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Editorial

As per its mission, Kigali Independent University (ULK) has dedicated itself to upholding research through publishing scientific articles in its quarterly scientific journal. This issue compiles three significant articles which are fruits from the research prodigiously carried out by ULK Lecturers. The recommendations prescribed at each concluding part of each article carries great weight and would bring about positive change if taken into consideration.

The first article put to light how the updated use of cultural traditions can contribute to rebuilding war-torn societies. Prof. Dr NZABANDORA Joseph showcases how the Rwandan society fruitfully applied its local cultural traditions and developed eligible policies, suitable programmes and convenient projects for the country's sustainable development. The cases of "imihigo", "Gacaca" and others illustrate better.

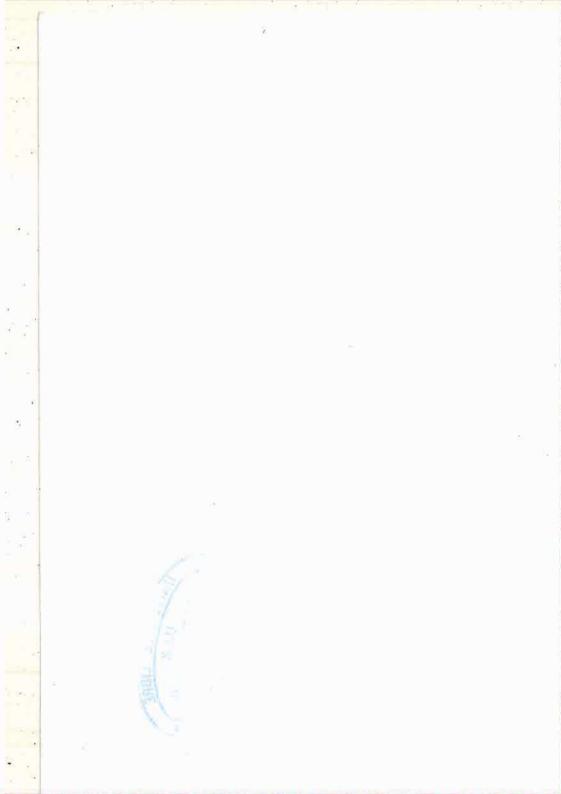In the second article, Prof. Dr. Kaaya Siraje investigated the promotion of migration and emigration for economic and social well-being of unprivileged people in the Least Developed Countries. In the light of the research findings, the researcher objectively asserts that Migration can promote economic and social well-being and improve education and health outcomes. It may be seen as an expression of the free choice of people where to live in the pursuit of new opportunities. It is rational to support that the right of choice is a human right and fortunately, where people run to, is where they find their hidden fortunes which they eventually share with their relatives back home as thus improvement of their social well-being.

The last but not least article evokes that with the current evolution of the International criminal law, high ranking officials may be held accountable for acts committed by their

subordinates if they fail to prevent or punish the commission of the crime by the latter. With reference to the article 28 of the Rome Statute, the researchers SERUGO Jean Baptiste(LLM) and NIKITAZI Jeffrey investigate whether in case of sexual abuses committed by priests could constitute crimes against humanity, whether the Pope could be held responsible as a superior authority.

Receive the issue 27th of ULK scientific review and read on.

Dr SEKIBIBI Ezechiel

Rector of ULK

UPDATED USE OF CULTURAL TRADITIONS AND WAR-TORN SOCIETY REBUILDING: THE CASE STUDY OF RWANDA AFTER THE 1994 GENOCIDE AGAINST TUTSI

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ABSTRACT

Some scholars blame the underdevelopment of African countries on African cultural traditions. Others consider that the use of local cultural traditions into developing policies, programs and projects is a key factor of a sustainable development. We would like to add the Rwandan case study to the file pertaining to this debate. We strongly believe that some Rwandan strategies of sustainable development after the 1994 genocide, like "imihigo" and "Gacaca" courts at all the levels of the country for example, could help cut short and settle once and for all the question (dilemma).

INTRODUCTION

The African cultures and traditions had been underestimated and fought by the colonial powers under the pretext that they are incompatible with development and modernization. Even after the independences, the underdevelopment of the Third World was still blamed on the local cultures. It was assumed that African countries cannot develop because their traditional cultures are against development. During the 1973 World Bank Conference held in Nairobi, Mr. McNAMARA, the President of that Bank, asked: " Why do African countries not develop despite enormous economic, financial and human resources devoted to their development?". The answer given was the following: "It is because of their cultures", "their cultures are fundamentally against development". From then he decided to hire at the World Bank anthropologists, who are experts on traditional cultures and societies in developing countries, so that they work in World Bank Developing Projects in order to find out why those cultures are fundamentally against development. Since then, hundreds of specialists of social sciences are yearly hired by the World Bank to apply Anthropology and Sociology to the socioeconomic development of the Third World (CERNEA, M.M., 1998:167-177).

More recently, during the 1990s, some authors such as Axelle KABOU (1991:87-88) again blamed the underdevelopment of the African continent on African mentality and cultures. She argued that it was not possible to talk about the underdevelopment of the African continent without linking it to the African mentality and cultures.

Resistance or reluctance to development, and therefore, the persistence of the underdevelopment in the Third World, despite substantial economic, financial and human resources devoted to its development, were given another explanation.

"To ignore the social and cultural context of the developing projects leads at best inappropriate design, at the worst to the hostility from the persons concerned, and generally converges to the projects which finally turn out to be inefficient and rejected by both the supposed beneficiaries and the public organisms which provide with investments" (CERNEA M.M., 1998 : 451). The same author illustrates his statement by an example of breeding project funded by the World Bank in Ethiopia. That project had an excessive confidence in the abstract authority of the law at the expense of the local traditional practices concerning the rights on land. At that period (end of the 1960s and the beginning of the 1970s), the World Bank did not pay enough attention to the cultural aspects of the developing projects. During the implementation of the project, thousands of peasants used to come and destroy the cattle farms' fences, burn the grazing lands, and steal cows. Following this situation, the World Bank asked to stop the project. But the peasants did not stop their rebellion against the ranches of Australian type imposed on local people without taking into account traditional practices. The rebellion ceased when the outside managers were replaced by a national team more sensitive to local cultural traditions. The new team used the traditional blood pact between local peasants and those who were concerned with the project (KOTTAK, C. P., 1998: 470-471).

We have two diametrically opposed views about the role of local cultural traditions in the development of developing countries. For some scholars local cultures are a big obstacle to development. For others they constitute an essential and absolute asset and must. These diametrical opposed views are as much embarrassing that we all know that the attempt to use local cultural traditions in political, administrative and economic practices had failed in Tanzania with Ujamaa, a Tanzanian socialism based on the African extended family and deemed to be the most humanistic and realistic form of socialism in post-independent Africa (KARIMUNDA, M. A., 2010: 105, YOUNG, R. J.C., 2002:246-248, NYERERE KAMBARAGE, J., 2007). Furthermore, the use of so-called African cultural traditions in 1970s by Mobutu Sese Seko in the former Republic of Zaïre, now Democratic Republic of Congo, led to the total economic collapse and the deliquescence of the state.

In these conditions it is very difficult to know whom to believe in. But the case of post genocide Rwanda may help cut short and settle once and for all the question. Indeed, the updated Rwandan cultural traditions have been at work and inform political, administrative, economic, judicial and social practices in Rwanda since 1999. Thanks to this strategy, Rwandan political authorities succeed in getting the country out of the economic and social disaster consecutive to genocide. The 1994 genocide against the Tutsi led Rwanda in apocalyptic situation in all domains. All the economic, social, educational and health infrastructures were completely annihilated and the Rwandans' will to live

together had been greatly affected by successive exiles and sporadic violence that culminate into the 1994 genocide. Rwanda had to repatriate and resettle more than 3 million of former and new Rwandan refugees and to judge about 2,000,000 detainees and other people suspected of having committed genocide.

But only 15 years later, Rwanda got out of that catastrophic situation and is now considered by international observers the best example of good governance and development all over the Great Lakes Region and Central Africa. As we will see it later, its performance is partially built on its cultural traditions as recommended by the 2003 Rwandan Constitution. Therefore the Rwandan experience in its political and socioeconomic development after the 1994 genocide against the Tutsi could bring about scientific progress concerning the relationship between the updated use of local cultural traditions and the local sustainable development in developing countries.

In this paper we focus on some Rwandan cultural traditions which are updated and used to cope up with the Rwandan political, economical, social and environmental challenges after the 1994 genocide against Tutsi until now (2011). We notably present the Gacaca courts, the traditional school of the behavior of excellence (Itorero ry'iguhugu), the performance contracts (Imihigo), the resettlement of more than 3 million of former and new Rwandan refugees (Isaranganya) and "Kwita izina" ceremonies applied to gorillas of Volcanoes National Park. For each case, we first

explain the cultural tradition in question before showing how it is applied in order to cope up with the Rwandan challenges.

1. AIM AND METHODOLOGY OF THE WORK

The purpose of this paper is not to assess the efficiency, with the help of figures, of each Rwandan strategy of development. The evaluation of Rwandan strategies for durable development, sector by sector, is being regularly done by the Journal Dialogue. See for example its issue 191 (July 2010) which assesses the results reached in various domains such as Good governance, Justice, Education, Health-care services, International Relations, Economy and issue197 (January 2012) exclusively devoted to Gacaca courts .

By writing this work, I was consumed with the four ambitions:

- to focus attention on the application of anthropology and on the importance of local culture in sustainable development by using a very exciting cases study;

- to show how the Rwandan Government found out intuitively and spontaneously the Rwandan cultural traditions' developing potential;

- to justify scientifically the relevance and accurateness (accuracy) of using Rwandan cultural traditions to cope with Rwandan challenges after the 1994 Genocide against Tutsi;

-   to call on or challenger Rwandan specialists of social sciences to take this opportunity to contribute to Rwandan sustainable development as their colleagues used to do since 1974 in developing projects or programs funded by the World Bank and USAID (United States Agency for International Development).

The aim of this works is to show how and at which extent applied anthropology is at work within Rwandan strategies of development. "Applied anthropology is the application of anthropological perspectives, theory, methods and data to identify, assess, and solve social problems" (KOTTAK, C.P., 2004: 32). As Erve CHAMBERS (1987:309) states it: " applied anthropology is the field of inquiry concerned with the relationships between anthropological knowledge and the use of that knowledge in order to improve human social conditions of life".

Because anthropologists are experts on human problems and social change and because they study, understand and respect cultural values and traditions, they should make policy affecting people. In this view, proper roles for applied anthropology include (1) identifying needs for change that local people perceive, (2) working with those people to design culturally appropriate and socially sensitive change, and (3) protecting local people from harmful policies and projects that threaten them (KOTTAK, C.P., 2004: 33-34).

To demonstrate how applied anthropology is at work in Rwandan strategies of development and is doing useful work, we have selected vital issues which actually constitute

Rwanda's crucial challenges after the 1994 genocide against Tutsi and shown how the Rwandan cultural traditions have been updated to face successfully those challenges. The relevance of Rwandan developing strategies based on cultural traditions is supported by two types of approaches and sources.

- We have given spectacular realizations performed in different sectors of life and drawn on the following sources: Rwandan Journals, students dissertations, reports from National Unity and Reconciliation Commission, National Service of Gacaca Jurisdictions, legal texts, Review Dialogue which assesses periodically Rwanda's government's actions in various sectors of life (governance, justice, education, health, economy and diplomatic relations), as well as our real-life experience.

- The Rwandan developing strategies based cultural traditions are supported by the conclusions drawn from the studies carried out by great anthropologists and sociologists on thousands and thousands developing projects funded by USAID (United States Agency for International Development) and the World Bank since 1960 to 1995. Among those anthropologists and sociologists we may mention Conrad Phillip KOTTAK (2004, 1998), Michael M. CERNEA (1998), Cynthia C. COOK (1998), Jean Francois BARE (1995), and so on.

But before going ahead, it is necessary to define the key concepts, namely sustainable development and culture.

2. WHAT ARE CULTURE AND SUSTAINABLE DEVELOPMENT?

It is not easy to define culture and sustainable development. Culture as well as sustainable development is a polysemous concept. In 1952, American cultural anthropologists drew up an inventory of about 150 definitions of culture (DE MARET, P., 200: 35). Since 1952 still many other definitions have been invented. All those definitions are genuine and pertinent. The multiplicity of means shows that culture is very complex. Each definition corresponds to one or a certain number of culture's aspects.

The concept of sustainable development is also polysemous. According to MURENZI NGANGO W. (2011:4-5), the coining of sustainability has ultimately caused the term to become nearly ubiquitous (omnipresent). At other times, it seems purposefully politicized, such as the use of "sustainability" in the U.S. Federal Agriculture Improvement and Reform Act (1996), which defined sustainability as a way "to continue primary emphasis on large-scale industrial agriculture for competitive production in a global export economy. However, few understand what is meant by sustainable development and fewer still have a clear idea of how its promise might be fulfilled. The concepts of sustainability and sustainable development evoke a broad range of questions. It is also complex. Anyway, let us attempt to give definitions of culture and sustainable development which are closer to the natural context of this article.

2.1. THE CONCEPT OF CULTURE

In his book **Primitive Culture** (1871, 1958: 1), TYLOR defines culture as *"that complex whole which includes knowledge, belief, art, morals, law, custom, and other capabilities and habits acquired by man as a member of society"*. Tylor's definition focuses on attributes that people acquire by growing up in a particular cultural tradition. Culture is not acquired through biological inheritance, but through enculturation, the process by which a child learns his or her culture. Cultures are traditions and customs, transmitted through learning and imitation, that govern (guide) the beliefs and behavior, even the personality of people exposed to them. Children learn such a tradition by growing up in a particular society, through a process called enculturation in Anthropology or socialization in sociology. Cultural traditions include customs and opinions developed over generations, about proper and improper behavior.

After reviewing about 150 definitions of culture, the American anthropologists Alfred Lewis KROEBER and Clyde KLUCKHORN proposed, in 1952, the following definition (De MARET, P., 2001: 35): Culture consists of habitual explicit and implicit models of behavior, acquired and transmitted by symbols (words and writing). According to those authors, the essential core of culture resides in its traditional ideas (i.e. resulting from its history) and particularly the values attached to it. On the one hand a cultural system may be seen as the product of the action, on the other hand, as something which conditions the elements of the coming action.

According to Clifford GEERTZ (1973: 44), quoted by Conrad Phillip KOTTAK (2004: 346), "cultures have been characterized as sets of "control mechanisms – plans, recipes, rules, instructions- what computer engineers call programs for the governing of behavior". Our behaviors and actions are shaped by our culture like the working of computers depends upon its programs. In whatever we do, it is our culture which is acting in us. "People use their cultural system to define their world, express their feelings, and make their judgments. This system helps guide their behavior and perceptions throughout their lives". Therefore we cannot ignore the cultural aspects in the process of sustainable innovation and development. By the way, studies done on the World Bank and USAID's projects in developing countries showed it.

1.2. THE CONCEPT OF SUSTAINABLE DEVELOPMENT

Being sustainable has become the socially preferable approach to almost everything. There have been references to sustainable policies, sustainable communities, sustainable agriculture, sustainable horticulture, sustainable use of the oceans, sustainable ecosystems, sustainable housing, not to mention sustainable businesses, sustainable practices, sustainable business practices, etc. Sustainable development as currently used traces its origins to the 1987 Bruntland Report of the World Commission on Development and the Environment. Expressed simply, sustainable development is commonly considered to be "the development that meets

the needs of the present without compromising the ability of future generations to meet their own needs" (SCOTT, J. and MARSHALL, G., 2005: 652).

Stephen A. ROOSA (in *Sustainable Development Handbook*), quoted by MURENZI NGANGO, W., 2011:.7), defines sustainable development as: The ability of physical development and environmental impacts to sustain long term habitation on the planet Earth by human and other indigenous species while providing:

- An opportunity for environmentally safe, ecologically appropriate physical development;

- Efficient use of natural resources;

- A framework which allows the improvement of the human condition and equal opportunity for current and future generations; and

- Manageable urban growth.

Sustainable development advocates were increasingly concerned with managing current events and their possible outcomes in a manner that increased the probability of more favorable outcomes, ultimately offering greater potential for mankind's sustained existence on Earth.

There is no universally accepted definition of sustainable development, nor do all definitions of sustainable development yield practical guidelines for policymakers. The concept is perhaps best defined as development that maximizes the

long-term net benefits to humankind, taking into account the costs of environmental degradation. Net benefits include not merely income gains and reduced unemployment and poverty, but also healthier living conditions and other benefits associated with improved environmental quality. Interpreted in this way, sustainable development stresses not the need to limit economic growth, as some have argued, but rather the need to grow and develop sensibly, to ensure that the benefits of development are long-lasting: that in the most general sense, people become better off over time. In our understanding the sustainable development is inseparable from a lasting peace that grants security, tranquillity and full development to every individual, every household and every human group and to society as a whole" (IRDP, 2006: 11).

2. THE USE OF UPDATED RWANDAN CULTURAL TRADITIONS FOR SUSTAINABLE DEVELOPMENT: POLITICAL WILL POLITICAL AND ITS ACCURACY

The Rwandan culture displays many positive practices. For this reason, argues the National Unity and Reconciliation Commission (NURC, December 2009: 5), the Government of Rwanda decided to use these practices in practical ways to alleviate the governance, economic and social problems encountered by the country following the 1994 genocide against Tutsi. In Urugwiro leadership meetings between May 1998 and March 1999, the problems of unity and reconciliation among Rwandans were discussed. It appeared that a further challenge to development was the

loss of values such as humanism that was an integral part of the Rwandan culture. One of the resolutions to resolve these problems was to reshape the Rwandan culture to encourage values that can help to build a good Rwandan citizen. Those values include patriotism for Rwanda and Rwandans, heroism, better ethical practices, behavior appreciated by others, living in peace with other people, mutual help, respect, integrity, patience, humanism, etc.

