Christian message means sharing in the Mission of Our Lord Jesus Christ who stated at the beginning of his public ministry that,

“The Spirit of the Lord is upon me, because he has anointed me to preach good news to the poor. He has sent me to proclaim release to the captives and recovering of sight to the blind, to set at liberty those who are oppressed, to proclaim the acceptable year of the Lord” [Luke 4.18-19]

To be called a Christian means to be identified as one who leads a particular way of life, a life of full commitment to Christ’s own mission. This is the mission that human rights defenders ought to embrace. It means always working to:

- Protect, promote, and defend the fundamental dignity of the human person and the equality of all human beings
- Bring about Social Justice and Peace, and the integrity of creation
- Defend and build Solidarity particularly with those that are on the margins of society, the underprivileged and vulnerable.

² All Biblical Quotations are from the Revised Standard Version (RSV) of the Bible.

Respect for the fundamental dignity of the human person and the equality of all human beings

The United Nations holds that fundamental human rights are inviolable, inalienable, and universal.³ This is a recognition that these rights are not gifts we get from the state but birth rights. By virtue of being born human, every person enjoys these rights regardless of race, tribe, nationality, religious affiliation, gender or physical outlook.

However, beyond what the United Nations recognises, we Christians take an interest in fundamental human rights because we believe that these rights emanate from the fact that each and every one of us is made in the image and likeness of God.⁴

To violate these rights means we are going against God's own design for the wellbeing of the person. Hence the everlasting fight to promote, defend and protect them.

It is this which makes it imperative for Christians to see to it that the right to life, shelter, education, food, and various freedoms are safeguarded at all times. We even go to the political arena to defend and promote these rights.

Working to bring about Social Justice and Peace

In emulating Jesus Christ, we Christians are called upon to announce the Good News of the *peace of Christ*. Note that the peace of Christ is not the same as the tranquillity that comes about when there is absence of conflict, but to be understood as the peace that comes about when there is presence of all those conditions that allow people to attain their full potential.

The Christian must endeavour therefore to ensure that people, especially the most vulnerable are given the necessary space in which they too can attain their full potential. It is absurd, for instance, to speak about economic and social progress in the absence of economic justice. If, for instance, the majority of the people do not share in a claimed economic boom, then that is meaningless in as far as the Church is concerned. The Church believes that the economy, and all social endeavours, are there to serve the human person and not the other way round.

³ Universal Declaration of Human Rights, 1948.

⁴ Genesis 1:26ff.

Human Rights and Duties

Last evening, during Mass, *Fr Sjaak de Boer*, the Parish Priest of Our Saviour Parish, quietly reminded us of the importance of making a balance between human rights and duties.

The Church promotes the principle of the Common Good in recognition of the social nature of humanity. Living in community brings about the responsibility to look for, and work towards, those things that are beneficial to society as a whole.

The Christian vision of society is one that is oriented towards establishing the reign of God on earth. This goes beyond working only to cater for our individual needs, or limiting our efforts to the wellbeing of our immediate family, but oriented towards creating conditions in society that allows all humanity to flourish.

In the modern society that is more and more characterised by the quest for personal benefit, where individualism is being promoted as the ultimate good, it can only be due to the contribution of Christians—by social action, that this can be moderated.

Challenge for Human Rights defenders

From the preceding reflection, it seems the work for those of us in the realm of defending human rights is well cut out.

However, one of the initial challenges we face is ignorance of the Truth. This is the truth that is promoted by the Social Teaching of the Church. To a large extent this teaching remains esoteric to those of us who are activists in the justice and peace circles.

Try to speak about the meaning of the common good, of the principle of subsidiarity, the full meaning of solidarity, economic justice etc, to an ordinary catholic, you get a blank stare—even among the most educated Catholics! It begs the question therefore that we have still not fully answered how we can go about to popularise this wonderful teaching within our Church and to the larger society.

Furthermore, and speaking from my own personal experience, when you become fully engaged and committed to the cause of social justice, it is not uncommon, within our own Church, to be accused of dabbling in politics. Hence, the challenge to mainstream the social justice ministry is essential to the preaching of the Good News.

True Discipleship

Jesus left us a commandment; to love each other as he loved us. By this, He told us, everyone would know that we are his disciples. [John 13:34-35]

Furthermore, a true disciple is one who makes a fundamental shift towards the moral order proposed by Jesus Christ in every way possible. Hence, the following radical demands that Jesus put forward:

- Whoever comes to me and does not hate father and mother, wife and children, brothers and sisters, yes, and even life itself, cannot be my disciple. [Luke 14:26]
- Whoever does not carry the cross and follow me cannot be my disciple. [Luke 14:27]
- So therefore, none of you can become my disciple if you do not give up all your possessions [Luke 14:33].

Discipleship is not a blind following of Jesus; it is a conscious decision that comes from acknowledging who we are as Christians, and accepting to follow in the footsteps of Jesus' life. This kind of faith comes with making sacrifices in life.

It is not an easy task, but it is one that we cannot shy away from regardless of the challenges we face, including those that are life threatening.

Christian history is not short of role models, it is littered with thousands of saints and martyrs from whom we can draw courage and inspiration.

The Loneliness of the Long Distance Runner... parallels with human rights defenders

Those of us who are of a certain age may remember the wonderful movie entitled "The Loneliness of A Long Distance Runner".

This was a movie about the anxieties that befall a long distance runner. Without an inexplicable quest to reach the end, it is a huge struggle to keep running when the end is so remote that you begin to ask yourself whether it is worth the effort. It often happens that you may find yourself running alone with some so far ahead of you that you cannot even see them and the same for those behind you. You only listen to your own footfalls and breathing.... You become you own motivator....

I see parallels with the work of being a faith motivated human rights defender. You often find yourself working in a situation where results for your efforts are not often apparent. There are times when it becomes very lonely. This is not to speak of the risks and sacrifices that you have to make.

Without a deep commitment to Christian values and pursuing the Truth of the Gospel one can become easily disillusioned and give up the fight.

Christian Hope

Pope Benedict's second Encyclical *Spe salvi* (In Hope we are Saved) gives us a platform from which we can look to the future with confidence.

What does being saved in hope mean? The Pope explains himself in the introduction to his Encyclical when he says:

Redemption is offered to us in the sense that we have been given hope, trustworthy hope, by virtue of which we can face our present: the present, even if it is arduous, can be lived and accepted if it leads towards a goal, if we can be sure of this goal, and if this goal is great enough to justify the effort of the journey.

This is the Hope that comes from our Faith. As Christians we believe that we have a future that we are sure about because of the person of Jesus Christ, even before we have an experience of what that future holds for us (knowing without knowing). This is the "**Good News**" that we preach.

We also know with certainty that the "Good News" is life-changing and life-sustaining. It makes things happen. This is the hope that makes it possible for us to cope with difficulties of all kinds. To be without this kind of Hope, is to be without God.

Development of Human Rights Obligations in the Field of Economic, Social and Cultural Rights

Sebastiaan van der Zwaan

Millions of people around the world continue to suffer from violations of economic, social and cultural rights (ESC rights), including abuses of the right to food, water, sanitation, adequate housing, health, work or education. As a Justice and Peace commission, JP Netherlands has worked with many justice and peace commissions and human rights defenders, and has supported them in developing strategies to claim their Economic, Social and Cultural rights. Developments of human rights obligations in the field of economic, social and cultural rights can, from our point of view, best be looked at by highlighting the developments that we see in the day to day work of our partners.

First of all we see a development in balancing human rights and business in which economic interests gain importance—also in our country—and prevail over human rights obligations. And although there is much lip service in western countries in support of economic, social and cultural rights, in practice they are often ignored. An important example of this is the large-scale violation of the right to water and land in countries like Myanmar, South Sudan or Sudan. Abusive policies are often carried out in the name of development: for example being forced from your land to make room for large investors. And they have led to numerous violations of ESC rights (including the right to water and land, but also access to food and adequate housing). This in turn has special negative impact on the basic needs of local communities. A second example are the labor conditions in the garment industry in countries like Bangladesh that continue to be violated by allowing western and local companies to continue to sell garments that are produced under degrading circumstances that are a violation of the right to good working conditions but also the right to health.

Another important issue that remains to be an obstacle for the enjoyment of Economic, Social and Cultural rights is the continuing resistance to equal enjoyment of economic and social rights of men and women in southern and northern countries. Especially equal access to education, equal pay for equal work and equality in the right to property are violations of ESC rights that we often see in our work.

A general development we see with regard to the work of our partners is that global counter terrorism rules and regulations have forced human rights defenders to work in a shrinking space when defending human rights. Important to stress is that human rights defenders working on civil and political rights and economic, social and cultural rights are equally challenged by state and non-state actors in this regard. Examples of shrinking space are trends of state sponsored defamation campaigns used to portray HRD's as a

threat, legislation introduced in more and more countries to undermine the operating space for HRD's and thirdly there is a negative development of increased surveillance and censorship of human rights defenders.

Although I describe a negative trend with regard to the development of Economic, Social and Cultural rights, I would also like to stress that Economic, Social and Cultural rights are more important than ever.

The trend highlights the need of a human rights approach, especially focusing on Economic, Social and Cultural rights, with regard to a development and (human) security agenda in the coming decade.

Only by implementing Economic, Social and Cultural rights we can work on the root causes of poverty and truly address the issue of inequality and exclusion.

Human rights, but especially Economic, Social and Cultural rights also give us standards to address not only States but also local and international corporations and organizations.

Only with Economic, Social and Cultural rights we ensure that we reach and improve the position of the poorest and most marginalized in our world.

And to underline the importance of this message I would like to quote Pope Francis who said: " The unjust distribution of goods persists, creating a situation of social sin that cries out to Heaven and limits the possibilities of a fuller life for so many of our brothers." (And sisters I might add).

Special Challenges in the Protection of ESC Rights Activists

Fr Rigobert Minani SJ

Introduction

Promotion, defense and cooperation in economic, social and cultural rights, will be key words of my intervention. I will focus on some area to enhance cooperation between human right activists of Africa and those of other continents. I will try to show that it is very difficult to promote and defend Economic, Social and Cultural Rights from the grass roots level only. Today more than yesterday we need strong cooperation with the international level.

They are a broad category of human rights guaranteed in the **International Covenant on Economic, Social and Cultural Rights** and other legally binding international and regional human rights treaties. The majority of countries in the world are party to a legally binding treaty that guarantees these rights.

I will explore one particular right, "**rights at work or rights to work**". In general this means right to just and fair conditions of employment, protection against forced or compulsory labour and the right to form and join trade unions.

In order to fully understand challenges African human rights activists are facing daily to defend these rights one should remember what happened in South Africa the 16th August 2012. On this day South African Police shot and killed 34 workers of the platinum mining belonging to Lonmin Corporation's mine in Marikana, South Africa. This massacre of, August 16 2012 brings to mind the worse time of Apartheid. The question one may ask is how come that, almost 20 years after the end of Apartheid, this could again happen in South Africa?

