
NATURAL JUSTICE

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PROMOTING HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS THROUGH
A BETTER UNDERSTANDING OF
TRADITIONAL VALUES OF
HUMANKIND: BEST PRACTICES

Context and justification

The Human Rights Council stressed that “traditions shall not be invoked to justify harmful practices violating universal human rights norms and standards”, thereby acknowledging that traditions are sometimes invoked to justify human rights violations.¹

The HRC in its resolution A/HRC/RES/21/3 of 9 October 2012 tasked the Office of the High Commissioner for Human Rights (OHCHR) to collect information from States Members of the United Nations and other relevant stakeholders on best practices in the application of traditional values while promoting and protecting human rights and upholding human dignity.

A number of NGOs have expressed reasonable concerns with a traditional values approach to human rights.² As many marginalised groups have experienced, “traditional values” are frequently invoked to restrict access to human rights for those segments of society who, from the conservative viewpoint or perspective of those in authority, challenge the mainstream or fall outside the dominant norm. Women are frequently the subject of traditions, often linked to national, cultural or ethnic practices, which violate human rights and freedoms.

This submission highlights the experience of Natural Justice (NJ), (www.naturaljustice.org) a collective of legal practitioners dedicated to environmental sustainability, social justice and economic well being in working with indigenous peoples (IPs) and local communities at the local level. It describes how the use of community protocols (www.community-protocols.org), a participatory tool for empowering indigenous peoples and local communities have been used to promote human rights and fundamental freedoms through the enhancement of traditional values and knowledge.

1. Self-determination, Free, Prior, Informed Consent and Community protocols: empowering IPs and local communities through the promotion of traditional values and customary ways of life

Indigenous peoples have a collective right to self-determination, including the right to consultation and decision-making processes. The right to free, prior, and informed consent (FPIC) is a rights-based principle representing a particular expression of the right to self-determination, related rights to lands, territories and natural resources, the right to culture, and the right to be free from losing livelihood, culture, and identity by recognizing their right to give or withhold consent to proposed development, conservation, extraction and other projects that may affect the lands they traditionally own, occupy, or otherwise use.

FPIC is the right of indigenous peoples to make free and informed choices about the development of their lands and resources. The basic principles of FPIC are to ensure that indigenous peoples are not coerced or intimidated, that their consent is sought and freely given prior to the authorisation or

¹ (HRC) Resolution 16/3, “Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind”.

² HRC/AC/7/NGO/1, “Joint written statement addressed to the Advisory Committee stemming From Human Rights Council resolutions: Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind.”

start of any activities, that they have full information about the scope and impacts of any proposed developments, and that ultimately their choices to give or withhold consent are respected.³

Community protocols offer a way to outline this, being a tool for empowering indigenous peoples and local communities. They are statements grounded in customary, national and international law by communities of their intentions to self-determine their futures and explain to specific stakeholders how they wish to engage with them. Through participatory methodologies, including meetings at the local level, the mapping of traditional values and customary ways of life, community protocols articulate community-determined values, procedures, and priorities. They set out rights and responsibilities under customary, state, and international law. Community protocols ultimately involve a dimension of self-identification, self-management, dignity, responsibility and control over traditional lands, territories and natural resources.

In fact BCPs have been used by NJ and its local partners for constructive and proactive responses to threats and opportunities posed by land and resource development, conservation, research and other legal and policy frameworks:

- Tanchara and Daffiama communities in northern Ghana have used community protocols to enable customary leaders and community organizations to respond in culturally appropriate ways to illegal gold mining and other threats to their territories, sacred groves, and important natural resources.
- Traditional health practitioners from two different ethnic groups in Bushbuckridge, South Africa, developed a BCP to address unauthorized use of traditional knowledge as well as lack of access to plants now confined within a state protected area.

2. Traditional values in conflict with human rights: BCPs as a community response to gender equality.

Traditional values and harmful traditional practices should not be confused. The lack of an internationally agreed definition of traditional values opened the door to using the term to legitimize human rights violations.⁴

The preamble of the Convention on the Elimination of Discrimination Against Women (CEDAW) affirms that: “a change in the traditional role of men as well as the role of women in society and in family is needed to achieve full equality between men and women”. In addition, article 5 of the CEDAW requires States parties to “take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”.

In most African societies, culture and tradition have been used by men to justify discrimination against women. Men are claimed to take precedence over women in marital relationships.⁵

³ U.N. Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights Working Group on Indigenous Populations, *Working Paper: Standard-Setting: Legal Commentary on the Concept of Free, Prior and Informed Consent*, 57, U.N. Doc. E/CN.4/Sub.2/AC.4/2005/WP.1, 2005 (July 14, 2005) (prepared by Antoanella-Iulia Motoc and the Tebtebba Foundation).

⁴ No.2 above

In Namibia, especially in the Caprivi Region, a man is regarded as the head of the household and backbone of the family. A woman is seen as needing her husband's support. A man is also recognized as the owner of land rights, the head of the household responsible for lighting the traditional fire and performing rituals before hunting (...) tending to political and social issues is also the domain reserved for men in Caprivi Region.⁶ During public meetings, the woman can make suggestions, but her decisions cannot be recognized as binding. The lack of a joint decision-making practice between husband and wife is critical in the region. In fact women are excluded from traditional authorities.

However, equality between men and women is a fundamental principle underpinned by the Universal Declaration of Human Rights (UDHR).⁷ Further, according to Article 14 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), States Parties should take into account the particular problems faced by rural women and the significant roles that such women play in the economic survival of their families. States parties should also take all appropriate measures to ensure the application of the provisions of CEDAW in rural areas in order to ensure, according to the principle of equality between men and women, that they participate in and benefit from rural development, health care, social security, training and education, financial assistance, and adequate living conditions.

Natural Justice's engagement in West Caprivi with the Khwe community is to facilitate the legal empowerment of women in helping them to fulfil their human rights entitlements, including the right to be part of decision-making processes. Natural Justice has used the process of developing community protocols to work towards the elimination of harmful traditional or cultural beliefs, values, stereotypes or practices that are inconsistent with human rights, by ensuring the representation of women and youth in all the meeting and at all stage of the process.

3. The role of community protocols in upholding the rights of the Khwe community and in restoring their dignity as a community.

Article 1 of the Universal Declaration of Human Rights stresses that: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".

Due to historical reasons, the Khwe community is losing a large part of their values which incorporates important knowledge around sustainable use and management of the natural resources within Bwabwata National Park. Further, no intergenerational transference of traditional knowledge is taking place. This is leaving the Khwe community vulnerable on many levels. With specific reference to their identity and dignity as a traditional value, the community protocol is playing an important role in upholding and enhancing the values of the community and affirming their identity as a "dignified" people. Healing, respect and sustainable use of natural resources are some of the values the protocol is promoting at the local level.

⁵ Lassana koné, "Promoting gender equality in francophone west Africa: reforming discriminatory laws, CAI Brief.

⁶ Olivier C. Ruppel, Women and Custom in Namibia: Cultural Practice versus Gender Equality?

⁷ Article 2 of UDHR: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (...)."