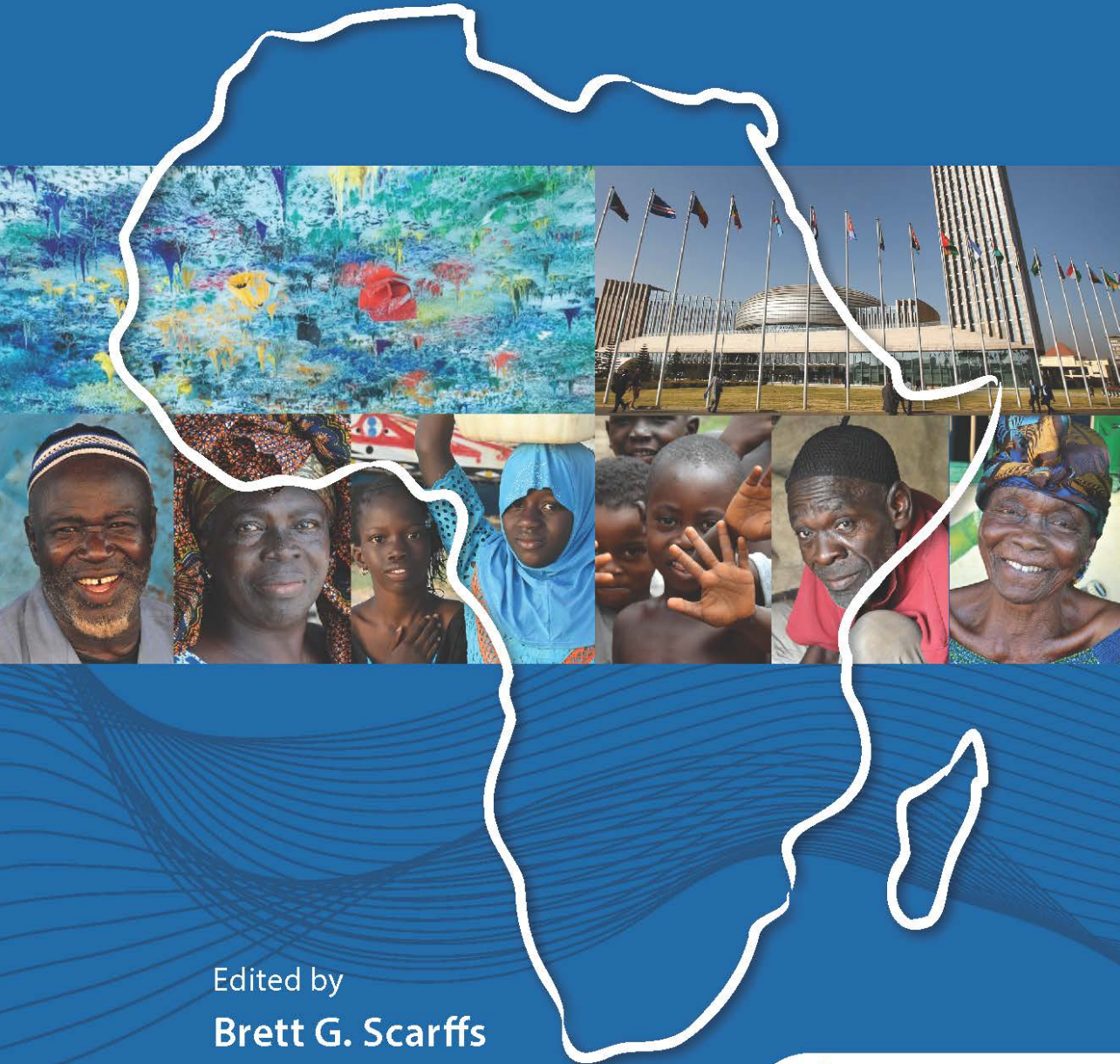


African Conceptions of Human Dignity



Edited by

Brett G. Scarffs

M. Christian Green

Simeon O. Ilesanmi

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4 THE MANY MEANINGS OF DIGNITY IN AFRICAN CONTEXTS

Faith Kabata¹

INTRODUCTION

In April 2023, the Court of Appeal in Kenya affirmed a judgment of the High Court in which the Kenya Employment and Labour Relations Court awarded the plaintiff exemplary damages of KES 450,000 (USD 3,300) for violation of human dignity. The circumstances leading to the award are as follows. In May 2014, a computer box disappeared from the office of a multinational transport company operating in East and Central Africa. The management of the company called in a witch doctor to identify the thief or thieves. The procedure of the witch doctor involved use of sticks, such that the witch doctor held one side, while the company general manager held the other side. The employees were then directed to touch the sticks in turns. The witch doctor was to determine the thief or thieves by singling out the employee or employees whose grip on the sticks were strong. The plaintiff and two other employees were said to have had a strong grip on the sticks, hence determined to be the thieves of the computer box. While the plaintiff did not allege violation of his human dignity in his court pleadings, the Courts based the award of exemplary damages on violation of his human dignity by the employer. According to the High Court, the employee's human dignity was violated by being subjected to macabre rituals and fear.²

The case above is illustrative of modern decision making, particularly in human rights and in discussions on the human person, which are often punctuated with the notion of "human dignity". Oftentimes, human dignity, when invoked, brings to the fore ideas of autonomy and inviolability. The above case is of particular relevance, since witchcraft is rooted in African customs. Although it is criminalised in Kenya, witchcraft is often applied traditionally in place of the criminal justice system or as a supplement to it. The High Court noted that while the Constitution of Kenya embraced traditional dispute resolution mechanisms, use of witchcraft was repugnant to morality and justice as a disciplinary procedure and inconsistent with the Constitution.³ Contrastingly, the Court, while acknowledging that witchcraft is banned in Kenya, referred to the ban as a colonial relic and suppression of African culture, noting that Kenyan employment law frowned upon use of supernatural powers, superstitions and charms in resolution of labour disputes.⁴ In conclusion, the Court found violation of the employee's right to human dignity from a human

1 Lecturer in Law, Kenyatta University School of Law.

2 *Dancan Ouma Ojenge v P.N. Mashru Limited* [2017] eKLR [Ojenge case].