Those killed were mineworkers who were striking and were asking better salary. More than one year later, the official investigation Commission of the massacre is still ongoing. But many South Africans do not hold much confidence in the government's ability to examine its own complicity in these events.

To understand what happened one should examine complexity and roles played by different actors:

- The African National Congress,
- The mine company,
- The National Union of Mineworkers....

to understand what is hidden behind the massacre of those trying to voice for their Economic, Social and Cultural Rights.

Marikana massacre reveals that defending Economic, Social and Cultural Rights is a deadly issue today in many part of Africa, as it has happened in 2014 when Anvil mining gave logistic support for the massacre in Kilwa, Katanga, DRC. While continuing our effort on defending political and civil right, there is need today in the continent to focus on Economic, Social and Cultural Rights.

Political and Civil Rights in Africa

From the independence defending Political and Civil Rights has been at the top of the agenda of many organizations and activists in Africa. Today the assessment of 50 years of independence that more and more African countries celebrate **highlights the progress in this field.**

The democratization of many countries in Africa, for example, is one of the elements of emerging progress. Between 1989 and 1994, out of 54 African countries, 38 have held competitive elections. Since then, almost all countries have organized elections at least once. So after only a little more than twenty years of the inauguration of political pluralism, Africa has made remarkable progress.

Cout d'Etat has been banned by Africa Union. Regular elections in several countries are held as a routine. **Peaceful change of leadership** is also now more frequent than before. And there are signs (as shown in Madagascar, Mali, Guinea, Central African Republic) that **it is becoming increasingly difficult for leaders to ignore this practice.** Today we can say that regular holding of elections and the alternation in power are indicators of the growth of democracy in the continent.

But the same time we have to affirm strongly that democracy cannot be defined only by elections. In other words there is not genuine democracy when the majority of youth do not find a Job, when people do not have enough to eat.

Democracy and Social and Economic Rights

The challenge to come is not only to overcome pre and post election violence. Democracy in Africa must also be built **on the rock of accountability and economic growth.** There will not be sustainable democracy in Africa if Social, Economic and Cultural Rights are not respected. If there is no **right at work**, particularly available work, just and fair conditions of employment; **right to education**, specially ensuring that primary education is free and of acceptable quality, **right to healthy living conditions,**

right to adequate housing, right to food, right to water. For all these rights, Africa still has a long way to go.

Long way to go in Promoting and Defending Economic, Social and Cultural Rights in Africa

Today Africa has an average growth of more than 5%. Oil, gas and mineral resources of Africa attract more numerous foreign investments. The demand for natural resources in China and other emerging markets boost like never the export prices and the trend is not currently showing signs of slowing. New prospecting operations on the continent have reported much larger reserves than that foreshadowed by prior knowledge, and several countries in Sub-Saharan Africa discover themselves a vocation of countries producing of oil, mining or forest.

Today in Africa, mining industry drains billions and could be a powerful engine of development. Indeed it is the first time in its history of the continent that we have in our hands the possibility to develop and respond to Economic, Social and Cultural Rights.

Paradox

One would have expected that the gross increase of wealth has an impact of improving peoples lives. But paradoxically countries rich in natural resources are classified as the last in the human development index of the World Bank. On a total of 187 countries, Gabon is in the 106th position, Equatorial Guinea the 136th and DRC closing the list at the 187th position. Nine of last twelve on the list of the index of human development are countries rich in resources.

Reversing this trend is an existential question

Africa should not, however, be mistaken. This situation will not last forever. Africa must consolidate now to avoid the risk, once emptied of its resources; it becomes like a squeezed lemon good for the trash.

Stewardship, equitable and efficient use of its resources is now able to lift millions of Africans out of poverty over the next decade, while giving hope to future generations. It could make the necessary income to invest in agriculture, food security, employment, health and education and be champion in promoting, defending social, economic and cultural rights. **To Waist this opportunity will be catastrophic, unforgivable and inexcusable.**

Urgency and Challenges of Defending Economic, Social and Cultural Rights

Many African researchers have discovered in a recent report published under the leadership of Koffi Annan by an international panel on May 10, 2013 entitled "Africa progress panel report" that the boom in the mining and natural resources exploitation in Africa causes a number of adverse effects on the continent that must be contained at all costs and rapidly.

Referring to this report we can note:

- A wide gap develops between the wealth generated by the resources and the well-being of the population.
- Many countries do not ensure that the benefits of growth are distributed equitably in society.
- The oil industry and the mining sector operate as islands outside the national economy. They create few jobs and do not have many links with local businesses.
- The raw minerals continue to be exported without bringing added value to the production.
- Some mining companies generate profits which do not benefit the government revenues due to excessive tax benefits, tax evasion and under-valuation of assets.

Among these adverse effects, we may draw particular attention to the issue of tax evasion because, according to the report of the Panel, Equity in Extractives:

- The majority of businesses in Africa operate in a secret environment that suits the companies and African leaders.
- Too many international investors use companies registered in tax havens and offshore centers and their transactions are mostly with their own affiliates, which permit them to hide the bulk of their profits.
- Tax evasion, illicit transfers of wealth and sophisticated practices that set unfair prices are supported by global trading and financial systems, far more powerful than the states.
- The widespread use of offshore companies and shell companies prevents African tax authorities from properly assessing the benefits and ensuring the tax levy.
- By itself, the mispricing of trade losses by Africa in the form of illicit capital outflows is greater than what it receives in foreign aid and foreign direct investment. The proportion is 38 billion over 32 billion of cooperation.

Need for cooperation

On the economic point of view, the consequences of such practices are tragic. Companies get so outrageously rich and some have become far richer than the states. Under these conditions, possibility of action for African economic political leadership is very limited. Two cases drawn from among others to help us to understand:

- Shell Oil Company in 2012 had an income of 467.2 billion, while Nigeria where it operates, had only 224.0 billion as gross domestic product, Angola had 104.3 billion and Gabon 17.1 billion.
- The mining company called Glencore realized in 2012 an income of 214.4 billion compared to Zambia where it operates that had 19.2 billion GDP and the DRC with an annual budget of \$ 7 billion in 2012.

It is this unbalance between political power and economic one that makes understandable the silence on Marina massacre.

Possible actions

Promoting Economic, Social and Cultural Rights

- Africa cannot be a reserve for others and not for Africans themselves. It is urgent to encourage states to develop their own vision on the use of natural resources. Exploitation of resources should be at the service of sustainable growth and human development. We are not the last survivors of the planet. We cannot do what we want with these resources.
- Exploitation of resources in Africa should tally with the local economy. It should create jobs, promote local jurisdiction, to participate in the diversification of the economy in order to help the continent get out of dependence in medium-term on mining products which by definition are not eternal.

Defending Economic, Social and Cultural Rights

- The wealth produced today should be distributed fairly and participate in the fight against poverty. Economic growth must be inclusive and benefit the people.
- The resources generated should be directed to investments in health, education and the necessary social protection, as well as to the infrastructure required to support dynamic growth.
- These actions will need to sustain and reinforce all the campaigns against corruption—a deadly activity in many countries.

Conclusion

We have seen the task ahead of us is enormous. But the potentials for this task are also available. In 2025, Africa will have a population of 1.2 billion. Sensitized, equipped with skills and opportunities to these questions, the population of Africa predominantly young, could become a tremendous force for change.

That is why we insist that these issues are known by the majority and African and especially those involve in Defending Economic, Social and Cultural Rights governments, Human Rights activists, communities of business, trade unions, churches, youth etc.

If however the current generation refuses to give young people opportunities to reverse the curve and realize its full potential, today's children will be lost generations that will make us all pay for the current poor governance. That is why for me promoting and defending Economic, Social and Cultural Rights is more than just any challenge it is an existential challenge.

The Work of National Human Rights Commissions

John Kapito

The Malawi Human Rights Commission (MHRC) is an independent National Human Rights Institution established under section 129 of the Republic of Malawi Constitution. Its mandate is to promote and protect Human Rights in the broadest sense possible and to investigate violations on human rights at the request of concerned people or on its own volition; The Malawi Human Rights Commission is also regulated by an Act under Chapter 3.08 of the Laws of Malawi.

Economic Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights was adopted and opened for signatures by the General Assembly on 16th December 1966, and entered into force on 3rd January 1976. However Malawi only Ratified the Economic Social and Cultural Rights Covenant on 22nd December 1993.

Malawi has never submitted a State Party Report on Economic, Social and Cultural Rights to the specialized agencies of the United Nations General Assembly; this has seriously affected the promotion and monitoring of the covenant.

Signing and Ratification of international Instruments in Malawi

The Signing and Ratification of International instruments in Malawi is done by the Executive Arm of Government and this has had its challenges because once the process of signing or ratifying is done the information is not transmitted to other arms of Government such as Parliament, Judiciary and other key relevant stakeholders such as the Human Rights Commission those that are involved in the promotion and protection of Human Rights.

Documenting of Economic, Social and Cultural Rights

During my tenure as Chairperson of the Human Rights Commission it was observed that there was a sharp rise of complaints on Economic, Social and Cultural Rights despite the State not committing resources for the promotion and protection of Economic Social and Cultural Rights.

The Principle of progressive realization has had its challenges in the promotion of Economic, Social and Cultural Rights as the State has continued to ignore its core

obligation to put in strong measures: to protect its citizens from economic, social and cultural failures. The failure by the State to enact strong legislation, the absence of laws and establishment of enforceable rights with judicial remedies within national legal systems on Economic, Social and Cultural Rights has subjected many Malawians fail to realize their rights under this covenant.

Domestication of Economic, Social and Cultural Rights

There is always a challenge among litigants who in one or the other believe that Economic, Social and Cultural rights are not justiciable however of late we have noted that Economic, Social and Cultural Rights like all other human rights do impose an obligation upon States, However of late the courts and other adjudicating bodies are now able to determine on them on case by case basis.

The Judiciary is also devising innovative legal strategies to enforce Economic, Social and Cultural Rights and the judicial activism is becoming a trend in Malawi in the absence of strong enforceable laws.

The Pretoria Declaration on Economic Social and Cultural Rights in Africa

The (2004) Pretoria Declaration has been one tool that advocates for Human Rights Defenders in Africa continue to use to demand implementation of the ESCR. The Pretoria Declaration was a product of Twelve African States, Commissions and Civil Society groups having recognized the marginalization and lack of implementation of Economic, Social and Cultural rights. They made a number of recommendations and observations. Among the key observations were the following:

- Lack of good governance among African States;
- Lack of political will;
- Corruption, misuse and misdirection of financial resources by African Governments;
- Failure to ensure equitable distribution of income from its natural resources by member states, i.e. mining (a good classic case study is the Kayelekela uranium mining in Malawi by Paladin of Australia);
- Illiteracy and lack of awareness among many Africans;
- Under development of social amenities;
- Lack of protection of indigenous knowledge;
- Failure to enforce judicial decisions against the State;
- Privatization of essential services;
- Conditionality of aid and unserviceable debt burdens.

