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Tel. +32 2 230 17 32 Fax +32 2 231 14 13 E-Mail: csc@cec-kek.be Website: http://csc.ceceurope.org July 2012 Genesis 1:27

27 So God created mankind in his own image, in the image of God he created them; male and female he created them.





### This Prayer was written for the "Vigil of the Mace Ceremony" to open the National Assembly for Wales following the elections in 2011

In our law and in our lives, we commit to create a community: where potential is not limited by prejudice, where the rights, the dignity and the worth of each person are respected and protected by all, where each can take an equal part, because, in our diversity our value and our values are the same. (Based on the Equality Act 2006)

In the life we hold in common, we commit: to give to each an equal chance to change our world and to be valued for it: to give to each an equal trust to find their own best answers for their world, in their way, a world where those who venture. those who give and those who serve. all seek the same good. a world where wealth and well-being, enterprise and ethics commerce and community, grow in the same earth and make the earth grow.

Our tradition, our trust and our task is to sustain the world by which we are sustained, in this place entrusted to us and in every place.

Our legacy, our liberty and our law is to respect all as one, in this time granted to us and in all times.

Our right, our reason and our rule is to show the fullness of humanity in this life that is given to us and in every life.

### Written by Grahame Davies

### Preface

### **European Churches' Joint Efforts on Human Rights**

The Conference of European Churches (CEC) has a long-standing record of promoting human rights. The beginnings date back to mainly two developments in the mid-70's of the last century. One development was the establishment of the Conference for Security and Cooperation in Europe (CSCE, later: OSCE: Organisation for Security and Cooperation in Europe) in Helsinki in 1975. The CSCE, next to the United Nations, became a political vis-à-vis for CEC as an explicitly pan-European fellowship of churches which had the promotion of peace and reconciliation as one of its *raisons d'être* since its beginnings in 1958. As in the CSCE (or "Helsinki Process") the implementation of human rights was seen by the churches as an indispensable precondition for peace and reconciliation beyond the East-West divide of the continent and a means to promote Christian values in society.

The other development in the mid-70's was the broader ecumenical debate on human rights triggered by the consultation of the World Council of Churches (WCC) in St. Pölten (Austria, 1974) and the following WCC Assembly in Nairobi in 1975. Following the Nairobi Assembly, the WCC Central Committee asked CEC, the Council of Churches of Christ in the USA and the Canadian Council of Churches to become the parent bodies of what became known as the "Churches Human Rights Programme of the Implementation of the Helsinki Final Act". Background to this development was the then ecumenical debate on how to do justice and how to resource two major priorities on the global ecumenical agenda: the Cold War and the East-West confrontation on the one side and North-South relations and global justice on the other. As a result of the WCC recommendation, a small secretariat for the Churches Human Rights' Programme was established in Geneva in 1980, which later became the desk for "Peace, Justice and Human Rights" of CEC.

This first period was characterised by a growing awareness among European churches with regard to human rights. Churches made the CSCE and UN commitments known in their respective states and got especially engaged on issues and cases related to freedom of religion or belief. However, later accounts of the Churches Human Rights Programme also show that common human rights' work across the Iron Curtain remained highly politicised and was caught in the parameters set by the on-going Cold War.<sup>1</sup>

A new window of opportunities, which might be described as a second phase in the churches' efforts on human rights, opened at the beginning of 1986 with the policy of *glasnost* and *perestroika in the former Soviet Union* and later on with the ensuing revo-

<sup>1</sup> Cf. e.g. Theo Tschuy, An Ecumenical Experiment in Human Rights, ed. by The Churches' Human Rights Programme for the Implementation of the Helsinki Final Act, Geneva 1985; Katharina Kunter, Die Kirchen im KSZE Prozeβ 1968-1978, Stuttgart, Berlin, Köln 2000; Hugh McLeod & Risto Saarinen, North European Churches from the Cold War to Globalisation, in: Hugh McLeod, Risto Saarinen, Aila Lauha, North European Churches. From the Cold War to Globalisation, Jyväskylä 2006.

lutionary changes in 1989. When the Heads of State and Government of all European states came together in 1990, they adopted the "Charter of Paris for a New Europe", committing themselves to a new Europe based on democracy, human rights and the rule of law.<sup>2</sup> The time for making substantial progress in implementing existing human rights standards seemed to have come.

This vision was also shared by the churches and even expressed some months earlier at the European Ecumenical Assembly in Basel (May 1989), just prior to the fall of the Berlin Wall. The Final Document of the Assembly listed all major human rights instruments and called for "the full implementation of the international human rights agreements on civil, political, economic, social and cultural rights, and of the instruments for their concrete application" in order to "overcome situations of injustice, dealing with discrimination, racism, sexism, torture, disappearance and killing of people and other violations of human rights, including the right of peoples and nations of self-determination".<sup>3</sup>

In the spirit of the Basel European Ecumenical Assembly, the churches enlarged the scope of their human rights agenda to cover a broader spectrum of rights, especially minority rights. CEC began to support its Member Churches in addressing human rights violations and, together with the Middle East Council of Churches, organised a first human rights' training course.<sup>4</sup> The Churches Human Rights' Programme published a first "Manual for Practitioners".<sup>5</sup>

It is also during that period that other political institutions got into the focus of European churches' advocacy work on human rights. CEC began to cooperate closer with the European Ecumenical Commission for Church and Society (EECCS), which had been liaising for many years with the Council of Europe and the European Communities on behalf of European churches, also on issues related to human rights. Since then, CEC and EECCS integrated and established the Church and Society Commission of CEC. As a result of the integration, the Church and Society Commission is now relating to all four political organisations with regard to human rights: the United Nations, the OSCE, the Council of Europe and the European Union.

The theological basis for the churches' joint human rights work in this second period is quite clearly expressed in the introduction to the report on the first training course in 1993: "This (the churches') mandate is rooted in the conviction that God created the human being in His own image, and that, through the self-sacrificing and reconciling love of

<sup>2</sup> Charter of Paris for a New Europe. Meeting of the Heads of State and Government of the participating States of the Conference on Security and Co-operation in Europe, Paris 1990.

<sup>3</sup> Final Document of the European Ecumenical Assembly "Peace with Justice for the whole Creation", § 84c; in: Peace with Justice. The official documentation of the European Ecumenical Assembly, Basel, Switzerland, 15-21 May 1989, Geneva 1989.

<sup>4</sup> Cf. International Human Rights Training Seminar, 15-28 September 1983, Limassol, Cyprus, ed. by the Conference of European Churches and the Middle East Council of Churches, Geneva, Beirut 1994. Further Human Rights Training Courses were organised by CEC, together with the Lutheran World Federation in Sibiu (1999) and Bratislava (2004).

<sup>5</sup> Cf. Protecting Human Rights. A Manual for Practitioners, ed by Eric Weingärtner for the Churches' Human Rights Programme in the CSCE, Geneva 1994.

Jesus Christ, Christians are called – in addition to providing help to those in need – to be in solidarity with those who are marginalised, silenced or oppressed, regardless of their religion, race and gender. ... Our aim, therefore, is to enable and promote the churches' common response to justice and peace which is not based on any ideology or partisan politics but stems from Jesus Christ's love for humanity."<sup>6</sup>

# Why a new Human Rights Manual for Churches now? – New Challenges!

New challenges have arisen since the promising re-start in 1989. Looking back, it might seem that the years after the revolutionary changes in Eastern Europe have been little more than a "window" of opportunity in terms of a more forceful implementation of human rights. Several developments have contributed to this "set-back" and have also led to substantial discussions about the concept of human rights.

The end of the East-West confrontation, which determined so many years of the era after WWII, led to a great acceleration of the globalisation process. New freedoms and new means of communication as well as possibilities for easier travel brought people closer together globally. On the downside of these developments, however, people discovered that more and more decisions were taken on an international and global level, far away from them, and by international bodies and companies often without or with hardly any democratic legitimisation. When churches gathered in 1998 under the auspices of the World Council of Churches in order to review new challenges in the field of human rights, they stated that "globalisation increasingly undermines the political participation of large sectors of society in the democratic process and their ability to influence state policy in the wider public interest".<sup>7</sup>

The process of globalisation affecting all sectors of society also made people ask for their own identity and tradition in the context of a globalised world. At best this is a question with the intention to grow one's own identity and to live it in a broader context, but this can also turn into an attitude of defensiveness and segregation. In any case, in the field of human rights, despite the "margin of appreciation" emphasized in international jurisdiction, a discussion on the relation between national tradition(s) and national legislation and on the universality of human rights' standards re-emerged. Human rights were often referred to as a "Western" concept and as a consequence, in various contexts, the universality and indivisibility of all human rights is being challenged, when

6 Cf. footnote 4; page 6.



<sup>7</sup> A Statement by the International Ecumenical Consultation, Morges, Switzerland, 23-27 June 1998, in: Human Rights and the Churches. New Challenges, ed. Commission of the Churches on International Affairs 1998/1, World Council of Churches, Geneva 1998, page 12.

certain rights are declared alien to and inconsistent with a nation's own tradition and legal system and, therefore, not applicable. The CSCE/OSCE principles as well the Basel European Ecumenical Assembly refer to both the implementation of human rights and the right to self-determination of peoples, states and nations. The relationship between both is again under discussion.

The indivisibility of all human rights is also challenged from another angle: The WCC Global Review on Human Rights in 1998 observed an "ideological division between civil and political rights on the one hand, and social, economic and cultural rights on the other, the latter having been largely ignored in the official international human rights implementation process of the United Nations until recently".<sup>8</sup> The globalisation process, characterised in the WCC statement as a "shift towards greater concentration of power", which "intensified injustice, exploitation and inequalities in most parts of the world" made the division and its disastrous consequences for large parts of the world's population even more visible and called for a different approach.

And last but not least, the perhaps biggest threat to the international commitment to human rights was posed by the terrorist attacks in New York, Washington, London, Madrid and elsewhere in the world and in Europe. The terrorist attacks, inhumane acts of violence, are an attack on human rights and the dignity of human beings on an unprecedented scale. But in response to them several, also European, governments tightened their legal framework and considered suspending certain human rights and/or certain (international) human rights instruments. The world and Europe found itself in a new debate on the relationship between human rights and (national) security – a debate which also got its momentum from double standards being applied by some states.

All these challenges did not leave the churches in Europe unaffected. On the one hand, churches given their own commitment and in view of the new challenges, became more strongly engaged in the promotion of human rights. Some churches, however, also saw the need to reflect again on their approach to human rights, most significantly visible in the dialogue between the Russian Orthodox Church and the Community of Protestant Churches in Europe.<sup>9</sup> And with all of the above-mentioned new challenges in mind, among and within churches, the ongoing dialogue first and foremost needs to be a theological dialogue, which reflects and at times challenges the churches' human rights practice.

http://www.leuenberg.net/sites/default/files/Human\_rights\_and\_morality%20%28final%29.pdf.

<sup>8</sup> Cf. footnote 4; page 6.

<sup>9</sup> Cf. The Russian Orthodox Church's Basic teaching on Human Dignity, Freedom and Rights (2008): http://www. mospat.ru/en/documents/dignity-freedom-rights, and Human Rights and Morality, published by the Community of Protestant Churches in Europe, Vienna 2009:

The Church and Society Commission of CEC was involved with the Russian Orthodox Church as well as with CPCE prior to issuing their documents. In March 2007, theologians and legal experts of the Church and Society Commission met in Moscow with the Drafting Committee of the Russian Orthodox Church. A joint final statement reads: "The two delegations agreed that the result of the present debate on human rights within the Russian Orthodox Church and among European churches will be to strengthen the churches' commitment to human rights as laid down, for instance, in the United Nations' Bill of Human Rights, the European Convention on Human Rights and the Council of Europe's Social Charter as well as in documents of the Follow-Up Conferences of the Organisation for Security and Cooperation in Europe."

The re-emerging discussions in the field of human rights within and among European churches have made substantial progress already<sup>10</sup>, but they are far from having come to an end. This reflects the fact that human rights are not a static concept – human rights need to be developed, re-owned and applied. Facing the above-mentioned challenges of today, it is important, however, that the churches individually and collectively stay committed to the implementation of human rights. This commitment is clearly expressed in the Charta Oecumenica (adopted and signed in 2001), where the churches together declare: "On the basis of our Christian faith, we work towards a humane, socially conscious Europe, in which human rights and the basic values of peace, justice, participation and solidarity prevail."<sup>11</sup> Consequently, many of the guidelines in the Charta Oecumenica for a growing cooperation among the churches in Europe draw on recognised human rights standards.

### How to use this Manual

The literature on human rights fills libraries. And there are also some Human Rights Manuals published by other organisations.<sup>12</sup> Among the many valuable resources, this Manual has two specificities: it addresses and is written specifically for churches which want to strengthen their commitment to involve more people in the active promotion of human rights through training. Its second specificity is that it draws on the wealth of experience and knowledge accumulated by churches of different confessions and contexts from all over Europe in order to make it available as a source of inspiration for others.

The Manual is divided into two main chapters. The first chapter entitled "Making the World a Better Place – The Churches' Approach to Human Rights" gathers articles from experts addressing various aspects of the present human rights discourse from a faithbased perspective. The authors do not necessarily express the views of the Conference of European Churches as a whole. The variety of backgrounds from within the CEC constituency reflected by the authors is meant to serve as a source of inspiration for all those who want to get involved as well as for the further debate among European churches. The approach to address the issues in distinct articles from different authors invites readers to either read them all or to select aspects which interest them most.

A second chapter offers "Material for Training, Workshops and Seminars". In that chapter, the reader will find a few general articles which will help planning workshops or seminars: on developing a human rights concept, as well as a checklist for preparing



<sup>10</sup> Cf. e.g. the contributions and results of the various conferences in recent years as documented in the human rights and religious freedom section of the Church and Society Commission website: http://csc.ceceurope.org/ issues/human-rights.

<sup>11</sup> Charta Oecumenica. Guidelines for the Growing Cooperation among Churches in Europe, ed. by the Conference of European Churches and the Council of European Bishops Conferences, Geneva/St Gallen 2001, § III.7.

<sup>12</sup> Cf. e.g. Handbook for Helsinki Committees. A Guide in Monitoring and Promoting Human Rights and NGO Management, published by the International Helsinki Federation for Human Rights, Vienna 1995; Training Manual on Human Rights Monitoring, published by the UN Office of the High Commissioner for Human Rights, New York/Geneva 2001; Compass. A manual on human rights education with young people, published by the Council of Europe, Strasbourg, 3rd edition 2007.

### European churches engaging in human rights





training events. In addition, that chapter contains background articles on five paradigmatic human rights' topics presently on the churches' agenda. These topics are: freedom of religion or belief, anti-discrimination, migration, social rights, and children's rights. Experts are presenting introductions and overviews on the present debate with regard to those topics, which help trainers to use the didactical material included on the CD accompanying the printed material. The didactical material on the accompanying CD consists of commented PowerPoint Presentations for use in training sessions. As indicated at the beginning of each presentation, the material needs to be adjusted according to the aims, the target group and the context in which the training is taking place. For this purpose, the checklist for organising trainings and the additional material referred to in the commentaries of the PowerPoint Presentations will be of help.

The list of further resources (books and websites) can be found on the enclosed CD and on the CSC website so as not to overwhelm readers and practitioners with material. This section of our website will be updated regularly. As there is so much material produced and published on the topic, references in the text will direct readers to other resources which could be of immediate use in the framework of this Manual. A major resource in relation to this Human Rights Manual is the human rights section of CEC's Church and Society Commission website (http://csc.ceceurope.org/issues/human-rights), which is regularly updated with regard to human rights developments in the European political institutions, contains a churches' human rights library, public statements of the Conference of European Churches as well as reports and material from consultations and conferences. The electronic version of this Human Rights Manual as churches are sending in their material and translations.

### Where do we go from here?

The Church and Society Commission of the Conference of European Churches will itself offer training courses on the basis of the Manual over the coming years. But we hope that the use of the material will go much beyond that. We would be happy if this Manual could stimulate further discussion, training and commitment to human rights issues in European churches. The material presented in this Manual can freely be used and amended, provided a reference to the source is mentioned. We would also be happy to receive your feedback on how the material was used in training sessions and discussions within your church: which sections you find more useful; what is missing; which further resources you would recommend to add; which further needs you have in your human rights work. If you translate or amend some of the material, we would appreciate to get a copy.

As already stated above, the debate on human rights is going on and as a consequence a lot of material is being produced. The human rights' section of the CEC/CSC website tries to keep churches and others up to date. We also gladly offer this website as a forum for exchanging information and for publishing further human rights-related articles and

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material produced by churches, which might serve as a source of inspiration for others. In this sense, the website should also serve as a tool for further developing and amending the Human Rights Manual. Your feedback would be most welcome: csc@ccc-kek.be.

## Words of Thanks

It was a long journey from the first idea for this Human Rights Manual to its development and finalisation in its present form. Many people have been involved who deserve to be acknowledged and thanked, first and foremost the authors of articles and contributors of this handbook. The short references about the various authors at the end of the Manual only give a glimpse of the wealth of expertise and experience gathered among the wide range of contributors.

Special thanks also go to Ms Hermine Masmeyer, who translated the articles, reflections and information into the didactical material offered in the PowerPoint presentations on the CD. The production of the Manual substantially benefitted from her knowledge in developing e-learning material and her long-standing experience in training legal professionals and others on human rights issues. Developing training material specifically aimed at the churches certainly posed an extra challenge to her.

The Manual developed under the supervision and with the constant advice of the CSC Human Rights Working Groups and the Human Rights Secretaries of the Church and Society Commission of CEC. It is the Human Rights Secretaries and the Working Groups which have developed the concept of this Manual, identified and contacted experts and reviewed incoming articles. Without their expertise and persistence, producing such a Manual would have proved impossible. Many of them also contributed as authors.

Before its publication, several sections of this Manual were already tested with various target audiences. Our thanks go to all those who offered their valuable comments, which also contributed to developing the Manual in its present stage. And last but not least, we wish to thank the CEC Member Churches which contributed by making their resources available on the CEC/CSC website and supported the project through their financial contributions. The Manual is now given back into their hands in the hope that it will help strengthening the commitment of churches in the area of human rights, individually and collectively.

Rev. Rüdiger Noll, CSC Director and Associate General Secretary of CEC Mag. Elizabeta Kitanović, CSC Executive Secretary for Human Rights & Communication

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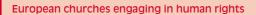
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# **Chapter I** MAKING THE WORLD A BETTER PLACE – CHURCHES' APPROACH TO HUMAN RIGHTS













### HUMAN RIGHTS – WHY DO THEY MATTER FOR CHURCHES? Rev. Dr. George Tsetsis

### Summary

Human beings were created in the image and likeness of God. Human Rights reflect the Covenant of God's faithfulness to His people. On the basis of this Covenant the Churches (should) commit themselves to intervene whenever human dignity is being trampled on and fundamental rights are disregarded.

It is a fundamental Christian belief that men and women were created in God's image (Gen 1, 27). This basic belief indicates that human existence is of divine origin and a gift of God the "Maker of heaven and earth and all things visible and invisible" (Nicean-Constantinopolitan Creed), and that humankind was in the will and mind of the Creator before time began. This belief implies that our existence on earth lies not only in the relationship between God and man (in the sense of "anthropos", namely "human being" and not "anēr", namely "male"!), but also in the relationship between the children of God, a relationship marked by harmony and righteousness.

Human rights reflect the Covenant of God's faithfulness to his people, as well as of His love for the world. It is precisely in the light of this Covenant, fulfilled in the death and resurrection of Jesus Christ and in the power of the Holy Spirit, that the Churches commit themselves and take position when human dignity is trampled on, when fundamental rights are disregarded and whenever freedom is taken away. In acting so, the Churches are motivated by the firm conviction that the entire "Oikoumene", the whole inhabited earth that is destined to live in the peace of the Lord according to God's plan of Salvation, can become a safe haven for all His children only when the root causes that generate millions of victims of human rights violations - poverty, economic inequality, (refugees, migrants and asylum seekers), racism and xenophobia - are eradicated.

It goes without saying that Europe is not exempt from such worldwide phenomena. It is a fact that most of them affect the daily life of our societies. Hence the eagerness of European Churches to seek solutions to many of these acute problems, in concert and in co-operation with their national governments and/or with European institutions.

In the course of the last two decades, the Churches of Europe have insistently stressed the need to formulate a new vision for Europe. They have repeatedly affirmed their belief that the European Union should not only be about economics and politics, but that it should also take into serious consideration the spiritual needs of its citizens.

Indeed, all rights protected and promoted by the United Nations, by the European Union, by other International Bodies or by Human Rights activists, such as the right to work, the right to enjoy and maintain a distinct cultural identity, the right to dissent, the right to personal dignity, or the right to manifest freely his/her religion or belief in practice, worship and observance, are meaningless in the eyes of the Church without taking into account the spiritual side of man's



existence on this earth - simply because "the divine gift of freedom is the fulfilment of the human person, and it is so to the extent that every individual carries within himself or herself the image of the personal God". (Third Panorthodox Preconciliar Conference, Chambesy, 1986)<sup>1</sup>. Therefore, to deny a person's freedom is to deny him/her an essential part of the humanity with which God has endowed him/her.

Individual rights however are closely linked with collective rights. It is a fact that the post World War II human rights system was developed mainly to protect individuals. Yet, from the Christian perspective the right to freedom of religion is one of the principal rights that has a strong collective, communal element, simply because the Church by its very nature, is above all a "community of believers". This implies that a religious community has the right to establish and maintain communal institutions, to build places of worship, to set up schools and to train clergy and community leaders.

On this particular issue the International Covenant on Civil and Political Rights (ICCPR) adopted by the UN in 1966, unequivocally affirms in its Article 18 that, although it is the individuals who possess the human rights, there are situations where these rights can only be exercised in community with others. This Article reads as follows: "*Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom, either individually or in community with others, to manifest his religion or belief in Worship, observance, practice and teaching*". The question we face is whether in the ongoing discussion about Human Rights, there is a willingness to tackle the issue of collective rights of a variety of ethnic and religious groups living in minority situations, with the same ardour as when we attempt to promote and defend fundamental rights of individuals.

Churches and Christian organisations have a collective responsibility to make sure that both individual and communal rights, particularly of those in a minority situation, are fully respected by all those in power. And they also have the duty to express their belief that human rights cannot be dealt with in isolation from the larger issues of peace, justice and development - because the rights that every person enjoys in a given society, contribute effectually to the peace, stability and prosperity of that society. Experience shows that injustices in society may generate social, economic and political disorders.



<sup>1</sup> The Panorthodox Preconciliar Conference, is the inter-orthodox body in charge of the preparation of the Great and Holy Council of the worldwide Orthodox Church.

### FACING GOD'S IMAGE – CHRISTIAN CHURCHES AND THE IDEA OF HUMAN RIGHTS

### Bishop Dr. Martin Schindehütte

### Summary

This article raises the issues why human rights are necessary and how they did develop. Furthermore, it tries to give a short overview on the churches' contribution and their reservations about the development of human rights. The human rights Manual is one of the contributions on this matter.

Nowadays the influence of Christian churches and theology on the idea of Human Rights is generally not questioned. Many believe that the Reformation movement was an important milestone in the development of the modern perception of human rights. However, in order to assess the contributions made by theology and churches to this discourse, it has to be distinguished between the idea of human rights and their political implementation. Moreover, it would not seem appropriate to state a common position among the various Christian churches and Christian theology towards Human Rights. It was the commitment of individuals or small groups, who often experience injustice in their own environment, that had a strong impact on the idea of human rights within the Christian community.

The approach of the churches on human rights in continental Europe remained until well into the 20th Century sceptic if not hostile. This was due to the fact that the impetus of the French Revolution was strongly opposing the established church institutions. The emancipatory struggle against the oppressive structures was therefore also directed against the clergy of the Roman Catholic Church in France. Furthermore, the modern idea of an autonomous subject appeared unacceptable to many theologians, since the mainstream interpretation of the gospel considered human beings as depending on God's grace and God's eschatological revelations.

The emerging concept of a self-determined individual – that is entitled to certain rights solely because of being human – sounded almost blasphemous in the ears of the church. For justification was not a human right to be claimed and legally enforced.

The new perception of the human being and its world came under heavy attack and was seen as a reversal of the relationship between Creator and creature. The rebellion against the given political structures - against the God-given system - was interpreted as a rebellion against God himself. Finally, the construct of a secular state that is free from ecclesiastical paternalism following only its own laws, contradicted both the traditional teachings and the traditional political practice of the state church.

In the meantime the development of personal and human rights in Northern America had been supported by Christian communities from the very beginning. Many European migrants immigrated into the New World for religious reasons. Because of their experience of religious oppression and persecution they were strongly in favour of freedom of the right to conscience of speech and religious freedom. Hence it is not a coincidence that the oldest constitutional







formulation of human rights can be found in the Constitution of Rhode Island in 1636.

In order to ensure redemption between the religious parties during the period of religious wars in Europe, the Virginia Declaration of Rights in 1776 continued these efforts by establishing individual rights and the protection of individual freedoms. Article 16 of this Declaration explicitly states the religious background: "*That religion, or the duty which we owe to our Creator and the manner of discharging it, can be directed by reason and conviction, not by force or violence; and therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.*"

Already in the 18th century, the respect for the faith and will of fellow citizens was considered a Christian obligation that had to be shown toward all religions equally. However, this remains one of the few highlights in church history. In the times that followed, particularly in the 20th century, many national churches joined in a mixture of mistrust, political expediency and ethnic or nationalist arrogance that contributed to the fatal European history that saw two world wars.

The Church's contribution to the UN Declaration of Human Rights in 1948 is closely related to these previous developments in world politics. The two world wars were the reason for an intensive ecumenical commitment to peace and justice. Hence the Churches' Commission on International Affairs, as a predecessor of the World Council of Churches (WCC), essentially contributed to the preparation of the Declaration's article on religious freedom.

# Imago Dei - theological approach towards human rights

The classical theological justification for human rights is based on the idea of human beings as images of God. God created humanity in God's own image, and therefore all human beings equally inherit a special dignity that cannot and must not be violated by any other person or state.

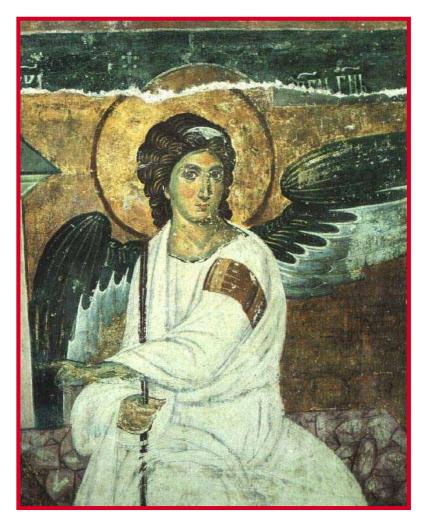
Nowadays the vast majority of Christian churches are committed to the universal concept of human dignity and human rights. Especially in its fragmentary and limited being - or theologically speaking in its need for redemption – the individual is truly attached to a reality that goes beyond final definitions. A human being, created in the image of God, is never self-sufficient as an individual. As a creature s/he is set within the community of all living things and linked to his fellow humans. The Christian idea of humanity that draws its specific dignity from the Imago Dei has proved to be valuable. It enables us to serve the wellbeing of all fellow humans by facing God's image. What this image means becomes obvious in Jesus Christ, in whom God himself as a human being suffered under enmity and violence, standing in love and solidarity with all in this world who suffer and are oppressed. This Incarnation Christology is the profound and essential reason why Christians are obliged to respond to any attempted violation of fundamental human rights even within the churches and throughout the societies in which they live in.

It all comes down to the insight that we as Christian churches directly benefit from the fundamental human rights such as the right to religious freedom. Therefore it seems inevitable to

Christians all over the globe to commit themselves to the matter of human rights and their protection wherever necessary. In this way we may even find a new approach towards the world and finally to God its creator and redeemer.