3 *Dancan Ouma Ojenge*, paras 39-42.

4 *Dancan Ouma Ojenge*, paras 48-57.

rights perspective and also that use of witchcraft, such as fear, superstitions and supernatural powers, was repugnant to morality and thus not reflective of dignity as a moral ideal. The case points to deployment of human dignity as a right and human dignity as a moral ideal in determining the appropriateness of certain African cultural practices in a way that leads to the main issue of this chapter: the different meanings of human dignity in an African context.

In positive law, dignity is elevated as a higher value, often a constitutional value that is to be recognised and upheld and states have the duty to respect and protect the dignity of everyone. In natural law, dignity is viewed as that inherent quality in the human person that distinguishes them from other living things, such as animals and which cannot be waived or diminished. Practically, debates on the restriction of abortion and assisted suicide, the ban on dwarf tossing in France, the 2018 outrage over two Chinese gene-edited children and the use of artificial intelligence all passionately invoke human dignity. The portrayals of the notion of human dignity displayed in all these instances lead one to question the precise meaning of human dignity. Even then, these invocations of human dignity have not been without criticism. Human rights law scholar Christopher McCrudden notes that as far back as the nineteenth century, Karl Marx referred to human dignity as “refuge from history to morality” and Arthur Schopenhauer, in reaction to Immanuel Kant’s conceptualisation of human dignity, deemed the concept to be contentless.⁵ The passage of time and repeated usage has not displaced the criticisms, which are equally blunt in the twentieth century. For instance, in modern bioethics, Ruth Macklin has suggested that dignity can be done away with and replaced with a clearer concept,⁶ while Steven Pinker has elaborately discussed what he referred to as the “stupidity of dignity”.⁷

This chapter engages with the debate on the many meanings of dignity, particularly in the African context. The chapter is organised as follows: Part II will provide a brief on the antecedents of human dignity in order to situate the subject of analysis by identifying different meanings ways in which it was conceptualised; Part III will analyse African conceptions of dignity by examining African cultural traditions and African treaty law and jurisprudence; building on Part III, Part IV will highlight the recurring themes on the African conception of human dignity; and Part V will offer concluding thoughts. The chapter acknowledges the difficulties of importing a Western frame of reference on human dignity to trace notions of the same in the African context.

5 McCrudden C. 2008. “Human dignity and judicial interpretation of human rights”, *European Journal of International Law* 19(4): 656-657.

6 Macklin R. 2003. “Dignity is a useless concept”, *BMJ* 327 (7429): 1419-1420.

7 Pinker S. 2008 “The stupidity of dignity”, *The New Republic*, 27 May.

ANTECEDENTS OF HUMAN DIGNITY

Historically, prior to the Enlightenment, Roman thought associated dignity with institutions and the state, not individuals.⁸ This was the social form of dignity which individuals acquired by being associated with public office, the appointment to which brought about status, hence dignity.⁹ At the international level, this notion of dignity informed the treatment that states extended to each other in the context of diplomatic and consular relations.¹⁰ Traces of the institutional and state-based notions of dignity are still visible today; for instance, public officers take oaths to uphold the dignity of certain offices that they hold and the International Court of Justice is often called upon to adjudicate cases involving the dignity of states.¹¹ Indeed, the term “dignitaries” is today still used in reference to state representatives in high-level international meetings. Beyond social and institutional dignity, writings of some Roman scholars attached dignity to human beings irrespective of status. Cicero introduced the idea of dignity as human excellence compared to other creatures, hence the elevated status of human beings in nature.¹² In the Middle Ages, this notion of dignity was linked to the idea of man as having the image of God and hence being worth of protection beyond that of other creatures. In the Enlightenment period, the social dignity concepts gave way to concepts of dignity founded on the inherent worth of the human person and also moved away from the notoriously religious claims of dignity to more secular foundations.¹³ The most compelling formulation of this concept is Kant’s idea of human dignity propounded in the argument that humans, based on their inherent dignity, should be treated as ends in themselves and never as a means to an end.¹⁴

In the modern era, the concept of human dignity is universal, in that all human beings enjoy human dignity and traces its origins to political events such as the French Revolution, which extended dignity and rights to everyone.¹⁵ The nineteenth-century abolition of the slave trade was also premised on the idea of human dignity, that men are equal in rights and dignity and thus worthy of certain treatment.¹⁶ The

8 McCrudden, “Human dignity and judicial interpretation of human rights”, 661.

9 Meyer MJ. 2002. “Dignity as a (modern) virtue”, in D Kretzmer & E. Klein, *The concept of human dignity in human rights discourse*. Alpen aan den Rijn/Philadelphia: Kluwer Law International, 196-197.

10 McCrudden, “Human dignity and judicial interpretation of human rights”.

11 See for instance Kenya Constitution, 2010, Third Schedule “National oaths and affirmations”; *Case Concerning Immunities and Criminal Proceedings (Equatorial Guinea v France)*, ICJ Reports, (Merits Judgment) 11 December 2020.