Furthermore, the article 8 of the preamble to the 2003 Rwandan Constitution provides the evidence that Rwandans consider "that it is necessary to draw from our centuries-old history the positive values which characterized our ancestors that must be the basis for the existence and flourishing of our Nation" (Republic of Rwanda, Ministry of Justice, 2003:7).

The potential of the Rwandan cultural traditions for the Rwandan development were thus intuitively recognized by the Rwandan Government and exploited it in many sectors of people's life. It is also supported by the specialists of social sciences who work within developing project sponsored and funded by the World Bank and USAID (United States Agency for International Development) in developing countries since 1974 (KOTTAK, C.P, 1998:453-454; 472-473).

In former time the developing policies, programs and projects were the lonely business of engineers, economists and accountants. But since early 1970s, numerous studies carried out by World Bank and USAID (United States Agency

for International Development) showed and demonstrated that "projects routinely fail when planners ignore the social and cultural dimension of development" (KOTTAK, C.P., 2004:17-18). The potential of development of social groups and traditional social organizations or institutions has been recognized at the same occasion,. But they are not taken into account in the developing projects because of the lack of social competences required for social engineering within the project management.

The job specialists of social sciences (Development Studies) is to understand and to exploit (or to use) the social and cultural models of developing countries in order to promote their sustainable development (KOTTAK, C.P., 1998:471). The Job of such specialists is among others to assess the social and cultural dimensions of economic development" (KOTTAK, C.P., 2004:17-18.   Since 1974, hundreds of specialists of social sciences are yearly hired by the World Bank to apply social sciences to the socioeconomic development of the Third World (CERNEA, M.M., 1998:167-57).

Learned from past experiences of projects sponsored and funded by the greatest funders of development (World Bank and USAID), the specialists of Social Sciences came to the conclusion that the fact of building the innovation conception on social and cultural structures in force in the project areas constitutes the best strategy for change (KOTTAK, C.P, 1998 :472-473).

The anthropologist Conrad Phillip KOTTAK and his sociologists colleagues made a restrospective evaluation of projects carried out by the World Bank and USAID (US Agency for International Development) in the developing countries. Their objective consisted in evaluating both the function and value of sociological and cultural knowledge at various stages of a project cycle (KOTTAK, C.P, 1998 :453).

« The most important conclusion and recommendation made from this study is that the economic development requires the adoption of well-founded social strategies. Each project must be based on a conception and execution strategy which is socially founded and culturally appropriate or sensitive. The social and cultural engineering is as much important as technical, financial or economic aspects (...). The results from this study revealed that taking into account the sociocultural compatibility is benefitable in economic terms, notably at the level of economic profitabily rates twice higher that those of the projects which do not take or insufficiently take into account social aspects. As far as the economic development is concerned, the sociocultural planification is not only wishable on a social point of view, but it is also indisputably profitable » (KOTTAK, C.P, 1998 :472-454).

"Development funds are often wasted if an anthropologist is not asked to work with local people to identify local needs, demands, priorities, and constraints. Projects routinely fail when planners ignore the cultural dimension of development. Problems arise from the lack of attention to and consequent lack of fit with, existing sociocultural

conditions". "To avoid such unrealistic projects, and to make development schemes more socially sensitive and cultural appropriate, development organizations now regularly include anthropologists on planning teams" (KOTTAK, C.P., 2004: 17- 18).

3. GACACA COURTS

The Gacaca courts are the most striking example of the use of the Rwandan cultural traditions to cope with the greatest challenge of Rwandan history due to the 1994 genocide against Tutsi. In 1999 the country thus found itself with 2,000,000 detainees and persons suspected of having committed genocide to be tried with related cost nearing 2/3 of the budget of the Ministry of Justice for 1998-1999 (MINIJUST, 2004:31-32). Five years after the genocide, only 6,000 cases had been tried. At the rhythm, more than 200 years were needed to try those 120,000 detainees registered in 1999 (RUBINGISA, J.C, July 2011: 6, quoting the Minister of Justice, Mr Tharcisse Karugarama and the Executive Secretary of National Service of Gacaca Juridiction). Most of them would be tried more than a century after their death. In this case, could one resurrect the death to be tried or to witness?

Rwanda has sourced from its heritage appropriate responses to new life circumstances and the big challenges it faced. In 1999, there were 2000,000 persons to be tried. Need was felt to reconcile Rwandans so as to restore their unity. Reconciliation is an obliged "passage" for the

survival of the society. To address these challenges, Rwanda drew on her cultural heritage the concepts of *gacaca* courts and *inyangamugayo*, i.e. the spirit of excellence, ongoing concern to avoid being regarded as inadequate, the sense of honor and the revulsion for dishonour, without neglecting the achievements of modern law (readjustment and reshaping gacaca courts in a written form). "Tapping into its cultural heritage", "learning from the experience of others" (*ubwenge burarahurwa*), relying essentially on oneself *(ak'imuhana kaza imvura ihise)*, these are some of the principles that inspired Rwanda and continue to support its actions" (SEBASONI, S., 2007: 296-298; 303). It is in this setting that nearly 12,000 gacaca courts were established throughout the country to accommodate any requirements of retributive justice with those of reconciliatory justice like in the traditional Rwandan society.

According to the same source, soon after the genocide, Rwanda undertook a quest for justice in response to an unprecedented situation. It sought advice from various experts and toured several countries to collect views and ideas from nations that had experienced the same misfortune or a similar misfortune. In this connection, an international conference was held in Kigali. This conference climaxed on elaboration by Rwanda of an organic law No 896 of 30/8/1996 organizing prosecutions for offenses constituting the crime of genocide or crimes against humanity committed since 1st October 1990. This law categorizes "acts of involvement in

crimes of genocide and classifies perpetrators of genocide into four categories:

- The first category includes those criminals who planned, organized, supervised and trained perpetrators of the crime of genocide and those who have used their authority to commit or abet genocide. It also includes those who have distinguished themselves in the crime of genocide and those who have committed acts of sexual torture.

- The second category includes those who have participated in voluntary homicide or acts that led to death.

- The third category consists of criminals who have caused serious injury to persons.

- Persons who committed offences against property fall under the fourth category.

Finally the two last categories were combined into one. The same law that seeks to combine justice and reconciliation also provides for the procedure of confession and guilty plea exactly like in the Rwandan traditional society. Many other attendant measures were taken since the commencement of this law in September 1996 to refine and balance the demands of retributive justice and a reconciliatory justice to enable the Rwandan community to continue to live (together). The Gacaca courts were created by the law no40/2001 of 26 January 2001. That law was revised by the law no 16/2004

of 19/06/2004 (MASENGESHO KAMUZINZI, 2012: 24). The move (communiqué) taken by the President of the Republic on 1 January 2003 is within this perspective and was motivated by the will to support the objectives of the Government of national unity to enshrine the rule of law, to fight injustice and to promote unity and reconciliation among Rwandans. It also came as a response to concerns about prisoners who pleaded guilty of crimes of genocide, apologized to their victims and Rwandans. Under the Law on Gacaca courts, genocide perpetrators not falling in the first category, pleaded guilty and apologized, would see their prison sentences reduced by half while they would be serving the other half performing community service (TIG). Finally, there are people who may stay in prison a term longer than what the law provides for their offences because they cannot be timely tried due to the large number of cases pending in courts throughout the country; such cases include those for juveniles who were between 14 and 18 at the time the offences were committed as well as common law criminals. All the released prisoners, except the old and sick ones attend a solidarity camp (ingando) before reintegration into normal life. In accordance with this law, those who pleaded guilty of genocide will perform community service (TIG). The spirit of the presidential communiqué was subsequently followed.

Rwanda has opted for Gacaca, a system of justice that is commensurate with the scale of the genocide and that allows to punish while best achieving reconciliation. Organic Law No 40/2000 of 26/01/2001 establishes and organises Gacaca courts.

"The success we expect from this law is also (...) the care and thoroughness with which Gacaca was prepared and the meticulousness of precautionary steps assigned to these courts before trial, a trial likely to be mitigated by apology sought from the offended and the community all to benefit justice and reconciliation. In short, Rwandans, those humiliated (by the shame of their actions) and those offended, all together, are called on by Gacaca courts to walk out of the darkness where the horrendous genocide threw them. The people of Rwanda as a whole, not only the accused and the judges, but also the witnesses and observers, are called on to survive death, to walk out of darkness back to life and light through truth telling. Ukuri kurakiza: truth heals (SEBASONI, S., 2007: 301)!

In the Rwandan political thinking, this truth is regarded as a catharsis, i.e., as an "effect of purgation of passions" (Aristotle), a "response of releasing or eliminating affects (natural ability) repressed for a long time in the subconscious but responsible for psychic trauma" (Petit Robert). The cathartic "acts as a powerful purgative" prompting "the need to say, to shout, and to release one's feelings to avoid madness". It is the firm belief that prevails in gacaca trials. It frees an individual from hatred towards others and the desire to exterminate them (SABASONI, S., 2007: 10-11 and 143).

The common habitat in Rwanda is a feature quite unique in Africa. There is no separate habitat in Rwanda between the so called "three ethnic groups". These live side by side

and have a mixed habitat. Elsewhere in Africa, tribes and their habitats are juxtaposed, each ethnic group having its own territory. When one is driven out of some place, they go back home, i.e. on the territory of their ethnic group. For Rwandans, sweet home is Rwanda and when one is driven from home they must leave Rwanda. It is this peculiarity of the common habitat in Rwanda which also explains the genocide of proximity; hence the need for proximity justice or trials.

Ultimately, one of the results expected from gacaca trials is to restore the neighbourhood ties, mixed or common habitat and the will to live together which were severely undermined or challenged by the successive massive exiles for a whole generation (1959-1994) and denied by the genocide against Tutsi in 1994. The gacaca trials can relieve genocide crime perpetrators of their fear and reassure all the victims to live a lasting peace in a common habitat that grants security, tranquillity and full development to every individual, every household and every human group and to society as a whole" (IRDP, 2006: 11).

As the National Unity and Reconciliation Commission (2009:30) puts it, « Gacaca courts were established in 2001 after it was noticed that the modern judicial system was visibly overwhelmed with the number of persons suspected of having committed genocide. This situation led the government of Rwanda to set up a traditional participatory system of justice that would resolve conflicts within the community, known as Gacaca. The Gacaca kicked off its

operations with the election of 15,000 judges-inyangamugayo (persons of integrity) to seat in more than 12,000 courts installed in all villages countrywide".

The Organic Law No 40/2000 of 26/01/2001, which established and organised Gacaca courts, came to implement the recommendations of Urugwiro leadership meetings held between May 1998 and March 1999. The election of 15,000 judges-inyangamugayo was followed by the official launching of the pilot phase of the Gacaca process by the President of the Republic of Rwanda on June 18th, 2002. Only 12 sectors were concerned. In November 2002 the Gacaca courts' activities were extended to 100 sectors. On the basis of this first test, the first law relating to Gacaca court was revised by the law n° 16/2004 of 19/06/2004. By then, the Gacaca courts were officially launched on national scale. The trials began in March 2005 in the pilot sectors and in July 2006 on national scale. The law of 2004 was revised by successive laws: laws n° 28/2006 of 27/06/2006, n° 10/2007 of 01/03/2007 and n° 13/2008 of 19/05/2008 (Executive Secretary of the National Service of Gacaca, December 2009).

The Gacaca jurisdictions functioned at all levels of the administration's country. In 2004 the Republic of Rwanda had 9,201 administrative cells, 1,546 sectors, 106 districts and 12 provinces. At each level were established Gacaca courts. In total there were 10,864 Gacaca Jurisductions which worked simultaneously on the assembly line. The 9,201 jurisductions functioning at the cell level sought the

facts, classed the accused persons in categories and tried the presumed criminals of the fourth category. The 1,546 jurisductions at the sector level were preoccupied by the third category while the jurisdictions at the district level were concerned by the facts of the second category and the appeals from the third category. Lastly, the Gacaca courts at the level of provinces were occupied in trying the alleged culprits of the second category (...).

When the system set to work on at national scale, all the Rwanda resembled a vast public hearing room in the open air. All the country was involved in legal proceedings with itself, and all the people were in open public court. Everywhere, at the same days, at the same hours, on all hills of the country, from the cell to the province levels, the Gacaca Jurisductions were at work. It is something without precedent worldwide and throughout the history (MUGESERA, A., 2012:2-4).

As one may notice, *the care, thoroughness and the pragmatism with which the reshaped Gacaca courts have been prepared and the meticulousness of precautionary steps are admired by many observers. They explain the scope* of the work done during the 7 last years, between March 2005 and August 2011. The Executive Secretary of the National Service of Gacaca Courts, Mrs Domitille MUKANTAGANZWA, revealed that until July 2011, 1.5 million trials have been prosecuted and ended by Gacaca courts. She precised that 500,000 trials related to the crime of genocide and the remaining cases were about looting and destroying goods (RUBINGISA, J.-C., August 2011: 6).

Until December 2009, « Over 60,000 suspects have confessed and have been temporarily released. They are living once again peacefully side by side with those they offended". At each prisoners release, 1000 prisoners undergo Ingando, conceived as a tool to build coexistence within communities. At the end of 2009, 46,688 prisoners had already undergone Ingando (National Unity and reconciliation Commission, NUR Review Magazine, December 2009:13 and 24).

Table no 1: Number of cases tried by Gacaca Courts between 2004 and 2012

Cases tried	3rd category	2nd category	1st category
1,951,388 criminal trials	1,270,336 (65.1 %)	649,599 (33.3%)	31,453 (1.6)
1,678,672 guilties	1,220,471 (72.7%)	433,471 (25.8%)	24.730 (1.4%)
272,716 released	49,865 (18.3)	216,128 (79.3%)	6,723 92.4%)

Source: Service National des Juridictions Gacaca (SNJG) quoted by Antoine MUGESERA (2012: 7)

According to the data from the National Service of Gacaca Jurisdictions at the end of January 2012, about 2,000,000 cases were tried (MUGESERA, A., 2012:1). Beside of Gacaca courts, another institution which is at all levels of the country is "Imihigo" (performance contracts).

4. PERFORMANCE CONTRACTS (IMIHIGO)

In Rwandan tradition, performance contracts (Imihigo) refer to an ancestral military rite during which the commanders and the members of different battalions commit publicly and

solemnly to perform an achievement out of the ordinary, in order to exhibit their exceptional bravery, heroism, patriotism and commitment to the nation. The evening before the battle, the King used to convene the warriors of all battalions and give them "the beer for challenges" (Inzoga y'Imihigo), so that they brave each other. He used to explain the goal of the war, and, appealing to warriors' pride, tell them: "The person, who thinks he is wining the war by killing the enemy before others, may come and drink this beer".

The commander of each battalion defiantly stands by turns, declaims his remarkable feats of arms and skills, bets his relatives, battalion he will be the first person to kill the enemies and thus win the war before others. Then one says that he has challenged others to do better (COUPEZ et KAMANZI, 1970: 27-28). On their return home, the heads of the battalions organized imposing ceremonies to pay homage to the King and make a report on their exploits during the war. The new feats of arms were incorporated into the previous ones and declaimed in front of the King. Moreover, they announced by the same occasion more exploits at the next time. These ceremonies are called "Kwesa imihigo". The heads of battalion, who took up a challenge and honored their commitments beyond their bets, were given cows, hills to govern, and decorated as highly distinguished persons for bravery and heroism.

"Imigo" have been integrated into the Rwandan administrative, political and economic practices since

March 2006. As the Ministry of Local Administration, Good Governance, Community Development and Social Affairs (MINALOC, 2007; 73-76) so rightly argued, the performance contracts are the Rwandan authentic answer to the problems of the efficient local governments' reform and management's change. The performance contract was established by the article 25th of the Law n° 08/2006 of 24/02/2006 determining the organization, structure and functioning of the District.

This law was preceded by a retreat of four days (from 9th to 12th 2006) which brought together the Executive Committees of all the districts of the country, MINALOC, MINCOFIN (Ministry of Finance and Economic Plannification) in order to examine the modalities of the performance contracts' efficient implementation into administrative and political practices as well as in the process economic development in Rwanda. The performance contracts are operational in all domains and at all levels: villages (cells), sectors, districts, provinces, ministries, associations, Non Governmental Organizations, private and public companies, cooperatives, civil society, etc.

According to MINALOC (2006: 9-10), each performance contract

1. identifies a certain number of clear priorities on the basis of the local potentialities and national priorities and programs (Vision 2020,Economic Development and Poverty Reduction Strategies, EDPRS);

2. determines specific objectives with their observable and measurable indicators;

3. Shows how the follow up and the evaluation of the projects relating to those objectives will be regularly done monthly, quarterly, half-yearly, and yearly;

4. specifies the mechanism of giving all local leaders, actors, partners and people a sense of responsibility and inciting them to actively participate in the projects' planning, execution, follow up and evaluation in order to achieve the specified objectives.

The performance contract is signed between the Mayor of the District on the behalf of the district's population and the President of the Republic of Rwanda. Each head of the family have to sign a performance contract with his cell. The latter signs its performance contract with the sector. The sector's population represented by the mayor signs the performance contract with the District.

Imposing ceremonies are annually organized at the national level during which the exploits done by different districts are reported and evaluated in front of the President of the Republic of Rwanda. The mayors, who took up challenges, were given rewards and prizes and decorated as highly distinguished persons for bravery and heroism by the President of the Republic of Rwanda so that they continue to be ahead of others. The analogous ceremonies take place at the levels of cell, sector and district. At all levels of the local governments, mayors of the districts and the

Executive Secretaries of sectors and cells, even families are thus exhorted to greater efforts.