These are among many challenges that National Human Rights Institutions and Human Defenders in Africa continue facing. And the Pretoria Declaration (2004) went further to demand all countries to ratify the covenant and incorporate the same into domestic laws to fully implement the provisions of the Regional and International Treaties on Economic, Social and Cultural Rights, Develop and implement National Action Plans which set out benchmark indicators for the progressive realization of Economic Social and Cultural Rights and review all laws that impinge citizens from realizing the Economic, Social and Cultural Rights. The challenges still remain a hurdle in the work of National Human Rights institutions and Human Rights Defenders in Africa as very little progress has been recorded.

Benchmarks for Economic, Social and Cultural Rights

The continued use of the elusive phrases and concepts in the covenant such—as each party is to ***“Achieve progressively”*** the full realization of the rights recognized in the covenant “to the maximum of its available resources”—makes it difficult for Human Rights Defenders and the public to have a methodological framework and requirement to monitor, evaluate and hold the State accountable and hence it has made State Party reporting on the covenant a challenge by many poor States like Malawi.

While Benchmarking for Economic Social and Cultural Rights still remains a challenge by many member States including Human Rights defenders due to their inadequate representation of society. A poor country like Malawi would find it hard to measure the labor market insecurity in a broader way given that would require extending the measure to the wide range of community and voluntary work taking place outside the labor market and its impact to economic and social contribution.

Corruption is one key challenge in most countries that continue to affect the work of national Human Rights institutions and Human Rights Defenders in the realization and implementation of Economic, Social and Cultural Rights. It is the worst enemy for Economic Social and Cultural Rights. Corruption continues to take away scarce resources that could have been used in the full realization of ESCR. For example it is reported that almost 30% of the Malawi budget is lost to corruption.

That is money that could have changed the lives of many Malawians to access education, health services, adequate and nutritious food, and access to employment opportunities. The failure and lack of capacity by Human Rights Defenders to monitor national budgets and conduct awareness on Economic and Cultural Rights has also contributed significantly to failures to hold member States accountable and raise public demand on Economic, Social and Cultural Rights.

The Support of Human Rights Defenders through Regional and International Human Rights Commissions

Clement Nyaletsossi Voulé

Since 1948, the Universal Declaration on Human Rights recognised economic social and cultural rights on a par with the civil and political rights. However the international community only started to mobilise its effort to implement these rights in recent years.

The adoption of the international covenant on ESCR in 1966 didn't change the situation significantly. It took many years for ESCR to find their place in the international human rights system and for defenders working on ESCR to identify themselves as defenders and to be effectively recognised as such. In fact as recently as 2010, the UN Special Rapporteur on HRD noted that: **"their work is not always recognised as human rights work"**.

Yet the work of ESCR defenders is becoming more important not only at the community level but also around international and regional human rights bodies. Their interaction with human rights experts in these bodies help to hold states to account for their international obligations to promote and protect the economic social and cultural right of their citizens.

Community and national levels

ESC rights defenders work predominantly at the community level, where they raise citizen's awareness about their rights to land, education, water and sanitation, to name a few. They are key to help communities to organize claims of such rights and are the key advocates for community and national level implementation of their governments' obligations.

ESC rights defenders are often the voice of the voiceless. Their struggle often focuses on structural inequalities. They are challenging established relationships of power between different segments of society.

From Sierra Leone to South Africa, from India to Brazil these defenders work to ensure that those who are most in need and are most marginalized can find a life of dignity and freedom from want.

International & regional levels

The recognition of ESC defenders role as activists has grown slowly but surely. As this recognition has expanded so has the defenders own identification as part of a global

human rights movement. Defenders have recognized that it is strategic and necessary to construct their struggle in terms of enforcement of human standards, with a strong focus on states' obligations.

As the ESC rights defenders movement has grown in strength and impact, regional and international bodies have developed their own jurisprudence and understanding of the content of these rights to reflect this growing evolution. ESC defenders advocacy at UN and regional levels has led to the appointment of experts on specific rights to engage governments about their performance, to assist in the interpretation of these rights and to promote their realization in close coordination with ESC rights defenders.

The UN now has several experts specifically covering issues such as right to adequate housing, the right to food and the question of extreme poverty. With the help of ESC rights defenders these mechanisms help link the international system to the community and help mobilize international attention for local struggles. These experts help to increase international pressure for change on the ground.

In the UN's Universal Periodic Review mechanism, where each member states rights record is reviewed by its peers, ESC rights are frequently discussed and opportunities for ESC rights activists to advocate for enforcement multiply.

Another less political and more technical tool available to ESC rights activists is the UN Treaty Body system. The UN Committee on economic, social and cultural rights, in particular, monitors how states parties to the Covenant on ESC rights enforce these rights. It is ESC rights defenders information that provides the basis on which the Committees' experts assess a state's performance. Based on each review, the Committee lists the recommendations that the State party should abide by to meet its obligations. The Committee's conclusions and recommendations can be used as roadmaps for ESC rights enforcement at the national level.

The adoption of a new protocol to the Covenant on economic, social and cultural rights in 2013, now also makes it possible for ESC rights defenders to bring individual cases of violations to the Committee, if the State party has acceded to the protocol.

In the African context, defenders advocacy has led the ACHPR to set up:

- a Working Group on economic and social rights to guide the ACHPR's actions in this field.
- The Working Group developed a set of Principles and Guidelines on economic, social and cultural rights focused on the enforcement of such rights on the African continent. These guidelines explicitly recognise in the point 41 and 42, the key role that African ESC rights defenders play in the promotion and protection of these rights on the continent.

In ACHPR, ESC rights activists have also been instrumental in the appointment of new expert bodies to monitor ESC rights—such as the working group on extractive industries in the African continent. Many resolutions focusing on ESC rights are also the work of tireless advocates. Resolutions focusing on issues such as human rights and the management of natural resources help raise awareness about State's obligations in this field, even vis a vis non state actors. The ACHPR Special Rapporteur on HRD has recognized the impressive role of ESC rights defenders in Africa and the need for their protection.

The risk faced by human rights defenders who work on ESCR

As the impact of ESC rights defenders has grown so have the risks they face for doing their work. They are targeted not only by state agents but also by Non State actors whose interests are threatened.

According to the UN Special Rapporteur on HRD, "Violations of their rights seem to take all the forms that violations of the rights of defenders working in the field of civil and political rights take." There are some differences though, perhaps the most important being that HRDs working in the field of ESCR often have a harder time having their work accepted as human rights work.

Defenders working on issues in connection with extractive industries and construction and development projects have faced risks of attempted killings, attacks, assaults and ill-treatment, excessive use of force by the police during demonstrations, threats and death threats, and different forms of intimidation and harassment.

For example in February 2014 a number of Russian civil society activists protesting against deforestation and environmental damage associated with construction projects for the Sochi Olympics were arrested and charged with offences such as "petty hooliganism". A February 2014 Human Rights Watch report on the impact of mining on human rights in Uganda found that "the government's increased focus on seeking foreign investment has been marked by increased hostility to civil society working on environmental, land, and corruption issues. " The report documents a range of attacks against NGOs, such as the Uganda Land Alliance, and concludes that "NGOs seeking to educate the public about the value of their land, community processes, and compensation rights face a variety of problems from government officials, including threats of deregistration, accusations of sabotaging government programs, and arrest. " The non-justiciability of ESC rights makes it harder for ESC rights defenders to enforce state obligations. It pushes them to find new and creative ways to ensure enforcement, through social protest and other means, which increases the risks they face as activists. But as their movement spreads so has international attention to their struggles.

Today the African and UN systems explicitly recognize the work of ESC rights defenders and advocate for the protection of their rights as defenders. Cases of ESC rights defenders being targeted or threatened are frequently taken up by regional and UN bodies with concerned Governments. The UN has even appointed a Specific Rapporteur on the right to freedom of association and assembly, who advocates regularly for ESC rights defenders' peaceful actions to be protected by States.

Indivisibility of ESC and civil and political rights

The Arab Spring has taught us more than ever, that the separation between ESC and civil and political rights is becoming more and more blurred. The struggle of ESC rights defenders is intimately linked to the struggle for civil and political rights. ESC rights struggles often mobilize larger segments of society but claims for democracy; good governance and political freedoms are invariably seen as essential to the realization of ESC rights.

Recently we have seen hundreds of thousands of protestors taking to the streets in many countries demanding ESC rights—access to food, resources, jobs & education and denouncing the lack of transparency of their government, demanding accountability, good governance and democracy.

It is clear that the enforcement of ESC rights requires participation of citizens in the decision-making processes of States. In this sense ESC rights demands are re-shaping our understanding of what it means to have a real democracy. These popular uprisings have shown that ordinary citizens aspire to rights across the globe and are willing to enormous risks for a future of dignity.

Many of the UN and African system's experts and representatives have echoed the calls of defenders on these streets and have underlined the legitimacy of such struggles. But governments are less willing to concede.

Conclusion

In order to succeed it is essential for ESC rights defenders to continue to strengthen their voice at international and regional levels, so that pressure to enforce rights at domestic levels is brought to bear on governments. Just as citizens have claimed domestic public squares to organize their protests and air their grievances, ESC rights defenders must claim their space in international and regional bodies. These bodies must become responsive to the realities on the ground and exercise real pressure on Governments who are denying citizens their most basic ESC rights.

It is only through sustained advocacy and presence in regional and international bodies that ESC rights defenders will succeed in truly connecting the local to the global. This will guarantee them better protection, through heightened international visibility and recognition.

Big steps have already been taken and many battles have already been won. Today for instance, it is globally accepted that every citizen has a right to adequate housing. No government can contest this. But it is the enforcement and implementation of these rights at local levels that challenge us today.

This is where ESC rights defenders must focus their attention on regional and international bodies to hold their governments to account, to mobilize international support and solidarity and to seek protection. The challenging job of ESC rights defenders on the ground can be lightened by a strong international and regional strategy to support them. This is essentially the role that international and regional bodies must play and that ESC rights defenders must demand from them.

Experiences from the Ground: Supporters and Obstacles to Human Rights Work at Local Level

Getrude Chimange

"It needs a strong will to venture into resource governance; though with its consequences!!"



Getrude taking a picture from inside her moving vehicle; security zone area of relocated victims.

The mining sector has the potential to uplift the economic turnaround of any hosting community and the livelihoods of its citizens. However, it also has the potential to undermine communities' rights. The reality is that elites and mining companies enjoy the huge profits attained from minerals extraction, while hosting communities endure its negative impacts characterized by displacements without fair and adequate compensation, deforestation, environmental and land degradation, water and air pollution, destruction of cultural sites and limited economic benefits.



Diverted river by a Russian Gold Mining Company near the city of Mutare.