12 Henry, “The jurisprudence of human dignity”, 212-214.

13 McCrudden, “Human dignity and judicial interpretation of human rights”, 657.

14 Steinmann AC. 2016. “The core meaning of human dignity”, *Potchefstroom Electronic Law Journal* 19(1):4.

15 Watson JDE. 2016. “Universal dignity: Its nature, grounds and limits”. Unpublished PhD Thesis, University of Exeter, 81-83.

16 Montgomery JW. 2009. “Slavery, human dignity and human rights”, *Evangelical Quarterly* 79:117-119.

idea of human dignity took a paradigm shift in the twentieth century and was used during the Second World War as a basis to condemn certain atrocities. After 1945, the inclusion of dignity in the United Nations Charter sealed its place as a universal value for all civilised societies.¹⁷ In international human rights law, dignity has been used as the foundation for protection of human rights.¹⁸

The foregoing brief history portrays the idea of human dignity through many facets: as inherent in all human beings based on human rationality, as a derivative of a person's status which can be lost and as universal deriving from the egalitarian values of equality and freedom. In addition, there are varying reasons for according human dignity to human beings: as inalienable and inherent in all human beings; for having certain capacities and capabilities unlike other creatures; and holding high office or social rank. However, the problem apparent in this brief history is that the meaning of human dignity or the history of human dignity assumes distinctly Western conceptions, leading to the implicit question of what are the African conceptions of dignity.

Debate on whether the notion of human dignity existed in Africa prior to colonisation is mixed. For instance, human rights scholars Jack Donnelly and Rhoda Howard-Hassmann, while denying existence of human rights in pre-colonial Africa, acknowledge that pre-colonial African societies recognised human dignity.¹⁹ On the contrary, G.W.F. Hegel, in his *Philosophy of History*, concluded that Africans lacked the consciousness and awareness of existence of a higher being, of others or anything beyond the self. Impliedly, Hegel found that the notion of dignity did not exist, as Africans lacked consciousness and awareness of the very basis of dignity – a deity and regard for others – from the European perspective discussed above.²⁰ Notwithstanding these debates, a number of writers have affirmed the existence of human dignity in African societies.

AFRICA AND HUMAN DIGNITY

Literature on human dignity in Africa mainly turns to cultural traditions and value systems to search for its meaning. This chapter adopts a similar approach and highlights cultural traditions of three African societies to trace their conceptions of human dignity. The chapter also examines the meaning of human dignity as articulated in African treaty law and jurisprudence.

17 Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, entered into force Oct. 24, 1945, preamble.

18 Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), preamble.

19 Mutua MW. 2002. *Human rights: A political and cultural critique*. Philadelphia: University of Pennsylvania Press, 75-83.

20 Hegel GWF. 1984. *Lectures on the Philosophy of History*. Sibree J trans. from the 3rd German Edition. London: George Bell & Sons, 97.

African cultural traditions

As noted in Part II, the notion of dignity has a number of typologies, such as: institutional status, social rank, a moral ideal signifying the higher value worth of the human person relative to other creatures and a human right. A cursory review of African cultural practices of three communities points to the existence of the different forms of dignity. Legal theorist Josiah A.M. Cobbah's work on the Akan community in Ghana points to different notions of dignity. First, the author alludes to the political structure of the Akan, which was hierarchical, with offices such as chiefs, sub-chiefs, craftsmen, musicians and warriors, which carried certain honours. In addition, those who occupied these offices were assigned certain roles meant to serve the well-being of the society and were equally expected to conduct themselves in a manner befitting the political office.²¹ Secondly, Cobbah notes that the organizing structure for the Akan society was the extended family unit in which each member had an assigned social role in the form of entitlements and obligations.²² The family unit was governed by explicit norms of conduct which dictated acceptable behavior from and towards other members of the family unit and the community. For instance, younger persons were expected to extend respect to older persons through bowing and in their communication.²³ Thirdly, in regard to the immortality of the human person, which emphasised the elevated status of the human person, Cobbah notes that the individual's existence was connected to the living, the dead and the unborn through the naming system.²⁴ Drawing from the typologies of dignity discussed earlier on, the Akan recognised dignity as social status which was acquired through appointment to the various offices, such as the chief, musicians and warriors. In addition, dignity was regarded as a moral ideal based the explicit norms that each individual was expected to adhere to for the cohesiveness of the society. This can also be referred to as dignity as human excellence, as one is expected to conduct themselves in a manner that the society deems "dignified" or honourably. Finally, the immortality of the human person alluded to by the connection of the dead, living and unborn points to human dignity as signifying the high value worth of the human person.

Writing on the Dinka of South Sudan, legal scholar Tsega Andualem Gelaye identifies two cultural traditions: *cieng* (moral order) and *dheeg* (honour) that resonate with the concepts of dignity.²⁵ *Cieng* is an explicit set of norms governing how each member of the Dinka society should conduct themselves and treat others. Through the *cieng*, respect and recognition of every member of the society is upheld

21 Cobbah JAM. 1987. "African values and the human rights debate: An African perspective", *Human Rights Quarterly* 9:322-323.

