

SAFEGUARDING HUMAN RIGHTS

GLOBAL
RESPONSIBILITY
AND CHRISTIAN
DEMOCRATIC
MISSION



Konrad
Adenauer
Stiftung

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Preface

Promoting respect for human rights worldwide is one of the most important tasks of the Konrad-Adenauer-Stiftung. In ethical as well as in political terms, this is one of the core concerns of our work in Germany and the world. Our effort to contribute towards enhancing freedom, justice, and peace within the framework of international development cooperation is absolutely predicated on the realization of the universal human rights.

Our ethical guideline is the Christian image of man, according to which every individual is a unique being created by God. Our conviction that the dignity of every human being is inviolable is based on the tenet that God created man in his own image (Genesis 1,26f.). At the same time, the concept of the inviolability of man's dignity, on which all human rights are based, forms a bond between us and one of the central concerns of the Christian churches. In its opening sentence, the 'Dignitatis humanae' declaration of the Second Vatican Council states that 'the dignity of the human person' is impressing itself on the consciousness of more and more people, and that, therefore, the demand is increasingly made 'that men should act on their own judgment, enjoying and making use of a responsible freedom, not driven by coercion but motivated by a sense of duty'. In the protestant church, the theology of human dignity similarly came to the fore again after the experience of the Second World War. Based on the protestant theology of justification, the concept of man being created in God's image serves to substantiate his individual freedom as well as his being enabled to enjoy that freedom by God's promise of salvation.

At all times, followers of the Christian or another faith have been intervening against violations of human dignity everywhere in the world. Particularly in the first half of the 20th century (but also afterwards), the concrete experience of genocide, torture, and totalitarian rule led to a more general awareness that man's dignity must be safeguarded first and foremost through human rights. Article 1 of the 1948 Universal Declaration of Human Rights (UDHR) of the United Nations states that 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.' Praised by Pope John XXIII. as a 'landmark of our time', this link between man's dignity and his rights was immediately recognized by almost all member states of the United Nations at the time.

Next to our ethical orientation, we also feel committed to the political and legal character of human rights. Article 1 of the Basic Law of the Federal Republic of Germany specifies that human rights constitute basic rights that are not only 'inalienable' but also directly enforceable, equally binding 'the legislature, the executive, and the judiciary'. The wealth of international human rights conventions that have sprung from the UDHR in the meanwhile similarly reinforced this political mandate to implement human rights, turning them into an ethical and political obligation for innumerable people, organizations, and states all over the world. This is why the Konrad-

Adenauer-Stiftung has no difficulty finding partners everywhere in the world to support us in our concern.

Another reason why human rights are so highly esteemed by the Konrad-Adenauer-Stiftung is that we regard freedom as an elementary fundamental good. As the CDU programme of principle puts it, 'it is the duty of those who are free to stand up for the freedom of those who are deprived of it'. Consequently, our duties include promoting a social policy that is guided by the standard of human rights in the field of education and culture so as to enable young people to discover a path through life on which they may find the ideal of freedom and social justice which they are seeking. While forging a link between the awareness of freedom and the awareness of responsibility, we argue at the same time against any facile attitude of cultural pessimism as well as against any egotistical over-emphasis of an awareness of freedom which ignores the responsibility towards one's fellow man and one's community that is conjoined to it. Intervening on behalf of the victims of persecution and discrimination all over the world constitutes an ethical and political purpose that guides a Christian democrat's awareness of responsibility.

Another aspect of our advocacy of human rights is the need to address our past. In Germany specifically, courageous Christian democrats rose against national socialism, resisting the tyranny that ruled the country at the time. The Konrad-Adenauer-Stiftung plays a leading role in the analysis of that resistance movement as well as of the former GDR. Virtually all the foundation's political-education activities are guided by the canon of Christian fundamental values and the goal of actively promoting constitutional democracy and human rights.

Forming the unassailable core of human rights, human dignity is threatened not only by obvious human rights violations but also, for example, wherever embryonal research is conducted in a moral void or the sick and aged are regarded as nothing more than a burden on society. In Germany, democracy and the rule of law secure a general awareness of the responsibility to uphold human rights. In many other countries, these elementary framework conditions that permit human rights to thrive sustainably are not as yet in place. This being so, the Konrad-Adenauer-Stiftung conducts valuable programmes on the rule of law in many countries of the world so as to establish a humane political environment. Together with political education on the spot, supporting democratic processes and local movements in a variety of coun-

tries forms an important element in the work of the Konrad-Adenauer-Stiftung worldwide. Collaborating with a multiplicity of local partners, our more than 70 staff posted abroad currently work in more than 100 countries of the world to promote a policy that is based on the principles of justice, human dignity, and freedom.

The contributions that follow focus on the catalogue of reasons sketched out above that will always guide our human rights activities. Our purpose is to address, and to invite the cooperation of, all those to whom the dignity of every individual is an indestructible fundamental value, and to whom protecting individual freedom forms a standard of action. As in the past, Christian democratic policy will be guided by these fundamental values in the future, for politics is inconceivable without ethical roots. This brochure documents the significance and concept of human rights, the origin of terms, traditions, and principles, and – first and foremost – the Konrad-Adenauer-Stiftung's activities to promote and implement human rights in the regions of the world. I should like to thank all members of our staff at headquarters and particularly those posted abroad very cordially for the wealth of information, comments, and corrections which we received while we compiled this brochure. Furthermore, I owe a particular debt of gratitude to Mrs Weilert LL.M. (London) for writing much of the text and for integrating the material supplied by our offices abroad.

*Dr. Gerhard Wahlers, Director of the KAS
International Cooperation branch*

RESPECTING HUMAN DIGNITY AND PROMOTING SELF-DETERMINATION



Implementing human rights worldwide is one of the most important political tasks of our time. All who are interested in the development of a communal life based on democracy, peace, and justice are ipso facto responsible for helping to perform this task. Championing human rights must ignore religious, national, cultural, and ethnic borders, following a standard that is recognized by the community of nations. This standard has been defined in the Universal Declaration of Human Rights of 1948 and the final declaration of the Vienna Human Rights Conference of 1993.

The need for political action has rarely been as urgent as it is today. At the beginning of the 21st century, terrorism acquired an international dimension and a new, particularly destructive intensity that has brought great misery to the people of a number of countries. Violent Islamist terrorists especially no longer direct their hatred solely against the state of Israel but also against the West in general, against its values, and even against those of their own fellow countrymen who either profess another Muslim creed or wish to implement democracy and the rule of law in their own country. Yet Islamist terrorism only provides some of the reasons why human rights are being infringed. All over the world, ethnic, political, or religious fundamentalist motivations as well as political persecution lead to human rights being infringed in warlike disputes and armed conflicts. The most common crimes in this respect are genocide, torture, expulsion, oppression, and deprivation of liberty.

The Konrad-Adenauer-Stiftung concentrates on joining in a responsible effort to shape a world in which people can live a humane life. The scope and manner in which the foundation supports human rights depend on current political events. While human rights activities do influence the shape of politics, they also need to buttress and bolster its deficiencies.

In recent years, the overall political and economic situation has been changing more and more quickly. Whereas the front line between West and East was clearly demarcated after the Second World War, new conflicts awaiting their solution arose once the Cold War had ended. When the block formed by the Soviet Union and its satellite states dissolved, bitter secession fights and armed ethnic conflicts flared up in Southeast Europe. However, this is not the only region where the world has changed from the ground up. At the moment, Asia is developing into an economic and political power which, strengthened by its newly-acquired self-confidence, is making more and more demands on the international stage. What is more, international terrorism and the threatening 'clash of cultures' have added an entirely novel dimension to politics that is no longer definable in terms of power blocks and countries alone. All these events greatly affect the people, their rights, and their living conditions. Next to civil liberties, social, economic, and cultural rights are growing more and more important. Nations and people are calling so loudly for self-determination that they can no longer be ignored.

Thus, the global community sees itself confronted with a never-ending succession of challenges, a process in which human rights are moving more and more into focus. Since 1945, a differentiated system to protect human rights has been developing at the global and occasionally at the regional level. The most recent culminating point of this process was the creation of the International Criminal Court which will help to ensure that severe human rights violations no longer go unpunished in the future. The first judges of the Court took the oath of office in 2003.

Shaping Globalization

However, whether human rights are implemented or not still largely depends on those holding political responsibility in the various countries. Even a state that has entered into international commitments will not necessarily fulfil its obligations at the national level. This is where the international work of the Konrad-Adenauer-Stiftung begins. Its educational programmes serve to inform decision-makers about the way in which their rights and obligations are interconnected. Its programmes on the rule of law are particularly effective in helping to strengthen democratic and liberal forces, thus establishing framework conditions within which human rights are accepted and may actually be put into practice. In pursuit of this goal, the foundation has been cooperating with partners in many countries of the Earth since the early '60s. Then as now, its international activities focussed on encouraging democracy and development, promoting understanding across national and cultural borders, providing help towards self-help, and fighting the causes of poverty and environmental destruction. On the global scale, this is a piece of active human rights policy dedicated to serving peace.

In its work, the Konrad-Adenauer-Stiftung is guided by its Christian democratic understanding of politics. Especially in these times of globalization and intercultural dialogue, it is important for everyone to know and avow their roots. People in Asia and Africa keep arguing that Western values are not universal and therefore do not apply equally on each and every continent. Cultural and religious customs and traditions are used as a pretext for denying human rights, some of them fundamental. In the view represented by the Konrad-Adenauer-Stiftung, respect for human rights can indeed go hand in hand with the recognition of different cultural traditions, provided the latter are not used as a pretext for curtailing human rights. Instead, a way must be found of realizing human rights and fundamental liberties as a basis for the peaceful

coexistence of a family of peoples independently, if need be, of political, economic, and cultural factors as well as of a country's level of development.

At that, there are very grave deficits to be found in the various regions. People in China, for instance, still languish under a dictatorial communist power machine that controls and directs their lives well into their private sphere. Free access to the internet and any outspoken opposition are suppressed, and even highly personal rights such as the right to a family are blatantly infringed by a strict 'one-child policy' and the enforcement measures related to it. In many states that are basically Islamic, freedom of religion, if it is enshrined in the law at all, is not worth the paper it is printed on. What is more, women are discriminated against and individual liberties infringed under religious pretexts. In Latin America, many young democracies find it very difficult to overcome poverty and repair their ruinous lack of education. In Central and South-Eastern Europe, states are confronted by the problem of having to eliminate the traces of their old authoritarian structures while building up a genuine constitutional democracy at the same time. For decades, governments in Africa had been condoning or even actively committing human rights violations of the gravest kind, denying the most elementary rights to their people. People in Africa especially suffer from widespread poverty, armed conflicts, and the death of AIDS of the middle generation in large parts of the continent.

In all these regions, action is needed to enable people to live a life of dignity and self-determination. For the people there, the Konrad-Adenauer-Stiftung is a reliable partner, contributing greatly to the global spread of human rights activities through its responsibility and competence in the socio-political field. The foundation's work in general and its development-policy measures in particular are based on the conviction that the implementation of human rights, opportunities for political and societal participation, and the introduction and permanence of a liberal, pluralist societal order form indispensable prerequisites both for the peaceful coexistence of the people and for the solution of their social and economic problems.

“ALL HUMAN BEINGS ARE
BORN FREE AND EQUAL
IN DIGNITY AND RIGHTS.”



Chapter 1

CONCEPT, IDEA, AND DEVELOPMENT OF HUMAN RIGHTS

THE ROOTS OF HUMAN RIGHTS IN THE HISTORY OF HUMAN THOUGHT, CHRISTIANITY, AND POLITICS

To address the development of human rights in politics and the history of human thought, we must first deal with the question of what the meaning of 'human rights' actually is. Most of the answers given to that question fall back on explanations in which human rights are described as "birthrights", "inalienable", "inviolable", or "innate" in all human beings. We may doubt, however, whether these explanations suffice on their own. From the Christian point of view, the case for human rights must be placed on a broader foundation.