5. ITORERO RY'IGIHUGU

The traditional school organized at Gako in the District of Bugesera near Kigali,is another illustration of the use of Rwandan cultural traditions to face to the Rwandan modern challenges. It started functioning in 2007. Its last session, which was held in July 2011, was devoted to about 300 students from the Rwandan Diaspora in western countries (BIZIMANA, V., July 2011:6). Itorero prolongs the philosophy, mission and strategies of Ingando (Camps de solidarite) but applies them deeply.

Historically, in Rwanda the Itorero ry'Igihugu was a Rwandan's school ; it was the channel through which the nation could convey messages to the people regarding national culture in areas such us, language, patriotism, social relations, sports, dancing and songs, defense of the nation, etc.(...). Participants were encouraged to discuss different national programs and positive values of Rwandan culture. The Itorero tradition also provided the formative training for leaders of the nation. Itorero participants understood that cultural values could help them develop their judgment, psychology, work and mutual aid, life and collaboration with others.

National fighters and grassroots leaders were selected from Intore (persons who have succeeded in Itorero, national school of the excellence) , as participants in Itorero. Itorero was not exclusive, even captured foreigners could have

access to it and if they behaved fairly, could be rewarded like others. Not all intore received cows or hills, these rewards were reserved for the best graduates. Apart from military training, participants could benefit from other training in body to body struggle, splaying away, jumping, racing, javelin throwing, shooting, endurance, etc. Participants also benefited from receiving other cultural training including: patriotism, attachment to the Rwandan spirit, wisdom, heroism, unity, taboos, eloquence, hunting, not to be deserters, etc. (NURC, May 2009: 7-8).

Nowadays, Itorero ry'Igihugu is a Rwandan cultural centre which mentors Rwandan citizens on civic education that enables them to embark on economic and social revolution. Itorero ry'igihugu is a way of gaining information about the country and the contribution to development using the values of Rwandan culture. It is a place where all selected Rwandans meet and are mentored on having objectives and vision in their ways of working and life; where they are taught the national objectives and the ways to achieve them by using the Rwandan culture. This in turn will help them to motivate and sensitize other people to be Intore (person characterized by his knowledge of Rwandan cultural values), Imfura (noble person) and Intwali (hero) (NURC, May 2009:11).

A high level retreat at Kagera Game Lodge in February 2007 mandated institutions including the Ministry of local Government, Good Governance, Community Development and Social Affairs, Ministry of Education,

Ministry of Sports and Culture and the National Unity and Reconciliation Commission, to establish strategies to make the Vision 2020, the Millennium Development Goals and Economic Development and Poverty Reduction Strategy understandable to Rwandans. They were also mandated to encourage the active participation of the Rwandan people in achieving these strategies through changes in mindset and ways of working. The Cabinet Meeting of 12 November 2007 approved the creation of the "Itorero ry'Igihugu" as the main contributor to speeding up mindset change and through this achieve the objectives of the Vision 2020. This program was publically launched by His Excellency the President of the Republic on 16 November 2007 in the Parliament (NURC, May 2009: 5-6, NURC, NURC Review, December 2009:8). The Itorero ry'Igihugu provides a culturally based channel that helps to mentor Rwandans on many different things, including re-educating them in the good cultural values that should characterize the Rwandan citizen. Then, by using these achieve real development. Itorero ry'Igihugu has a mission to teach Rwandans on "actively participating in mindset change of Rwandans about economic and social revolution" (Speech by the President Paul KAGAME at the closing ceremonies of activities of Teahers' Itorero, April 2008).

Itorero ry'Iguhugu has a vision and a mission (NURC, May 2009: 12-13). The vision of Itorero ry"Igihugu is, in the future, to have "Rwandans:

1. With a shared mindset and values to promote their unity and patriotism,

2. Aware of the goals of the country, ways to achieve them and their contribution in implementing them,

3. Self confident in solving their problems,

4. Characterized by the same and shared vision to strive for self development and pride to develop their country.

To achieve this vision, Itorero ry'Igihugu has the mission to:

a. Mentor intore suitable for the country and available in all categories of **Rwandans:**

- Characterized by the values based on the Rwandan culture which are: patriotism, sustainable Rwandan spirit, nobility, heroism, taboos; and also based on national development programs.

- Intore must be the motivation for positive change in terms of mindset, behaviors and service delivery in their place of residence and work.

b. Promote opportunities for development using Rwandan cultural values, identify taboos that inhibit the development of the country, fight violence and corruption, eradicate the culture of impunity, strengthen the culture of peace, tolerance, unity and reconciliation and eradicate the genocide ideology and all its roots.

c. Praise dignity (ishema) and heroic aspects (ibigwi) of Rwanda and Rwandans.

The following figures show that Rwanda uses intensively its updated cultural traditions to cope with its critical challenges.

Table n°2. Social categories mentored by Itorero ry'Iguhugu from 2007 to 2009

Categories of intore	Number
Local leaders Abayobozi b'Inzego z'ibanze	23,862
Primary and secondary school teachers Abarezi	43,600
Sector Executive Secretaries	403
Students from Diaspora	415 (plus 300 in July and August 2011)
Coffee partners Abahinzi ba kawa	598
Partners in medicine (community health workers) Abafatanyabikorwa mu bizima	45,210
Agronomists and veterinaries	1.140
Total	115528

Source: NURC, May 2009: 30; NURC December 2009: 9; BIZIMANA V., 2011:6.

The social category of community health workers occupies the first place. It is followed by Primary and secondary school teachers whereas local leaders occupy the third position.

6. UNDERLYING CULTURAL PRINCIPLES OF THE LAND SHARING (ISARANGANYA)

One may think that the land sharing was a provisional action (measure) linked to the massive comeback of ancient and new refugees after the genocide against Tutsi. It is not true. The land sharing is a way of reconstructing the common habitat and social tissue tattered by successive exiles and the genocide. It is rooted in Rwandan traditions and customs. Its aim was the restoration of the common habitat which characterizes Rwandan society since centuries and centuries. As shown in this paper, the land sharing is the Rwandan riposte to the strategy proposed by some western countries and consisting of dividing the country into Tutsi land and Hutu land, as a way of facing to the Rwandan challenges after the 1994 genocide against Tutsi. Furthermore, that land sharing was subsequently and definitively confirmed by the registration of individuals' landed properties according to current land law as demonstrated in the following paragraphs.

We show in this section how the resettlement of over 3 million former and new Rwandan refugees in the same lands was inspired by the Rwandan cultural traditions according to which Tutsi, Hutu and Twa have shared mixed or common habitat since centuries. In Rwandan rural areas, where more than 80 % of people live on agriculture to survive, the land constitutes the lonely source of life and hope, the shield against extreme poverty. Therefore the social peace in Rwandan rural zones depends to a certain extent on the way in which land conflicts are managed and resolved.

After the 1994 genocide against Tutsi, the Rwandan Government of National Unity faced the crucial problem of repatriation and resettlement of over 3 million former and new Rwandan refugees in the same lands (NURC, December 2009: 13). This problem was not easy because of the Rwandan political history. As S. SEBASONI (2007: 10-11, and 143) put it, the neighborhood ties, mixed or common habitat and the will to live together were severely undermined or challenged by the successive massive exiles of Tutsi for a whole generation (1959-1990) and denied by the Rwandan genocide in 1994.

The former refugees are those Rwandans who had been driven out of Rwanda in 1959-1962 and during Kayibanda and Habyarimana's regimes. The new ones were the Rwandans who fled their country in 1994 when the RPF (Rwandan Patriotic Front) conquered Rwanda and stopped the genocide. All the kinds of refugees had been forced to abandon their lands but hoped to retrieve them. The former refugees went back home in 1994 when the new ones were fleeing the country. The new refugees came back home in 1996 after the breaking up of Rwandan refugees' camps in eastern Congo.

The so-called western specialists of African issues suggested eagerly the country's partition into Tutsi land and Hutu land, believing that the coexistence between Hutu and Tutsi in the same country was practically impossible. As S. SEBASONI (2007 :22-23) put it in December 2003," there are some members of the international community who maintain the

ethnic interpretation of the problems of Rwandan society and even want to impose on Rwanda a political model based on "ethnic groups".

The new Rwandan authorities chose a solution which has profound roots in the Rwandan traditions since many centuries, even millenniums. Indeed, since time immemorial, Tutsi, Hutu and Twa used to share the common habitat. Still according to Servilien SEBASONI (2007: 10-11), "the common habitat of all Rwandans has always been peculiar to Rwanda. In Africa, Rwandan habitat is authentic. Of all times, there has never been separate settlement between the three ethnic groups. In Rwanda, ethnic groups have always had a mixed habitat unlike true ethnic groups found in other countries neighbouring Rwanda and Burundi.

The mixed habitat constitutes supplementary evidence that there is only one ethnic group and not three in Rwanda. Indeed, according to Denys CUCHE (2001: 85), the objective primordialist theories define ethno-cultural identity on the basis of a certain number of determining criteria such as common origin, language, culture, religion, collective psychology (basic personality), link with common territory, etc. To the objectivist theories, a group without his own language, his own culture, his own territory cannot claim to constitute an ethno-cultural group. It cannot at all claim an authentic cultural identity".

One of Rwanda's major challenges is to restore strong ties between neighbours", as it was the case in the former times",

by sharing lands between former and new refugees in same areas (Isaranganya). The sharing of owned land system was recognized by the Organic Law n° 08/2005 of 14/07/2005 determining the use and management of land in Rwanda. The article 87 of this law stipulates (Republic of Rwanda, September 2005: 36-37): "The State has the responsibility of giving land to persons who were denied their rights of landlorship. The lands given to such persons mainly consist of:

1° escheat land;

2° public or state owned land;

3° land in Public domain or Province State owned land;

4°land in Public domain or Private District, Town or Municipality and the City of Kigali owned land;

5° Sharing of owned land.

Without prejudice to article 20 of this organic law in relation to land that cannot be sub-divided, land sharing which was conducted from the year 1994 is recognized by this organic law. Holders of such land shall enjoy the same rights as those under customary holdings. Matters related to sharing of land which is mentioned in this article are not subject to compensation that is provided for this organic law. The order of the Minister holding land in his or her attributions determines the modalities in which sharing of land is conducted".

In order to have an idea on the concrete procedures of land sharing on the field, we have analyzed the reports relating to land sharing in Gataraga sector, Musanze District, in Northern Province (KAMALI BIDOBE, A., 2009; 58-59). Each report pertaining to land sharing has four parties. The first one mentions the persons or families who claim the same plot and the genuineness of their rights. The latter must be confirmed by witnesses having lived in the neighborhood of that plot. The families (their descendants or ancestors) who sold before the exile or had never lived in the place, according to the witnesses, were excluded from the sharing.

The second part of the report describes the land to be shared, its surface, limits and location. The third part is devoted to the rough sketch of the shared land and the atmosphere in which the sharing had been done (transparence, tolerance, mutual understanding). The last part is constituted by the signatures of the persons who attended the land sharing:

1. the families who have shared the land are each represented by five persons,

2. at least 20 witnesses (the number varies between 20 and 28 witnesses according to reports);

3. local authorities and leaders: Executive Secretary of the Cell (Umudugudu) who signs the report as the Secretary, some of the members of Consultative Committee (Njyanama) of the cell and sectors. After the sharing, the assembly is invited to a convivial ceremony (Ubusabane) at a given day.

The sharing reports are the evidence asked for the land registration. The systematic peasant lands registration in the country began in 2007 in the Northern Province, precisely in Rwaza sector, the pilot zone for that operation (UZAMUKUNDA, S., 2010: 2-3). The peasant land registration gives access to the bank credits and make safe transactions of leasing and buying (UVENHOVEN, R., 2008: 1). Moreover, a good land sharing undoubtedly contributes to restore a sustainable peace and consolidate the social cohesion of Rwandans. The researches carried out between 2005 and 2008 on the evolution of the social cohesion in Rwanda show it. Even if the land sharing is not the lonely factor of social cohesion, its contribution to the latter cannot be denied in rural societies.

Table No. 3. The expression of mistrust in the surrounding communities by province

Mistrust is still evident in surrounding communities				
PROVINCES	Opinions expressed in percentage of respondents			TOTAL
	YES	NO	No opinion	
EAST	58.1	39.1	2.8	100.0
NORTH	50.4	47.5	2.1	100.0
WEST	61.1	36.2	2.7	100.0
SOUTH	53.1	43.7	3.2	100.0
CITY OF KIGALI	54.2	43.2	2.5	100.0
TOTAL	55.7	41.6	2.7	100.0

Source: SOCOS, November 2008

Regarding clear and manifest mistrust in the surrounding communities, the Western Province tops the list in 2008 with 61.1% of respondents who stated this in this province. It is followed closely by the Eastern Province with 58.1% of respondents. The two provinces stand out in 2008 by their particularly high level of interpersonal mistrust compared to other provinces: 49% of respondents in the two provinces against 38% of respondents in the Northern and southern provinces, with the City of Kigali drawing closer to them. The Northern Province has the lowest level of mistrust in the surrounding communities because 47.5% of respondents rejected the proposition that "mistrust is still evident in their community. It is followed by the Southern Province and the City of Kigali with respectively 43.7% and 43.2% of respondents who do not agree with this proposal. As we have already shown, the provincial variations in levels of interpersonal trust and mistrust in surrounding communities is justified by both the magnitude of genocide and population movements following the genocide. Indeed the difference is huge between those who witnessed the unbearable horror of the genocide and those who know it just by hearsay (...).The lowest level of mistrust in the surrounding communities noticed in the Northern Province, which includes Musanze District, is also explained by the success of the sharing land between ancient and new refugees, that success being very mitigated in the Western and Eastern Provinces (KAMALI BIDOBE, A., 2009: 73-76, NZABANDORA J. et al., 2009).

7. KWITA IZINA CEREMONIES AND THE RWANDAN GORILLAS' CONSERVATION

In development, conservation or health projects or schemes, anthropologists study the local people's social behaviors, practices (customs, habits), beliefs, knowledge, know-how, and compare them with the scientific knowledge and know-how, by showing their similarities and their differences. They then seek the means and strategies which enable to maintain, reinforce, encourage, and strengthen the similarities, and design ways able to eliminate cultural aspects that can harm or hinder (impede) the scientific action. As illustration, let us give an example taken in Antilles: As C. LESNE, a psychiatrist who had practiced in Antilles, put it: "The psychiatrist uses anthropology to determine at which extent the scientific medical knowledge and know-how are tally with the system of beliefs and representations of a given society; and at which extent they are discordant or contradictory; and then design the means to reduce those divergence (difference, discrepancy, deviation, disagreement) (AMADES, quoted by M.-E. GRUENAIS, 1995: 200).

On his behalf Pierre de MARET wonders: « What types of knowledge and know-how have the scientists of the conservation of National Parks (modern conservationists)? And what type of knowledge and know-how can we found among local people and based on traditions (local people's knowledge and know-how)? At which extent are the two types of knowledge and know-how different or similar? How to make them understanding each other? How to

make them collaborating together in development and conservation policies and projects? (de MARET, P., 2000). Within any society the Applied anthropology distinguishes the social and cultural factors favorable to the projects from those which may hinder those projects. Then it designs and examines how to maximize favorable social factors and minimize the harmful factors to those projects or policies via cultural and social engineering, instead of using power to impose themselves on local people, given the fact that imposed projects always fail, and the ecological, economic and social costs of that failure are too expensive, as shown by the past of Virunga Volcanoes National Park at its beginning (1925-1947) (NZABANDORA N.M.J., 2008 and 2011) and experiences of other protected areas allover the world. Thus, Applied Anthropology makes projects and policies culturally and socially appropriate, sensitive and acceptable for local people. The applied anthropology's concerns are not to replace scientifically recognized action, but to improve it, to enhance it, as it is the case in health policies (related to epidemiology, community health-care services or workers) and development projects.

What is usually important for medicine order is actually to find the cultural and social interrupter (switch) which will allow the physician to act and to be efficient (GRUENAIS, M.E., 1995: 209). Applied anthropology seeks anchoring ties, points or zones for the implementation of health, development, and conservation policies or projects in local social and cultural structures (organizations) and undertakes appropriate social and cultural engineering in favor of

that anchorage. This thought does fit in with the Georges BALANDIER's theories of social and cultural dynamic, according to which the actual and durable change arises from the combination of forces from inside with the forces from outside (forces du dedans et du dehors, BALANDIER, G., 1974). Let us now give illustrations concerning the use of Rwndan cultural traditions in order to improve Nature conservation.

Reviving the Rwandan tradition of assigning nouns to human babies and small calves, Rwandan authorities organized in June 2008 grandiose ceremonies during which twenty gorillas' babies were given nouns. Contrary to the previous years (2005 for example), the ceremonies of Jun 2008 gathered together national and international agencies, associations and NGOs, from the three countries surrounding the Birunga volcanoes (Rwanda, Uganda and Democratic Republic of Congo), and which are concerned with Nature conservation and local development. Those ceremonies were organized around the Rwandan National Park of Volcanoes in the North-West of Rwanda. They lasted a whole week punctuated with traditional songs, stories, poetries relating to nature conservation, ascription of nouns, and other cultural great expressions of joy, workshops with local population about conservation policies and local development originated from tourism's revenues, and finally the unveiling of the monument erected in memory of Birunga volcanoes' gorillas.

The ceremonies culminated on June 21st, 2008 in the christening of twenty babies' gorillas. Among them were twins. Other babies' gorillas have been christened in June 2011 during analogous ceremonies. Once again among them they were twins. Twins among gorillas became a peculiarity of the National Park of Volcanoes in the Northwestern Rwanda.