22 Cobbah, "African values and the human rights debate", 320-321.

23 Cobbah, "African values and the human rights debate", 320-321.

24 Cobbah, "African values and the human rights debate", 323.

25 Gelaye TA. 2021. "The role of human dignity in the jurisprudence of the African Commission on Human and Peoples' Rights", *African Human Rights Yearbook* 5:122-123.

as sanctions attach for violation of the norms.²⁶ Accordingly, the *cieng* tradition resonates with dignity as virtue, as human excellence or as a moral ideal – how an individual within the Dinka society is expected to conduct themselves and dignity as responsibility or duty on how one should treat others. *Cieng* is enforced by the ancestors, implicitly pointing to the recognition of humanism among the Dinka and the superior status that attached to the human person. On other hand, the *dheeg* tradition signifies dignity as a social rank or status acquired through birth or marriage to a family that occupies high status, wealth measured in the form of cattle or as physical appearance or beauty.²⁷

In *Facing Mount Kenya*, political leader and first post-independence Kenyan president Jomo Kenyatta, in his expatiation of the Gikuyu cultural life, notes that different aspects of an individual's life such birth, marriage and religion are tied to the social culture of the community.²⁸ In this regard, the individual exists as part of the community and their being derives from the harmonious existence of the community. Kenyatta further emphasises that it is from the culture that one inherits that their human dignity and material prosperity are derived.²⁹ According to Kenyatta, the Gikuyu community was organised around three pillars: the extended family, the clan which consisted of a number of families and the age-set system. An individual's behavior and status was determined based on the family, the clan and the age-set system. The behavior patterns were strictly enforced and each member of the community was supposed to conduct themselves based on their age set.³⁰ For instance, boys and girls of the same age set were expected to accord respect to those of more senior age sets.³¹ The centrality of the family kinship in an individual's life was signified by the fact that the individual was addressed in reference to their social status in the family as so and so's mother or daughter of X. To signify the high worth attached to the human person within the Gikuyu traditions, intentional killing through witchcraft or poisoning was punished by burning the perpetrator to death.³² Further, the Gikuyu believed that those who died were still part of the community and engaged with them through the practice of ancestor worship in times of crisis such as illness or being struck by lightning.³³ The system of government was organised from the family unit in which the father represented the family in the village council, which brought together a number of families. The village council was headed by the oldest and wisest elder, then there was the

26 Gelaye, "The role of human dignity in the jurisprudence of the African Commission", 122.

27 Gelaye, "The role of human dignity in the jurisprudence of the African Commission", 123.

28 Kenyatta J. 1961. *Facing Mount Kenya: The tribal life of the Gikuyu*. London: The Hollen Street Press Limited, 317.

29 Kenyatta, *Facing Mount Kenya*, 317.

30 Kenyatta, *Facing Mount Kenya*, 8-9.

31 Kenyatta, *Facing Mount Kenya*, 8-9.

32 Kenyatta, *Facing Mount Kenya*, 265.

33 Kenyatta, *Facing Mount Kenya*, 239-240.

district council and finally the national council comprising the whole population.³⁴ Government positions were not the heritage of any family but depended on merit and good behavior and a leader could be recalled if they fell below the expected standards of office.³⁵ Therefore among the Gikuyu, similar to the Akan and Dinka, the conception of dignity existed as a moral ideal, a human right, a social and institutional status and through the elevated status of the individual. As a moral ideal, based on an individual's age set, one was expected to conduct themselves in accordance with a moral code. Notions of dignity as a human right can be attributed to the inviolability of human life, such that if one killed another, the perpetrator's life was similarly taken in the most painful way. Further, the leadership positions conferred certain status and one was expected to behave in a way that reflected the position of a particular position of leadership, hence the conception of dignity as socially and institutionally based.

African treaty law and jurisprudence

Turning to African modern political and adjudicative institutions, the African Union (AU), African Commission on Human and Peoples' Rights (African Commission) and the African Court on Human and Peoples' Rights (African Court) have appealed to the various typologies of dignity. At the political level, dignity was a consistent theme in the agitation for the transition from colonialism to independence in Africa. Both the African Union Constitutive Act (AU Constitutive Act) and its precursor the Charter of the Organisation of African Unity (OAU Charter) explicitly mention dignity in their preambles and affirm the connection between dignity and self-determination of the African people. The OAU Charter, formulated in early 1960s at the eve of African independence and after the 1948 Universal Declaration of Human Rights (UDHR), refers to dignity alongside the themes of freedom, equality and justice,³⁶ thus indicating colonial repression and domination as a violation of universal values of civilised societies. The African Commission in its elaboration of this provision has described dignity as the "soul of the African human rights system shared with other civilized human societies".³⁷ Therefore, the meaning attached to dignity is collective dignity for the African people to be accorded equal treatment as others members of the human race. The noted Kenya-born political scientist Ali Mazrui's work is also instructive, as he refers to dignity for the African people as freedom from the anti-colonial struggle and apartheid.³⁸ The AU Constitutive Act, formulated in the early 2000s, links human dignity to the anti-colonial struggle by

34 Kenyatta, *Facing Mount Kenya*, 194-195.

35 Kenyatta, *Facing Mount Kenya*, 195.

36 Charter of the Organisation of African Unity, 479 U.N.T.S. 39, entered into force Sept. 13, 1963.

37 *Open Society Justice Initiative v Republic of Cote d'Ivoire*, Communication 318/2007, Decision (Merits) February 2015, para 139.

38 Mazrui A. 1986. *The Africans: A triple heritage*. Boston: Little Brown and Company: Boston, 279-304.

listing it alongside political independence and economic emancipation of Africa.³⁹ In summary, it can be argued that in the context of anti-colonial struggle, the meaning attached to human dignity at the political level was dignity as equality – a quest for freedom and equality of the African peoples in relation other members of the human race to exercise their own free will politically, economically and socially through the right of self-determination.