In the history of human thought, some of the roots of the insight that every human being is born with a certain dignity are to be found in the Jewish faith, in the fundamental convictions of Christianity, and in ancient philosophy. One of the key ideas of Judaism was and is the view that God created man in his own image. The image of man that emerges from the Genesis chapter of the Old Testament shows that man is not the product of a random coincidence but a being called upon to share in the responsibility of the creator and imbued with the special value of being God's own image. This understanding of man was cast in more concrete terms by Christianity, according to which Jesus Christ died for all human beings, independently of the colour of their skin, their nationality, and their gender. His death in penance is a particular manifestation of God's esteem for mankind. Each individual's personal accountability to God as well as the commandment to "love thy neighbour" form core elements of the Christian faith. Consequently, the Christian dogma of creation and redemption embodies the idea of universal human dignity. While it is true that this idea failed to give birth to human rights for a long time, it played a crucial role for the concept of and, ultimately, the demand for universal human rights.

Greek and Roman philosophy, noted for its capability to abstract and formulate basic premises, similarly contributed towards the concept of human rights. The stoics took the first tentative steps towards thinking that all men are equal and invested with an innate dignity. To this day, we preserve the stoics' idea that the equality of all human beings transcends the inequality that exists in real terms. It is reflected in the Christian and Jewish faith in creation which regards every human being as the image of God.

As far as nation states are concerned, however, the precursors of our modern natural-law theory were more important than the philosophers of antiquity. Among these, the thinking of Thomas Hobbes, John Locke, and Jean-Jacques Rousseau on contract and state theory laid the foundations for the assumption of natural rights as part of the fabric of the state, such as freedom and equality. One figure who deserves particular mention in the development of human rights is that of Samuel Pufendorf who set major highlights in his publications on natural law and, more specifically, the assignation of dignity to every human being. Although Pufendorf (1632-1694) did not regard human beings as equally gifted either intellectually or physically, he believed them to be naturally imbued with equal freedom and equal dignity.

In Europe, human rights had their breakthrough in the political field only during the French revolution. The road there was paved by the Magna Charta Libertatum (1215), the Bill of Rights (1689), and the Virginia Bill of Rights (1776). As the Magna Charta Libertatum accorded rights only to the nobility and the Bill of Rights was mainly concerned with the rights of parliament, only the Virginia Bill of Rights may, in the light of our present understanding of human rights, be regarded as the first milestone on the way towards universal human rights. Postulating that, by their nature, all human beings are equally free and independent and endowed with certain rights from

birth, the Bill specifically mentions the right to life and freedom, property, happiness, and security. Proclaimed only a short time later, the Declaration of Independence of the United States solemnly states that all men are created equal and endowed with certain inalienable rights by their creator. In Europe, however, the Virginia Bill of Rights was noted mainly for expressing the idea of freedom, while the "Déclaration des droits de l'homme et du citoyen" of 1789 mainly promoted the idea of universal equality. In Germany, the idea of human rights took somewhat longer to take root. Although Immanuel Kant had earlier formulated his idea of a fundamental right to freedom inherent in every human being in his "Metaphysics of Morals", a catalogue of fundamental rights was finally appeared only in the Paulskirche Constitution of 1849 which, however, never acquired legal validity. The only consolation is the fact that the Paulskirche Constitution had a signal effect on developments in the various German states.

During the enlightenment and the French Revolution, a new, modern concept of human rights was formed which concentrated more on man's gift of reason. This made man, as Kant put it, a "purpose on himself" in all his legal and political relations. Although the plight of the poor and the powerless, justice, equality, and fraternity had been major concerns before, the concern about the dignity and honour of the oppressed from now on went hand in hand with a greater awareness of human freedom. Very soon, the conviction arose in response to this that human dignity, assuming that it is inviolable and therefore absolute, cannot be founded alone either on the experience of human beings or on a consensus among them, but only on God. Human rights could find permanent roots only if the freedom of man and his unique dignity were their key concern.

In the 20th century, another aspect emerged which had been of secondary importance in the late 18th century – the concern about the status of the individual as a person. If human rights today form one of the world's fundamental humanitarian concerns, this is mainly a reflection of the experience of totalitarian rule that marked the 20th century. The experience of illegality in the form of persecution, unlawful arrest, war, expulsion, torture, and genocide on the one hand as well as the experience of scientific and technological progress, education, culture, political freedom, and democratization on the other served to sharpen an awareness in most people that human beings have a universal right to be free from any suffering that might be arbitrarily inflicted upon them by others.

In the Christian world, this awareness assisted the biblical idea of man's unique dignity in regaining its crucial importance after the Second World War. Being created in God's own image, every individual is invested with this dignity as a person. Reflected in condensed form in the *imago dei* formula with its genuine anti-totalitarian import, this idea became the basis of our legal thinking after 1945. In the substantiation of human rights, this reference to God acquired the character of an absolute which serves, on the one hand, to prevent us from replacing it by another absolute and, on the other hand, to remind us that what we have achieved so far can always be improved upon.

Human Rights Policy of Christian Churches

Today, human rights are of decisive importance for our ideas about how societal coexistence should be ordered. Having refuted human rights for a long time, the Christian churches are now to be found in the foremost front line when it comes to reminding people of the normative power of human rights everywhere. The fact that human rights today play such an eminent role in the social teachings of the churches reflects the political and societal change that has left its stamp on our modern ideas of freedom and equality. In consideration of the experience of totalitarianism, however, the social pronouncement also reminds us that commitment to human rights should not be exclusively based on an anthropological concept which expresses almost unlimited confidence in man's reason, but should also offer answers to questions about the meaning of human life, together with an ethical foundation for them. Even though the idea of human dignity was gradually established as an institution in international law as the codification of human rights progressed after 1948, the question about man himself and the protection of the transcendental quality of the human person remains essential for the Christian churches. It is precisely this background against which the Christian churches feel that the 'rights of the poor' in particular more and more often call for special measures to combat human rights violations. In performing this mission, they quite rightly demand to be protected by the political and judicial sphere.

THE DEVELOPMENT OF HUMAN RIGHTS IN UNIVERSAL INTERNATIONAL LAW

In traditional international law, which was mainly concerned with regulating relations among sovereign nation states, the individual had hardly any role to play. The so-called principle of non-interference, an outcrop of sovereignty, dominated relations between the states. To the extent that international law granted any individual rights at all (e.g. in the law of aliens), it was only the state whose citizens had been injured that could assert any rights vis-à-vis the state that had infringed them. Individuals had no immediate claim in international law against a foreign state. As the name suggests, the law of aliens affords protection only to aliens but not to citizens vis-à-vis their own state.

Shocked by the horrors of national socialism, people saw that human rights should not be allowed to remain a *domaine réservé* of individual states but should be regarded as a matter for the international community. For this reason, the goals of the United Nations were not restricted to safeguarding global peace and international security when the organization was founded in 1945 but expressly included the observation of human rights. However, the provisions laid down in the Charter of the United Nations are not very concrete as far as individual human rights are concerned. Consequently, the 'Universal Declaration of Human Rights' (UDHR) promulgated in the form of a General Assembly resolution in 1948 acquired outstanding importance. The rights listed in this declaration represent a compromise between the Western and the communist concept of human rights: While the West tended to emphasize civil liberties, the socialist countries accorded greater weight to social and economic rights. As a mere resolution of the General Assembly, the UDHR is not binding in international law. Because of its eminent political significance, however, the general assumption meanwhile is that it is legally binding and/or that some of the rights embodied in it have acquired validity in customary law.

Human Rights of the First, Second and Third Generation

After prolonged international wrangling, another milestone on the way to the protection of human rights was set some 20 years later: In 1966, agreement was reached on an international covenant on civil and political rights (Civil Covenant) as well as on an international covenant on economic, social and cultural rights (Social Covenant). It was only ten years after its adoption that the Civil Covenant reached the number of ratifications needed to become part of international law. By now, most states have ratified both covenants. The Civil Covenant mainly codifies civil liberties (such as the right to life, freedom, and security; the prohibition of torture; freedom of religion, conscience, opinion, and peaceful assembly). Serving to defend the citizen against the state, these rights are often categorized today as human rights of the first generation. In the Civil Covenant, the states parties bind themselves to undertake any legal and other steps necessary to put these rights into effect. Specifically, states are bound to establish processes by which individuals may lodge domestic complaints about any injuries of their rights resulting from the Civil Covenant.

The first optional protocol to the Covenant is of particular importance because it establishes a complaint process for individuals at the international level. For the first time ever, it gives individuals a right to protest against infringements of their personal rights under international law. However, this is possible only if the relevant optional protocol has been signed by the state in question. About two thirds of the states parties to the Civil Covenant have done so. Another major step on the way towards enhancing the legal force and enforceability of human rights was the creation of the Human Rights Committee (Art. 28ff. of the Civil Covenant). Its primary duties are to review and generally comment on the reports of individual states on the implementation of their duties under the Covenant. According to the first optional protocol, the duties of the Committee further include reviewing individual complaints. In addition, the Committee has been contributing towards the interpretation of individual provisions of the Covenant by its so-called 'general comments' since 1981.



Supplementing the Civil Covenant, the Social Covenant embodies economic, social, and cultural rights or ESC rights, for short. As indicated above in the context of the UDHR, the socialist states placed particular importance on these social rights at the time as they were concerned less with the freedom of their citizens and the protection of their property and more with the communist concept of the state as a centralized organization of public welfare and distribution. During the Cold War, civil liberties and social rights occasionally confronted each other in the ideological dispute between the different political systems. Once communism had collapsed and the geopolitical climate had changed in consequence, it was increasingly thought that the ancient dualism would be superseded by the three levels of legal obligation that are commonly described as the duty to respect, the duty to protect, and the duty to fulfil, i.e. to provide infrastructures and resources. These three fundamental duties apply equally in the domestic sphere as well as in international cooperation.

ESC rights are occasionally called human rights of the second generation. This sequence of generations is designed to reflect the development of human rights over time from their historical origins as rights of defence. To be sure, this terminology suggests that the development of human rights consists of separate elements arranged in strict temporal succession. However, as the simultaneous adoption of the Civil and Social Covenants shows, human rights came to be recognized in a closely interwoven process. The ESC rights aim to encourage states to ensure material living conditions that are conformable with human dignity. Thus, the Social Covenant mentions, *inter alia*, the right to work, trade union membership, social security, maternity benefits, an adequate standard of living, health, and education. Whether or not ESC rights are 'genuine' human rights is in dispute to this day. A mere glance shows that the formulation of social rights is less stringent and clear, resembling that of political targets. This being so, the way in which these rights are fleshed out is left largely to discretion, raising questions about their capability of adjudication. Added to this is the fact that the implementation of social standards depends very much on the economic situation prevailing in a state.

The third generation of human rights mainly includes the 'collective' and/or 'solidary rights' that have been moving into the focus of international attention only recently. We are here looking at rights accorded to a specific group as a collective. The rights usually men-

tioned in this context include, for instance, the right to development, a healthy environment, democracy and codetermination, peace, and security. Many of the details remain moot and volatile. Mainly advanced by developing countries, these rights met with little attention from the international community in the past.

However, a turning point in the recognition of these collective rights appears to be emerging gradually. The general perception of these rights is growing, not least because of their codification in the African human rights charter ('Banjul Charter on Human and Peoples' Rights'). The right to development in particular has meanwhile found many advocates outside the developing countries. Thus, the United Nations General Assembly recognized the right to development in a resolution as early as 1986. Article 1 says, "(1) The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. (2) The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both international covenants on human rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources." This right to development was confirmed by the Vienna World Conference of 1993 as well as in the Millennium Declaration of the United Nations of September 2000. However, the main point for which these collective rights are criticized is the vagueness with which the beneficiary group (what is a 'people' or a homogenous group?) and the material entitlements that are supposed to spring from these rights are described.

This third generation shows that defining human rights is a process that will go on in the future. Past and present evidence indicates that human rights constitute a response to the experience of injustice under certain political and social conditions: While civil liberties evolved as the nation states of modernity formed, and social rights gained in weight because of the economic transformations engendered by the industrial revolution, the rights of indigenous peoples, minorities, and other groups moved into focus as decolonization progressed and power blocks dissolved.

