

SUPPORTING THE RULE OF LAW WORLDWIDE

THE KONRAD-ADENAUER-STIFTUNG
RULE OF LAW PROGRAMME

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THE GERMAN CONSTITUTION ...

... affirms its commitment to the rule of law in Article 20, 28 I 1 (Basic Law). The rule of law is one of the fundamental constitutional principles that cannot be overturned even by amending the constitution, being protected to that effect by Art. 79 III (Basic Law), the so-called "eternity clause". The concept of the rule of law centres on "the requirement of the state to exercise its sovereignty in the form of law. This means that it governs according to rules and by means of rules. Governing according to rules means that the state not only lays down rules for the people within its domain, but also submits to these rules itself. Governing by means of rules means that requirements regarding conduct laid down by the state for the people in its domain are enacted in the form of rules and are based upon rules" to quote Professor Dr Dieter Grimm, former judge at the German Federal Constitutional Court. This commitment to the rule of law in both a formal and material sense was ceremonially sealed with the signature of the Basic Law by the President of the Parliamentary Council, Konrad Adenauer, on 23 May 1949.

Guaranteeing the rule of law and legal safeguards is also one of the core tenets in the debate on development and foreign policy, especially as an efficient legal system that meets the principles of the rule of law is a basic prerequisite for any form of democratic system. Numerous national and international development cooperation institutions are placing ever-greater emphasis on promoting the rule of law. The United Nations, the World Bank, the OECD and the European Union have made it one of their key fields of action. The United Nations is working towards making the rule of law a cross-cutting issue in all of its areas of activity. A resolution issued by the General Assembly confirmed the following outcome of the Millennium Summit: good governance and the rule of law are key to development work at national and international level and play a major role in ensuring sustainable economic growth, sustainable development and in combating poverty and hunger. Each year, the World Bank Institute uses the Governance Matters Index to measure the development of 213 countries and territories. The six Worldwide Governance Indicators include: Voice and Accountability, Political Stability and Absence of Violence, Government Effectiveness, Regulatory Quality, Rule of Law, and Control of Corruption. The index is rooted in the belief that sustainable economic development and the rule of law, i.e. legal certainty, go hand in hand.

Particularly with regard to transformation processes, such as those in the Middle East and North Africa, it is important to stress that development cooperation is never a static process and must be constantly adjusted to the situation at hand. At the Deauville Summit, the G8 foreign ministers declared the following: "In light of the recent developments in the Middle East, North Africa and Sub-Saharan Africa, we have renewed our commitment to supporting democratic reform around the world and to responding to the aspirations for freedom, including freedom of religion, and empowerment, particularly for women and young people. Democracy lays the best path to peace, stability, prosperity, shared growth and development."

The Konrad-Adenauer-Stiftung also gears its international activities towards creating an international order of peace, freedom, democracy and justice. In order to achieve these goals, in 1990 the foundation launched the Rule of Law Programme, a transnational sector programme aimed at promoting the rule of law and complementing its global projects to promote democracy and political dialogue. German jurists with international expertise direct the regional rule of law programmes from bases in Bogotá, Singapore, Nairobi, Bucharest and, since 2013, also in Beirut, while cooperating closely with KAS national offices in Latin America, Asia, Sub-Saharan Africa, South-East Europe and the Middle East/North Africa. Their activities are coordinated from the foundation's headquarters in Berlin.

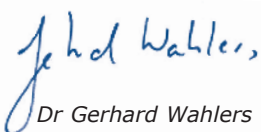
In line with its function and identity, and in contrast to many other bilateral and multilateral donors and advisors, the Konrad-Adenauer-Stiftung does not adopt a purely technical stance, but rather takes an explicitly political, dialogue-based approach. Thanks to trusted contacts often nurtured over decades, the foundation is able to credibly promote the principles of the rule of law in numerous countries throughout Latin America, Africa, Asia, South-East Europe and the Middle East. This work is of such importance because even the finest constitutions and laws can have little impact unless there is a general awareness of applicable law and its ensuing rights and obligations among actors within the justice system and the population as a whole. Such awareness can, however, only be established and maintained through ongoing political education.

The relevance to development policy also stems from the knowledge that sustainable development and security is not viable without stable democracies – and stable democracies are not possible without the rule of law. In the absence of a functioning rule of law, corruption, nepotism, mismanagement and abuses of power are able to thrive and prosper. In the current era of globalisation, promoting the rule of law is, therefore, a structural prerequisite to achieving social and economic progress.

The values and desired impact of the Rule of Law Programme are illustrated particularly well by the themes and targets in its clearly defined profile, which is due in part to the character of the KAS as a political foundation. This common foundation of values and its cooperation with various partners gives the KAS the credibility it needs to conduct a productive dialogue on legal policy. The long-term promotion of constitutional structures; the endeavour to ensure separation of powers, particularly an independent judiciary and an administration that acts in accordance with the law; the promotion of basic and human rights; and the strengthening of regional networks, all form part of the foundation's extensive, yet clearly defined portfolio. In particular when addressing sensitive issues, the work's regional emphasis has proven more effective for openly broaching problems relating to the rule of law than would be the case at national level. The work of the KAS in and with regional networks creates synergies and garners greater attention, raising the profile of critical issues and increasing the pressure to take action and make the necessary improvements. Furthermore, German legal culture is held in high regard in most regions across the world, which has evidently led to considerable demand for German expertise. The Rule of Law Programme also functions as an advisory body and centre of excellence. It accompanies and supports political development processes related to the rule of law and creates platforms that enable exchange between actors involved in the rule of law, politics and society.

The aim of this brochure is to present the Konrad-Adenauer-Stiftung's global activities concerning the rule of law to a broader public. It will begin by providing an outline as to why there is such a keen interest in German law and the German legal culture in many countries around the world. It will subsequently illustrate the nature of the foundation's work on the rule of law, focussing particularly on the areas of law that the KAS deals with in individual regions, the goals it pursues and the manner of its approach. The final section will present a number of selected partners and a selection of publications.

*I trust that you will find this brochure both interesting and informative.
We would be glad to receive any feedback and suggestions you may have.*



Dr Gerhard Wahlers

Deputy Secretary General of the Konrad-Adenauer-Stiftung e. V.

SUPPORTING THE RULE OF LAW WORLDWIDE

German expertise in the area of law and justice is in demand the world over. A whole host of countries in Latin America, Asia, Africa, South-East Europe and the Middle East have shown considerable interest in our legal culture. This applies in equal measure to German legal doctrine, jurisprudence, legislation and legislative procedures, implementation of laws and questions of legal organisation. Seen from a historical perspective, there is nothing new about countries comparing their respective legal systems and subsequently making “legal imports”. In the late Middle Ages, Germany itself absorbed Roman law to a considerable extent. A further example in German legal history is the Allies’ influence on municipal law after the Second World War.

A significant level of interest exists first and foremost on the part of the Latin American countries with whom we share a common legal tradition and also, above all, common value systems and legal ideals. In this region, there is barely a textbook on, for example, constitutional and administrative or criminal law that does not cite German legal teachings. However, there is also a considerable need for advisory services in many other countries in Africa, Asia, and Central and Eastern Europe, and Germany should not hesitate to meet this demand as far as is possible.

The reasons for this are diverse. German legal culture stands out as highly differentiated in terms of doctrine and sub-specialisation. As a result, sufficiently consolidated and reliable material, and, as a rule, the corresponding specialists are available for each required area of law. In contrast to the domain of common law, German resolution models are readily available, immediately applicable and supported by an in-depth experiential base (as a result of successful institutional development in the new German federal states, for example). German bilateral development cooperation may well have fewer resources, particularly in comparison to major multilateral players. However, with regard to the rule of law, the absolute extent of resources frequently plays a lesser role in terms of project success. Access to key local actors and their subsequent trust in the advisory institution is often of far greater importance, given that this can strengthen commitment in the beneficiary countries to ensure that legal reforms are not just drafted on

paper, but are actually implemented. Moreover, German interests are generally formulated in an open manner, without any hidden agenda. German development cooperation is motivated by solidarity and self-interest in equal measure. Adopting the rule of law provides the respective partner country with enhanced development opportunities. At the same time, from both an economic and security policy perspective, Germany benefits if it is able to count on stable, democratic partner countries founded on the constitutional rule of law.

Nevertheless, it is also necessary to add a note of caution regarding a misunderstanding that continually arises in this context. While the German Basic Law may well be an excellent constitution, it is not an “export item” that can simply be adopted. Rather, in conjunction with its interpretation by way of case law and doctrine, it should be considered as a rich source of possible solutions that can only ever be effective within the context of the actual legal culture of the receiving country. This observation applies in equal measure to all the other areas of law mentioned.

The Konrad-Adenauer-Stiftung thus offers advisory services and training programmes on specific legal topics, but by no means attempts to implement German legal concepts that go beyond the legal culture of the respective beneficiary country. When advising on the rule of law, those who fail to afford local legal traditions the same consideration as social, religious and cultural factors will have little success. The needs-based and dialogue-oriented approach has clearly been well-received by numerous cultures, particularly in the area of law. Furthermore, close cooperation with influential and credible local actors is absolutely essential and is standard practice for the Konrad-Adenauer-Stiftung throughout the world.

A particularly clear example of German influence is the keen interest of many countries around the world in the German constitution. The direct applicability of basic rights and the instrument of constitutional complaint are viewed as exemplary. The Federal Constitutional Court’s culture of precise interpretation provides these countries with impetus and resolution models, as does Germany’s highly specialised constitutional theory, which is steeped in tradition.

**THE CASE
FOR SUPPORTING THE RULE OF LAW WORLDWIDE**
DR CHRISTIAN STEINER

Challenges facing the Western model of democracy in the era of globalisation

Since the end of the Cold War, a series of historical turning points and global trends have shaped the development of the international community. These include various phenomena such as heightened levels of risk from international terror networks, the proliferation of weapons of mass destruction, global warming in light of fossil fuel shortages, and Fukushima. Similar impacts can be ascribed to the enormous progress made in the field of information technologies, as well as threats to networked infrastructures, individual and corporate data protection, and thus freedom in general. Other important factors are the ever-closer interlocking of industrial production, trade and transportation of goods around the world, and the seemingly unstoppable decoupling of the financial economy from the real economy with the resulting risks for the economy as a whole.

These developments pose fundamental new challenges to our societies, states and the international community, especially in times when numerous new global players have emerged in the nations around the world, whose views on the geopolitical challenges of the 21st century are anything but homogeneous.

Contrary to the expectations of many, the Western political model of the liberal democracy under the rule of law combined with a market economy that is socially adjusted to a greater or lesser degree has not been able to establish itself on a global scale, in spite of the failure of the communist counter model in Europe. Instead, the various actors from the competing political and economic systems are advocating very different positions. The basic principles of the "Western model" are being put to the test by multiple crises, both in economic (Lehman bankruptcy) and social policy terms (saving the Euro), and also with regard to security policy (Afghanistan and Iraq), ethical issues (Guantanamo, refugees and migrants) and the universal validity and feasibility of the model in other cultural and historical contexts (Arab Spring).

Faced with a seemingly ubiquitous terror threat, Western societies are also at risk of relinquishing one of their most precious assets to surveillance agencies which are not subject to sufficient democratic controls:

privacy, which is a key personal liberty. It forms the core of personal development and creativity, fostering the innovative capacities of free societies. In the "war against terror", the West is also acting in a way which calls into question its previously irrefutable moral standards by denying the enemy fundamental human rights.

As the world competes for resources, standards concerning human rights in third countries are not only being violated by new global players; Western companies are also exploiting the weaknesses of state structures in places such as Africa and South America to gain a competitive advantage with regard to accessing resources and manpower.

Relinquishing important elements of the free and democratic constitutional order not only poses an ethical problem. It jeopardises Western achievements per se by calling into question the legitimacy and credibility of the West. Unlike authoritarian social orders, liberal democracy lives from a firm and long-lasting belief in its ideals. Active and responsible citizens support and shape this system of government in cooperation with social, political and economic actors because they believe in its legitimacy and functionality. A state cannot exist without citizens like this; it needs a critical mass of people who respect and protect the political model, statutes and laws out of conviction rather than coercion.

Only in a liberal system, which provides incentives for commitment and innovation, are individuals able and ready to use their creativity for the benefit of society in the spirit of solidarity and not just for their own ends. Freedom thus becomes a constitutive element of a sustainable civilisation. Making one's voice heard in the context outlined above will require serious efforts on the part of the West to restore lost credibility, as a basis for persuading geopolitical partners to opt for fair and sustainable solutions.

ONGOING DEVELOPMENT OF INTERNATIONAL LAW

In times of growing internationalisation, it is becoming increasingly necessary to address the question of whether existing legal frameworks, institutions and procedures are suitable for so-called ungoverned spaces. International law has already begun to deal with these kinds of challenges in various areas, such as investment protection, outer space or the high seas. It has also provided answers to issues regarding security and peace. However, there is some doubt as to how suitable, up-to-date and effective these are.