### Selected further reading

Schweizer Evangelischer Kirchenbund SEK (ed.): Den Menschen ins Recht setzen. Menschenrechte und Menschenwürde aus theologisch-ethischer Perspektive. SEK Position 6, Bern 2007. Evangelische Kirche in Deutschland (ed.): Die Menschenrechte im ökumenischen Gespräch. Beiträge der Kammer für Öffentliche Verantwortung der EKD, Gütersloh 1979.





# THE BIBLE AND HUMAN RIGHTS

**Rev. Anthony Peck** 

### Summary

This section explores the basis for human rights which we find in the biblical witness, from the foundational principles of the imago dei and the right to life there at the beginning; to the exemplary ministry of Jesus and his concern for the poor and the marginalized; to the biblical pictures of the future hope which includes restorative justice for all.

The Bible does not contain a fully elaborated, codified doctrine of human rights. We owe that development largely to the post-Enlightenment, Western secular tradition. But that tradition was built on a worldview and value system deeply conditioned by the Christian faith and by the biblical story in particular. Without the influence of that story, it is doubtful if human rights instruments like the Universal Declaration of Human Rights would ever have emerged<sup>1</sup>.

This chapter explores aspects of the biblical story that have given rise to human rights as we encounter them today. This is not to deny that followers of other world faiths would find many points of agreement with the sacred scriptures of their own faiths. But it is indeed the biblical story of faith which has most nurtured the soil out of which contemporary human rights have grown, and it is this story which continues to inspire Christians to be fully committed to the establishment of human rights for all.

### Creation

The creation stories of the book of Genesis assert right from the beginning the dignity and worth of the human person. In the first story human beings are seen as the 'pinnacle' of creation, made in the image of God, male and female, and given special responsibilities over the rest of creation<sup>2</sup>. This is confirmed by the writer of Psalm 8 who in wonder says of God's creation of humankind, 'You have made them a little lower than God and crowned them with glory and honour<sup>3</sup>.

The second creation story puts human beings at the centre of creation and begins to establish the family as the basis of human society<sup>4</sup>. The story of sin entering into the world, followed by Cain's murder of Abel throws up the challenging and perennial question, 'Am I my brother's keeper?'<sup>5</sup>, with the intention of emphasising the sacredness of human life and our responsibility to ensure that it is not violated.

# Human rights located in the nature of God

As James E. Wood writes, 'The creation of humankind in the image of God is, in fact, the foun-





<sup>1</sup> Christopher D Marshall: Crowned with Glory and Honour: Human Rights in the Biblical Tradition. Publ. Pandora Press USA, 2001 p.116

<sup>2</sup> Genesis 1: 26-27

<sup>3</sup> Psalm 8

<sup>4</sup> Genesis 2: 18-25

<sup>5</sup> Genesis 4: 1-16

dation of all human rights, for human rights are located in the nature of God<sup>76</sup>. Repeatedly in the Old Testament the ways of God with humankind are described as 'justice and mercy' and these qualities are then required of women and men made in the image of God. So the prophet Micah describes it thus, 'For what does the Lord require of you but to do justice, love mercy and walk humbly with your God<sup>77</sup>.

As Christopher Marshall expresses it, "Rights are not reductions made on the basis of abstract notions of equality, freedom or justice. They are expressions of what God is like, as revealed in historical acts of deliverance. Rights represent the justice of God<sup>//8</sup>

### **Old Testament Society**

It must be honestly stated that the Old Testament can appear ambiguous as a basis for human rights. Despite the dignity and worth of the human person being absolutely foundational to the Israelite faith, there are examples of what would appear to us today to be clear abuses of human rights: slavery, cruel behaviour in times of war, subjugation of women and the denial of religious freedom to idolaters. But the Bible, and especially the Old Testament, does not hesitate to describe the reality and consequences of sin in the world that often make the full realisation of human rights difficult or impossible. This is a universal reality, found in all societies since then, including those that would today consider themselves as having a Judeo-Christian foundation.

It is, however, possible to see in the Old Testament certain foundational principles which, however inadequately worked out at the time, provide a positive basis for human rights. In particular the right to life is primary and emphasized in the Ten Commandments and in numerous other references. The rights of the poor, the vulnerable and the marginalized are also highlighted and summed up in the command to 'love the stranger' and care for widows and orphans<sup>9</sup>.

### **Prophetic voices**

In the writings of the prophets we encounter a denunciation of those who abuse human rights, even and especially in the name of religions (Amos). Instead, the plea of the prophets is for 'justice to flow down like waters, and righteousness like a never-failing stream'<sup>10</sup>.

In the prophecy of Second Isaiah we find the concern to create a just society where children do not die, where old people live in dignity and where those who work, are not treated falsely and receive a proper reward for their labours<sup>11</sup>.

At the heart of this Old Testament concern is the concept of SHALOM, often translated as 'peace' but which carries connotations of wholeness, healing and justice for all.



<sup>6</sup> James E Wood: Baptists and Human Rights Baptist World Alliance 1997

<sup>7</sup> Micah 6:8

<sup>8</sup> Marshall op.cit. p. 118

<sup>9</sup> e.g. Deuteronomy 10:17-19

<sup>10</sup> Amos 5:24

<sup>11</sup> Isaïah 65: 17-25



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# The mission and ministry of Jesus

The 'Manifesto' of Jesus at the beginning of his ministry, quoting the prophet Isaiah as having sent him to preach 'release for the captives, recovery of sight to the blind, and to let the oppressed go free'<sup>12</sup> can be seen as a restoration of full rights to those who were marginalized and even despised in contemporary society. Such restorative justice was seen as a foundation for what was the core message of Jesus, the announcing of the coming of the Kingdom of God. As Helmut Frenz expresses it, 'Our commitment to human rights is an unabandonable part of the mission Christianity received from Jesus'<sup>13</sup>.

In the Sermon on the Mount in the Gospel of Matthew<sup>14</sup> we see the vision of the 'upside-down' Kingdom of God where the poor, the hungry, and the persecuted are among those especially blessed.

Jesus sets forth the foundation of faith as love of God and love of one's neighbour and in his parables explores the question 'Who is my neighbour?'<sup>15</sup>, and that the judgement of God is on those who have ignored the cries of the sick, the hungry and the poor.<sup>16</sup> So that a denial of practical love for one's fellow human being, 'one of the least of these', is a denial of one's love for God.

# The early Church

It must be remembered that the Church began as a persecuted minority of the Roman Empire with no pretensions to political power. Therefore before its 'Christendom' era, the Church had its own experience of living as a minority with a denial of human rights. In what is widely seen as a post-Christendom era in Europe today the Church begins once again to find itself on the margins; and perhaps it is from the margins that it can have a renewed concern for justice and human rights.

The letters of the Apostle Paul are often seen as restrictive on rights e.g. of women and an acceptance of slavery which was universal at that time. But when allowance is made for the context of his time it can be seen that Paul was also concerned to model in the church a 'new society', based on justice and equality, in which there would be 'neither Jew nor Greek, slave nor free, but all one in Christ Jesus'.<sup>17</sup> Paul and the early Church also proclaimed the freedom in Christ brought about by the resurrection and this gives rise to a magnificent vision that the whole of creation, including human beings, can be transformed and set free from its bondage.<sup>18</sup>

The Book of James majors on the impossibility of 'faith without works', contains a warning against those who deny the human rights of the poor, and defines 'the religion that God our Father accepts' as including looking 'after widows and orphans in their distress'.<sup>19</sup>

<sup>12</sup> Luke 4:16-19

<sup>13</sup> Helmut Frenz, 'Human Rights: A Christian Viewpoint', Christianity and Crisis 36 (June 1976) quoted in James E. Wood op.cit

<sup>14</sup> Matthew 5: 1-11

<sup>15</sup> Luke10:25-37

<sup>16</sup> Matthew 25: 31-46

<sup>17</sup> Galatians 3:28

<sup>18</sup> Romans 8:18-25

<sup>19</sup> James 1:27; 2:14-26; 5:1-6

# The future vision

Finally we must mention eschatology, the glimpses in both the Old and the New Testament of a future vision of the world as God would like it to be, when his Kingdom will find its fulfilment and consummation. We have already referred to some of the prophetic visions from the Old Testament. In the final section of the Bible, in the Book of Revelation, we find the vision of the New Jerusalem where there is no more 'mourning or crying or pain<sup>/20</sup> and this contrasts with images of 'Babylon' where oppression, injustice and evil predominate. These eschatological visions are certainly in the future and 'not yet' but they are also 'now' in the sense that Christians can strive towards their realisation by becoming involved in issues of justice and human rights in their contemporary context.

## Conclusion

It is this rich biblical story that is foundational for Christians as they engage in the struggle for human rights, rather than the rights themselves. It is a vision founded on the inclusiveness of God's love for all humankind, 'all of whom are created equally in the divine image and are equally inviolable as persons'<sup>21</sup>. And human rights are always balanced by human responsibilities and the notion that 'people's deepest human needs for love, joy, forgiveness, intimacy and comfort, cannot be demanded as rights but must be received as gifts'.<sup>22</sup> These powerful biblical motifs impel Christians to join with others who may be motivated by a different vision, to take their responsibilities seriously and find common cause in defending the human rights and dignity of those who are least able to defend themselves.



20 Revelation 21:1-8

21 James E.Wood op.cit.pl1

<sup>22</sup> Marshall op.cit. p118

# THE FUNDAMENTAL RIGHT TO FREEDOM OF RELIGION (Freedom of belief)

### Dr. Peter Krömer

### Summary

The freedom of belief (religion) for each individual – one of the oldest of the fundamental and human rights – was one of the most significant breakthroughs in recognising the individual spiritual freedom of the human being. The legal framework protecting this right essentially ensures that any state coercion in the religious or philosophical sphere is out of the question – and at the same time offers certain guarantees for religious practice (of a community of believing individuals). This article explores the legal and conceptual provisions at European level – and the different UN and European levels of protection afforded.

### 1. Introduction

In the field of fundamental human rights, the fundamental human right of the individual to freedom of religion (freedom of belief) is connected to the right of the individual to freedom of thought, conscience and religion. The right of individuals to be free to choose to practice their religion (faith) without state interference is one of the oldest of the fundamental and human rights even if it is not the oldest. Freedom of belief (religion) for each individual was one of the most significant breakthroughs in recognising the individual spiritual freedom of the human being and the development of fundamental and human rights.

### 2. Legal sources

The fundamental and human right to freedom of religion (freedom of belief) – individual freedom of religion and collective (corporate) freedom of religion – is laid down in European states according to their respective constitutions and also in their respective national state Church laws or religious legal systems – along with their respective corresponding national protection of rights systems.

Council of Europe member States are contractual parties to the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>1</sup> of 4th May 1950 (ECHR) plus in the meantime a number of additional protocols. European States - and consequently their citizens are thus part of an international human rights protection system with the European Court for Human Rights in Strasbourg as an independent monitoring mechanism and judicial body.

Freedom of thought, conscience and religion is laid down in Article 9 of the ECHR. Article 2 of the first supplementary protocol to the ECHR lays down the right to education including parents' right to religious education for their children.

Almost all European states are, as members of the United Nations, also party to the International Pact on citizens' and political Rights (UN Human Rights Pact II). Freedom of thought, conscience and religion – plus the right of parents to religious education for their children – are

<sup>1</sup> Also: European Convention on Human Rights; ECHR

laid down in Article 18 of the UN Human Rights Pact II. European states are furthermore members of the OSCE – the organisation that succeeded the CSCE – and thus also accept the corresponding CSCE or OSCE documents relative to fundamental and human rights especially the Document of the Vienna meeting of the CSCE in 1986, often referred to as the final document of Vienna 1989. Many European states as members of the Council of Europe are automatically parties by international law to agreements on protection of minorities with stipulations concerning freedom of religion.

These international legal frameworks – especially the ECHR – constitute an agreed basic standard in fundamental and human rights concerning freedom of religion (freedom of belief) throughout  $Europe^2$ .

For EU member states ratification of the Lisbon Treaty entails increased significance for the Charter of Fundamental Rights of the European Union, whose Article 10, concerning freedom of thought conscience and religion, follows the same line as the European Convention on Human Rights.

### 3. Concept of Religion

To look at the substance of freedom of religion (freedom of belief) and its protection, it is important to know the meaning of "religion" in the juridical sense first.

Historically, the fight for freedom of religion was long and protracted, and yet there is no positive legal definition of religion. Neither the General Declaration of Human Rights of 1948 nor the UN Human Rights Pact II nor the ECHR with all its supplementary protocols offer a universally recognised definition of religion. It is generally accepted that "a religion" has to comprise at least a profession of faith, precepts for a way of life and some form of service of worship. The profession of faith in this sense would posit a comprehensive interpretation of the world and the position of man therein and some reference to the transcendental. Typical features of a concept of religion – and these are recognised as such by the highest courts in European states as well as in the United States of America – basically comprise an all-encompassing sense of meaning of the world and the position of man therein, a sense of the transcendental and corresponding guidelines for behaviour. The reference to the transcendental is the decisive criterion distinguishing religion from philosophical convictions.

# 4. Substance of the fundamental right to freedom of religion (freedom of belief)

The following description of the substance of the fundamental and human right of freedom of religion (freedom of belief) is grounded in the legal sources given in international law for fundamental and human rights, point 2 – particularly in Article 9 of the ECHR and relevant case law of the European Court of Human Rights. The following explanations are brief and simplified for non-jurists.

The Fundamental and Human Right to freedom of religion as formulated in Article 9 of the ECHR, Article 18 of the UN Human Rights Pact II and Article 10 of the Charter of Funda-



<sup>2</sup> Except for Belarus which is not a member of the Council of Europe

mental Rights of the European Union is primarily directed at deterring the state from exercising any influence. The essence of freedom of religion (freedom of belief) lies in excluding any state coercion in the religious or philosophical sphere.

The right to freedom of religion (freedom of belief) as cited earlier, not only justifies keeping the state at bay, however, but also endows it with the obligation to assure certain guarantees, such as guaranteed protection of religious practice from interference from third parties.

The right to freedom of religion (freedom of belief) covers first and foremost the so-called inner freedom of religion (forum internum), and sometimes also freedom of faith in the narrow sense of the term. It protects above all the freedom to hold an inner conviction in the face of any kind of ideological influence or investigation by the state, including notably the freedom to **have** a religion or philosophical conviction – or not to have one – or to change it. This inner freedom inevitably implies however the freedom to practise one's religion (forum externum), sometimes called freedom to worship. This freedom to practise a religion includes the right to freedom of private and public practice of one's religion or of a philosophical conviction and in that respect, to profess this faith (religion) or conviction in private or in public, on one's own or in the company of others.

The right to freedom of religion is first of all an individual right for all individuals – and Article 9 of the ECHR, Article 18 of the UN Human Rights Pact II and Article 10 of the Charter of Fundamental Rights of the European Union are drafted accordingly. It has become accepted as incontrovertible, that in addition to individuals, religious communities such as Churches and associations are also included in the provisions for freedom of religion (freedom of faith). Ultimately this is valid, too, for philosophical convictions. The fundamental right to freedom of religion (freedom of belief) cannot however be enforced by legal persons whose primary interest is one of profit, and where questions of religion (or faith) or conviction play a subsidiary role.

Article 9 of the ECHR, Article 18 of the UN Human Rights Pact II and Article 10 of the Charter of Fundamental Rights of the European Union do not afford absolute protection of the fundamental right to freedom of religion (freedom of belief). They are limited to Article 9 para 2 of the ECHR, Article 18 para 3 of the UN Human Rights Pact and Article 52 of the Fundamental Rights Charter of the European Union. It should be pointed out that one's inner religious freedom (forum internum) cannot be limited by the state, only the right to practice one's religion or conviction (forum externum, freedom to practise) and then only to a relative degree.

Freedom of religion (freedom of belief) is first and foremost the right of the individual to decide upon a specific religion/faith or conviction and to profess allegiance to this choose a faith/ religion or conviction, and, hand in hand with this, the right to alter one's religious allegiance or conviction at any time. Freedom of religion (freedom of belief) comprises - as a negative freedom - the right also not to believe, or to hold disbelief. As with regard to freedom of thought and conscience, the state cannot exercise coercion of any kind in the previously cited spheres which largely touch on one's inner religious freedom. In the same vein, the state has to not only guarantee the possibility for individuals to leave a Church, religious community or philosophical conviction, it must actually facilitate it. The state may not therefore enforce the practice of

religious customs or entry into a religious community. Similarly there is no duty to take part in religious manifestations or events, and it must consequently be possible to claim exemption from religious instruction in schools - in keeping with one's inner freedom of religion. Negative freedom of religion (freedom of belief) also means that a religious declaration when swearing an oath or making a vow does not have to be uttered. To a limited extent the state is obliged to give some guarantee that third persons acting inadmissibly cannot make it impossible for any individual to commit to a particular religion/faith or conviction, profess a faith or conviction and in all events to change allegiance to a religion (faith or conviction). In this respect let it be explicitly stated that recruitment for a faith (religion and Church/religious community) is always admissible in the framework of freedom of religion, however any such recruitment for a faith (religion and religious community or Church) cannot be carried out in such a legally abusive manner that the other can no longer freely commit to or profess his/her religion. Incidentally it should be noted that the state can and must institute and provide legal procedures whereby individuals can protect themselves against defamation in this faith or commitment of faith – although a degree of criticism must always be tolerated in the framework of the fundamental right to freedom of expression.

The fundamental right to freedom of religion (freedom of belief) as an individual right of the individual also covers the freedom to practise a religion whether in private or in public, and to profess one's faith (religion) or conviction alone or in the company of others. Thus the freedom to have a faith (religion or conviction) and to profess it also means being able to practise one's religion and conviction as cited above. Article 9 of the ECHR, Article 18 of the UN Human Rights Pact II and Article 10 of the Fundamental Rights Charter of the European Union list forms of practice in this connection such as services of worship, instruction, prayer, religious customs, rituals. Such lists are merely indicative – it is left up to each individual to decide in which form he or she wants to practise his/her faith or conviction. It should be made clear that this right to practise one's religion in the framework of the fundamental and human right to freedom of religion (freedom of belief) is left up to the individual quite independently of adherence to a Church or religious community or conviction (constituted as a legal persona).

Recruitment for the faith (religion or conviction) and consequently to a Church and religious community or conviction in public also features under the heading of public practice of one's religion, Services of worship are acts of religious proclamation as well as religious worship and so forth. Instruction in this particular instance means the transmission of religious doctrine or the tenets of faith of a Church or religious association. Religious customs and rituals can take the form of processions, pilgrimages, but also bell ringing and the call to prayer. Wearing specific types of clothes, adopting a particular hairstyle or adhering to dietary regulations also fall into this category in certain circumstances (these cannot be set forth in detail in the context of this paper). However, every act of an individual that is influenced by religion or faith is necessarily protected by the fundamental right to freedom of religion. Refusal to act in conformity with general civic duties such as refusing to pay taxes for example cannot be justified through freedom of religion (freedom of belief).

Judgments of the European Court of Human Rights endorse certain civic obligations and guarantees in connection with an individual's public and private practice of religion. The state has





to ensure that inmates of prisons and also members of the armed forces – especially in the context of performing national service – have the possibility of practising their religion in a particular, albeit somewhat limited, manner and some pastoral care by clergy must be provided. In countries with different Churches and religious communities the state has to make sure there is peace between religions in order to enable the individual believer to practise his or her religion in a climate of social tolerance. The state, as a neutral and unbiased organising power, must make it possible for a variety of religions and convictions to be practised amongst its citizens in the framework of their religious freedom without implying any kind of relative value judgment. This latter point also means that the state must ensure that no Church, religious community or philosophical conviction exercises any form of influence over the religious practice of members of another Church/religion does not however qualify as such.

Exercising one's freedom of religion as an individual typically occurs in the company of others – and is protected by the fundamental right of freedom of religion (freedom of belief) in this respect, too. European states, the European Court for Human Rights, and common law generally, recognise that in the context of collective religious practice adherents of a religion or confession of faith can form an association and thus become a legal persona, which is independent and separate from the individual believers or members. The legal format and its arrangements for Churches and religious associations have to make it possible for them to organise and constitute themselves legally in such a way that they can practise their religion, faith and philosophical conviction in public with and through their members and others. Accordingly, Churches, religious associations are collective agents of their respective congregations and thus also representatives of religious freedom – especially collective (corporate) religious freedom.

It is therefore an incontrovertible fact in the aforementioned sense relative to collective religious freedom – especially in the field of the ECHR but also the UN Human Rights Pact II - that on the basis of the Fundamental and Human Right of freedom of religion, members of a particular faith community or religion or conviction can come together in some form of religious community (Church, religious association) and attain an autonomous legal persona whereby the shape of this Church or religious community in the form of a legal persona has to take into consideration the possibility for public practice of this religion or collective freedom of religion. This has to take place according to state legal procedure.

In the case of an official State Church, the state must ensure that adherents of other confessions or religions can constitute themselves as religious communities with juridical personae with sufficient organisational facility to be able to implement public religious practice for and with their believers. For this to happen these Churches and religious communities – alongside the state Church – must be granted certain minimum rights to public common practice of their religion. In conjunction with the above-mentioned common law obligations, states are not impeded from providing for two different procedures of constituting Churches and religious associations (two types of legal personae) – one of these entailing more rights but also more responsibilities than the other. Such schemes would comprise both legally recognised Churches and religious associations and non-recognised Churches and religious communities in the form

of confessing communities. In view of the neutrality that was described earlier, states are urged, not to make it impossible for Churches and religious associations to change in time from one legal form to the other (especially to the form of special legal recognition with more extensive rights and responsibilities) especially if these are only at the basic stage of being a Church or religious association. Even this basic or initial stage of being constituted as a Church or religious association must bestow on the Church or religious association in question certain minimum rights for free public exercise of this religion.

The collective (cooperative) freedom of religion borne above all by Churches and religious associations also requires that the state allows a degree of self-rule for the legal personae of Churches and religions, so that they can carry out their religion and faith publicly together in the framework of a Church or religious association and legally responsible in their own right. Hence it is not allowed – particularly by Article 9 of the ECHR - for states to interfere in the internal affairs of Churches and religious communities. Internal affairs signify above all definition of content of faiths/confessions of faith and their forms of expression, but also the organisation of the Church/religious community itself and the designation of responsible officers and organs.

For Churches and religious communities as legal personae and representative bodies of collective freedom of religion, identical stipulations are valid for the sphere of collective and public practice of religion as for an individual – even with to some extent some wider rules for the purpose of collective religious practice in the form of congregations. The state must act as a neutral and non-partisan facilitator for the practice of different religions, faiths and convictions without itself passing any kind of value judgement on content. It must not proceed in a discriminatory way even where state Churches or systems with two kinds of Churches and religious associations may exist. The state must moreover offer the possibility for Churches and religious associations to protect themselves from defamation, in particular anti-religious utterances or anti-religious art – or if necessary enable the Church or religious associations to embark on legal proceedings. However, taking into account the right of freedom of expression and the right of art, a certain degree of criticism of Churches and religious associations can be expressed, even if this be anti-religious in nature.

Churches and religious associations and philosophical convictions as legal bodies in their own right and thereby bearers of the collective right to freedom of religion must (as already stated) be in the position to practice religious faith and conviction in public in all manner of expressive forms and also to recruit for their religion, faith or conviction.

In a context where majority Churches, majority religious associations or State Church exist in many Council of Europe member states, it is necessary to look into the minimum rights pertaining to other Churches and religious associations. This question is too detailed for this essay. From a common law point of view reference can be made to points 16 and 17 of the final document of the 1986 Vienna Meeting (follow-up meeting) of the Conference for Security and Cooperation in Europe (now OSCE), also known as the 1989 final document.

Right to freedom of religion (freedom of belief) is not granted limitless. Both Article 18 para 3 of the UN Human Rights Pact II and Article 9 para 2 of the ECHR – and to some extent Article 52 of the Fundamental Rights Charter of the European Union - make provision for



### European churches engaging in human rights

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possible limitations to the fundamental and human right to freedom of religion. This concerns only the practice of freedom of religion and not the so-called inner freedom of religion (forum internum). Encroachments on freedom of religion (or belief) can only be made through legislation by member states, with a legitimate goal, and with the incursion or limitation being proportional to the goal in question. Such restrictions may be justified by the interest of public security, public order, morality and decency, but above all the rights and freedoms of others – implying here fundamental rights and fundamental freedoms. In the context of the ECHR reference is made to the measures required in a democratic society to maintain proportionality.

In line with Article 9 para 2 of the ECHR, Article 52 of the Fundamental Rights Charter of the European Union refers to the very essence of fundamental rights and fundamental freedoms which shall never be assailed.

According to Article 15 of the ECHR, in case of war or another public state of emergency which threatens the life of the nation, the fundamental and human rights protected by the ECHR may be suspended to a limited extent. While this applies to a certain extent to Article 9 of the ECHR (fundamental right to freedom of religion/freedom of belief), it may never affect inner freedom of religion. Where Article 4 para 2 of the UN Human Rights Pact is in Force, however, freedom of religion (freedom of belief) may not be suspended. Even in case of public emergency (including war).

### 5. Protection of rights

European states must respect and implement the fundamental and human right to religious freedom through their constitutions and legal systems.

Over and above this, Council of Europe member States, by ratifying the ECHR, are party to a highly effective international human rights protection system, including the fundamental and human right of freedom of religion (freedom of belief). If domestic law has been exhausted without producing a result commensurate with the provisions of the ECHR, the European Court of Human Rights in Strasbourg can be invoked within six months by means of a formal complaint. Any individual, any legal persona, any Church or religious community or philosophical body can do this. The opposition party in this complaints procedure is the individual state concerned. In cases where the ECHR or its additional protocols is deemed to have been infringed the European Court for Human Rights can condemn the state in question to pay damages and costs to a limited extent, and to amend the legal system with a view to avoid further human rights violations.

The optional protocol to the UN Human Rights Pact II makes provision in the form of a quasi-legal protection scheme for human rights, for individuals to invoke the Human Rights Committee by means of a written communication to plead human rights infringements once all internal legal channels have been exhausted.

### Note

The present paper was originally written in German and is the summary of a detailed article in German with bibliographical references. The full version of this paper can be found on the CEC/CSC website http://www.cec-kek.org.

### INTERPRETATION OF HUMAN RIGHTS IN THE LIGHT OF THE CHURCH FATHERS

Prof. Dr. Vladan Perišić

### Summary

In the writings of the Church Fathers we find no detailed statements on human rights. In spite of this, their insights into human nature and the human person, and especially their insistence on the inalienability of human dignity, display an awareness of what we nowadays call natural human rights.

Declarations about human rights usually just *enunciate* different kinds of rights. They do not explain why people have them. However, from the *theological* point of view, and this is what interests us here, this question is the most interesting one. On reading the Church Fathers<sup>1</sup>, we find no in-depth arguing and even less specific terminology for the human rights issue<sup>2</sup>. Does this imply that the concern for what is essential for human rights is altogether absent from their horizon? If we take a closer look at their writings, we will soon be assured that this is not the case. When dealing with human rights 'patristically', we should start from the Church Fathers' insights into human nature and the human person. But, before doing that, a short introduction.

### 1. Origins

First of all, we have to admit that it is not true that the ideals enshrined in the foundations of human rights theory are found nowhere else but in biblical or patristic tradition. Maintaining that would be an exaggeration. In spite of this, the notion of human worth or human dignity, which is the most important of these ideals, really can be found both in biblical and in patristic tradition. Furthermore, it is also not true as is sometimes claimed that the so-called Medieval Church contributed substantially to the development of the concept of human rights, as it is a *modern* concept. This is so because the struggle between Church and state<sup>3</sup> - the clash of two conflicting authorities - was not for the freedom of *each individual*, which is the essence of the very idea of human rights, but for the freedom of the *Church as an institution*<sup>4</sup> (not to be underestimated at all, but something quite different). During the later Middle Ages<sup>5</sup> the concept of

<sup>1</sup> Church Fathers are "ecclesiastical writers in so far as they were accepted as representatives of the tradition of the Church" (J.Quasten, *Patrology*, vol. I, Utrecht-Antwerp, MCMLXVI, p. 9. A Church Father should combine 1. orthodoxy of doctrine, 2. holiness of life, 3. ecclesiastical approval and (according to Quasten) 4. antiquity. In a way, they continue in the line of the apostles and disciples of Jesus Christ.