MILESTONES ON THE WAY TOWARDS THE INTER- NATIONAL PROTECTION OF HUMAN RIGHTS:

MAY 4, 1910

INTERNATIONAL CONVENTION TO SUPPRESS THE TRAFFIC IN WHITE SLAVES

SEPTEMBER 30, 1921

INTERNATIONAL CONVENTION AGAINST THE TRAFFIC IN WOMEN AND GIRLS

SEPTEMBER 25, 1926

CONVENTION AGAINST SLAVERY

JUNE 26, 1945

UN CHARTER

DECEMBER 9, 1948

UN CONVENTION AGAINST GENOCIDE

DECEMBER 10, 1948

UNIVERSAL DECLARATION OF HUMAN RIGHTS (GENERAL ASSEMBLY RESOLUTION)

JULY 28, 1951

GENEVA REFUGEE CONVENTION

DECEMBER 21, 1965

UN CONVENTION AGAINST RACIAL DISCRIMINATION

DECEMBER 19, 1966

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

DECEMBER 19, 1966

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

DECEMBER 18, 1979

UN COVENANT ON DISCRIMINATION AGAINST WOMEN

DECEMBER 10, 1984

UN CONVENTION AGAINST TORTURE

NOVEMBER 20, 1989

UN CONVENTION ON THE RIGHTS OF THE CHILD

DECEMBER 18, 1990

UN CONVENTION ON THE RIGHTS OF MIGRANT WORKERS

JUNE 25, 1993

VIENNA DECLARATION

JULY 17, 1998

ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT



Interim Results

By now, the number and scope of human rights agreements have reached considerable dimensions. This being so, agreeing on new conventions is not as important as putting into practice what has been achieved so far, be it by implementing human rights in the signatory states or by recruiting new parties. It is against this background that we must view the Vienna World Conference whose final declaration, supported by 171 states, confirms the universal scope of human rights and defines concrete endeavours and targets for the future. To improve the human rights situation worldwide, and to follow up a recommendation made in the Vienna Declaration, the Office of the UN High Commissioner for Human Rights (OHCHR) was created in 1993 to stop violations of human rights, promote international cooperation on the protection of human rights, and strengthen the UN human rights system.

The work of the OHCHR is guided by the final declaration of the Vienna World Conference. Another major step to promote the implementation of human rights worldwide was taken when the UN General Assembly created the UN Human Rights Council in March 2006. Replacing the much-criticized Human Rights Commission of Geneva, the Council reports to the General Assembly. The future will show whether or not the UN Human Rights Council is capable of fulfilling the hopes placed in it.

Next to human rights activities at the level of the United Nations, non-governmental organizations are the most important promoters of human rights protection. Most prominent among these are Amnesty International (founded in 1961) and Human Rights Watch (founded in 1975).

INTERNATIONAL CRIMINAL JURISDICTION

The community of states was well aware of the need for international criminal jurisdiction from the end of the Second World War onwards. The international military tribunals instituted at Nuremberg and Tokyo marked the beginning of the criminal prosecution of atrocities for which individuals could be held accountable. Next in line were the ad-hoc tribunals instituted in 1993 to deal with the crimes committed in ex-Yugoslavia, and in 1994 to adjudicate the genocide in Rwanda. However, the punishment meted out by these tribunals was selective, and many of the persons responsible were never brought to book, which encouraged fresh crimes. Endeavours to establish a universal and permanent criminal court finally came to fruition at the end of the 20th century. In 1998, agreement was reached on the so-called Rome Statute which provided for the creation of an international criminal court. In 2002, the statute came into force, having been ratified by 60 countries. All member states of the European Union are to be found among the states parties, which numbered 100 as early as 2005. Then again, a number of important states, including the USA, Japan, Russia, China, and India, have not acceded to the Statute to this day.

Ceremonially opened in March 2003, the International Criminal Court employs 18 judges, one of them German. According to Art. 5, the crimes that fall within the jurisdiction of the court include genocide, crimes against humanity, war crimes, and the crime of aggression. All except the last are defined in detail in the following articles of the Statute where a number of punishable offences are enumerated. The International Criminal Court may step in only if a crime has not been prosecuted on the national plane (see Art. 17 of the Statute).

“THE FREE ARE OBLIGED
TO INTERVENE ON BEHALF
OF THOSE WHO ARE DENIED
FREEDOM.”



Chapter 2

ON THE UNIVERSALITY OF HUMAN RIGHTS

REGIONAL PROTECTION OF HUMAN RIGHTS

In addition to what has been achieved at the level of the United Nations, some regions have developed their own systems to protect human rights. In Europe, America, and Africa, individual protection mechanisms have been established which incorporate not only a regional human rights charter but also, and more importantly, a legal process by which citizens may assert their fundamental rights. Regional human rights protection is based on the idea that the states of a region may achieve a higher level of commitment because of their geographical and cultural proximity, enabling the standard of human rights to be raised to a level that could not be achieved on the global plane as yet. In the view of the states concerned, it is important that guaranteed human rights should reflect the cultural traits of a region. What is even more important is the fact that sovereign states find it comparatively less arduous to submit to the jurisdiction of a regional court of their own cultural character. Not only is the level of commitment thus achieved comparatively high; it has also been found that people are more prepared to make use of a regional complaint process. Statistics clearly show that the number of individual complaints lodged under the supplementary protocol of the UN Civil Covenant is much smaller than, for instance, the number of cases brought before the European Court of Human Rights.

The system to protect human rights established in Europe has proven the most sustainable and effective so far. In this context, we must distinguish between various levels, namely that of the European Council, that of the Organization for Security and Cooperation in Europe (OSCE), and that of the European Union (EU), which is most vividly present in the public mind.

In Europe, the European Council was foremost in initiating and promoting human rights activities. Its most important and best-known convention is the European Convention on Human Rights (ECHR) of 1950 which, coming into force in 1953, has meanwhile been amended in 14 protocols. The fact that all 46 member states of the European Council are parties to the Convention shows how large its scope is. The first chapter contains a catalogue of protected human rights, while the second specifies the rules of procedure of the European Court of Human Rights. While the main purpose of the Convention is to assure classic civil liberties, the jurisprudence of the Court keeps in touch with developments in the standard of human rights, thus turning the Human Rights Convention into a 'living instrument'.

At the level of the European Council, there are other treaties to protect human rights besides the Convention. Among these, the European Convention for the Prevention of Torture deserves mention, which features its own precautionary mechanism. Another instrument deserving attention is the European Social Charter, which was adopted as early as 1961 to promote ESC rights. However, it is second in importance to the Human Rights Convention because of the much lower number of its states parties and



its comparatively low standards of commitment. Further relevant treaties include the European Convention on the Legal Status of Migrant Workers (1977), the European Convention on the Exercise of Children's Rights (1996), and the Bioethics Convention (1996). In addition, the office of Commissioner for Human Rights was established by the European Council in 1999.

At the level of the European Union, on the other hand, the protection of human rights evolved much later and in a comparatively limited scope. The dimension of human rights moved into focus only as the reach of the Union expanded. After the preliminary spade-work had been done by the Convention on Fundamental Rights, a charter of fundamental rights was finally proclaimed by the European Council meeting at Nice which, however, has not yet come into legal force. Having been incorporated in the constitutional treaty, it will now become legally binding at long last, provided the treaty is ratified by the EU member states. However, these fundamental rights are binding only at the community-law level. This means, on the one hand, that the EU must observe these fundamental rights in the formulation and interpretation of community legislation. On the other hand, member states are bound to observe the same fundamental rights in the implementation of community law. At the same time, the fundamental rights of the community cannot be applied in matters unrelated to community law.

America may be regarded as a pioneer of the universal protection of human rights because the member states of the OAS adopted the American Declaration on the Rights and Duties of Man in 1948, a few months before the UDHR was proclaimed by the UN General Assembly. It specifies rights (Art. 1-28) as well as duties (Art. 29-38). Also known as the San José Covenant, the American Human Rights Convention (AHRC) was passed in 1969 and came into force in 1978. It mainly covers civil and political rights. In contrast to the rules of procedure of the European Court of Human Rights, individuals are not allowed to assert their rights in court but may only lodge complaints with the commission, which may then take the matter to court if it sees fit. The system differs from the protection of human rights in Europe in that proceedings may be brought only against states that have expressly recognized this jurisdiction before.

The Inter-American Commission for Human Rights is not exclusively an organ of the Convention; it was established as early as 1959 to promote human rights in general. In 1965, ruling on individual complaints was added to its portfolio of competences. Today, its duties relate to the AHRC as well as to the American Declaration on the Rights and Duties of Man. Those activities of the Commission that relate to the Declaration are of particular importance with regard to the AHRC because the latter has not been ratified by some states, such as the USA and Canada.

In Africa, too, a system has been established recently to protect human rights. Adopted by the African member states of the Organization of African Unity (OAU) in 1981, the Banjul Charter on Human and People's Rights came into force in 1986. Featuring a number of peculiarities relating to regional conditions, the Charter has meanwhile been ratified by all OAU member states. Its very preamble reflects to some extent the tension that exists between universal human rights and characteristic cultural features, for while it begins by referring to the Universal Declaration of Human Rights, it reminds readers immediately afterwards that they had better understand human rights from the point of view of the historical traditions and values of African civilization. In the body of the Charter, civil, political, and social rights are to be found next to the rights of peoples (collective rights) and an Article on the duties of the individual (mainly towards the family, the society, and the state). This makes the Banjul instrument the first to guarantee all three generations of human rights in a single human rights charter. Given Africa's history, however, there is some danger that the catalogue of duties might be abused by African governments to make painful cuts in civil liberties. Thus, the protection of the family and the society might be used as a pretext for silencing regime critics.

Based on Art. 30ff. of the Banjul Charter, the African Commission for Human and People's Rights was created to promote human rights. Among other matters, its duties include conducting studies and investigations in the field of human rights, assisting African legislators in incorporating human rights in their codes of law, and interpreting provisions of the Charter on request. In addition, a reporting process was established under which member states are bound to explain at two-year intervals what they are doing to implement the rights guaranteed in the Charter. All in all, the work of the Commission remained extremely marginal for a long time, partly because of the prescription of confidentiality contained in Art. 59 of the

Banjul Charter. Handled restrictively, this clause was the reason why human rights violations were not brought to the attention of the public. However, the Commission has now begun at long last to publish some information about pending and closed complaint proceedings.

Higher hopes hang from the African Court of Human Rights established on the basis of a supplementary protocol appended to the Banjul Charter in 1998 (in force since 2004). Both the Commission and the states parties may bring actions before the Court. Individuals and non-governmental organizations may do so only if the states in question have expressly declared their submission to the proceedings. The impact of this deficit is mitigated slightly by the fact that Art. 55 of the Banjul Charter empowers the Commission to appeal to the Court on the basis of individual complaints. The Commission may decide at its own discretion whether to conduct its own proceedings first or file a complaint straight away. The Court itself is competent to rule not only on the rights laid down in the Banjul Charter but also – a novelty compared to the European and American human rights courts – on other relevant human rights conventions previously ratified by the parties.

In the field of human rights, further regional agreements of outstanding importance include the OAU Refugee Convention of 1969 (in force since 1974), the African Charter on the Rights and Welfare of the Child, which was adopted in 1990 and came into force in 1999, and the Protocol on the Rights of Women in Africa adopted in 2003, which came into force two years later. All these instruments extend specific protection to particularly disadvantaged population groups.

Another instrument that deserves mention is the Arab Charter of Human Rights which, although adopted in a resolution by the Council of the Arab League in 1994, has not yet come into force for lack of ratification. As this first draft was subjected to a great deal of criticism, the Standing Committee on Human Rights of the Arab League has meanwhile produced a second draft of an Arab human rights charter which, however, has not been adopted by the Council of the Arab League so far.

At the end of the day, binding, regionally-institutionalized human rights systems exist so far only in Europe, America, and Africa. All that exists in Asia is a non-governmental human rights Charter without binding effect ("Our Common Humanity") which, developed by the Asian human rights commission together with more than 200 NGOs and numerous experts, was proclaimed in South Korea in 1998 after three years of preparation.



In view of the fact that Asia does not yet have a binding human rights system (such as those of Europe, America, and Africa), the ASEAN ISIS Colloquium on Human Rights supported by the Konrad-Adenauer-Stiftung plays a key role as a step on the path towards enforcing human rights in Asia. ASEAN ISIS (ASEAN Institute of Strategic and International Studies) is an amalgamation of various NGOs that is represented in almost all ASEAN member states. The Colloquium on Human Rights was founded in 1993, its objectives being to achieve a regional consensus on human rights, to enable an open human rights discussion, and to set the stage for a regional human rights institution. While the first meeting was taken up by the individual ASEAN states sharing their different views on human rights, the discussions of this year's conference turned into a profound debate on various subjects that affect human rights issues in the region, addressing pressing problems such as women's rights, refugees, social development, and the consequences of regional problems. What has to be highlighted is the composition of the Colloquium, which consists of government officials as well as non-governmental human rights activists, thus giving both sides an opportunity to gradually reconcile their sometimes contradictory ideas.