The African Charter on Human and Peoples' Rights (African Charter) makes three explicit references to human dignity. The first two references contained in the preamble are aspirational and a link to the AU's political instruments, which echo the equality and liberatory notions of dignity associated with Africa's anti-colonial struggle. The preamble further refers to "virtues of their historical tradition and values of African civilization" as being embedded in the concept of human and peoples' rights in the African Charter,⁴⁰ implying that beyond the explicit references to the human dignity, interpretation and application of the rights should take into account African values on dignity. The third reference contained in the substantive text of the African Charter guarantees human dignity as a right. Article 5 reads: "Every individual shall have the right to the respect of the dignity inherent in a human being and the recognition of his legal status. All forms of exploitation and degradation of man particularly, slavery, slave trade, torture, cruel, inhuman or degrading treatment or punishment shall be prohibited."⁴¹ This provision implies a conception of dignity that resonates with universal dignity under international law: as a universal value and a human right. As a universal value, the reference to inherence in the provision signifies that dignity derives from mere personhood irrespective of all other factors, hence its universality.

In this regard, the African Charter embraces the universalisation of human dignity recognised under international law – that which human beings enjoy by virtue of being human. Further, dignity is also referenced as a legal and human right under two strands: (1) the inviolability of the human person, thus the absolute prohibition of violation of rights that are at the core of personhood such as torture, slavery and cruel and degrading treatment and (2) legal personhood that enables a human being to hold rights as well as obligations. In his insightful analysis of human dignity in international law, Christopher McCrudden argues that at the minimum core dignity has three elements: (1) intrinsic worth of the human person, (2) recognition of that worth by others and (3) the state obligation not to inviolate the person and to protect that worth.⁴² Certainly, these three elements find expression in the above provision of the African Charter as the intrinsic worth of the person through recognition of

39 Constitutive Act of the African Union, OAU Doc. CAB/LEG/23.15, *entered into force* May 26, 2001, preamble.

40 African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986 [African Charter], preamble.

41 African Charter, art. 5.

42 McCrudden, "Human dignity and judicial interpretation of human rights", 679.

explicit reference to the inherency of human dignity and by the absolute prohibition of practices that degrade the human person such torture, slavery and cruel and degrading treatment and the state obligation to respect and protect that worth. The African Court, in *Mugesera v Rwanda*, has asserted that this provision protects dignity as a specific individual right by outlawing physical, mental or psychological abuse which would denigrate individual dignity.⁴³

In a number of cases, the African Commission has interpreted human dignity as conceived in Article 5 of the African Charter and in the rest of the Charter more generally. These cases are examined in the discussion below with a view to distilling the different conceptions of dignity that the African Commission embraces in the adjudication. In the *Kobedi* case on imposition of the death penalty by Botswana, the African Commission considered whether execution of the death penalty by hanging and failure to consider the medical circumstances of the individual offender violated human dignity as guaranteed under Article 5 of the African Charter.⁴⁴ The petitioners further urged the African Commission to find a violation of the right to human dignity, as the state failed to notify the accused and his family members of the date and time of execution of the death penalty.⁴⁵ While the African Commission affirmed that execution of the death penalty by hanging was incompatible with the inherent dignity of a person, it linked this to the state's duty to minimise suffering, particularly the slow and painful death which would result if the weight of the condemned was not taken to account.⁴⁶ In the *Kobedi* case, the African Commission ruled that the petitioners failed to demonstrate that the state did not take into account the weight of the condemned. Consequently, the African Commission did not find that execution of the death penalty by hanging violated human dignity.⁴⁷ On the contrary, the African Commission found that failure of the state to notify the condemned person and his family of the date and time of execution amounted to a violation of the human dignity, as the condemned person and his family were not afforded an opportunity to accord one another a dignified farewell.⁴⁸ By finding a violation of human dignity based on failure of the state to ensure that the condemned person and his family had opportunity for a closure and a dignified farewell, the African Commission was drawing from dignity as a human right that requires the state not to carry out practices that dehumanise an individual and, in this particular instance the individual, in relation to his family. This concern stems from the African traditional values, which view the individual not as an isolated being but part of a family or group, hence their dignity is to be protected and recognised within their family. In this regard, the African Commission invoked

43 *Lèon Mugesera v Republic of Rwanda*, Application No. 012/2017 Judgment (Merit) 20 November 2020, para 80.

44 *Spilg and Mack and Ditshwanelo (on behalf of Lehlohonololo Bernard Kobedi) v Botswana*, Communication 277/2003, Decision (Merits) December 2011, paras 122-123.

45 *Kobedi*, para 174.

46 *Kobedi*, para 169.

47 *Kobedi*, para 170.

48 *Kobedi*, para 175.

both the right to safeguard against mental and psychological abuse and also the communitarian sense of African traditional practices on death.

In the *Esmalia Connateh* case,⁴⁹ the Republic of Angola initiated an operation to expel all foreigners working and living in Angola and pursuant to this operation, the complainant and 13 others who were miners were subsequently arrested, detained and deported to the Gambia.⁵⁰ The complainants alleged that the detention and deportation violated their human dignity, as they were held in an overcrowded centre previously used to house animals, were regularly denied food and were given toilet facilities consisting of two buckets for 500 detainees that were located in the same rooms where the detainees ate and slept.⁵¹ In addition, the complainants were not informed of the reasons and duration of their detention and were beaten by the guards.⁵² The African Commission found violations of the complainants' right to human dignity on the grounds that they were subjected to inhuman and degrading treatment in the detention facilities.⁵³ Further, the African Commission noted that failure to inform them of the reasons for and duration of arrest constituted mental abuse, hence a violation of the right to human dignity.⁵⁴ The African Court has also ruled that failure to accord a detained person adequate food, access to health services and access to family and counsel resulting in mental and physical health deterioration are violations of human dignity.⁵⁵ In these two cases, both the African Commission and the African Court invoke human dignity as a legal and human right, specifically prohibiting any form of mental, physical or psychological abuse.