There is a general sense that the current instruments of international law are not sufficient to manage the various new global challenges. There is, for instance, a need for (ongoing) development of the rules regarding the management of the global commons. Transnational standards must be developed for cyberspace. Multinational companies make use of the latitude that arises due to a lack of common legislation on their cross-border operations both to evade taxes and to circumvent standards on human rights. New developments in technology and climate change are making it possible to exploit natural resources in formerly sovereignty-free spaces, such as the Arctic or on the ocean floor of the high seas. This raises questions on how to fairly regulate access, how to ensure that exploitation is sustainable and how to manage the redistribution of revenues. For an asymmetrical international community, it remains difficult to reach agreement on effective solutions concerning both the area of energy security and the related field of environmental and climate protection. In addition to considerations relating to power politics and realpolitik, questions of distributive justice, historical environmental pollution and unequal technological capabilities also come into play here.

In the area of peace and security, the West in particular has called for a realignment of the tense relationship between the principle of state sovereignty and the protection of human rights so that civilian populations can be protected in the event of serious crimes against humanity by means of military action. However, in light of the extreme complexity of the contexts of such action, the successes of these kinds of interventions have been negligible to date.

PRIMACY OF LAW

Large areas of international relations are thus subject to the principle of power rather than the principle of law. The majority of both historical and emerging superpowers continue to hold onto the expectation that it will be easier to assert their own interests in areas that are largely unregulated by law. As a result, citizens, communities and entire states are not protected by law and are exposed to the law of the jungle. This lack of protection has enormous potential to spark conflict. This brings with it incalculable risks for the security of entire states and regions (Ukraine, Iraq, Syria), the economic efficiency of entrepreneurial activity (economic espionage, energy security, resources, trade routes), and individual freedom (total surveillance by intelligence agencies uncontrolled data usage by private companies).

This demonstrates the necessity to enforce constitutional standards at international as well as domestic level. It is, therefore, essential to gradually establish the primacy of law in those nations around the world which are still largely shaped by the politics of power. The project of European integration is a good example of how interstate and supranational answers can be found to cross-border questions.

GERMAN AND EUROPEAN INTERESTS

The Federal Republic of Germany and the European Union can benefit from more firmly embedding the rule of law and constitutional procedures at bilateral and multilateral level. From a historical perspective, Germany is viewed as a credible representative of the common values of (not only) the Western community of states: democracy, the rule of law, human rights, good governance and a social market economy. Working to safeguard fair and legally binding conditions in the context of global competition between ideas and economies does not create an obstacle to the competitiveness of Germany or Europe at international level. Ultimately, they will only be able to hold their ground in the face of global competition if they ensure that all players, including those beyond Europe's borders, respect and comply with standards concerning issues such as protection of human rights and ecological sustainability. Security and peace represent an intrinsic value that does not require a functional justification. Security and peace are, however, also prerequisites for sustainable economic activity and international trade. Germany's status as an industrial and exporting nation means that the free movement of ideas, people, services, capital, raw materials and goods are imperative for its economic prosperity.

LATIN AMERICA

In Latin America there is particular interest in Germany's legal experience in the areas of constitutional law, including basic rights, administrative law, criminal law and the philosophy of law. The constitutional democracy of the Federal Republic of Germany also enjoys a high level of credibility because it emerged from the ashes of a totalitarian system and is viewed as particularly efficient. The Rule of Law Programme has responded to this demand above all by offering advisory services and producing publications. The annual conference of constitutional judges in Latin America, for example, is always attended by a judge from the German Federal Constitutional Court. Together with other judges from the continent, he or she adds a European and German perspective to the discussion. Decisions of landmark importance handed down by the German Federal Constitutional Court are translated and compiled into casebooks, which are made available to the legal practitioners in Latin America – as well as in Africa, Asia and South-East Europe. The German Federal Constitutional Court landmark judgements are clearly structured, rigorous and balanced, giving them a persuasive reasoning that has led colleagues in the constitutional courts and senates in the region and elsewhere to consult German jurisprudence when faced with similar cases.

In cooperation with renowned administrative lawyers from Latin America and Germany, it was also possible to translate the Administrative Procedure Act and the Code of Administrative Court Procedure into Spanish with comparative legal commentary. With its comments on the American Convention on Human Rights and on the Mexican constitution's norms regarding basic rights, the Rule of Law Programme helped introduce legal commentary – which is well-established in Germany – to legal administrators in Latin America, who are largely unfamiliar with this instrument. The application and interpretation of ordinary domestic norms in light of basic and human rights, which is called for in the jurisprudence of the Inter-American Court of Human Rights, can only succeed if jurists who are not trained in this field also have access to the necessary tools in the form of suitable legal commentary. This approach also aims to remind jurists in Latin America of their duty to critically and constructively monitor and evaluate the respective national and international jurisprudence. Only by ensuring an ongoing discourse between academia and practitioners will it be possible to establish a doctrine of basic and human rights, which is crucial in order to reinforce their effectiveness.



In a work covering approximately 1,000 pages, the foundation has provided Portuguese-speaking readers with an overview of the jurisprudence of the German Federal Constitutional Court (Karlsruhe). While the majority of the

publication is devoted to basic rights, it also includes leading decisions on constitutional law and the law of constitutional procedure.

ASIA

In Asia, and particularly the South-East Asian region, there has been growing interest in the relationship between citizens and the state and the significance of the rule of law. Demand for a discussion on these issues has primarily come from civil society. Improved economic conditions and the resulting rise in educational standards have also played a notable role here. The scope created for private sector trade and the resultant strengthening of a productive civil society are giving rise to ever-greater calls for bureaucratic structures to be adapted to the changing conditions. It is precisely within this context that German expertise is frequently in demand in the hope of gaining inspiration and resolution models from Germany.

Calls for good governance – encompassing efficiency, transparency, a citizen-focussed and participatory approach, responsibility, and effective mechanisms to combat corruption – are becoming ever louder. Civil society actors are progressively denouncing the widespread corruption and governments are paying increasing attention to the efforts of these actors. Changes to the usage of agricultural land or forestland for industrial or infrastructural projects which are likely to spark discontent among the citizens concerned are also of particular importance in this context. The right to free expression of opinions and freedom of reporting plays a key role here.

Moreover, the independence of the judiciary is becoming a focal point of discussion in many countries throughout Asia and, in some cases, citizens are taking courageous steps to demand change. The lack of balanced systems for mutually controlling power (checks and balances) is increasingly being viewed

as a barrier to development in the region, particularly in economic terms. Essentially, such considerations stem either from discussions on possible constitutional reform or from endeavours to actually make the constitutional system an effective part of the constitutional reality. In many countries, there are, or have been, discussions on developing new constitutions or making fundamental changes to existing constitutions. In this context, Germany's special expertise is very much in demand and the Konrad-Adenauer-Stiftung with its network is an important partner. Overall, the judicial systems in Asia can rarely be classed as truly independent. Here, again, there are structural dependencies and corruption, and the judiciary is frequently misused as a political tool. Spurious allegations are used to put political opponents behind bars. At the same time, we are seeing an escalation of disputes between the executive and the highest courts, while in other cases high-ranking officials in the judiciary are subjected to political power games.

THE AFRICAN CONTINENT

Turning to the African continent, the new start for democracy in South Africa provides an exemplary model based on one of the most liberal constitutions in the world. The Konrad-Adenauer-Stiftung played an advisory role in the process of constitutional reform and, as such, enabled Germany's experience in shaping its own democracy – for example, in terms of a federal state structure with strong municipal districts – to be taken into consideration and adopted during the landmark Kempton Park negotiations. Germany was extremely keen to see a successful change of system and invited delegations with representatives from the relevant parties and other experts to the Federal Republic of Germany to take part in a range of activities, including expert discussions at the German Federal Constitutional Court. Other successful programmes include academic training for especially well-qualified young jurists from French-speaking countries. At seminars, which are held once a year over the course of a semester and supervised by a German and a local professor, topics are allocated to seminar participants, who then write papers.

The best of these papers are subsequently published as e-books by the KAS African Law Study Library – which was founded by the Rule of Law Programme – in cooperation with Nomos publishing house. There is a great deal of interest in these publications from universities and other institutions in both Africa and Germany. This programme has already launched the

academic careers of many a young jurist. Taking a similar approach to the programme in Latin America, the Rule of Law Programme in Sub-Saharan Africa also supported the publication of the first commentary on the Kenyan constitution drafted in 2010, which will undoubtedly shape legal opinion on this constitutive work well into the future.

SOUTH-EAST EUROPE

Particularly in the years directly following the major upheaval of 1989/90, the practice of Central and Eastern European constitutional courts took a strong lead from both the jurisprudence of the German Federal Constitutional Court and that of the European Court of Human Rights, especially in terms of developing the principle of the rule of law and constitutional protection of basic rights.

The same development was also observed in the countries of South-East Europe several years later. Without exception, the constitutions of post-communist countries, which gradually came into effect from 1989 onwards, affirm their commitment to establishing democratic states founded on the rule of law, a concept which is based on the respect of human and civil rights and which realises the principles of social justice. The concept of constitutional statehood in the new democracies is unmistakably geared towards the model of the German Basic Law.

This is true both in terms of the comprehensive commitment to the constitution by all of the state powers including the legislature – a commitment which is often expressly entrenched in the text of the constitution in the form of specific priority clauses – and also with regard to the institutional mechanisms required for its effective enforcement. The majority of these constitutions have opted to establish specialised constitutional courts that are independent of other courts, and which are primarily charged with scrutinising the constitutionality of laws passed by parliament. Building on their own experience, these constitutions have thus adopted a model of constitutional jurisdiction that has long been practised in the Federal Republic of Germany and – to some extent taking a conscious lead from the German model – also in Italy and on the Iberian Peninsula.

In contrast to this is the legal status of the constitutions in a number of Western and North European states, which either generally reject the idea of binding the legislature to higher constitutional law (UK), refrain from establishing a specific constitutional court

to effectively enforce the primacy of the constitution (Scandinavia), or only afford the constitutional court limited powers of control (France). In this context, it becomes apparent that there is a basic constitutional consensus among European states that have endured a prolonged phase of totalitarian and authoritarian rule in the recent past and which, in light of such experiences, are no longer willing to leave respect for fundamental constitutional values to the arbitrariness of political forces. In light of this, it is of little surprise that precisely the jurisprudence of the German Federal Constitutional Court is also in great demand in South-East Europe.

THE MIDDLE EAST/NORTH AFRICA

The most recent section of the programme, the Rule of Law Programme in the Middle East/North Africa, is faced with a difficult situation at the outset. Before the Arab Spring, there was already evidence of internal pressure to reform the Arab states in the form of several major regional initiatives, which were committed to reforming the political systems in the Arab states in line with the principles of the separation of powers, peaceful transition of power, press freedoms, human rights and the advancement of women. In practice, however, up until the Arab Spring (and for the most part after the revolution), the majority of the ruling political and economic elite in the Arab world did not, in fact, take a great deal of action. The key requirements regarding advisory services on the rule of law here are assistance in establishing a constitutional order or – if this already exists – help to improve this order and make it a legal reality. In this context, there is a particular need for ordinary domestic regulations and for further training for judges, lawyers and other members of the judiciary.

In their pursuit of social, political and legal stability, many countries across all continents not only wish to gain knowledge of German constitutional law, namely the law of basic rights and state law, but also of German electoral law, political party law, criminal law and the law of criminal procedure, civil law and the law of civil procedure, or administrative law and the law of administrative procedure. They wish to understand how administrations operate under the rule of law – specifically with regard to courts that have binding jurisdiction over the administration.



German Federal Constitutional Court judges in Karlsruhe

It is important to go beyond a purely development policy-focussed perspective when meeting this demand. Instead, German and European commitment to providing legal advisory services should also encompass foreign policy perspectives. All in all, this could be developed into a test case for the application of a European soft power approach to foreign policy: in the area of legal and judicial reform, open dialogue founded on strong argumentation holds especially great promise.

PROMOTION OF THE RULE OF LAW BY THE KONRAD-ADENAUER-STIFTUNG

It is generally accepted that a constitutional state must fulfil the following conditions – in the sense of a minimum definition – in order to be designated as such. Firstly, it must adopt the principle of the separation of powers. Specifically, this involves creating a system of horizontal, political and legal controls and guaranteeing the functionality and independence of the judiciary and parliament. Secondly, it must guarantee the legality of the executive, first and foremost by establishing an effective system of administrative courts. The third requirement involves binding all laws to the constitution in its capacity as the supreme authority. Finally, any state based on the rule of law must provide sufficient scope for the application of basic and human rights, which should include participative elements and not merely be viewed in a negative light as the right of citizens to defend themselves against the state. The objectives formulated by the Konrad-Adenauer-Stiftung for its global activities to further the rule of law have their roots in this definition.

The foundation's work promotes:

- **institutions based on the rule of law and key institutional elements of the rule of law (e.g. effective constitutional courts);**
- **the separation of powers, particularly a strong, established and independent judiciary and a legitimate executive;**
- **basic and human rights, both in terms of substantive law and from a procedural-law perspective;**
- **the strengthening of regional networks dedicated to safeguarding the rule of law and democracy.**

Strategy workshop for the heads of the Rule of Law Programmes in Berlin – left to right: Peter Rimmele, Peter Girke (coordinator), Thorsten Geißler, Dr Gerhard Wahlers (Deputy Secretary General, KAS), Gisela Elsner, Marc Spitzkatz, Dr Arne Wulff, Dr Christian Steiner



In pursuit of these objectives, the Konrad-Adenauer-Stiftung works throughout the entire project region, encompassing Latin America, Asia, Sub-Saharan Africa, South-East Europe, the Middle East and North Africa. In doing so, the transnational Rule of Law Programme interacts closely with the individual national offices. In a number of cases, these offices are able to draw on decades of experience of promoting the rule of law.