HUMAN RIGHTS AND THE DIVERSITY OF CULTURES

Some of the human rights laid down in the Universal Declaration of Human Rights have meanwhile acquired universal validity in customary international law. Human rights of out-standing importance, such as the prohibition of slavery and torture, enjoy the rank of *ius cogens*, or cogent international law. In addition, elementary human rights are regarded as rights *erga omnes*, meaning rights which all states should be interested to uphold, not only those directly concerned. The consequence of this is that human rights violations are no longer regarded as purely internal affairs.

From the point of view of substantive law, the case for the universal validity of human rights may be based on the fact that practically all states are members of the UN and are accordingly bound to recognize human rights (Art. 1 of the UN Charter). In addition, most states have ratified several of the most important UN human rights conventions. However, merely referring to relevant instruments does not do justice to the legal nature of human rights. Especially in their historical development, invoking certain inalienable rights as "natural" or "anterior to the state" was instrumental in the initial codification of corresponding laws. Human rights, therefore, must be enforced no matter whether the state in question has recognized them or not.

Although universal human rights were once again affirmed in the declaration of the Vienna World Conference (1993), the critics of universality refused to be silenced. Because the development of human rights is mainly rooted in Europe with its Christian traditions, and because it was speeded up by the Enlightenment there, their universal validity is being challenged by several countries in Asia and Africa. Occasionally, Western countries are blamed for 'cultural imperialism'. Invoking their own characteristic cultural and religious features, non-Western countries reject the idea that certain human rights should be universally binding.

The controversy about the universality of human rights is concerned not so much with challenging their validity in principle and more with rejecting the concrete content of a catalogue of human rights inspired by Western values. Therefore, the dispute is about the content of human rights, their optional restriction, and the relationship between the different generations of human rights.

A closer look clearly shows that those states which disagree with the idea of universal human rights often employ allegedly culturerelated "religious", "ethical", or "legal" arguments to defend the deficiencies in their implementation of human rights. The Sharia of Islam and the neo-Confucianism of Asia furnish particularly popular grounds for rejecting Western human rights concepts. But even in Islam or in Confucianism, interpretations and traditions of thought can be identified that might substantiate the universality of human rights. To be sure, these traditions and interpretations are often used as power tools in the political and legal sense, particularly by authoritarian and dictatorial regimes. It is certainly true that cultural and/or religious traditions do sometimes infringe human rights, but human rights violations all too often form distressing elements of the power base of corrupt, nepotistic, and oligarchical regimes and their accessories, or else they are used to secure the privileges of individuals or groups. Last but not least, human rights violations such as the oppression of women serve to maintain patriarchal structures.



Advanced mainly by Islamic critics, the argument that human rights are a product of the secularization of Western society ignores the fact that in Germany, for example, representatives of the Church are among the most active promoters of human rights. The recognition of a personal dignity that is part of every man's birthright is largely based on the insight that every human being is created in the image of God. The crucial point is, however, that everyone should have the right to decide about their own faith and may not be constrained, as some Islamic countries do to this day, by threats of punishment to embrace Islam and its attendant religious duties, such as the veiling of women.

In addition, some countries in the Asian and African region find fault with the preponderantly individualist orientation of human rights. In their respective cultures, the commonweal concerns of families, social or ethnic groups, and the community at large enjoy top priority. Countries with such a national mindset tend to accord less importance to the rights and more importance to the duties of the individual, mainly towards the community. Such criticisms ignore the fact that human rights are circumscribed by the rights of other individuals even in the Western interpretation. An individual may enjoy his or her liberties only as long as the rights of others are not infringed. Thus, for instance, the Federal Constitutional Court of Germany quite rightly emphasized that the image of man reflected in the Basic Law is not that of an "isolated sovereign individual" but of an individual that must be seen as part of the community. The crucial point is, however, that the "inherent value" of a person must remain inviolable. No individual may be constrained to sacrifice the individuality granted him to the concerns of the family and the society, because this would rule out human rights altogether.

The allegation that the establishment of Western human rights would be tantamount to cultural imperialism falsifies the facts by compression. For the fact that human rights are now generally recognized in the West is not only a natural manifestation of Western culture but also the result of a long, tenacious struggle for human rights. Thus, the often-quoted Magna Charta Libertatum (1215) knew nothing of human rights for each and every citizen but was merely intended to secure liberties for the nobility. Even in the history of the Church, we find institutions like the prosecution of heretics and the burning of witches that are irreconcilable with our present understanding of human rights. Therefore, the Enlightenment, the political uprisings, and all the other past actions to

promote liberties and social rights are nothing but challenges to ossified values and traditional thought patterns.

Thus, instead of being an exclusive product of traditional Western thought, human rights developed mainly from the people's experience of injustice in their respective political and economic environment. This is why equivalent developments may be observed in other regions and cultures. According universal validity to human rights implies discarding any specific religious or even theological foundation. Although the evolution of human rights from their own tradition may be a clinching argument for Christian organizations, the awareness of the universal character of human rights in no way distracts them from promoting the freedom of religion, development cooperation, and assistance for refugees and people in distress. People living in any society or nation whatever should have the right to make autonomous and responsible decisions about what kind of political, social, economic, and cultural system they wish to live in. Consequently, telling people from other cultures how they should live their lives is not the point at all. The point is, however, that it should be the people themselves who decide about their rights, not any dictatorial powers-that-be. There is no way in which human rights violations may be justified by differences in cultural self-interpretation.

The fact remains that respecting a universal standard of human rights in no way implies negating the indigenous culture and identity of a state. Rather, there is ample room left for states to assert their cultural interests while recognizing human rights at the same time. Although human rights do not claim to be a "substitute religion", they do need comparatively deep ethical roots. In that sense, it is mostly not religion itself which comes into conflict with human rights and their allegedly strictly Western nature but the interests of elites of leaders or otherwise privileged persons who take advantage of religion to buttress their power structures.

Chapter 3

TRADITION AND PRINCIPLES OF THE HUMAN RIGHTS ACTIVITIES OF THE KONRAD- ADENAUER-STIFTUNG

HUMAN RIGHTS – OUR CORE MISSION

The Konrad-Adenauer-Stiftung looks back on a long tradition of working for human rights. In principle, its mission to promote human rights results from the Christian image of man to which it has been committed from the beginning. The recognition of man as the "imago dei" and the Christian appeal for compassion for our fellow man caused the Konrad-Adenauer-Stiftung to make human rights activities one of its focal points and competences right from the start.

In that sense, human rights constitute not only a "cross-sectional task" but an inherent element of the foundation's work. The core issues addressed by the Konrad-Adenauer-Stiftung directly relate to the promotion of human rights. Being a political foundation, it conducts regionally specific dialogue programmes on the rule of law and other subjects in which particular attention is paid to the implementation of constitutional structures worldwide. Whereas democracy and human rights used to be viewed as different categories of the constitutional order as well as of the rights of the individual, the interactions and interconnections that exist between the two are clearly recognized today. Wherever the population is not allowed to participate, abuses of power and violations of human rights are a foregone conclusion. What is more, the opportunities for minorities and socially disadvantaged population groups to gather political weight behind them are greatest in a democracy. For this reason, promoting an understanding for, as well as the implementation of, the elements of the rule of law is so important. The awareness that this is so must evolve within the population itself. What is needed, therefore, is to provide education and political information for as large a part of the population as possible, an approach that is particularly favoured by the Konrad-Adenauer-Stiftung.

In developing and emerging countries, however, the degree to which human rights and democracy are implemented should not be measured by the standard of one of the numerous and widely-divergent constitutional models and political systems of the Western countries but rather by the presence or absence of the fundamental elements of an order that is conformable with human rights. Building on these elements, different cultures and natures may develop their own institutions and methods for implementing human rights in practice.

ADDRESSING THE GDR DICTATORSHIP

To consolidate human rights, the Konrad-Adenauer-Stiftung operates a variety of measures to analyze critically the injustices committed in the former GDR. In that context, the foundation has been assisting in various ways the Commission of Enquiry instituted by the German Federal Parliament in March 1992 to "investigate the history and consequences of the SED dictatorship". The Archive of Christian Democratic Politics (ACDP) greatly enriched the work of the Commission by providing numerous documents on the history of the GDR.



AN EYEWITNESS REPORT –
HUMAN RIGHTS IN THE

GDR

In addition, members of its staff attended the internal meetings of the CDU/CSU representatives on the Commission, contributing materially to its work by naming eyewitnesses and experts and suggesting subjects which the Commission might address. Initially, the CDU/CSU group was headed by Dr. Dorothee Wilms, the last Federal Minister for Intra-German Relations, who served as protempore chief executive of the Konrad-Adenauer-Stiftung at the time. A study entitled "Dissent and Resistance within the CDU of the GDR" appears among the materials of the Commission of Enquiry. The foundation continued its consulting and supporting activities throughout the 13th legislative period (1994-1998) when the second Commission of Enquiry devoted itself to the subject of "overcoming the consequences of the SED dictatorship within the process of German unification".

Next to this contribution towards addressing the past, the Konrad-Adenauer-Stiftung undertook socio-political steps to help overcome the heritage of the SED regime. Under the heading of "Buchenwald Talks", the ACDP has been organizing a series of annual meetings since September 1991 that address the subject of "persecution and resistance of Christian Democrats after 1945", with some of the conferences taking place in Buchenwald. The location was chosen advisedly, because the concentration camp that was built there and used by the Nazis from 1937 to 1945 was converted by the Soviets immediately afterwards into one of their special camps in the period from 1945 to 1950. These talks were attended by victims, mostly CDU supporters who were persecuted and imprisoned in the GDR because of their political activity after 1945, as well as by contemporary historians. In later years, meetings also aimed to awaken an awareness of contemporary history in adolescents and young adults. Next to honouring the victims, the main purpose of these conferences was to analyze the GDR's system of illegality in its various manifestations. In this way, the Konrad-Adenauer-Stiftung helps to combat efforts to put the GDR's human rights violations in the wrong perspective and to belittle and/or "exalt" the past of the SED.

When on July 26, 1988, our church opposition group, the ecumenical peace circle of the Forst region situated in Lusatia, printed a Universal Declaration of Human Rights in our self-published leaflet entitled 'Aufbruch' (Departure), our intentions were clearly political. In the GDR, the various human rights conventions served as an argumentation aid that could hardly be overestimated – not only for human rights groups but for all opposition groups. After all, even according to the self-interpretation of those who held power in the SED (United Socialist Party of the GDR) we lived in a dictatorship, namely that of the proletariat. In view of this fact, it does come as a surprise that so many people use various attributes today to lend a scientific aura to the GDR's system of injustice.

Those in power naturally did not want to be reminded of the signatures they had put to various international-law conventions, since from their point of view, these signatures were merely intended to improve their reputation abroad. At home, they argued that in comparison to the 'FRG', economic, social, and cultural rights had been realized in the GDR. However: A single visit to a nursing home for the elderly would have reduced this statement to absurdity! Individual liberties and rights of political participation, on the other hand, were attenuated in favour of so-called collective human rights. Thus, on April 21, 1988, Erich Honecker proclaimed on the first page of the daily Neues Deutschland: 'In our country, human rights are reality, as proven by secure social facts and legal guarantees. This holds true for all economic, social, and cultural as well as civil and political rights ...' We, on the other hand, wrote in our leaflet 'Aufbruch' at the time: 'The kind of reality Mr Honecker speaks of is not the reality that is experienced by all of us.' This is the decisive point that many people today forget only too quickly. To be sure, human rights violations do also occur in democratic constitutional states, where they certainly must be made public and suppressed, but in dictatorships and regimes of injustice, on the other hand, human rights are violated systematically by the government; as there is no freedom of opinion or of the press, most cases can even be glossed over. The reality of human rights looks different not only to individuals but to almost everybody. Although to most people, economic and social problems often play a larger role in their personal life than the political freedom rights they are denied, we should not overlook the fact that in a system of injustice, these so-called ESC rights are granted for good political conduct but not to everyone by any means. We are deeply convinced that we need not only the rule of law but also democracy if we want human rights to thrive in the long run.