Rwandan traditional ceremonies relating to making names for people and cows are thus applied to Nature conservation. Indeed, those popular and political ceremonies integrate Nature conservation into Rwandan culture and traditions and link it with them. They bring it closer local cultural sensibilities. They put the local culture and traditions in the service of mountain gorillas' conservation in Birunga volcanoes and certainly contribute to enhance it.

That is why the organization of that kind of ceremonies is highly commendable. However I would like to suggest pushing on with the use of Rwandan cultural traditions in the Rwandan Nature conservation policy, for example by officially proclaiming gorillas as Rwandans and Rwanda's totemic animals. Totems are very known and worshiped in Rwandan traditions. In Rwandan traditions totemic animals are with the clans the determining factors of individual and social identification. They are the emblematic symbols of clans and their members. Rwanda became famous in the Western countries, especially in Europe and America because of its mountain gorillas. Moreover, all Rwandans are very proud of that. Artistic representations of mountain

gorillas that one finds all over the country give evidence of that profound feeling.

In popular imagination, totemic animals are considered the source of the happiness, good fortune, well being, and prosperity of the people (individuals as well as their clans) they symbolize. The mountain gorillas of the Rwandan National Park of Volcanoes match that popular perception relating to totemic animals. Indeed, the mountain gorillas make Rwandans happy because they are today the first source of foreign currency of Rwanda (RWANYIZIRI, G., 2008: 46 and 55).

Another example of the application of anthropology to Nature conservation in Rwanda is the recent incorporation of the traditional sacred area of Gihondohondo, near Nyakinama and Ruhengeri city, into the National Park. The sacred zone of Gihondohondo have been efficiently protected since centuries and centuries, despite the development of Ruhengeri city and the growth of its population, thanks to the local beliefs, taboos and socio-religious and political practices, as, among others, an initiating place of Rwandan pre-colonial kings, such the famous Rwabugiri Kigeri IV and many other previous kings. In this case a link is made between local traditional strategies of Nature conservation and the modern ones. This transition needs an efficient social engineering as seen above.

CONCLUSION

The Rwandan authorities have had the ingenious and pragmatic intuition of the Rwandan cultural traditions' potential for development. They exploited them in order to face the Rwandan tremendous challenges after the 1994 genocide against Tutsi. They have reached the spectacular results after only 15 years. The relevance of Rwandan intuition and pragmatism are scientifically validated by researches relating to the retrospective evaluation of numerous projects carried out by the World Bank and USAID (US Agency for International Development) in the developing countries.

Learning from past experiences of projects sponsored by the greatest funders of development, the specialists of Social Sciences came to the conclusion that the fact of building the innovation conception on social and cultural structures in force in the project areas constitutes the best strategy for change (KOTTAK, C.P, 1998:472-473).

The anthropologist Michael M. CERNEA (1982: 133) worked on fifty-seven projects. His colleague Cornard Philip KOTTAK and other sociologists made in 1998 a retrospective evaluation of 337 projects carried out by the World Bank and USAID in the developing countries and finished between July 1992 and April 1995. Their objective consisted in evaluating both the function and value of sociological and cultural knowledge at various stages of a project cycle (KOTTAK, C.P, 1998:453). Those studies showed that the

economic profitability and the sustainability of developing projects depend upon the taking into consideration of local cultural and social aspects.

The most important conclusion and recommendation made from that study is that the economic development requires the adoption of well-founded social strategies. Each project must be based on a conception and execution strategy which is socially founded and culturally appropriate. The social and cultural engineering is as much important as technical, financial or economic aspects.

The results from that study revealed that taking into account the sociocultural compatibility is benefitable in economic terms, notably at the level of economic profitabily rates twice higher than those of the projects which do not take or insufficiently take into account social aspects. As far as the economic development is concerned, the sociocultural planning is not only wishable on a social point of view, but it is also indisputably profitable economically (CERNEA, M. M., 1982:133; CERNEA, M. M., 1998: 33; KOTTAK, C.P, 1998:473;453).

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The promotion of migration & emigration for economic and social well-being of unprivileged people in least developed countries (LDCs).

Case study of the fourth United Nations conference on the least developed countries, Istanbul Turkey, period 9th -13th may, 2011.

by

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ABSTRACT

This article entitled he promotion of migration& emigration for economic and social well-being of unprivileged people in least developed countries (LDCs).Case study of the fourth United Nations conference on the least developed countries, Istanbul Turkey, period 9th -13th may, 2011, which the writer attended.

It states that Migration can promote economic and social well-being and improve education and health outcomes. It may be seen as an expression of the free choice of people where to live in the pursuit of new opportunities (UNDP, 2009). In other words the non-respect for fundamental human rights like; rights of equality, liberty, personal freedom, safety and security and a decent standard of living, among others, can act as a major driver of emigration. However, and fortunately, where these people run to, is where they find their hidden fortunes which they eventually share with their relatives back home as thus improvement of their social well-being.

However, migration can also lead to a trade –off in rights of migrants through better opportunities abroad, and improve the well being of family members at home through the remittances sent (Klugan and Pereira, 2009). Migration can also lead to a blockage in rights by depriving migrants of their human rights if adequate protection in the host country is not assured (Klugan and Pereira, 2009). Diaspora members and migrants can promote the transfer of skills, technology, capital and ideas, while migration can be a livelihood strategy and improve the conditions of both the migrant abroad and family members left behind, including in conflict –affected and post-conflict situations. Financial remittances may well be the most tangible and direct link between migration and development, but these are only one of many dimensions (Klugan and Pereira, 2009). It is from the above perspective that the writer decided to show to the prospective readers how migration and emigration can come in to save the unprivileged people in the LDCs

GENERAL INTRODUCTION

1. Background

This research paper aimed at examining the promotion of migration & emigration for economic and social well-being in least developed countries **(LDCs).** Migration can promote economic and social well-being and improve education and health outcomes. It may be seen as an expression of the free choice of people where to live in the pursuit of new opportunities (UNDP, 2009). Human rights are integral part in the exercise of such choices and participate in the decisions that affect people's lives (UNDP, n.d). The non-respect for fundamental human rights (e.g. rights of equality, liberty, personal freedom, safety and security and a decent standard of living, among others) can act as a major driver of emigration. However, and fortunately, where these people run to, is where they find their hidden fortunes which they eventually share with their relatives back home as thus improvement of their social well-being.

2. Problem Statement

Human mobility can be instrumental in the realization of the quest for the protection of human rights of migrants through better opportunities abroad, and improve the well-being of family members at home through remittances. However, migration can also lead to a trade –off in rights of migrants through better opportunities abroad, and improve the well being of family members at home through the remittances sent (Klugan and Pereira, 2009). Migration

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can also lead to a blockage in rights by depriving migrants of their human rights if adequate protection in the host country is not assured (Klugan and Pereira, 2009). Diaspora members and migrants can promote the transfer of skills, technology, capital and ideas, while migration can be a livelihood strategy and improve the conditions of both the migrant abroad and family members left behind, including in conflict –affected and post-conflict situations. Financial remittances may well be the most tangible and direct link between migration and development, but these are only one of many dimensions (Klugan and Pereira, 2009). It is important that the opportunities of migration be seen as one factor among others in the context of necessary local and national policies, to eradicate poverty and promote human development. It is from the above revelations that the researcher wanted to show the readers the promotion of migration& emigration for economic and social well-being of unprivileged people in least developed countries **(LDCs)**.

Research Question

Does the promotion of migration & emigration lead to improved economic and social well-being of people in LDCs? (2010-2011)

3. Research Hypothesis

The promotion of migration & emigration lead to improved economic and social well-being of people in LDCs.

4. Research Objective

To find out how migration & emigration lead to the improved economic and social well-being in least developed countries **(LDCs).**

5. Research Design

Churchill (1992:108) defines research as the framework or plan of study that guides the collection and analysis of data, whereas Richard and Williams (1990:138) define research as the total plan researchers use to aid in answering research questions; as part of his/her plan, he/she decides what research questions should be, what data will be required to answer them, from whom data will be obtained and the best way to gather the data.

According to Grinnell and Williams (1990:41), a research design is a careful systematic study or investigation in some field of knowledge undertaken to establish some factors or principles. They further emphasize that a research design is the entire process of the study, the problem formulation through dissemination of findings.

Richard M. and Williams (199:117), assert that the research may be exploratory, descriptive or explanatory. Under this study, the researcher used a case study a case study and explanatory approaches. The researcher adopted a case study of the fourth United Nations conference on the least developed countries, Istanbul Turkey, period 9th -13th may, 2011, *which the researcher physically attended.*

6. Primary data

According to Audrey J. Roth (1989:57), primary data comes straight from the people or works being researched and therefore the most direct kind of information that can be collected. For Churchill (1992:49), he defines primary data as the information collected especially for the investigation at hand. Primary sources of data are of paramount importance to this research because it provides first hand observation and investigation. The primary data required for this research was minimal and to a small extent collected from the fourth United Nations conference on the least developed countries, Istanbul Turkey, period 9th -13th may, 2011, *which the researcher physically attended.*

7. Secondary Data

Another very important source was secondary data. Grinnell Jr. Richard M. and Margaret Williams (1990:219), defined secondary data as the data that already exists in boxes, in some companies or organizations' computers. This has been the most important source of Data as far as this study is concerned. The researcher obtained the secondary data from the fourth United Nations conference on the least developed countries, Istanbul Turkey, period 9th -13th may, 2011, *which the researcher physically attended.*

1. The Literature on the key concepts

Due to its volatile and multifaceted nature, migration is more difficult to capture than other demographic indicators

of population change (Poulain and Perrin, 2003). The quality of migration and remittance data available in many countries, including LDCs continues to be an obstacle in providing evidence –based and policy-oriented research. Migration statistics tend to be outdated, unreliable or not comparable at either regional or global levels. These data limitations have to be kept in mind when considering the migration and remittance trends referred to below

1.1 Key concepts

Migration; is the act of moving from one's country to go and live in another country of his/her choice.

LDCs; refers to the least developed countries

1.2 EMIGRATION FROM LDCS

Socio-economic and political conditions, wage differentials, transnational networks, a rapidly growing young population, and armed and political conflict can be considered key determinants of emigration. According to the World Bank (2005), 21.8 million, or 2.9 per cent of the total population of all LDCs, migrated in 2005. According to bilateral estimates by Ratha and Shaw (2007), main emigration countries among LDCs are Bangladeshh4.9 million) Afghanistan (2 million) Mali (1.2.million) and Burkina Faso (1.1million). Unlike common perception, South –South migration from LDCs appears to be significantly more important than South-North migration. Some concerns individuals originating from South –south migration tends to occur

between neighbouring countries and where are small wage differentials, though income LDCs, one in five migrated to another LDC, and almost half of all emigrants moved to another developing country.

1.2.1 Destinations of Emigrants from LDCs, 2005.

South-South migration tends to occur between neighboring countries and where there are small wage differentials. Though income variations may be relatively small compared to South-North migration and the quality of earnings and the quantity of remittances may be of concern, the potential welfare gains for poor people can still be significant Ratha and Shaw, 2007). Based on calculation s of 2005 data by Ratha and Shaw , with almost 700.000 emigrants , Eritrea is estimated to have been the main source country of intra-LDC migration in 2005, followed by Mali about 400.000), Mozambique (335.000) and Guinea (300.000).

Relatively speaking, more than four out of five migrants originating from Eritrea, Burundi and Rwanda moved to other LDCs.

According to data by (Docquier and Marfouk 2006), the emigration rate from LDCs to Developed countries (DCs) countries was only 1% per cent in 2000, while it is more than 10 times higher among skilled workers (13.2%) Whereas a mere 2.3% per cent of the labor force in LDCs are skilled workers, in three migrant workers from LDCs in DC countries belonged to the tertiary educated group. While a large proportion of Emigrants from LDCs move to other

LDCs and developing countries, highly skilled migration from LDCs seems to be a predominantly South North phenomenon . Densely populated Asian LDCs (Bangladesh , Myanmar, Nepal , Bhutan and Cambodia) are less affected by such brain than African or Small Island LDCs with extremely high emigration rates among their tertiary-educated population (Haiti, Samoa, Gambia, Sierra Leone, Mozambique and Liberia)

1.2.2 Share of skilled workers from LDCs in OECD countries from the top 30 skilled emigration countries, in 2000

Broken down by gender, this South-North brain drain is highly feminized. The emigration rate of skilled women stood at 17.1 per cent in 2000, considerably higher than the rate for men with tertiary education working in OECD countries 910.3%) This might reflect the unequal access for women in many countries; only about four out of 10 highly skilled emigrants from LDCs in 2000 were women, pointing to a considerable gender gap. As the human capital of woman relative to men in LDCs in 2000 were women, pointing to a considerable gender gap. In other words the human capital of woman relative to men in LDC is even scarcer as a result of unequal access to higher education , is female brain drain may be more detrimental than the emigration of skilled men (Docquier et al. ,2008)

In the medical sector, the emigration of physicians exceeds critical levels in Haiti, sub – Saharan Africa, and South Asia.

In Liberia, the emigration rate exceeds 50 per cent, similarly, more than a third of Haitian and Ugandan doctors left the country in 2004 (Bhargava et al.,2010)

1.2.3 Emigration of physicians from LDCs, 2004

While the migration of the highly educated and the likely detrimental impact on countries of origin is widely referred to as brain drain, recent research by the United Nations development programme (UNDP,2009) found the repercussions for home communities to be less negative than the commonly assumed . Concerning the medical sector, improved public health systems, staffing levels of nurses and the availability of medication may, among other factors, be as important for the achievement of the MDGs in relation to public health as tackling the high emigration rates of doctors. Most highly skilled health personnel in Africa tend to work outside the pubic sector rather than in the areas most critical to the poor, that is , rural areas and slums (Clemens , 2007).The perceivd non-existance of opportunities in countries of origin and the perceived better prospects abroad are important drivers of emigration .

Measures that aim to entain the brain drain are unlikely to be effevtive unless the underlying structural deficiencies and the lack of incetives are also addressed. Furthermore, emigration opporituituis for skelled workers have been shown to spur incentives and the deand to invest in human capital formation in the country of origin, resulting in

increased numbers of training opportunities consequently, taineesor a net brain gain.

1.3 Population and immigration in LDCs

Over the past 20 years the population of LDCs has increased by 330 millions, accounting for 855 million or 12.4 per cent of the global population. Growing at double the rate of average global population growth, the united Nationals projections forecast that the population in LDCs will grow by a further 200 million over the next 10 years (UN DESA/ pop, 2009) While over the past five years , the average global   total fertility rate stood at 2.6 per cent (1.6%in developed countries and 2.7% in less developed countries) it remained   at 4.4 per cent in LDCs, reaching a peak of 5.1 in sub-Saharan Africa (UN DESApo,2008 estimates) Life expectancy at birth in LDCs is some 20 years lower than in more developed regions at 56 years and 77 years , respectively.

The urbanization rate in LDCs is 20 percent, points below the world average 29.2%) indicating that the large majority of the poorest still live in rural areas. In contrast to urbanization rates in more developed regions (75%) and the world average (50%), only some 33 percent of the population in poorest countries lives in urban centers. However, there are important variations regarding urban dwellers in LDCs , for instance , between countries like Djibouti (88.1%) and Burundi (11%) Nonetheless the urban population of LDCs is estimated to grow by 120 million over the next decade

(UN Desa/pop,2008), either through rural-urban migration or demographic growth. Such urban population growth is likely to place significant strain on public services and infrastructure, as well the human development potential in urban centres.

For 2010, the United Nations Population Division (2009) estimates that about 11.5 million or 5.4 per cent of all international migrants word wide lived in LDCs. Even though overall migrant numbers in LDCs are increasing, relative to the rapid population growth in these countries , their relative share in the population has declined slightly,. However , because of the inherent difficultly of measuring irregular migration , the actual volume of migrant stocks in LDCs may well exceed that estimate.

It is expected that LDCs may faced with the necessity to provide asylum to some 2.1 million refugees this year. The number of forced migrants as a share of international stocks has been steadily decreasing over the past 20 year. Representing almost half of all international migrants in 1990 43.2% or 4.8million) their numbers may decrease tom under one fifth (18.6%) in 2010.According to the United Nations High Commissioners for Refugees (UNHCR, 2009) in 2008 , almost one in five refugees received protection in an LDC , with a quarter of all refugees worldwide originating from Afghanistan (2.8 million) in addition , LDCs are host to a large share of internally displaced persons (IDPs) . In 2008 , at least two out of five IDPs were forced to relocate within a LDC . Sub Saharan Africa is the region with the

highest number of IDPs worldwide (37.3% to 38% of total IDP numbers. Hosting at least 10.5 million IDPs and some 1.8 million refugees in 2008 raises important protection and development issues for LDCs , and discrimination and human rights violations may epecist while vulnerable populations seek protection.

Compared to the worldwide distribution (49%), the share of female migrants in LDCs is slightly lower and has remained stable at round 47.6 per cent over the past decade. Their role in migration has changed considerably and it is often referred to as the " feminization" if formerly, they travelled mainly as dependents accompanying male migrants, women now often migrate independently and are actively involved in migration for employment (IOM, 2008).

Considering overall immigration and emigration trends from LDCs , the net migration rate has dropped by almost half from -0.7 per cent in the period from 1995 to 2005 , to -0.4 over the past five years (UN DESA/ pop,2009). therefore , in terms of net migration flows , between 2005 and 2010, more people left than moved to LDCs , compared to immigrants , the stocks of nationals from LDCs living abroad are high as a result of the negative net migration rate over the years. The decline in this rate could either reflect the increase of immigrants in these countries , or as drop in outmigration .the role played by labor migration in LDCs is discussed in the next subsection.