The Konrad-Adenauer-Stiftung decided to adopt a transnational approach to implementing its Rule of Law sector

programme, on account of the fact that rule of law reform processes often take a parallel course in the various regions around the world.

Strategy workshop on the rule of law on the premises of the KAS Academy, here with Dr Böckenförde (centre)



Taking action at regional level is a prerequisite for international agreements, such as the American Convention on Human Rights, which, through the jurisprudence of the strengthened Inter-American Court of Human Rights in San Jose de Costa Rica, is able to provide significant impetus for measures aiming to more effectively safeguard basic and human rights in the member states. The Rule of Law Programme supports the tribunal with its wide range of training programmes and publications throughout the continent. A further example of a transnational approach is the fundamental reform of criminal procedure that has taken place in practically all Latin American countries since the mid-1980s. In this area, there is a clear trend towards ousting the traditional written “inquisitorial process”, which stems from the colonial period, and replacing it with forms of oral hearings based on the rule of law. There is still general consensus among experts that it is necessary to modernise criminal procedure not only to safeguard basic rights, but also to improve the efficiency of criminal prosecution. However, in practice, it is

The Rule of Law Programme mainly deals with primary legal areas of political relevance, which are specific to the Konrad-Adenauer-Stiftung as a political foundation. The worldwide Rule of Law Programme – unlike certain individual KAS national offices – is not generally active within the fields of ordinary substantive law, such as civil law, criminal law or administrative law. Our priority areas are:

- *constitutional law and constitutional courts*
- *protection of basic and human rights*
- *procedural law*
- *legal pluralism*

extremely difficult to implement these far-reaching procedural restructuring measures. They require intensive training of the actors involved and adjustments to the existing structures. States whose security situations are under serious threat from organised crime and cartels are witnessing the emergence of counter-movements, which advocate restricting the rights of defendants in the hope that this will result in more effective criminal prosecutions. Ultimately, it will take another generation for modern criminal proceedings to firmly establish themselves in Latin America.

In Asia, too, modernisation processes have frequently taken a parallel course in several different countries. The region has seen intensive dialogue regarding the validity of basic and human rights for a number of years, particularly regarding the right to own property. In Africa, discussion along the same lines has resulted in the annual consultations of the African Commission on Human and Peoples’ Rights, which are organised by the Rule of Law Programme in cooperation with the Network of African National Human Rights Institutions. At sub-regional level, too, the East African Court of Justice has expressly affirmed its jurisdiction for human rights abuses.

Thanks to its transnational approach, the Konrad-Adenauer-Stiftung is also able to address and facilitate the discussion of themes that could not be broached publicly at purely national level. The foundation is thus able to focus attention on these themes and generate problem awareness among decision-makers and within civil society. This applies to all regions. An example of this from Africa is the intensifying discussion concerning the separation of powers in light of an often all-powerful executive that hinders the existence of an independent judiciary. The results of this debate were, for example, reflected in the Kenyan constitution, which was drafted in 2010 and significantly strengthened the status of the judiciary. In Asia, one of the issues on which decision-makers such as judges may only pass comment within the scope of international forums is the aforementioned topic of international human rights protection. In South-East Europe, the most obvious example is the sensitive question of coming to terms with the judicial past.

A further advantage of the transnational approach is that it allows the creation of regional networks of experts. The Konrad-Adenauer-Stiftung, for example, unites experts and decision-makers from different countries within a region enabling them to exchange experiences of dealing with similar challenges.

X. CONFERENCE ON INTERNATIONAL LAW: CYBER SECURITY

The ongoing process of digitalisation is having an impact on society, politics and development across the world. Online banking, social networks, and infrastructure and institutions controlled by software are part of everyday life in industrial nations. In addition to many positive aspects, this development also brings with it threats in the form of cyber-crime, cyber espionage and cyber war, which pose major challenges to national and international security policy.

Experts from China, Germany, Israel, Romania, South Korea, Tanzania and the US discussed the legal dimensions of cyber security at the Konrad-Adenauer-Stiftung's 10th International Law Conference in Bonn. There was a general consensus that in the future cyber security would take on ever-increasing significance in areas such as the judiciary, the police and the military, in regional and international agreements – also including the economy – and in the development of international law.



Protection of human rights as a common task: Dialogue between IACHR and constitutional courts at the meeting of Latin American constitutional judges in Costa Rica, from left to right: German Federal Constitutional Court judge Herbert Landau, President of the IACHR Diego García Sayán, member of the Study Group for Constitutional Law and Basic Rights Eduardo Ferrer MacGregor (judge at the IACHR since 1 January 2013), judge at Mexico's supreme court Jorge Mario Pardo Rebolledo



activities also provide an opportunity for transnational cooperation between the target groups. This kind of cooperation promotes understanding between the countries involved in the programme, helps overcome cultural, historical and political differences and antagonisms and thus contributes to better relations in the region. The thematic focuses include boosting acceptance for the constitutional order, supporting independent constitutional courts (in particular protecting the rights of individuals and safeguarding basic and human rights by means of constitutions and constitutional courts), and raising awareness of political interference in courts and the role of military and special courts. Impulses for reform from civil society are also welcomed.

In his keynote speech at the 10th International Law Conference, the President of the German Federal Office for the Protection of the Constitution, Hans-Georg Maaßen, highlighted the need to maintain the necessary balance between security interests and rights to freedom – not least in light of the NSA scandal.

The work of the Konrad-Adenauer-Stiftung to promote the rule of law throughout the world does not pursue a purely technical approach, but rather adopts an explicitly political, dialogue and values-based modus operandi. This is reflected not least in the instruments employed by the Konrad-Adenauer-Stiftung. The most important pillar of the foundation's work is the organisation of educational initiatives, namely international conferences, seminars, workshops and further training events for judges, public prosecutors, law students and other legal professionals. To support these endeavours, regular publications are also issued within the scope of the Rule of Law Programme. A selection of publications can be found at the end of the brochure. Other important components of this educational work are the study and dialogue programmes organised by the foundation in Germany. These provide participants, who are generally decision-makers and multipliers from the aforementioned regions, with a regular opportunity to gain first-hand information through dialogue with representatives of the German judiciary and legal culture. Furthermore, the foundation also grants scholarships to particularly talented law students and young legal practitioners

The regular meetings of constitutional judges and Chief Justices of supreme courts in Latin America, Africa and Asia are an example of this.

The transnational approach, which was adopted for other sections of the worldwide Rule of Law Programme, has proved its worth and also set a benchmark for the Middle East/North Africa region. At transnational seminars, further training events and conferences, participants benefit from sharing each other's knowledge and experiences; these

SUPPORTING THE RULE OF LAW WORLDWIDE: KONRAD-ADENAUER-STIFTUNG LOCAL OFFICES



■ **The Rule of Law Programme in Latin America**

Bogotá/Columbia – www.kas.de/rspla

■ **The Rule of Law Programme in Asia**

Singapore – www.kas.de/rspa

■ **The Rule of Law Programme in Sub-Saharan Africa**

Nairobi/Kenya – www.kas.de/rspssa

■ **The Rule of Law Programme in South-East Europe**

Bucharest/Romania – www.kas.de/rspsoe

■ **The Rule of Law Programme in the Middle East/North Africa**

Beirut/Lebanon – www.kas.de/rspno

■ **The Rule of Law Programme coordination**

Berlin/Germany – www.kas.de/rechtsstaatsprogramm



 Rule of Law Programme locations
(working areas in dark blue)

 KAS offices abroad

The regional Rule of Law Programmes are run by jurists. Their work is coordinated from the head office in Berlin. Our priority areas include constitutional law, basic and human rights, procedural law, legal pluralism.

For further information, go to:
<http://www.kas.de/wf/de/21.41/>

The Colombian Constitutional Court won the trust of the people with the constitution drafted in 1991, which made generous provisions for safeguarding basic rights. The appeal of General Francisco de Paula Santander at the entrance to the Palace of Justice is fitting in this context: "Colombians: Weapons have given us independence. The law will make us free."
(Colombianos las armas os han dado la independencia, las leyes os darán la libertad.)



IN LATIN AMERICA

An intensive discussion on the rule of law and judicial reforms began as far back as the 1980s in practically all countries in Latin America as part of the process of overcoming authoritarian systems and establishing democracy. It is here that the Konrad-Adenauer-Stiftung's work on the rule of law also has its roots. The foundation's Rule of Law Programme encompassing the whole of Latin America (except the Caribbean) was developed at the start of the 1990s with the aim of supporting the young democracies as they worked to establish the rule of law. Constitutional jurisdiction, human rights, constitutional procedures and regional alliances were the key issues identified during this period and continue to define the programme's work today.

Its long-term and ongoing commitment to the aforementioned areas and trust-based cooperation with local partners have enabled the Rule of Law Programme to

build an extensive and far-ranging network of people and organisations. It is this network that provides the solid foundation for the Konrad-Adenauer-Stiftung's activities on the rule of law in Latin America. Using a mixture of classic instruments, which have established the programme's reputation over the years, and innovative responses to economic challenges, the Konrad-Adenauer-Stiftung takes a stand on the major developments concerning legal policy on the continent and plays a role in shaping them in line with constitutional, democratic ideals.



The Inter-American Court of Human Rights in dialogue with representatives from academia at the meeting of Latin American constitutional judges in Chile. From left to right: Jorge Tomás Larrieux (judge at Uruguay's Supreme Court), Asdrúbal Aguiar (Universidad Católica Andrés Bello, Venezuela), Marisol Peña Torres (judge at Chile's Constitutional Court), Néstor Pedro Sagüés (iconic constitutional law expert from Argentina), Diego García Sayán (President of the IACHR), Matthias Herdegen (University of Bonn), Claudio Nash (Universidad de Chile)

One of the key areas of activity within the Rule of Law Programme is the protection of national basic rights and international human rights. This approach is based on the conviction that a stable constitutional democracy is not possible without a free political system and the effective safeguarding of basic rights. The constitutional courts and senates in the region and the Inter-American Court of Human Rights (IACHR) play a major role in this process. The last few years have seen a constant increase in the profile and caseload of this organ of the Organization of American States (OAS). The court has made its mark as a driving force behind effective – and not merely nominal – protection of human rights in Latin America. Several states have already accepted and are implementing the IACHR's judgments as a matter of course; in other places, they have been met with huge resistance. To a certain extent, there are reasonable concerns about uncontrolled international involvement in sensitive domestic issues and other matters. Coming to terms with the past is one such issue, where the protection of the basic rights of victims and their next of kin may be in conflict with the principle of democracy and the interests of pacification with a view to facilitating effective transformative justice. In other cases, however, the objections lack any foundation from a juridical or even legal policy perspective. It is the strength of the community of values – as defined in the American Convention on Human Rights – that is on trial here. The global debate on the universality of basic rights, with particular regard to civil rights and liberties in political debate, also divides opinion in Latin America. Indeed, several governments on the continent are putting classic civil rights and liberties (voting, freedom of expression and assembly etc.) and the right of

Social, economic and cultural rights as a vehicle to realise the social rule of law

In addition to the poverty and marginalisation of wide sections of the population, extreme inequality in most of the states on the continent is increasingly posing an obstacle to the establishment of a stable democratic order based on the rule of law. A lack of prospects, coupled with an awareness of the unfair privileges afforded to a small elite, drives people in these countries into the arms of figures who promise salvation, even though in order to impose their ideologies they will restrict the very political and civil freedoms which helped bring them to power.

Even if most of the legal systems in the region guarantee extensive social rights on paper – often by incorporating the relevant international agreements –, it is a very different picture in practice. The responsibility for this gap between aspirations and reality mainly lies with the political figures in the parliaments and executive bodies. Fiscal limits are a typical objection to effectively implementing these rights and thereby enabling a more active social policy, with argumentation along the lines of: how can one redistribute funds that are not even available?

However, in several states on the continent, this objection is no longer as tenable as it once was. Furthermore, there is an awareness that the problem is often less a lack of financial resources and more a need for a fairer and more efficient fiscal policy and redistribution.

In light of the inactivity of the executive faced with extreme social injustice, a number of the highest courts on the continent decided no longer to oppose the social demands of the people and initiated a set of rulings aimed at motivating the other state authorities to pursue a fairer social policy in a variety of areas, such as education, health, employment and other aspects of basic social security.

The Columbian Constitutional Court is playing a pioneering role in this respect. At the meeting of constitutional judges in Costa Rica, its former President, Juan Carlos Henao, defended this set of rulings. He pointed out that in the area of social, economic and cultural rights, whether the judge was in a rich or a poor country did, in fact, make a difference. However, in light of social disparities vast enough to call democracy into question, it was no longer enough for a constitutional judge merely to act as the mouthpiece of the law; greater commitment was required.