Strengthening an independent civil society as well as establishing a free and non-selfcensored press and public were – at the time of the GDR – and still are considered to be the most important human rights activities, always combined with potentially strengthening any opposition present. Even though those in power respond to this with increased control and repression, it should not keep us from clearly championing our conviction today: Human rights are not provided from above but are innate in all human beings and must be claimed publicly!

Günter Nooke, Human Rights Commissioner of the Federal Government

THE KONRAD-ADENAUER-STIFTUNG ON THE SPOT

POLITICAL DEVELOPMENTS IN VARIOUS REGIONS

Freedom of the Press

The positions are taken from the "Reporters Without Borders Worldwide Press Freedom Index" of 2006. Place 1 is conferred to the country with the most liberal press policy.

http://www.rsf.org/article.php3?id_article=19388

Corruption Perceptions Index 2006

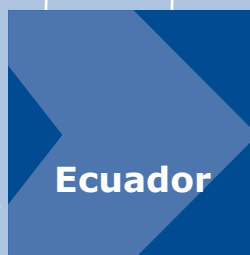
The Corruption Perceptions Index by Transparency International ranks countries according to the extent to which corruption is perceived by officials and politicians. Place 1 is conferred to the country with the least corruption.

http://www.transparency.org/policy_research/surveys_indices/cpi/2006

Political and Civic Rights

The classification as "free", "partially free" and "not free" refers to the report "Freedom of the World 2006" issued by Freedom House, Washington, D.C.

<http://www.freedomhouse.org/template.cfm?page=15&year=2006>



- Freedom of the press 68th place
- Corruption 138th place
- Partially free



- Freedom of the press 165th place
- Corruption 66th place
- Not free



- Freedom of the press 66th place
- Corruption 130th place
- Not free

Russia

- Freedom of the press
147th place
- Corruption
121st place
- Not free

Palestinian Autonomous Territories

- Freedom of the press
134th place
- Corruption
not listed
- Partially free

Uzbekistan

- Freedom of the press
158th place
- Corruption
151st place
- Not free

China

- Freedom of the press
163rd place
- Corruption
70th place
- Not free

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Chapter 4

HUMAN RIGHTS AND THEIR PROMOTION BY THE KONRAD-ADENAUER-STIFTUNG IN VARIOUS REGIONS

HUMAN RIGHTS ACTIVITIES OF THE KONRAD-ADENAUER-STIFTUNG

General Guidelines for Local Human Rights Activities

The Konrad-Adenauer-Stiftung promotes the observation and reinforcement of human rights in many different ways. Its basic approach consists of doing everything in its power to provide the international support which reform-oriented forces in societies suffering from human rights violations need to effect changes in their societal, political, and legal structure. The advantages of this method of promoting human rights are obvious: Cooperating with local partners enables those framework conditions in which human rights may thrive to be strengthened particularly sustainably. Instead of going above the heads of the people in the region, the foundation collaborates with them, tailoring its activities to their individual needs. Involving local institutions, groups, and personages enables the Konrad-Adenauer-Stiftung to use its resources in the best and most effective way to promote human rights.

Specifically, the target groups of the Konrad-Adenauer-Stiftung's activities include political leaders, political parties, representatives of the judiciary, personages from the intellectual and cultural sphere, and representatives of the media. All these persons exert great influence on the political situation either directly through their actions on the political plane or indirectly by arousing popular awareness. In this way, the Konrad-Adenauer-Stiftung contributes not only towards strengthening the political and judicial authorities but also towards "empowering" societal organizations, a parallel approach to complement any necessary political, societal, and economic reforms from which the entire population stands to benefit sustainably.



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Tools of Active Human Rights Policy

Next to measures to promote democracy in general, the Konrad-Adenauer-Stiftung uses a variety of tools to promote human rights specifically:

■ Political Education and Consultation

Political-education measures mainly serve to sensitize decision-makers and multipliers towards constitutional structures and inform them about democratic mechanisms and their own rights. Communicating knowledge and exchanging experts is regarded as an important factor in the implementation of human rights. These measures foster an awareness of responsibility for one's own political situation as well as the ability to shape that situation on the basis of fundamental values acquired through education. At the same time, they serve to strengthen civil society and reinforce the assertion of human rights. Specifically, the Konrad-Adenauer-Stiftung devotes itself to the promotion of understanding between population groups of different ethnic origins through conferences, round-tables, and workshops designed especially for young people. By advising governments, parliaments, and societal groups, the foundation supports the development and implementation of reforms as well as the improvement of participation in political decision-making processes.

■ Support of Non-Governmental Organizations and Human Rights Groups

The approach of the Konrad-Adenauer-Stiftung of collaborating with partners on the spot facilitates promoting a wide variety of societal groups and non-governmental organizations, including human rights organizations. Women's programmes are given particular attention. The Konrad-Adenauer-Stiftung strengthens local organizations not only by improving framework conditions, communicating knowledge, and assisting them in concrete projects but also, and very effectively, by creating networks for them and providing legal assistance for the establishment of new organizations.

■ Publications

By developing analyzes and studies addressing political developments and the social, economic, and legal policies of individual countries, the foundation intends to identify specific needs so as to facilitate the purposeful coordination and implementation of related measures and resources. Further publications either produced in-house or funded by the Konrad-Adenauer-Stiftung are designed to sensitize people towards the human rights situation in each country and publicize specific problem hotspots.

■ Inter-cultural Dialogue Programmes on Social and Economic Policy

Most of the foundation's numerous dialogue programmes revolve around human rights issues. This holds particularly true for inter-cultural and inter-religious forums where differences in fundamental values and the image of man are discussed. Socio-political dialogue programmes help to establish and strengthen democratic political structures. Conducted all over the world, the Konrad-Adenauer-Stiftung's dialogue programmes on economic policy are intended to contribute towards the implementation of necessary economic reforms as well as towards strengthening social structures on the spot.

■ Media Programmes

Freedom of opinion and the press is a standard by which the democratic achievements of a state may be measured. Abuses of power, human rights violations, and related protest actions are generally uncovered and publicized by the media. This being so, the Konrad-Adenauer-Stiftung concentrates particularly on promoting independent and value-oriented journalism. Especially in those regions where journalists are exposed to massive intimidation, the foundation is heavily engaged in communicating background knowledge and protecting journalists so as to promote a free press and, by the same token, the observation of human rights. Lastly, the Konrad-Adenauer-Stiftung has set up educational measures in the field of peace and reconciliation journalism to support processes of reconciliation sustainably.

■ Sensitization for and Information about Current Human Rights Violations

The foundation's commitment to human rights is not restricted to its work on the spot. It is just as important to bring the problems and needs of people in other countries to the attention of the German and international public, with the foundation acting as the mouthpiece of the oppressed, in a manner of speaking. This is particularly true in those countries where the current political situation does not permit concrete human rights activities. Human rights activists in those countries must necessarily be supported from outside through information events and other activities. In many cases, the foundation has been able to protect those concerned indirectly by placing concrete human rights concerns before the national or international public.

THE COUNTRY RULED BY FIDEL CASTRO – CUBA

For more than four decades, Fidel Castro ruled his country with an iron fist. Civil and liberal human rights such as freedom of opinion, assembly, and the press, are withheld from Cuba's population. While it is true that human and civil rights do exist in name in Cuba's constitution, it is also true that exercising them is subordinated to the socialist polity. In accordance with this dictatorial state concept, a bill to 'secure national independence and Cuba's economy' was passed in 1999, which was also called the 'gag law'. This bill offers the government ample scope for imprisoning political dissidents. In 2003, for example, it resulted in a wave of arrests and convictions during which 75 members of various opposition movements, journalists, and trade unionists were sentenced to long terms of imprisonment. Then, a person could be convicted merely for being in possession of pamphlets that contained the UN's Universal Declaration of Human Rights or the American Declaration of Independence, or for possessing literature on human rights and democracy.

Under these circumstances, it is very difficult for the opposition to bring about political changes in a country that is ideologically isolated from liberal-minded states, has practically no real experience in democracy, and has been subject to the rule of a dictator for more than 45 years. This is why the Konrad-Adenauer-Stiftung, which cannot be active in Cuba for political reasons, supports the domestic opposition through publications and conferences organized from Latin America and Germany. The foundation is particularly concerned with the so-called Varela Project, a legislative initiative to hold a referendum on democratic reforms on the island, which was introduced in Cuba's National People's Chamber by a group of Cuban citizens led by Oswaldo Payá Sardiña in May 2002. This project was intended to use the scope offered by the constitution to bring about democratic change; however, it was – temporarily – brought to a standstill by strategic countermeasures of the government. That Castro classed this Project as being especially dangerous may be seen from the fact that most of the people arrested in March 2003 were activists belonging to the Movimiento Cristiano Liberación (MCL), the movement from which the Varela Project later evolved. The Varela Project was presented among others at a conference on the situation of human rights in Cuba which was held in Berlin in August 2005 and attended by politicians from Germany and Europe as well as by



affected Cubans. On the occasion of the conference, an exhibition was opened showing pictures of relatives of political prisoners who are suffering under repression measures. At the beginning of December 2005, the foundation organized a conference on 'Cuba after Castro' in Mexico in cooperation with the Organización Demócrata Cristiana de América (ODCA). At this conference, it was again stated that any democratic change in Cuba must emerge from the islanders themselves. Because of this conviction, support provided by organizations such as the MCL becomes even more important.

HUMAN RIGHTS IN ASIA

The Asia-Pacific region is home to more than half the population of the world. Asia incorporates economic powers on the rise, such as China and India, as well as countries with a particularly urgent need for development, such as Bangladesh, Laos, and Myanmar. Yet even China's economic boom is not evenly distributed among the entire population, and the gap between rich and poor widens incessantly. The implementation of human rights is confronted by a multitude of obstacles in Asia: Widespread in any case, poverty has recently been increased further by a number of devastating natural disasters. In Indonesia, Thailand, Sri Lanka, and India, the tsunami of December 2004 not only claimed a near-inconceivable number of victims but also rendered many people homeless and destroyed important infrastructures. In addition, numerous earthquakes occurred, especially in Pakistan, Iran, and Indonesia. Next to these disasters, which can be ascribed to force majeure, protecting human rights is made extremely difficult by unstable and sometimes authoritarian political regimes in Asia. Countries with governments that tend towards a dictatorial Islamism (as in Iran, for instance) or with governments controlled by communism, such as China and North Korea, arbitrarily deprive their population of its liberties. The shock suffered by the Western world on September 11, 2001, and the subsequent establishment of an alliance against terrorism by the USA enabled authoritarian rulers (in Pakistan, for example) to strengthen their grip under the pretext of fighting terrorism. Thus, there are two respects in which Asia suffers from terrorism: Especially in Afghanistan, Pakistan, and Iraq, people are kept in a state of constant fear by unpredictable attacks and armed conflicts, and at the same time, governments use their mailed fist against opponents of the regime and marginal groups in their societies under the pretence of maintaining law and order.

Limits to the Rule of Law

But there are positive signs as well: Thus, various countries have moved to improve the protection of human rights by establishing governmental human rights commissions, and the ratification of major UN human rights conventions is progressing. Nevertheless, some Asian countries still regard some of these conventions with a great deal of reserve.

It is because of the interests of power politics that liberal and democratic fundamental rights are violated so often, or not even recognized in the first place. Religious and cultural traditions obstruct the equality of women who are still oppressed by violence in the family, honour murders, and enforced marriages. Even in democratic India, most crimes against women go unpunished by the state. Similarly, people of different ethnic origins are exposed to discrimination again and again.

Asia's character has been formed by a variety of religions and world views, including not only Confucianism, Hinduism, and Islam but also Animism, Buddhism, and Shintoism. In addition, numerous Christians and even small Jewish communities are to be found in Asia. In China, peoples' thoughts and lives were regulated for centuries by the teachings of Confucius, and his ideas spread to other East Asian countries, so that Asia's mentality is largely influenced by Confucianism even today. Even though Confucius postulated a right to resist an unjust ruler, the salient feature of his dogma is respect for existing structures in society and the family. Further points of importance include the common good and an elaborate social hierarchy. The individual must strive for perfection, meaning he or she must exercise conscientiousness and self-control, among other things. All in all, Confucian tradition contains little that might be conformable with the Western concept of human rights as individual and inalienable rights that are anterior to the state. Used mainly as a tool to suppress crime and safeguard the power of the rulers, the law did not provide for protecting individual liberties. Traditional Confucian order concepts subordinate the individual to the extended family, freedom to authority, and rights to duties. For all that, the ideal of "walking tall" might be interpreted as an analogy to the dignity of man.