As Tsega Andualem Gelaye notes, the African Commission has embraced broader conception of human dignity in cases involving the second strand of human dignity in the African Charter: recognition of legal personhood.⁵⁶ In this regard, the African Commission has recognised human dignity as the motivating principle of all other rights in the African Charter and also as an African value. In the *Nubian Community in Kenya* case, Kenya was found to have violated the human dignity of the Nubian community in Kenya by denying them the right to nationality through failure to provide identification documents and instituting procedural and administrative obstacles in the issuance of those documents.⁵⁷ The African Commission held that

49 *Institute for Human Rights and Development in Africa (on behalf of Esmalia Connateh and 13 others) v Republic of Angola*, Communication No. 292/ 2004, Decision (Merits) May 2008.

50 *IHRDA for Esmalia Connateh*, para 3.

51 *IHRDA for Esmalia Connateh*, para 5.

52 *IHRDA for Esmalia Connateh*, paras 6-8.

53 *IHRDA for Esmalia Connateh*, paras 51-52.

54 *IHRDA for Esmalia Connateh*, para 50.

55 *Mugesera*, paras 90-93.

56 Gelaye, "The role of human dignity in the jurisprudence of the African Commission on Human and Peoples' Rights", 131.

57 *The Nubian Community in Kenya v Republic of Kenya*, Communication No. 317/2006 Decision (Merits) February 2015. The case was filed on their behalf by Open Society Justice Initiative and Institute for Human Rights and Development in Africa.

recognition of legal personhood enabled an individual to enjoy the rights protected in the African Charter.⁵⁸ Further, it noted that nationality was a prerequisite for legal personhood; hence, by denying the Nubian community citizenship, the Kenyan government rendered them incapable of holding any rights and obligations, thus violating their dignity.⁵⁹ In addition, the African Commission also invoked equality as dignity, noting that government denial of identification documents and citizenship to the Nubian community denigrated the human dignity of the Nubians as human beings by excluding them through differential treatment compared to other Kenyans.⁶⁰ Importantly, the African Commission addressed the state's response in the case by drawing on African values. The state in its defence produced a list of individual Nubians who had obtained Kenyan citizenship. However, drawing from African communitarianism, the African Commission acknowledged that while legal personhood is a right enjoyed individually, the emphasis in the case was on the administrative and bureaucratic hurdles imposed on the Nubians as a community, thus resulting to their social exclusion and differential treatment from the rest of the Kenyan society.⁶¹

Similar reasoning informed the African Commission's decision in the *Open Society Justice Initiative v Côte d'Ivoire* case on the introduction of the *Ivoirité* policy by the government.⁶² The *Ivoirité* policy, which had the effect of denying citizenship to the Dioula people on the grounds that they did not have "pure" Ivorian heritage, but rather had a "migrant ancestral" heritage.⁶³ Pursuant to the *Ivoirité* policy, the Dioulas and other persons occupying the northern region of the country were denied identification documents, access to government services, including employment opportunities, even in instances in which their Ivorian nationality was attested.⁶⁴ In that case, the African Commission embraced the broadest conception of human dignity so far. First, the African Commission elaborated on the notion of human dignity in the preamble of the African Charter noting that human dignity was the "soul of the African human rights system" shared with all civilised societies, thus appealing to dignity as a universal value. Secondly, that violation of human dignity put into question the human nature of an individual and their membership to the human family.⁶⁵ Thirdly, that legal personhood was an automatic consequence of human personality; thus, when violated by the state, it denied the individual their status as a subject of law capable of holding rights and duties.⁶⁶ Fourth, the African

58 *Nubian Community in Kenya*, para 138.

59 *Nubian Community in Kenya*, para 139-140.

60 *Nubian Community in Kenya*, para 132.

61 *Nubian Community in Kenya*, para 144.

62 *Open Society Justice Initiative v Republic of Cote d'Ivoire*, Communication 318/2007, Decision (Merits) February 2015.

63 *OSJI v Cote d'Ivoire*, para 54.

64 *OSJI v Cote d'Ivoire*, para 9.

65 *OSJI v Cote d'Ivoire*, para 139.

66 *OSJI v Cote d'Ivoire*, para 140.

Commission noted that in African societies, in which membership to the community is central, denial of legal personhood subjected an individual to being treated as an inferior member of the society, hence a violation of their dignity.⁶⁷ Accordingly, the African Commission invoked human dignity as a universally recognised human right and also appealed to the African communitarian conception of dignity in which dignity is enjoyed through membership to a community.