1.4 LABOUR MIGRATION

Although the actual extent of global labor migration is not known owing to the lack of reliable data, the international labor Office (ILO) estimates the number of economically active workers among global migrants in 2010 at 105.4 million , or about half of all migrants . According o the regional distribution, 8.4 million (8%) were working in Africa , 30.7 million (29%) in Asia

(inclus\ding the Middle East) and 3.2 million (3%) in Latin American and the Caribbean (ILO,2008,2010).

Overseas employment is predominant in some of the populous Asian LDCs and in the Island States. South Asian LDCs, such as Bangladesh and Nepal , have continued to rely heavily on the Middle Eastern labor market due to economic growth and labor shortages in the Gulf Cooperation Council (GCC) countries. Intraregional labor migration from sill pacific Island LDCs is mainly directed towards Australia and New Zealand (Duncan and Voigt – Graf, 2008). In sub –Saharan Africa, the phenomenon of overseas employment is still at an early stage . Though countries such as Senegal and Mauritania have over the past years entered into bilateral agreements with Spain (IOM, ILO and OSCE, 2008) intraregional migration still predominates on the African continent. This is also true of the only LDC in Republic for work, with some Intra-Caribbean migration other than to the Dominican Republic also significant.

Although poor people may gain most from migration , they also face the biggest obstacles to migrate immigration policies in destination countries , including developing countries hosting migrants , tend to favour highly skilled workers. However , this does not mean that the demand for labor is limited to the tertiary –educated. The demographic change in advanced countries and the associated growing demand for care and health services for their ageing societies, as well the demand in other sectors such as agriculture , construction and hospitality , have created a growing market for lower skilled workers from abroad . Despite the economic crisis and resulting high unemployment levels in DC countries, the need for low-skilled immigrant labour is unlikely to change in these sectors that are not affected by the business cycle, and such structural demand is frequently met through irregular migration (DC, 2009). The vast majority of workers in LDCs are in the lower-skilled category (Docquier and Marfouk, 2006) ad leave in increasing numbers to satisfy emerging needs in developed countries.

Recent years have witnessed a surge in interest in temporary and circular migration schemes. Matching demand and supply y effectively managing migration can benefit migrants as well as origin and destination countries (IOM, 2009d) . Labor mobility has been found to generate significant welfare gains for each of these ,constituting a triple-win situation (see , for example, Chiswick and hatton,2002, Winters , 2003, OECD,2007 , IOM,2008b, Puri , 2008) . Within the framework of the World Trade Organization (WTO) , LDCs have been negotiating temporary market access

under Mode 4 of the general agreement of Trade in services (GATS) speciafically for low-skilled service providers. This temporary labor migration scheme is likely to benefit LDCs more given their small pool of skilled labour, which due to the high emigration rates among the higly skelled from LDCs , has been further depleted with serious detrimental effects on the limited scope of LDC economies Cross-border migration can help to better match the supply of and demand for skills , and generate important welfare and efficiency gains (Ratha and Shaw , 2007) It can also link people in remote or underdeveloped locations to economics centers (Luthria, 2009).

Historically, internal, migration has been a coping mechanism for populations in many LDCs . Internal or cross-border intraregional migration may offer a viable alternative to poor people in their search for better live hoods. Representing more than three times the volume of international migration, internal migration is also believed to play an important role in poverty alleviation (Black and Sward, 2009) However , considering the cost associated with migration , it is not the poorest but rather those with some means and existing migration experience or networks who are able to benefit from access to international migration possibilities over long distances.

1.4.1 Causes of migration

Unemployment and underemployment are key drivers of migration. Over the coming decade the number of young

people in the poorest countries is expected to increase by a further 35.5 million (UN DESA/pop,2009b) These millions of juveniles will enter the labor markets of their already struggling home economies. In the case of the Pacific, LDCs and sub –Saharan Africa, the lack of FDI struggling home economies. In the case of the Pacific LDCs and Sub-Saharan Africa , the lack of FDI and of employment creation compounds unemployment and underemployment and risks generating a " youth bulge" (Duncan and Voigt-Graf,2008) where unemployed youth , particularly young women, will pose a significant development challenge in the future.

Regardless of skill level and migratory status, foreign workers can contribute to economic growth and welfare in destination countries, and support their families and relatives back home through remittances. Yet, their contribution is often unacknowledged, owing to the political sensitivity of migration issues in many destination countries. Because of predominantly precarious working conditions and discrimination, the protection of the rights of migrant workers remains unsatisfactory. Although legal and policy frameworks regarding international migration and the protection of the human rights of migrants workers, irrespective of their status. For their part, migrants must understand and accept that they have to live by the laws and regulations of the countries they transit and where they ultimately work.

For the status of ratifications by LDCs of instruments concerning migrants), these rights still await implementation in man y destination countries , including in the global South the prevention of discrimination would allow migrants to access the labor market and gain social inclusion , and thus foster social cohesion Translating the rights of migrants and migrant workers into practice would help to ensure their social protection and the necessary degree of self reliance that are important factors in achieving positive outcomes of labor migration and its contribution to socio-economic development in most and rights countries (GFMD , 2009b, ILO,2010) For their part, migrants must understand and accept that they have to live by the laws and regulations of the countries they transit and where they ultimately work (IOM, 2009b).

1.5 Irregular Migration

Of the 214 million international migrants (UN DESA / po,2009b) 10 per cent are believed to be in an irregular situation (ILO, 2004) Regarding international migrants in LDCs , this would mean that 1.2 million to 1.7 million are in an irregular labor migrants in these countries might be considerably higher. The large majority of irregular migrants in Asia are Nepalese and Bangladeshis living in neighboring India and Afghan nationals living in Pakistan and the Islamic Republic of Iran (ILO, 2004) However, as the actual scale of irregular migration can only be speculated upon, such numbers are at best indicative.

Restrictive immigration policies , which are common not only in developed but also in developing countries , together with the continuing demand for cheap labour , are likely to contribute to irregular movements. The scale of irregular migration flows may reflect a certain mismatch between economic realities and political decisions (ILO, 2004), including in times of crises, such as the current one and its effects , as underlying structural demands for labor are unlikely to disappear (IOM, 2009c) . Overstaying visa entitlements, moving between formal and informal occupations, using false documents or the services of smugglers to cover long distances to reach the intended country of destination, is a common occurrence for unauthorized migrants . the demand for cheap labor can also lead to people being forced to move within or to a third country and to work under slave-like conditions , endangering the security and life of the trafficking victims .

Irregular migrants are particularly vulnerable to becoming caught up in a vicious cycle of poverty, powerlessness, discrimination and exploitation (IOM, 2010) , with women and children particularly exposed to sexual exploitation and forced labor. Frequently deprived of their documents and denied freedom of movement, irregular migrants are denied their basic human rights and access to basic social and health services. Delayed medical treatment, if at all , may lead to serious complications and exposure to infectious diseases, such as HIV /AIDS and tuberculosis among the migrant community and beyond , which in turn become more difficult to treat and control and entail additional

heavy public expenditures , Improving and augmenting the availability of regular migrant channels would serve to protect human rights and the safety and security of migrant women and men facing irregular , exploitative and abusive conditions , and help to contain the risk of falling prey to human trafficking.

Such difficulties and dangers notwithstanding, migration , and in particular , labour migration in search of better opportunities often yield positive human development outcomes. The remittances migrants send home , as well as pension beneficiate, compensations and other financial transfers (World Bank , 2008) can lay the foundations for beneficial human development outcomes. The scale and impact of such flows are described in the next subsection.

2. Remittance flows to LDCs

In 2006, one out of every 10 persons worldwide was either sending or receiving remittances (IOM, 2006a). Remittances are private flows mostly used for consumption and should thus not be considered a substitute for support of the public sector.

The remittances migrants transfer to LDCs are relatively small compared to those reaching non-LDC developing countries/economies in transition, therefore, the amounts reaching the poorest countries tend to be relatively small. Second only to ODA (USD 32.8 billion, or 7.4% of LDC/

GDP; Gross Domestic Product), remittance flows to LDCs in 2007, remittances constitute an important source of external finance for the group of poorest countries. Worldwide remittances amounted to over three times ODA, and, though they were much smaller that FDI reaching these countries. U\in sub-Saharan Africa, where ad and foreign investment flows vary quite significantly on an annual basis , remittances represent a more reliable financial flow for the recipients (Ratha and Mohapatra,2007).

The World Bank estimated remittance flows to LDCs at more than USD 24 billion in 2009 (World Bank , 2009b) an increase of some USD 1.5 billion since 2008. This is especially significant given that worldwide remittances are estimated to have declined by 6.8 per cent, and flows tp developing countries are projected to have fallen by 6 .7 per cent, and flows to developing countries are projected to have fallen by 6 per cent in 2009 (Ratha et al.,2010.)

Nonetheless, th volume of remittances is likely to be considerably higher as 11 out of 49 LDCs provided no transfer data ; 13 had incomplete data for the past two decades , and just over half (26) presented complete data sets. Incomplete and unreliable data in this area remain a key challenge. Estimates for some countries indicate that as much as half of all remittances might be sent outside official banking channels owing to burdensome procedures, high transfer costs and unfavorable exchange rates. In countries such as Uganda, the percentage of informal transfers is believed to reach 80 percent (UN –OHRLLS and OSAA, 2006). Informal

systems, such as the Hawala or Hundi structures in South Asia are more accessible for the "Unbanked " to receive money (ILO ,2004).

In relative terms, the funds remitted by migrants are importance. In Lesotho and Samoa they accounted for over a quarter of GDP in 2008, and around one fifth of GDP in Nepal and Haiti.

2.1. The consequences of remittances on LDCs

The repercussions of the recent global financial and economic crises on LDCs were initially less evident because their financial markets are both less developed and less integrated into the global economy. However, the delayed effects on the crises could affect LDCs as export earnings for commodities and revenues from tourism, remittances and external finance for infrastructure declined in the wake of weaker world trade and lower economic growth. Together with the sharp oil price increases and the 2007-2008 food crisis, the impact on the economies of LDCs would have been particularly severe as they depend heavily on external funds, notably ODA and FDI, which also tended the decline since the onset of the economic crisis, the particular socio-economic context and the local economy's exposure to and dependence on international markets. (GFMD, 2009a, UN ECA, 2009, UN-ESCWA, 2009, UN GA, 2009a; UN –OHRLLS, 2009b, World Bank , 2009a).

Despite the impact on LDCs of the economic and financial downturn in richer countries, remittances have proven to

be relatively resistant. Thus, remittance flows to LDCs in sub-Saharan Africa actually registered higher growth rates or only a relatively modest decline (Uganda , Senegal and Mali). Remittances sent to Bangladesh and Nepal in the first eight months of 2009 actually increased by 16 per cent and 13 percent , respectively (Ratha et al., 2009) while financial flows, particularly institutional and non-government earthquake of January 2010.

There is cautious optimism that such financial flows to developing countries would recover in 2010 and 2011, especially as remittance flows have generally shown themselves to be more stable than FDI and ODA. in times of weak economic growth in developed countries , remittances to LDCs may therefore represent an even more significant source of external financing. The greater diversification of migration destinations and labor mobility, the more roust remittance flow are likel to be, although the low growth and concomitant unemployment among migrants woulf also sooner or later affect remittance flows (ratha et al. ,2009,2010) . this poses a challenge for migrants and remittance receiving households, as well as for home-country governments . Even though remittances should not be cast in the role of an insurance mechanism against economic hardships , the repercussions are likely to be felt in many LDCs, as the economic situation becomes increasingly difficult for migrants who have lost their jobs in their countries of destination and for those at home who have come to depend on remittances to supplement the family income and meet basic needs. Even in LDCs where some

kind of social services are available, such a situation would put additional strain on already tight public resources.

2.2 The impact on migration flows

The impact of the global financial and economic crisis migration flows showed considerable variations. While no reliable data are as yet available, there is some evidence to suggest that initial labour migration declined. In the first three quarters of 2009, the outflow of migrant workers from Bangladesh dropped by almost 50 per cent compared to the previous year. (Awad, 2009; Fix et al.,2009 , and NTS Alert , 2009).

The development impact of migration is thus closely linked to economic stability and the migration policies of host countries, in particular those policies concerning labor migrants. As migrant workers tend to be concentrated in less stable and frequently temporary occupations in sector that are particularly sensitive to economic downturns , they are also the first to be laid off (IOM, 2009 c, Ratha et al.2009). In contrast , the health care , domestic service and education sectors , with their high share of migrant workers , were less affected by the economic downturn and have actually witnessed a rise in employment (Awad , 2009). Even though flows have declined, labor migration is continuing despite the global economic crisis.

Women and men have been affected differently. While men may suffer job losses in mainly male dominated sectors, such as construction and manufacturing , women migrant workers

may feel the crisis through working disproportionately in less regulated sectors, for example in domestic services , as care providers for the elderly and in the sex industry) that are frequently not covered by national labor laws.

Women may experience discrimination both as women and migrants, and are frequently exposed to both verbal and physical abuse and exploitation, with no recourse to social services or legal assistance.

As such, they are particularly vulnerable to the effects of economic downturns (GFMD, 2009a).

Moreover, when they return home , women often have to relinquish their newly gained economic and social independence through migration , and they have to readjust to cultural and social hierarchical structures. However, the demand for health care and domestic services, usually dominated by women workers, is unlikely to diminish, given the ageing societies in many developed countries.

However, the expected large-scale returns of migrants did not occur, despite the financial incentives offered in some host countries. While some migrants decided to return, many others choose o remain in their destination countries and to sit out the crisis , concerned that they might not be able to reenter if restrictions on immigration were to be tightened. Others felt that the situation in their home counties had not improved and offered no prospects of earning a decent living (Awad, 2009). Those who returned might experience reintegration problems and find it difficult

to find work or to readapt to local conditions following their long stays abroad. However , if they remained with their visa entitlements expired in the meantime, they would be in irregular situation and face the attendant precarious status and risks this implied(Awad, 2009).

Protecting the human rights of migrants is particularly relevant in the context of economic crises such as the one that occurred in 2008, the effects of which can still be felt. In times of economic downturns , migrant workers may experience growing resentment and may be made to feel that they were scrounging off the local social system at the expense of the local population (IOM, 2009c) . While human rights violations, abuse and exploitation of migrants are still wide spread , migrants are particularly vulnerable to socio-economic marginalization , discrimination , hostility and acts of racism in times of crisis , notwithstanding that it has also been shown that migrants do generate employment and economic gains (IOM, 2009c)

3. The contribution of remittances and other diasporas resources to development

As with many other aspects of migration, generalizations regarding the impact of migrants transfer on development are not possible. At the macro economic level, they are an important source of foreign exchange and, in some cases , have led to the upgrading of a country's creditworthiness, thus improving access to international capital markets (OSCE, IOM and ILO, 2006 , Ratha et al.,2010). However,

they may have the effect of rendering exports less competitive by raising the exchange rate of the local currency. High dependence on remittance as a share of GDP can pose an economic risk, though the same may be said of other capital flows.

Although remittances supplement household incomes and thereby alleviate poverty and contribute to better living conditions , access to healthier nutrition and clean water , as well to basic health care and education for children , while also generating economic activities , remittance can only complement existing development policies and official aid flows, but not replace them . The potential benefits of interpersonal flows depend on the broader economic ad political context and policies (Ratha and Mohapatra , 2007 ,de Haas , 2010) and need to be supplemented by private and public investments in LDCs to generate employment and strengthen the local institutional capacity and legal frameworks, which , however , are weak in most LDCs. The same applies to the transfer of skills , technology and ideas to countries of origin, whose impact will be small if minimal economic and political conditions are not in place . These affects are discussed in the following section.

3.1 The human development impact of remittances

The potential benefits of money transfers on development are manifold. At the microeconomic level, a key role for remittances disasters and heavy or unexpected medical expenditures is to support family welfare and augment

household income to cover or contribute to expenditures on food, health and education needs. If saved, these private funds constitute a financial reserve during periods of instability and the loss of other means of sustenance, such as economic crises , conflicts , natural disasters and heavy or unexpected medical expenditures (UNDP, 2009, UN-OHRLLS and OSAA, 2006). An important function of these transfers is the alleviation of poverty by supporting family welfare (Bakewell, 2009. Ghosh, 2006, Luthria, 2009), thus representing a significant contribution to realizing the human right to a decent standard of living. In Uganda, the share of the poor is estimated to have declined by 11 per cent and in Bangladesh , by 6 per cent , owing to additional income through remittances (Ratha and Mohapatra, 2007) in a recent study on Angolans in South Africa and Portugal, in almost four out if 10 household , remittances supplement income , while 16 per cent of the surveyed households claimed to depend entirely on these private money transfers (Alvarez Tinajero,2010). However, there is also evidence that the frequency and the amounts remitted tended to decline the longer a migrant remained abroad. This variation in sending patterns, coupled with a high dependency rate on monetary transfers, can cause significant social and economic costs for children and family ,members at home who rely on this additional income (Ratha and Mohapatra, 2007). Furthermore, remittances have also been shown to lead to income inequality between remittance- receiving households and non-migrant households, and that the poorest are also those least likely to be able to migrate and benefit from remittances.