Recently initiated by some Asian states, the debate about specifically Asian human rights has acquired a profile under the title of 'the Singapore school'. It projects a specifically Asian understanding of human rights with an ideology rooted in Confucianism, which deliberately opposes the claim to universality of Western human rights. Many Asian states use this dogma to free themselves of the economic, cultural, and political dominance of the West and its code of values, and to express their newly-acquired self-confidence, boosted especially by the economic rise of China and India. At the same time, this specifically Asian concept of human rights is supposed to justify defects in the allocation of civil rights and liberties. The Singapore school assumes that human rights in Singapore and/or

Asia in general differ in form and significance from those of the Western world because of differences in local conditions and cultural roots. It points out that the family and the common good enjoy higher priority in Asia than in the individualistic West. In the sweeping form in which this theory is often presented, it tends to play down the individualist traits that are to be found in Asia as well as elsewhere while exaggerating the Western culture of the ego. To legitimize a specifically Asian perspective of human rights, Western problems such as crime, abortion, and the collapse of the family are branded as being the product of an all-too-individualistic view of the world. Next to such cultural arguments, the school maintains that the debate on human rights is largely influenced by the specific economic situation of Singapore: Only the rise of the economy, so it is said, permits satisfying fundamental needs, such as those for food and shelter, which is why it should not be endangered by granting fundamental political and civil freedoms too lavishly.

Regional Differences

In the run-up to the 1993 Vienna World Conference on Human Rights, regional meetings were held in some continents. Meeting in Bangkok, the Asian states adopted the so-called Bangkok Declaration in which they recorded their view of human rights. While the Bangkok Declaration basically welcomes the increasing attention paid to human rights by the global public, it also emphasizes national sovereignty, territorial integrity, and the principle of non-interference in the national affairs of a state. The Declaration goes on to state that ESC rights and political rights are both interdependent and indivisible, and that the right to development does exist. Among the third-generation rights, it specifically mentions the right to national self-determination, meaning in this case liberation from foreign and colonial rule. It condemns the practice of making development aid dependent on the implementation of human rights as well as that of exerting political pressure in response to any failure to observe them. Further along, the Declaration emphasizes that the universality of human rights should not be seen as remote from "national and regional traits and different historical, cultural, and religious backgrounds". At all events, the Asian states did sign the Vienna Declaration despite their reservations, a fact which, although positive, should not blind us to the discrepancies that exist.





A COUNTRY IN TRANSFORMATION – CHINA

China is in the middle of a far-reaching transformation process which, starting with the economic modernization initiated at the end of the 1970s, is increasingly embracing its entire society. Due to disparities between the rich and the poor, the urban and the rural population and/or between the flourishing coastal regions and the less developed western provinces, considerable tension is building up. For various reasons, however, China's government refuses to a large extent to implement civil liberties which, against this background, would be especially essential. Next to the general democratic deficit (elections are held only at the village level), there are defects in the practice of criminal proceedings and correction as well as considerable restrictions of the freedom of opinion, assembly, religion, and the press. China's government still regards human rights as group rather than individual rights. The enactment of numerous new laws and regulations – motivated especially by China's accession to the WTO – points in the direction of a constitutional state, giving citizens additional judiciable rights vis-a-vis (local) administrations without, however, establishing truly constitutional conditions so far.

The ways in which the Konrad-Adenauer-Stiftung supports the broader implementation of human rights in China are manifold. Thus, it promotes the discussion on numerous human and civil rights subjects through knowledge transfers, expert exchanges, and studies so as to make decision-makers in politics and science aware of the fact that strengthening civil rights would have a positive effect on the country's overall societal and economic development and contribute decisively towards stabilizing the country. Since 1997, the Konrad-Adenauer-Stiftung has carried out more than 25 measures (e.g. international conferences, technical discussions, studies, and publications) that served the objective of expanding the rule of law, purposefully introducing experts who are responsible for the formulation and application of laws to Western experiences and values. Currently, the foundation is concentrating on supporting reforms of the criminal law and the penal system by communicating modern scientific findings from Germany. What is more, the Konrad-Adenauer-Stiftung sharpens an appreciation of the importance of rule of law, civil-society engagement, and political ethics through publications, events, and studies organized for its Chinese partners.

A COUNTRY NOT ONLY OF MEN: ON GENDER MAINSTREAMING IN

UZBEKISTAN

"The problem women are facing is not that they are weak, but that they do not know their rights and still think the traditional way: Men are dominant, women are submissive and obedient. WE have to seize the initiative, seek knowledge, and take an active part in contributing towards the development of our society." With those and similar words, Dr. Natalya Muravyeva motivates the women in her seminar to strive for more independence and public participation. Since 1995, she has been holding seminars for women all over Uzbekistan in cooperation with the Konrad-Adenauer-Stiftung, addressing subjects relating to the family, society, economy, and politics. In 1997, she founded the Woman and Society Institute, and the Konrad-Adenauer-Stiftung was able to recruit qualified specialists such as lawyers, university lecturers, and businessmen for this women-promotion project. Next to the seminars of the Konrad-Adenauer-Stiftung, the Institute for Women and Society promotes the professional integration of unemployed women, who often lack professional qualifications because they marry early and have large numbers of children. It organizes courses that teach women computer, tailoring, and hair-dressing skills in order to give them a chance on the labour market. It is true that Uzbekistan's constitution does dictate equal treatment for men and women, but the level of education especially of young women is decreasing since, for financial reasons, most families can only give their sons, who do not "marry away" but stay within the family, the chance of obtaining a university degree. Thus, courses that provide knowledge on politics, the society, and business, such as those offered by the Konrad-Adenauer-Stiftung, play a very important role on the way towards virtually equal opportunities. To some extent, the participants of the courses act as multipliers as they spread their knowledge among the women in their home towns.

HUMAN RIGHTS IN THE ISLAMIC WORLD

The question about human rights in the Islamic world is particularly popular and relevant at the moment because of the many terror attacks committed by radical Islamists. While Islam and all its problems seemed "far away" at first, it penetrated the awareness of the Western world after the events of September 11, 2001, together with all the attendant difficulties. Maintaining a dialogue with diverse Islamic forces and endeavouring to enhance the rule of law and democracy in the Islamic countries has by now become highly important for the implementation of freedom and security, not only to the people living in the Islamic regions but also to those living in the West. This holds true not only on the international but also on the national plane: Formally "forgotten" or banished from the public consciousness, the integration of foreign population groups in Germany mainly concerns Muslim citizens. By now, there is nobody left to dispute that increasingly grave tensions and problems are bound to arise whenever different cultures live next to each other without contact. Once again, the objective is to establish a dialogue and communicate the Western concept of fundamental values.

In Islam, the problems associated with the assignation of human rights are widespread and complex since Islam does not talk in "one voice" but features a variety of interpretations and Islamic schools of law. Even geography shows the spread of Islam's reach: Ranging from Western Africa to China and the Philippines in Asia, it embraces a multitude of entirely different cultural traditions. More importantly, various quotations from the Quran can be interpreted as expressing divergent opinions about human rights, and they are exploited by each group according to its own interests: Religious radical fundamentalists, moderate theologians, Western-oriented forces that are ready for reform, and extremists with religious and political motives. At the same time, reform-oriented thinkers especially are rejected by the conservative forces that predominate in Islam. In the political field, the extent of the influence exerted by conservative thinkers and politicians manifests itself in the re-Islamization movement which, beginning in the early 1970s, aims to revive the rules of the Sharia, the Islamic code

of law. In the process, quite a number of states (in the Middle East and Africa) included in their constitutions references to Islamic law and/or declared themselves "Muslim" or "Islamic" (e.g. Afghanistan, Egypt, Bahrain, Iran, Yemen, Kuwait, Pakistan, Sudan, Syria, the United Arab Emirates, and Saudi Arabia).

A Muslim Understanding of Human Rights

At the same time, even Islam is no stranger to human rights, including, as it does, physical integrity among the natural rights of man. Nevertheless, the human rights standards of Islam differ markedly from those of the West. For one thing, its catalogue of inalienable human rights is counterbalanced by a catalogue of duties. More importantly, difficulties arise from the fact that some human rights are denied. Most core problems with human rights that are to be found in Islamic states are caused by the total absence of religious freedom, the degradation of women, and the cruelty of lawful punishment. According to the prevalent view among Muslims, reneging from the Muslim faith belongs to the class of hudud crimes, offences for which Allah himself demands retribution, and for which specific punishments are irrevocably prescribed. Even today, apostasy is severely punished, sometimes even by the death of the apostate. There is some dispute about whether the Quran only condemns polytheistic creeds or the Jewish and Christian faith as well. In point of fact, however, Christians and Jews are oppressed in Islamic countries and do not enjoy any genuine freedom of religion. That people are not granted that freedom is not a purely internal problem of Islamic countries because violent Islamists invoke certain rules in the Quran that call for a "holy war" against infidels. This appeal for violence is usually ascribed to the period which the prophet of Islam, Muhamad, spent in Medina.

Next to the violent potential of Islam, it is the societal position of women that is discussed in many papers. The extent to which the marginalization of women in Islamic societies today is prescribed in the Quran may be judged differently. At all events, there are provisions in the Quran, particularly in the laws on the family and inheritance, that accord men greater privileges than women:



Men are allowed polygamy, they are given preference in divorce law, women receive the smaller share of any inheritance (Surah 4, 11) and, finally, there is the general provision regulating the relationship between husband and wife in Surah 4, 34, which establishes the prerogative of the male sex and gives the husband permission to beat "recalcitrant" women (after due warning). Similarly, a man's testimony in court has a greater weight than that of a woman (see only Surah 2, 282). Another obvious proof of a woman's inferior status in Islamic societies is that she must wear a veil (which may cover her more or less completely), and that she is less educated than men and, consequently, under-represented in public offices and professions. In addition, there are further traditional prerogatives of men along the same lines.

The Western media devote particular attention to cases of cruel punishment under Islamic law. The physical penalties quoted in the Sharia range from whipping and the amputation of limbs to lapidation. Basically, cruel punishments like these are often applauded in theory, although opinions differ about the extent to which these penalties should be executed in practice. Views on this subject range from those which emphasize the numerous procedural hurdles which render such sentences highly improbable to the idea that such penalties should apply only in a perfect Islamic society.

In addition, there is a fundamental problem in that the conservative interpretation of Islam favours authoritarian governmental structures. Strictly speaking, there is no separation of religion and the state in Islam. Rather, Islam aims for a societal order that is based on the commandments of the Sharia. In that sense, Allah wields unlimited authority even in the secular field so that, according to the conservative interpretation of Islam, even the rights of a national parliament are circumscribed by any explicit regulations to be found either in the Quran or in the Sunna. In those countries where there is no legal and institutional separation of the state and religion, governmental and especially legal practice is influenced much more directly by theological dogma, which automatically affects the human rights situation.

A COUNTRY IN THE MAKING:

THE PALESTINIAN AUTONOMOUS TERRITORIES

The main goal of the Konrad-Adenauer-Stiftung's activities in the Palestinian autonomous territories is to establish and consolidate constitutional structures. For this purpose, it has been cooperating with the Institute of Law (IOL), the law research institute of the renowned Bir Zeit University, since 1996. In concrete terms, the Konrad-Adenauer-Stiftung supports the clarification and harmonization of the laws valid in the territories. This work is of crucial importance since, due to its genesis, the Palestinian legal system suffers from confusion and incoherence: Some laws and regulations are relics from the Ottoman Empire or the British Mandate, others originate from Jordanian (West Bank) and Egyptian (Gaza) law or from Israeli military regulations. And finally, there is the original law promulgated by the Palestinian National Authority after the Oslo Accords. This diversity of laws has a destructive effect on the functionality of the legal system and on the preservation of civil rights. This is where the Konrad-Adenauer-Stiftung comes in, supporting the development of a database which contains all applicable laws. Since 1996, the Konrad-Adenauer-Stiftung has been promoting the IOL in its 'Programme for Supporting Legislation' project. Those who benefit from this database, and the further-education measures based on it, are judges and prosecutors, politicians, lawyers, scientists, and students. Within the framework of these project activities, particularly those institutions receive systematic counselling that are involved in the legislative process. Activities here comprise both legal and technical assistance. Special attention is paid to harmonizing existing laws, and especially to making the legislation of the Palestinian National Authority conform to the basic law. The questions on human rights that were taken up within this framework triggered an intensive debate among (local) experts, which considerably affects the legislative process itself as well as the implementation of the law. In this way, members of parliament and high-ranking decision-makers of the executive branch are motivated to pay more heed to safeguarding human rights. What is more, the Konrad-Adenauer-Stiftung organizes science-oriented further-education courses in law as well as conferences with local and international experts in cooperation with the IOL, the primary objective of these events being to make local decision-makers from politics and the judiciary understand that constitutional structures are needed to establish a democratic Palestinian state.