The million dollar question to ask would be why the Church should, or put simply, why should a Human Rights Defender working for the Church care? The right of the Church is at the same time a duty, because she cannot forsake this responsibility without

denying herself and her fidelity to Christ: Because of the public relevance of the Gospel and faith, because of the corrupting effects of injustice, that is, of sin, the Church cannot remain indifferent to social matters. To the Church belongs the right always and everywhere to announce moral principles, including those pertaining to the social order and to make judgements on any human affairs to the extent that they are required by the fundamental rights of the human person or the salvation of souls. Thus the Church must be a caring community, which sees to it that order and harmony reign.

The Church has a responsibility to demand a call for responsible investment that takes care of the land and environment. Private corporations need not pursue profit with disregard to the destruction caused to land and the environment. Thus the Church; (you and i); has a moral obligation to make sure that leadership is remoralised in pursuit of a moral transformation so that the CST`s are practised both in faith and our daily living in homes and communities.

The objective of the work of a Human Rights Defender is to promote aspects of human rights in the extractive sector and in particular the environmental, economic, social and cultural rights of target communities. These activities are tailored to respond to the environmental, natural resources and human rights needs of poor and marginalised women, youths and men in rural and urban areas. They are also aimed at influencing policy and legal reforms in the Province/Country. Thus our work as HRD involves helping poor and disadvantaged communities to assert their Environmental, Economic, Social and Cultural Rights (EESCR) within the natural resources and environmental sectors. We seek to ensure that environmental and natural resources management laws and policies, respond positively to the needs of poor and marginalized women , men, youths living in urban and rural communities.

Alleged mismanaged revenues by governments and entrenched corruption, combined with inefficiencies and poorly designed development projects, have limited opportunities for communities to reap direct local economic benefit of large-scale projects and have left many communities living in poverty.



Affluent being discharged in rivers where communities use the river as a source of water for consumption and animal survival.

According to the technology that is being used, the ferro-silicone must be recycled after the diamond extraction. Ferro-silicon is being discharged with waste water into rivers resulting in the problems of itchy skin and unusable water for irrigation and domestic use. The metal concentrations especially that of chromium which is carcinogenic (cancer causing), are of particular concern being close to or higher than W.H.O. standards for drinking water. The problems of bacterial contamination in the water are of serious concern and pose an immediate risk of outbreaks of waterborne diseases such as diarrhoea, cholera and typhoid.

Since it is not possible to gain access to the mining area and assess how mines dispose of their human waste, it will be prudent to make the assumption that they could also be contributing to the problem. It is quite obvious that the water quality problems in this region have far-reaching socioeconomic implications for the livelihoods of local communities and the mines must take full responsibility in accordance with the various legal instruments that protect the environment. There is need for a regular monitoring programme to be instituted to assess for seasonal changes in the water quality of these rivers.



Veld fire outside a mining zone.

As HRD we facilitate a process of empowering and capacity building for the disadvantaged communities so that they are able to articulate these issues to government officials and the companies that are involved. It is because of such work that HRDs face direct and indirect threats to their personal integrity at some instances, and otherwise face structural constrictions upon their rights to defend human rights. Mostly the work involves naming and shaming the culprits, while lobbying for justice to take its course.

Thus in the process of engaging HRDs have faced threats in the form of unlawful detainment; (for trespassing security zones as one tries to get information) and intimidation—as one names and shames corrupt government officials. In most instances, HRDs face structural forms of violence such as the unresponsiveness of duty-bearers (refusal to avail information pertaining to mining contracts and payment towards taxes/royalties). Sometimes one has to do research through visiting the communities and the institutions involved in the negotiation of contracts and this is where the frustration comes in. Many a times anonymous calls are made to scare one off from pursuing the matter, or one has to set interviews in secret places or late at night in order to access certain areas for example points of affluent discharge by companies.

It thus takes more than courage to engage in this, because when HRD suffer, it's not only his/her that is endangered. The whole family becomes endangered species yet will not have somebody else to rely on.

Sadly to say, while all human rights are said to be "equal, indivisible, interrelated, and interdependent", international enforcement mechanisms are strongest for civil and political rights, and their violation is considered more serious than that of economic, social and cultural rights. There are few international NGOs that focus on economic, social and cultural rights and there are few lawyers who have the knowledge or experience to defend economic, social and cultural rights at a national or international level. HRDs of Economic, social and cultural rights are less likely than civil and political rights to be protected whether at National, Regional NAD International level.

References:

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Churches and Human Right Defenders

Fr Jan Stuyt SJ

Part One: Talking Points

Why bother

Why should we defend human rights? First, because the gospel tells us to defend the weak and Human Rights defenders do just that, so we help them. It is consistent with Catholic Social Teaching (see the second part below). Diakonia is core business of the Church, not just an optional extra. When people near you suffer, you cannot do nothing.

Where to act

We act first close to home, where we see injustice. Secondly we defend friends and colleagues who speak up. The Church has a special calling to speak up for those without a voice, c.f. the undocumented migrants in one's country of residence. We can also speak for those who are threatened far away, like Amnesty International does very well. We also speak up because our friends elsewhere ask us to do. Finally we defend those who defend God's creation and we can learn from groups like Greenpeace.

Churches come in sizes and attitudes

The Catholic Church has great assets: it is a worldwide Church, its central government can be a help, especially when there is a charismatic leader like Pope Francis. It is so big that there are many flavours. The orthodox churches are often national churches with close links to their governments. Protestant churches vary enormously: we at Justitia and Pax know the Lutheran World Federation, the Quakers and the Mennonites as good and reliable worldwide partners.

Strengths of the Church in Human Rights Work

Many Catholic organisations have a qualified professional staff: Pax Christi, Caritas. There is an enormous network that we can consult and should consult much more: the Catholic network is not used enough. The Catholic Church is both national and international: this is our greatest asset—that we have both the knowledge of the place and the international perspective. When the Church speaks out it is often heard: c.f. Pope Francis in Lampedusa. Charismatic leaders like Mother Teresa and the reputation of “the good sisters” give us in many places goodwill.

Pitfalls for the Church in Human Rights Work

Sometimes those in authority in the Church are very close to the establishment—we all remember the Argentine junta and its bishop friends. The culture where an independent NGO can freely criticize the government is not widespread: Westerners should not underestimate the risk that their colleagues run in most other countries. The brand mark 'Catholic' is not copyrighted, sometimes very weird people speak in 'our' name. In a place like the European Parliament it is really easy to get access a first time. But you get only one shot. If you do sloppy work there is no second chance. Advocacy is a job that demands expertise, timing and the right partners. It is easy to make mistakes. And we are often too shy. I heard more than once from government officials that we should speak up louder.

CONSOLATION

Sometimes just being there is enough, as election monitor, or when the nuncio is silently present, just listening.

You are not the Saviour of the World, that title has been given already to someone else, you do not have to do the impossible.

In this kind of work our partners and colleagues are a great gift. You will meet wonderful generous expert people.

Finally you will know that you have made a difference and not committed the sin of doing nothing.

Part Two: Notes on Catholic Social Teaching

Using Infrastructure at Different Levels to Protect Human Rights Defenders: Church and Human Rights Defenders

Human rights defenders undertake a great responsibility for they are called to commit themselves to the defense of all human rights. As the *Compendium of the Social Doctrine of the Church* (CSD) tells us, "(h)uman rights are to be defended not only individually but also as a whole: protecting them only partially would imply a kind of failure to recognize them." They correspond to the demands of human dignity and entail, in the first place, the fulfilment of the essential needs of the person in the material and spiritual spheres. "These rights apply to every stage of life and to every political, social, economic and cultural situation. Together they form a single whole, directed unambiguously towards the promotion of every aspect of the good of both the person and society ... The integral

promotion of every category of human rights is the true guarantee of full respect for each individual right". Universality and indivisibility are distinctive characteristics of human rights. They are "two guiding principles which at the same time demand that human rights be rooted in each culture and that their juridical profile be strengthened so as to ensure that they are fully observed" (CSD, 154).

Citing, in part, the encyclical *Pacem in Terris* of Blessed John XXIII, the *Catechism of the Catholic Church* affirms that "respect for the human person entails respect for the rights that flow from his dignity as a creature. These rights are prior to society and must be recognized by it. They are the basis of the moral legitimacy of every authority: by flouting them, or refusing to recognize them in its positive legislation, a society undermines its own moral legitimacy. If it does not respect them, authority can rely only on force or violence to obtain obedience from its subjects. It is the Church's role to remind men of good will of these rights and to distinguish them from unwarranted or false claims" (Catechism, no 1930).

In the encyclical *Centesimus annus* blessed John Paul II drew up a list of human rights and enumerated them as follows, namely "right to life, an integral part of which is the right of the child to develop in the mother's womb from the moment of conception; the right to live in a united family and in a moral environment conducive to the growth of the child's personality; the right to develop one's intelligence and freedom in seeking and knowing the truth; the right to share in the work which makes wise use of the earth's material resources, and to derive from that work the means to support oneself and one's dependents; and the right freely to establish a family, to have and to rear children through the responsible exercise of one's sexuality. In a certain sense, the source and synthesis of these rights is religious freedom, understood as the right to live in the truth of one's faith and in conformity with one's transcendent dignity as a person." (CA, 47).

It is important to remember always that the right to life is the first of all rights. As the *Compendium of the Social Doctrine of the Church* tells us, the right to life "is the condition for the exercise of all other rights." (CSD, 15).

Addressing the link between rights and duties, Benedict XVI in his encyclical *Caritas in Veritate* has written that "nowadays we are witnessing a grave inconsistency. On the one hand, appeals are made to alleged rights, arbitrary and non-essential in nature, accompanied by the demand that they be recognized and promoted by public structures, while, on the other hand, elementary and basic rights remain unacknowledged and are violated in much of the -world. A link has often been noted between claims to a "right to excess", and even to transgression and vice, within affluent societies, and the lack of food, drinkable water, basic instruction and elementary health care in areas of the underdeveloped world and on the outskirts of large metropolitan centres" (CV, 43).

In his apostolic exhortation *Evangelii Gaudium*, Pope Francis affirms the responsibility of all followers of Christ to promote human rights and thus better the world in which we live. As he writes, the Church “cannot and must not remain on the sidelines in the fight for justice.” All Christians, their pastors included, are called to show concern for the building of a better world. This is essential, for the Church’s social thought is primarily positive: it offers proposals, it works for change and in this sense it constantly points to the hope born of the loving heart of Jesus Christ (EG, 183).

In *Evangelii Gaudium*, Pope Francis draws attention to many of those who are more prone to suffering grave violations of human rights and the responsibility that we have toward them, namely, the poor as well as all who are in vulnerable situations, that is, the homeless, those suffering from addiction, refugees, indigenous peoples, the elderly, migrants, victims of human trafficking, “women who endure situations of exclusion, mistreatment and violence,” and unborn children—whom he refers to as “the most defenseless and innocent among us” (EG, 210-213).

The Catholic Church is committed to affirming, defending, and promoting human rights. The Holy See does this both bilaterally with individual governments and also between and among governments within intergovernmental organizations, for example, at the United Nations both in New York and Geneva, the Organization for American States, and the Council of Europe.