<sup>2</sup> It goes without saying that this does not mean that there is no religious origin of important civil rights concepts.

<sup>3 &</sup>quot;It was a long and bloody battle." Charles Villa-Vicencio, "Christianity and human rights", Journal of Law and Religion, Vol. 14, No. 2. (1999-2000), pp. 579-600. See also R.H.C.Davis, A History of Medieval Europe (Longman, 1976) and Brian Tierney, The Crisis of Church and State: 1050-1300 (Prentice Hall, 1964).

<sup>4</sup> Charles Villa-Vicencio, ibidem.

<sup>5 &</sup>quot;... there is no expression in any ancient or medieval language correctly translated by our expression 'a right' until near the close of the middle ages." Alasdair MacIntyre, After Virtue, Notre Dame, Ind.; University of Notre Dame Press, 1984, p. 66-67. Some were more moderate: "Whether any of the Greeks had any such conceptions of moral agency, without which it would make no sense to speak of moral rights, is so far unproven." A.I.Melden, Rights in Moral Lives, Berkeley", University of California Press, 1988, p. 147. "... a growing body of literature locates the origin of innate rights views in the early and high Middle Ages." Paul Marshal, "Two Types of Rights", Canadian Journal of Political Science/Revue canadienne de science politique, Vol. 25, No. 4. (Dec. 1992), pp. 661-676. So it seems that it is also an exaggeration to claim that the idea of human rights has its origin in the secular Enlightemment (in the eighteenth century) or even in the theologico-political thought of Ockham (in the fourteenth century – e.g.). The last

*ius naturale* (i.e. *natural law* - denoting at that time what is naturally right) began to acquire all the more subjective meaning denoting a kind of faculty inherent in the individual or innate to human nature as such. So, the *articulated* concept of human rights started to grow sometime in the Middle Ages and continued its development gradually until it reached its present sense.

## 2. Secular or Religious

Being a *modern concept*, human rights theory is frequently seen as entirely secular, having nothing in common with biblical or patristic heritage. On the other side, there are many authors who claim that this theory has its roots specifically in the religious - if not texts - then spirit.<sup>6</sup> Both could easily be true. The American version of human rights can be shown to have its origin in the Christian reading of the natural law tradition, while the French version can be explained as stemming from rationalistic anti-clericalism, where human (or 'natural' or 'pre-political' or 'moral' or 'subjective' or 'inherent' or 'innate') rights are opposed to the alleged 'divine' rights of monarchs and popes. The former could be called the "secular humanism of western liberalism" and the latter the "anti-theistic current of the French human rights tradition".<sup>7</sup> This being as it may, what we need here is something else: a kind of *theological* understanding of the human rights complex. With that, we finally come to our issue.

## 3. Patristic insights

The essence of patristic anthropology can be expressed in just a few words by saying that *every human being is sacred.*<sup>8</sup> Formulated in this way it is at once evident that we find ourselves in a religious, not a secular, environment, because only in connection with God can that statement have meaning. Moreover, nothing more is necessary for a *human being to be sacred*: neither state, nor family, nor some sort of special circumstances. It is enough 1. to be a being *made in the image of God*,<sup>9</sup> and, of course, 2. that a fallen state does not deprive a human being of that image. Nothing else. And every human being, regardless of sex, race, age, colour, disability, marital or social status, ethnic or social origin, sexual orientation, language, culture, religious beliefs etc. etc. is that kind of being. The same can be expressed by saying that human beings simply have worth.<sup>10</sup> By the mere fact of being human, they are sacred, and being sacred in itself implies dignity. So, human *dignity* is not something derived from something more fundamental, because in this world there is nothing more fundamental than a human being (or being human). Consequently, *image, sanctity, worth, dignity*, being characteristics of being human, are all entirely fundamental.

results of some legal historians of the medieval period (e.g. John Witte and Charles Reid) show that the origin of the idea of natural rights can be found in the writings of the canon lawyers of the twelfth century – e.g. Huguccio (c. 1190). (See also, inter alia, Brian Tierney, "*Religion and Rights: a Medieval Perspective"*, Journal of Law and Religion, Vol. 5, No.1 (1987), pp. 163-175 and Nicholas Wolterstorff, "*Can Human Rights Survive Secularization?*" Parts I and II, http://www.reformedinstitute.org/news/20080126\_2.html. 3/5/2009).

<sup>6</sup> Even if this were true, it would be entirely unacceptable for someone to try to reduce the Gospel to some kind of theory of human rights.

<sup>7</sup> See Charles Villa-Vincenio, ibidem.

<sup>8</sup> See, for example, Michael J. Perry, *The Idea of Human Rights: Four Inquiries 7*, Introduction (Oxford University Press, 1998) and Jean Bethke Elshtain, "The Dignity of the Human Person and the Idea of Human Rights: Four Inquiries", *Journal of Law and Religion*, Vol. 14, No. 1 (1999-2000), pp. 53-65.

<sup>9</sup> What is important here is that humans are created in the image of God, independently of what that actually means. So, be that image 'reason' or 'creativity' or 'morality' or 'immaterial soul' or 'love' or whatever, what matters here is the very fact that that human being is "in the image of God", not what that image is exactly.

<sup>10</sup> This introduces the (practically useful) principle that all people have equal worth on the basis of their human dignity.

# 4. Individual versus Person

Further, in order to grasp the term in its fullest intended extent human rights must be understood *individualistically*.<sup>11</sup> On the other hand however, humans are relational beings and they are such intrinsically, not contingently.<sup>12</sup> Now, the very concept of relation, when applied to persons, entails responsibility and obligation. The teaching of the Church Fathers is that human beings are not self-sufficient monads, i.e. individuals<sup>13</sup> with no relations to others. Rather they are what they are only in communion with each other. They are mutually connected in such a way that speaking of *only* one person is possible only grammatically but not essentially. And that is so because, from the Christian perspective, one person is equal to no person.

Why is all of this relevant to the human rights issue? Because the aforementioned conclusion about the *intrinsic dignity of the human person*, which is the fruit of the exegesis and insights of patristic anthropology, shows both: 1. that human beings really have (God-given) rights, and also 2. that these rights are always in connection with obligations. Human freedom, in patristic philosophy, in contrast to most modern ideas, does not reflect some autonomous<sup>14</sup> 'choosing' ('me and my rights' along the lines of possessive atomism or individualism of the capitalist economy or liberal polity), but a responsible being endowed with a sense of duty. Church Fathers teach us that our God-given dignity (i.e. the right to be really human) and the right to freedom should not be understood as a (selfish and childish) right to do anything (a right of the 'grasping self'), but rather as a right to exercise responsibly that kind of freedom which (being the Godgiven freedom) always implies duties (and this is impossible without the 'giving self'). Consequently, the proper human freedom is not only a 'freedom from', but primarily a 'freedom for'. And the 'freedom for' together with 'duties' speaks of the human relational (not self-centered) character.<sup>15</sup> So here, the theological take on human rights underwent a significant transformation and redirection of emphasis towards human *obligation* that has always to be understood as going hand in hand with privileges and rights<sup>16</sup>.

# 5. Some patristic testimonies

If it is allowed to speak about some sense of natural (God-given) human rights, then we may say that we can perceive this sense in the writings of the Church Fathers. Let me mention but a few examples. Origen (*Contra Celsum*, V, 37) differentiates between "two kinds of law", one



<sup>11</sup> Human rights are intended to protect individuals – I take it as an axiom. But - and I take this as an axiom too - 'individuals' does not imply 'isolated individuals'.

<sup>12</sup> Instead of 'relational' Elshtain has 'social' which we, for the present purpose, can take as essentially the same. In a way this is also the standpoint of Alasdair MacIntyre, *After Virtue*, Notre Dame, Ind.; University of Notre Dame, 1984, p. 67.

<sup>13</sup> Christianity made an enormous shift from 'individual' to 'person' according to this logic: if an individual perishes, the species remains unaltered, but when a person dies, something unique and unrepeatable is lost.

<sup>14</sup> Cf. "From the religious point of view, human freedom is not autonomy, that is, pure self-determination; rather, it is autexousion, a graced capacity to achieve full ethical personhood and mystical participation in the life of God." Vigen Guroian, "Human Rights and Modern Western Faith: An Orthodox Christian Assessment", *Journal of Religious Ethics 26*, No. 2, 1998. p. 244.

<sup>15</sup> In my paper "Personhood and Nature: An Orthodox Theological Reflection on Human Rights", Human Rights: Christians, Marxists and Others in Dialogue, ed. Leonard Swidler, New York, 1991, pp. 131-140 I tried to develop a kind of theological approach to human rights, affirming that there are rights which are human, and yet are neither legal nor natural. I claimed that an example of such a right is deification, and that it is grounded in man's ability to exceed his nature, which is rooted in the fact that God himself exceeds his nature and 2. that man is an image of such a God.

<sup>16</sup> Cf. Lisa Cahill, "The Catholic Tradition: Religion, Morality and the Common Good", Journal of Law and Religion 5, pp. 75-77 (1987); "Theological Perspectives: Concluding Panel Discussion", ibidem, pp. 105-106 (1987).



being "the ultimate law of nature" and the other "the written code of cities", and argues that if these laws come into contradiction, we should give priority to the "law of nature" which he also calls "God's law"<sup>17</sup>. Lactantius (*Divinae institutiones*, VI, 10), speaking of faith in God and compassion with others, maintains that the purpose of faith is "unity with God", and the purpose of compassion is "unity with our fellowmen". The former he calls 'religion'; the latter 'humanitas'. Gregory of Nyssa (*Homiliae in Ecclesiastes*, 4) claims man's natural right to freedom. Basil of Caesarea (*Sermones*) warns us that the bread, coat, shoes or gold we have, belong in essence to the hungry, naked, shoeless or needy. And if we refuse to help them, "we do them wrong". John Chrysostom (*Homiliae in Acta Apostolorum*, 11, 3, and *De eleemosyna*, 2) teaches us that we should show mercy to the needy "not because of his virtue but because of his misfortune". So, the means of sustenance belong to the poor not on account of their moral right or on account of any positive law, but on account of their need, i.e. just because they are human beings. *Constitutiones apostolorum*, (IV, 12,2) while allowing slavery, maintains equality by nature between master and slave. Ambrose supports the right to life and virginity, etc, etc.

What is important to add is that these patristic insights that led on to the recognition of what came later to be named as "natural human rights", are made mainly in the course of Church Fathers' comments on passages from the Scripture.

### 6. Humanity revealed by God

From the aforementioned, it follows that what is fundamentally human, i.e. what it means to be human (and by inference what it means to have human rights), is gradually revealed to us by God (starting with the Old and continuing with the New Testament and Church Fathers up to the present day). (Un)fortunately it was necessary for God himself to teach us what it means to be (really) human. Therefore, the deepest mystery of human dignity is not achieved by human intellect, but is revealed by God's revelation, achieving its fulfillment in Christ's incarnation. In the Old Testament vaguely, and in the New Testament very clearly appears the idea that every human being has a great, unique and equal worth, and that the origin of this should be sought exclusively in the fact that humans are made "in the image of God", so that so-called "natural

<sup>17</sup> This antithesis, which derives its origin from Plato (Laws, 793 A), was a Stoic commonplace. Having differentiated thus, Origen continues: "Where the written law does not contradict the law of God it is good that the citizens should not be troubled by the introduction of strange laws. But where the law of nature, that is of God, enjoins precepts contradictory to the written laws, consider whether reason does not compel a man to dismiss the written code and the intention of the lawgivers far from his mind, and to devote himself to the divine Lawgiver and to choose to live according to His word, even if in doing this he must endure dangers and countless troubles and deaths and shame. Moreover, if the actions which please God are different from those demanded by some of the laws in cities, and if it is impossible to please both God and those who enforce laws of this kind, it is unreasonable to despise actions by means of which one may find favour with the Creator of the universe, and to choose those as a result of which one would be displeasing to God, though one may find favour with the laws that are not laws, and with those who like them. If in other instances it is reasonable to prefer *the law of nature, as being God's law*, [my italics] before the written law which has been laid down by men in contradiction to the law of God, should we not do this even more in the case of the laws which concern the worship of God?" Origen, Contra Celsum, Translated with an Introduction & Notes by Henry Chadwick, Cambridge University Press, Cambridge, 1979, p. 293.

<sup>18</sup> Closely connected with the notion of equality is the notion of discrimination, and especially interesting is the notion of so-called 'indirect discrimination' very successfully described as "... discrimination that is neither conscious nor intended and may not even be discernible on the surface, for instance, when something is taken for granted but still has a discriminatory impact and leads to discriminatory effects" (i.e. of violations of human rights), Johannes A. van der Ven, "A Chapter in Public Theology from the Perspective of Human Rights: Interreligious Interaction and Dialogue in an Intercivilizational Context", *The Journal of Religion*, University of Chicago Press, 2006, Vol. 86, No 3, pp. 412-41.

human rights" are rooted in the inherent (God-given) worth or dignity of each and every human being.<sup>19</sup>

# 7. Conclusion

I think that it can be shown<sup>20</sup> that we can trace the recognition of natural human rights from the contemporary statements in different declarations in the twentieth century, back to the political philosophy of the secular Enlightenment in the eighteenth century, Suarez's thought in the late sixteenth and early seventeenth century and Ockham's thought in the early fourteenth century, through the canon lawyers in the twelfth century and Church Fathers of the first millennium, back to Scripture itself.

Just as it is true that human beings in their inmost core reflect God's image no matter whether they are Christian or even religious, or simply outright atheists, it is also true that they have inalienable natural rights no matter whether they are religious or not. Therefore, leaving aside the question of the actual foundations of human rights, in matters of common action (by theists and atheists), we may conclude that whatever those foundations may be, both believers and atheists or agnostics (even if they disagree on the question of why human beings possess rights) may still join and come out together when these rights are violated.<sup>21</sup> They should react together in common awareness that there is no end, on earth or in heaven, so sacred that human beings should be used as a means for achieving it.<sup>22</sup> Behaving in this manner, they stand firm in defense of inalienable human dignity.



<sup>19</sup> On the other hand, it is through the Church that we as human beings "attain a vision of our common good in God", David Matzko McCarthy, "Catholic Social Thought: Rights, Natural Law, and Pluralism", November 1, 2004 (http:// www.samford.edu/lillyhumanrights/papers/McCarthy\_Catholic.pdf)



<sup>20</sup> Though of course, such a project would demand a whole book.

<sup>21</sup> From the theistic perspective, violation of basic human rights is, in essence, violation of the dignity of God's image. John Calvin understood this: "... no one can be injurious to his brother without wounding God himself". Commentaries on Genesis, Grand Rapids: Baker Book House, 1984, pp. 295-296. That is why such violation is not only a moral, but primarily an ontological sin.

<sup>22</sup> One can read this as a variation of the wise Kantian maxim pointing out that a human being may never be used as a means only but always at the same time as an end in itself (Immanuel Kant, *Groundwork of the Metaphysics of Morals*).

# THE CHURCHES' ENGAGEMENT IN HUMAN RIGHTS a brief discussion

#### Mr Dennis Frado

#### Summary

This article surveys the Churches' involvement in human rights primarily in the context of the United Nations. The role of Dr. O. Frederick Nolde, later an ecumenical observer at the UN, in the development of the Universal Declaration of Human Rights, is highlighted.

The concept of human rights has its roots in the Enlightenment period and in particular John Locke's concepts of the self and the idea of the social contract. These ideas greatly influenced the U.S. "Founding Fathers", especially Thomas Jefferson, and led to the Bill of Rights added to the U.S. Constitution. Obviously, Locke and other Enlightenment philosophers had considerable influence on the development of ideas about the then-called "rights of man" and subsequently on the emergence of more democratic governing structures in Europe. Therefore, the codification of human rights, culminating in the adoption of the Universal Declaration of Human Rights in 1948 by the UN General Assembly, stems primarily from this Enlightenment period even though many aspects of democratic values were implemented earlier than that by the ancient Greeks, among others.

It was the need for a new world order in the aftermath of the atrocities of World War II that motivated world leaders (albeit mostly the victors and clearly not the then-colonized) to seek ways to avoid war through the development of international law. As Canon John Nurser has noted in his essential For All Peoples and All Nations: The Ecumenical Church and Human Rights, the 1937 Oxford Conference on Life and Work, as evidenced in its discussion, "Church, State and Community", had a fair degree of influence, as a Christian commentary on the social order, on the post-war discussion of how to realize a more orderly world.<sup>1</sup> And, as Nurser has also noted, the development of the Pillars of Peace by the Federal Council of Churches of the U.S. during the war years, and the involvement of Dr O. Frederick Nolde as a representative of the World Council of Churches in that process, had considerable influence later in the UN's development of the Universal Declaration.<sup>2</sup>

But, as Canon Nurser has noted, the creation of the Universal Declaration was influenced by the somewhat American concept of "inalienable rights", such that it was proposed by the State Department to be in the UN Declaration and was ultimately included in the first sentence of the Preamble.<sup>3</sup> And, it is very important to note that both the Preamble of the Universal Declaration of Human Rights and its first Article include a reference to the fundamental importance of human dignity.

John S. Nurser, For All Peoples and All Nations: The Ecumenical Church and Human Rights, (Washington, D.C. Georgetown University Press, 2005), pp. 19-20.

<sup>2</sup> Nurser, pp. 57-68.

<sup>3</sup> Nurser, p. 148 and http://www.unhchr.ch/udhr/lang/eng.htm

However, let us establish first what is meant by human rights in terms of international law. A very helpful excerpt from a human rights manual for UN staff outlines the basic concepts:

Human rights are commonly understood as being those rights that are inherent to the human being. The concept of human rights acknowledges that every single human being is entitled to enjoy his or her human rights without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Human rights are legally guaranteed by human rights law, protecting individuals and groups against actions that interfere with fundamental freedoms and human dignity. ... Human rights are inherent entitlements that come to every person as a consequence of being human. Treaties and other sources of law generally serve to protect formally the rights of individuals and groups against actions or abandonment of actions by Governments that interfere with the enjoyment of their human rights.

The following are some of the most important characteristics of human rights:

- Human rights are founded on respect for the dignity and worth of each person;
- Human rights are universal, meaning that they are applied equally and without discrimination to all people;
- Human rights are inalienable, in that no one can have his or her human rights taken away; they can be limited in specific situations (for example, the right to liberty can be restricted if a person is found guilty of a crime by a court of law);
- Human rights are indivisible, interrelated and interdependent, for the reason that it is insufficient to respect some human rights and not others. In practice, the violation of one right will often affect respect for several other rights. All human rights should therefore be seen as having equal importance and of being equally essential to respect for the dignity and worth of every person.<sup>4</sup>

These ideas about inalienability and dignity are a common thread throughout the understanding of human rights that is generally accepted by the international community. In a recent issue of the LWF Documentation series, Dr David Pfrimmer, Principal Dean of the Waterloo Lutheran Seminary in Ontario, Canada, outlines three theological convictions about human rights:

... that people are created in the image of God (imago Dei), a recognition of the prevalence of sin, and the mutually responsible vocation of the Churches, governments and civil society in the public sphere.<sup>5</sup>

Pfrimmer goes on to state: "Bearing the 'image of God' implies that people have an inherent and inviolable dignity". He also cites the Church of Norway Council on Foreign Relations' 1975



<sup>4</sup> http://www.ohchr.org/english/about/publications/docs/handbook.pdf

<sup>5</sup> David Pfrimmer, *Human Rights as a Public Theology*, LWF Documentation No. 51, The Lutheran World Federation. (Minneapolis, Lutheran University Press, 2006, Peter N. Prove and Luke Smetters, eds.), p. 57.

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working paper on human rights to support the second conviction: "'The fact that we are all in bondage to sin means that some can exercise their human rights at the expense of others. What is meant for good can be perverted for evil.""<sup>6</sup> On the mutually responsible vocation of church government and society, Pfrimmer says this "arises from their involvement in public life". He notes that rather than merely focusing on one right – such as religious freedom –- "Churches have tried to lift up human rights for all people, pushing the political frontier to understand those rights as both individual and communal"<sup>77</sup>.

The Lutheran World Federation (LWF) and the World Council of Churches, as Pfrimmer also notes<sup>55</sup>, have documented various theological perspectives about human rights over time. Mandated by the Fifth LWF Assembly, a consultation was held in Geneva, Switzerland in mid-1976 which resulted in the publication of "Theological Perspectives on Human Rights" in 1977. Those attending explored theological questions in the field of human rights, human rights in differing cultural, social and political systems, and the Churches' responsibility for realizing human rights. It appears to be the first -- or at least one of the first -- specifically international Lutheran discussions of human rights.

The 1976 LWF consultation noted other significant ecumenical discussions of human rights – the World Council of Churches' October 1974 consultation in St. Pölten, Austria on "Human Rights and Christian Responsibility", and the World Alliance of Reformed Churches' discussion on the "Theological Basis of Human Rights" in London in 1976.

"A Lutheran Reader on Human Rights"<sup>8</sup>, published by the LWF in 1978, was prepared to complement the 1976 booklet. The volume compiled reports and statements by the LWF and its member Churches over the period 1970-77 and also included articles by individuals, the papers delivered at the 1976 consultation and an extensive bibliography on various aspects of the theological discussion of human rights.

In 1980 an inter-confessional consultation took place. Its report, "How Christian Are Human Rights? – An Interconfessional Study on the Theological Bases of Human Rights", includes six papers and agreed findings and recommendations. Fortunately, the findings and recommendations are available online<sup>9</sup>. While this meeting did not break much new ground in its conclusions, noteworthy is Dr Carl Braaten's comment on the search for justice and its connection to human rights:

"But how can the ideal of justice act as means of testing what is constitutive of human rights? The core of justice is care for the neighbour. Justice is one form that love takes in the life of society. The sum of the law is: you are to love your neighbour as yourself. If you

<sup>6</sup> Idem.

<sup>7</sup> Ibid., p. 58.

<sup>8</sup> Idem.

<sup>9 &</sup>quot;A Lutheran Reader on Human Rights", LWF Report 1+2/1978, Jørgen Lissner and Arne Sovik, Eds., The Lutheran World Federation, September 1978, Geneva, Switzerland.

<sup>10</sup> The theological basis of human rights – Report of a limited research project, 1980, World Alliance of Reformed Churches (http://warc.ch/dt/erl2/01b.html) Accessed February 25, 2009.

love your neighbour, you will care for him/her, which means that you will concern yourself for his/her basic rights".

These discussions took place in the midst of the Cold War but after the Final Act of the Helsinki Conference on Security and Co-operation in Europe (CSCE) was signed (1974), arguably the first thaw in the Cold War.<sup>11</sup>

With this focus on religious freedom, the work of the churches on human rights came back full circle in the sense that one of Dr Fred Nolde's important contributions to the development of the Universal Declaration (UDHR) was on this particular aspect of human rights.

As Nurser makes clear, Nolde's contribution should be seen in its ecumenical, as compared to Lutheran, context because Nolde's involvement was rooted in the emergence of the modern ecumenical movement, and in his fundamental role in establishing the Churches' monitoring role at UN headquarters while he was the first director of the Churches' Commission on International Affairs - soon thereafter and still, an entity within the World Council of Churches.

Nolde attended a study conference on international affairs in Ohio in 1942 and this led to his connections with the Federal Council of Churches' Commission to Study the Bases of a Just and Durable Peace and service with the Joint Committee on Religious Liberty, an effort of the FCC and the Foreign Missions Conference of North America.<sup>12</sup> Nolde's work with the Just and Durable Peace Commission and the Religious Liberty Committee led to his work on human rights more generically.<sup>13</sup> It also led to his collaboration in efforts by Church leaders during the Second World War to engender support for the idea of a new and stronger international organization. Nolde was a critical player among the non-governmental organization (NGO) representatives present at the UN organizing conference in San Francisco. It was there that he successfully argued for the provision of a Commission on Human Rights in the Charter as well as for UN relations with NGOs.

As Nurser describes, a common thread in the development of the UDHR was the growing interest within the modern ecumenical movement, on the one hand, to have a role in promoting peace in order to avoid in future the horrors it experienced prior to and during World War II and, on the other hand, the interest among world leaders who were also Christian, to do the same. One whose role bridged both was John Foster Dulles, later the U.S. Secretary of State for President Eisenhower, who, in the course of events became a close friend of Nolde and, arguably, a supporter of his involvement in the UN's codification of human rights. This is worth noting not only for its historical significance of connecting the powerful with the emerging modern ecumenical movement but also for its contrast with our current international political circumstances where the Churches' role, especially at the UN, has diminished in influence over the years. This difference is largely attributable to the matter of who was at the table in 1945 and who is there now – two very different sets of nation state actors and NGOs.

<sup>11</sup> See also "An ecumenical experiment in human rights" Theo Tschuy, Geneva, 1985, Churches' Human Rights Programme for the Implementation of the Helsinki Final Act.

<sup>12</sup> Nurser, pp. 41-42.

<sup>13</sup> Ibid., p. 94.

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In the period from 1945 until the adoption of the UDHR in December 1948, Nolde worked for that document's realization in earnest alongside Eleanor Roosevelt, the first chair of the Commission on Human Rights.<sup>14</sup> It was in that larger context that Nolde made his famous contribution of the text that would become Article 18:

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance".

Nolde's contributions to the ecumenical movement and its promotion of human rights did not end there. Indeed, he continued to lead the WCC's office at the UN and be perhaps the most influential NGO representative there until his retirement in 1969.<sup>15</sup>

While Nolde's contributions were unique, he laid the groundwork for ecumenical and Lutheran efforts to promote human rights that have continued over the years.



14 Ibid., pp. 143-169. 15 Ibid., p. 29.

# HUMAN RIGHTS WITHIN THE CHURCHES

# The Church of Scotland's anti-discrimination legislation: an example of "equivalence of protection"

Rev. Dr. Marjory MacLean

#### Summary

The Church of Scotland has developed an approach to human rights principles that is consistent with its distinctive spiritual jurisdiction, which is recognised in British civil law. By legislating on the basis of offering 'equivalence of protection' to those subject to the Church's jurisdiction, the Church is able to set its standards of conduct and justice that are derived from religious beliefs, whilst ensuring no diminution of personal rights to ministers and others.

### 1. Church and State

Throughout Europe, Churches experience many different kinds of constitutional relationship with the civil states in which they operate. Some have no distinctive spiritual jurisdiction in law, and are subject to civil law just like any other voluntary or professional body. Some enjoy particular religious freedoms within the law, perhaps in the form of exemptions from certain statutory obligations or regulations. A few Churches have some kind of recognized legal jurisdiction for their own spiritual purposes, an area of authority where the writ of civil law does not run. The Church of Scotland is an example of the last category.<sup>1</sup> Consequently it faces a profound and constant question, whether it has a responsibility – parallel to the moral responsibility of the civil magistrate – to enshrine into its own legal system the same standards and principles of human rights we have become used to seeing become visible in national laws.

#### 1.1. Human Rights and Civil Law

Even when a separate spiritual jurisdiction is conceded to a Church by the state, the civil law may regulate many aspects of the Church's life: to the extent that it is an employer, to the extent that it provides services to the public, to the extent that it operates public buildings, and so on. In those non-spiritual activities, the Church is subject to the principles of human rights (for example the principle of non-discrimination) expressed in those regulations. Most of the time that is not problematical, but just occasionally there may be a clash of competing beliefs. Famously in Great Britain, the Roman Catholic Church found itself caught by laws outlawing discrimination against prospective adoptive parents who are homosexual, because it was not exempt from the requirement of the civil law in that area of its work.

#### **1.2. Church Law and Personal Rights**

It is rather tempting to assume that the Churches are only ever negatively distinctive, or resistant to the promotion of personal human rights. Far from it: one can demonstrate the Biblical and theological roots of much of the Western tradition of rights in persona, and the Churches take pride in guaranteeing individuals' rights, sometimes going beyond the practice of secular

<sup>1</sup> see MacLean, M.A., The Crown Rights of the Redeemer: The Spiritual Freedom of the Church of Scotland, Edinburgh: St Andrew Press 2009

example and courage in difficult circumstances.