Even though the outcome of the courageous rulings of the Columbian Constitutional Court depends upon the constitutional organs of the legislative and the executive – which are primarily responsible for shaping the law and actually implementing the judicial decrees – the court's strategy can be viewed as a success. The message communicated by a large number of landmark and individual decisions, which called for the entire spectrum of basic and human rights (including economic, social and cultural rights) to be guaranteed in practice, was heard loud and clear by the citizens. Their confidence in the constitutional court is so great, in fact, that demonstrators in Bogotá prefer to hold their protests in front of the Palace of Justice rather than in front of the president's residence across the street or the parliament building. Like the Columbian court, the Constitutional Court of Costa Rica and, in a few cases, the Argentinian Supreme Court, have also taken action to address extreme social imbalances with regard to issues such as health care or health hazards caused by environmental pollution by passing judgements that modify legal rights.



Juan Carlos Henao, (left, former President of the Columbian Constitutional Court) defending the work of his court in the area of economic, social and cultural rights. Next to him: Víctor Bazán, member of the Study Group for Constitutional Law and Basic Rights (Argentina) and former President of the Constitutional Court of Guatemala, Alejandro Maldonado Aguirre.

property ownership up for negotiation, citing the need to “divest capitalist assets”. In this context, a number of governments in the region are taking steps to undermine the Inter-American Human Rights System (as a part of the OAS) by creating parallel structures. These tendencies are also apparent at domestic level, where in recent years the constitutional and democratic rules have been repeatedly bent and broken, albeit often by deliberately misinterpreting the constitution or by claiming a majority-borne legitimacy. The focus here has often been the supreme or constitutional courts, either as instruments of the executive and legislative or as uneasy guardians of the constitution, the aim being to keep their powers to a minimum.

These developments clearly show that merely creating a model legal framework on paper – based on general experience – with the corresponding institutionalism is far from sufficient for building a state founded on the rule of law and democracy. Legitimate state action in all three branches of government is also absolutely essential. People do not measure this legitimacy in terms of whether their rights have been nominally codified in the various constitutions or whether procedures that affect them have been carried out with formal propriety – for example, in the course of elections, or before the administrative authorities or the courts. What people want, instead, is to feel that their state is fair and effective. They are looking for protection from organised and political crime. They expect the public administration to treat them professionally and to meet their needs. Transparency and sincerity must prevail in politics. People are looking for equal opportunities and a minimum level of social justice. In spite of favourable legal frameworks, many a country in the region falls short of fulfilling these expectations. The resulting gap between aspirations and reality leads people to doubt the strength of their young democracies. Disappointed citizens then call into question the institutions and organs of the state – the constitutional democratic order itself.

In cooperation with its partners in the fields of justice, politics, administration, civil society and academia, the Rule of Law Programme is taking a variety of steps to restore and consolidate the credibility of the concept of the democratic rule of law. In this endeavour, it is also working together with members of the elite, such as judges at various levels, public prosecutors, lawyers, university professors, ombudsmen, ministry officials and representatives from NGOs.

To this end, for over 20 years, the foundation has organised an annual conference in Latin America lasting several days aimed at the presidents of constitutional courts and constitutional judges from the continent. The conference involves working sessions where the judges join forces with recognised experts to discuss current developments and legal policy and juridical problems. This regular gathering in a trusting environment also gives the highest ranking judges a chance to exchange ideas, and enables the creation of expert, institutional and personal networks that go beyond the scope of the conference, providing the judges with a pool of expertise that they can draw on in their day-to-day work. The meeting of constitutional judges is also increasingly becoming a platform for dialogue between national jurisdictions and the Inter-American Court of Human Rights. Especially interesting contributions are included in the yearbook of Latin American constitutional law, which the Konrad-Adenauer-Stiftung has published for over 20 years to coincide with the meeting of constitutional judges. A worrying development in recent years has been the efforts of a number of governments and parliaments in the region to undermine the independence of the constitutional courts and senates.

Furthermore, the work with the judges is reinforced through training events on basic and human rights, such as a course for over a thousand members of the Mexican federal judiciary, which ran over several months. When organising this course, the Konrad-Adenauer-Stiftung, in cooperation with the school of federal judges, drew on the expertise of established specialists from the KAS network in the region. Another approach taken by the Rule of Law Programme study groups is to analyse the jurisprudence of the IACHR and the national courts in a critical and constructive manner.

With its comments on the American Convention on Human Rights and the norms in the Mexican constitution regarding basic rights, the foundation has created important instruments to interpret the law in accordance with basic and human rights. In terms of coordination and methodology, these publication projects were a major challenge, involving the participation of more than 25 and 70 authors respectively. However, they have the potential to point the way for other countries in the region to produce practice-oriented publications in the field of constitutional law and basic and human rights.

In theory and practice: The Rule of Law Programme study groups

STUDY GROUP ON ADMINISTRATIVE LAW

The annual meeting of constitutional judges also included the Latin American university competition entitled "Human rights and administrative law in practice". This moot court competition involved the simulation of proceedings before the IACHR. In the final round, the winners of the preliminary selection from Mexico, Honduras and Argentina discussed their judgements on the practice cases with judges from the constitutional courts and the IACHR. The format



Participants of the regional preliminary selection in South America, Faculty of Law of the Universidad de Buenos Aires – at the lectern: Dr Diego García Sayán (left), President of the IACHR, and Dr Pedro Aberastury, UBA professor and member of the KAS Study Group on Administrative Law

of the competition, consisting of students on one side and practising jurists on the side of the jury, has proven to be a particularly effective way to highlight the importance of basic laws for the relationship between the citizen and the state at the level of administrative law. Putting practitioners on the jury (even including constitutional judges in the final) also brings together important target groups of the Rule of Law Programme.

STUDY GROUP ON LEGAL PLURALISM

Latin America is a continent shaped by cultural diversity. Up until the end of the last century, however, this fact was not given sufficient recognition in most Latin American constitutions, which were generally merely designed to define the homogeneous national state. The long overdue strengthening of indigenous movements can be viewed as evidence of the successful development of the democratic rule of law on the continent. However, it presents numerous states in the region with enormous social and legal policy challenges. They are faced with the task of adapting policy and law to the social realities of plural societies, which were repressed for many centuries. Fundamental issues here include how to combine and



Workshop on legal pluralism in La Paz, Bolivia. From left to right: Petronilo Flores (Bolivia); Javier La Rosa (member of Prujula, Peru); Efrén Choque, judge from the Plurinational Constitutional Court, Bolivia; Rosember Ariza (member of Prujula, Columbia); Isabel Ortega, Vice Minister for Indigenous Justice, Bolivia; José Regalado (member of Prujula, Peru), Christian Steiner (Director, KAS RSP), Aresio Valiente (member of Prujula, Panama), Patricia Uribe (research assistant, KAS RSP)

coordinate legal systems and legal convictions that are concurrently valid within a state (legal pluralism), as well as ensuring the socio-ecological sustainable development of Latin America's emerging economies, paying particular attention to the cultural and territorial rights of indigenous communities (with an emphasis on consultation procedures). However, it is also vital to adapt the nation-state structures, which are shaped by continental-European ideology, to the cultural particularities of plural societies. The Rule of Law Programme's Study Group on Legal Pluralism, which brings together jurists, anthropologists and social scientists from Mexico, Guatemala, Panama, Columbia, Ecuador, Peru, Bolivia and Brazil, has made extensive efforts since 2007 to find suitable answers to questions which have arisen in the aforementioned field.

STUDY GROUP ON INTERNATIONAL CRIMINAL LAW

A collaborative project between the KAS Rule of Law Programme in Latin America and the faculty of law at the University of Göttingen resulted in the creation of Latin American Study Group on International Criminal Law. This group was initiated in January 2002 and currently has members from 13 different countries in Latin America, as well as Germany, Italy and Spain. It is currently the only internationally staffed, continuously active study group with scholarly objectives rooted in comparative law, which contributes to implementing the Rome Statute and monitors relevant developments on the continent in the field of international and national criminal justice. The group's expertise is in demand the world over. The aim over

Continuity and aspirations: The Latin American Study Group for International Criminal Law at its annual meeting in Bogotá, Colombia. The international law standards of the ACHR and the Rome Statute play a central role in the context of the peace negotiations between the government and the FARC rebels, initiated in 2012. After 50 years of internal armed conflict, how much justice can one afford to sacrifice in order to secure long-awaited peace?



the next few years is to incorporate this know-how even more vigorously into reform processes and legal policy debates on the continent.

STUDY GROUP FOR CONSTITUTIONAL LAW AND BASIC RIGHTS

Mirroring the partly heartening, partly worrying political developments on the continent, there are also positive and negative developments in constitutional jurisdiction. To a certain extent, the highest courts are a reflection of well-implemented, forward-looking policy; at the same time, some courts reflect a step backwards with regard to efforts to build stable, democratic structures. The courts that have proven to be unassailable here are precisely those that have won the respect and trust of the general population by pursuing a jurisprudence that is consistent, balanced, convincingly argued, and



No democracy without effective basic rights: The Study Group on Constitutional Law and Basic Rights has members from around the world and provides input that is scientifically based and practice-oriented in order to help the highest courts in the region achieve their mission of establishing the rule of law.

protects basic rights. In response to this and building on its years of experience in the field of constitutional law, the foundation joined forces with the Institute for Human Rights of the Universidad de Chile to found the Study Group on Constitutional Law and Basic Rights, which brings together academics and practitioners from Latin America, including judges at the Inter-American Court of Human Rights.

In recent years, cooperating with international study groups has proved to be exceptionally effective. Group participants observe and comment on relevant developments in their respective juridical and legal policy fields and discuss these with each other and also with external actors within the scope of dialogue events. The findings are presented to a wider audience in regular publications.

The know-how of the groups, which is unique as a result of this regular regional exchange, is also increasingly being incorporated into ongoing reform processes and passed on in training events. The experts also use the various media available via Web 2.0 to publish ongoing briefings and opinions on current events in key areas of the Rule of Law Programme, thus helping to shape public opinion inside and outside the foundation network. The aim is to use new media not only to communicate expert knowledge, but also to get a younger audience interested in the democratic and social rule of law.



Mutual understanding and a certain degree of coordination are essential to enable the state and indigenous judiciaries to work together effectively and create a plural judiciary. Javier La Rosa (Peruvian member of the KAS Study Group on Legal Pluralism) discussing a practice case with indigenous authorities and members of the state administration at a workshop in Curahuara de Carangas (Bolivia)

The building of Thailand's Supreme Administrative Court in Bangkok. Since its foundation, Thailand's administrative court system has cooperated closely with the Konrad-Adenauer-Stiftung and has been invited by the Rule of Law Programme in Asia to take part in events which examine constitutional and administrative law issues.



IN ASIA

Asia is not only the most populous continent in the world and currently home to over half the global population, but is also – for the time being, at least – by far the most dynamic. At the same time, there is evidence of a number of existing or latent conflicts with global implications. Alongside the industrialised nation of Japan, the two vast, newly industrialised countries of China and India are dominating events in Asia, and also playing an ever-greater role in other corners of the world.

Activities to promote the rule of law in Asia can only be successful if its distinct cultural heterogeneity is taken into consideration. Such heterogeneity has emerged over centuries and neither colonialism nor other developments, even those occurring in the wake of global political events, have diminished it. Asian countries are, therefore, home to a diverse range of legal traditions and legal cultures. Buddhism, Hinduism and Islam have varying levels of impact on legal thinking and legal practice in Asia. The exploitation of religion for the purposes of political action and the utilisation of the state to religious ends are phenomena that occur to varying degrees in the case of the aforementioned religions.



The Philippines ratify the Rome Statute – the Filipino Justice Minister, Leila de Lima, explains the importance of the Philippines joining the International Criminal Court in The Hague to the Director of the KAS Rule of Law Programme in Asia, Marc Spitzkat.

Buddhism is more moderate in this regard; it is intent on achieving a fair social balance within society, propagates democratic values, such as responsible governance, and is clearly development-oriented. As such, Buddhism is essentially open to democratic social models and the rule of law.

In the case of Hinduism, the caste system is the most significant factor in relation to the present discussion. The structure of society gives rise to specific parameters governing the political and legal order – in civil law, for example (family and succession law, rights of property ownership) – which have further implications for the structure of the rule of law. This also challenges the principle of equality, in that courts cannot simply disregard these parameters.

Such influences are, however, significantly greater in countries where Islam is a dominant religion (Malaysia, Indonesia, parts of the Philippines, Bangladesh, Pakistan, Afghanistan, Central Asia and the Middle East). In these countries and regions, religion has had an enormous impact and continues to do so. All in all, it is clear that Islamic law is once again coming to the fore in a number of countries. The effects are not only evident in the field of private law (for example, family and succession law, property, the capital market), but also, and in particular, in the field of criminal law. As a result, access to state courts is denied in many cases that concern basic rights, while Sharia courts do not comply with the government-regulated legal system and exclusively pursue Islamic law. Fundamentalist groups regularly exploit religion in order to undermine institutions founded on the rule of law.