The Catholic Church is concerned for the wellbeing of human rights defenders especially those working in difficult situations. Recently, the Holy See has expressed concern for women human rights defenders in particular, and, in this regard, has stated at the Human Rights Council that “(u)nstable situations marked by violence present the risk of particularly aggressive behavior against the more defenseless groups of society. A grave concern of the Holy See is that the protection of women from violence be provided in these contexts, with special concern for women who are human rights defenders. Judicial impunity, cultural and social norms that tolerate discrimination and fail to address violent acts such as female infanticide or sex-selective abortion must be addressed and rejected” (Intervention of Archbishop Silvano M Tomasi, Permanent Observer of the Holy See to the United Nations and other international organizations in Geneva, Human Rights Council, 20th regular session, 26 June 2012).

“The Church’s deepest nature is expressed in her three-fold responsibility: of proclaiming the word of God (kerygma-martyria), celebrating the sacraments (leitourgia), and exercising the ministry of charity (diakonia). These duties presuppose each other and are inseparable. For the Church, charity is not a kind of welfare activity which could equally well be left to others, but is a part of her nature, an indispensable expression of her very being”. *Deus Caritas Est*, God is Love, Pope Benedict XVI. (DC, 25, abridged).

“The Church cannot and must not take upon herself the political battle to bring about the most just society possible. She cannot and must not replace the State. Yet at the same time she cannot and must not remain on the sidelines in the fight for justice. She has to play her part through rational argument and she has to reawaken the spiritual energy without which justice, which always demands sacrifice, cannot prevail and prosper. A just society must be the achievement of politics, not of the Church. Yet the promotion of justice through efforts to bring about openness of mind and will to the demands of the common good is something which concerns the Church deeply”. (DC, 28, abridged).

List of Participants

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Zwaan Sebastiaan van der
The Hague, The Netherlands, Deputy Director Justice and Peace Netherlands

Program of the Conference

Defending Human Dignity and Human Rights: A Challenge for International Cooperation, International Workshop on Human Rights Defenders

Wednesday 5th February 2014

Morning Arrival of Participants

Afternoon Opening of the International Workshop

Venue: The English Speaking International Roman Catholic Church of Our Saviour, Koningin Marialaan 2, 2595 GB, The Hague

12:30 Lunch

14:00 *Welcome Addresses*

- Gerard de Korte (Bishop of Groningen-Leeuwarden, Justice and Peace The Netherlands)
- Gertrud Casel, Secretary General, Commission of Justice and Peace Germany)
- Dr. Manfred Emmes (Chargé d’Affaires a.i., German Embassy in the Hague)
- Fr Sjaak de Boer (pastor, Parish of Our Saviour)

Theme: History and Reconciliation

Chair: Daniel Legutke (Justice and Peace, Germany)

14:30 The Precursors of Modern Imperialism and the Scramble for Africa

- Introduction: Prof. Piet Emmer
(Professor Emeritus in the History of European Expansion, Leiden University)
- Discussion

15:30 Coffee Break

16:00 Panel Discussions–Burdened Past. Why the Acceptance of the Ambivalence of Modern European and African History with Human Rights Makes a Difference

- Catherine Cissé van den Muijsenbergh (Executive Director of the Institute for Historical Justice and Reconciliation in The Hague)
- Prof. Piet Emmer
- Fr Leonhard Chiti Sj (Director of the Jesuit Center for Theological Reflection)
- Florence Simbiri Jaoko (Lawyer, Kenya)

17:30 Closure

18:00 Mass

19:00 Dinner

Evening, until 21:30 : Informal Meeting with the African Community of the Parish

Thursday 6th February 2014

Venue: NH Hotel The Hague, Prinses Margrietplantsoen 100 2595 BR, The Hague

Theme: Broadening the Concept of Human Rights Defenders: Activism for Economic, Cultural and Social Rights?

Chair: Heiner Bielefeldt (UN Special Rapporteur for Freedom of Religion and Belief)

09:00 Keynote Speech—Human Rights Defenders in the Self-Understanding of the Church, Her Teachings and Her Mission

- Fr Joe Komakoma (Secretary General SECAM)

10:00 Coffee Break

10:30 Panel with Statements

- Development of Human Rights Obligations in the Field of Economic, Social and Cultural Rights
Sebastiaan van der Zwaan (deputy director Justice and Peace Netherlands)
- Defending Economic, Social and Cultural Rights: Special Challenges in the Protection of Economic, Social and Cultural Rights Activists

Rigobert Minani SJ (Director of Jesuit African Social Centers Network (JASCNET); Nairobi, Kenya)

- Defending Economic, Social and Cultural Rights: The Work of National Human Rights Commissions

John Kapito (Executive Director of Consumers Association of Malawi; Lilongwile, Malawi)

12:30 Lunch

Theme: Supporting the Work of Activists for Economic, Cultural and Social Rights

Chair: Heinz-Gerhard Justenhoven (Institute for Theology and Peace; Hamburg, Germany)

14:00 Keynote Speech–Defending ESC Rights; The Support of Human Rights Defenders through Regional and International Human Rights Commissions

- Clement Voulé (Program Manager, States in Transition, and African Commission Advocacy Coordinator, International Service for Human Rights, Geneva)

15:00 Coffee Break

15:30 Panel with Statements

- The Possibilities in International Law to Address Violations of ESC rights
Judge Joyce Aluoch (Representative of the ICC)
- Experiences from the Ground: Supporters and Obstacles to Human Rights Work at Local Level
Gertrude Chimange (Catholic Commission of Justice and Peace; Mutare, Zimbabwe)

17:30 Closure

19:00 Dinner

Friday 7th February 2014

Venue: NH Hotel The Hague, Prinses Margrietplantsoen 100 2595 BR, The Hague

Theme: Using Infrastructure at Different Levels to Protect Human Rights Defenders: Practical Opportunities.

Chair: Peter Tak (President Justice and Peace Netherlands)

09:00 Keynote Speech–Church and Human Rights Defenders

- Fr Jan Stuyt (representative of the Pontifical Council for Justice and Peace, secretary of the Jesuit Provinces of The Netherlands and Flanders)

10:00 Coffee Break

10:30 Panel with Statements

- Different Tasks of Different Institutions and Organizations at Local, National, Regional and International Level
Herta Däubler-Gmelin (Lawyer, Prof. at Free University Berlin, former Federal Minister of Justice; Germany)
- Ways of Enhancing the Implementation of the EU Guidelines
Lionel Veer (Netherlands Human Rights Ambassador)
- Possibilities to better link National Human Rights Institutes and Human Rights Networks
Betty Okero (Executive director of Civil Society Organizations Network, Kisumu, Kenya)

12:30 Lunch

13:30 Policy Dialogue, Dutch Ministry of Foreign Affairs

- Meeting at the International Criminal Court

18:30 Dinner

Evening

- Working Group: Draft to React on the Questions from the Lusaka Conference

Saturday 8th February 2014

Venue: The English Speaking International Roman Catholic Church of Our Saviour,
Koningin Marialaan 2, 2595 GB, The Hague

Theme: How to Move from Here? Commitments and Draft of a Final Declaration

Chair: Victor Scheffers (Justice and Peace Netherlands)

09:00 Session in Plenary

11:00 Closure

11:30 Sending Mass

12:30 Lunch and Departure

Annex

I. UN Declaration on Human Rights Defenders

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144)

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming also the importance of the Universal Declaration of Human Rights² and the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter,

Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms,

Stressing that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels,

Declares:

1. Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

2. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

3. Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

4. Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights,² the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

5. For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

(b) To form, join and participate in non-governmental organizations, associations or groups;

(c) To communicate with non-governmental or intergovernmental organizations.

6. Everyone has the right, individually and in association with others:

(a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; 16

(c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

7. Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

8. 1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

2. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

9. 1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, inter alia:

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

10. No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

11. Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

12. 1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

13. Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

14. 1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include, inter alia:

(a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;

(b) Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

15. The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

16. Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, inter alia, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

17. In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

18. 1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.

2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

19. Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

20. Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.

II. European Guidelines on Human Rights Defenders

Ensuring protection – European Union Guidelines on Human Rights Defenders

I. PURPOSE

1. Support for human rights defenders is already a long-established element of the European Union's human rights external relations policy. The purpose of these Guidelines is to provide practical suggestions for enhancing EU action in relation to this issue. The Guidelines can be used in contacts with third countries at all levels as well as in multilateral human rights fora, in order to support and strengthen ongoing efforts by the Union to promote and encourage respect for the right to defend human rights. The Guidelines also provide for interventions by the Union for human rights defenders at risk and suggest practical means of supporting and assisting human rights defenders.

An important element of the Guidelines is support for the Special Procedures of the UN Human Rights Council, including the UN Special Rapporteur on Human Rights Defenders and appropriate regional mechanisms to protect human rights defenders. The Guidelines will assist EU Missions (Embassies and Consulates of EU Member States and European Commission Delegations) in their approach to human rights defenders. While the primary purpose of the Guidelines is to address specific concerns regarding human rights defenders, they also contribute to reinforcing the EU's human rights policy in general.

II. DEFINITION

2. The definition of human rights defenders, for the purpose of these Guidelines, draws upon operative paragraph 1 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (see Annex I), which states that "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels".

3. Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence.

III. INTRODUCTION

4. The EU supports the principles contained in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised

Human Rights and Fundamental Freedoms. Although the primary responsibility for the promotion and protection of human rights lies with States, the EU recognises that individuals, groups and organs of society all play important parts in furthering the cause of human rights. The activities of human rights defenders include:

- documenting violations;
- seeking remedies for victims of such violations through the provision of legal, psychological, medical or other support;
- combating cultures of impunity which serve to cloak systematic and repeated breaches of human rights and fundamental freedoms; and
- mainstreaming human rights culture and information on human rights defenders at national, regional and international level.

5. The work of human rights defenders often involves criticism of government policies and actions. However, governments should not see this as a negative. The principle of allowing room for independence of mind and free debate on a government's policies and actions is fundamental, and is a tried and tested way of establishing a better level of protection of human rights. Human rights defenders can assist governments in promoting and protecting human rights. As part of consultation processes they can play a key role in helping to draft appropriate legislation, and in helping to draw up national plans and strategies on human rights. This role too should be recognised and supported.

6. The EU acknowledges that the activities of human rights defenders have over the years become more widely recognised. They have increasingly come to ensure greater protection for the victims of violations. However, this progress has been achieved at a high price: the defenders themselves have increasingly become targets of attacks and their rights are violated in many countries. The EU believes it is important to ensure the safety of human rights defenders and protect their rights. In this regard it is important to apply a gender perspective when approaching the issue of human rights defenders.

IV. OPERATIONAL GUIDELINES

7. The operational part of these Guidelines is meant to identify ways and means of effectively working towards the promotion and protection of human rights defenders, within the context of the Common Foreign and Security Policy.