1.3. The Concept of Equivalence of Protection

regarded more solemnly than they would be in civil law.

2. Anti-Discrimination Principles

institutions in doing so. Across Europe, Christians will readily bear witness to their Churches'

But where secular law is founded on a basis of universal personal rights, the perennial challenge for Churches is this: is it possible to be different from secular society? Is it right to be, in this rights-driven age? Why bother having a separate spiritual jurisdiction if it is not possible to be different from the world regulated by civil law? If there can be no distinctiveness in the Church's

The Church answers this puzzle by offering within its own community an 'equivalence of protection' alongside whatever is provided by the civil law. It cannot do otherwise without denying the relevance of fundamental human rights in Church life. It is not 'identity of protection'; but it is a separate, parallel, comparable enshrining into Church law of human rights principles, which are read by Christians from Natural Law but also from Divine Law. And often indeed the expected standards of conduct are higher within the life of the Church: where adultery is often still treated as a disciplinary offence even where the civil law does not treat it as a crime; where a minister's breach of confidentiality is regarded very seriously even in countries where clerical confidence would not be protected by the civil courts; or where ordination or marriage vows are

attitude to rights and obligations, why trouble to maintain our own legal system?

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#### **2.1. The Churches and Discrimination** Churches have often wanted, for sincerely spiritual reasons, to exercise discrimination in ways the civil law would not allow: against women's ordination in some traditions, against homosexuals' leadership of the Church in some traditions, and of course on grounds of doctrinal integrity in virtually every tradition. Sometimes this distinctiveness of practice draws admira-

most problematically.

sexuals' leadership of the Church in some traditions, and of course on grounds of doctrinal integrity in virtually every tradition. Sometimes this distinctiveness of practice draws admiration, and often it draws criticism from commentators within and beyond the Churches. Often, however, the Church will wish to provide exactly the same protection against the same illegitimate grounds of discrimination as the civil law provides. And often, as I have argued above, the Churches offer an equivalence of protection, serving a single fundamental principle of rights but doing so in an unmistakable Christian way.

A flurry of activity in the European institutions over the last decade makes the field of anti-discrimination law one of the most visible illustrations of the concretisation of human rights into positive law. It also happens to be the area in which Churches seem to act most distinctively,

#### 2.2. The Need for Separate Protection

The recent experience of the Church of Scotland provides an interesting illustration of how 'equivalence of protection' can work. As part of an exercise with the Churches, the Department of Trade and Industry (as it was then called) of the UK Government considered whether clergy could be said to have adequate protections as workers, even where they were not regarded as 'employees' in conventional terms. Behind the exercise was the implied threat that the government might introduce regulation to protect clergy where the denomination itself did not

adequately do so within its own jurisdiction. In some ways this felt slightly sinister, as if the government was allowing the Church its independent jurisdiction but then determining what should be included in its terms, and threatening to supply that want in civil law if all else failed. In particular, the government observed that the Church's procedures to tackle discrimination were not clearly articulated and rather difficult to identify.

#### 2.3. Church of Scotland Anti-Discrimination Legislation

The Church's Ministries Council and its Legal Questions Committee took the view that the right response was to provide 'equivalent protection' by introducing into the law of the Church a measure meeting both the highest standards of civil anti-discrimination legislation and the best practice of the Church's life. The DTI having made a reasonable observation of a slight gap in the Church's own law, it would be foolish to react aggressively and try to defend the jurisdiction – and the gap in its protection! With the help of a specialist discrimination lawyer, legislation was framed.<sup>2</sup> Its terms went beyond the equivalent civilian legislation, for example by requiring the process to include an attempt at mediation of the situation before resort to a solution imposed by the Church's courts. The Church thus borrowed the best of the civil law's provision but added its own ethos, providing an equivalent (but much better) kind of protection for the Church's needs.

An interesting footnote to the process emphasises the independence of spirit still very much in evidence within the Church. As soon as this legislation was passed, the same Committees proposed that the Courts of the Church should have the power to impose financial penalties in proven discrimination cases, an element missing from the original text. Through consultation it became clear that most of the Church rejected the proposed addition, as being a copying of a temporal civil law provision that was unnecessary and inappropriate within a spiritual jurisdiction. No one, therefore, can say that the Church of Scotland exercised its own jurisdiction by slavishly importing everything relevant out of the civil jurisdiction.

# **3. Conclusions**

This article has described the approach in one denomination with a historically unique relationship with the state in which it operates. Perhaps, though, the conclusions to which this Church's experience points have a more universal relevance:

- The fundamental principles of human rights derive from Divine Law as well as from secular sources of legal principle. Therefore Churches must have some duty to enshrine these principles in their own law making.
- This may, in practice, mean that Churches enact measures very much like civil laws. This should not be mistaken as an incorporation of civil law into Church law, no matter how strong the similarity. Doing the same good thing others have done does not necessarily mean 'conforming to the world' provided that motivation is Christian and faithful.
- Churches may have to be ready to defend any distinctive position that appears to operate a lower standard of discrimination policy than society normally expects. Indeed they may find legal pressure against doing so.

<sup>2</sup> Act V 2007 anent Discrimination

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• Churches, however, should not forget that they have the opportunity to operate a higher standard, or a better practice, or a nobler example, than secular society gives.

Often it is assumed that the Churches' role in the protection of human rights must lie only in serving those whose rights are under threat. This article suggests that it is also in its bearing of obligations as a legal authority that the Church has a difficult role, which it must fulfil without apology or hesitation.





#### NON-DISCRIMINATION LEGISLATION AND CHURCH (LABOUR) LAW WITHIN THE EKD, ITS MEMBER CHURCHES AND ORGANISATIONS Rev. Patrick R. Schnabel

#### Summary

The Church is not a free master of its own order, but bound by the requirements of its doctrine. In Germany, the Constitution respects the Churches' right to self-determination, so that these can administer their affairs in line with their theology. Human Rights are part of the Church order, as they are deeply rooted in the Church's teaching on the dignity of the human being. The Church is also a beneficiary of fundamental rights, especially the right to freedom of religion. When making use of civic freedoms, conflicts with the rights of others are unavoidable. This also applies to the Church, for example when defining occupational requirements for its employees. When balancing rights that clash, the Church's identity as a religious community needs to be taken into account. The best solution for the secular legal order is to include special provisions concerning religious freedom in its legislation so as to avoid any unintended discrimination by the Church when exercising its rights. This is also a contribution to a pluralistic society and social engagement of believers.

According to the Theological Declaration of Barmen<sup>1</sup>, the Church rejects the misconception, whereby it could be "permitted to abandon the form of its message and order to its own pleasure or to changes in prevailing ideological and political convictions" (thesis 3). Its order must, therefore, be in line with its message and doctrine. From this notion it follows that all ecclesial law must be shaped in a way that is consistent with the ecclesiology of the respective Church. The extent to which this is possible, however, depends on the degree of corporative or institutional religious freedom guaranteed by the legal order of the country in which a Church is located. This form of religious freedom is also known as the Churches' right to self-determination<sup>2</sup>.

In Germany, the general framework of state/Church relations has been governed by the same constitutional provisions at federal level since 1919. They are now enshrined in Art. 140 Grundgesetz. One of its central norms reads: "*Religious societies shall regulate and administer their affairs independently within the limits of the law that applies to all"*. (Art. 140 GG, incorporating Art. 137, paragraph 3, of the Weimar Constitution). This norm has been interpreted by the Federal Constitutional Court in several landmark decisions as providing a space of legal independence for the Churches. The Weimar Constitution effectively disestablished the Protestant Churches in Germany, thus paving the way for a state that is neutral in religious matters. Such a state, however, can no longer claim any sort of religious expertise. As the Grundgesetz also enshrines freedom of religion (and it does so without any caveat except the other provisions of the constitution itself), it is basically up to the Churches to define what are the theological requirements in their legal set-up. The state has to respect these decisions.



<sup>1</sup> The Theological Declaration of Barmen, adopted in May 1934, was a statement of the "Confessing Church" against the heresies of the German Christian Movement, which tried to reconcile National Socialism with Christianity. After 1945, it has become an official confession in many Churches in Germany and worldwide.

<sup>2</sup> Whereas the Churches'"right to self-determination" originates from the Church itself and only has to be respected and guaranteed by the state, "Church autonomy" in legal matters that are directly applicable in the secular legal order is conferred on the Church by the state.







The reservation "within the limits of the law that applies to all" has to be interpreted restrictively considering that only norms and values immanent to the constitution may limit religious freedom. "Their affairs", on the contrary, has to be interpreted broadly: The self-understanding of a Church is a key measure for the scope of its own affairs. According to the Federal Constitutional Court, a wide range of activities such as education, social care or youth work are covered by this formula. Religious freedom and the Churches' right to self-determination are separate norms, but complementary: What is at the centre of the latter, originates in the former. It would, therefore, not be comprehensible if totally different standards were applied to the individual exercising his or her right to religious freedom or many individuals doing so together and in a structured form (collective and corporate aspects of the freedom of religion). It is therefore always a matter of balancing of conflicting legally protected interests to determine which laws fall under the category of the "*law that applies to all*". To avoid the courts having to do this balancing, many laws in Germany already contain "Church clauses" with the necessary exemptions.

When administering "their affairs", the Church is on the one hand free to apply its own standards, on the other hand limited by the overall constitutional order of which the fundamental rights of the individual are a key constituent. However, in the first place fundamental rights protect the individual from the sovereign power of the state. They do not directly bind private citizens or institutions. If the state decides to extend its powers into the domain of private relations, this has to be done by a concrete law for a concrete area. Such laws will have to balance the fundamental rights they want to protect, with conflicting rights. In the case of the Church, religious freedom and the Church's right to self-determination can make for such conflicting rights. According to German constitutional doctrine, this balancing must be done in a way that none gains improper dominance over the other and none shall be treated in derogatory fashion in its essence. Accordingly, Churches have to guarantee certain rights, but where these collide with their religious identity it must be determined which impact would be the greater: to limit the individual's or to limit the Church's exercise of their rights. The jurisdiction of the Federal Constitutional Court has established that the Churches' right outweighs the individuals' right in all cases where the Church would be forced to accept a permanent, even structural violation of its teachings or identity. An example is the physician in a Catholic hospital who publicly advocated the right to abortion: The Court deemed it appropriate for the Church to end the contract with this physician<sup>3</sup>.

To avoid any misunderstanding: Such cases are very rare. The churches in Germany endorse the fundamental rights of the individual, which have been derived, to a large extent, from their own teachings on the dignity of the human being. So far, there is only one area where such collisions have every so often become an issue: labour law, both individual and collective. This has occurred because with labour law the sphere of Church autonomy reaches far into society. In Germany, the Protestant Church (EKD), the Roman-Catholic Church and their main social

<sup>3</sup> BVerfGE 70, 138. This decision has also been confirmed by the European Court for Human Rights (Application No. 12242/86 – Maximilian Rommelfanger vs. Federal Republic of Germany).

agencies, Diakonie and Caritas, together employ more than 1 million people. In an open, pluralistic society and with a registered Church membership of about 2/3 of the overall population, it is only natural that not all applicants for positions in the Church bring along the knowledge and convictions needed to form the ecclesial order in accordance with the Church's ethos. Also, when it comes to shaping its order, the Church cannot rely on the Holy Spirit only, but needs to set the frame by means of laws. No-one can vouch for the belief of every individual, but ecclesial law can set up an objective framework for the ministry of the Church. It binds its members when acting in its service, by its mandate and in its name.

The crucial guestion for the Church is how its engagement in the social, educational and cultural sector is defined vis-à-vis its spiritual identity: Is it something second to its nature, or part of it? For most denominations the answer is quite clear: The Christian faith does not exist for its own sake alone, but must be transformed into action for others. To take on responsibility and get involved in society – and also to get engaged in the processes that determine the conditions under which we live – is part of being the Church in the world, for the world. So it is indeed always "the Church" that acts, even if the legal form of its different institutions varies. What it essentially is, cannot be reduced to cult and teaching; its mission cannot be separated from the vision it grows from. It is, therefore, in the legitimate interest of the Church to perform its duties itself. For this reason, Church law must apply the same basic norms to the Church proper and its various organisations and institutions. In the Protestant tradition, there is also no hierarchy in the different tasks within the Church: "The various offices in the Church do not establish a dominion of some over the others; on the contrary, they are for the exercise of the ministry entrusted to and enjoined upon the whole congregation". (Theological Declaration of Barmen, thesis 4). The whole congregation, minister and presbyter, sexton and organist, nurse and social worker - they act not only as individuals satisfying their need for an income, but also as members of the Church partaking in its ministry. The concept behind this is derived from St Paul who described the Church as a community of service. Following from the above-cited constitutional norms, the Churches in Germany are relatively free to establish such a "community of service" by means of Church law, but are also limited by some basic principles of a constitutional order.

Applied to collective labour law, this means that the Church must allow for its employees to participate in the fixing of salaries and work conditions, but can do so in line with its ecclesiology. As it is incompatible with the nature of the Church to suspend its service for the world (strike) or for its different offices to fight with each other (as in the logic of "collective action"), the Church has chosen to determine all such matters through independent commissions representing leading Church officials and other Church employees in equal numbers. Collective agreements are reached in these commissions by majority vote. Employee representations have to agree to most decisions concerning the staff. This system is currently under pressure as the recent introduction of free market rules in the social sector exposes the Church to unprecedented competition. The Church is willing to adapt in a way that serves both the interests of the Church to continue to work effectively and in keeping with its order, and the interest of its members in fair conditions when contributing to these tasks as employees. By doing so, all those in positions of responsibility must keep in mind that the law can only provide a framework, but that the "community of service" derives from the spirit that is nurtured within it.



Applied to individual labour law, this means that the Churches will require most of their employees to be Church members and all to comply with their ethos in their conduct, professional and private. It is these requirements that constitute the area where Church and secular order are most likely to be at odds. The first is based on the Church being a community constituted by baptism and upheld by belief – or, insofar as belief is impossible to measure either theologically or legally, at least formal dedication. As such it requires positive distinction on the grounds of religion, which needs to be dissociated from discrimination. The second may be relevant in a number of cases, ranging from conflicting opinions (as in the case cited above), which bears on the freedom of expression, to issues like the sexual orientation of clergy which could, again, be viewed as discrimination. For Germany, the Federal Constitutional Court has established that Churches are well within their rights to lay down such requirements. However, all member states of the EU operate in a multi-level legal system of which national constitutions are only a part. Community law is another, and has, in most cases, primacy in application.

In Europe, there are more legal systems defining the relationship of Church and state than there are states: Regional and religious history and identity have been closely bound up over centuries. The resulting differences are still relevant. The German Federal Constitutional Court, in its well-known decision of 2009 on the compatibility of the Lisbon Treaty and the German Constitution, named this legal field as one of the few that form a specially protected core of national identity and authority. Neither has the EU any intention of extending its legislation into this field, as it is well aware of the differences – and pit-falls. Art. 17 paragraph 1 of the Treaty on the Functioning of the European Union (part of the Lisbon Treaty), therefore reads: "*The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States*".

This does not, however, exclude any EU influence on pertinent national law. EU legislation on non-discrimination, especially at the work place, is one field where the EU did not intend to establish specific Church/state law, but effectively had an influence on this law in its member states. As it has no interest in a conflict over the law on religion, but very definite interest nonetheless in ensuring that its legislation is applied comprehensively, the EU makes use of the same method already mentioned for the German legal order: special "Church clauses" already balancing the potentially conflicting rights. One such clause can be found in Art. 4, paragraph 2 of Directive 2000/78/EC, the interesting part of which is this: "... a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos". The Directive accepts that in Church labour law a difference of treatment with regard to an employee's religion or belief does not necessarily constitute discrimination. That is important. Equally important is the reference to the organisation's ethos, as the evaluation of whether a religion or belief does constitute a genuine, legitimate and justified occupational requirement cannot be made without having regard to the Church's self-understanding.

Even in Churches that do not know a hierarchy of priests and laypersons, a certain distinction is surely only reasonable if a "clericalisation" of all labour relations is to be avoided. While it is undisputed that a member of the clergy should be of the denomination of the Church in

question, to be Christian should surely suffice for a doctor or social worker. In some cases it might also be advisable to delegate a specific task to a non-Christian, if such a task can be better achieved this way. In a kindergarten with many Muslim children, a nursery teacher of that religion might be an asset for integration, which is also part of the institution's overall aim. The decision, however, must lie with the Church, not with a labour tribunal. People choosing a Christian institution, be it a school, a hospital or a home for the elderly, do so for a reason. They expect to encounter a certain attitude and spirit, which can only be realised through the people working there.

However, for both collective and individual labour law within the Church, one rule must apply: Either the Churches make use of the space proffered by the secular order and enact legislation in line with their self-understanding, or else accept that secular law is applied in lieu thereof. The Churches owe legal clarity to all those who work within their sphere. A lack of regulation would lead to arbitrary decisions, probably varying from case to case. This would be unacceptable. To meet the requirements of European non-discrimination legislation, Churches must make detailed provisions concerning the relevance of membership for their identity. This does not need to be done for each and every position, but can be done in a more general way, for example for certain categories. The EKD has complied with the requirement of legal clarity in the Directive Concerning Occupational Requirements within Church and Diakonia, of 1 July 2005. Art. 3, paragraph 2, of this directive states that for positions not concerned with proclamation, pastoral care, instruction or leadership, Christians from other denominations may be employed, if no suitable member of an EKD member Church applies for it.

Recent legislative developments suggest that the EU will extend the protection from discrimination also to the area outside the workplace, including the provision of goods and services. This will raise the question if and how Churches might be affected. The impact on the social or cultural work of the Church will be negligible, though. Neither when caring for the poor or needy nor when contributing to the cultural life of our society, do Christians ask whom it is they serve. Nevertheless, establishments like confessional schools will need to be able to ensure that a majority of their pupils share the convictions these institutions are based on. Likewise, when letting Church property, it will be asked if the new tenant blends in with the general character of the Church. Legal issues that might arise from such decisions do not, however, pose new problems: They are subject to the same balancing of conflicting legally protected interests. The protection of a Church's identity will have to be a key element in this process. Appropriate exemptions are already being negotiated.

While, in their relation to the state, citizens are beneficiaries of the franchise, not addressees of the obligations from fundamental rights, non-discrimination legislation extends some of these obligations to relations between private actors. Such relationships are not determined by the exercise of sovereignty, but other powers are being exercised that can be almost as relevant in daily life. Non-discrimination legislation can help create an environment in which factual power structures are not abused in a way detrimental to the dignity of the human being and the cohesion of society. The protection from discrimination on the ground of religion is a form of guaranteeing the right to freedom of religion. It is in the interest of every believer and his or her religious community that religion should not prevent one from obtaining employment – or



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advancing oneself in one's position. Churches should therefore welcome such legislation, as long as it is balanced and leaves room for individual decisions and preferences (even such as might not be in line with a social consensus). The basic equality of all human beings must bear on the social reality in society. To guarantee fundamental rights and freedoms means to guarantee diversity and pluralism. These can only prosper where people have the actual opportunity of living according to their convictions, values and decisions.

Exceptions like the Church clause of Dir. 2000/78/EC are not in contradiction with this overall aim of non-discrimination, but in fact serve its very purpose. Even though some Churches may be active in many fields of social and cultural life and are, therefore, also major employers, they remain, at core, institutions based on and serving a religion. They are institutions set up by people who want to exercise their religion together and for others. If they could not do so, because to do something together with those of the same mind and conviction necessarily excludes others, non-discrimination would turn into discrimination and undermine the plurality it should serve. Fortunately, the European legislator has made way for Church autonomy, so that the Churches have the freedom to continue with their ministry for the world.





# THE UNIVERSALITY OF HUMAN RIGHTS AND DIFFERENT CULTURES AND TRADITIONS

**OKRin Katharina Wegner** 

#### Summary

The article expresses to some extent the author's weariness and frustration with a discussion that is – in her opinion – mainly a tool in the hands of those who are interested in weakening respect for human rights. After confirming the principle of the universality of human rights, and taking a closer look at the reasons for challenging this principle, the author tries to present a useful approach to the discussion of the universality of human rights.

Are Human Rights universal? Do they apply to all human beings, irrespective of the culture or religion from which they originate? Are they inherent to all cultural traditions or just one? Can the differences between different cultures be bridged? Are human rights still an appropriate concept in the age of globalisation?

This article tries to give some answers to these questions but not from a scientific approach. It is not an analysis of the application of the universality of human rights in different cultural contexts. On the contrary, it is more the expression of a certain weariness and frustration with a discussion which, in the author's opinion, is mainly a tool in the hands of those who are interested in weakening respect for human rights. The article deals first with the confirmation of the principle of the universality of human rights (I), then takes a look into the reasons for challenging the universality of human rights (II), explains why human rights are not exclusively connected with certain cultural traditions (III), deals with the concept of human rights (IV) and finally tries to find a useful approach to the discussion of the universality of human rights (V).

**I. The Universal Declaration of Human Rights**, which was proclaimed in December 1948 by the General Assembly of the United Nations, was the first international articulation of the rights and freedoms of all members of the human family in history. All its predecessors were national or regional declarations. The text was not formulated only by representatives of Western Christian traditions: ideas from Buddhist, Islamic and Hindu traditions also made their way into the Declaration.<sup>1</sup>

From paragraph 1 and 2 of the preamble of the Universal Declaration of Human Rights one can see that the idea of the universality of human rights is a corner stone of the declaration:

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of *all members of the human family is the foundation of freedom,* justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of *mankind*, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the *common people*, ..."

<sup>1</sup> Mary Robinson, Die Allgemeine Erklärung der Menschenrechte – ein lebendiges Dokument, in: Jahrbuch Menschenrechte 1999, Frankfurt 1998, p. 31ff.

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What it means to call the universality of human rights into question can be seen if one follows the consequences of a denial to the end. Take Article 5 of the Declaration: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Is anybody seriously arguing that a person from the western hemisphere should not be tortured whereas somebody from Sudan or Tibet might be subjected to torture because torturing people is part of his or her cultural context? Is the ban on slavery only valid for people from Europe and not from Africa? Is the mass rape of Korean Women by Japanese soldiers really an integral part of Asian culture and values?

No, these examples show that much of the ongoing discussion on the universality of human rights is either an intellectual luxury enjoyed by those who never became and are sure never to become victims of human rights violations – or by those who have a real interest in challenging the universality of human rights.

# II. How is it that this discussion has nonetheless been going on for such a long time?

- One reason is that initially, during the Cold War between "the East" and "the West", and after that in the antagonism between "the South" and "the North", representatives of both sides have claimed that a certain kind of human rights were core human rights and that the others would apply secondarily or be more some kind of political declaration of intent. This antagonism between civil and political human rights and economic, social and cultural rights has been superceded some time ago even though it is still present in some people's minds. Phrase 5 of the Final Declaration of the Vienna World Conference on Human Rights in 1993 stated that all human rights are universal, indivisible and interdependent and interrelated. Also, according to juridical theory, all human rights - civil and political as well as economic, social and cultural rights - have three aspects: "respect" – the traditional dimension of defense against any interference of a state in liberties; "protection" - against abuses of human rights; and "fulfillment" - in the sense of giving access to something, e.g. to farmland with regard to the right to food. Interestingly, when it now comes to making economic, social and cultural rights operational, it is very often the very same states which have been advocating these human rights in earlier times that then become rather more reticent for example when it comes to establishing a Protocol on a procedure for complaints to the Covenant on Economic, Social and Cultural Rights.
- Another reason is the selective approach of western states which somewhat arrogantly claim to be the custodians of human rights worldwide, when it comes to human rights violations under their own jurisdiction Guantánamo and the undermining of the ban on torture by the United States of America under the Bush administration or in countries they are related to politically e.g. Saudi Arabia. This selectivity serves to feed the argument that the concept of human rights is just a tool in the hands of western states to impose their political and economic interests.
- Thirdly, a stance opposing the universality of human rights is very useful for certain people. It is thus very revealing to see who uses the argument that in such and such a state human rights as they are enshrined in the Universal Declaration, are incompatible with the cultural traditions of that state. It tends to be the governments that violate those human rights. Representatives of civil society, human rights defenders and victims of human rights viola-

tions from these same states argue just the opposite. There is the example of the famous Nigerian writer and Nobel Prize winner, Wole Soyinka, who says that the denial of the universality of human rights is just alibi talk<sup>2</sup>; there is the former Chinese dissident Wei Jingshen, or the Declaration of Bangkok of the Asian Non-Governmental Organizations of March, 29, 1993 in the run-up to the World Conference on Human Rights. 240 representatives of over 110 non-governmental organizations from 26 Asian states confirmed that human rights have roots in many different cultural traditions. Many other examples from Asia or Africa could be mentioned. Are these people not part of their culture because they are fighting for women's rights, freedom of opinion etc.? Who denies them from being a part of their culture? What legitimacy do those doing so carry?<sup>3</sup>

# III. Is the idea of human rights an integral part of a certain cultural tradition?

Let us first have a closer look at the western traditions. It shows that there have been - and still are to a certain extent - strong tensions between western cultural traditions and human rights. Not only with respect to the lack of implementation of human rights in reality, but also with regard to the concept of human rights. One has only to recall the persecution of witches in medieval Europe and in puritan America. There is a long and strong tradition of racism and anti-Semitism in Europe coming to its peak in the Shoah. There has been a long tradition of torture. Churches have been very reluctant until quite recently to accept the idea of human rights. Human rights as such are not genuine Christian values even though in the course of their development they have been intertwined with aspects of Christian belief in many ways.<sup>4</sup>

On the other hand, what many of the critics of the alleged western concept of human rights claim when they say that it is only concerned with individual rights, is not true either<sup>5</sup>:

- In western societies, e.g. in the USA, there is also a debate about communitarism.
- Furthermore, many rights that are first and foremost individual rights have a collective dimension. Religious freedom is a good example. Article 18 of the Universal Declaration of Human Rights reads as follows: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." The significance of freedom of opinion for a democratic state above the individual right lies in the protection of the open discussion of issues of public interest in a democratic society. Families are also protected by human rights<sup>6</sup>.

4 Wolfgang Huber, Recht und Gerechtigkeit, Gütersloh 1996, p. 240ff.

<sup>2</sup> Wole Soyinka, Kulturelle Ansprüche und globale Rechte, in: Jahrbuch Menschenrechte 1999, Frankfurt 1998, p. 37ff.

<sup>3</sup> Heiner Bielefeldt, Der Streit um die Menschenrechte, in: Menschenrechte im Umbruch, Neuwied, 1998, p. 31ff, 35.

<sup>5</sup> Bielefeldt, 40.

<sup>6</sup> Article 16 of the Universal Declaration for Human Rights reads: (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.



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• Thirdly, all the individual rights and freedoms of a person find their limits where the rights and freedoms of another person begin. Art. 29 paragraph 2 of the Universal Declaration of Human Rights reads as follows: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." The aim is the free merger of a community enabling a cultural diversity open to different cultural traditions within the framework of human rights. There is no binding model of marriage or family imposed by human rights.

In the Islamic world there have also been attempts to trace the idea of human rights directly back to the Qur'an<sup>7</sup>. With regard to women's rights, one can say that in terms of history the provisions in the Qur'an concerning women were a step forward in the direction of more safeguards for them. (As in the Bible where statements on the death penalty already narrowed the scope of its applicability.) And it is interesting to note that there are Islamic scholars who do speak up for the idea of secularisation by saying that legitimizing earthly power through religion is blasphemy because it is degrading the singularity and transcendence of God.<sup>8</sup>

If one looks at the arguments promoted in Islam and in Christian belief against the concept of human rights, similarities can be found: in the many Islamic traditions where political power is traced directly back to the Qur'an, there is little room for political participation by subordinates – as little as in the Gottesgnadentum (divine right) of European feudalism.

In cases of violation of human rights, there are also examples of where different cultures coincide. Wole Soyinka points out the fact that in prisons the world over, the withdrawal of writing material is a common punishment for prisoners.

What is the result of these findings?