Individual regions in Asia thus have greatly differing legal spheres, which, in turn, have been eclipsed by various cultural, religious or political developments:

- traditional legal philosophy in feudal states with certain foreign influences
- Common Law and positive rights in former European colonies
- communism and other totalitarian forms of government
- religious influences (Islam, Hinduism, Buddhism)

Cultural heterogeneity in Asia

The Confucian doctrine with its strict hierarchical thinking, which is widespread in North and East Asia and in some parts of South-East Asia, has always been influential in this region. This doctrine does not, however, involve following abstract norms supported by broad consensus and stemming from a democratic mindset, but rather standards imposed by authority figures (traditionally: emperors, teachers, fathers).

- **Korea** – at least the southern part – developed along strong neo-Confucian lines after several decades of Japanese colonialism, the Second World War and the subsequent civil war. The first signs of democracy in South Korea emerged at the end of the 1980s. They have since developed into highly successful constitutional structures based on the rule of law. The regime in the North has allowed the Confucian social order, marked by obedience and a hierarchical consciousness, to ossify into a totalitarian dictatorship.
- During the Late Imperial era and the period of the Republic of **China**, attempts were made to create a modern constitutional state based on German and European law that had reached China via Japan. The seizure of power by the communists in 1949 almost entirely crushed these efforts at first. Only when Deng Xiaoping began to pursue a policy of reforming and opening up the country from 1978 onwards was it once again possible to start (re)building a modern judiciary. In addition to German and European law, Anglo-Saxon common law is playing an increasingly key role here.
- A strong, democratic order based on the rule of law was established in **India** as early as 1948. This order essentially preserved the British colonial legal system. However, specific cultural and religious characteristics have become firmly entrenched, which are also reflected in the law (such as the caste system that effectively still exists to this day).
- The story is similar in **Malaysia and Singapore**, which gained independence in 1957, yet retained the fundamental features of the Anglo-Saxon legal system. The former British Crown Colony of Hong Kong, which was handed back to mainland China in mid-1997 as a special administrative region, still continues to practise common law. British law has not merely been adopted wholesale, however. Instead, in the decades following independence, it has been adapted to the specific characteristics of local cultures and political ideals.
- A special case is the **Philippines**, which practised continental-European law as a Spanish colony up until the end of the 19th century, but then completely transferred to the Anglo-American legal framework during the American colonial era (up until 1946).
- *Indochina*, namely **Laos, Cambodia and Vietnam**, is similarly marked by French colonial power. Its influence resulted in the introduction of positive (written) continental-European law. The basic principles are still apparent today, even if the constitutional core has been eroded by communism.
- **Thailand** is one of the very few Asian countries which avoided colonisation altogether and, consequently, has never been exposed to direct foreign influence. While the affinity of the monarchs to European, primarily French, culture also shaped this legal framework to a certain extent, these traces of European legal culture have since been eclipsed by a period of military dictatorship and, above all, by indigenous cultural traditions.
- In the late 1980s and early 1990s, the **former Soviet states of Central Asia** – including the previously Soviet-dominated countries – also experienced considerable upheavals. Democratisation processes initiated within this context developed, and continue to develop, in different directions and at very different paces in the various countries. While Mongolia quietly introduced a pluralist social order, for example, the Central Asian states have moved towards authoritarian regimes and, in some cases, dictatorships.

Nevertheless, despite the different starting points and developmental influences illustrated above, the concept of the rule of law has patently gained significance throughout most of the Asian countries. However, a mindset embracing the rule of law has yet to become a matter of course in legal thinking and has only been integrated to a limited extent into the everyday business of government.

Nevertheless, in Asia, the concept of a constitutional state is not primarily considered in terms of the “rule of law”, but rather as a system of “rule by law”. Frequently, discussion then also

centres on the “role of law”. This illustrates that a system based on the rule of law is not deemed to be an essential element and prerequisite of democracy, but rather is considered a means to achieve economic development by way of individual growth, while simultaneously restricting state power – namely by law.

Equally, there is often a failure to recognise that the rule of law not only requires an effective and independent judiciary accompanied by clear statutory regulations but, to the same degree, a democratically controlled executive that acts lawfully (good governance).

The tendency towards juridification (in terms of legal certainty and clarity) is first and foremost viewed as a prerequisite for facilitating promising economic development. The economic crisis of 1997 and the ever more apparent effects of globalisation have created a compelling need for action as people in this region have gained a pragmatic understanding of modern necessities.

At best, Asia takes a selective approach to respecting human rights – i.e. if it is deemed opportune – and they are often played off against each other. Although the ASEAN Intergovernmental Commission on Human Rights (AICHR) was inaugurated in 2009, it is generally viewed as a “toothless tiger” because citizens cannot appeal to it directly. However, socio-economic rights are being afforded greater consideration than, for example, basic political rights, although this stance is again primarily due to the consideration of economic necessities. The ASEAN Human Rights Declaration adopted in 2012 has a similar focus, yet does not set any new standards and is merely a declaration of political intent.

In summary, it is clear that Asian countries are indeed seeking practicable methods that would allow them to respond to calls for the rule of law from other regions of the world, while simultaneously protecting unique national characteristics – even if, in some cases, this is simply to preserve the power of the ruling class or party. Alongside the race to modernise and internationalise economic systems, there are, however, still grave deficits with regard to controls on state power. Even where the foundations of the rule of law have been laid within constitutional texts, reality tells a very different story. A state’s constitution is still not viewed as a basic law which determines what action can be taken and which binds all state organs and each and every citizen to this order. In the majority of Asian countries, the principle of constitutionalism has yet to be established and internalised.



Congress of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) – constitutional judges from Asia, Africa and Europe in Seoul discuss the significance of constitutional courts for the development of democracy.



The ethics of being a judge and fighting corruption – at the invitation of Thailand’s Supreme Court in Bangkok, high-ranking jurists exchange experiences on the specific challenges facing the judiciary in the battle against corruption.

Moreover, a lack of institutions based on the rule of law – above all, an independent judiciary – and secure procedures for law enforcement continue to render democratisation processes susceptible to authoritarian backlash.

The Konrad-Adenauer-Stiftung also supports regular meetings of guardians of the constitution in Asia. The annual conferences have now become an integral part of the foundation’s work to promote the rule of law. Participants particularly value the collegial atmosphere of these meetings, as they provide a platform for extremely open exchange on critical developments in individual countries and other matters. After many years of preparation, representatives of the judiciary from Indonesia, Korea, Malaysia, Mongolia, the Philippines, Thailand and Uzbekistan adopted the Jakarta Declaration in 2010 establishing the Association of Asian Constitutional Courts and Equivalent Institutions (AACC). Its statute acknowledges the significance of the principle of an independent constitutional jurisdiction and the promotion of democracy and human rights. The exchange between representatives helps foster a common awareness of the significance of an independent judiciary. The founding of the AACC and support from the Rule of Law Programme in Asia bolstered the determination of the representatives of constitutional courts and equivalent institutions from over 30 nations to work towards separating powers and establishing a free and democratic constitutional order worldwide. Representatives from the European Council’s Venice Commission and constitutional judges from Europe and Africa now regularly take part in meetings. This has helped initiate an Asian-European dialogue on constitutional jurisdiction.

Freedom of expression and a free media are the key pillars of a free and democratic system. In numerous countries in South-East Asia, journalists and critical citizens also frequently face criminal prosecution. In response to this, the Konrad-Adenauer-Stiftung’s partners – lawyers in Malaysia, the Philippines and Singapore – have been working for several years to establish a network of jurists in the region, supported by the Media Legal Defence Initiative in London. Alongside their normal caseload, these lawyers work on a voluntary basis to help colleagues and journalists with legal issues, in particular in court proceedings relating to press publications and statements of opinion.



*Kenya's Supreme Court
in Nairobi*

IN SUB-SAHARAN AFRICA

The Western interpretation of the concept of the rule of law has no roots in the traditions of Sub-Saharan Africa and thus often only plays a minor role in political culture. There are, however, a number of political, administrative, civil society and above all judicial actors who are interested in the rule of law and are committed to promoting and establishing it in the region. The KAS worldwide Rule of Law Programme's sub-programme in Sub-Saharan Africa aims to provide this group of people with support and encourage others to join their ranks.



Human rights conference in Zambia

Concepts of the rule of law or similar approaches in line with European legal traditions did not exist in pre-colonial Africa. The colonial powers, whose main concern was exploiting the countries economically, did not bring these ideas to Africa or support them either. This can be viewed as one of the reasons why, after more than five decades of independence, many parts of the continent still suffer from considerable deficits with regard to the rule of law. The state apparatus often feels no need to account for its actions, behaves in an indiscriminate and at times violent manner, exploits ethnic diversity by playing off different groups against each other and is led by people whose top priority is to enhance their personal wealth. Europe's prevailing culture of respect for the rule of law, which has evolved over centuries and is the result of both armed conflicts and peaceful – in particular philosophical – disputes, has the air of an import that, in many African states, struggles to find any takers. Having obtained independence, the adoption or creation of Western-style state structures in African cultural contexts can often seem artificial, imposed and quite alien.

For this reason, Western values – unlike Western technology and expertise – are not always met with acceptance. These values include the social and political regulatory models of the modern state. In part, this also includes a number of rules and mechanisms which the European legal tradition has developed as core components of the principle of the rule of law and established within the institutional framework as respected values. A particular problem that has become apparent in the African context is the indifference of state officials to the principles of the rule of law when dealing with human rights and institutional checks and balances, particularly concerning the independence of the judiciary, and a general lack of willingness to comply with rules laid down by the state. In quite a few countries, people are still imprisoned and tortured as officials see fit, court decisions are ignored, and laws are wilfully broken by governments and administrations.

Examples here include presidents standing for election for more terms of office than permitted in their respective constitutions and rulers going to great lengths to organise extensive ballot rigging to stay in power against the will of the people. A unique phenomenon here is the concept of the "big man", which is rooted in African social and political traditions: an authoritarian political leader who acts indiscriminately, concentrates as much power as possible in his hands and builds a protective apparatus around himself by creating personal dependencies. He is,

so to speak, the absolute contrast to the constitutional institution of the head of state or government in parliamentary democracies. Many African countries are governed – or, more accurately, ruled – by “big men”. The traditional role of these leaders appears to involve disregarding rules with impunity or creating their own rules to serve their own interests.

Many African functionaries and also large sections of the public do not view constitutional rules as basic principles which can guide them with regard to values and action. The consequences of action that is not founded on the rule of law are widespread corruption and legal uncertainty to the point of lawlessness, which, in turn, can quickly damage economic development and increase poverty. Despite reports of progress in recent years, Africa is still by far the world’s poorest continent and this situation can be attributed to a large extent to insufficient rule of law.

At the same time, Sub-Saharan Africa is increasingly becoming the focal point of terrorist campaigns. Under the pretext of converting the “infidel” to Islam, paramilitary-criminal groups, such as al-Shabab in Somalia or Boko Haram in Nigeria, are trying to achieve political power. On the other hand, Islam, which is also gaining ground in Africa, is generally considered to be moderate and tolerant in Sub-Saharan Africa. Nevertheless, in recent years, government action has been increasingly geared towards Islam and its law, Sharia. Particularly in terms of criminal law and the relationship between citizens and the state as reflected in administrative law – or the lack of such –, and also in terms of private law, legal systems characterised or influenced by Islam comprise elements that are incompatible with internationally accepted ideas of rule of law and human rights. Terrorist attacks on the civilian population along with the heterogeneity of legal systems increase people’s sense of insecurity, in turn, and lead them to doubt the state’s monopoly on legitimate use of force. The widespread belief that the safety of property, life and limb can only be guaranteed in quasi-democratic or even autocratic systems undermines democratic developments and increases the tendency to replace unstable democracies, which cannot guarantee the protection of individuals, with autocratic rule. This is another trend that the Rule of Law Programme aims to counteract.

Corruption and state institutions’ scant regard for their own laws have particularly led to increasing dissatisfaction in many countries. Especially in countries where there is a relatively large, educated middle class, dealing with the realities of badly functioning

Dr Gaby Schäfer, President of the Audit Office of Schleswig-Holstein, talking about the significance of effective public budgetary controls in the battle against corruption at an event organised by the Rule of Law Programme in Sub-Saharan Africa in Entebbe, Uganda



state institutions has given rise to a growing clamour from the population for a functioning state that acts in a rational manner.

Over the last few decades, key figures from politics, administration, the judiciary, academia and civil society have made increasingly successful calls for a more solid rule of law in many countries in Africa. Supported by the Western donor community and its potential to exert pressure, it was possible to convince many institutions in African states to officially adopt a stance that was pro rule of law. Opposition groups, civil society organisations, churches and universities have increasingly embraced these demands, with the result that internal pressure on governments is also increasing in a host of countries. This has given rise to one of the most promising openings in terms of the rule-of-law activities undertaken by the Konrad-Adenauer-Stiftung. However, these actors who endorse the concept of the rule of law frequently find themselves subject to unofficial restrictions imposed by actors in the respective state apparatus who do not endorse the rule of law. As a result, behind the scenes of the official rule-of-law activities at many institutions, there is an opaque mixture of forces that endorse the rule of law and forces that oppose it and are geared towards personal gain.