Monitoring, reporting and assessment

8. EU Heads of Mission are already requested to provide periodic reports on the human rights situation in their countries of accreditation. The Council Working Party on Human Rights (COHOM) has approved the outline of fact sheets to facilitate this task. In line with these fact

sheets Missions should address the situation of human rights defenders in their reporting, noting in particular the occurrence of any threats or attacks against human rights defenders. In this contexts HoMs should be aware that the institutional framework can have a major impact on the ability of human rights defenders to undertake their work in safety. Issues such as legislative, judicial, administrative or other appropriate measures, undertaken by States to protect persons against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of any of the rights referred to the UN Declaration on Human Rights Defenders are all relevant in this regard.

9. The EU Heads of Mission are requested to deal with the situation of human rights defenders at meetings of local working groups on human rights. Where it is called for, HoMs should make recommendations to COHOM for possible EU action, including condemnation of threats and attacks against human rights defenders, as well as for demarches and public statements where human rights defenders are at immediate or serious risk. HoMs may decide to conduct an urgent local action to support human rights defenders who are at immediate or serious risk, and to report on their action to COHOM and other relevant working parties with recommendations concerning the scope for following up the European action. HoMs should also report on the effectiveness of EU action in their reports. Furthermore, Missions should pay particular attention to the specific risks faced by women human rights defenders.

10. The HoM reports and other relevant information, such as reports and recommendations from the Special Rapporteur on Human Rights Defenders, other UN Special Rapporteurs and Treaty bodies and the Commissioner for Human Rights of the Council of Europe as well as non-governmental organisations, will enable COHOM and other relevant working parties to identify situations where EU action is called for and decide on the action to be taken or, where appropriate, make recommendations for such action to PSC/Council.

Role of EU Missions in supporting and protecting human rights defenders

11. In many third countries, EU Missions (Embassies of EU Member States and European Commission Delegations) are the primary interface between the Union and its Member States and human rights defenders on the ground. They therefore have an important role to play in putting into practice the EU's policy towards human rights defenders. EU Missions should therefore seek to adopt a proactive policy towards human rights defenders. They should at the same time be aware that in certain cases EU action could lead to threats or attacks against human rights defenders. They should therefore, where appropriate, consult with human rights defenders in relation to actions which might be contemplated. If action is taken on behalf of the EU, EU Missions should provide feedback to human rights defenders and/or their families. Measures that EU Missions could take include:

- preparing local strategies for the implementation of these guidelines, with particular attention to women human rights defenders. EU Missions will bear in mind that these

Guidelines cover human rights defenders who promote and protect human rights, whether civil, cultural, economic, political or social. EU Missions should involve human rights defenders and their organisations in the drafting and monitoring of local strategies;

- organising at least once a year a meeting of human rights defenders and diplomats to discuss topics such as the local human rights situation, EU policy in this field, and application of the local strategy for implementing the EU Guidelines on human rights defenders;
- coordinating closely and sharing information on human rights defenders, including those at risk;
- maintaining suitable contacts with human rights defenders, including receiving them in Missions and visiting their areas of work; consideration could be given to appointing specific liaison officers, where necessary on a burden-sharing basis, for this purpose;
- providing, as and where appropriate, visible recognition for human rights defenders and their work, through appropriate use of the media—including the internet and new information and communication technologies—publicity, visits or invitations for such purposes as presenting prizes they have obtained;
- where appropriate, visiting human rights defenders in custody or under house arrest and attending their trials as observers.

Promoting respect for human rights defenders in relations with third countries and in multilateral fora

12. The EU's objective is to influence third countries to carry out their obligations to respect the rights of human rights defenders and to protect them from attacks and threats from non-State actors. In its contacts with third countries, the EU will, when deemed necessary, express the need for all countries to adhere to and comply with the relevant international norms and standards, in particular the UN Declaration. The overall objective should be to bring about an environment where human rights defenders can operate freely. The EU will make its objectives known as an integral part of its human rights policy and will stress the importance it attaches to the protection of human rights defenders. Actions in support of these objectives will include the following:

- where the Presidency or the High Representative for the Common Foreign and Security Policy or the Personal Representative of the SG/HR on Human Rights or EU Special Representatives and Envoys or representatives of the Member States or the European Commission are visiting third countries, they will, where appropriate, include meetings with human rights defenders during which individual cases and the issues raised by the work of human rights defenders are addressed, as an integral part of their visits;
- the human rights component of political dialogues between the EU and third countries and regional organisations, will, where relevant, include the situation of human rights

defenders. The EU will underline its support for human rights defenders and their work, and raise individual cases of concern whenever necessary. The EU will be careful to involve human rights defenders, under the most appropriate arrangements, in the preparation, follow-up and assessment of the dialogue in accordance with the EU Guidelines on human rights dialogues;

- EU Heads of Mission and EU Embassies will remind third countries' authorities of their obligation to implement effective measures to protect human rights defenders who are or could be in danger;

- working closely with other like-minded countries notably in the UN Human Rights Council and the UN General Assembly;

- recommending, where appropriate, to countries when they are under the Universal Periodic Review of the Human Rights Council that they bring their legislation and practices into line with the UN Declaration on Human Rights Defenders;

- promoting the strengthening of existing regional mechanisms for the protection of human rights defenders, such as the focal point for human rights defenders and national human rights institutions of the OSCE Office for Democratic Institutions and Human Rights, the Commissioner for Human Rights of the Council of Europe, the Special Rapporteur on Human Rights Defenders of the African Commission on Human and Peoples' Rights and the special Human Rights Defenders Unit within the Inter-American Commission on Human Rights, and the creation of appropriate mechanisms in regions where they do not exist.

Support for Special Procedures of the UN Human Rights Council, including the Special Rapporteur on Human Rights Defenders

13. The EU recognises that the Special Procedures of the UN Human Rights Council (and the individuals and groups carrying them out: Special Rapporteurs, Special Representatives, Independent Experts and Working Groups) are vital to international efforts to protect human rights defenders because of their independence and impartiality and their ability to act and speak out on violations against human rights defenders worldwide and undertake country visits. While the Special Rapporteur on Human Rights Defenders has a particular role in this regard, the mandates of other Special Procedures are also of relevance to human rights defenders. The EU's actions in support of the Special Procedures will include:

- encouraging States to accept as a matter of principle requests for country visits under UN Special Procedures;

- promoting, via EU Missions, the use of UN thematic mechanisms by local human rights communities and human rights defenders including, but not limited to, facilitating the establishment of contacts with, and exchange information between, thematic mechanisms and human rights defenders;

- since the Special Procedure mandates cannot be carried out in the absence of adequate resources, EU Member States will support the allocation of sufficient funds from the general budget to the Office of the United Nations High Commissioner for Human Rights.

Practical supports for Human Rights Defenders including through Development Policy

14. Programmes of the European Union and Member States aimed at assisting in the development of democratic processes and institutions, and the promotion and protection of human rights in developing countries—such as the European Instrument for Democracy and Human Rights—are among a wide range of practical supports for assisting human rights defenders. These can include but are not necessarily limited to the development cooperation programmes of Member States. Practical supports can include the following:

- supporting human rights defenders, as well as NGOs that promote and protect human rights defenders' activities, through such activities as capacity building and public awareness campaigns, and facilitating cooperation between NGOs, human rights defenders and national human rights institutions;
- encouraging and supporting the establishment, and work, of national bodies for the promotion and protection of human rights, established in accordance with the Paris Principles, including, National Human Rights Institutions, Ombudsman's Offices and Human Rights Commissions;
- assisting in the establishment of networks of human rights defenders at international level, including by facilitating meetings of human rights defenders both within and outside the EU;
- seeking to ensure that human rights defenders in third countries can access resources, including financial resources, from abroad and that they can be informed of the availability of those resources and of the means of requesting them;
- ensuring that human rights education programmes promote, inter alia, the UN Declaration on Human Rights Defenders;
- providing measures for swift assistance and protection to human rights defenders in danger in third countries, such as, where appropriate, issuing emergency visas and facilitating temporary shelter in the EU Member States.

Role of Council Working Parties

15. In accordance with its mandate COHOM will keep under review the implementation and follow-up to the Guidelines on Human Rights Defenders in close coordination and cooperation with other relevant Council Working Parties. This will include:

- promoting the integration of the issue of human rights defenders into relevant EU policies and actions;

- undertaking reviews of the implementation of these Guidelines at appropriate intervals;
- continuing to examine, as appropriate, further ways of cooperating with UN and other international and regional mechanisms in support of human rights defenders;
- reporting to the Council, via PSC and COREPER, as appropriate on an annual basis, on progress made towards implementing these Guidelines.

III. African Commission on Human and Peoples' Rights

69: Resolution on the Protection of Human Rights Defenders In Africa

The African Commission on Human and Peoples' Rights meeting at its 35th Ordinary Session held from 21st May to 4th June 2004, in Banjul, The Gambia:

Recognising the crucial contribution of the work of human rights defenders in promoting human rights, democracy and the rule of law in Africa;

Seriously concerned about the persistence of violations targeting individuals and members of their families, groups or organisations working to promote and protect human and peoples' rights and by the growing risks faced by human rights defenders in Africa;

Noting with deep concern that impunity for threats, attacks and acts of intimidation against human rights defenders persists and that this impacts negatively on the work and safety of human rights defenders;

Recalling that it is entrusted by the African Charter on Human and Peoples' Rights with the mandate to promote human and peoples' rights and ensure their protection in Africa;

Reaffirming the importance of the observance of the purposes and principles of the African Charter for the promotion and protection of all human rights and fundamental freedoms for human rights defenders and all persons on the continent;

Bearing in mind the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders);

Mindful that in the Grand Bay (Mauritius) Declaration, the Organisation of African Unity called on Member States "to take appropriate steps to implement the UN Declaration on Human Rights Defenders in Africa";

Mindful that the Kigali Declaration recognises "the important role that the human rights defenders play in the promotion and protection of human rights in Africa"

Recalling its decision to include on its agenda the situation of human rights defenders and to nominate a focal point on human rights defenders;

1. Now decides to appoint a Special Rapporteur on human rights defenders in Africa for a period of two years with the following mandate:

- to seek, receive, examine and to act upon information on the situation of human rights defenders in Africa;
- to submit reports at every Ordinary Session of the African Commission;
- to cooperate and engage in dialogue with Member States, National Human Rights Institutions, relevant intergovernmental bodies, international and regional mechanisms of protection of human rights defenders, human rights defenders and other stake holders;

- to develop and recommend effective strategies to better protect human rights defenders and to follow up on his/her recommendations;
- to raise awareness and promote the implementation of the UN Declaration on Human Rights Defenders in Africa;

2. Further decides to nominate Commissioner Jainaba Johm as the Special Rapporteur on Human Rights Defenders for the current duration of her mandate within this Commission;
3. Reiterates its support for the work carried out by human rights defenders in Africa;
4. Calls upon Member States to promote and give full effect to the UN Declaration on Human Rights Defenders, to take all necessary measures to ensure the protection of human rights defenders and to include information on measures taken to protect human rights defenders in their periodic reports;
5. Invites its members to mainstream the issue of human rights defenders in their activities;
6. Urges Member States to co-operate with and assist the Focal Point in the performance of his/her tasks and to provide all necessary information for the fulfillment of his/her mandate;
7. Requests the African Union to provide adequate resources, assistance and support in the implementation of this Resolution.