HUMAN RIGHTS IN CENTRAL AND SOUTH EASTERN EUROPE

In the countries of Central and Eastern Europe, we find different levels of democratic development. Besides, the state of Belarus is still ruled by an authoritarian regime that has been resisting any development towards the rule of law to this day. The human rights situation differs from state to state. Thus, human rights standards are much higher in those countries that joined the European Union in 2004. Even in these countries, however, deficits still exist in the implementation of human rights, most prominent among them being the tendency to marginalize minorities.

In the Visegrád states (Hungary, Czechia, Slovakia, and Poland), fundamental and human rights are now embodied in the constitution. Problems occur only in the administration of the law. Relations with minorities are particularly tense, with the Roma minority especially suffering from being disadvantaged in almost all walks of life. In Czechia, the situation of the children is particularly regrettable because 70 per cent of those that go to any school at all are accommodated in schools for the mentally handicapped. Compared to Czechia, the situation of the Roma is much worse in Slovakia, where numerous racist outrages have been committed against Roma in the recent past. Human rights organizations blame the law-enforcement authorities for standing by without taking action. Similar problems are to be found in Poland, the only EU member country without its own office for issues relating to equal rights. Furthermore, the Visegrád states are plagued by other problems caused by the relatively high incidence of corruption in public authorities and the courts as well as in politics. Conversely, developments in the field of imprisonment conditions and gender mainstreaming are satisfactory.

Compared to the Visegrád states, the Baltic states (Estonia, Lithuania, and Latvia) lag behind in gender mainstreaming. Stating his concern about the situation in all three countries, the Human Rights Commissioner of the European Council said that many cases of violence in the family were not prosecuted because they were regarded as private affairs in these countries, instead of being classified as violations of human rights. The point now is to sensitize the society, the judiciary, and the police towards this issue. At the same time, more precise provisions on acts of violence within the family are still lacking in legislation. In addition, the situation of the Russian population remains tense. Representing more than 25 per cent of the population

in both Latvia and Estonia, this large minority feels gravely discriminated by the solution found for the citizenship question.

Very grave concerns are caused by the authoritarian government of Belarus, the last dictatorship remaining in Europe. According to OSCE observers, the presidential elections of 2006 did not conform to democratic standards, either. Members of the opposition and critics of the regime suffer from massive repression, including arrests. Those who have been in prison report that conditions there are very bad. Trials are manipulated by politicians, and the rights of the individual are protected only on paper. Every means at hand is being used to suppress a public debate about politics and the freedom of political activity. Along the same lines, radio and TV stations are controlled by the government, acting merely as its mouthpiece. Independent newspapers and magazines can only be printed abroad and are seized again and again as they cross the border. Even the internet is being targeted by the authorities now.

In Ukraine, on the other hand, the parliamentary elections of 2006 could be classed as democratic, although the subsequent formation of a government threw the country into chaos for months. Ukraine already has a modern constitution that upholds fundamental rights and the rule of law, which now must be translated into practice. The situation prevailing in regular and remand prisons will have to be watched closely in the future. Conditions in Ukrainian prisons and camps are often bad. Corruption and bribery constitute a grave problem in the judiciary and the administration as well as in public prosecution. The role as well as the self-interpretation of public prosecutors are still informed by Soviet traditions.

A common feature of all countries of Southeast Europe (Rumania, Bosnia and Herzegovina, Serbia, Montenegro, Bulgaria, Croatia, Macedonia, and Albania) is the ongoing process of transformation from authoritarian single-party states to democratic constitutional states under the rule of law. In the field of minority protection, considerable deficits still exist in the implementation of legal norms that protect ethnic minorities. Endeavours to comply with the so-called Copenhagen Criteria on which accession to the European Union is

A COUNTRY BETWEEN
EUROPE AND ASIA –

RUSSIA

The scandal revolving around a lance-corporal who, on New Year's Eve, was abused so severely in the tank school of Chelyabinsk that several of his limbs had to be amputated, revealed with impressive vehemence the extremely bad state of affairs within the Russian armed forces to the general public. On the other hand, it also threw some light on the great engagement of many Russian non-governmental organizations (NGOs), specifically the 'Union of the Committees of Soldiers' Mothers in Russia', which successfully uncover cases of injustice despite a press which is often plagued by self-censorship and state control, and despite strict new laws and the culture of silence within the army. In Russia, people engage themselves in 450,000 NGOs. Given the precarious situation of human rights in many parts of the country and the continuous conflict both in Chechnya and the entire Northern Caucasus, human rights organizations are facing a difficult task. The success of the NGOs is not as sweeping as their large number might suggest: On the one hand, they are met with deep suspicion by the authorities, and on the other, the work of the various organizations is not sufficiently networked nor done professionally enough sometimes. The person who benefits from their work is the Human Rights Commissioner of the Russian Federation whose post in its current form – established in both ordinary and constitutional law – has been in existence since 1998, and whose task is to strengthen human rights and to uncover and clear up human rights violations. Meanwhile, about one third of the total of 88 administrative regions within the Russian Federation has regional ombudsmen. However, the ombudsmen's voices have so far hardly been transported by the media, so that their effect on the public is very limited. The fact that human rights problems are not made public is one of the main reasons why political decision-makers are not yet under sufficient pressure to bring about necessary changes.

In cooperation with the Human Rights Commissioner of the Russian Federation and his regional representatives, the Konrad-Adenauer-Stiftung has been holding events in Moscow and other regions on a regular basis since 2005, thereby helping to strengthen the position of human rights organizations and ombudsmen vis-a-vis politicians and other decision-makers, and to make the public aware of their work. Another important goal of the Konrad-Adenauer-Stiftung is to develop confidence and functional



cooperation between human rights organizations and the government. What is more, the foundation organized an international conference on monitoring and human rights to connect the individual human rights commissioners of the CIS member states. An important contribution towards ensuring that the European Human Rights Convention is observed in the country itself was made by a conference entitled 'Implementation of the Rulings of the European Court of Human Rights in the European Constitutional Court's Current Practice' organized by the foundation's branch office in Moscow, which took place within the framework of the VIII. International Forum on Constitutional Justice.

The problematic attitude of the Russian government towards NGOs working independently shows in the enactment of a new law that has been in force since April 2006. Although the law was defused after severe international and national protests so that it no longer prohibits the work of branch offices of non-Russian organizations, it still hampers national NGOs painfully in their independent activities. Against this background, the Konrad-Adenauer-Stiftung invited representatives of important Russian human rights organizations to attend an information programme held in Germany at the end of May 2006 to introduce them to the German and European system of human rights protection, and to give them an opportunity to exchange views with experts, politicians, and civil-rights activists. This meeting was a success, not only for the Russians, who were able to establish additional contacts and acquire additional knowledge, but also for German politicians who learned about the situation in Russia through the German press and were thus motivated to maintain and expand their contacts there.

predicated largely influence and accelerate the transformation of formally communist systems. "Political" criteria for accession include institutional stability, a democratic constitution, the rule of law, the observation of human rights, and respect for as well as protection of minorities.

Progress has been quickest in Bulgaria and Rumania: Major improvements achieved in recent years include the reform of the judicial system, specifically the creation of a legal and institutional framework for assuring the independence of the judiciary, and the development of a strategy to suppress corruption. Furthermore, both countries greatly improved the freedom of their media, the restitution of property, and the protection of minorities and children. The most difficult task currently confronting these countries is implementing the reform of the judiciary and the strategy to suppress corruption. In the process, they will have to ensure that governmental anti-corruption measures do not involve unlawful infringements of the civil and political rights of the persons concerned, which would be tantamount to a violation of European and other human rights standards. Deficiencies persist in the conditions prevailing in ordinary and remand prisons as well as in the treatment of prisoners, the legal protection extended to socially disadvantaged groups and particularly to the mentally handicapped, the comprehensive realization of the freedom of opinion, and access to public information. Rumania is confronted by another difficult task in the field of human rights – that of addressing its past in legal terms. In this context, victims are mainly concerned with obtaining effective legal protection as well as compensation for themselves and their dependents. At the same time, the civil and political rights of the offenders must not be curtailed to an unreasonable extent in the process.

In the western Balkan countries (Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, and Serbia), the situation has improved markedly since the wars of the 1990s. However, these countries are still undergoing a difficult phase of transformation into democratic constitutional states. The process is largely influenced by inter-ethnic relations and conflicts, which slow it down and negatively affect the human rights situation in the region. Thus, ruling nationalist parties attempt to establish and/or maintain ethnic homogeneity by, among other things, subdividing their territories among different ethnic groups.

In Bosnia and Herzegovina, endeavours to ensure the comprehensive recognition of individual human rights are running into another ethnic obstacle: Most of the people living in the country do not define themselves primarily as individuals endowed with inviolable and inalienable human rights by virtue of their humanity. Instead, they define their identity through the ethnic group they belong to (Bosniaks, Serbs, Croats). This being so, collective rights enjoy top priority, while individual rights play a subordinate role. The constitution of Bosnia and Herzegovina does declare that the rights and liberties laid down in the European Human Rights Convention directly apply in the country, but it does not state in so many words that the individual is endowed with inviolable and inalienable human rights because of his dignity as a human being.

To a great extent, the future of Southeast Europe depends on its ability to develop into a region of peace, stability, freedom, and democracy. A legal investigation of the communist rule and the wars of the past is an essential prerequisite for this development. First and foremost, this involves investigating the criminal-law implications of the Balkan wars, one of the conditions for accession to the EU. The International Criminal Tribunal for Yugoslavia (ICTY) at The Hague played a crucial role in investigating the war crimes that involved human rights violations of the gravest kind, as well as in imposing related sanctions. It will probably cease its activities in 2008, after which war crimes will be adjudicated by national courts. Creating the requisite structures and conditions is one of the most urgent tasks in the region. Finally, securing the return of refugees and other persons displaced both within and outside the country under conditions conformable with internationally-recognized human rights standards is another post-war challenge facing the region.





A STRUGGLING COUNTRY –

TOGO

To an authoritarian machinery of power, implementing human rights and the rule of law appears to run contrary to its own interests. However, maintaining power at all costs is only one side of the coin that might explain why establishing human rights in Togo is so difficult. On the other side, there is the fact that the population is hardly able to defend its own interests effectively since it lacks the kind of education required for it. Schools in Togo do not teach social studies, and political education for adults exists only in rudiments. This is why the Konrad-Adenauer-Stiftung addressed itself, within the framework of the 'Political Education in West Africa' (PEWA) project, to the issue of human rights in Togo. In cooperation with the Centre d'Observation et de Promotion de l'Etat de Droit (COPED), a Togolese non-governmental organization, it has been training civil-society actors to become 'volunteers of the constitutional state' since 1997. The participants of this training course, which takes place twice a year, include outstanding personages with key functions in traditional structures, political parties, women's groups, tradesmen's associations, religious communities, etc. from small towns and villages. Next to seminars on important principles of human rights and the rule of law, workshops are organized at which current and local problems are discussed. Having completed their training, participants act as multipliers, transmitting to their respective communities the knowledge acquired by them about human rights, about the recognition of the personal integrity and dignity which is the part of every human being, and about the rights of minorities. Another important point promoted by the seminars is the networking of different civil-society organizations.

HUMAN RIGHTS IN AFRICA

In Africa, the recognition of individual human rights is a comparatively recent phenomenon in international law. The reasons for this delay become clear if we look at Africa's history: After the Second World War, when the inhumanity of the national socialists and the destruction wrought by the war caused the global public to fix its gaze on the international institution of human rights, most African states were still fighting for independence from their respective colonial rulers. Consequently, the OAU (Organization of African Unity), which was established in 1963, primarily aimed for independence for those African states that were still under foreign rule. Therefore, the principle of non-interference in the internal affairs of African states outweighed the concern about any individual rights. Accordingly, the goals proclaimed in the OAU Charter were mainly concerned with the unity of Africa as well as with defending the sovereignty, territorial integrity, and independence of the African states. Outside the preamble, the body of the Charter refers to human rights only in sweeping terms, suggesting that international relations should be developed "with due regard" to the Universal Declaration of Human Rights. The policies of the OAU similarly reflect this subordinate role of human rights: For a long time, human rights violations were exclusively perceived as a threat from outside; they were pilloried in the struggle against apartheid in South Africa but not criticized whenever they took place under an African government.