The KAS Rule of Law Programme in Sub-Saharan Africa aims to identify and support those who endorse the rule of law and the institutions they direct, to help promote their activities and to persuade more people to join their ranks by creating networks and providing them with information and guidance. The work of the KAS focuses on the aforementioned, particularly thorny areas: human rights, the independence of the judiciary, dealing with legislation, especially constitutions as the highest set of statutory rules and regulations, and regional integration.

An example of its activities is an annual pan-African conference on the development of human rights protection in the region. In the last few years, the event has focussed on the protection of socio-economic human rights. This also includes protecting the population from increasingly pervasive corruption on nearly all levels.

One of the greatest challenges in Africa is pervasive corruption. It plagues the people of this region like an epidemic; it is often no longer possible to do anything without "tea" or "soda". Those who refuse to pay have to wait long periods for their applications to be processed, if they receive any notification at all. Those who pay avoid prosecution by the police or the judiciary – which resulted in the coining of the phrase: "Why pay a lawyer when you can buy the judge?" Money secures permits that are clearly unlawful; offering a brown envelope lifts a ban that is obvious to everyone. Corruption undermines all efforts to build good governance and violates human rights. It not only infringes on the right to liberty and property – it also means that there is no equality before the law. It poses one of the greatest risks to economic investment in the future of Africa, which is so urgently needed.

The battle against corruption is a focal point of the Rule of Law Programme in Sub-Saharan Africa. However, the questions remain: how do you uncover it? How do you combat it effectively? A defining feature of corruption is that it takes place in secret. For precisely this reason, it is not easy to track down.

Transparency is the enemy of secrecy: transparent administrative procedures, transparent financial transfers, and a transparent budget policy. Where transparency prevails, corruption loses the protective shield of secrecy. It can no longer function effectively because it fears that it will be discovered.

In light of this situation, the Rule of Law Programme in Sub-Saharan Africa joined forces with the Network of African National Human Rights Institutions to organise a number of events, including an international conference, which aimed to develop effective measures to combat the increasing abuse of public budgets to corrupt ends. It addressed issues such as how to spend public funds, who should control this expenditure and how those responsible can be held to account in the case of wrongdoing. The conference was attended by members of supervisory committees, ombudsmen and representatives of the private sector and universities from 15 African countries. The President of the Audit Office of Schleswig-Holstein talked to participants about ways to minimise abuse of public funds by carrying out effective budgetary controls, e.g. preventive measures, such as consultations and auditing of budgetary submissions. Having the possibility to inspect records and thus track income and expenditure down to the very last detail and submit information on suspicious files to the prosecuting authorities also acts as a strong deterrent. Other decisive factors are follow-up checks on expenditure incurred with a comprehensive right to inspect records, which can both be informative and act as a deterrent to corruption. Close cooperation between the inspection agencies and the media has also proven to be an effective measure. However, there is still a great deal to be done in this field, particularly since similar African inspection systems do not have the extensive rights enjoyed by German audit courts and, above all, often lack real independence from the machinery of government.

The foundation organises study visits to Germany – to the Federal Constitutional Court, for example – and to other countries to give the relevant professional groups insight into the work of comparable institutions. Doctoral seminars are held at nine different African universities, where prospective officials in the administration and judiciary write research papers examining matters relating to the rule of law, thus raising their awareness of constitutional issues. The best papers are published as e-books by the KAS African Law Study Library in cooperation with Nomos publishing house, and a conference involving the authors is held every two years.

Each year, a regional conference for jurists is organised in cooperation with the International Commission of Jurists (ICJ) to discuss important regional legal developments. It provides support to the East African Court of Justice, in part by building networks, and creates a platform for exchange and cooperation with other trans-regional courts of justice. Conferences examine current political issues, such as the immunity that many African leaders demand for their activities in office and the resulting protection from criminal prosecution, while monitoring of the administration is addressed by offering advisory services that aim to facilitate the introduction of administrative courts.

The KAS has established strong ties with the community of states on the Horn of Africa, which have joined forces in the Intergovernmental Authority on Development (IGAD); this cooperation aims to strengthen institutions, in particular through capacity development. Furthermore, the foundation issues annual publications on important themes relevant to the rule of law, making them accessible to a broad audience.

In the context of the continent as a whole, the KAS views all of these measures as small but in part very effective and therefore important contributions to the rule of law in Africa and thus to the development of Africa overall.



IN SOUTH-EAST EUROPE

The Konrad-Adenauer-Stiftung's Rule of Law Programme has been operating in South-East Europe since 2006. In addition to the two most recent Member States of the European Union, namely Bulgaria and Romania, the countries of the former Yugoslavia together with Albania and the Republic of Moldova represent the second key focal area of the Rule of Law Programme in South-East Europe. While the countries of South-East Europe may be different in many ways, the decision to initiate the sector programme in this region was based on a factor that is common to all these states: they are all currently in an ongoing process of transition from a totalitarian or authoritarian single-party state into a democratic, constitutional state based on the rule of law. For the judicial system, this transformation has primarily entailed a shift from viewing the judiciary as an extension of the executive to a state authority with equal powers.



Participants of the "Leaders for Justice" programme for the promotion of young jurists, with former Justice Minister Valeriu Stoica and the Director of the Rule of Law Programme in South-East Europe, Thorsten Geissler

The transformation of post-communist / socialist systems was and continues to be decisively influenced by the efforts of South-East European states to fulfil the European Union accession criteria or, in the case of Bulgaria and Romania, the so-called post-accession criteria. These criteria provide a rough framework for transition countries to develop the rule of law. The "political" accession criteria comprise institutional stability, the existence of a democratic system based on the rule of law, respect for human rights, and respect for and protection of minorities. However, when it came to reforming the judicial system, of all things, there were no methodological approaches that could simply be enlisted. It was not possible to apply "shock therapy" to the rule of law, as was the case with the economy. However, law forms the indispensable bedrock upon which the economic and political unification of Europe is founded. European integration will only succeed if Community Law applies and is implemented uniformly in all Member States.

The greatest challenge to achieving this does not lie in formulating the appropriate statutory texts. These are already in place in the majority of new EU Member States and (potential) candidate countries. Far more important is the creation of common value standards, legal convictions and a common legal culture. Otto von Bismarck coined the phrase: "With bad laws and good civil servants it is still possible to govern. But with bad civil servants, even the best laws are no help to us." This quotation astutely reflects the situation in many states in the region: as much as ever, personal relationships and interests frequently prevail over objective standards. State philosophy in the modern sense of the term, encompassing abstract, objectivised standards which apply equally to each and every individual, is not as firmly entrenched in the traditions of South-East European transition countries as it is in Northern or Western Europe. A change in perception and mentality is thus required in these countries if they are to succeed in developing and consolidating a system of rule of law. Only with a critical mass of reform-oriented legal policy-makers and legal professionals will it be possible to ensure long-term change in the judicial system.

LEADERS FOR JUSTICE – THE RULE OF LAW'S PROGRAMME FOR THE PROMOTION OF YOUNG JURISTS IN SOUTH-EAST EUROPE

Coming to terms with the judicial past is still a sensitive topic in South-East Europe to this day.

In response to this, the Rule of Law Programme in South-East Europe joined forces with the association "Pravnik" in Sarajevo in 2006 and has since helped organise an annual international summer school on human rights and transitional justice in the capital of Bosnia and Herzegovina. Thirty students from South-East Europe and other European countries take part in presentations, seminars and themed visits and examine various aspects related to coming to terms with the judicial past. The papers produced by the participants during the summer school will subsequently be published in a journal established specifically for this purpose – the International Journal of Rule of Law, Transitional Justice and Human Rights. The Rule of Law Programme in South-East Europe thus not only plays a role in developing the professional expertise of future multipliers, but also helps foster reconciliation and boosts tolerance in a region which has not yet escaped from the shadow of nationalism and xenophobia.

Since 2010, within the scope of the annual project "Leaders for Justice", the Rule of Law Programme in South-East Europe has helped train particularly well-qualified junior jurists from Romania, who have the potential to play a leading role in strengthening the democratic, constitutional state and building a judiciary that is transparent and ethically responsible. The programme is founded on the knowledge that sustainable reform of the judiciary is heavily dependent on the availability of a new judicial elite, whose members have not only adopted the principles of the rule of law but are also prepared to act as multipliers and do everything necessary to apply these principles to the judicial system.



Conference "Transparency and open government to combat corruption"

INTEGRITY AND ANTI-CORRUPTION MEASURES IN THE JUDICIAL SYSTEM

A further focal point of the activities of the Rule of Law Programme in South-East Europe is the promotion of a judiciary that is independent and has integrity. Ensuring integrity in public services has become one of the cornerstones of a functioning, constitutional state. The Rule of Law Programme in South-East Europe plays a part in encouraging debate in this area. It organises conferences and produces publications to raise public awareness of issues related to integrity and battling corruption. It also fosters the exchange of experiences between multipliers – (legal) policy-makers and experts from civil society – on best practices to guarantee the ethical conduct of legal professionals

A particular focus of the Rule of Law Programme in South-East Europe is the promotion of regional networks of specialists as well as dialogue with German institutions at national and federal-state level, whose expertise has attracted a great deal of interest in the region. Within the scope of the Danube Region Strategy, for example, the Rule of Law Programme cooperated with the Bulgarian Interior Ministry, the German Federal Interior Ministry and the Bavarian State Ministry of Justice to organise a project which aims to develop an integrated approach to preventing and combating corruption in the Danube region. This measure also aimed to intensify cross-border cooperation between the authorities responsible for these matters in the countries of the region. In conclusion, to ensure the sustainability of the project results, a comparative study on best practices to combat corruption in the region was published in collaboration with the Max Planck Foundation for International Peace and the Rule of Law.

CONSTITUTIONAL JURISDICTION AT THE CORE OF A STATE

Constitutional jurisdiction represents the "innermost core of a state founded on the rule of law". The objective of the Rule of Law Programme in South-East Europe is thus to sustainably foster the development and consolidation of effective constitutional jurisdiction in the transition countries. The Rule of Law Programme primarily pursues this goal by supporting the work of constitutional courts. On the one hand, this involves facilitating a dialogue between the constitutional courts in the region to enable them to exchange experiences and knowledge. An example of this approach was the high-level conference organised by the Rule of Law Programme in South-East Europe in Macedonia, which was attended by the President of the European Court of Human Rights and constitutional judges from all of the countries involved in the programme, and examined the "independence of constitutional courts".

On the other hand, the Rule of Law Programme in South-East Europe aims to promote the transfer of experience between the Federal German Constitutional Court and those in South-East Europe. To this end, the programme decided to translate a casebook of the Federal German Constitutional Court into Serbian, Macedonian, Albanian and Bosnian. The constitutional courts in these countries unanimously expressed their appreciation for this project, stating that the casebook was one of the most important aids for dispensing justice, as they lacked experience with legal doctrine in every area. An updated casebook was recently also translated into Romanian and presented at a conference in Bucharest in collaboration with the Romanian Constitutional Court. Finally, the Romanian-language edition was edited and presented to the constitutional court in the Republic of Moldova in a public ceremony. The Rule of Law Programme in South-East Europe thus plays a key role in improving the quality of the grounds on which constitutional judgements are made.

The Rule of Law Programme in South-East Europe also supported the publication of a study conducted in cooperation with the Romanian Centre for European Policies on the impact of European conditionality on judicial reforms in Croatia, Serbia, Macedonia, Bulgaria, Romania, the Republic of Moldova and Ukraine. Among other issues, the publication focussed on evaluating the efficiency of the work of anti-corruption and integrity agencies, as well as assessing the transparency and independence of the judiciary.

As the independence and integrity of the judiciary can only be guaranteed if all of the relevant actors abide by ethical standards, the Rule of Law Programme in South-East Europe also conducted a large-scale project on professional ethics in cooperation with the Justice Ministry of the Republic of Moldova. This measure involved compiling ethical codes for all of the professions in the judicial system and putting together related handouts and multi-media recommendations for implementation, as well as organising training sessions on ethics for legal practitioners.

Another important event to mention is the conference "Promoting Best Practices in Fighting High-level Corruption and on Asset Recovery", organised by the Konrad-Adenauer-Stiftung's Rule of Law Programme in South-East Europe in cooperation with the Romanian Justice Ministry, the Regional Cooperation Council and the British Embassy in Bucharest. The conference enabled the exchange of best practices between the states from the South-East European Cooperation Process and helped consolidate regional cooperation. The event was attended by directors of and experts from national state prosecution departments, anti-corruption agencies and authorities responsible for asset recovery in countries in the region.

Since 2008 the Rule of Law Programme in South-East Europe has been the main partner of the only film festival on human rights in Romania, which is held each year in cooperation with One World Romania and supported by the Czech Centre. The festival screens over 50 documentary films, which give Romanian audiences the rare opportunity to address the topic of human rights violations around the world and thereby develop and enhance their own understanding of democracy and the rule of law. Each of the 10,000 people who attend the annual festival is a potential multiplier: by discussing their experiences after the event with friends, family members and colleagues, they can help make Romanian society more open and tolerant.