Beyond the express invocation of human dignity in the African Charter, since the African Charter draws from African values, there is a logical link between the notion of duty as provided for in the African Charter and human dignity. As discussed earlier in the African cultural traditions highlighted above, each of the three communities has explicit norms which prescribe individual responsibilities within the community, hence the notion of duty. The notion of duty is addressed in the preamble of the African Charter affirming its importance as a theme underlying the African conception of human rights.⁶⁸ International human rights law theorist Richard Gittleman notes that the inclusion of individual duties in the African Charter draws from the African traditions of an individual's responsibility towards the community, family and nation.⁶⁹ Gittleman further points out that it also reflects the ideological differences at the level of African states between socialism and capitalism prevalent at the time of drafting the African Charter.⁷⁰ The significance of these differences to the notion of duty lies in the recognition of the communitarian nature of the individual in socialist societies. In the same strand of argument, human rights scholar Julia Swanson notes that the African Charter's protection of human rights is anchored in the group norm, in which an individual's rights are to be actualised within his or her community.⁷¹

The individual duties enumerated in the African Charter impose responsibilities on the individual towards the family, society, state and international community.⁷² In an apparent elaboration of the notion of individual duty, in relation to others, the individual is required to respect and consider others without discrimination and maintain relations.⁷³ In regard to the family, the individual should respect their parents and extend assistance for their needs, while in regard to the society, the individual should uphold positive African cultural values and promote the moral wellbeing of society.⁷⁴ The individual duties at state level require the individual to serve the state with their physical and intellectual abilities, work towards national

67 *OSJI v Cote d'Ivoire*, para 141.

68 African Charter, preamble.

69 Gittleman R. 1982. "The African Charter on Human and Peoples' Rights: A legal analysis", *Virginia Journal of International Law* 22:676-677.

70 Gittleman, "The African Charter on Human and Peoples' Rights".

71 Swanson J. 1991. "The emergence of new rights in the African Charter", *NYLS Journal of International and Comparative Law* 12(1-2):328.

72 African Charter, art 27.

73 African Charter, art 28.

74 African Charter, art 29.

and social solidarity, to respect the national independence of the state and to be productively engaged and pay taxes.⁷⁵ At the international level, the individual has a duty to promote African unity.⁷⁶ These duties resonate with individual responsibilities within society as highlighted in the earlier discussion on the Akan, Dinka and Gikuyu societies.

Within the notion of duty in the African Charter, states also have duties beyond their general obligations under international human rights law. In this regard, linked to the individual duty towards the family, is a duty of the state to assist the family in its role as the theatre for the exercise and preservation of African traditions and morals.⁷⁷ Significantly, the African Charter also guarantees the protection within the family of vulnerable members of society, such as women, children, the aged and persons within disabilities.⁷⁸ The import of the African Charter is a recognition of the African traditions and values that extend individual responsibilities to the other members of the family or community, particularly in the case of the vulnerable. In relation to human dignity, the African Charter acknowledges that in line with African traditions, individual dignity is recognised and protected within the community, hence it singles out social vulnerabilities that would lead to violation of human dignity and calls for their protection within the family, while also invoking the state obligations towards the family. Pointedly, over time, the African human rights system has enacted specific protocols that articulate the rights and state obligation in relation to the aged and persons with disabilities in Africa.⁷⁹ Osita C. Eze, an African legal scholar, in his discussion of duties in the African Charter notes that the notion of duty reflects common African traditions such as respect for parents, elders and individual responsibilities for social cohesion and wellbeing of the African society.⁸⁰ Furthermore, he points out that the notion of duty in the African Charter institutionalises the extended family and community as sites for the protection of human rights.⁸¹

The foregoing examination of African traditional cultural values of the Akan, Dinka and the Gikuyu, along with review of African treaty provisions and jurisprudence on human dignity, reveals the meanings attached to human dignity in the African context. Revisiting the typologies of dignity identified in the Western concept of human dignity, it is evident that the same facets of the concept of dignity exist in

⁷⁵ African Charter, art 29.

⁷⁶ African Charter, art 29.

⁷⁷ African Charter, art 18.

⁷⁸ African Charter, art 18.

⁷⁹ See Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, adopted 31 January 2016, not yet in force; Protocol to the African Charter on the Rights of Persons with Disabilities in Africa, adopted 29 January 2018, not yet in force.

⁸⁰ Eze OC. 2021 *African Charter on rights and duties, enforcement mechanisms*. African Law 10. Geneva: Globethics.net, 237.

⁸¹ Eze, *African Charter on rights and duties, enforcement mechanisms*.

Africa. Pointedly, two themes stand out in the African conception of human dignity: the communitarian paradigm and the notion of individual duty. The next part of the chapter discusses these two themes and their relevance to African concept of human dignity.

THE COMMUNITARIAN PARADIGM AND INDIVIDUAL DUTY IN THE MEANINGS OF HUMAN DIGNITY IN AFRICA

As indicated above, the two recurring themes in the African conception of human dignity are communitarian paradigm and individual duty. Both themes are woven into the different typologies of dignity embraced by African cultural traditions and in the African human rights system. On the communitarian paradigm, Josiah Cobbah's observation that in the African context, the quest for human dignity seeks to uphold the well-being of the individual within a group and not necessarily to essentialise the rights of the individual against the world,⁸² provides a good starting point of analysis. In the African philosophy individual personhood is viewed from the lens of the society in which the individual lives. Noted Kenyan theologian and philosopher of African religions John S. Mbiti noted that individual personhood is realised through other people as an individual's duties, privileges and responsibilities exist in relation to others.⁸³ Similarly, Cobbah pointed out that the whole nature of the individual in African philosophy is constructed in relation to their social relations.⁸⁴ Therefore, conceptions of human dignity discussed earlier find expression within the community and less in the individuated self.