- First of all, there is no single cultural tradition that "stands for" human rights.
- Secondly, as Wole Soyinka puts it, from all kinds of cultural traditions, arguments and strategies may be drawn that humiliate or that exalt human beings, as much for slavery and oppression as for the liberalization of human beings.
- Thirdly, culture: cultural traditions are not stable, they change, they develop and today more than ever before, in this age of globalisation and communications across continents and knowing no borders.

8 Bielefeldt, p. 44.

<sup>7</sup> Even though the contrary can be found more often.

Some of those who - as mentioned above - lament the allegedly individual concept of human rights, blame it for the unbounded individualism of today's globalized world. To counterbalance this they call for a Declaration of Human Responsibilities. In 1997, the Inter Action Council, a worldwide gathering of elder statesmen, presented the first draft. It has within it certain fundamental flaws:

- As already shown above, the basic assumption already that human rights are purely individualistic in their approach is not correct. The Universal Declaration of Human Rights itself states in Article 29, paragraph 1: "Everyone has duties to the community in which alone, the free and full development of his personality is possible." Or as Bishop Wolfgang Huber puts it: "Human dignity materializes in the life of the community". The assertion that human rights are responsible for individualization in the world has been an argument against human rights for a long time even before the age of globalization – and is commonly used by leading evangelicals against the concept of human rights as such.
- In the relationship between individual and state there is no symmetry between rights and responsibilities. Human rights based on the idea of human dignity are pre-state, unalienable and unconditional. They are not granted on the condition that certain responsibilities are met. Dangerous criminals also have their human dignity that has to be respected. Human rights are the counterbalance to the subordination of citizens to a state to which they have given the monopoly of the use of force. Citizens are protected by human rights against the superior position the state derives from its monopoly of the use of force. As mentioned above, they find their limits in the rights and liberties of other persons.

Furthermore, the articles of the draft are formulated flabbily and are therefore open to abuse. Article 4 of this draft cites the Categorical Imperative of Immanuel Kant, "Act only according to that maxim whereby you can at the same time will that it should become a universal law", by stating: "Do as you would be done by." Article 10 states the responsibility of all human beings to develop his or her abilities through diligence and hard work. Who is this exhortation addressed to? Effectively anybody, as in Article 13 of the draft: "Politicians, civil servants, economic leaders, writers, artists.....". The result could easily be a certain model of society that is not open for different cultural traditions.

Human rights are not instructions for the correct conduct of one's life or for the life of communities; instead they establish a legal and political scaffold for a life in dignity. The opposite of the liberty guaranteed by human rights is not political or communitarian solidarity, but oppression by the state or the community. Human responsibilities may give moral guidelines for human beings to live together, but not at the same level as human rights, not with the same binding force.





# V. What then does the concept of the universality of human rights imply?

Some authors argue that human rights are such a new concept that they are not compatible with any existing cultural tradition, that they represent a complete break with any of these traditions. The danger here is that these traditions are seen as something backward that has to be superseded. This belief in modern progress is as problematic as the tracing of human rights back purely to traditional western roots. Human rights do not oblige human beings to step out of their culture.

Whereas human rights cannot be identified with one or other cultural tradition, they are a reaction to fundamental experiences of injustice and oppression in all continents and cultural traditions. They have had – and still have - to be fought for in all societies.

The idea of human rights can be taken up by different cultures and cultural traditions. And in this regard the discussion of the universality of human rights can be very helpful. Not by excluding human rights from certain traditions, not by dividing people further by denying them abilities and insights, but by taking the differences between the traditions seriously and nevertheless trying to find what points of contact exist. That effort should be an important part of the dialogue between religions and cultures with the aim of developing a common language and culture of human rights.



# THE ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE Dr. Simona Santoro <sup>1</sup>

#### Summary

This article presents the work of the Organization for Security and Co-operation in Europe (OSCE – formerly CSCE) which occurs outside the immediate orbit of the Churches but to which the Churches seek to relate (amongst other organizations).

# 1. Introduction

At a recent meeting in Brussels, European Commissioner Olli Rehn mentioned how the  $20^{th}$  anniversary of the fall of the Iron Curtain and the 5th anniversary of the EU accession for ten new Member States make 2009 a good time to reflect on enlargement as one of the Union's most powerful policy tools.<sup>2</sup>

Indeed, the end of the Cold War represented an opportunity to change Europe's face by integrating into the EU newly democratic countries previously under one-party rule. Since the collapse of the Berlin wall, the EU has put into action a process of expansion and integration that led to the accession of ten new members in 2004 (Poland, Czech Republic, Slovakia, Hungary, Lithuania, Latvia, Estonia, Slovenia, Malta, and Cyprus) and two in 2007 (Bulgaria and Romania). New developments are on the horizon, with former Yugoslav counties like Croatia and the former Yugoslav Republic of Macedonia being candidate countries.

The process of unifying Europe is based on the acquisition on the part of newcomers to the EU of a functioning market economy, stable democratic institutions that can guarantee good governance, the rule of law, and respect of human and minority rights. These are the same principles which areas such as Eastern Europe and the Caucasus, more at the periphery, are committed to, in exchange for a privileged partnership with the Union through the European Neighbourhood Policy.

The new Europe emerging from these transformations is, however, only partially new. Its foundations rest as well on the work laid down by the Organization for Security and Co-operation in Europe (OSCE) since the beginning of the 1970s.

# 2. Human Rights in a Pan-European Perspective

Born as a forum for dialogue between East and West during the Cold War, the then Conference for Security and Co-operation in Europe (CSCE) brought together 35 states from the United States to the Soviet Union, from Iceland to Yugoslavia, to discuss how to enhance co-operation and prevent conflict.

What emerged was the Helsinki Final Act (1975), which defined the basis for stable and secure



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<sup>2</sup> Enlargement Newsletter, 23 February 2009, available at <a href="http://ec.europa.eu/enlargement/press\_corner/newsletter/220209\_en.htm#a2">http://ec.europa.eu/enlargement/press\_corner/newsletter/220209\_en.htm</a>

#### European churches engaging in human rights



relations among the states participating in the Conference. Interestingly, the concept of security was not limited to military aspects, although these played an important role, but also included economic development and the respect of human rights. In OSCE language, these are referred to as the three dimensions of security – military, economic, and human - that are considered interdependent and indivisible. The Helsinki Final Act was seen by many as a revolutionary achievement as its adherents committed to found their relations on the notion that respect for human rights would bring peace and co-operation. By doing so they "transformed human rights from a marginal item on the pan-European political agenda into a subject of central importance to it."<sup>3</sup> Remarkably, one of the main principles chosen to regulate relations among states was freedom of religion or belief.<sup>4</sup>

These tenets were further developed in the successive meetings that took place in Belgrade (1977-87), Madrid (1980-83) and Vienna (1986-1989). For example, in the Vienna Concluding Document (1989), participating states highlighted the importance of guaranteeing the effective exercise of human rights by inter alia making available the basic texts developed within the CSCE framework to their citizens, as well as to ensure effectively the right of the individual to know and act upon his rights and duties in this field, and to publish and make accessible all laws, regulations and procedures relating to human rights and fundamental freedoms.

With this process already in place, bridging into a post Cold War organization founded on human rights was a natural development. In November 1990, the CSCE participating states signed the Charter of Paris for a New Europe. In a euphoric preamble, they declared that a new era of democracy, peace and unity had come. They acknowledged that the principles of the Final Act would guide them towards an ambitious future, just as they had facilitated better relations in the past fifteen years.

The Charter of Paris provided a roadmap for the years to come. The direction was clear and guided by some basic principles, which include the following:

- building, consolidating and strengthening democracy as the only system of government;
- protecting and promoting human rights as the birthright of all human beings, ensuring as well effective remedies against any violations of these;
- upholding the principle of equal enjoyment of human rights without discrimination;
- respecting the identities of national minorities as part of universal human rights;
- combating racism and intolerance.

Another major step forward in the protection of human rights was made at the Moscow Meeting in October 1991, when states declared unequivocally that commitments taken within the

<sup>3</sup> Louis Henkin, *Human Rights and 'Domestic Jurisdiction'*, quoted in T. Jeremy Gunn, *The Organization for Security* and *Co-operation in Europe and the Rights of Religion or Belief*, in Peter G. Danchin and Elizabeth A. Cole (Eds.), Protecting the Human Rights of Religious Minorities in Eastern Europe, Columbia University Press 2002.

Principle VII of the Helsinki Final Act recognizes the right for an individual to "profess and practice, alone or in community with others, religion or belief within the dictates of his own conscience." Throughout the Helsinki Process, this tenet evolved in a comprehensive set of commitments on freedom of religion or belief. The 1989 Vienna Concluding Document is considered as the "most impressive multilateral commitment for guaranteeing religious rights that had yet been adopted anywhere in the world". See T. Jeremy Gunn, op. cit.

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sphere of the human dimension were not a matter of exclusive concern of the state concerned, but of legitimate interest to all participating states.  $^{\rm 5}$ 

The evolution of the CSCE continued in the following years, both on the normative and the institutional track. Commitments were expanded and institutions and field operations were established that provided an executive arm to the work done at the negotiating table. In 1995, the CSCE became the OSCE, i.e. an Organization. At present, the OSCE includes 56 states. It has a Secretariat, a Permanent Council of representatives of participating states that meet weekly, institutions such as the Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner on National Minorities and the Representative for the Freedom of the Media, as well as 19 Field Operations in Eastern and South-Eastern Europe, the Caucasus and Central Asia.

# 3. Why is the OSCE still relevant today?

While being the largest regional security organization, the OSCE also represents a mechanism for human rights protection. Unlike other international organizations, this system is based on political commitments – as opposed to legally binding norms – undertaken by participating states since the Helsinki Final Act. The absence of court decisions and sanctions does not mean, however, that the respect of the commitments on the part of participating states does not come under scrutiny. The OSCE is based on a review mechanism that foresees ad hoc meetings and conferences as fora to discuss the implementation of commitments. These events bring together participating states and civil society on equal grounds.

According to some interpretations, the Helsinki Process played a role in the call for democratic reforms that brought about the collapse of the Soviet Union<sup>6</sup>, also through the emergence of a civil society that challenged the regimes in Central and Eastern Europe.<sup>7</sup> Since the beginning of the 1990s, the OSCE has also been very active in the fields of conflict prevention and resolution as well as of promotion of democracy. OSCE field operations in South Eastern Europe and support in election processes are just two examples of the OSCE's active engagement. Moreover, its consensus-based structure and inclusive approach have contributed to creating a common culture, an OSCE acquis, among participating States, diplomats, experts, NGOs and other stakeholders that has a tradition of transcending the political divides. This represents a solid basis for the path towards a new Europe that can complement and strengthen the EU efforts.



<sup>5</sup> P.Terrence Hopmann, The Helsinki Final Act after 30 Years: Addressing the Future of European and Global Security, remarks delivered at Finlandia Hall, Helsinki, Finland, 1 August 2005 available at <a href="http://www.osce.org/documents/osce/2005/08/15944\_en.pdf">http://www.osce.org/documents/osce/2005/08/15944\_en.pdf</a>>

<sup>6</sup> Coit Blacker, The Collapse of Soviet Power in Europe, Foreign Affairs, Vol. 70, No. 1, 1990-91, pp. 88-102.

<sup>7</sup> Emanuel Adler, Seeds of Peaceful Change: the OSCE's Security Community Building Model, in Emanuel Adler and Michael Barnett, Security Communities, Cambridge University Press 1998.

#### MOVING FROM THE HOUSE OF FEAR TO THE HOUSE OF LOVE Rev. Frank Kantor

#### Summary

"On the basis of our Christian faith, we work towards a humane, socially conscious Europe, in which human rights and the basic values of peace, justice, freedom, tolerance, participation and solidarity prevail." Charta Oecumenica (Strasbourg, 22.04.2001)

" He has told you, O mortal, what is good; and what does the Lord require of you but to do justice, and to love kindness, and to walk humbly with your God." (Micah 6:8 NRSV)

### 1. Introduction

It was the late Henri Nouwen who popularised the notion of the journey from fear to love as part of his spirituality of peacemaking. In his writings, he describes this as a movement from a location where we are surrounded by a 'huge network of anxious questions, which begins to guide many, if not most, of our daily decisions,'<sup>1</sup> to one where we are able to reframe these questions from a position of ultimate security – the love of God. He offers Jesus as the example of someone who resisted answering questions raised out of concern for prestige, influence, power and control as they came from the house of fear. Instead, he says, 'Jesus transforms such questions by his answer, making the question new - and only then worthy of his response'.<sup>2</sup>

Such responses are only possible from the house of love which Nouwen *describes as 'the house of Christ, the place where we can think, speak, and act in the way of God – not in the way of a fear-filled world. From this house the voice of love keeps calling out: 'Do not be afraid...come and follow me...see where I live...go out and preach the good news....the kingdom of God is close at hand...'<sup>3</sup> Nouwen is not naive about the resistance to such a movement in our cynical, secular Western society and goes to some length to expound a spirituality of peacemaking based on the disciplines of prayer, resistance and community to ground this movement.<sup>4</sup>* 

A number of the current questions about human security and human rights appear to emanate from the house of fear. Questions such as: How can we be assured that we are safe from terror attacks in Europe? *How can we make ourselves and our families more secure from criminals? What do we need to do to guarantee our children the same standard of living that we have enjoyed? What rights do I have to protect myself from intruders who threaten my security? How can we prevent more migrants from entering our country/community/city?* Such questions reveal our fearful and misinformed perspective on the things that make for our peace in the West and we need to urgently discern and respond to the particular *kairos*<sup>5</sup> moment confronting us if

<sup>1</sup> Nouwen, H., In the House of the Lord – The Journey from Fear to Love, DLT, 1986, p.4

<sup>2</sup> Ibid. p.6

<sup>3</sup> Ibid. p.7

<sup>4</sup> Nouwen, H., The Road to Peace, edited by John Dear, Orbis Books, 1998 (published posthumously)

<sup>5</sup> Kairos (καιρός) is an ancient Greek word meaning the right or opportune moment (the supreme moment). The ancient Greeks had two words for time, chronos and kairos. While the former refers to chronological or sequential time, the latter signifies a time in between, a moment of undetermined period of time in which something special happens. What the special something is depends on who is using the word. While chronos is quantitative, kairos has a qualitative nature. Kairos brings transcending value to kronos time. To miscalculate kairos is lamentable. (Mark Freier (2006) "Time measured by Kairos and Kronos")

we are to avoid the desolation and lament that such failure inevitably brings!

This paper seeks to summarise some of the key points related to human security and human rights based on a shift in paradigm proposed by the Oxford Research Group from what they call a 'control' to a 'sustainable security' paradigm (which provides a practical roadmap for moving from the house of fear to the house of love)!

## 2. Sustainable security described

The Oxford Research Group (ORG) has been analysing the drivers of global insecurity and developing alternative responses to these threats for some years. ORG identifies four interconnected trends that are most likely to lead to substantial global and regional instability, and large-scale loss of life, of a magnitude unmatched by other potential threats:

- Climate change
- · Competition over resources
- Marginalisation of the majority world
- Global militarisation

ORG believes that current responses to these trends can be characterised by a control paradigm – an attempt to maintain the status quo through military means and control insecurity without addressing the root causes. They consider current security policies to be self-defeating in the long-term and propose a new approach based on sustainable security. The main difference between this and the control paradigm is that sustainable security does not attempt to unilaterally control threats through the use of force ('attack the symptoms'), but rather it aims to cooperatively resolve the root causes of those threats using the most effective means available ('cure the disease'). ORG believes that this will best be achieved by developing security policies that employ preventative, rather than reactive, strategies and are global in focus.

ORG has been developing and promoting the sustainable security framework since early 2005 aimed at contributing to a substantial shift in the government and public understanding of the real threats to global security in the 21<sup>st</sup> century and developing strategies to respond to these threats to ensure sustainable security for all. A sustainable security approach therefore incorporates human security as the basis for policy and action in Europe and abroad. For more information see: http://www.oxfordresearchgroup.org.uk/projects/moving\_towards\_sustainable\_security

# 3. Impact of global trends on human security

The global threats outlined above present the vulnerability of human security in multiple contexts which ultimately violate the rights of all. The converging global economic, environmental, energy and food crises are creating security threats in developed and developing countries alike which highlight the need for a coordinated global response based on principles of solidarity, sustainability, subsidiarity and social justice within a human rights framework.

By way of example, the IMF estimates that the impact of the economic crisis triggered by the recent collapse of financial institutions will increase the debts of the developed G20 economies by 40 per cent – those, such as Germany and the UK which suffered a «systemic crisis» saw





Ministers meeting in Brussels on 7 September 2010 in which she calls for the introduction of a financial transaction tax in Europe, Elise Ford, head of Oxfam's EU Office, wrote the following:

'Ordinary people across Europe have been hit hard. Millions of people have been thrown out of work and salaries have stagnated. As tax revenues have fallen, governments have come under pressure to cut public services to balance their books; services such as transport, welfare and care services that are particularly important for the poor.

economic output fall by 27%. That amounts to more than €980bn for Germany and €600bn

Commenting on this issue in an article published by the EU Observer ahead of the EU Finance

And it is not just poor people in rich countries who are victims of this mess. Research carried out for Oxfam by Development Finance International found that the 56 poorest countries face a \$65bn hole in their finances because of this crisis.

Faced with a potential debt crisis, two-thirds of those where data on social spending is available have chosen to cut spending on at least one of health, agriculture, education or social safety nets. Already without the Europe-style welfare systems that we rely on during difficult times, the world's poorest people face cuts in life-saving medicines, losing the school place for their child or cuts in their crops because they can no longer afford fertiliser.

This blow comes at a time when many poor countries are already struggling to cope with food shortages and the devastating effects of climate change. Our research suggests that by 2015 the average number of people affected each year by climate-related disasters could increase by over 50 per cent to 375 million. This summers' flooding of large parts of Pakistan show the potential for human suffering that lurks behind these statistics.' For a copy of the full article see http://euobserver.com/7/30736

The above example highlights the moral and ethical crisis underlying the global economic and ecological crises as those least responsible for these crises – the poor and vulnerable – are paying the highest price in terms of their security and livelihoods. The churches in Europe are uniquely positioned to respond to this crisis based on a human rights approach to human security which the remainder of this paper seeks to address

# 4. Towards a human rights approach to human security

The link between human security and human rights is well established. In his article on this subject, Bertrand Ramcharan<sup>6</sup> states: 'Human rights and fundamental freedoms must be respected, assured and protected if the individual human being is to be secure, to develop to the fullness of his or her potential and to breathe the air of freedom.' He summarises the linkages between individual, national and international security in the following way: 'Individual security must be the basis of national security, and national security grounded in individual security must be the basis of international security. National security and international security cannot be achieved without

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for the UK (£497 billion).

<sup>6</sup> Bertrand Ramcharan, « Human rights and human security », *Disarmament Forum*, Spring 2004, p. 40 – see http:// www.humansecurity-chs.org/activities/outreach/ramcharan.pdf

respect for individual security in the form of respect for human rights and fundamental freedoms."7

What is less clear is how to achieve this in 'a world of power disequilibria, of uneven quality of governance, of social and economic disparities, of contending value systems, and of shocking violations of human rights.'<sup>8</sup> Ramcharan appeals to member states to consider human rights strategies of governance i.e. 'a conscious decision by governments and subjects that the aim of governance is to advance achievement of the key human rights – civil and political, economic and social and cultural.'<sup>9</sup> He also recognises that not all states are responsive and responsible to their constituencies and the critical role of civil society organisations in helping to realise this outcome in partnership with the United Nations.

However, the challenges of advancing human security through human rights remains formidable and highlights the difficulty of moving from a discourse on human rights to creating a human rights culture and of understanding the obligations and duties that accompany human rights. This has been considerably complicated by the so-called 'war on terror' and erosion of civil liberties in the US and parts of Europe in the post-9/11 context. The remainder of this paper seeks to identify the distinctive contribution that churches in Europe can make to this process based on our understanding of justice and morality and a theistic grounding of human rights.

# 5. Justice and moral action

As Christians we have a moral obligation to do justice (within a framework of mercy and kindness) as the prophet Micah reminds us. This is what Johannes van der Ven calls 'love informed justice'<sup>10</sup> which he contrasts with the justice reasoning of Lawrence Kohlberg<sup>11</sup> and John Rawls' theory of distributive justice based on a well conceived self-interested liberalism utilising the social contract.<sup>12</sup> Love informed justice (or divine justice as van der Ven explains it), is different from human justice in that it is informed by unconditional love and is embedded in universal mercy and solidarity. 'On the basis of this divine justice, informed by love, people are able to act in a just, forgiving, merciful and loving way toward one another. They are able to do so because they are surrounded by God's forthcoming benevolence and solidarity, which precede, initiate, and evoke human beings' care for each other.'<sup>13</sup>

<sup>7</sup> Ibid. p.40

<sup>8</sup> Ibid. p.40

<sup>9</sup> Ibid. p.41

<sup>10</sup> van der Ven, J., Formation of the Moral Self, Wm. B. Eerdmans Publishing Company, 1998, p. 219

<sup>11</sup> Lawrence Kohlberg was an American psychologist who specialised in research on moral education and moral reasoning. He is best known for his stage theory of moral development which describes three levels (preconventional, conventional, and postconventional) and six stages of moral reasoning (which can also be described in terms of justice reasoning or justice judgement).

<sup>12</sup> John Rawls (1921-2002), an American political philosopher argues in A Theory of Justice that the way to think about justice is to ask what principles we would agree to in an initial situation of equality. This leads to a hypothetical social contract from which two principles of justice emerge. The first provides equal basic liberties for all citizens, such as freedom of speech and religion. This principle takes priority over considerations of social utility and general welfare. The second principle concerns social and economic equality. Although it does not require an equal distribution of income and wealth, it permits only those social and economic inequalities that work to the least well off members of society.' (Michael J. Sandel, Justice, What's the right thing to do? Penguin Books, 2009, p.143 )

<sup>13</sup> Based on this understanding of justice van der Ven argues that this makes Christians' 'actions of love and justice essentially passive. They receive what they do, owe what they perform, and channel what they let pass. Before carrying out justice they undergo it.' (van der Ven, J., *Formation of the Moral Self*, p. 219)



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Love of God and neighbour is intimately linked within this construct and love of the other is understood as the most fundamental moral virtue. 'This stands in contrast to Kohlberg's conception that justice is the virtue of virtues (Kohlberg 1981, 30). Love is the very essence of God, and thus the very basis, core, and synthesis of morality. God is love, and love is God.'<sup>14</sup> Whereas the ability to reason from a moral or justice perspective does not necessarily lead to moral or just action, 'love informed by justice' compels us to act on behalf of the vulnerable other – particularly the suffering other, the poor other, the alien other, the oppressed and persecuted other and the hostile other. This love inspired action should be based on principles of solidarity, sustainability, subsidiarity, and social justice within a framework of the common good.

If love informed justice provides the basis for moral action, then a theistic grounding of human rights provides the rationale for treating other people in accordance with the inherent worth bestowed on them by virtue of them being created in the image and likeness of God.

# 6. Theistic grounding of human rights

In his illuminating book of justice and human rights, Nicholas Wolterstorff examines whether it is possible, without reference to God, to identify something about each and every human being that gives him or her a dignity adequate for grounding human rights.<sup>15</sup> He concludes that attempts at a secular grounding of human rights in the capacity for rational agency (Kant) or the dignity-based approach of Dworkins are bound to fail as they cannot account for the inherent or intrinsic worth of human beings where their capacity for rational argument or creativity is severely impaired such as people with dementia. He believes that the same difficulty applies to a theistic grounding of human rights based on the imago Dei interpreted as dominion or as inherent worth based on human nature.<sup>16</sup>

Instead, Wolterstorff posits that a theistic grounding for human rights is realised in bestowed worth based on God's love for each and every human being regardless of their mental or physical capacity or their status in society.<sup>99</sup> This love renders human beings as irreducibly precious with a bestowed worth based on God's love in the mode of attachment. This love grounds natural rights - they inhere in the worth bestowed on human beings by that love - and requires a response expressed in love for God and neighbour and a respect and recognition of the rights that such a relationship incorporates.<sup>17</sup>

The grounding of natural human rights in the worth bestowed on human beings by God's love

- 16 According to Wolterstorff, attempts to ground human rights in the imago Dei fail on the same basis as secular attempts when understood either as a mandate of dominion or as human nature because the former is also based on rational capacity and the second on the difference between human beings and the non-human creation.
- 17 Wolterstorff states that 'if God loves a human being with the love of attachment, that love bestows great worth on that human being and other creatures, if they knew about that love, would be envious'. He therefore concludes that 'if God loves, in the mode of attachment, each and every human being equally and permanently, then natural human rights inhere in the worth bestowed on human beings by that love. Natural human rights are what respect for that worth requires.' (Wolterstorff, p.360)
- 18 Wolterstorff understands 'a right to be a normative social relationship; specifically a right is a legitimate claim to the good of being treated in a certain way by persons and by those social entities capable of rational action. To have a right to the good of being so treated is for that good to trump other goods; having a right to that good carries peremptory force with respect to all those goods to which no one has a right.'

<sup>14</sup> van der Ven, Formation of the Moral Self, p.220

<sup>15</sup> Wolterstorff, N., Justice - rights and wrongs, Princeton University Press, 2008, p. 324

is available to all those who hold to the theistic convictions and locates us in the house of love which Nouwen identifies as the house of Christ. From this perspective we are able, not only to reframe the fearful questions about human security, but advocate passionately for a rights based approach to human security based on the understanding that such rights are grounded in the worth of human beings as loved by God.

# 7. Application and implications for human security

Applying this understanding and perspective to the global security threats identified in this paper provides Christians with a compelling rationale and distinctive response to the discourse on human rights and human security. Some examples are listed below as a means of engaging European churches and faith groups in this discussion:

**7.1. Work against fear, addressing ignorance** – as those who understand the inherent worth of human beings loved by God, we need to be creatively seeking to reframe the current discourse on human security in Europe which is based on fear and ignorance. This pertains in particular to the discourse and response to the so-called 'war on terror' based on constantly heightened security alerts and stereotyping of people from non-Christian faith groups (particularly Muslims), the 'fortress Europe' mindset related to migrants and asylum seekers, and the false premise that introduction of Western style democracy will cure all social ills in society. A human rights approach requires us to understand how our fear and prejudice is not only wronging others by denying them a legitimate claim to the good of being treated in a certain way by persons of rational action, but is under-respecting them as people loved by God and bestowed with inestimable worth. Our interreligious and cultural exchanges must move beyond dialogue to meaningful engagement on these issues.

**7.2. Addressing social and economic exclusion** – in the economically constrained environment of Europe (occasioned by the raft of austerity measures which respective countries are initiating in response to the global economic crisis) we need to be identifying those on the margins who are facing social and economic exclusion such as the Roma in France and other European countries whose rights and freedoms (particularly those related to security and freedom of movement) are being grossly abused. To gain the perspective of the socially excluded, churches in Europe need to reposition themselves from the centre to the margins of society where we are called to discern God's activity in the excluded and suffering other.

#### 7.3. Addressing nuclear weapons and other weapons of mass destruction

– as churches we need to continue campaigning for a world free of nuclear weapons based on the demand from the vast majority of states and WCC member churches for discussions on achieving a global zero at the recent NPT Review Conference in New York. Renewal of nuclear deterrents at the cost of billions of dollars when cuts are been made to public services, jobs and benefits is immoral and unjust and needs to be challenged on moral, economic and common security grounds.

**7.4.** Addressing the discourse on just war and erosion of civil liberties, privacy and patriotism in Europe – as Christians we need to analyse and challenge the Church-State relationship based on a Christendom paradigm which has framed the discourse







on national security for centuries. This paradigm has espoused the just war theory as a Christian response to war since the time of Augustine and was refined by several medieval thinkers including Thomas Aquinas.<sup>19</sup> This contrasted significantly from the position of Christians in the first 170 years of church history when most believers were pacifists and the church's self-identity was a peaceful fellowship of those who followed the Prince of Peace. As we enter a post-Christendom era in much of Europe, we are being presented with a unique opportunity to shift the discourse on security and waging war from a 'control' to a 'sustainable security' (or common security) paradigm based on a moral rights discourse. This discourse also needs to address the Christendom interpretations of patriotism and reclaim the truth that we must obey God rather than man in defending civil liberties and the right to privacy enshrined in dignity befitting our bestowed worth as children of God.