Debate in the Lebanese Parliament in Beirut



IN THE MIDDLE EAST / NORTH AFRICA

At the end of 2012, as part of its worldwide Rule of Law Programme, the Konrad-Adenauer-Stiftung launched the programme section Middle East/North Africa based in Beirut with the aim of meeting the region's high level of demand for advisory services on the rule of law. The events of the Arab Spring and the subsequent political, security policy, social and economic upheavals have increased this demand even further.

The Rule of Law Programme in the Middle East/North Africa comprises three sub-regions. All of the countries in the programme are undergoing transition processes and are similar in some respects, while differing greatly in others. North Africa (the Maghreb) is marked by the French legal tradition and still influenced by the French language and French politics. The Levant and the Mashreq comprise the Palestinian territories, Jordan and Lebanon (as well as Syria and Iraq). There are also specific parallels in these states in historical, political and legal terms. Egypt is viewed as part of the Mashreq. The Gulf States (apart from Yemen), last of all, have achieved the highest level of cooperation in the region and share a number of legal policy structures and experiences.



Official opening of the Regional Rule of Law Programme in the Middle East/North Africa and the Konrad-Adenauer-Stiftung's Lebanon Office in Beirut

The development of the rule of law in the Middle East/North Africa region is marked by two general characteristics: firstly, the influence of the legal traditions of the former colonial powers and, secondly, the tense relationship between secular and Islamic law. In addition, the legal landscape of most Arab nations consists of legal subsystems which exist in parallel or in conjunction with each other, and sometimes also in opposition to each other. The resulting overall legal pluralism runs contrary to the state's claims to hegemony and above all the state's monopoly on legitimate use of force, and thus destabilises the state itself.

One of the most complex and hotly debated questions in the region is the value of an exclusively secular legal system. Most of the constitutions of states in the Middle East and North Africa cite Sharia as one or even the main source of law. The idea of a sovereign people legislating in accordance with the principle of the separation of powers is met with fierce criticism. The concept of the supremacy of Sharia implies that there can be no fully autonomous human legislator in an Islamic state. Nevertheless, in predominantly Islamic countries there has always been an area that is secular in all but name, which has allowed the state considerable freedoms to shape the political and social order, and this order has been governed by regulations and edicts that are akin to laws. It is, therefore, incorrect to equate Sharia with Islamic law, although this misconception is widespread (even among Muslims). Only around ten percent of Islamic law stems from the principles of Sharia. In the areas that are not covered by Sharia, the Islamic state has the power to develop its own laws. It must, however, ensure that these laws are compatible with Sharia.



Beirut Palace of Justice: "Beirut, the Mother of Laws" – the inscription in Latin and Arabic in Beirut's Palace of Justice is a reference to the first school of law in the Roman Empire (Photo: Sandy Chalouhi).

The increasing Islamisation of law in the region is creating tensions and problems between secular and religious legal concepts. The KAS works to empower advocates of the rule of law as they engage in public debate on this matter with those who support a comprehensive Islamisation of the legal system. The regional Rule of Law Programme has, for example, helped organise two conferences on establishing an international constitutional court in Tunis. These activities also aim to strengthen the forces within civil society, politics and the legal system which espouse the foundation's core values, such as peace, freedom and justice, and thus guarantee support for constitutional structures in the programme countries in the long term. This also includes the international conference on human rights organised by the KAS in cooperation with the Caritas Lebanon Migrants Center.

Until such time as governments and parliaments begin to address deficits concerning the rule of law adequately, or at all, civil society organisations and also journalists can play a greater role in providing impetus for reform. Participation from stakeholder groups is insufficient in some cases and totally lacking in others, which again creates a need for civil society engagement. This kind of engagement can often raise public awareness of the frequent discrepancy between the legal situation in theory and in reality. The KAS also addressed this disparity in cooperation with the Lebanese American University at a discussion event on "Equality and Constitutional Reform".

Training courses, seminars and accompanying measures are increasing the scope for action and professionalism of selected non-governmental organisations with regard to legal issues and helping to widen their options when it comes to drawing public attention to constitutional deficits. Maintaining contact with political decision-makers and members of parliament is a key task and activities will be expanded in this area with the aim of establishing an ongoing dialogue between policy-makers and civil society on legal matters and helping to encourage the reform and initiation of laws.

Training programmes and expert talks embolden legal policy-makers and practitioners in the region to introduce reforms to the legal system that are in line with – and help foster – the separation of powers, basic rights and other constitutional principles.

BASIC RIGHTS, CONSTITUTIONAL COURTS AND LEGAL CULTURE IN THE MIDDLE EAST/NORTH AFRICA

Protecting basic rights: *In the area of basic rights, what one is entitled to according to the law is far-removed from the legal reality in many states in the region. In legal practice, political interference, despotism, lack of transparency and rampant corruption often lead to the erosion of basic rights that are guaranteed by the constitution. In spite of limited scope for action, civil society organisations in many countries in the region are able to draw attention to constitutional deficits. One approach taken by the KAS is thus to encourage legal and civil society actors to raise awareness of the discrepancy between the legal situation in theory and in reality.*

Constitutional courts: *The status of constitutional and supreme courts varies from country to country in the region. In light of the increase in authoritarian power structures and lack of credibility, the influence of these courts is lessening or stagnating. The aim of the KAS's work on the rule of law is, therefore, to enhance the efficiency and visibility of these courts, to illustrate how they can benefit society and to promote the principle of constitutional jurisdiction in general.*

Legal culture: *In many states in the region, there is evidence of considerable distrust of the legal system and its institutions. Political, religious, social and familial authorities grant and also revoke personal security, individual freedoms and access to resources on a more or less arbitrary basis. Those affected often fail to make use of judicial procedures to assert their basic rights due to fear, powerlessness and ignorance. Citizens in these states often fail to see a direct connection between democracy and the rule of law. The foundation's work on the rule of law therefore also strives to establish and raise the profile of this connection, specifically in the Arab-Muslim context.*



The Chairman of the KAS, Dr Hans-Gert Pöttering, used his visit to Lebanon to conduct political talks with the president, General Michel Sleiman (r.).

In this context, it also becomes clear that guaranteeing the rule of law plays a key role when businesses are choosing where to invest. The Arab uprisings stemmed not least from the dismal prospects for economic and personal development facing broad sections of the population. Economic development in the region based on the principles of the rule of law will help defuse social conflicts and thus foster external and internal peace.

SELECTED PARTNERS OF THE KONRAD-ADENAUER-STIFTUNG

As a general rule, the Konrad-Adenauer-Stiftung cooperates with local partners. These partners include legal practitioners (regional human rights court judges, national constitutional court judges, judges presiding at supreme or other courts, public prosecutors and lawyers), organs of the judiciary and governmental control organisations (above all, supreme magistracy offices and judicial councils, constitutional and supreme courts, ombudsman organisations and offices of chief public prosecutors), professional legal associations (professional associations of the magistracy, judges and lawyers), employees of judicial institutions and the administration of justice, police officers and security service personnel, university lecturers (above all, in law faculties and independent academic institutes), judicial academies and other judicial training facilities, parliamentarians (particularly members of legal affairs and legislative committees), members of the government and ministerial employees (above all, justice and interior ministries), political parties, officials from various integration associations, employees of non-governmental organisations working in a constitutional sphere, churches, religious organisations and, last but not least, the media.

The following section presents a selection of particularly important partners of the Rule of Law Programme.

LATIN AMERICA

Constitutional courts and supreme courts

From the outset, the activities of the Rule of Law Programme supported the exchange of experiences and knowledge between constitutional courts and senates in the region, through the annual meeting of presidents and judges at these courts, for example. Dialogue between the courts – and also increasingly with the Inter-American Court of Human Rights – is essential in order to achieve progress on the common task of effectively safeguarding basic and human rights, while avoiding counter-productive disputes over jurisdiction.

Schools for judges

The foundation's strategy for cooperation with schools for judges on the continent draws on the expertise of renowned jurists in the field of human rights and specialist dialogue with talented young graduates. This collaboration aims to advance the technical-legal skills of legal practitioners for the continuing development and protection of human rights, and also to promote dialogue within the judiciary at national and international level.

The institutions that have joined forces as part of this initiative include: the Institute for Federal Judges in Mexico, the Study Centre for Contemporary Law in Querétaro (Mexico), the "Lic. Edgar Cervantes Villalta" school for judges, the Judicial Training and Support Programme in El Salvador, the Constitutional Law Institute in Guatemala, the Legal College of Judicial Studies in Guatemala, the Study Centre on Constitutional Law in Uruguay and Nicaragua School for Judges.

Universities

The academic centres of the region are important hubs for collaborative analysis, discussion and exchange of ideas on the programme. These include universities in Mexico, Guatemala, Honduras, Colombia, Venezuela, Chile, Bolivia, Argentina and Uruguay. The main contribution of the universities to the work of the programme consists of training jurists and developing the educational programmes to equip the next generation of graduates with the necessary specialist knowledge. This concerns students and young academics from a wide range of disciplines – both during their university education and after graduating – in their respective seminars, colloquia and courses.

Non-governmental organisations

The programme supports diverse projects in cooperation with civil society organisations which have close links to the programme's objectives, in particular concerning issues such as constitutional jurisdiction, legal pluralism, international criminal law, human rights, legality and legal culture.

The Centro de Estudios sobre la Enseñanza y el Aprendizaje del Derecho – CEEAD – in Monterrey, Mexico, is unique for its scientifically based and exceptionally innovative approaches. The Rule of Law Programme has, for example, cooperated with the CEEAD to get promising projects off the ground which have funded indigenous schools of law and promoted legal culture. These projects are now being copied all over the country thanks to support from major donor organisations. The aim is to pass on these experiences to other states on the continent, enabling them to launch similar projects in the future.

> www.ceead.org.mx

The Fundación Tribuna Constitucional, based in Sucre, Bolivia, is one of those civil society organisations which, in spite of difficult political and infrastructural conditions, works tirelessly as a pioneer in the field of the rule of law and democracy. It is not for nothing that the NGO enjoys the trust and support of highly respected experts from Latin America and Europe.

> www.tc.org.bo

Other important partner organisations are: Instituto Mexicano de Derecho Procesal Constitucional, Instituto Iberoamericano de Derecho Procesal Constitucional, Centro Colombiano de Derecho Procesal Constitucional, Asociación de Investigación y Estudios Sociales – ASIES (Guatemala), The Due Process of Law Foundation – DPLF (USA), Centro de Direito Internacional – CEDIN (Brazil), Comisión Andina de Juristas – CAJ (Peru), Foro de Estudios sobre la Administración de Justicia – FORES (Argentina), Instituto Brasileiro de Ciências Criminais – IBCCrim (Brazil), Instituto Iberoamericano de Derecho Humanos – IIDH (Costa Rica).

The Inter-American Court of Human Rights

The IACHR deserves particular recognition as a driving force behind efforts to provide effective safeguards for human rights at national and international level. The KAS has had a relationship of trust with the tribunal for many years, providing both constructive criticism of, and support for, the work of the court.

> <http://www.corteidh.or.cr/>

ASIA

Association of Asian Constitutional Courts and Equivalent Institutions (AACC)

In 2010, constitutional courts and equivalent institutions from seven Asian countries established the AACC within the scope of the Jakarta Declaration as a forum for regular exchange of experiences and knowledge. Korea initially held the chair and organised the bi-annual meeting of constitutional guardians in 2012. This association is the result of many years of support from the foundation, which continues to work closely with the courts.

> <http://www.aaccei.org>

Asia Legal Information Network (ALIN)

ALIN is a network of outstanding jurists and was founded in 2003 with the support of a number of organisations, including the KAS, by renowned faculties of law from across Asia, with the aim of creating an institutional platform enabling the exchange of information on the very different legal systems in the region. To this end, an annual conference is held at a different location each year to discuss current legal issues. The network's ongoing business is managed by the Korean Legislation Research Institute (KLRI).

> <http://www.e-alin.org>

German-Chinese Institute for Jurisprudence, Nanjing/China

The institute was founded in 1989 as a joint initiative of the universities of Göttingen and Nanjing. Collaborative projects in teaching, research and legal practice aim to promote dialogue between the two legal cultures. The work of the institute initially focussed on civil and commercial law; a number of years ago, it expanded its activities to cover public law. The institute is home to the largest German-language legal library in the People's Republic of China.

> <http://www.uni-goettingen.de/de/423274.html>

Human Rights Resource Centre für ASEAN

The Human Rights Resource Centre (HRRC) is a centre for academic research affiliated to the University of Indonesia in Jakarta and with a broad network in the ASEAN Member States. It was founded in 2010 by members of the Working Group for an ASEAN Human Rights Mechanism, as well as other prominent human rights advocates. It supports improvements to human rights protection in the region through targeted academic research and publications.

> <http://hrrca.org/>

SUB-SAHARAN AFRICA

The Court of Justice of the East African Community, Arusha/Tanzania

This regional court, a partner of the Rule of Law Programme for many years, plays a key role in the process of unifying the East African Community (EAC) and views itself as an equivalent of the European Court of Justice.

> <http://eacj.org/>

Centre for Human Rights at the University of Pretoria, South Africa

The Centre for Human Rights at the University of Pretoria is a human rights organisation, renowned across Africa, with high academic standards. It offers Master's degrees in Human Rights and Democratisation and internships at various human rights organisations. Its academic programme also includes post-graduate degrees and the organisation of conferences and workshops with participants from around the world. Its collaborative work with the KAS covers a range of topics, such as the activities and significance of the International Criminal Court and the SADC Tribunal.