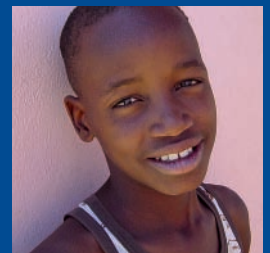
It was only in the mid-70s that critical voices began to be heard from African governments, condemning such "double standards". When human rights violations reached an unusually high level in the late 70s, and international donors began to respond by reducing or suspending their development aid, the OAU was shaken up by this political and economic pressure. The efforts of the United Nations, which promoted a regional system for protecting human rights, as well as those of non-governmental organizations and some African states which pilloried abuses were finally crowned with success: In 1981, the African OAU member states adopted the Banjul Charter of Human and Peoples' Rights which came into force in 1986. To be sure, the creation of a regional human rights system was motivated not only by the wish to demonstrate Africa's presence in the struggle for human rights on the international stage but also by the desire to formulate human rights from the African perspective.

In 1987, the African Human Rights Commission envisaged in the Banjul Charter began fulfilling the mission of promoting human and peoples' rights which the Charter gave it – not particularly effectively, we regret to say. It was found that, because of its limited freedom of action, the Commission stood in urgent need of support by some organ that was competent to make binding decisions. After tenacious lobbying by all levels of the United Nations and particularly by non-governmental organizations, the OAU finally adopted a supplementary protocol to the Banjul Charter to create a regional human rights court in 1988. Now that the protocol has come into force in 2004, the African Court of Human Rights, whose constitutive session took place in July 2006, will henceforth be able to contribute towards the enforcement and observance of the human rights asserted in the Charter through well-publicized binding decisions. Its creation is even now being celebrated as a “dam-buster”.

Severe Violations of Basic Human Rights

Although a regional system for protecting human rights is now in place, Africa is still a needy continent as far as the implementation of human rights is concerned. Thus, for example, women in Africa still suffer from the traditional interpretation of the role of the sexes, which encourages violence, the sexual abuse of women (genital mutilation included), and related serious illnesses such as HIV and AIDS. In the regions of Africa south of the Sahara, women's health is the worst worldwide. Some hopes were pinned on the African Union (AU) which replaced the OAU in 2002. The treaty to establish the AU advocates the protection of human rights more explicitly than the former OAU Charter. What is more, the AU has been given the legal option of intervening against neighbouring African countries in the event of particularly grave offences being committed, such as war crimes, genocide, or crimes against humanity (Art. 4 [h] of the act establishing the AU). However, there are those who doubt even now whether the AU will actually intervene more energetically on behalf of human rights. As before, any changes still depend on the political leadership, which has remained unchanged in the various states, and which has failed so far to demonstrate the will to start afresh.

Many African countries still have a long way to go towards the establishment of democratic structures (such as allowing genuine freedom of opinion, the media, and assembly) and functional governmental institutions as well as towards eliminating the widespread practice of corruption and mismanagement. While human rights in the countries north of the Sahara are hampered mainly by problems relating to Islam, the situation south of the Sahara is exacerbated by the grave consequences of the AIDS pandemic, a rudimentary criminal jurisdiction which often proves incapable of effectively prosecuting even the most severe crimes of violence, and alarming poverty. The whole continent is suffering from the consequences of political unrest, civil wars, genocide, and gigantic streams of refugees.



A COUNTRY WITH INDIGENOUS PEOPLES –

ECUADOR

Like those of other Latin American states, Ecuador's new constitution of 1998 grants numerous collective rights to indigenous peoples to ensure the preservation of their culture. In international law, this provision is principally founded on the International Labour Organization's (ILO) Convention 169 on indigenous peoples living in tribes that was ratified by Ecuador. On the basis of this Convention, Ecuador granted its indigenous peoples the right to manage and control their own organizations and institutions, to elect their own authorities by their own traditional customs in parallel with the governmental system, and to let their authorities exercise collective rights under customary law as long as they stay within the framework of the constitutional and ordinary laws. Difficulties arise, however, when it comes to implementing these rights. Many village elders, for example, have a low level of education, so that they apply indigenous customary law even though it sometimes conflicts with constitutional law, or decide according to whim in cases when traditional law is silent. Responding to the resultant legal uncertainties and grey zones virtually unregulated by the constitution, the Konrad-Adenauer-Stiftung and the 'Defensoría del Pueblo' began to train suitable candidates as indigenous ombudsmen who, in their position as advisers, assist indigenous office-holders – who generally change each year – in legal questions, their training courses concentrating mainly on communicating collective indigenous as well as general human rights. In addition, candidates are trained in inter-cultural negotiation techniques on the basis of concrete case studies. Having received academic training as mediators, the ombudsmen may now draw on a fully developed network to exchange experiences. They act as mediators and arbitrators in civil-law cases as well as in public matters, such as conflicts with other communities or crimes committed by community members. Today, the Konrad-Adenauer-Stiftung supports the activities of these indigenous ombudsmen, who work without pay, with advice. The whole project constitutes an important contribution towards conflict reduction and consensus-forming in the indigenous society. Next to strengthening the role of the constitution within the indigenous population, the project reinforces the indigenous people's rights in the national courts. The latter is of some importance since not only is there latent racism to be found within the judiciary, but members of indigenous communities are granted no help whatsoever in court proceedings (e.g. by remitting charges or providing interpreters).



HUMAN RIGHTS IN LATIN AMERICA

The military governments of the 1970s and 1980s left the countries of Latin America with a heritage that makes it difficult to implement human rights. In coping with the past, the problem of how to discover the truth, administer the law, and effect a reconciliation at the same time has not been solved very adequately so far, especially as far as the criminal prosecution of the responsible regime members is concerned. In their reports, the truth commissions established to uncover past crimes in Chile, Guatemala, Peru and other countries painted a disturbing picture of governmental human rights violations, and yet sanctions are slow to begin. A prominent sign pointing in the right direction was the case that was brought against the former dictator, Augusto Pinochet, by the Chilean judiciary.

In the course of the (re-)democratization movement of the 1980s and 1990s, most Latin American countries gave themselves constitutions that prescribe respect for fundamental human rights. Unfortunately, however, these positive beginnings in constitutional law still remain nothing but theoretical echoes in some countries.

Across the board, human rights standards differ greatly from country to country. While human rights violations have reached a particularly dramatic level in Cuba and, increasingly, in Venezuela, other countries, such as Costa Rica and Uruguay, have already established a respectable standard.

Disadvantaged groups, such as women, children, the indigenous population, and the poorer classes in general suffer most from inadequate human rights standards. Alarming statistics about poverty, the widening gap between the rich and the needy, and educational defects all reflect structural problems and social injustice. Solving these problems is one of the key challenges in the implementation of human rights.

Many Latin American countries are marked by fragile constitutional structures and inadequacies in the implementation of civil liberties. Given these circumstances, those provisions that postulate the rule of law and human rights in the new constitutions must be instilled in the awareness not only of the population in general but also, and more importantly, of the ruling elites, so that they may develop into a liveable political, societal, and legal reality. Together with a general readiness to resort to force, the failure of the state is responsible for the violence that still rules in some countries. To be sure, these problems are partially due to the fact that some countries, such as Columbia or Peru, were (and still are) confronted by a state of virtual civil war caused by Guerrilla movements and drug mafias.

A Fragile State of the Rule of Law

A big obstacle on the way towards establishing comprehensive human rights standards is widespread impunity for crimes committed (*impunidad*). While the reasons for this are many and varied, the responsibility lies with the political and judicial systems which allow themselves to be influenced by corruption. In the case of the judiciary, moreover, chronic work overloading and the inefficiency of bureaucratic structures compel most prisoners to wait for their sentences for a very long time. Because of these two factors, the confidence of the population in the police and the judiciary is at a very low ebb which, in turn, undermines the credibility of the constitutional democratic state.

Next to civil rights and liberties, the fundamental social rights guaranteed in international conventions and/or in some constitutions have not been implemented adequately either. In a region which, like Latin America, is marked by great poverty and defects in the political participation particularly of indigenous peoples, economic, social, and cultural rights need particular attention to avoid major conflicts which, it is feared, might otherwise arise in the future. Experience shows that to promote fundamental social rights sustainably, social policy must be interwoven with a

responsible and efficient economic policy. Economically stable countries with an active and sustainable social policy, such as Chile, Costa Rica, and Uruguay, are more successful in poverty alleviation, and their standards of education and health care are higher than those of countries suffering from a precarious economic system and a succession of economic crises, such as Peru, Argentina, or Bolivia.

Although most states of Latin America are bound by relevant international agreements like the UN Social Covenant to observe social, economic, and cultural rights, social rights and obligations remain largely unheeded by the population at large and particularly by political leaders and elites. At that, there are regional agreements to complement the international-law obligations of the Latin American states: At the inter-American level, they agreed on an American Convention on Human Rights as well as on a supplementary protocol to protect economic, social, and cultural rights, which is especially important in the present context. Adopted in 1988, the Protocol came into force in 1999. Further instruments worth mentioning include Convention 169 (1989) of the International Labour Organization (ILO), which is particularly relevant in Latin America because it offers protection to indigenous peoples. Next to their generally friendly attitude towards international conventions, many Latin American constitutions incorporate social rights in their text. The actual extent of this protection varies from country to country.



STRENGTHENING HUMAN RIGHTS THROUGH INDEPENDENT CONSTITUTIONAL JURISDICTION IN LATIN AMERICA

After dictatorships or lasting civil wars, the young constitutions of most Latin American states give human rights protection high priority. Putting these guaranteed rights into practice, however, is very difficult. Only the formal and organizational aspects of the constitution are asserted in practice, but not the values it contains. Even the constitutional courts that were established in almost all Latin American states from the eighties onwards were hardly able to bring about any change. The reason for this generally lies in the fact that politicians, administration officials, judges, and prosecutors often lack the requisite insight, will, technical knowledge, or moral and ethical steadfastness. Thus, judges at ordinary courts often feel bound only by ordinary laws. Another problem is the inadequate political independence of the constitutional courts.

Therefore, the work of the Konrad-Adenauer-Stiftung begins at the roots of the problem: On the one hand, the foundation organizes conferences, seminars, and workshops for members of the judiciary and the administration as well as for law students to explain the immediate validity and applicability of constitutional and national law; on the other, its rule-of-law programme in Latin America focusses on supporting the constitutional courts and senates, most of which are very young. Since 1993, the foundation has been organizing conferences for presidents and judges of the Latin American constitutional courts and senates. This annual one-week symposium offers a dialogue forum which is unique in Latin America, facilitating the development of a network of contacts for mutual support and the exchange of experience, and thus strengthening the independence of the courts and defending the existence of this institution. The outstanding response to this meeting, to which a judge of the German Federal Constitutional Court is invited every year, shows that it is widely accepted, and that the foundation's rule-of-law programme has gained access to the highest level of jurisdiction in Latin America.



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<http://www.un.org>

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www.un.org/rights/index.html

UN – Commission on Human Rights
<http://www.ohchr.org/english/bodies/chr/index.htm>

UN – Human Rights Council
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UN – Office of the UN High Commissioner for
Refugees

<http://www.ohchr.org/english/issues/index.htm>

UN – High Commissioner for Refugees
<http://www.unhcr.org>

UN – Children’s Fund
<http://www.unicef.org>

World Health Organization
<http://www.who.int>

International Criminal Court
<http://www.icc-cpi.int/>

Concerning the Regional Protection of Human Rights

Council of Europe
<http://www.coe.int/DefaultEN.asp>

European Court of Human Rights
<http://www.echr.coe.int>

Organization of American States (OAS)
<http://www.oas.org>

Inter-American Court of Human Rights
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African Union
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Of renowned NGOs acting in the field of Human Rights

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<http://www.amnesty.org>

German Institute for Human Rights
<http://www.institut-fuer-menschenrechte.de>

Human Rights Watch
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