**7.5. Culture of enough** – the financial crisis and ensuing global economic recession has exposed the culture of greed and excess at the heart of the financial system and Western culture based on the global economy of scarcity and fear (which is counter to God's economy of grace and sufficiency). During the Asian financial crisis in 1999, churches at an ecumenical conference in Bangkok wrote a public letter to the churches in the North addressing our deficit of contentment and well being. The following quote from this letter is most revealing:

"Next to the pain and suffering here in the South, there are the threats in the North. We heard about poverty, coming back in even your richest societies; we received reports about environmental destruction also in your midst, and about alienation, loneliness and the abuse of women and children. And all that, while most of your churches are losing members. And we asked ourselves: is most of that not also related to being rich and desiring to become richer than most of you already are? Is there not in the western view of human beings and society a delusion, which always looks to the future and wants to improve it, even when it implies an increase of suffering in your own societies and in the South? Have you not forgotten the richness which is related to sufficiency? If, according to Ephesians 1, God is preparing in human history to bring everyone and everything under the lordship of Jesus Christ, his shepherd king – God's own globalization! – shouldn't caring (for nature) and sharing with each other be the main characteristic of our lifestyle, instead of giving fully in to the secular trend of a growing consumerism?"

Clearly, and to our shame, we failed to heed this insightful warning from our Asian brothers and sisters and are now facing the dire consequences of our consumptive lifestyles in the North in the form of the converging global economic, environmental and energy crises which are threatening human security in every part of the world (with the poorest nations once more paying the highest price). Love informed justice demands an urgent response in terms of lifestyle change and it is contingent on those of us living in the affluent countries of Western Europe (and other parts of the world) to live more simply and sustainably so others can simply live. As churches we have a particular mandate to do justice (as we have established) and this needs to be based on

<sup>19</sup> The just war theory established criteria for wars to be considered justifiable. In its developed form this has six main components: 1) War must be declared for a just cause; 2) War must be fought with a good intention; 3) There must be a reasonable expectation that more good than evil will result; 4) War must be waged by proportionate means (avoiding civilian casualties); 5) War must be the last resort after exhausting other options; 6) War must be declared and fought by a legitimate authority. (Source: *Murray, S., Post-Christendom,* Paternoster, 2004, p. 116).

careful analysis of our social, economic and environmental trends to address the root causes of these crises in partnership with other organisations. We also have a prophetic mandate to speak truth to power and to advocate on behalf of those who lack a voice in the public square. Finally, we also have a pastoral and priestly mandate to care for the victims of these crises and to pray without ceasing for the righting of wrongs in our domestic, national and international affairs.

7.6. Culture of conflict resolution and peace-building at local level – the vision of Shalom which the Hebrew Scriptures outline for us is the setting where all "shall sit under their own vines and under their own fig trees, and no-one shall make them afraid." This reflects a context of total well-being and security where all are situated in the house of love. However, as we reflect on the social reality of the communities of which we are a part in Europe, we realise that we have a long way to go to achieve this quality of life and well-being. Yet we are encouraged that this is the fullness of life which Jesus came to bring and as his followers we are given the task of building peace and reconciliation in our churches and communities. As churches, we also have a key role to shift the discourse of human security in Europe from a national to a people-centred view of security, which is essential for national, regional and global stability and security. This approach must emphasise the need to identify the core principles of human security within the framework of protecting people, their basic rights and freedoms and people's ability to act on their own behalf and on the behalf of others. Beyond this, we need to develop creative strategies to help facilitate the transition from the house of fear to the house of love in our communities using conflict resolution and peace-building tools and processes to achieve greater community cohesion, respect for difference and reconciliation at all levels – with God, humanity, non-human creation and within ourselves (for as Francis of Assisi reminds us, "While you are proclaiming peace with your lips, be careful to have it even more fully in your heart."



# 9/11 – THE END OF HUMAN RIGHTS? Security vs Human Rights?

#### Prof. Dr. Malcolm Evans

#### Summary

Since 9/11 many of our assumptions concerning the role and relevance of human rights have been called into question, particularly when issues of national security are at stake. Whilst some see this as an erosion of human rights values, this is not the case. Rather, it suggests that human rights are being taken extremely seriously at the highest levels and that compliance with human rights standards is believed to be essential if executive action is to have legitimacy. If this means that those standards are being subjected to more rigorous scrutiny as a result, this is to be welcomed, indicating as it does that human rights have 'come of age' as key evaluative tools of good governance.

#### Introduction

It is incontestable that the events of 9/11 have had an indelible effect on the world in which we live. The political, economic and social consequences of those events and the forces that they unleashed are still being felt and will continue to reverberate for many years to come. 9/11 has had many victims – but is 'human rights' one of them? At one level, it is all too easy to reach this conclusion - one need only look to the horrors of the day itself and to the misery and suffering that millions have endured in the context of and as a consequence of the 'war on terror' in order to do so. This, however, would be a mistake. The UN continues to adopt new, standard-setting treaties and declarations; the newly constituted Human Rights Council is crafting an effective process out of the new device of Universal Periodic Review; bodies such as the European Court of Human Rights are receiving an ever-increasing number of applications and issuing significantly more judgements than hitherto. The political and institutional machinery of international human rights protection is fully engaged and is as active as it ever was – indeed, probably more so.

At another level, however, there has indeed been change, in that the events flowing from 9/11 have both challenged prevailing assumptions concerning human rights and made us all more aware of the complexities of human rights claims. Whilst 9/11 has not been the end of human rights, it may have marked the end of a comparatively simplistic, idealist notion of human rights, which failed to acknowledge properly the extent to which human rights claims were bearers of sets of legal, political and cultural assumptions – assumptions which are now more open to challenge. As a result, we may be entering into a phase in which human rights thinking becomes more nuanced and more complex – in short, a more mature approach. If as a result of 9/11 we find that in time, this indeed comes about, then human rights will have been strengthened rather than undermined by the events of that day. Nevertheless, the days in which it was possible to claim a moral advantage merely by levying a charge of abusing human rights at a practice are possibly over: whilst human rights as a legal and ethical concept have surmounted the challenge posed by 9/11, the potency of language of human rights has been diminished. If however, there is to be more focus on the substance of the claim than upon the language in which that claim is couched, then this will ultimately be to the good.

#### Torture

Perhaps no one single area has come in for more scrutiny than that of torture and ill treatment of those suspected of involvement in terrorist activities and so provides an illuminating example. Torture is possibly the most widely prohibited of all human rights. Historically, we associate torture with repressive regimes that can only maintain their power by terror. Outlawing torture stands alongside a rejection of tyranny and the espousal of democratic, liberal values. But when those values are themselves under assault, what should one do? Can vice ever be the handmaiden of virtue? After all, we countenance war in order to defend ourselves and our liberties - so why not torture? Yet in the wake of 9/11 this fundamental principle came under direct challenge, it being argued that absolute prohibition is not morally sustainable. It has become a commonplace to raise the 'ticking bomb' scenario in which it is assumed that a person in custody has, or may have, information necessary to save the lives of many others and that that information needs to be acquired and acted upon if significant loss of innocent life is to be avoided. This is a classic dilemma and it is usually countered by pointing out that the interrogator can never know whether the person being tortured does in fact have the information sought or whether the evidence acquired through torture is so inherently unreliable as to be worthless anyway.

However, the stark question remains: is it ever morally justifiable to inflict pain and suffering beyond the degree that would otherwise be considered permissible in order to seek to acquire information that would prevent the infliction of pain and suffering on others? Many writers engage in what might best be termed 'avoidance techniques' when faced with this question. Some have argued that since it is inevitable that - rightly or wrongly - torture will occur under such circumstances then the appropriate thing to do is to regulate its use, in order to ensure that resort to torture happens as rarely as possible and is subject to all appropriate safeguards. Others have argued that whilst the absolute prohibition must remain and that there should be no legal defence to the crime of torture, the circumstances in which torture took place should be taken into account in mitigation of sentence. Others accept that it may just be that whilst society as a whole cannot afford to decriminalise torture, there will be occasions when it will be ethically justified and at that point one must look to the individual to act in the interests of society even if he, as torturer, must bear the cost.

The idea that torture can be considered an ethically acceptable response to the perils that face society, speaks of values that many will find impossible to accept. However, this does not prevent a rather more subtle challenge – that of seeking to 'redefine' our understanding of what comprises an act of torture, as for example in the infamous and now repudiated US 'torture' memoranda issued in the course of 2002 which attempted to argue that only the most egregious forms of ill-treatment (such as the use of electric shocks, prolonged beatings causing severe injury, etc) were sufficiently severe to be described as torture, whilst 'lesser' forms of ill-treatment (such as 'waterboarding' - involving the simulation of suffocation/drowning) could be described as being 'merely' inhuman or degrading' and thus - somehow - less objectionable. Yet another challenge comes from the practice of 'extraordinary rendition', as a result of which suspects are sent to other countries whose techniques may be more 'vigorous' than those of the 'rendering' state for purposes of interrogation - a seemingly attractive proposition to those who do not wish to be too closely acquainted or associated with the trade of the torturer. A further

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issue concerns the use to which information acquired as a result of torture might be put. In the UK, for example, it has been judicially determined that evidence acquired as a result of torture, including torture undertaken by non-UK nationals in other countries, may not be used in court proceedings but it was also made clear that this 'exclusionary rule' did not apply to evidence acquired as a result of ill-treatment falling short of torture (even though such treatment may itself be in violation of human rights). Moreover, the rule only applied to the use of evidence in court, so the security services remain free to act on the basis of information acquired as a result of torture by foreign nationals (and, one presumes, UK nationals as well).

# Human Rights and state law

It is easy to point to examples such as these as providing evidence of the erosion of human rights and civil liberties. But it is equally true that the debates surrounding the use of torture, and of evidence acquired as a result of torture, have been driven by the desire to protect democratic societies from those who, it is believed, are seeking to destroy them, or at the very least, kill or injure those resident within them. How do the rights of the suspect and those of the individuals who comprise that broader society relate? This is no more than a reflection of the increasingly prominent debate within the criminal justice process concerning the extent to which the rights of the accused are to be calibrated against those of the 'victim'. As the 'individual'-orientation of society is more generally placed under scrutiny and the relevance of the broader community interests are increasingly brought into play, it is hardly surprising that the (arguably) overly individualistic focus of traditional human rights thinking has come under challenge. Whether or not this is related to the effect of 9/11 is a matter for debate, but there is certainly a confluence in trajectory towards re-evaluating the nature of the balances struck between the rights of individuals and of those of the communities of which they form a part. For some, this is no more than a reflection of a heightened sense of social cohesion, for others it is a fundamental challenge to the foundations of western liberalism. The essential point is that there is indeed such a debate taking place and it is centred on the nature of the political and social structures – and associated sets of values – which both inform and inspire the legal frameworks that regulate the conduct of both citizens and State. Within that debate, the mere appeal to a matter – such as torture – being prohibited as a matter of 'human rights' is no longer determinative of the outcome; it is increasingly necessary to test out the rationale for existence of the right.

#### When does the abstract become concrete?

Is this a cause for concern? At one level, it is naturally disconcerting to see either the need for, or the generally accepted implications of, some of the most well-attested human rights commitments being called into question. At the same time, however, the idea of human rights remains as powerful as ever and it must not be forgotten that whilst the content and interpretation of human rights obligations have come in for scrutiny, the relevance of human rights obligations to the manner in which individuals are treated by those in authority has not been subject to serious or sustained challenge. Indeed, the lengths to which states have gone to justify their actions within the paradigms of the human rights framework is itself quite remarkable. None of the principle protagonists in the post 9/11 events has ever seriously attempted to withdraw from their human rights obligations as a matter of law (albeit that some, such as the UK, have taken advantage of the opportunity to derogate from some human rights commitments, but only to the extent that the legal instruments which are the source of these obligations expressly

permit). Indeed, even the US torture memoranda themselves evidence a desire to offer a form of justification that acknowledges the potency of the overarching rights-based framework. The prominence given to human rights considerations in domestic legal discourse in both the UK and the US is considerably greater than previously and these are now brought to bear on the outcome of considerably more questions of law than was previously the case. Indeed, there may well have been a passing from the 'political' to the 'practical', from a world in which the role of 'human rights' was in truth more rhetorical, more a means of promoting certain ethical approaches and inspiring political change, to being a tool with direct legal potency.

Post 9/11, the US and the UK, along with so many other states, have been challenged by the need to adhere to human rights principles whilst seeking to protect their national security - in a time of peace but which for those involved has been cast as a time of war. Rather than being a means of projecting liberal western values – being, in effect, little more than an agent of foreign policy with only limited domestic relevance – they have become significant obstacles to the achievement of critical national policy objectives. In such a context it was inevitable that human rights values would come under pressure and scrutiny – as indeed they have and continue to be. Yet it is precisely because of the practical significance that they have now acquired that this is so. Whereas in the past one might advocate for human rights abroad but continue with 'business as usual' at home, it is increasingly difficult to do so. The challenges to, and the refinement of, our understanding of human rights obligations is a necessary phase in the realisation of human rights, rather than an abandonment of them.

At a practical level, this means that we may expect to continue to see challenges to accepted understandings, as the increasing significance of human rights results in the need for more nuanced approaches. For example, and to draw on material of direct relevance to the community of religion, whilst it is easy to subscribe to the freedom of expression as an abstract concept, it is less easy to do so when the views expressed are hurtful and disrespectful of the views of others and very difficult to do so when they challenge in a hurtful fashion the foundations of a person's sense of religious identity. But at what point does such expression warrant a restraint on the freedom of expression, given the importance of that right to the flourishing of a democratic society? Likewise, should religious messages given to believers be subject to the same principles of mutual tolerance and respect that are demanded of other forms of expression or communication? Similarly, and like it or not, surveillance and intelligence gathering is (and always has been) a fundamental tool in the maintenance of public order. Are religious believers sacrosanct? If security forces can obtain access to our private phone calls, e-mails and text messages and subject them to critical scrutiny in the interests of public safety, should they not have access to religious ceremonies for similar purposes, or to the exchanges that may take place between believers and spiritual guides or leaders?

There is no easy answer to these questions, and raising them as human rights issues does nothing to help settle the outcomes. What it does do, however, is provide a framework and a set of values that help inform the discussion. During the 1990s the major 'debate' surrounding human rights was the so-called 'Asian Debate', concerning the universality of human rights obligations and the challenges of 'cultural relativism'. There was always a degree of artificiality to that 'debate' in that, as a matter of legal obligation, not all human rights obligations were





universally applicable and, moreover, to be relevant in different cultural contexts human rights must be applied in a contextual fashion. What the post 9/11 debate has demonstrated is that human rights standards do indeed stand in a reflexive relationship, not only with cultural expectations but with more general political and societal (and this includes religious) expectations, aspirations and exigencies. This makes human rights less of a touchstone of legitimacy and so, to some, a lesser, diminished, commodity. On the other hand, it makes them much more of a dynamic element in the forming and un-forming of the societies they serve. Seen in this light, there is no more – and no less - of a tension between 'security' and 'human rights' than there is between any other informing value. What may have been lost is the late 20th century view of rights as 'trumps' held by the individual. Whilst an understanding of human rights, as being less of an evaluative tool and more of a set of guiding principles informing the practical outworking of societal inter-actions, will doubtless appear to some as being the end of human rights as we have known them, this does not mean that it is the end of human rights. It makes for greater complexity – and greater risk – but also holds out the prospect of greater relevance and realisation. Arguably - and despite all the many violations of human rights that have taken place and continue to do so – the role of human rights thinking has, ultimately, been enhanced rather than diminished in the post 9/11 world as states wrestle with – rather than reject - the realities of its implications.



#### "JUSTICE AND PEACE EMBRACE EACH OTHER" Human Rights and Conflict Situations

Dr. David Stevens

#### Summary

The article explores tensions between justice and peace, human rights and security, between past and future goals, between the claims of justice and peace, and between the claims of justice and truth. It uses the particular example of Northern Ireland.

But do Justice and Peace embrace each other (in the words of Psalm 85,10)? Are there not tensions between justice and peace – at least in some situations? Dealing with terrorism and situations of internal conflict in states can bring acute dilemmas. For instance, do human rights have to be curtailed? Is there a trade-off between human rights and security? If so, what is acceptable? What is not acceptable? And we know that violence begets violence and destroys the restraints on violence – and increases the desire to root the 'enemy' out.

Let us take the case of Northern Ireland during the Troubles<sup>1</sup> to illustrate the various strategies that can be adopted, and their potential consequences.

#### The War Strategy

It was often argued that if only the security forces in Northern Ireland could have been freed from the restraints under which they were operating and permitted to wage all-out war on the IRA, the conflict could have been brought to a rapid and satisfactory conclusion. Some support for this view might have been taken from the fact that the IRA clearly perceived itself to be fighting a war against the British Army. It was a guerrilla war with some limitation of legitimate targets. It was a war nonetheless, in which soldiers, policemen, prison officers and civilians were shot without warning, and in which bombs and incendiaries were used against all kinds of property, both governmental and private.

It was not always made clear what the adoption of a war model by the security forces would have entailed. At the simplest level it would almost certainly have involved a general policy of shooting suspected terrorists on sight, and the indefinite detention of all captured suspects as prisoners of war. Experience in the Irish Republic in the 1920s and in Malaya in the 1950s suggests that it might also have involved reprisals against communities from which gummen or bombers emerged or in which they were sheltered. There was also the possibility of hot pursuit raids into the Republic or even the destruction of suspected terrorist training camps or hideouts. Human rights would not have been high up on the agenda and suspects would have been treated harshly.

It is extremely doubtful whether the adoption of policies of this kind would have been successful in eliminating the IRA. They would equally likely have caused an escalation in the fighting. The cost in civilian casualties would certainly have been very high. The political consequences for the British Government in the eyes of the rest of the world would have been very grave.



<sup>1</sup> The Troubles is the most recent period of community conflict in Northern Ireland, commencing in and around 1969.

#### **The Detention Strategy**

A policy of arresting and detaining suspected terrorists without trial was pursued between 1971 and 1975 in Northern Ireland– this policy was somewhat short of the full-scale war model.

The implementation of the policy of putting suspected terrorists behind bars during that period involved the regular and systematic 'screening' of the population in all areas in which there was thought to be a substantial IRA presence. The process of arresting and questioning large numbers of people, sometimes on a street-by-street basis, inevitably increased the antagonism between the security forces and innocent members of the nationalist community in which the policy was applied. There is little doubt that it contributed substantially to the flow of recruits to the IRA.

### **The Criminal Prosecution Strategy**

Under a pure criminal prosecution model all suspects, whether they were charged with terrorist or ordinary crimes, are dealt with in ordinary criminal courts and have a right to jury trial in serious cases. In practice, the system of criminal prosecution was substantially modified in Northern Ireland from 1973 by changes in the common law rules on arrest for questioning, and on the admissibility of confessions, and by the suspension of jury trial. But the criminal prosecution model which was maintained from 1975 remained essentially different from the war or detention models in that a suspect could be kept in custody only if he or she was charged with a specific criminal offence and the prosecution was able to prove his or her guilt beyond reasonable doubt. This strategy had to have some concern for people's human rights.

There are some important consequences of adopting a pure or modified criminal prosecution model. The most important is that some people who are 'known' by the security forces to have committed or organised acts of terrorism will not be put behind bars because there is insufficient evidence to bring them before a court or because a court will not convict them. Relying on criminal prosecution thus makes dealing with suspected terrorists rather like dealing with suspected burglars or pickpockets. No one assumes that all of these will be arrested and imprisoned, or that burglary or pick pocketing will be completely stamped out. The community accepts this as part of the price to be paid for its commitment to the principle that it is better to allow a guilty suspect to go free than to convict an innocent person.

All policies have their consequences and costs. The criminal prosecution strategy enforced restraint on the security forces. The problem of obtaining evidence was very difficult, if not impossible in many cases. Emphasis was put on undercover work, the use of informers and sophisticated intelligence gathering. With the understandable pressure to get 'results', to lessen or eliminate terrorism, there were strong temptations for the security forces to seek ways round the restraints. The suspicions of confessions being forced out of people in the late 1970s, the use of super grasses against terrorist suspects in the Courts in the mid-1980s, the events of 1982 involving the shooting of suspected members of the Provisional IRA by the Royal Ulster Constabulary in an alleged 'shoot to kill' policy investigated by John Stalker and Colin Sampson, events and enquiries since (e.g. the Stevens Inquiry and inquiries by the Police Ombudsman), particularly around alleged collusion with loyalist paramilitaries in murder, all highlight the dilemma of how to cope with sophisticated and deeply entrenched terrorism in

ways which do not corrupt the state, the security forces and society itself: we risk becoming lost in a miasma of lies, deception and moral murk. Limits and restraints must be observed, including respect for human rights, otherwise the State becomes, in the words of St Augustine, 'organised brigandage' and sections of the security forces become indistinguishable in the end from the paramilitaries (as happened in some South American countries in the mid-1970s). But states in conflict situations are particularly prone to fail in their respect for human rights. Hence the need for local, national and supranational watch guards.

#### **Post-War Situations**

A political settlement is about ending reciprocal community violence and the cycle of revenge through creating a justice system and institutions that have the consent of its citizens.

There are a whole series of potential goals for societies responding to collective violence:<sup>2</sup>

- Overcome communal and official denial and silence about the past and gain public acknowledgement;
- · Seek to memorialise the past and educate about it;
- Obtain the facts in an account as full as possible in order to meet the victims' need to know, to build a record for history, and to ensure minimal accountability and visibility of perpetrators;
- End and prevent violence; transform human activity from violence violent responses to violence into words and institutional practices of equal respect and dignity;
- Forge the basis for a domestic democratic order that respects and enforces human rights;
- Support the legitimacy and stability of a political accommodation or a new regime;
- Promote reconciliation across social divisions; reconstruct the moral and social systems devastated by violence;
- Promote psychological healing for individuals, groups, victims, bystanders, and offenders;
- Restore dignity to victims;
- Punish, exclude, shame, and diminish offenders for their offences;
- Express and seek to achieve the aspiration that 'never again' shall such collective violence occur;
- Build an international order to try to prevent and also to respond to aggression, torture and atrocities.

What is important to note is that there are tensions between many of these goals. Further, some are focused on the past, some on the present and some on the future. Elements of the past, present and future (and the goals appropriate to each) are likely to intermingle in complicated ways in particular situations. And there may again be tensions in post-conflict situations between the claims of peace and justice, and between the claims of peace and truth. The tension between the moral demands of justice and the political requirements of peace have been very clear in Northern Ireland with the early release of politically-motivated prisoners and in South Africa with the granting of amnesty to those that had been involved in murder and torture, provided only that they were politically motivated and that they made public confession of

<sup>2</sup> See Martha Minow, "Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence", Beacon, 1998, p.88.

#### European churches engaging in human rights



them. There are tensions between wishing to let go (and even forget the past) which peace may require and the longing for acknowledgement of wrong, the demand for accountability and the validation of painful loss and experience that justice and truth may require. The balance that emerges between all of these claims in a particular situation is the result of political negotiation. A renewed respect for human rights is an important part of the mix, but it is only one part. Even more important is a wish for people to live together and to create viable political structures where negotiation can take place. Perhaps then justice and peace can embrace each other.



# INSTRUMENTALISATION / POLITICISATION OF HUMAN RIGHTS (Double Standards)

#### Dr. Göran Gunner

#### Summary

The article discusses issues related to tensions arising between human rights as political aspirations and as legally binding obligations as well as security and human rights, peace-building (political decisions) and human rights (legal obligations). Also discussed are the self-regulation of human rights inside the state structure, the responsibility for human rights as a relationship between the state and the individual, and a human rights-based approach.

Freedom of religion has through the history of human rights been looked upon as foundational for freedoms and rights, and in the European setting (the European Court of Human Rights) essential for a democratic society. Being incorporated in the *Covenant on Civil and Political Rights* (Article 18), freedom of religion belongs to the basic freedoms and rights. In 1981 the UN General Assembly proclaimed the *Declaration on the Elimination of All Forms of Intole-rance and of Discrimination Based on Religion or Belief* (Resolution 36/55). But in contrast to other declarations like the ones on discrimination against women, the rights of the child, and protection of all persons from being subjected to torture, there has been no follow up about freedom of religion through a specific binding covenant. This may be ascribed to a lack of political will and even tensions between states concerning issues such as, for example, the right to change religion.

The division in the human rights system, with declarations on the one hand and covenants on the other, is in one way symptomatic of a kind of tension between political aspirations for human rights and the implementation of human rights with legally binding commitments. Declarations about human rights are important as an expression of political will by a state; but to transform goodwill into legally binding obligations is to make human rights instrumental for change and protection. In the case of freedom of religion it can be seen in the difference between expressing a good intention without any obligations and taking on obligations granting rights.

The process of transforming the *Universal Declaration of Human Rights* of 1948 into a binding covenant resulted in two main covenants, the *International Covenant on Civil and Political Rights* and the International Covenant on Economic, Social and Cultural Rights, both adopted in 1966 and entering into force in 1976. This process is usually ascribed to the Cold War situation. In many books on human rights the argument goes that the Cold War blocked the establishment of one convention, with the Eastern block arguing for the economic and social rights and the US defending civil and political rights. In a recent analysis of the process behind the covenants this way of arguing has been described as "the myth of Western opposition".<sup>1</sup> According to the authors the decision in 1952 to draft two covenants had nothing to do with any kind of opposition or disregard either to economic and social rights. Rather it was a question of how best to recognize and implement the rights.

<sup>1</sup> Daniel J. Whelan and Jack Donnelly, "The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight." In *Human Rights Quarterly* 29 (2007) pp.908–949.







Still, the discussion following World War II concerning the two covenants really pinpoints the gap between political decision-making and legally binding obligations. Making most of the civil and political rights legally binding was agreed upon, incorporating or transforming them into national law, with violations to be treated by the court system. But the fulfilment and jurisprudence concerning most of the economic and social rights were looked upon as being ongoing processes and thus connected to political decision-making. But as the Cold War grew in intensity, the Eastern block headed by the Soviet Union faced critiques over civil and political rights, and the counter-attack focused on economic and social rights in the West, thus creating tension between two blocks of human rights.

Today, the international human rights system is a body of laws, of legal documents, founded on the principle of the inherent dignity of the human being, recognizing the rights of all human beings to freedom, justice, and non-discrimination. The rights agreed on by the states, with an accompanying will to implement and improve them, may be considered as a framework, even if not all conventions are ratified by all states. Political decisions have established and continue to discuss improvements of the human rights system.

But sometimes the political decision-making bodies try to influence the implementation and the interpretation of the rights. In specific states a lack of commitment by state parties is sometimes all too apparent as well as a lack of enforcing implementation and control mechanisms. In other situations the concept of human rights is used but given another interpretation, based, it is claimed, on religious or cultural understanding. This is a threat to universal human rights. Another threat is when political decisions side-step the totality of human rights and argue in favour of only some specific rights or claim that only some rights are the human rights.

There is a tendency in the US followed by Western European states, to focus more and more on identifying human rights with civil and political rights. Such an approach will emphasize important concepts such as freedom, democracy and a free choice. This is of course important but easily leads to a reduction of human rights to "freedom". The vulnerable in today's world – the poor, the homeless, the starving, the children and the women without rights etc. are, even if they are in full possession of civil and political rights, not free. Through not taking into account social, economic and cultural rights, there is a risk of the entire concept of human rights being undermined.

In principle, the rights that have been agreed upon should mean each and every person will have the same rights in relation to the state and should be protected against the state abusing and exceeding its power, as well as being protected against abuse by other actors in society.