> www.chr.up.ac.za

Kenyan Section of the International Commission of Jurists, Nairobi/Kenia

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) was established in 1959 and is a non-governmental and non-profit organisation, which is registered in Kenya and whose members are primarily from the legal professions and the judiciary. It is a regional office of the International Commission of Jurists, which is headquartered in Geneva. ICJ Kenya's activities focus on promoting and protecting the rule of law, democracy and human rights in Kenya and in the region of East Africa. The Rule of Law Programme has already issued a large number of very popular publications in cooperation with the ICJ and organises an annual regional conference for jurists.

> www.icj-kenya.org

Strathmore University, Nairobi/Kenia

The KAS collaborates closely with the Law School of Strathmore University. The recently established faculty is known for its exceptional commitment to the rule of law and social policy. In events organised alongside the standard teaching programmes, it also dedicates itself to issues such as the protection of human rights, access to the courts and constitutional development.

> <http://www.law.strathmore.edu/>

SOUTH-EAST EUROPE

"PRAVNIK" association, Bosnia and Herzegovina

The goals of the non-governmental organisation include: assisting law students and jurists as they train and look for work, promoting democracy and human rights in Bosnia and Herzegovina, and supporting entry into the EU.

> <http://www.pravnik-online.info/>

Expert Forum, Romania

Expert Forum (EFOR) is a think tank whose activities focus on supporting reforms in the area of public policy and good governance. Its priority areas are administrative reform, integrity in the public sector, regional development, public finances, justice and anti-corruption, social policy, energy, transport and health.

> <http://www.expertforum.ro>

Romanian Center for European Policies, Romania

The Romanian Center for European Policies (CRPE) was established in 2009 by a group of experts with the aim of strengthening the role of Romania in the development of EU policies. Other goals of the CRPE include supporting the process of Europeanisation in Romania and stimulating public debate on European issues.

> <http://www.crpe.ro>

One World Romania Association, Romania

The "One World Romania Association" has set itself the goal of generating public interest in human rights and fostering the engagement of citizens in this area. The association's most important event is the annual human rights documentary film festival, One World Romania.

> <http://www.oneworld.ro/>

Center for Democracy and Human Rights, Montenegro

The Center for Democracy and Human Rights (CEDEM) was established to promote and spread awareness of the importance of successful democratic transition processes, to research and analyse these transition processes, to support the process of transformation in Montenegro, and to help strengthen civil society and the democratic process in general. The Konrad-Adenauer-Stiftung has cooperated with CEDEM since 2003, and as part of the Rule of Law Programme in South-East Europe since 2005.

> <http://www.cedem.me/en/>

Ministry of Justice, Republic of Moldova

The Ministry of Justice is responsible for developing and implementing the government's programme in the area of justice and coordinates the implementation of the strategy to reform the judicial system in the Republic of Moldova.

> <http://www.justice.gov.md/>

Bulgarian Lawyers for Human Rights, Bulgaria

Bulgarian Lawyers for Human Rights (BLHR) is a non-profit organisation which works towards sustainably implementing international standards regarding the protection of human rights in Bulgaria. It was founded in 1993 by five lawyers with different legal specialisations and is the first institution of its kind in Bulgaria and in Central and Eastern Europe. Today, BLHR works with over 25 renowned lawyers to address issues related to safeguarding human rights in Bulgaria's jurisprudence, particularly focusing on aspects of European human rights legislation.

> <http://www.blhr.org/>

Association for Development Initiatives – Zenith, Mazedonien

Zenith is a Macedonian non-governmental organisation dedicated to facilitating sustainable development and democracy. The association's training programmes, seminars, conferences and publications focus on supporting democratic processes, strengthening civil society, developing the judicial system, reducing poverty and promoting corporate social responsibility.

> <http://www.zenith.org.mk>

THE MIDDLE EAST/NORTH AFRICA

Institute of Law, Birzeit University, Ramallah

In 2006 the KAS (Ramallah office) signed a partnership agreement with the Institute of Law at Birzeit University, which was founded in 1993. The institute's goal is to contribute to developing constitutional structures and to the practical application of the rule-of-law principle in Palestine. The legislative database built up by the institute is particularly noteworthy, containing a collection of all Palestinian court judgments from the past 150 years, among other data.

> <http://lawcenter.birzeit.edu/>

Institute for Women's Studies in the Arab World – Lebanese American University, Lebanon

The Lebanese American University is one of the leading private universities in Lebanon. The Institute for Women's Studies in the Arab World (IWSAW) is part of the university and has pioneered academic research on women in the Arab world since 1973. It strives to empower women through education and development programmes. The institute also aims to serve as a catalyst for policy change regarding women's rights in the region.

> <http://iwsaw.lau.edu.lb/>

Lebanese Foundation for Permanent Civil Peace, Lebanon

The Lebanese Foundation for Permanent Civil Peace (LFPCP) is a non-governmental organisation based in Beirut, which has been engaged in advocacy work since 1987 to encourage Lebanese society to reflect upon and deal with past conflicts in Lebanon. By renewing the collective memory of the years of war, it helps foster a peaceful Lebanese civic culture, which the organisation views as a cornerstone of enduring peace. It thus aims to promote the peaceful resolution of conflicts. The LFPCP has collaborated with the regional programme on a regular basis since 2013 and joined forces with the KAS to organise an international conference on "Education and human rights culture at Arab universities".

> <http://www.lfpcp.org/>

Conseil Constitutionnel Libanais, Lebanon

The Lebanese Constitutional Council, which was established in 1993, is a political organ which reviews the constitutionality of laws passed by the Lebanese Parliament, and is entrusted with ensuring the separation of powers and respect for the integrity of the institutions. The constitutional council is independent of the judicial authorities and is thus set apart from the legal hierarchy. The Konrad-Adenauer-Stiftung's work with the constitutional council achieves a number of aims, such as facilitating dialogue between policy-makers and the judiciary.

> <http://www.conseilconstitutionnelliban.com/>

Conseil Supérieur de la Magistrature Libanais, Lebanon

The Lebanese Supreme Council of Magistracy (CSM) safeguards the independence of the judiciary and oversees the lawfulness of actions taken by the judicial authorities and the courts, as well as assessing the performance of judges and state prosecutors. As part of the regional Rule of Law Programme, the Konrad-Adenauer-Stiftung organised a seminar on "Performance indicators and evaluation of judges and the courts" in cooperation with the CSM.

CURRENT PUBLICATIONS (SELECTION)

LATIN AMERICA



Commentary on the American Convention on Human Rights, Steiner/Uribe (eds) (2013)

The first practitioners' commentary on the American Convention on Human Rights, compiled in collaboration with renowned authors in the region, is a long overdue instrument of fundamental importance to legal policy-makers and practitioners in the region. On the basis of IACHR jurisprudence, national administrators of justice are obliged to interpret and apply national law in line with the ACHR. The commentary facilitates this task by providing a succinct account of the current status of the ACHR in case law and legal scholarship.



Yearbook for Latin American Constitutional Law

Since the launch of the Rule of Law Programme, the Yearbook for Latin American Constitutional Law has collected essays by renowned authors from Latin America and Europe, whose work examines current constitutional law issues in the region in the broader sense. The topics range from substantive constitutional law, the law of constitutional procedure, the protection of basic and human rights and international law, to specialised areas such as environmental law, legal pluralism and international commercial law. With its broad range of authors from across the region, the yearbook is a benchmark for developments in the aforementioned areas of law on the continent.



Commentary on the Mexican Constitution's Norms regarding Basic Rights, Ferrer, Caballero, Steiner (eds) (2013)

This work describes the factors that shape the content of applicable human rights legislation in Mexico and defines the norms on human rights, interpreted in light of the double jurisprudence (constitutional jurisprudence and international jurisprudence). Furthermore, it outlines how national actors in the field of law, in particular judges, should acknowledge and apply these norms.



Handbook on Legal Pluralism, Martínez/Steiner/Uribe (eds) (2011)

The Handbook on Legal Pluralism is a practice-oriented instrument developed by the KAS Study Group on Legal Pluralism that is tailored to legal practitioners, containing advice from a comparative-law perspective on solving typical conflict situations arising from state and indigenous systems existing in parallel or in conjunction with each other.

ASIA



Rule of Law: Perspectives from Asia Konrad-Adenauer-Stiftung (2013)

Seven articles showcase the wide range of topics that the Rule of Law Programme in Asia seeks to address and provide a glimpse into the scope of the programme's projects. The articles examine both the theoretical frameworks and practical experiences in the countries concerned and discuss recommendations for action in the future.

> <http://www.kas.de/rspa/de/publications/35615/>



60 Years German Basic Law: The German Constitution and its Court, Bröhmer/Hill/Spitzkatz (eds), 2nd edition (2012)

Over the past 60 years, the Basic Law has proved its worth in the Federal Republic of Germany as the foundation of our democratic constitutional state. Among the most important aspects of the law are the comprehensive provisions to safeguard basic rights, which the Federal Constitutional Court formulated on the basis of a wide range of individual cases. In light of growing interest not only from European countries but also increasingly from the domain of English law, over 50 landmark judgements have been translated into English, accompanied by short explanations.

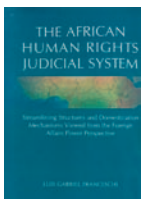
> <http://www.kas.de/rspa/de/publications/32858/>



Constitutionalism in Southeast Asia, Hill/Menzel (2008)

This three-volume publication contains the constitutions of ten South-East Asian countries, each accompanied by an introductory article on the history of the constitution and the basic structural elements of the constitutional orders. The third volume takes a more detailed look at examples of overarching questions concerning constitutional law, sometimes from a comparative-law perspective. All in all, the publication illustrates the increasing importance of constitutional law in this region. Thanks to its extensive bibliographical references, the publication can be used for both teaching and further research in this field.
> <http://www.kas.de/rspa/de/publications/21147/>

SUB-SAHARAN AFRICA



The African Human Rights Judicial System, Franceschi (2014)

The book examines the relationship between national governments and their laws and international organisations charged with protecting individual rights, such as the African Court on Human and Peoples' Rights. It makes the connection between constitutional and international human rights. The book also deals with legal frameworks and explores how they emerged within the scope of international negotiations.



The Constitution of Kenya, 2010, Lumumba/Franceschi (2014)

The book is the first commentary on the Kenyan constitution of 2010. It takes a comprehensive look at the fundamental meaning of constitutions, how the Kenyan constitution came into being and what constitutes its basic values. Furthermore, the authors provide commentary on the individual articles of the constitution.



Climate Change: International Law and Global Governance Vol. I + II, Ruppel/Roschmann/Ruppel-Schlichting (eds) (2013)

In addition to outlining the international legal bases for climate and environmental protection, the volumes also explore issues relating to climate change governance and the possibilities of slowing down or stopping this change. The authors demonstrate how international agreements can be used and which other internationally recognised rights, such as the right to life and health, can exist amid the competing climate-change priorities.

SOUTH-EAST EUROPE



Tackling Constitutional Challenges on the Road to the European Union: Perspectives from South-East European Accession Countries (2012)

The book contains papers on the regional project "Tackling constitutional challenges on the road to the European Union". The papers examine the necessary constitutional reforms in the Western Balkan states that were instituted as part of the process of European integration to strengthen the independence of the judiciary and to safeguard human rights. The papers also highlight the shortcomings of constitutional changes that have already been made. They portray the interaction between European and national constitutional bodies as a productive "catalyst" in the process of modernising these national bodies.



Conflicts of Interest and Incompatibilities in Eastern Europe - Romania, Croatia, Moldova; Ştefan/Pârvu/Podumlijak/Cozonac (2012)

The study aims to analyse checks on integrity and accountability in the public sector in Romania, Croatia and the Republic of Moldova, as well as examining the stance taken by the relevant political and institutional actors on these matters. The publication also offers suggestions on how to enhance the quality of the work of integrity agencies in the three countries.



EU Approach to Justice Reform in Southeastern and Eastern Europe, Ghinea/Ştefan (2011)

This comparative study analyses the progress of reform in the judicial systems of South-East Europe as the countries in the region integrate more closely with the European Union. One focal point of the study was to analyse the development of self-governing bodies by judges and public prosecutors acting as guardians of an independent judiciary. A further point of emphasis is identification of the strengths and weaknesses of the work of the integrity and anti-corruption agencies in the countries under examination.

THE MIDDLE EAST / NORTH AFRICA



The Palestinian Political Division and the Status of the Rule of Law in Gaza:

Selected Legal Issues, Birzeit University (ed.) (2014)

PUBLISHING INFORMATION

Published by

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Editing

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Layout

SWITSCH KommunikationsDesign, Köln

Printed by

Bonifatius GmbH, Paderborn

Photo credits

Konrad-Adenauer-Stiftung e. V.
dpa Picture-Alliance (pages 10, 30, 34)

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Druck | ID 53323-1512-1031

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Sankt Augustin/Berlin

www.kas.de/wf/en/71.7346/
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