Banjul, The Gambia, 4 June 2004.

Abschlussklärung

Workshop *“Der Einsatz für Menschenwürde und Menschenrechte: eine Herausforderung für die internationale Kooperation”*, Februar 2014

Das Potenzial der Kirche zur Verteidigung von Menschenrechten

“Unsere Reise führt uns vom Dialog zur gemeinsamen Aktion” erklärten kirchliche Menschenrechtsverteidiger und andere Menschenrechtsakteure aus Afrika und Europa zum Abschluss des Workshops *“Defending Human Dignity and Human Rights: International Workshop on Human Rights Defenders”*, der vom 5. bis 8. Februar 2014 in Den Haag stattfand. Dieser Workshop war die letzte Zusammenkunft einer Reihe von Workshops, die unter dem Titel *“Human Dignity and Human Rights–Historical Experiences and Present Day Challenges”* vom 24. bis 25. Mai in Berlin und zu *“Defending Human Dignity and Human Rights–A Challenge for International Cooperation”* vom 7. bis 9. Februar in Lusaka, Sambia, durchgeführt wurden. Durch die Zuspitzung auf die Frage, wie die Kirche die Implementierung der Menschenrechte vor Ort fördern und stärken kann und wie diese Arbeit mit den Anstrengungen auf internationaler Ebene angemessen verbunden werden kann, konnte der Workshop in Den Haag Anregungen für eine verstärkte Zusammenarbeit geben. „Die Kirchen und die Zivilgesellschaft sollten bei der Förderung der Menschenrechte zusammenarbeiten. Zu diesem Zweck ist eine systematischere und engere Zusammenarbeit zwischen den jeweiligen Akteuren im Norden und im Süden erforderlich, damit die Staaten zur Verantwortung gezogen werden“, so wurde die Erkenntnis prägnant von einem Teilnehmer zusammengefasst.

Diese Abschlussklärung gibt Empfehlungen, die auf den im Workshop erzielten Ergebnissen basieren und konzentriert sich auf die wichtige Rolle der Kirche bei der Förderung der Menschenrechte.

I. Menschenrechte in der Lehre der Kirche

Während der Gedanke der Menschenrechte – im Sinne von einklagbaren Rechten auf größtmögliche Freiheit, Gleichheit und Solidarität für alle – eine moderne Errungenschaft ist, stehen die zugrundeliegenden Prinzipien seit jeher im Zentrum der kirchlichen Lehre. Wie im Buch Genesis bekundet, besitzen die Menschen eine unveräußerliche Würde, da sie nach dem Bild und Gleichnis Gottes geschaffen wurden. Die Achtung dieser von Gott verliehenen Gabe muss für jeden gleichermaßen gelten. In diesem Sinne bezeichneten die Enzykliken *Pacem in Terris* und *Populorum Progressio* und die Pastoralkonstitution *Gaudium et Spes* des Zweiten Vatikanischen Konzils die modernen Menschenrechte als unerlässlichen Bestandteil der Achtung der Würde eines jeden Menschen. In jüngerer Zeit hat die Enzyklika *Deus Caritas est*

(DC) die politischen Implikationen der Achtung der Menschenrechte konkreter formuliert: "Die Kirche kann nicht und darf nicht den politischen Kampf an sich reißen, um die möglichst gerechte Gesellschaft zu verwirklichen. Sie kann und darf nicht sich an die Stelle des Staates setzen. Aber sie kann und darf im Ringen um Gerechtigkeit auch nicht abseits bleiben. [...] (D)as Mühen um die Gerechtigkeit durch eine Öffnung von Erkenntnis und Willen für die Erfordernisse des Guten geht sie zutiefst an." (DC, 28).

Für die Kirche sind die Menschenrechte ein wesentlicher Bestandteil ihrer pastoralen Arbeit im weitesten Sinne. Sie muss den Stimmlosen eine Stimme geben. Dabei erinnert die Kirche Staaten, Unternehmen und andere Akteure an ihre Pflicht, die Menschenwürde in einer "möglichst gerechten Gesellschaft" (DC, 28) zu schützen. Die Arbeit der Kirche beinhaltet die Förderung von Aktivitäten zur Verbreitung von Menschenrechtsnormen und –instrumenten, die praktische Unterstützung derer, deren Würde und Rechte verletzt werden, sowie Beiträge zum Aufbau einer wirksamen Menschenrechtsinfrastruktur auf lokaler, regionaler und internationaler Ebene. Das konkrete Engagement für Menschenrechte ist nicht etwas, das lediglich "außerhalb" des Evangeliums steht; vielmehr ist es ein wesentlicher Teil der Aufgabe der Kirche, Zeugnis zu geben und von daher wird es zu einer Frage glaubwürdiger Evangelisierung. Bei der Förderung der Menschenrechte wendet sich die Kirche an "alle Menschen guten Willens" und damit nicht nur an ihre eigenen Anhänger.

II. Das spezifische Potenzial der Kirche zur Unterstützung von Menschenrechtsverteidigern

Das größte Kapital der Kirche für die Menschenrechtsarbeit ist ihre Präsenz und Nähe zu den Menschen, wie ihre vielfältigen Einrichtungen und Organisationen für die Hilfs- und Schutzbedürftigen zeigen. Die Kirche ist auch auf regionaler Ebene präsent – zum Beispiel in Form von regionalen Bischofskonferenzen – und auf internationaler Ebene, nicht nur durch die Institutionen des Heiligen Stuhls sondern auch durch eine Vielzahl internationaler Organisationen (z.B. religiöse Orden, das weltweite Netz kirchennaher Organisationen, usw.). Als globale Instanz vereint die Kirche Menschen aus allen Regionen der Welt. Ihre Möglichkeiten, lokales, regionales und internationales Engagement zu bündeln, sind einmalig, und darin liegt auch das enorme Potenzial für eine effektivere Menschenrechtsarbeit.

Sehr viele Menschen, die für die und innerhalb der Kirche arbeiten, sehen sich selbst als Menschenrechtsverteidiger, und sie zeigen dieses Selbstverständnis in ihrer täglichen Arbeit als Lehrer, Prediger, Sozialarbeiter, Rechtsanwälte und in vielen anderen Berufen. Darüber hinaus bieten ‚ganz normale‘ Kirchenmitglieder Bedürftigen ihre Unterstützung an. In vielen Ländern, in denen die Kirche Bildungsangebote an Schulen und Universitäten oder gar staatsbürgerliche Bildungsangebote bereitstellt, stehen die Menschenrechte mit auf dem Lehrplan.

In ihrer alltäglichen Arbeit versetzen Menschenrechtsverteidiger Menschen in die Lage, sich für ihre eigenen Rechte und die anderer einzusetzen und damit ungerechte Machtverhältnisse anzufechten. Ein Menschenrechtsansatz lehnt jede Form von willkürlicher Macht ab und verlangt, dass Staaten glaubwürdige Einrichtungen zur Förderung und zum Schutz der Rechte aller schaffen. Die Menschenrechtsweltkonferenz von 1993 bekräftigte "das feierliche Bekenntnis aller Staaten zur Erfüllung ihrer Verpflichtungen zur Förderung der allseitigen Achtung, Einhaltung und Wahrung aller Menschenrechte und Grundfreiheiten für alle Menschen" (Wiener Erklärung und Aktionsprogramm, 1993).

Doch trotz dieser Verpflichtung der Staaten leben Menschenrechtsverteidiger in vielen Ländern gefährlich. Sie leiden unter öffentlicher Diffamierung, Erpressung, physischer Bedrohung und anderen Formen der Einschüchterung. Wie von der UNO aufgezeigt "haben viele Menschenrechtsverteidiger in allen Teilen der Welt Verletzungen ihrer Menschenrechte erleiden müssen. Sie waren Ziel von Hinrichtungen, Folter, Schlägen, willkürlicher Festnahme und Inhaftierung. Ebenso waren Menschenrechtsverteidiger Opfer von falschen Anschuldigungen und unfairen Gerichtsverhandlungen und Urteilen" (UN Fact Sheet Nr. 29, Human Rights). Diese Situation verlangt nach einer systematischeren Arbeit zum Schutz der Menschenrechtsverteidiger. Mit anderen Worten brauchen diejenigen, die den Stimmlosen ihre Stimme leihen, nationale und internationale politische Unterstützung, damit sie ihre Arbeit für die Menschenrechte ausüben können. In der Tat hat die Notwendigkeit einer Stärkung der Menschenrechtsverteidiger in der internationalen Menschenrechtsdebatte mehr Aufmerksamkeit erlangt. Im Dezember 1998 verabschiedete die UNO zum 50. Jahrestag der Allgemeinen Erklärung der Menschenrechte eine speziell den Menschenrechtsverteidigern gewidmete Erklärung und richtete danach das Amt des UN-Sonderberichterstatters zur Lage von Menschenrechtsverteidigern ein. Die strategische Bedeutung des Schutzes der Verteidiger schlug sich auch in anderen offiziellen Dokumenten regionaler und internationaler Menschenrechtsorgane nieder.

Trotz zahlloser Beispiele lobenswerter Menschenrechtsverteidigung vor Ort hat die Kirche bis heute ihr Potenzial, Menschenrechtsverteidiger auch politisch zu schützen, noch nicht systematisch erkundet. Die große Bandbreite an menschenrechtlichem Engagement, das täglich an der Basis geleistet wird, wird in den Aussagen und der Handlungsweise der Kirche auf „höherer Ebene“ nicht immer angemessen reflektiert. Bestehende Aktivitäten auf diesem Gebiet scheinen meist Ad-hoc-Maßnahmen als Reaktion auf Krisensituationen zu bleiben. Regionale Konferenzen wie IMBISA oder COMECE und kontinentale Organisationen wie CCEE oder SECAM sollten ihr Potenzial zur politischen Unterstützung der in der Kirche vor Ort tätigen Menschenrechtsaktivisten systematischer erkennen und nutzen. Durch die Zusammenarbeit der regionalen Konferenzen mit ihren politischen Ansprechpartnern hinsichtlich der Situation der Menschenrechte und Menschenrechtsverteidiger können sie dazu beitragen, die Position der Menschenrechtsverteidiger innerhalb und außerhalb der Kirche zu stärken, so wie es die

europäischen Bischofskonferenzen in Bezug auf das Recht auf Religions- und Glaubensfreiheit getan haben. Papst Franziskus erinnert uns: "Die Kirche verkündet » das Evangelium vom Frieden « (*Eph 6,15*) und ist für die Zusammenarbeit mit allen nationalen und internationalen Autoritäten offen, um für dieses so große universale Gut Sorge zu tragen. ... Es ist Zeit in Erfahrung zu bringen, wie man in einer Kultur, die den Dialog als Form der Begegnung bevorzugt, die Suche nach Einvernehmen und Übereinkünften planen kann, ohne sie jedoch von der Sorge um eine gerechte Gesellschaft zu trennen, die erinnerungsfähig ist und niemanden ausschließt." (Apostolisches Schreiben *Evangelii Gaudium*, 239).