#### **Rights – but for whom?**

The individual state takes the decision as to which human rights instruments it will ratify and therefore be obliged to follow. The individual state establishes its own national agenda for interpreting, protecting and implementing human rights. And the individual state sets up its own mechanism for monitoring and evaluating their way of fulfilling their human rights obligations. In one way this means that the state is the duty-bearer and at the same time the protector and evaluator. In the worst cases this implies that a state can have a political system that on a daily

basis negates and tramples on human rights and disregards human rights on its own territory. In other cases it can imply that the state may have a weak mechanism for implementing them or may concentrate on specific rights while neglecting others. Keeping traditional privileges and power structures is too often connected with political power and can jeopardize instrumentalisation of human rights. And it is one thing to accept the human rights system in words and another to establish a human rights culture through deeds.

Once a specific state has ratified a covenant and thereby agreed on the rights according to that covenant, the responsibility still lies basically with that same state. Ultimately, it is a case of self-regulation within the state-structure, with some possibilities for criticism coming from other states, international supervising committees and councils. Or you can count on the "mobilization of shame" model - exposing violations of human rights and hoping that international political and moral pressure will give results. Yet, we know it is not always that easy since there is still human vulnerability, discrimination, and misuse of power and unequal distribution of resources.

To be able to uphold human rights, it is crucial that the sphere of law and human rights be separated from that of the state and from politics. It is also important to stress that human rights are mutually dependent on each other. This is a unity that must be upheld.

Taking into account that human rights is basically about the relation between the state – the public sector – and the individual, it is important to determine a relationship between the state and the individual. A human rights-based approach looks upon power relations and power structures through a specific perspective distributing different key roles to participants. A human rights-based approach identifies rights holders (mainly the individual but in some instances a group) and duty bearers (mainly the state). Focusing on a human rights-based approach implies that human beings will insist on their rights. Rights are not granted through the goodwill of the state or according to need but just as rights, since the state is a duty bearer.

All rights – civil and political as well as economic, social and cultural – are, in their entirety, worth fighting for. At the same time a human rights-based approach sets fundamental priorities – with a focus on the marginalized, non-privileged and those excluded from society. These priorities may look different in different settings and countries, and in a global setting it may also be a question of relations between the South and the North in the struggle for reducing poverty and hunger in the world. The priority is very much towards those human beings forced into powerlessness and lacking control over their situation. All too often, that is strikingly true for women. The priority will then include gender and equality issues with equal treatment of men and women. Thus human rights claim to empower individuals, regardless of their relationship with authorities or their status in the community.

Today, the responsibility for human rights, as primarily a relation between the nation state and the individual, is being questioned. That is not the same as questioning human rights as such, nor as questioning the need for legal implementation - but questions the state as the sole actor, with the individual person in isolation as counterpart. Non-governmental organizations including the Churches have a special duty to assume responsibility in this situation by for example putting pressure on state parties, educating and empowering rights holders as well as duty bearers, and

adopting a trans-national approach with stress on the need for protecting and implementing human rights. Put in another way, it is important not to allow state authorities to hold the monopoly for trying to shape justice.

#### Power - but for whom?

The Human Development Report presents a table for all the states in the world of economic performance per capita GDP (2005).<sup>2</sup> Sweden is at number six with US\$ 39,637 and France number ten with US\$ 34,936. If on the other hand you look down to the bottom you will find for example Mozambique with US\$ 335 and the Democratic Republic of Congo with US\$ 123. And the difference is catastrophic, indicating a pretty hopeless situation if you belong to one of the poorest countries of the world. From the Asian context, Vandana Shiva has warned repeatedly, human rights have not been globalised but human wrongs have been turned into law. She targets the trade agreements and rules set up by the WTO that she labels as "genocide."<sup>3</sup> Just a few more examples: the people of Peru account for 0.1 percent of the world's carbon emissions but will pay a high price for the glacial melting because of the emissions of other countries. And calculations for sub-Saharan Africa estimate that between 75 million and 250 million more people could have their livelihoods "compromised by a combination of drought, rising temperature and increased water stress"<sup>4</sup>.

Of course, there can be lots of explanations for the power gap and economic imbalance. One is the economic or political weakness of the state in developing countries, and also the resistance of the privileged and powerful groups in those countries. But it is also due to the political system of the world today neglecting economic and social rights as tools for change and defining problems mainly as inter-state issues and not as a concern for all human beings to be equal and have the same rights.

Over twenty years ago the UN adopted the Declaration on the Right to Development (Resolution 41/128). Coming back to the difference between declarations and covenants it is of interest to see that this declaration has never been turned into a covenant. Even if there is a UN Working Group on the Right to Development, it would seem to be far off, since to enforce the right to development would need a redistribution of resources between states that goes beyond existing international co-operation. In the report from the group to the General Assembly 2008 it states: "The European Union believed that States had the responsibility to create internal conditions favourable to their development and to co-operate on an international level to eliminate obstacles to development."<sup>5</sup> It is clear that the EU puts the responsibility on each individual state (in the South) to solve its own development problems but is ready to talk about its own solidarity and commitment. Once again, international political decisions determine what to do with human rights.

<sup>2</sup> Human Development Report 2007/2008. New York, United Nations Development Programme, 2007, p.292. Online: http://hdr.undp.org/en/media/HDR\_20072008\_EN\_Complete.pdf

<sup>3</sup> Shiva, Vandana. "Set Farmers Free from the Binds of 'free trade."". International Forum on Globalization. Online: http://www.ifg.org/pdf/supple-vandana\_oped.pdf\_1.pdf

<sup>4</sup> *Human Development Report 2007/2008.* New York, United Nations Development Programme, 2007, p.292. Online: http://hdr.undp.org/en/media/HDR\_20072008\_EN\_Complete.pdf

<sup>5</sup> Report of the Working Group on the Right to Development from its Ninth Session. (A/HRC/9/17, 10 September 2008).

This is not just about giving each state its authority. It is about power structures and it is about control. In the discussion following on from the South African Truth and Reconciliation Commission, theologians talked already ten years ago about the need for distributive justice, biblically referring to the notion of the jubilee in Leviticus<sup>6</sup>.

### Human rights and security

On at least the Western political agenda today is the issue of attaining "security". The concept of security is used in many ways in the debate but here I will focus on security as a concept allowing excuses for restrictions on basic human rights. Individual states are today seeking ways or motivations for how they can restrict human rights in the name of security. Guantanamo is one expression of a situation where human rights are set aside in the name of security. Another example is what the State of Israel calls the security barrier but what for the Palestinian population in the occupied territories is a Wall with severe human rights abuses. A third example can be the OSCE expert meeting on security, radicalisation and prevention of terrorism in July 2008. The report states that radicalisation leading to terrorism is growing and that there is a potential link between failure to respect human rights and radicalisation. One conclusion could have been a message on the need to implement all human rights in the member states. But according to the report the questions discussed concerned religion in prison and detention facilities, religious/ethnic/racial profiling, and surveillance and security in relation to religious sites and communities. The political pressure for security seems to question human rights protection. It is clear that the authorities have the responsibility to protect human rights in prisons. But if the prisons are a potential recruiting ground for terrorists, is there then a need to regulate the practice of religion?

"For the authorities, an important issue is who decides when a restriction is to be placed on religion (e.g. the prison director) and ensuring that the prisoner in question be entitled to appeal against such decisions to an independent body. Limitations on the circulation of religious literature in places of detention were considered to be a crucial topic in this regard. An issue requiring further study is whether restrictions or violations on the freedom of religion or perceived abuses of prisoners' religious sensibilities contribute to radicalisation"<sup>77</sup>.

If the state were to forbid circulation of religious literature in the prisons, would it in that case offend the freedom of religion; and what comes first - security (political intentions) or freedom of religion (human rights)? The fear is that as long as the state is the decisive actor in human rights, political issues may interfere.

<sup>6</sup> Tsele, Molefe. "Kairos and Jubilee." To Remember and to Heal: Theological and Psychological Reflections on Truth and Reconciliation, edited by H. Russell Botman, and Robin M. Petersen. Cape Town: Human and Rousseau, 1996.

#### **Rights and peace**

The International Criminal Court<sup>8</sup> decided in March 2009 to issue an arrest warrant for Sudanese President Omar al-Bashir. The accusation included war crimes and crimes against humanity in Darfur. The decision is undoubtedly one of great significance. For the first time a President in office was convicted in the ICC. As head of the government and using the entire state apparatus he is guilty of crimes against humanity and international law, an important step in the instrumentalisation of human rights.

But organizations involved in political processes encouraging peace negotiations say the decision will shatter the fragile peace negotiations. Or maybe this process has never been serious from the governmental side but the ICC decision will open the door for more human rights abuses.

The response from President Omar al-Bashir has been to order the expulsion of foreign aid agencies from Sudan. Obviously, that will worsen the situation for the targeted population in Darfur. From a human rights perspective it may be argued that justice can never be bargained for or prosecution avoided through political manipulation. On the other hand, from a peace negotiating perspective it is possible to argue that chances of peace would be destroyed by an indictment. Or can there be peace without rights (justice)?

A lot of efforts today are directed at finding ways of dealing with peace-building activities (political decisions) and human rights activities (enforcing legal obligations). There is a need for an inventory of principles and areas of effective mutual co-operation between peace building and human rights to make better use of both agendas and a need to implement human rights in the peace-building process.





<sup>8</sup> The International Criminal Court (ICC) is the permanent international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community. Online: http://www.icc-cpi.int/

RIGHTS OF THE INDIVIDUAL AND THE COMMON GOOD "Each of us must consider his neighbour and think what is for his good and will build up the common life." Romans 15:2

**Rev. Theodor Angelov** 

#### Summary

The article tackles the relationship between individual and community rights. Our stewardship in society as Christians entails responsibility and Christ-likeness. The Christian attitude should include respect for all. To serve means to exemplify humility and readiness to work for others.

Although traditional forms of discrimination have disappeared in most parts of the world there is no guarantee that people will enjoy full equality without discrimination in the future. The idea that one group is superior to another—and the consequences of that idea—have not disappeared. What is the relationship between the rights of the individual and the needs of the community—should the rights of the individual be valued higher than the rights of the majority? In many countries, the pendulum seems to be swinging towards the rights of the community over the rights of the individual, which in extreme situations could revive the idea of "bolshevism" (the majority over the minority) of the past century.

#### Human rights, duties and responsibilities

Having in mind the broad spectrum of possible approaches to the question, we should be very careful before giving a "definitive" answer as to what precisely the relationship between individual and community rights should be. What should we as Christians think about such a difficult issue? In his letter to the Romans the apostle Paul gives this advice: "*Each of us must consider his neighbour and think what is for his good and will build up the common life*" (Romans 15:2). He goes on to point to the ultimate example of Jesus, who did not please himself but became the servant of all. This is the Biblical sense of the word "servant", that Christ was a servant; he did not come to be served, but to serve the others, and his service brought him to the cross. We must become servants as well. Our stewardship as Christians entails Christ-likeness, and that includes sacrifice. To serve means to exemplify humility and readiness to work for others; to give and even sacrifice something for our fellow man and our community.

#### Responsibility

Nothing can destroy the life of a society, family, or community as quickly as lack of responsibility. A family in which the parents do not fulfil their responsibility towards their children; a government administration which does not fulfil its responsibility to the people being governed; civil servants or financial workers who do not fulfil their responsibilities to those they are supposed to help—we can see in all these cases how lack of responsibility can lead to catastrophe! We are witnesses of many such catastrophes today in the lives of individuals and entire nations.

## The Christian attitude: Respect for all

Among the more striking stories about St. Francis of Assisi are the accounts of his profound reverence for every person, every creature, and every thing. He went to great lengths to avoid offending a brother. Any abuse of animals also saddened him deeply. When he encountered

other beings, his initial reaction was not one of fear, arrogance, or greed. Rather, he thought of his fellow creatures as having as much right to exist and to flourish as he himself did. Where there is such profound reverence and respect for all creatures, there naturally follows a great desire for peace. A Christian understanding of the rights of others, of the common good, always leads to peace in society.

We have witnessed firsthand the painful struggle that many countries have gone through in order to rid themselves of absolutist, totalitarian ideologies. Under Communism, we saw what it was to live in a society of "justice" without freedom, and equality without responsibility. A Christian vision of society, aware of interdependency and relationships, should be based on the possibility of overcoming indifference and selfishness, as well as the individualism and consumerism that are so widespread today. The presence of God in our world guides us in our realization of the true meaning of the phrase: "to consider his neighbour and think what is for his good and will build up the common life", and that is the real transformation of humanity through an act of God's power, through His grace. This will happen only when grace is present in the hearts of human beings—it is through this grace that we will have the freedom to value and respect the rights of others.

# Do we respect the economic, social and cultural rights of others?

In addressing the question of human rights we think mainly of elimination of intolerance and discrimination, of protection of human and religious rights, freedom of speech, freedom of conscience, and protection of minorities. Most European countries have become multi-ethnic and multicultural. It is remarkable that in the Bible God makes specific mention of several groups: the alien, the fatherless, the widows and the poor. "*You shall not deprive aliens and orphans of justice nor take a widow's cloak in pledge''* (Deuteronomy 24:17); "*I command you to be open-handed with your countrymen, both poor and distressed in your own land''* (Deuteronomy 15:11). These words demonstrate that God is especially sensitive toward our treatment of the alien and stranger—immigrants who are very often deprived of their human rights. The economic, social and cultural rights of minorities should be respected in the same way as those of any other human.

An essential feature of the Church's service in Europe is its ministry to the poor and needy. One of the most fundamental aspects of our world today is the challenge of living next to one another while maintaining mutual recognition and respect for people of different nationalities, ethnic backgrounds and religions. The Christian tradition of maintaining charitable institutions is as old as Christianity itself and shows the nature of the Christian faith; as an old prayer says: "Lord, let me sow love where there is hatred and injury." The biblical commandments affirm our mutual responsibility and accountability to our fellow man. The teaching of the Church in Europe about social, cultural and economic rights should be put into practice with profound acts of understanding and love.

In his final description of the Kingdom of heaven Matthew 25, Jesus says: "Anything you did for one of my brothers here, however humble, you did for me" (Matt.25:40). By "my brothers here, however humble" Jesus meant the strangers, the hungry, the poor, the sick and the prisoners. In other words:

To care about the economic, social and cultural rights of the others means not only to respect them but to serve them, and to build up the common life!

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### A BRIEF INTRODUCTION TO SOCIAL RIGHTS

Ms Diane Murray

#### Summary

Complementing civil and political rights, social rights cover such areas of daily life as employment, health, social security and education; they also offer specific protection for groups such as women, children, and the elderly. The main international social rights instruments are the International Covenant on Economic, Social and Cultural Rights (United Nations), the European Social Charter (Council of Europe) and the European Union Charter of Fundamental Rights. These international treaties lay obligations on the States signator to them and set up various types of mechanisms for overseeing their implementation.

#### Introduction

Although social justice is an elusive and imprecise concept, a society may be held to be socially just in so far as everyone contributes according to their ability so as to ensure that everyone's basic needs are met. This implies a society in which income inequalities are not excessive (however this is defined), in which poorer members of society live in dignity and richer members of society accept an obligation to help those who are less fortunate.

Among the means by which governments can seek to move towards greater social justice are social security systems, employment policies, and redistributive taxation. A complementary approach is to enshrine social rights in law. This rights-based approach is based on the recognition that decent conditions of life are a fundamental part of human dignity and that all societies have a duty to strive to achieve this to the greatest extent possible. Social rights can be seen as the legal underpinning of social justice.

Human rights are inalienable rights which guarantee the fundamental dignity of every human being. When considering human rights, pride of place is commonly given to civil and political rights, i.e. the rights set forth in the European Convention on Human Rights and Fundamental Freedoms. Each individual, however, lives within a society, and this implies that, in seeking to live their own lives in their own way, individuals must avoid infringing the rights of others. Social rights, sometimes referred to as "second generation rights", are related to and in some ways overlap with cultural and economic rights but tend to come as something of an afterthought.

Churches, however, while not in any way wishing to diminish the importance of civil and political rights, will see rights such as those to employment, fair remuneration, decent conditions of work, housing, the protection of children, women and the elderly, and protection against poverty as being means of applying the biblical imperative to come to the aid of widows, orphans and foreigners and to assist the sick, the poor and the downtrodden.

Although economic and social rights may, therefore, be felt by Christians to be just as important as civil and political rights in ensuring human dignity, it cannot be denied that the two categories of rights are to some extent different in nature. Thus, on the one hand, civil and political rights

are primarily about protecting the individual from the power of the State. They set limits on the power of the State. Economic and social rights, on the other hand, tend to place obligations on the State to take certain kinds of action aimed at ensuring that individuals benefit from decent jobs, housing, working conditions and so on. Economic and social rights can therefore involve the State in substantial expenditure (as with the right to social security or the right to health) and it has, therefore, always been accepted that more prosperous countries will be able to go further towards ensuring the enjoyment of social rights than poorer countries. In other words, economic and social rights are something to be achieved progressively as countries develop economically. Civil and political rights, by contrast, do not on the whole imply substantial government spending, and should therefore be capable of full implementation everywhere, irrespective of the stage of economic development.

In this article we shall look at several of the main instruments which have been designed to protect and promote social rights in the wider Europe.

# The Universal Declaration of Human Rights of the United Nations, 1948

The Declaration is an expression of principles. It is not in itself a binding document and from the first it was recognised that there would need to be a binding covenant - or treaty - to give legal force to the Declaration. Two covenants now exist to this end, although only one was originally intended. They are the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). In the late 1940s while the countries of the West stressed the importance of civil and political rights like the right to choose a government, freedom of expression, conscience and belief, the Communist bloc gave priority to economic, social and cultural rights, such as the right to work, housing and access to health care.

It took almost twenty years before a compromise position was reached and the two covenants were drafted and finally adopted in 1966. It should be noted, nonetheless, that in the last two decades the perceived conflict between civil and political rights on the one hand and economic and social rights on the other has lessened. In 1993 the Vienna Declaration and Programme of Action which resulted from the World Conference on Human Rights in Vienna emphasised that 'all human rights are universal, indivisible and interdependent and inter-related'.

### International Covenant on Economic, Social and Cultural Rights (ICESCR) International Covenant on Civil and Political Rights (ICCPR)

#### Role of Committees

When governments become parties to the ICESCR and the ICCPR, they are required to comply with certain conditions and report back to the special Committees which oversee the implementation of the rights outlined within these instruments. These Committees meet annually and require each state, once it has ratified a convention, to submit an initial report on the measures it has adopted which give effect to the rights recognised therein. Depending on the Committee,



each state must report every four to five years on the progress made in the enjoyment of rights by people in their country.

The Committees can also consider communications received from individuals who claim that their rights, as outlined in the treaty, have been violated without domestic redress.

In order to investigate, monitor and publicly report on human rights abuses in specific countries or territories the Commission has established procedures and mechanisms including rapporteurs, experts and working groups or human rights groups. The ICESCR for example is monitored by the Committee on Economic, Social and Cultural Rights, a body of human rights experts tasked with monitoring the implementation of the Covenant. It consists of 18 independent human rights experts, elected for four-year terms, with half the members elected every two years.

Unlike other human rights monitoring bodies, the Committee was not established by the treaty it oversees. Rather, it was set up by the Economic and Social Council following the failure of two previous monitoring bodies.

All states parties must submit regular reports to the Committee outlining the measures they have taken to implement the rights affirmed in the (ICESCR) Covenant. The first report is due within two years of ratifying the covenant; thereafter reports are due every five years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations". Interestingly, it has been known that on at least one occasion a number of NGOs co-operated to send in a report when those responsible in their country had failed to do so.

## The Council of Europe and social rights

The Council of Europe is a political organisation, founded in 1949, to defend the principles of democracy, human rights and the rule of law. Membership is open to all European states, which undertake to abide by the organisation's principles. At present the Council of Europe has 47 member states.

The European Convention on Human Rights guarantees civil and political human rights and the European Social Charter, its natural complement, guarantees social and economic human rights. It was adopted in 1961 and thoroughly revised 30 years later. Following this revision, the revised European Social Charter, which came into force in 1999, is gradually replacing the initial 1961 treaty. The European Social Charter (from now on referred to as "the Charter") not only sets out rights and freedoms but has also established a supervisory mechanism to guarantee their respect by the States Parties.

The rights guaranteed by the Charter concern individuals in their daily lives and cover such areas as:

Housing, which is taken to mean access to adequate and affordable housing, the reduction
of homelessness and a housing policy targeted at all disadvantaged categories together with
procedures to limit forced eviction;

- Accessible, and effective health care facilities for everyone coupled with a policy for preventing illness with, in particular, the guarantee of a healthy environment and elimination of occupational hazards so as to ensure that health and safety at work are provided for by the law and guaranteed in practice; the Charter calls for the protection of pregnant women and mothers;
- Education including free education to all levels, vocational guidance services and special measures for those with difficulties, for example, children with disabilities and foreign residents employment This area contains measures prohibiting the employment of children under the age of 15 and requires special working conditions for those between 15 and 18 years of age. It gives the right to earn one's living in an occupation freely entered upon and an economic and social policy which is designed to ensure full employment with fair working conditions as regards pay and working hours and the promotion of collective bargaining and conciliation;
- Social protection, including the protection against poverty and the protection for disabled people;
- Freedom from discrimination;
- Rights of migrants.

The Charter is monitored by a Council of Europe body, the European Committee of Social Rights which is charged with ascertaining whether countries have honoured the undertakings set out in the Charter. It has fifteen independent, impartial members, who are elected by the Council of Europe Committee of Ministers for a six year period. Their mandate may be renewed once. This Committee must determine whether or not national law and practice in the States Parties to the Charter are in conformity with it.

This monitoring procedure is based on national reports which the States Parties submit every year to demonstrate how they are implementing the Charter in law and in practice. Each report concerns some part of the accepted provisions of the Charter. The Committee examines the reports, decides whether the countries concerned are in conformity with the Charter and then publishes its decisions, known as "Conclusions".

If a state does not take action on a Committee decision to the effect that it is not complying with the Charter, the Committee of Ministers may address a recommendation to that state, requesting that it change the situation in law and/or in practice.

A collective complaints procedure was established in the 1990s. Under a protocol opened for signature in 1995, which came into force in 1998, complaints of violations of the Charter may now be lodged with the European Committee of Social Rights by a number of approved organisations. They include many of the non-governmental organisations (NGOs) which enjoy participative status with the Council of Europe.



It is important to note here that the Conference of European Churches (CEC) is one of the approved NGO's. This means in practice that it is open to member churches to bring forward complaints, which will need to have been carefully prepared by their legal experts, and these can then be formally presented under the auspices of CEC.

In twelve years some 60 complaints have been brought against specific countries by such NGOs as the Mental Disability Advocacy Centre on the subject of education for children with disabilities, the European Roma Rights Centre on a number of issues concerning treatment of the Roma and the European Federation of Employees in Public Services (EUROFEDOP), which lodged complaints against countries where the armed forces were denied the right to organise (Article 5) and the right to bargain collectively (Article 6).

### The European Union Charter of Fundamental Rights

The European Union Charter is in some senses different from the other instruments mentioned before because it sets out in a single text the whole range of civil, political, economic and social rights of European citizens and all persons resident in the EU. These rights are divided into six sections: dignity, freedoms, equality, solidarity, citizens' rights and justice.

These rights are based, in particular, on the fundamental rights and freedoms recognised by the European Convention on Human Rights, the constitutional traditions of EU Member States, the Council of Europe's Social Charter, the Community Charter of Fundamental Social Rights of Workers and other international conventions to which the European Union or its Member States are parties.

The Charter is an important development in that it is the first formal EU document to combine and declare all of the values and fundamental rights (economic and social as well as civil and political) to which EU citizens should be entitled. Moreover, it also includes certain "third generation" rights such as the right to good administration or the right to a clean environment. Social rights are mainly found in chapters 2, 3 and 4 which cover, respectively, freedoms, equality and solidarity. The main aim of the Charter is to make these rights more visible and it is important to remember that the Charter does not establish new rights, but brings together in one text existing rights that were previously scattered over a range of international sources.

The Charter applies to the EU institutions (European Commission, European Parliament, European Council, the Council of Ministers, European Court of Justice, European Court of Auditors and European Central Bank) as well as to the bodies set up under secondary legislation (such as Europol, Eurojust, the European Economic and Social Committee, and the Committee of the Regions). All these EU institutions and bodies must conform to the rights and principles proclaimed by the Charter.

The Charter also applies to the actions of EU member states, but only when they are acting within the scope of EU law. For example, the Charter would apply to any of the 27 EU member States if it was passing a law about trade regulation, but not if it was passing a law about a purely national matter. Thus, it does not provide, as is sometimes argued, any new freestanding rights, such as a general right to strike. The Charter is accompanied by explanations which provide a guide to its interpretation.

With the coming into force of the Treaty of Lisbon in December 2009, the Charter became directly enforceable by the EU and national courts. Art. 6(1) of the Treaty on the European Union (TEU) provides that "the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights". The Charter has already acted as an important reference document.

Most people do not appreciate the extent to which EU law is part of their everyday lives. The main purpose of the Charter is to make these fundamental rights more visible and accessible to people in the EU. The Charter helps people in the EU to better understand the extent of their rights and be aware of any violation of them by European institutions, bodies and the member states, when they are making decisions concerning EU law. Since the Lisbon Treaty, the Charter enables people to challenge the way in which a member state has implemented EU law in the courts of their country. This is simpler, cheaper and easier than taking the case to the European Court of Justice in Luxembourg. A national judge can thus directly enforce the rights guaranteed by the Charter.

The Charter also provides the EU institutions and bodies with a set of standards, against which they can measure their own performance and the performance of member states when implementing EU law into national law. For instance, if the EU Commission is concerned that a particular member state is failing to protect human rights in an area within the scope of EU law, it could use the Charter to challenge that member state to improve its protection of the right. An individual can use the Charter to complain to the European Ombudsman about their treatment by an EU institution. The EU courts and national courts must take account of the Charter provisions in cases which fall within the scope of EU law. For example, the Charter can be used as a yardstick in a review of EU measures, or as grounds to challenge the legality of national measures implementing EU legislation. Overall, the Charter comprises an additional source of protection that can be used by European citizens in litigation which has an element of EU law.

A breach of one of the rights contained in the Charter could give an individual possible grounds for challenging the legality of a measure. At present people can only complain to the European Court of Justice if they are directly and individually concerned by a measure taken by an EU institution or body. This usually means that the measure must have been addressed specifically to a particular individual, for example about someone's company; however few legislative measures individually and directly concern a particular person. The Lisbon Treaty has broadened the possibility to complain about regulations somewhat (the complainant only needs to be indirectly concerned), but it will still be very difficult to get direct access to the European Court of Justice.

#### **Concluding observations**

As part of their commitment to justice in society, European churches can welcome the fact that, in one way or another, all European countries recognise social rights in their national legislation or constitutions. Churches also need to become more aware of the possibilities offered by international treaties for furthering social rights in their countries. The rights-based approach to social justice is one means of protecting the human dignity which is inherent in our existence as creatures of God.



# HUMAN RIGHTS AS A CHALLENGE TO THE CHURCHES: protecting human dignity by promoting human rights and the rule of law

Dr. Jochen Motte

#### Summary

All human beings have the right to human dignity – and human dignity must be protected by human rights, evolving accordingly as human dignity is threatened in never-changing ways. The Churches have come to reread their own traditions in support of this imperative – Old and New Testament – without claiming exclusivity of motivation in this mission, but with more leeway for manoeuvre than state actors, and strong reference points for clarifying contested interpretations. Today's challenge is especially for the Church to support the individual faced with the overwhelming power of globalisation and with increasing poverty and to raise the alarm where necessary.

# 1. All human beings are born free and equal in dignity and rights

#### (Art. 1 - Universal Declaration of Human Rights)

Human dignity and human rights belong together and are indivisible. It is not just by chance that the Universal Declaration of Human Rights was passed by the United Nations (UN) on December 10th 1948, only a few years after the end of the Second World War when more than 56 million people died, six to seven million Jews were murdered and innumerable other criminal acts were committed.

It seemed that after the unbelievable crimes of National Socialism and their repercussions and consequences throughout the world, for the first time in history the time had come to establish universal and indivisible rights for all human beings and to make these an integral part of international law.