Households with a family member abroad are more likely to be better informed on health issues and preventive medical measures , including vaccinations . Migration might also play a role in curtailing child labor by financing health care, education and consumption (Yang, 2009), as borne out by more than half of remittances sent by female migrants in the Middle East to their families in Bangladesh (Ghosh, 2006) . Female migration and human capital formation are closely linked as women tend to remit a larger share of their income over longer periods of time, and with a larger portion devoted to the education of children. Remittances can empower girls by enabling them to go to school in societies where females have almost no access to education (Docquier et al.2008)

To the extent that remittances provide funding for human capital investments , help to generate jobs and offer access to small credit and microcredit for entrepreneurs, migrants;' transfers may act as catalysts to stimulate economic growth (UN-OHRLLS and OSAA, 2006) . It is disputed whether a high share of household income spent on consumption , generating little or no productive capacities through investments , contributes to inflation by raising the local demand for consumer goods. However, it has been argued that in times of economic crisis , the stimulation of domestic demand could raise production and strengthen the economy, although such a result would depend on the existence of available productive capacity. Findings indicate that remittances in Bangladesh have a multiplier effect of 3.3 on Gross National Product

(GNP),2.8 on consumption and 0.4 on investment (ILO, 2004) The use of remittance varies among households and investment in health and education may be considered productive" in terms of human capital formation , while business activities, if unsuccessful or depending on unpaid labour provided by relatives, for instance , do not necessary contribute to development . A household survey in Angola revealed that remittances helped householders to meet basic needs, buy consumables and pay for utilities (According to 67% of respondents) Fourteen per cent of the households also use a portion of remittances for business purposes; only 1 percent of respondents invested part of the creation of jobs through increased domestic demand for goods and services and the additional economic effects generated by spending additional incomes , only a fraction of remittances tends to be directed towards productive investment(ILO, 2004). The next section discussions the role of investments promoted by members of the Diaspora community.

3.2 The Private Sector and the Trade contributions of Diasporas

The acknowledgment of the role of diasporas play in the private sector is still art in early stage. Enterprise, in particular small enterprises, are at the heart of economic development .they generate jobs and raise output and productivity. Compared to traditional investors, Diaspora members are more inclined to finance businesses or projects in their country of origin. owing to a lower risk perception of investments (Ratha et al.,2008).

The outcome of productive investments of remittances can in turn increase household income (Yang, 2009). The private funds of migrants can offer capital for small and micro-enterprise, overcome obstacles to obtain credits in areas where financial systems are not sufficiently developed, and foster entrepreneurship. Transitional networks can be instrumental in promoting socio economic development projects through the sharing of know-how and innovative practices. For instance   Haitian migrants in the United States have established hometown associations (HTAs) to combine their financial and social resources to promote community development in their home towns (Ghosh, 2006) . Community projects financed through remittances have made it possible to develop the local infrastructure in the Senegal River Valley, spanning four countries in West Africa (Guinea, Mali, Mauritania and Senegal) (Bakewell, 2009).

Remittances can support the development of the local financial sector, but even more so strengthen the manufacturing and industrial sector that are important elements in generating and sustaining economic growth. A business–friendly environment characterized by public confidence in well-functioning local institutions, political and economic stability , responsible monetary policy , a well–functioning financial sector and credible anti-corruption regulations are important prerequisites to achieve beneficial results.

Otherwise, migrants and members of the Diaspora would be inclined to act like any other rational investor and choose to invest in the host or other countries where the expected returns are likely to be higher, or they would turn to informal remittance channels (Ghosh, 2006, Ratha and Mohapatra, 2007). An important area to be further investigated concerns the respective investment behavior or female and male migrants and how and to extent their behavior differed.

The human and financial capital of Diaspora members can benefit trade relations in the country of origin, and their expansion can in urn have a positive impact on the mobility of workers. Familiarity with the local context and trade, investment and market conditions and opportunities in the country of origin, better access to information, and personal contacts and networks in both countries of origin and destination put Diaspora members in a special position. In the Caribbean, Diaspora networks have been established to promote trade, tourism and investment opportunities (Gosh, 2006). Thus, trade links have been fostered through Samoan migration to New Zealand (Luthria, 2009). Diaspora members can also play an important role I facilitating trade by facilitating market entry, identifying market niches in destination countries for new or ethnic goods and services, and promoting the manufacturing and exchange of products and assets. Based on the knowledge and contacts of Ghanaian expatriates in Italy, a cooperative was set up in their origin community in Ghana , an initiative which opened new trade opportunities and allows local farmers to trade in local products, in this instance pineapples, directly on the Italian market (IOM, 2009).

4. Transfer of skills, technology and ideas

Diaspora members can foster the flow of knowledge, skills and technology to the home country and into sectors where these are needed. They can be instrumental in encouraging political and social change through the transfer of new values, expectations, ideas and social capital. Such "social remittances "(Levitt, 1998) can include political values, increased participation in community decisions and support for democratic principles, as observed in Latin America (yang, 2009).

Tapping into the human capital of skilled emigrants and Diaspora members constitutes an important step in promoting development through migration. For instance, migrant workers from Vanuatu in New Zealand return home after five to seven months of work and having acquired valuable skills and knowledge of new irrigation techniques, agricultural productivity gains or computer skills .For instance, the latter of these newly acquired skills led to a demand for improved service delivery in terms of Internet connections in Vanuatu. Samoan migrants, who experienced good governance in New Zealand, transferred the demand and resulting capacities needed in this area to their home country. Acknowledging the need for sound institutional structures to foster development, these social transfers can generate important beneficial and long-term impacts on social –economic stability (Luthria, 2009).

Recent innovative practices to share technology and knowledge include the donation of medical equipment by

Ethiopia Diaspora members and others living and working in the United States . As part of the " MDEth" project (Migration for development, in Ethiopia) of the Government of Ethiopia, UNDP and IOM, four hospital in Ethiopia received equipment worth up to USD million. Other examples of new approaches include the use of electronic communications technology. While enabling the virtual transfer of skills and promoting counseling via the internet, connectivity problems in countries covered by the IOM project facilitating the temporary return of qualified expatriates to countries such as Afghanistan, Ethiopia, Sierra Leone and Sudan, have impeded progress in this area so far (IOM, 2009d). Developing the frequently weak IT infrastructure could provide an avenue for LDCs to mobilize Diaspora skills for development purposes (Oucho, 2009).

Despite the importance of intraregional and interregional migration for LDCs , policymakers and researchers have tended to focus on establishing a beneficial link with Diaspora members living in developed countries. This may be due to the perceived outflow of large numbers of skilled migrants to OECD countries and the related interest of countries of origin to transform such outflows into " Brain gains" (Bakewell , 2009d) . Such South –South initiatives could provide a model for similar intra-LDC and LDC-development country initiatives.

5. Conclusion

The preceding section reviewed the importance of migration and the different, potentially beneficial relationships between migration, economic and social well-being in the particular context of LDCs.

- Migration emerges as an important development strategy at the individual, household and community levels. Migrants, Diasporas and returnees are important actors in development, able to generate wealth through diverse personal and group strategies, with remittances being one of the most important examples that, however, should not overshadow other types of contributions.

- The risks associated with migration call for tragedy policy responses. Mobility can either heighten or alleviate the vulnerability of populations: migration, development and human rights are all items on the common agenda.

- As a group, the 49 LDCs face diverse challenges and problems within their local context, or as a result of regional circumstances. Their respective policy priorities will therefore also differ.

- LDCs are characterized by limited human resources, low per capita GNP and fragile economies, all of which may be positively or negatively affected by migration. A carefully planed and sensitive approach to policy development (IOM, 2008b) is required to limit such

potentially negative consequences and support positive outcomes.

- The Handbook for policy makers and practitioners on mainstreaming Migration into development planning (2009), prepared by IOM and other Global Migration Group (GMG) agencies , proposes a step-by-step approach for mainstreaming migrations into existing development plans.

- Countries that have successfully included migration into their PRSPs (IMF website, 2010) include Bangladesh (2005). The democratic Republic of the Congo (2006), Ghana (2005), Rwanda (2007), Senegal (2006) and Sierra Leone (2005) . The 2005 Bangladesh PRSP provides a good example of how migration issues can be mainstreamed into the development plan. Internal migration, the impacts of remittances on development and interregional migration are identified as significant elements to understand changes in development and poverty reduction trends. The document highlights the importance of providing services for migrants as part of the development strategy, such as information on safe migration, one –stop services for international women migration, pre-departure training, facilitating on interregional migration and the reduction of the initial costs of migration.

- As to destination countries, a significant number of countries in particular developed countries, have now integrated migration into their development programmes and budgets , for example; the United Kingdom, the Netherlands, France (with the co-development approach) Italy , Denmark , Sweden Norway, Switzerland , Japan and the United States.

- Successful examples of migration and development policies are based on the acknowledgement of the needs, priorities and strategies of migrants and Diaspora communities. This calls for the acknowledgement of their ownership of activities and the discretionary use remittances as private funds by receiving households. Incentive for migrants and Diaspora to contribute to the development of home countries households. Incentives for migrants and Diasporas to contribute to the development of hom countries if they are supported by a regulatory framework providing access to voting rights , the possibility of allowing dual citizenship , the protection of private and commercial property , a frees media and freedom of expression , adequate housing, education and health services , and adequate banking structures for migrants, diasporas , returnees and their families. The issue of the of the social integration (UN-OHRLLS, 2006) of migrants and their families remains a significant area of policy intervention in relation to LDCs with a view to contributing to the elimination of acts or racism and xenophobia.

Basing on the above discussed factors, it clear that the hypothesis of this paper which states

that "The promotion of migration & emigration lead to improved economic and social well- being of people in LDCs." has been proved.

6. Recommendations

Based on the policy roles presented above, the following recommmandations are proposed as guiding policy principles for migration and development in LDCs:

- A" mainstreaming role" policy should favour coherence among poverty alleviation, development and migration , and policies / plans

  To achieve successful migration management outcomes , development frameworks have to integrate migration related challenges and give equal consideration to the needs of both sending and destination countries Migration issues can be structurally and systematically integrated into operational development strategies .

  The mainstreaming of migration-related issues into long-term development schemes can be realized in particular by factoring migration concerns into MDG implementation strategies and other national and local development strategies, as and when appropriate.

  An "empowering role" policy should adopt a migrant's centered approach

The protection of human and labour rights of migrants in destination countries should include non-discrimination, equal treatment also in regard to working conditions, the monitoring and enforcement of labour regulations and access to basic health and social services.

An "Enabling role" policy should facilitate the contributions to development of migrants and diasporas communities

A: partnership role " Policy should implement a multi-stake holder approach

Policy should ensure active participation and consultation of migrants , disporas and civil society Public initiatives can facilitate collaboration with development actors from the private sector , financial institutions , employers and workers associations, chambers of commerce , business networks , local authorities , as well as the media.

A " cooperative role" Policy should foster bilateral and

multilateral collaboration

Programmes aimed at reducing the costs and maximizing the benefits of migration are based

on cooperation between host and home countries.

Authorities at the local , national , regional and international level should acknowledge migration as an important development strategy for individuals , households and communities.

Home and destination countries should mainstream migration into existing development strategies such as National Development Plans , PRSPs , Sector-wide Approaches (SWAPs), NAPAs concerning climate change, country and local employment strategies and their donor , aid and development strategies (Mainstreaming policy role).

Home and host countries should adopt a human rights and migrants, diasporas and their families, acknowledgement of remittances as private funds and recognition of stakeholders as owners and drivers of activities.

Home and host countries should adopt legislative , regulatory, economic, social and political measures conducive to migrants' and diasporas; contributions to development.

Home and host countries should facilitate a multi-stakeholders approach favouring partnership between migrants ,diasporas , civil society and development actors such as public and private sector stakeholders , financial institutions , employers' and workers' associations , chambers of commerce , business networks , local authorities and the media (partnership policy role).

- Policymakers should commit themselves to dialogue and collaboration on migration and development at the national , bilateral , regional and multilateral levels (cooperative policy role).

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THE SUPERIOR RESPONSIBILITY IN INTERNATIONAL CRIMINAL LAW: CASE OF POPE BENEDICT XVI.

By

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Abstract

With the current evolution of the International criminal law, high ranking officials may be held accountable for acts committed by their subordinates if they fail to prevent or punish the commission of the crime by the latter. The conditions required for a person to be prosecuted under the doctrine of superior responsibility are set out by the article 28 of the Rome Statute This article investigates whether Pope Benedict XVI may be held accountable for acts committed by priests in the context of the sexual abuses committed by Roman Catholic priests all over the world as victims of those offences have seized the ICC requesting the court to prosecute Pope Benedict XVI for crimes against humanity. Therefore, this article focuses only on the question whether in case the sexual abuses committed by priests would constitute crimes against humanity, whether the Pope could be held responsible as a superior authority.

I. INTRODUCTION

The establishment of the International Criminal Court followed the gravest of crimes committed in Rwanda and the former Republic of Yugoslavia.[1] In both cases, as we know to our shame, the United Nations and international community failed to take decisive and forceful action to protect the victims.

These terrible events did, however, shock the world and pushed the international community into action. *Ad- hoc* tribunals were set up to bring those responsible for such atrocities to justice. The Rome conference in 1998 agreed to establish an International Criminal Court to help end the global culture of impunity.

The establishment of this International Criminal Court (ICC) constitutes a major breakthrough in the field of international criminal law, international human rights and international humanitarian law.

Thus by creating of the ICC, the international community meant that the massive violations of human rights are no longer a matter of domestic jurisdictions, now it became

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1 ICTY Statute adopted on 25 May 1993 by Resolution 827, available at: http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept08_en.pdf and ICTR Statute adopted by Resolution 955 (1994) of 8 November 1994, available at: http://unictr.org/Portals/0/English%5CLegal%5CStatute%5C2010.pdf Accessed on 26 September 2011

a legitimate interest of the international community as whole. The result is that in the face of war crimes, crimes against humanity and genocide, the default position of the international community is no longer impunity but accountability.

This accountability is imposed on basis of individual criminal liability or superior responsibility. The latter concept is reflected in article 28 of the Rome Statute. The doctrine of superior responsibility is based on omission rather than affirmative action. Under the doctrine of superior responsibility, the accused may be convicted based on his or her failure to prevent the crime from occurring in the first place or to punish the perpetrator after having learned that the offense was committed.

Recently, different people and organizations have been calling for the prosecution of Pope Benedict XVI for crimes against humanity related to the sexual abuses committed by the Roman Catholic priests around the world, arguing that the sexual abuses constitute crimes against humanity in accordance with Art.7(g) of the Rome Statute[2].

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2 SAILER, C and HETZEL, J. "Criminal Charges against Dr. Joseph Ratzinger, Pope of the Roman Catholic Church on grounds of document submitted to the ICC prosecutor on February 14, 2011", p.26, available at: www.popeaccountability.org/assets/calling-the-pope-to-account.pdf, accessed on 3 July 20011.

This evolution in the sexual abuses raises some questions that need answers. Those sexual abuses were committed by priests, therefore those seeking the Pope to be prosecuted have either to prove that he was directly involved or that as a superior authority, he failed to take necessary and reasonable measures to prevent or to punish the commission of the sexual abuses. It is the latter that interest us in this article. In other words, the question to be answered in this article is whether Pope Benedict XVI may be held accountable for acts committed by priests under the doctrine of superior responsibility.

Therefore, this study is not seeking either to establish if the sexual abuses committed by priests constituted crimes against humanity (because this would constitute another study) or seeking to establish the Pope's culpability which belongs to a competent court.

II. OVERVIEW ON THE DOCTRINE OF SUPERIOR RESPONSIBILITY IN CIVILIAN SETTING

International law provides two primary modes of liability for holding an individual criminally responsible: individual or personal criminal responsibility and superior or command responsibility. The latter concept is reflected in the statutes of international criminal courts and tribunals that hear cases arising under international criminal law[3].

3 See for more details, art.28 of the Rome Statute of 17 July 1998, available at: http://untreaty. un.org/cod/icc/statute/english/rome_statute%28e%29.pdf, art.7 [3] of the ICTY Statute adopted on 25 May 1993 by Resolution 827, available at: http://www.icty.org/x/file/Legal%20Library/ Statute/statute_sept08_en.pdf and art. 6[3] of the ICTR Statute adopted by Resolution 955 (1994) of 8 November 1994, available at:

Under the doctrine of superior responsibility, command responsibility includes two concepts of criminal responsibility: the first concept is direct responsibility, where the commander is held liable for ordering unlawful acts, and the other is imputed criminal responsibility, where the commander is held liable for a subordinate's unlawful conduct[4].

This means that the accused may be convicted based on his or her failure to prevent the crime from occurring in the first place or to punish the perpetrator after having learned that the offense was committed. In other words, under superior responsibility, military commanders or civilian superiors can be made criminally liable for crimes under international law committed by their subordinates[5]. Superiors must answer for the crimes of subordinates[6].

The superior responsibility doctrine was firmly reaffirmed in the *ad hoc* international tribunals' case laws (II.1.) and Conditions for determining the superior responsibility were therefore laid down (II.2).

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http://unictr.org/Portals/0/English%5CLegal%5CStatute%5C2010.pdf Accessed on 26 September 2011

4 BASSIOUNI, CH. *The Law of the International Criminal Tribunal for the Former Yugoslavia*, Transnational Publishers, New York, 1996, p. 345.
5 WERLE, G. *Principles of International Criminal Law*, TMC Asser Press, The Hague, 2005, p.128.
6 *Ibidem.*

II.1.International tribunals' position on superior responsibility of civilians

The criminal responsibility of civilians only arose in full force in the International Criminal Tribunal for Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR). In fact, even the leading post-1990 case on the applicability of the doctrine to civilians, the ICTY's *Čelebići*, concerned individuals whose status was not entirely clear and who operated in a paramilitary setting[7]. The ICTY in *Čelebići*[8] and subsequent cases, and also the ICTR, have posited that the responsibility of civilians for their subordinates' action is a customary legal principle[9], reflected in post-WWII jurisprudence.