At the outset is the centrality of the family as the primary and first social integration unit for the individual in society. The centrality is reflected both in the African cultural traditions highlighted above and in the African human rights system. In the African cultural traditions of the Akan and Gikuyu, the family is the basic organizing unit of the society, so that the family is a key component in the recognition and protection of individual dignity. In the African human rights system, the centrality of the family is reflected in the institutionalisation of the family and its invocation in the decisions of the African Commission on human dignity. Human dignity as human excellence, as articulated by Cicero, acquires its meaning of dignified living based on how individuals conduct themselves in the community through adherence to the society's moral code of conduct. In this regard, human dignity as a moral ideal is recognised and articulated in respect to behavior towards others. Further, human dignity as social status is also recognised in the communal sense, as seen in the Dinka community, which recognises social status based on wealth and family heritage and also among the Gikuyu, in which a person's role in the family and their age set determined their identity within society.

82 Cobbah, "African values and the human rights debate", 322.

83 Imafidon E. 2021. "African communitarian philosophy of personhood and disability: The asymmetry of value and power in access to healthcare", *International Journal of Critical Diversity Studies* 4:48 (quoting John Mbiti).

84 See Cobbah, "African values and the human rights debate", 319-320 (quoting Turner).

The African human rights system also reflects this communitarian paradigm in the protection of human dignity. In protection of dignity as a human right, the African Commission, in the case law discussed above, has highlighted the centrality of the family and community. As noted in the *Nubian community in Kenya* case, the African Commission appealed to human dignity as equality and found a violation of dignity on the basis that members of the whole community were treated differently, irrespective of the fact that human dignity as legal personhood is enjoyed individually. In the *Open Society Justice Initiative v Côte d'Ivoire* case, the African Commission referred to violation of dignity in the context of the Dioula's lower status within the general Côte d'Ivoire society. In the *Kobedi* case, the African Commission found violation of individual dignity in relation to the family, in that the victim and his family were denied an opportunity to accord each other a dignified farewell prior to the victim's execution.

In addition, the institutionalisation of the family in the African Charter supports the communitarian paradigm of human dignity in Africa. The family is designated as the site for expression and preservation of African cultural values and traditions and also for the protection of the vulnerable members of society. International law scholars Elen de Paula Bueno and Emilio Mendonça Dias da Silva have argued that in international human rights jurisprudence, human dignity has been invoked to protect groups that have traditionally been socially vulnerable such women, persons with disabilities, indigenous peoples and sexual minorities.⁸⁵ By situating the protection of women, children, the aged and persons with disabilities within the family and in line with African values, the African Charter recognises that human dignity in the African context finds expression through the wellbeing of the individual within the community.

Tied to the communitarian paradigm is the notion of individual duty, which also is a common thread in both the African cultural traditions highlighted above and the African human rights system. As noted by human rights law scholar Annemarie Devereux, while the meaning of individual duty in human rights remains contested, African scholars have referred individual duty to the responsibility that accrues to an individual based on community membership and as a precondition for community membership.⁸⁶ In the African cultural traditions discussed above, individual duty arises as individual responsibilities that one owes to the community. For instance, in the Akan, Dinka and Gikuyu communities that have been referenced in this chapter, there are explicit norms that prescribe how individuals should conduct themselves based on age and position in society. In the Gikuyu community, Jomo Kenyatta noted that even the exercise of power by those who held leadership positions was for the wellbeing of the community as a whole. He observed that

85 Bueno EDP and da Silva EMD. 2021. "An international legal perspective on human dignity: The extrinsic recognition of an intrinsic condition", *The Canadian Yearbook of International Law* 59:316.

86 Devereux A. 1995. "Should "duties" play a larger role in human rights?: A critique of Western liberal and African human rights jurisprudence", *UNSW Law Journal* 18:474.

“[t]he pronoun ‘I’ was used very rarely in public assemblies”.⁸⁷ In this regard, it is the relational notion of duty in which the individual owes certain moral obligations to the community to which they belong. Human dignity is thus conceived as fulfilling one’s responsibilities to society based on their prescribed roles. The notion of individual duty resonates more with the conception of human dignity as a moral ideal, that an individual is expected to conduct themselves based on explicit societal norms, hence a dignified living or human excellence. Expounding on the concept of human dignity in the communitarian perspective, philosopher of African religions Polycarp Ikuenobe notes that human dignity connotes socially prescribed individual duties and the individual’s relationships within society for the wellbeing and harmonious living of the group.⁸⁸

The African Charter locates individual duties within the family, society, nation and international community. In terms of human dignity, the most significant location of the individual duty is within the family. The African Charter acknowledges that the responsibilities of caring for the aged and persons with disabilities lie within the family unit, although as pointed out earlier there are specific protocols that outline their rights and the state obligations. In this regard, the African Charter acknowledges the social vulnerability associated with old age and disability and it requires the recognition of the human dignity of persons in such situations. In this regard, the African Charter invokes human dignity as equality – equal treatment for those with diminished human capacities even in the private spheres.

CONCLUSION

This chapter has sought to explore the many meanings of human dignity in the African context. Despite the lack of a precise definition of human dignity, it is possible to identify the meanings attached to it in particular circumstances. Accordingly, the meanings attached to human dignity in the African context closely mirror the Western conceptions of human dignity. However, two common threads in African conceptions of human dignity can be found in African cultural traditions and the human rights jurisprudence of the African adjudicative bodies: the communitarian paradigm and the notion of individual duty. These concepts distinguish the African conception of human dignity from the Western conceptions which are largely based on individualism. Even with these differences, the African view of human dignity, akin to the Western view, is still directed towards realising the human rights of the individual albeit in a markedly communitarian and duty-bound way.

⁸⁷ Kenyatta, *Facing Mount Kenya*, 195.

⁸⁸ Ikuenobe P. 2018. “Human rights, personhood, dignity and African communalism”, *Journal of Human Rights* 17:595-596.