III. Verstärkte Kooperation über die Kirche hinaus

Kirchliche Akteure sollten auch mit anderen Menschenrechtsorganisationen systematischer zusammenarbeiten. Dazu gehört natürlich auch die Zusammenarbeit mit anderen religiösen (christlichen und nicht-christlichen) Organisationen. Angesichts der Konflikte in vielen Teilen der Welt, die religiöse Dimensionen aufweisen oder die zumindest als solche gesehen werden, ist die interreligiöse Zusammenarbeit neben sich darin erschließenden praktischen Vorteilen auch von hoher symbolischer Bedeutung. Nationale Menschenrechtsinstitute (NHRIs) stellen sich gerade als wichtige und wesentliche Akteure in der Menschenrechtsdebatte, besonders in Afrika, dar. Dennoch ist eine Zusammenarbeit zwischen NHRIs und der Kirche de facto nicht vorhanden. Es ist kaum zu unterschätzen, wie sehr einen solche Distanz der Sache der Menschenrechte schadet und die Notlage von Menschenrechtsverteidigern bisweilen verstärkt. Außerdem gibt es eine ganze Bandbreite von zivilgesellschaftlichen Organisationen, die sich für Menschenrechte einsetzen. Zwar gibt es gute Beispiele für gelungene Zusammenarbeit zwischen der Zivilgesellschaft und der Kirche an der Basis, doch auf internationaler Ebene sind sie weit seltener. Besonders fällt auf, dass katholische Organisationen bei internationalen oder auf UN-Ebene von der Zivilgesellschaft organisierten Veranstaltungen häufig fehlen. Diese Beobachtung erhellt die Notwendigkeit, dass die Kirche ihre Beziehungen zu zivilgesellschaftlichen Organisationen und internationalen Institutionen klärt und verbessert. Auch Papst Franziskus wies auf den Bedarf hin, in einen fruchtbaren Dialog einzutreten: "Für die Kirche gibt es in dieser Zeit besonders drei Bereiche des Dialogs, in denen sie präsent sein muss, um einen Dienst zugunsten der vollkommenen Entwicklung des Menschen zu leisten und das Gemeinwohl zu verfolgen: im Dialog mit den Staaten, im Dialog mit der Gesellschaft – der den Dialog mit den Kulturen und den Wissenschaften einschließt – und im Dialog mit anderen Glaubenden, die nicht zur katholischen Kirche gehören" (EG, 238). Daher sollte die Kirche ihre Stimme erheben und zum Schutz für die Menschenrechte präsent sein, wo immer diese Präsenz notwendig ist.

Die Zusammenarbeit mit nichtkirchlichen Akteuren ist besonders wichtig für die Gestaltung und Durchsetzung einer Politik zum Schutz von Menschenrechtsverteidigern. Die dafür

geschaffenen Möglichkeiten sind oft selbst den Experten nicht bekannt. Dazu gehören unter anderem die bereits erwähnte UN-Erklärung zum Schutz von Menschenrechtsverteidigern von 1998 und die Leitlinien der EU zum Schutz von Menschenrechtsverteidigern von 2008, in denen sich die EU- Mitgliedsstaaten verpflichten, Menschenrechtsverteidiger auf der ganzen Welt praktisch zu unterstützen. Mit der auf ihrer 35. Versammlung verabschiedeten Resolution 69 beschloss die Afrikanische Kommission für Menschenrechte und Rechte der Völker die Einsetzung des Sonderberichterstatters für Menschenrechtsverteidiger, dessen Mandat die Bewusstseinsbildung und Förderung der UN-Erklärung zum Schutz von Menschenrechtsverteidigern umfasst. Die Leitlinien der EU basieren auf dieser UN-Erklärung. Wenngleich diese Erklärungen und Resolutionen auf das breite Spektrum des Schutzes aller Menschenrechte abzielen, wird wirtschaftlichen, sozialen und kulturellen Rechten oft ein Sonderstatus zugeschrieben – als seien sie nicht gleichermaßen justiziabel wie bürgerliche und politische Rechte. Daher erläutert der „Entwurf von Leitlinien und Prinzipien für wirtschaftliche, soziale und kulturelle Rechte in der Afrikanischen Charta der Menschen und Völkerrechte“ (November 2011) das Verständnis von wirtschaftlichen, sozialen und kulturellen Rechten im afrikanischen Kontext. Insgesamt können diese Erklärungen eine klare Vorstellung von der Bedeutung, Wichtigkeit und Praxis des Schutzes von wirtschaftlichen, sozialen und kulturellen Rechten und von der Verantwortung zum Schutz von Menschenrechtsverteidigern vermitteln. So liegt es z.B. in der Verantwortung von Beschäftigten in Botschaften und Konsulaten von EU-Mitgliedsstaaten im Ausland, sich mit Verteidigern zu vernetzen, sie zu Konferenzen einzuladen, sich als Prozessbeobachter zu betätigen, in Krisensituationen ein Notfallvisum auszustellen, usw. Diese pragmatischen Maßnahmen können dazu beitragen, den (in vielen Ländern heute eher kleiner werdenden) Handlungsspielraum für Menschenrechtsverteidiger zu vergrößern. Das Problem jedoch ist, dass es mehr an Information, Koordination und Kooperation bedarf, damit die EU-Leitlinien und der Entwurf von Leitlinien und Prinzipien für wirtschaftliche, soziale und kulturelle Rechte in der Afrikanischen Charta der Menschen und Völkerrechte Wirkung erlangen können. Das ist ein Gebiet, auf dem die Kirche zweifellos eine bedeutendere Rolle übernehmen könnte, die es noch zu erarbeiten gilt.

IV. Ermutigung zu gemeinsamem Handeln

Während des Workshops wurden bereits bewährte Praktiken aufgezeigt, die die Potenziale der Zusammenarbeit auf lokaler, nationaler, regionaler und internationaler Ebene deutlich machen:

- Menschenrechtsverteidiger leben vielerorts gefährlich. Sie nehmen zum Beispiel Risiken auf sich, wenn sie ausgegrenzten Menschen Obdach und Unterstützung gewähren. Oft können Menschenrechtsverteidiger auf den Schutz von Justitia et Pax Kommissionen und anderen kirchennahen Organisationen, aber auch von Netzwerken in der breiteren Zivilgesellschaft zählen. Auch in Europa werden Asylsuchende von der Kirche und ihren Einrichtungen

aufgenommen und unterstützt; sie finden Unterkunft in Kirchenasylen, viele der als „sans papiers“ bezeichneten Personen werden von kirchennahen Organisationen beraten. In den afrikanischen Ländern bietet die Kirche Flüchtlingen und Binnenvertriebenen ähnliche Dienste an. Kirchen machen sich in der ganzen Welt zum Fürsprecher für Migranten und Menschen ohne Papiere. Für die ganze Gemeinschaft der Menschenrechtsaktivisten war es eine enorme Ermutigung, als Papst Franziskus die italienische Insel Lampedusa besuchte und ein Zeichen setzte für die Würde aller Menschen und gegen das, was er als die „Globalisierung der Gleichgültigkeit“ (EG, 54) bezeichnete. Dies alles zeigt, wie gläubige Menschen, die an der Basis arbeiten, von kirchlichen Amtsträgern in ihrer weiteren Arbeit für die Würde anderer ermutigt werden.

- Bei bestehenden oder auftretenden Konflikten eröffnet die interreligiöse Zusammenarbeit der katholischen Kirche mit Muslimen und muslimischen Organisationen Chancen für eine Vermittlung zwischen den Konfliktparteien. Die interreligiöse Zusammenarbeit trägt zur Gewaltprävention bei und bietet den Opfern und Bedürftigen Schutz. Aufgrund ihrer engen Beziehungen zu ihren Brüdern und Schwestern im Süden können die Kirchen in Europa im Norden mehr Klarheit und Verständnis schaffen, indem sie über verkürzend auf das Religiös reduzierte politische, soziale und ethnische Konflikte aufklären. Religion kann als Instrument erheblich zur Überwindung von Differenzen beitragen.

- In den Workshops erfuhren wir von erfolgreichen gemeinsamen Aktionen auf internationalen Foren wie dem UN Menschenrechtsrat in Genf: Die regelmäßigen Berichte der Vertragsorgane bieten bedeutsame Gelegenheiten, kirchliche und kirchennahe Organisationen mit der örtlichen Zivilbevölkerung in die Erstellung sogenannter „Schattenberichte“ einzubinden. Vor allem der neu eingeführte „Universal Periodic Review“ eröffnet Möglichkeiten, Verpflichtungen eines Staates anzusprechen, und zwar über Eingaben bei der Berichtserstellung auf nationaler Ebene sowie direkt bei der Annahme des Berichts im Menschenrechtsrat. Es sind zumeist internationale zivilgesellschaftliche Organisationen, die im Menschenrechtsrat anwesend sind und zu den Berichten der Staaten Stellung nehmen. Angesichts der Netzwerke, die die Kirche über ihre Organisationen von der Basis bis hin zu ihrer Vertretung im Menschenrechtsrat durch den Gesandten des Heiligen Stuhls unterhält, sind das Potenzial und die Möglichkeiten der Kirche als kritischer Partner und Stimme in Menschenrechtsfragen bisher nicht ausgeschöpft worden. Viel stärker in die Diskussion eingebracht werden müsste der offenkundige Vorteil, den lokale Stimmen gegenüber internationalen Akteuren haben, was Authentizität und Autorität in diesen Foren betrifft; Erfahrungen haben in der Tat gezeigt, dass eine lokale Beteiligung größere Aufmerksamkeit und mehr Engagement seitens der Mitglieder des Menschenrechtsrates weckt. Die Kirche könnte ihr Netzwerk nutzen, um häufiger solche Begegnungen von Akteuren vor Ort und an der Basis mit der internationalen Gesellschaft zu initiieren.

Wir sind dankbar für die vielen Beispiele, die uns das Potenzial dieses weltweiten Netzwerkes der Kirche zum Schutz von Menschenrechten aufgezeigt haben. Eine Voraussetzung für diese Kooperation lokaler und nationaler Organisationen in internationalen oder globalen Foren ist, dass wir von der Relevanz der Erfahrungen und Botschaften, die wir der internationalen Gesellschaft mitzuteilen haben, überzeugt sind. Der Appell des Vertreters des Päpstlichen Rates Justitia et Pax, P. Jan Stuyt SJ, an die Konferenzteilnehmer brachte es auf den Punkt: „Nur keine Scheu!“. Diese Botschaft möchten wir allen zurufen: Scheut euch nicht, für die Rechte eines jeden Menschen einzutreten.

März 2014

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