In 2007, the ICTR Appeals Chamber confirmed the conviction of Ferdinand Nahimana for public and direct incitement to genocide and crimes against humanity, and sentenced him to 30 years' imprisonment[10]. Nahimana, a former University Lecturer and former Director of the Rwandan Ministry of Information, was the founder and director of RTLM, the only

7 RONEN, Y. "Superior responsibility of civilians for international crimes committed in civilian settings", The Hebrew University of Jerusalem ,Faculty of Law, Research Paper No. 16-09 August 2009, p.8, available at: *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=145826* Accessed on 29 November 2011

8 Zejnil Delalid ("Čelebići"), Case No. IT-96-21-A, Appeal Judgement, 20 Feb. 2001.

9 RONEN, Y. *Op.cit.,p.*9 (quoting the Čelebići Trial Judgment, supra note 12, at para. 333 (*"That military commanders and other persons occupying positions of superior authority may be held criminally responsible for the unlawful conduct of their subordinates is a well-established norm of customary and conventional international law."*),

10 Ferdinand Nahimana , Jean Bosco Barayagwiza, and Hassan Ngeze v. the Prosecutor, Case No. ICTR-99-52-A, Appeal Judgment ,November, 28, 2007, XVIII Disposition, p. 357 available at: http://www.concernedhistorians.org/content_files/file/le/82.pdf Accessed on 29 November 2011

private radio station operating in Rwanda in 1993-1994 and which served as a platform for a genocidal media campaign against the Tutsi population in Rwanda. Nahimana himself never broadcasted on RTLM.

He was convicted under the doctrine of superior responsibility for failing to prevent the broadcasters from inciting to genocide in their programs, or to punish them for having done so[11].

The doctrine of superior responsibility or its traditional name, command responsibility, is well established[12] today.

II.2. Conditions for determining the superior responsibility in the case of Pope Benedict XVI

Four elements must be distinguished in determining a superior authority[13]: (i) An international crime has been perpetrated by someone other than the defendant; (ii) There existed a superior-subordinate relationship between the defendant and the perpetrator; (iii) The defendant as a superior knew or had reason to know that the subordinate was about to commit such crimes or had done so; and (iv) The defendant as a superior failed to take the necessary and reasonable measures to prevent such crimes or punish the perpetrator. Under the ICC Statute, there is a further requirement, of a causal link between the superior's dereliction of duty and the commission of the crime[14].

11 RONEN, Y, Op.cit.p.9
12 Ibidem
13 WERLE, G,Op.cit.p.130
14 RONEN, Y, Op.cit, p.5 (quoting article 28 of the Rome Statute)

From the above mentioned elements, the Pope would be only held accountable for the sexual abuses as an international crime committed by priests under the superior responsibility if it is determined that the priests under his responsibility committed those crimes (1), there is a superior-subordinate relationship between the Pope and the priests(2), the Pope knew or had reason to know that the priests were about to commit the sexual abuses or had committed them(3), the Pope failed to take necessary and reasonable measures to prevent the sexual abuses or to punish the priests(4).

III. APPLICABILITY OF THE SUPERIOR RESPONSIBILITY ON POPE BENEDICT XVI

After a brief overview of the superior responsibility, this part aims at the first place clarifying the relationship between the Pope and Priests all over the world, in order to determine if there exist a superior-subordinates relationship between the Pope and the priests as this is the cornerstone of the superior responsibility doctrine. Then, we will examine whether the Pope has effective control over the priests all over the world in order to be held accountable for their acts. Finally, it must be established that he has the required *mens rea* under the doctrine of superior responsibility.

In the case sexual abuses committed by priests would constitute crimes against humanity; can the pope be held liable for crimes committed by priests? In other words, is

there any superior-subordinate relationship between the Pope and priests? This section tries enlightening the kind of relationship between the Pope and Roman Catholic priests.

III.1. Commission of an international crime by priests

Article 28(b) of the Rome Statute provides that *"a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates (...)"* , so before determining if there exist a superior-subordinate relationship between Pope Benedict XVI and the priests, one has to establish if a crime was committed and that it is imputable to priests. In the case of the sexual abuses, there is no doubt that the sexual abuses were committed by priests[15] taking advantage of their relationship of privilege that they had with children (in most cases, children trusted the priests[16]).

In his report on the sexual abuses committed by priests, Thomas F. Reilly, Attorney General of the Commonwealth of Massachusetts, stated that a widespread assault on children has occurred for six decades[17]. However, the sexual abuses would have to be qualified as crimes against humanity (as this study is dealing with a situation where the Pope would have

15 Pope Benedict XVII himself presented an apology to the people of Ireland for the sexual abuses committed there by priests; see the apology letter in The Guardian, "Full text of the pope's letter to the Catholics of Ireland on child sex abuse", *the Guardian*, 20 March 2010, available at: http://www.guardian.co.uk/world/2010/mar/20/full-text-popes-letter-ireland. Accessed on 12 December 2010.

16 The paragraph 7 of the apology letter addressed by Pope Benedict XVI aforesaid.

17 Office of the Attorney General ,Commonwealth of Massachusetts, "The sexual abuses in the Roman Catholic Archdiocese of Boston", July 23, 2003 p.2, available at : http://www.bishop-accountability.org/downloads/archdiocese.pdf Accessed on 12 July 2011.

to answer for an international crime committed by priests[18]). As above mentioned, the main purpose of this study is not to qualify the sexual abuses committed by priests as crime against humanity (The ICC Pre-Trial Chamber would deal with it in its pre-trial proceedings before authorizing the Prosecutor to carry out an investigation), hence, we depart from the facts that the sexual abuses were committed by priests and might constitute crime against humanity to analyze if there is a superior-subordinate relationship between the Pope and priests.

III.2. Hierarchical relationship between the Pope and the priests

The art.28 (b) of the Rome Statute reads as follows "(....) *a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates (...)*", so the basic requirement for criminal responsibility (under the superior responsibility theory) is the existence of a superior-subordinate relationship[19].This superior-subordinate relationship is characterized by a hierarchical relationship between the superior and subordinate. Thus, superiors maybe held liable for the acts committed by their subordinates.

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18 Art.15 Para.4 of the Rome Statute provides that " *If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case*".
19 WERLE, G. *Op. cit.*130

The hierarchical relationship may exist by virtue of a person's *de jure* or *de facto* position of authority[20]. The superior-subordinate relationship need not be formalized or determined by formal status alone. Both direct and indirect relationships of subordination within the hierarchy could suffice.

III.2.1 Position of the Pope in the Church

For a person to be regarded as a "*superior*", he must have a position of command (in a military context) or authority (a more general term, applicable in both military and civilian settings)[21]. Authority is reflected in a hierarchical relationship, which distinguishes superiors from mere rabble-rousers or other persons of influence[22].

Considering the organizational structure of the Catholic Church, there might be arguments that the Pope cannot satisfy the conditions set by the superior responsibility in order to be held responsible for acts committed by priests as subordinates. The Catholic Church is organized in a decentralized way. It is made of different entities and such entities, principally dioceses (and their subdivisions) and religious orders that operate across both ecclesiastical and national jurisdictional boundaries[23]. According to canon

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20 International Criminal Law Services (ICLS), *Modes of Liability: Superior Responsibility*, Module 10, p. 5-6 available at: http://www.iclsfoundation.org/wp-content/uploads/2011/10/icls-training-materials-sec-9-modes-of-liability.pdf. Accessed on 1 December 2011

21 RONEN, Y. *Op.cit.* p.23

22. *Ibidem*

23 Can. 372 of Code of Canon law

373 of the 1983 Code of Canon Law, those entities *"(.....)
Once they are lawfully established, the law itself gives them
juridical personality[24]"*.

In addition, the Bishop exercises legislative power himself.
He exercises executive power either personally or through
Vicars general or Episcopal Vicars, in accordance with the
law. He exercises judicial power either personally or through
a judicial Vicar and judges, in accordance with the law[25].

He is bound to foster the discipline which is common to
the whole Church, and to press for the observance of all
ecclesiastical laws[26]. The question here is to know if the
organizational structure implies that the Bishops are the
superior authority of the priests, not the Pope. Let us
examine if the Pope does have authority and then if he has
an effective control over priests.

III.2.2.Pope as a superior authority for priests

Authority may be *de jure* or *de facto. De jure* authority means
that the superior had been officially assigned the position
of authority for the purpose of leading the other persons
who are thereby considered as his subordinates[27]. If we
analyze the provision of the Code of Canon Law, the Pope
holds in the Catholic Church the De jure authority. The

24 Can.373 of the Code of Canon Law
25 Can. 391 § 2 of Code of Canon law
26 Can. 392 §1 of Code of Canon law
27 METTRAUX, G. *The Law of Command Responsibility,* Oxford University Press, Oxford,
2009, p.139.

Canon 331 of the 1983 Code of Canon Law asserts that the Pope *"(...) is the Head of the College of Bishops, the Vicar of Christ, and the Pastor of the universal Church here on earth"*. By interpreting this canon, no one can deny that it clearly presents the Pope as Head of the whole Catholic Church. To our opinion, this is a proof of an existence of the authority of the Pope over the whole Church which implies logically authority over the priests.

However, the authority possession is not sufficient to be held accountable. In addition to the authority, *"it is necessary that the superior have effective control over the persons committing the underlying violations of (....), in the sense of having the material ability to prevent and punish the commission of these offences in a meaningful and effective way*[28]*"*. The Pope is vested by the law with authority over the whole Church but does he have effective control over priests?

III.3. Pope's effective control over the priests

As long as a superior has effective control over subordinates, to the extent that he can prevent them from committing crimes or punish them after they committed the crimes, he would be held responsible for the commission of the crimes if he failed to exercise such abilities of control[29]. The article 28 (b) of the Rome Statute further stipulates that *"a superior shall be criminally responsible for crimes within the*

28 RONEN, Y. *Op.cit.* p.23
29 FORREST MARTIN, F. *et al*, *International human rights and humanitarian law*, Cambridge University Press, Cambridge, 2005, p. 118.

jurisdiction of the Court committed by subordinates under his or her effective authority and control"

III.3.1. Extent of the Pope's effective control

In the *O'Bryan* case, using Kentucky law, the court accepted the plaintiffs' contention that the Holy See exercises *"absolute and unqualified control . . . over each and every priest, bishop, brother, sister, parish, diocese, archdiocese, and instrumentality of the Church*[30]*"* in the United States. This seems to be an oversimplification of its relationship to other church entities to maintain that it exercises such a level of control over all Catholic institutions or persons in the United States or elsewhere in the world if we consider the Canon 391 §1 of the Canon Law. Indeed, this canon stipulates that *"The diocesan Bishop governs the particular Church entrusted to him with legislative, executive and judicial power, in accordance with the law"*.

At the same time, while the Pope may not effectively exercise control on a regular basis, Church law makes sweeping claims about the extent of papal authority over the entire church that could be read in Canon Law. According to the Canon 331, the Pope *"(.....) by virtue of his office, he has supreme, full, immediate and universal ordinary power in the Church, and he can always freely exercise this power"*. The power of the Pope over the entire Church is asserted

30 O'Brian v. Holy See, quoted in MARTINEZ, JR. L. "Sovereign Impunity: Does the Foreign Sovereign Immunities Act Bar Lawsuits against the Holy See in Clerical Sexual Abuse Cases?" *In Texas International Law Journal*, Vol.44:123, 2009, p.28 , available at: http://www.gotofirm. com/media/site_files/129_09_Martinez_PUB_FINAL.pdf Accessed on 12 November 2011

too in the Canon 333 §1 which reads as follows " *By virtue of his office, the Roman Pontiff not only has power over the universal Church, but also has pre-eminent ordinary power over all particular Churches and their groupings*".

The same idea can be read in the Pontiff Decree concerning the pastoral Office of Bishops in the Church *Christus Diminus*. It provides that; "*In this Church of Christ, the Roman pontiff, as the successor of Peter, to whom Christ entrusted the feeding of His sheep and lambs, enjoys supreme, full, immediate, and universal authority over the care of souls by divine institution. Therefore, as pastor of all the faithful, he is sent to provide for the common good of the universal Church and for the good of the individual churches. Hence, he holds a primacy of ordinary power over all the churches[31]*".

From the Church's Laws, even that the diocesan Bishop "*governs the particular Church entrusted to him with legislative, executive and judicial power, in accordance with the law*", the Pope holds a primacy of ordinary power. To our understanding, this means the Pope has the last word on any serious matter involving the Church. Furthermore, priests all over the world are bound by a special obligation to show reverence and obedience to the Supreme Pontiff and to their own Ordinary[32].

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[31] 2nd Preface of the Decree concerning the pastoral Office of Bishops in the Church *Christus Diminus*, proclaimed by His Holiness, Pope Paul VI, on October 28, 1965, available at: http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decree_19651028_christus-dominus_en.html, accessed on 12 November 2011

32   Can. 273 of the Code of Canon Law

Nevertheless, these are statements of the extent of the pope's authority over the entire church; it is not a reflection of the actual control over an entity that is comprised of over one billion members and hundreds of thousands of clergy and religious sisters and brothers. Still, it does point to the fact that in the most important matters, the Pope is capable of using his considerable authority over the worldwide church in an attempt to bring about the desirable outcome.

The Pope may not exercise the control directly over priests but as proved by the Canon Law provisions, his effective control over them is *de facto* manifested through the hierarchal relationship between the Diocesan Bishops and the Pope.

This hierarchal relationship is proved by the fact that the Pope can remove a bishop whenever necessary (as an example, Pope Benedict XVI has removed Australian Bishop William M. Morris of Toowoomba from office five years after he wrote a pastoral letter indicating he would be open to ordaining women and married men if church rules changed to allow such a possibility[33]).This deduction can be justified by the ICTR's position about the status as a superior with its full implication.

In *Musema case, the* ICTR identified the defendant's status

33 WOODEN, C. "Pope removes bishop who expressed openness to ordaining women", Monday, May 2, 2011, *Catholic News Services*, available at: http://www.uscatholic.org/news/2011/05/pope-removes-bishop-who-expressed-openness-ordaining-women, accessed on 4 December 2011.

as superior on the ground that he could remove or threaten to remove an individual from his position at the tea factory if the latter was identified as a perpetrator of crimes punishable under the Statute[34]. To our point of view, the kind of control that exercises the Pope looks like an indirect control effected through a well organized chain of command.

According to the ICLS analysis[35] of the ICTY precedents *"the superior-subordinate relationship does not have to be formalized or determined by formal status alone[36]. Both direct and indirect relationships of subordination within the hierarchy could suffice[37], and if two or more superiors have effective control, they can both be found criminally liable. It is not a legal defense that someone else had effective control[38]"*.

Hence, in case of the Pope, Diocesan Bishops are close to priests than the Pope is in most of cases and have executive, administrative and judicial powers within limits to their Diocese which is a direct control. Nevertheless, the Pope remains the Head of the Church with the full power that this implies and maybe held criminal liable as well as diocesan bishops for acts committed by priests.

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34 APTEL, C. *et al*, "Prosecutor v Musema: A Commentary on the Musema Judgment Rendered by the United Nations International Criminal Tribunal for Rwanda", *Melbourne Journal of International Law*, Vol.6, 2000 available at: http://www.austlii.edu.au/au/journals/MelbJIL/2000/6.html, accessed on 4 December 2011.

35 See ICLS, *op.cit*, pp5-7.

36 Zejnil Delalid ("Čelebići"), Case No. IT-96-21-A, Appeal Judgement, 20 Feb. 2001, para 370 quoted in ICLS, *op.cit.*,p.6

37 Čelebići, para. 252; *see also* Sefer Halilovid, Case No. IT-01-48-A, Appeal Judgement, 16 Oct. 2007, ¶ 59, quoted in ICLS, *op.cit.*,p.6

38 ICTY, Prosecutor v. Milorad Krnojelac, Judgment, 15 March 2002, Case No: IT-97-25-T, para.93, quoted in ICLS, *op.cit.* p.7.

Another issue that got to be clarified in relation with the effective control at least as far as the Pope is concerned, is the remoteness of control. This issue is raised by the fact that the type of superior-subordinates relationship between the Pope and the priest is somehow different to other cases. In most of cases, the relationship between the superior and the subordinates can be limited within territory boundaries, which is not the case of the Pope.

III.3.2. Remoteness control

The relationship between the Pope and an individual member of the clergy or a religious order is attenuated by both geographic distance and the considerable autonomy of local church entities in their ordinary governance. In this case, we are talking about a kind of control at a global scale what would seem impossible. However, we have seen above that the Catholic Church is organized in a decentralization way, which is in itself an effective way to keep control over subordinates in case of geographical distance.

The remoteness in the Pope's case might not constitute a hindrance from establishing his effective control. According to the International Criminal Law Services, a UN implemented project, states in its training materials that "*an accused can still incur criminal responsibility as a superior when the link to the perpetrators of the crimes at issue is remote*"[39].

In addition, the proof that the remoteness or church autonomy are not a hindrance to the Pope's effective control

39 ICLS, *op.cit.p.7*

over priests is that some authors argue that when the Holy See has wanted to call a member of the clergy somewhere in the world to account for failure to adhere to a doctrinal position or a matter of church discipline, the Holy See has been able to breach that distance and autonomy and enforce its norms[40].

Furthermore, whether the effective control descends from the superior to the subordinate culpable of the crime through intermediary subordinates is immaterial as a matter of law; instead, what matters is whether the superior has the material ability to prevent or punish the criminally responsible subordinate[41]. The separate question of whether –due to proximity or remoteness of control –the superior indeed possessed effective control is a matter of evidence, not of substantive law[42] (The ICC Pre-Trial Chamber II in the Prosecutor v Jean Pierre Bemba Gombo held the same point of view[43]). Thus the distance that might be between the Pope and the priests is not at anytime a hindrance to the Pope's effective control over priests. Effective control means that "the material ability to prevent or punish the commission of the offence[44]". In other words, a superior who has effective control but fails to exercise it bears superior

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40 CORIDEN, A.J, *et al The code of canon law: a text and commentary*, Heintschel eds., New York: 1985, p.325.

41 CRYER, R, *et al, An introduction to International criminal law and procedure*, Cambridge University Press, Cambridge, 2007

42 ICLS, *op.cit.*,p.7

43 ICC, Prosecutor V Jean Pierre Bemba Gombo, ICC-01/05-01/08, *Decision of 15 June 2011*, paras. 415-416

44 The Prosecutor v. Delalié et al., Case No. IT-96-21, Appeal Judgment (Feb. 20, 2001), Appeal Judgment] at para. 256 quoted in ICLS, *op.cit.*p.6.

responsibility[45]. It is relevant then to verify if the Pope failed to exercise it in order to be held accountable.

III.4. Material ability to prevent or to punish priests for committing the sexual abuses by priests

As aforesaid, effective control is the material ability to prevent or punish the commission of the offence. Effective control is different from substantial influence. Substantial influence over subordinates that does not meet the threshold of effective control is insufficient[46].

Here the question is to know whether there are means at the Pope's disposition to prevent or punish the commission of the offence given the fact that crimes might be committed wherever in the world by priests under his watch. Concretely can the Pope as a superior authority prevent or punish the commission of offence? The answer to this question would depend on the circumstances surrounding the case called to examination.

It would be exaggerating to think that for instance the Pope had the power to prevent or punish priests who committed the genocide in Rwanda; all he could do was to take disciplinary measures towards them after the commission of the genocide acts. So in situation similar to Tutsi genocide in Rwanda where priests might be involved as any other

45 The Prosecutor v. Delalić et al., Case No. IT-96-21, Appeal Judgment (Feb. 20, 2001) , Appeal Judgment] at para. 266 quoted in ICLS, *op.cit*.p.6.
46 ICTY, Prosecutor v. Milorad Krnojelac, Judgment ,15 March 2002, Case No: IT-97-25-T, para.93 available at: http://www.icty.org/x/cases/krnojelac/tjug/en/krn-tj020315e.pdf Accessed on 7 December 2011

citizens, the answer to the above question is negative.

However, our position is different about the sexual abuses committed by priests. This change of position is explained by the circumstances surrounding the commission of those acts of sexual abuses.

According to different sources, there has been a cover up of the sexual abuses crimes where the Church's high officials[47]including the current Pope were involved[18], this cover up was following instructions from the Holy Office that outline a policy of 'strictest' secrecy in dealing with allegations of sexual abuse and threatens those who speak out with excommunication[49] (these instructions were reaffirmed by new instructions promulgated in 2001 and the new instruction gives jurisdiction the Congregation of Doctrine of Faith (CDF) in all matters involving the sexual abuses committed by clergy[50] which was reaffirmed by the new instructions promulgated in 2010, abrogating the 2001 instructions[51]) This brings us to advance the following arguments:

47 BARNETT, A. "Vatican told bishops to cover up sex abuse", The Guardian, 17 August 2003, available at: http://www.guardian.co.uk/world/2003/aug/17/religion.childprotection Accessed on 7 December 2011

48 GOODSTEIN, L. Vatican Declined to Defrock U.S. Priest Who Abused Boys, *New York Times*, 24 March 2010, available at: http://www.nytimes.com/2010/03/25/world/europe/25vatican.html?scp=2&sq=pope%20led%20cover%20up%20of%20sexual%20abuse&st=cse Accessed on 7 December 2011

49 Instruction from the Supreme and Holy Office on the manner of proceeding in case of solicitation, Vatican Press, promulgated by Pope John XXIII on March 16,1962, para.11 ,available at: http://image.guardian.co.uk/sys-files/Observer/documents/2003/08/16/Criminales.pdf Accessed on 7 December 2011 (This was effective until 2001 and was abrogated by *The Norms of the Motu Proprio "Sacramentorum sanctitatis tutela" (2001), available at:* http://www.vatican.va/resources/resources_introd-storica_en.html., accessed on 7 December 2011.

50 Para 1 of *the Norms of the motu proprio "Sacramentorum sanctitatis tutela" April 30,(2001), Available at:* http://www.vatican.va/resources/resources_introd-storica_en.html *Accessed on 12 December, 2011*

51 Art.1 of Norms on delicta graviora currently in force is approved by the Holy Father Benedict XVI on 21 May 2010.Available at: http://www.vatican.va/resources/resources_norme_en.html Accessed on 15 December 2011

- The sexual abuses were committed within the Catholic Church by its priests against its members and they were dealt with an absolute secrecy. Those two circumstances made it impossible for the states authorities where the crimes were taking place to prevent, even to punish them, at least until recently[52].

By dealing in secrecy the sexual abuses, the Church officials shifted the duty to prevent or to punish from states to their side. And that's where the Pope's duty to prevent or to punish the commission of the crime comes into picture.

-It is the failure to that duty of preventing or punishing the offenders of the sexual abuses from the Church on which can be grounded the liability of Pope Benedict XVI as a superior responsibility. In other words, it must be established that the Pope as a superior authority failed to take the necessary and reasonable measures to prevent or to punish the sexual abuses committed by priests.

This is reasonably explained by the fact that besides having effective control, the superior is only criminal responsible for the acts committed by his subordinates if he failed to take the necessary and reasonable measures to prevent or to punish their crimes. Necessary measures are the measures appropriate for the superior to discharge his obligation, showing that he genuinely tried to prevent or punish.

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52 States have recently started some cases of priests accused of sexual abuses, an example is that of The Rev. Aaron Cote, 57, now living in New York City, convicted of third-degree sex offense in USA. Quoted from MURPHY, C, "Priest Removed From Job After Suit Alleging Abuse", *Washington Post*, November 17, 2005, available at: http://www.washingtonpost.com/wp-dyn/content/article/2005/11/16/AR2005111602414.html . Accessed on 12 December 2011

The position of the ICTY is that necessary and reasonable measures are those reasonably falling within the material or actual powers of the superior[53].

Hence, it must be determined the nature of the measures falling within the material or actual powers of the Pope.

III.4.1 Necessary and Reasonable measures

'The measures required of the superior are limited to those within his power'.[54] He has a duty to exercise the measures reasonably possible in the circumstances; including those that may be beyond his formal powers[55]. What constitutes such measures is not a matter of substantive law but of evidence[56].

According to the ICLS Training Materials[57], *"the kind and extent of measures to be taken by a superior ultimately depends on the degree of effective control over the conduct of subordinates at the time a superior is expected to act[58]; he must undertake all measures which are necessary and reasonable to prevent subordinates from planning, preparing or executing the prospective crime. The more grievous and/ or imminent the potential crimes of subordinates appear to*

53 ICTY, Prosecutor v Sefer Halilovid , Appeal jugement, para.63 November 11, 2005 quoted in ICLS, *op.cit.* p.13

54 ICLS, *op. cit.*, p.13.

55 The Prosecutor v. Delalić et al., Case No. IT-96-21, Appeal Judgment (Feb. 20, 2001) , Appeal Judgment] at para. 395 quoted in ICLS, *op.cit.*p.13.

56 ICLS, *op.cit.*p.13

57 *Ibidem*

58 ICTY, Prosecutor v. Naser Orić, Case No.: IT-03-68-T30, 329 Trial Judgment, Para., June 2006 available at: http://www.icty.org/x/cases/oric/tjug/en/ori-jud060630e.pdf Accessed on 7 December 2011

be, the more attentive and quicker the superior is expected to react[59]. However, a superior is not obliged to do the impossible[60]".

To our opinion, there are measures that should have been taken by the Pope or under his initiative to prevent or even to punish the commission of sexual abuses by priests; however, the cooperation with other states would have been the best move to been taken as a necessary and reasonable measure.

III.4.2.Judicial measures

The Pope as the Head of the Catholic Church may resort to different judicial measures provided by the Canon Law. The Code of the Canon provided sanctions that can be applied towards an offender priest. Those sanctions vary from *latae sententiae* excommunication to dismissal from the clerical state[61]. The latter sanction is the highest sanction that can be imposed by the Church.

As any other superior, the Pope had to order or execute appropriate sanctions or, if not yet able to do so, he had at least *to conduct an investigation and establish the facts*

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59 *Ibidem*

60 *Ibidem*

61 The Can.1336 of the Code of Canon Law set out the following sanctions depending the gravity of the case:

1° *a prohibition against residence, or an order to reside, in a certain place or territory;*

2° *deprivation of power, office, function, right, privilege, faculty, favor, title or insignia, even of a merely honorary nature;*

3° *a prohibition on the exercise of those things enumerated in n. 2, or a prohibition on their exercise inside or outside a certain place; such a prohibition is never under pain of nullity;*

4° *a penal transfer to another office;*

5° *dismissal from the clerical state.*

in order to ensure that offenders under his effective control were brought to justice[62]. The superior need not conduct the investigation or dispense the punishment in person, but he must at least ensure that the matter is investigated and transmit a report to the competent authorities for further investigation or sanction[63].

If we take an example of the sexual abuses committed by priests, the Pope and the institutions under his authority had a duty to prevent or to punish the commission of those sexual abuses. In this case, the Code of the canon Law explicitly names the Pope as the Highest Judge with the power to judge cardinals, bishops and other cases which he has called to his own judgment[64].

This is a proof that the Pope has an effective authority not only over priests but even highest officials in the church. It also proves that he is in possession of judicial measures that he may apply, depending on the situation and failing to do so would engage his criminal responsibility under the principle of superior responsibility.

The Holy See's Code of Canon Law provides, in its section on criminal law, explicitly that clergy sexual activity with minors is a serious offense, to be dealt with in a serious manner, even including dismissal from the clerical state—considered as the most severe penalty for a priest[65], the

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62 ICLS, *op.cit.*p.14.
63 *Ibidem*
64 Can. 1405 §1 of the Code of Canon law.
65 Canon 1395 §2 of the Code of Canon Law quoted in CFFC(Catholic For a Free Choice), The Holy See and the Convention on the Rights of the Child, September 2002, p.12 available:

Code then provides a detailed judicial process to investigate, confirm or repudiate claims, and punish criminal acts[66]. This process includes several mechanisms for protecting the rights of the accused cleric as well as the accusing party, and provisions for due process before the law[67].

The law guarantees the victims of the abuse the opportunity to participate in a judicial proceeding and to request and be awarded reparations[68]. It even prescribes a penalty for negligence, which could be asserted in these cases when a superior has failed to investigate or punish instances of actionable offenses brought to his attention[69].

In 2001, the Holy See issued a document entitled *Sacramentorum sanctitatis tutela*[70]

In this document, which supersedes the law in the codes, the Holy See directs all the bishops of the world to inform one of its offices, the Congregation for the Doctrine of the Faith, if they receive an allegation of child sexual abuse by a cleric[71]. This same law prohibits the bishops or other church authorities from taking any action beyond a preliminary

http://www.catholicsforchoice.org/topics/other/documents/2002rightsofthechildshadowreport. pdf Accessed on 7 December 2011

66 Canon 1719-1952 of the Code of Canon Law

67 CFF, *op. cit.* p.13

68 Canon 1729-1730 of the Code of Canon law

69 Canon 1389 §1 stipulates that "A person who through culpable negligence illegitimately places or omits an act of ecclesiastical power, ministry, or function with harm to another is to be punished with a just penalty".

70 John Paul II, Apostolic Letter *motu proprio, Sacramentorum sanctitatis tutela, April* 30, 2001, sent by letter of the Congregation for the Doctrine of the Faith to all Catholic bishops in the world on May 18, 2001 (*Epistula ad totius Catholicae Ecclesiae Episcopos aliosque Ordinarios et Hierarchas interesse habentes de <<delictis gravioribus>> eidem Congregationi pro Doctrina Fidei<< reservatis>>), Acta Apostolicae Sedis* 93 (2001) 737 739 and 785 788 respectively. See http://www.vatican.va/roman_curia/congregations/cfaith/doc_dis_index.htm quoted in CFF, *op. cit.* p.13

71 Art.13 of the *Sacramentorum Sanctitatis tutela*, aforementioned

investigation of the allegation without further direction from the Holy See's delegate[72].

This document acknowledges the exclusive power to the Holy See to issue the last decision on the sexual abuses. The necessary and reasonable measure would have been to apply the provision of the Canon law and dismiss the offender priests. This would have not only discouraged other priests from committing the sexual abuses but could also have in some ways deterred the offenders from recidivism.

Instead, priests were moved from one parish to another where they abused children again. The case of father Murphy can illustrate an example of how inappropriate the Church has handled the sexual abuses. Father Lawrence Murphy is alleged of having molested 200 children but he had never been subject to any disciplinary measures imposed by the Canon Law in its canon 1336. Despite the request from his bishop to the Holy See to take measure against that priest, the Holy See ignored it until the priest died in 1998[73].

Those arguments advanced above can be used to prove that the Pope as a superior authority failed to take necessary and reasonable measures at the judiciary level to insure the offenders were punished. At least, he did not undertake all measures which are necessary and reasonable to prevent subordinates from planning, preparing or executing the prospective crime.

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72 *Ibidem*

73 The full story can be found at: NYTimes, "Vatican Declined to Defrock U.S. Priest Who Abused Boys", available at: http://www.nytimes.com/2010/03/25/world/europe/25vatican.html?pagewanted=all . Accessed on 5 December 2011.

III.5. *Mens rea* under the superior responsibility doctrine

The ICLS Training Materials[74] distinguish two forms of *mens rea*: Actual knowledge and constructive or imputed knowledge.

III.5.1. Actual knowledge

The superior's actual knowledge, *established through either direct or circumstantial evidence, that the superior knew subordinates were about to commit or had committed crimes*[75]. This knowledge *cannot be presumed*[76]; *however, in the absence of direct evidence, actual knowledge may still be established by way of circumstantial evidence*[77].

III.5.2. Constructive knowledge

According to the ICLS Training Materials[78], "*Constructive or imputed knowledge means that the superior possessed information that would at least put him on notice of the present and real risk of such offences and alert him to the need for additional investigation to determine whether such crimes were about to be committed or had been committed by his subordinates*".

Referring to the ICTY and ICTR cases, the ICLS Training

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74 ICLS,*op.cit.*,p.10.

75   *Ibidem*, see also ICC, Pre-Trial Chamber, Prosecutor V Bemba, ICC-01/05-01/08, Decision of 15 June 2011, para.429 available at: http://www.icc-cpi.int/icedocs/doc/doc699541.pdf Accessed on 17 December 2011

76   ICLS,*op.cit.*, p.10.

77 *Ibidem*.

78 *Ibidem*.

Materials[79] recall us that *"Having "reason to know" is another form of imputed or constructive knowledge, which can be proved through direct or circumstantial evidence showing that a superior had "some general information in his possession, which would put him on notice of possible unlawful acts by his subordinates would be sufficient to prove that he 'had reason to know.[80]"* Therefore *the information does not need to provide specific details about unlawful acts committed or about to be committed by subordinates[81].*

The constructive knowledge can be proved easily through factual circumstances such as the aforesaid document from the Holy See that requested bishops to deal with sexual abuses in secrecy issued in 1962[82] or from the Papal Nuncio's letter addressed to the Irish bishops in reaction to the measures taken by them to fight against the sexual abuses in Ireland[83]. The Irish bishops sought recognition from Rome for the Framework document prepared to protect children but it was not forthcoming[84].

Furthermore, almost a year after its introduction, the Papal Nuncio at the time wrote, strictly confidentially, to all the bishops in Ireland in the following terms:

"The Congregation for the Clergy has attentively studied the complex question of sexual abuse of minors by clerics and the document entitled "Child Sexual Abuse: Framework for a

79 *Idem*, pp 10-11.
80 *Orić* para.322, *Čelebići*, para. 223, 241.
81 *Ignace Bagilishema*, Case No. ICTR 95-1A-A, Appeal Judgement, 3 July 2002, para. 42.
82 Decree concerning the pastoral Office of Bishops in the Church *Christus Dominus*, proclaimed by His Holiness, Pope Paul VI, on October 28, 1965
83 The letter can be found in The Cloyne report on the sexual abuses committed in Ireland ,p.44 available at: http://www.rte.ie/news/2011/0713/cloyne_report.pdf
84 Cloyne Report, *op.cit.*p.45

Church Response", published by the Irish Catholic Bishops'
Advisory Committee.

The Congregation wishes to emphasize the need for this
document to conform to the canonical norms presently in force.
Recognition ('recognitio') from Rome would give the document
canon law status. The text, however, contains 'procedures
and dispositions which appear contrary to canonical discipline
and which, if applied, could invalidate the acts of the same
Bishops who are attempting to put a stop to these problems.
If such procedures were to be followed by the Bishops and
there were cases of eventual hierarchical recourse lodged at
the Holy See, the results could be highly embarrassing and
detrimental to those same Diocesan authorities.

In addition, we can presume that the Pope knew or
had to know that the priests were sexually abusing
children departing from the fact that his Nuncio knew.
This presumption is based on Canon 364 of the Code of
Canon Law that sets the mission of the Papal Nuncio. The
paragraph 1° of the said provision states clearly that it is
the responsibility of a *Legate*: *to inform the Apostolic See*
about the conditions in which the particular Churches find
themselves, as well as about all matters which affect the life
of the Church and the good of souls.
From the above provision of the canon 364, we presume
that the Pope knew what was happening in Ireland because
his Nuncio knew and had a duty to "*inform the Apostolic*
See".

CONCLUSION

The main concern in this article was to establish if Pope Benedict XVI can be held accountable for crimes in the context of the sexual abuses committed by Catholic priests all over the world. Different elements necessary to establish the existence of superior responsibility were explored. It was determined that the Pope can be held accountable depending on the circumstances surrounding the situation in which he is called to answer to.

To the current context of sexual abuses committed by priests on children, this article has shown that in case the sexual abuses constituted the crimes against humanity, Pope Benedict XVI could be held accountable for the acts committed by the priests. This is due to the fact that he can be considered as the de *jure* authority of the priests, in addition; we have shown that in the context of the sexual abuses, the Pope had an effective control over the priests meaning the material ability to prevent or to punish the sexual abuses.

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