The experience of acts of debasement and degradation many million times over led to the growing conviction that human dignity must be protected by human rights, and that all human beings have the right to human dignity, irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In view of the present challenges facing the world community more than 60 years after the adoption of the Universal Declaration of Human Rights, it is helpful to remember what global answers were given to the global challenges of terror and injustice at that time, which today still form the basis for our rule of law. It is necessary to continue to re-interpret these and to develop them further, in response to the prevailing threats to human dignity that we encounter in old and new forms in our changing world today.

The Preamble of the Universal Declaration of Human Rights states:

«Whereas recognition of the inherent dignity and of the equal and inalienable rights of all mem-

bers of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, now, therefore the General Assembly proclaims this Universal Declaration Of Human Rights, article 1: All human beings are born free and equal in dignity and rights".

The commitment to guarantee life in dignity and to uphold human rights is the duty of states. It is their task to establish the rule of law and to maintain it. It is essential to maintain absolutely the universality and inalienability of human rights whenever any attempt is made to relativise them. Nor may civil and political rights be played off against economic, social and cultural rights or vice-versa; they are both dependent upon each other. The importance of social rights is particularly of note to the Churches, on account of their own biblical traditions.

# 2. "But let justice roll down as waters, and righteousness as a mighty stream." (Amos 5, 24)

Although the Churches remained rather sceptical and disapproving of human rights until the end of the Second World War, they then became actively involved in the discussions about the formulation of the Universal Declaration and in the continuing process of its implementation. This particularly applies to the World Council of Churches, which was able to exert direct influence on certain formulations of the Declaration through its Commission for International Affairs. All this took place against the background of a growing awareness of solidarity within the Church's own global community, whose members in many countries in the South, but also in the Eastern Block countries at that time, were affected by human rights violations and poverty. The Churches took up the challenge to themselves as a global and yet at the same time local community of people, to stand up together against injustice, exclusion and violence. They raised their voices to admonish and protest to governments and the community of states on behalf of the victims of human rights violations.

In this way the Churches re-discovered their own traditions and learnt to read them in a new way. Today they consider it their job to protect the dignity and human rights of people throughout the world, as a contribution in accordance with the core message of the good news of God's revelation in Jesus Christ. In 1977 Emilio Castro, General Secretary of the World Council of Churches from 1985-1992, expressed this very pointedly in the following way:

"God invites every creature to new life in him, and the Church is sent into the world to struggle against everything which keeps that invitation from being presented to them and everything that hinders their freedom to respond to it. The freedom to respond to God implies more than what is normally called religious freedom, or even political freedom. The freedom to respond to God implies the liberation of man from everything that enslaves him, that deprives him of the possibility of standing as a free human being before God. Freedom from hunger, from want, from fear are aspects of that liberation. Such liberation creates community. ... 'Human rights' is not just the slogan of the political activist; it sums up the Christian missionary imperative."

#### European churches engaging in human rights

The God of the Bible as encountered by Israel, is a God who leads from slavery to freedom, who on the way through the desert towards this freedom gives his people laws and legal statutes for a life in freedom, and with the gift of land guarantees the material foundation for a life in community with God and other human beings. It is not through violence and terror, but through justice and peace that Israel and Christianity shall become the "Light of the Nations".

It is remarkable in this context that Old Testament law is oriented particularly towards the wellbeing of the weak, in other words it declares precisely what we today understand as economic and social human rights to be the yardstick for justice and righteousness. Women and children, in as far as they are widows and orphans, are included among the groups of persons to be given special protection. "Thus saith the Lord: Do justice and righteousness, and deliver from the hand of the oppressor him who has been robbed. And do no wrong or violence to the alien, the fatherless, and the widow, nor shed innocent blood in this place" (Jeremiah 22,3). God will give justice to those who live in injustice. "He shall give judgement for the suffering and help those of the people who are needy; he shall crush the oppressor." (Psalm 72,4)

"But let justice roll down as waters, and righteousness as a mighty stream." These words of the Prophet Amos (5,24) express God's just intent for a social community called to a life in freedom, and it is the representatives of the state with the King at their head, who are made responsible before God that this law shall be applied.

The prophetic criticism is directed in very harsh words against perversions of the course of justice, corruption, exploitation of the poor, the selling of people into slavery, fraudulent profit and other crimes, in the face of a growing gap between the rich and the poor. Almost 3000 years after Amos, these phenomena that exclude people and prevent a life in dignity are not new, even if they come to us today in a global context.

In the New Testament God comes to us in the person of Jesus of Nazareth. He is the true image of God. Through his death and resurrection we are freed from guilt and have a share in a new life in dignity and freedom. In his image all people - Jews and Christians, women and men, rulers and servants become brothers and sisters (Galatians 3,28). The sanctity of all people and their inviolable dignity is grounded in Christ and in our relationship to him. For in his life and message Jesus directs us to act mercifully and in a healing way towards our neighbours, especially towards the weakest and most threatened members of the community, to protect them and give them back their dignity and rights. A good example of this is the parable of the Good Samaritan that Jesus told, where the Samaritan gave help despite barriers of nationality and religion.

"We are all one in Christ Jesus. And when we truly believe in the sacredness of human personality, we won't exploit people, we won't trample over people with the iron feet of oppression, we won't kill anybody." That was what Martin Luther King preached in a Christmas Sermon on Peace in 1967, in which he spoke out strongly against racial discrimination and justified the dignity of all human beings, and therefore his 'no' to discrimination, with our fellowship and community in Christ.

It is with this understanding of dignity and justice that come from God, and God's liberating and merciful action towards us, that Churches participate in discussions to bring about peace and justice in the age of globalisation. However the Churches do not exclude any other religiously or secularly motivated justification for action, but rather consider them constructively and are open for alliances and coalitions to enforce the implementation of human rights and the protection of human dignity wherever they are threatened. In the prophetic tradition Churches will raise their voices wherever people suffer injustice and violence. They will remind governments and states of their responsibility to enforce the rule of law and to make a life in dignity possible for all people.

# **3.** Current challenges for the Churches to stand up for God's justice and righteousness.

In many countries people suffer today under conditions such as the prophet Amos described 3000 years ago. For example people in the Philippines are executed on account of their political convictions. The perpetrators are suspected in government and military circles and the judiciary fails to search for the perpetrators. In Congo, countless women are raped and children misused as soldiers, while perpetrators need hardly fear that they will ever be called to accountability. Under such circumstances there is hardly any chance that state structures will be set up to protect the poor and to implement law and order.

In this period of financial and economic crisis the millions of poor people in Cameroon, Namibia, Tanzania and elsewhere have even less chance of an improvement of their situation.

In many countries today, while human rights are recognised on paper they are insufficiently protected in practice. Often the states lack the will or the means to implement justice in the face of corruption and a lack of resources.

In Germany people are asking whether the state is fulfilling its duty to enable life in dignity and to enforce the rule of law, in view of a collapsed finance and banking system with its excessive profit seeking, golden handshakes and incomes of millions for managers and the liberalisation and abolition of regulations and laws in this field. Everyone now has to bear the consequences, especially of course those who lose their jobs or were already on the fringe of society before this. Churches have also criticised the states of the European Union for the way they deal with refugees, who are drowning in their thousands in the seas around Europe's coasts, and they have demanded the protection of refugees and a more correct behaviour towards them.

Further challenges for current work on human rights can be listed as follows: the undermining of the ban on torture by the USA in its "War against Terror"; the limitation of the right to freedom of speech by Islamic countries, which refer in an unacceptable way to the right of freedom of religion, thereby turning the individual right into a right of the religion itself; the political instrumentalisation of human rights by various groups of countries in the Human Rights Council of the United Nations.

In view of this situation, it is and remains part of the mission of the Churches with their proclamation of the liberating message of the Gospel, to protect human dignity, to stand up for human rights and to remind those in power of their duty to ensure that there is justice and peace.







There can be no going back on the Universal Declaration of Human Rights or the Agreements and Conventions for the protection of human dignity that have so far been passed by the United Nations. We must make far more effort to develop further the norms for the international protection of Human Rights, and in particular to do away with the great deficits in their enforcement. At the same time it is necessary constantly to debate and justify anew the basis for the universality and indivisibility of human rights in discussions with other religions and ideologies, to work against fundamentalist tendencies within our own and in other religions and ideologies, and to seek for common convictions. In this context the question of religious freedom for the Churches is of particular importance.

Today the Churches face the task of opposing clearly any undermining of the standards for human rights, naming states that violate human rights or indirectly contribute towards it, and campaigning for the setting up of international structures for the protection of human rights that are capable of coping with current global challenges.

In the process of globalisation private protagonists and huge nationally and internationally operating companies and banks have gained a position of power that limits the scope of action of individual states and has dramatic effects on the living conditions of people throughout the world. Not only people in countries of the south but also people in Europe see themselves more and more as victims of globalisation, when jobs are lost or people have to live and work in production under inhuman conditions. As in 2008 at an international conference of the 'United Evangelical Mission, Communion of Churches in Three Continents' on Justice, Peace and the Integrity of Creation held in Batam/Indonesia, Churches are raising their voices and demanding that companies, banks and international institutions such as the World Bank and the IMF effectively assume their part of responsibility for human rights.

Given that this year the number of hungry people in the world will reach the billion mark, and that over 30,000 children die every day of sicknesses that are curable, extreme poverty remains one of the greatest challenges preventing a life in dignity.

The Churches welcomed the fact that in the year 2000, 189 states committed themselves to halving poverty throughout the world within 15 years. Due to the consequences of climate change and the international financial and economic crisis, the achievement of this goal has been pushed back into the distant future. The Churches will continue to speak out emphatically for more to be done to abolish poverty. How much more could be done, if only a fraction of the money that is now being pumped into securing the financial systems were to be made available for fighting poverty, for education, health care and rural development!

These examples show that human dignity and human rights can only be protected effectively where there are structures under the rule of law, and where the state does not violate human rights through absence, looking the other way, toleration or even active support. For this reason the Churches will speak out for the setting up of state structures where necessary, and will warn people that there is a danger of the state being weakened where its scope of action to guarantee the law and to protect human dignity is reduced. In doing this the Churches can and must refer back again and again to their own fundamental principles stemming from God's liberating ac-

tion and God's will for justice and righteousness for the world. When the Churches understand this they can give good reasons for the cause of human dignity. Based on God's commandment they will explain the task and the duty of the state to protect human dignity and to enforce human rights.

In 1977 Emilio Castro named the championing of human rights as the missionary imperative for the Churches. I believe that this is still valid today. The Churches in the worldwide ecumenical movement should stand in their mission work on the side of those who have fallen among robbers. They have to remind those in power of their responsibility to respect human dignity and to enforce human rights. At the same time Church people have to stand together with those in our societies who suffer and are in need. They do this by sharing and helping others, by showing sympathy and fellowship to them and through intercessions and trust in God, to whom they pray: "Your kingdom come. Your kingdom of justice and of peace."

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#### Rev. John Murray

#### Summary

Churches see the struggle for human rights as a gospel imperative. Their pastoral and diaconal work enables them to speak authoritatively about human rights abuses at the grassroots. The Churches' work for human rights must be not only pastoral and diaconal but also prophetic. Their detailed local knowledge as well as their access to government makes it possible for them to campaign effectively against human rights abuses.

The point of entry into the human rights discourse for the Churches was probably the right to freedom of religion. This is the right that Christians claim for themselves - the right that is fundamental to the free practice of our faith. At the same time, it cannot be denied that, over the centuries, dominant Churches have used their power and their proximity to the seats of political power to restrict the freedom of certain religious groups and indeed to persecute them. This is an area of human rights where Churches have been both victims and perpetrators. So while we celebrate the freedom of religion which we enjoy in Europe today, we must at the same time remain alert to any remaining restrictions on that freedom and be willing to defend it against any renewed attempts to limit it.

However, Churches came to recognise that freedom of religion cannot be protected in isolation from the whole package of human rights. Human rights are an entity; they stand or fall together as an indivisible whole. Churches recognise, therefore, that they should not restrict their involvement in the human rights movement to the protection of their own sectional interest as religious bodies. They are aware that they have a clear duty to engage in the struggle to protect human rights as a whole.

For Christians, it is nothing less than a gospel command to struggle for the rights of others, particularly those least able to stand up for themselves. The Bible reminds us that Christ himself comes to us in the form of others in need: the hungry, the sick, the stranger and the prisoner (Matthew 25.31-46); and that if we "hunger and thirst for righteousness" we are assured of the blessings of the Kingdom (Matthew 5.6).

It thus comes as no surprise that the Charta Oecumenica commits European Churches to engage in the struggle for human rights:

On the basis of our Christian faith, we work towards a humane, socially conscious Europe, in which human rights and the basic values of peace, justice, freedom, tolerance, participation and solidarity prevail.

However just as "charity begins at home", so should human rights begin within the individual Churches. The Churches' actions in the field of human rights will not carry conviction unless

they demonstrate respect for human rights in their own internal affairs and procedures. As human rights are to a large extent a matter of guarding against the abuse of power, we need to ensure that the powers of Church leaders and authorities are exercised in accordance with the principles of natural justice - which has not always been the case in the past. For example revelations about the sexual abuse of children in the context of the Churches have been immensely damaging for their witness to human rights. This has led Churches to introduce much more stringent procedures to minimise the risk of such scandals in the future.

Churches are not, of course, alone in struggling for human rights. We do not aspire to lead or control the human rights movement, but – as in the title of this section – to "help promote and implement human rights". Very often, therefore, Churches and Christian organisations find themselves working in close co-operation and partnership with secular human rights movements and other associations. While there will be specific human rights issues where we disagree with some organisations, as a general rule we find ourselves able to identify strongly with the struggles and concerns of other bodies. As Churches we bring our deep commitment to the wider human rights movement together with our grassroots experience of daily life in every local community throughout Europe. We also have the possibility of access as institutions to government and the media.

#### The Churches' pastoral and diaconal service

Pastoral ministry brings clergy and others into constant contact with the daily lives, problems and crises of the people whom they serve. Pastors are admitted into people's homes and the intimate spheres of family and personal life. Through these contacts they will become aware of human rights abuses. They will meet victims of domestic violence and sexual abuse, they may see evidence of cruelty to children or injustice at the hands of the authorities. In cities and urban areas especially they will find migrants and refugees among their congregations, because the Church is sometimes the only place where these groups find a welcome.

In these cases the primary responsibility of pastors is to offer spiritual and practical support and comfort. They may also be able to put people in touch with social services or non-governmental support organisations, and should indeed be aware of where appropriate help is to be found in their locality.

Clergy and other Church leaders may also need to educate their congregations about the realities of human rights abuses. They need to help people overcome their prejudices and fears concerning foreigners, the members of minority groups or groups which are socially marginalised or despised (e.g. asylum-seekers, single mothers, HIV/AIDS victims, ex-prisoners, prostitutes and many others).

Pastoral work is chiefly about meeting the needs of Church members, but charitable or diaconal work for the benefit of people in need in the wider society often follows. Because of their intimate knowledge of people's lives in their local community, clergy and Church members very often become aware of human rights abuses of which others remain ignorant. Churches are in the front line of need in their societies. As such, they are often able to play a pioneering role in identifying current forms of human rights violations and in developing practical forms of

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support and assistance. Some recent examples are the growth of trafficking in Europe and its extension to such abuses as organ theft.

Therefore, Churches, often working alongside other associations and voluntary organisations, are now involved in developing initiatives such as drop-in centres for the poor, the homeless or the unemployed, shelters for victims of domestic violence, advocacy and advice services for migrants, refugees and victims of human trafficking, and so on.

The resources at the disposal of Churches are limited. Work of this kind often needs to be taken up on a larger scale by the State or local government, and the Church will then be prepared to hand over its work to official bodies. On the other hand, human rights victims may be more comfortable working with non-governmental bodies, and services may possibly be provided more effectively and flexibly by non-governmental actors than by official bureaucracies. For a variety of reasons, all concerned will thus sometimes prefer an "arms-length" approach in which governments provide funding for services which continue to be delivered by the Churches or other non-governmental bodies.

#### The Churches' prophetic witness

While the pastoral and diaconal service offered by Churches is fundamental to their mission, it is not enough on its own. Those whose human rights have been abused do need our Christian charity, but people in need should not be seen only as victims or passive recipients of help. A Christian approach needs to go beyond charity to rights. Rights represent an affirmation of the dignity of each human person. A rights-based approach is, moreover, a preventive approach. Instead of just dealing with human need as it appears, we give people the legal protection they require in order to avoid them becoming victims of human rights abuses. It is not enough merely to treat the symptoms of human rights abuse. We have a duty to tackle the causes, to work for laws and structures that will extend and further human rights in the future.

The Church's witness to human rights must be not only pastoral and charitable but also prophetic. There are a number of reasons why Churches are well placed to exercise a prophetic role. In the first place, our extensive knowledge of local situations and problems and our experience of helping individual victims enable us to speak with authority and knowledge of the human rights abuses we encounter. Furthermore Churches are often well placed to play an advocacy role, to act as a voice for the voiceless, particularly as they traditionally have a degree of privileged access to government. Such privilege can be used as an opportunity to "speak truth to power", to raise the awareness of those in the positions of authority of unwelcome realities they would prefer to ignore.

Although most European Churches do not have the social influence they once did, they still enjoy a public visibility which can enable them to raise awareness of the ways in which human rights are being disregarded. They can appeal to the conscience of the public and campaign for effective measures to right wrongs and injustices. Their combination of grassroots knowledge and public visibility can be used by Churches to campaign effectively for a response to human rights abuses. For example, Churches can rightly claim to have played a part in pushing problems such as poverty and its many causes, human trafficking and the plight of asylum-seekers higher up the agenda of European governments.

Today where the context for legislation and policy-making is determined more and more, especially in Europe, by international institutions, this prophetic witness can only be effective if it is exercised at the international level as well as at the national and local levels. Where the European Union and other European intergovernmental bodies are concerned, European Churches now find it imperative to work together through organisations such as the Church and Society Commission of the Conference of European Churches.

There are many ways in which Churches can bring their views to bear on international human rights questions. They can use the possibilities open to non-governmental organisations to work in coalition with other NGOs through the EU consultative mechanisms and the NGO participatory structures of the Council of Europe. Staff working for the Churches at the European level can brief national Church leaders about the strategic moment to intervene with national governments to try and influence their positions in international bodies, for example by ratifying human rights instruments.

A number of pre-conditions must be met if the Churches' prophetic witness to human rights, both at national and international level, is to be effective. Firstly, it needs to be ecumenical: governments cannot cope with a plethora of religious interlocutors. A united ecumenical approach has greater credibility. Credibility depends also on professionalism. Churches need to be well informed and skilled in communicating their concerns to governments and to the public. Their witness needs to be based on a combination of good research and convincing evidence drawn from their grassroots experience. They also need to be sufficiently informed about the decision-making process, both at national and at international level, so that they know when to intervene, with whom to intervene and how to intervene.

Being professional means being sufficiently resourced. At present when financial resources are scarce, it becomes even more important for Churches to pool their efforts, to work together ecumenically. Moreover Churches need to recognise that they cannot carry out an effective prophetic witness to human rights without a minimum of well-informed and expert staff.









#### European churches engaging in human rights

# **Chapter II** ENGAGING IN HUMAN RIGHTS – MATERIAL FOR TRAININGS, WORKSHOPS, SEMINARS



#### DEVELOPMENT OF A HUMAN RIGHTS CONCEPT Ms Natallia Vasilevich & Ms Kati Jääskeläinen

In the article the evolution of human rights both as a moral and legal concept is traced. The authors give an overview of historical changes in the social context and the emergence of different ideas on the human individual, human personality, equality, unity as well as on human community and society as a whole. Different approaches to law and legal institutions are explored and sources of legal standards and institutions on human rights are explained.

#### Introduction

The development of human rights has a long history which can be seen in two different but not separate dimensions: axiological (as a moral notion) and normative (as a legal category). If the former is based on reflection on the human being, one's dignity, and organisation of private and public life in the respective society; the latter touches upon institutional expression, legal formulations and norms in which the idea and ethos of the moral dimension are explicated and by which they are implemented.

## Axiological development of human rights

The idea of human rights as a moral category traces its genealogy from the idea of the human being. The anthropological issue has been raised from the very beginning of human society. In many respects, the notion of the human being was influenced significantly by the social organisation of individuals and at the same time the plurality of human being's images and multiple approaches to anthropology in the framework of the same society or tradition must be admitted. Philosophical and theological ideas often were not embodied in the actual social praxis and could have been reinterpreted to fit dominating political discourse. What is a human being and human dignity; are all people equal, having the same value, or is their dignity different and derived from their personal and social characteristics, activities or origin; what is the basis for evaluation of the social order as right and good? These questions have existed since the early history of humankind.

The concept of the human being as a self-reflective one has emerged initially to differ humans and their communities from their natural surroundings, to find self-understanding in the difference from animals and the rest of nature. Being integrated into nature through the biological dimension, human beings from the primitive era of the human race tended to differ themselves from other biological species. This belonging to the natural and animal world and distinction from it at the same time formulated the idea of humanity. Although in archaic cosmological views, the biological world was attached by metaphysical and anthropomorphic features and other specific objects of the natural world such as natural elements and phenomena, certain plants or animals could have higher status than human beings; while the dignity of individual human beings as well as groups of humans could be identified with different natural objects or phenomena and could differ in dependence on the status of the attached object. This reflection in archaic societies could have had but actually did not have a reflective sense but rather an interpretative character: actual social order and organisation of the life of human beings were seen to be of primordial origin and initially determined by nature or by supernatural forces. On the other hand, we can remark on the emergence of the concept of a human individual different from other human individuals as a unique being and at the same time belonging to the community as an integrity and collective being and the whole human race as a generic group.

In prehistoric societies, the social system was based on kinship - clan or tribal relations, and being human had the meaning of belonging to the group based on origin from the same ancestors and sharing in the group of responsibilities and common welfare. Belonging to the native group was evaluated higher than being a stranger, while the former was attributed with positive features and the latter with negative (or at least less positive) ones, often even with ascribing inhuman peculiarities to the very image of the strangers.

With an extension of smaller groups, the beginning of the division of labour and welfare in premodern societies, not only belonging to an ethnic community, was laid down as a determination of the human being but also social status and belonging to a social group, each of which had a different place in the social hierarchy, a different level of welfare and participation in power. Individuals of different ethnicities as well as social groups were even considered to differ in their nature and their dignity. The dignity of a concrete human being was derived from belonging to the group or specific political community with its own social system (dignity of citizens vs. non-citizens, strangers, barbarians); from the origin of specific ancestor(s) of a family or wider group who were believed to be a great figures, heroic or godly persons, possessing supernatural origin or virtues, and this relation transmitted dignity to the descendants; from political belonging to a specific political community, from social position - having its hierarchy in dignity while a large group of human beings - slaves - were deprived of human dignity, rather having material value and being considered as property (res in Roman law). The same idea of hierarchical dignity, depending on belonging to social estate, was presented in the Hammurabi code where all the people had different rights and different dignities, being patricians, plebeians or slaves which was fixed in the legal provisions. The caste system in Ancient and Medieval times, as well as even in modern India of colonial times (both in varna or jatis manifestation) with its rigid belonging of the human being to some strict group which had not only a social but also a religious sense and which was sacralised by religion. Different norms and a different social order were applicable in the framework of different groups, making universal norms impossible for everyone. Traditional norms, such as social regulators, were laid down on the basis of social order in such societies and law legal institutions were based on these traditional norms.

Plato in Republic (p.415) illustrates this differentiating approach with the allusion of metals of different value: governors having an admixture of gold, which makes them more worthy, their assistants - of silver, and farmers and craftsmen - of iron and copper, and each of these groups have their own virtues. Also Aristotle in Politics argues that people differ in their nature having different parts of the soul and possessing different moral virtues: free people differ from slaves; male from female; man from child; and the perfection of the citizen depends on how perfect the state is which he belongs to. These concepts of dignity were coming from the social order, and dignity was determined by the value of the community, which naturally was seen as greater in comparison with the value of one individual life. Both philosophers not only evaluated existing social organisation but also reinterpreted and proposed political projects of how societal life should be organised to correspond with human nature and cosmic order. In his Nicomachean



Ethics Aristotle distinguished between 'natural justice' and 'legal justice': 'The natural is that which has the same validity everywhere and does not depend upon acceptance' (189) giving an idea of order deriving from nature itself, not from the tradition or established order, and claimed universality of natural justice. It was a formulation of natural law, which is based on natural justice coming from the very nature of the human being and cosmic order, while actual existing law coming from the will of the ruler could be different.

Several ancient philosophical schools tried to overcome approaches of community being prevailing over individual being when social norms and obligations determined the life of an individual opposed to life according to nature, while perfection of the human being was seen through his personal moral behavior and ascetics (Cynics), affirming equality of all human beings in front of universal reason and therefore a universal value of all people. Stoics claimed the existence of a universal moral community established through common sharing relations with god, whose will touches all human beings equally. Cicero in De officiis (XVI, 50) argues, that all the people are bound in the same humankind (natural society) being different from animals and having intellect and faculty of speech; (XXX, 105, 107) and every human being has double role: as belonging to the universal human race (having common human dignity) and at the same time as having a unique individual nature (differentiated dignity linked with specific achievement of position). Still, even Cicero pays attention to differences between males and females, elder and young, citizens and foreigners, people of different professions and different qualities having a different place in the social system and different responsibilities living in a political community. Roman jurist Ulpianus expressed this dichotomy of the individual being and collective rights through the understanding that individually everyone is born free, but slavery comes from the nation's law, from the social order.

The universality of the human race could be traced also in the Hebraic tradition deriving from Biblical cosmogony - according to Genesis, the whole world was created by God and the first human beings were created in the image and likeness of God Himself. All the people born on the earth originated from the same parents who, on the one hand, being created by God, possess His image and likeness and, on the other hand, inherit from Adam and Eve human nature with the consequences of sin. The universality of human kind was claimed by the Bible, though this universality is mainly the later interpretation through the vision of Jesus Christ's teaching, New Testament and modernity. In the Old Testament society there was also differentiation of people in dignity and people were seen as divided into different humanities. Origin from a specific ancestor had ethical and substantial impact on an individual belonging to the "semen": three sons of Noah gave birth to different races, which were attributed with the personal character of their ancestors; religious belonging to the chosen people and relation to God depended not only on personal behavior and virtues but on consanguinity with the righteous and pious ancestor Abraham whose personal relationship to God becomes blessing to the next generations of the Hebrews, semen of Abraham. Considering themselves a nation chosen by God and having a special relationship with Him, the Israelite people viewed themselves as having a higher dignity in comparison with the neighbouring people. The same clan relationship based on kinship was applied in the society and slavery continued to exist as a social institution as well as gender inequality.

Christianity, which emerged in the context of both the Hebraic world and Hellenic oikumene, reveals a new idea of human value through the universality of Christ's Sacrifice and Gospel. Like in Adam all humanity was fallen, in Christ all humanity was embodied and redeemed. In kenosis and the Sacrifice of the Son of God Himself, the human being was revealed in the highest value and dignity. The universality of the Christian message postulated the inclusivity of the human race and importance of every human being regardless of biological or social characteristics and belongings. Also Christ is presented in the Gospel as breaking the traditional social order, by putting a human being at the center of the faith itself and claiming that the human being is more important than the sacred day of Saturday; and by being open also to people not from Israelite origin, or from lower social position and to sinners, which is more important than to follow religious purity.

Moreover Christian theology, in trying to explain Trinitarian and Christological dogmas, elaborated the notion of the human person as a unique being non-reducible to nature which influences philosophical anthropology of future centuries. Quite a revolutionary message of being neither Jew nor Greek, slave nor free, circumcised nor uncircumcised, barbarian, Scythian, male nor female but all one in Christ Jesus (Gal. 3:28, Col. 3:11) was pronounced but the real social praxis of Christianity and societies where Christian faith was accepted as the official one were still far from that idea of universality. Still it can be admitted that in the Middle Ages the social structure of feudal society was based on the approach of a different social and personal dignity for those who had different social positions. In the religious sense, all human beings were considered to be equal and their righteous or sinful actions made them more or less "similar" to Christ but, in reality, the social system was still based to a great extent on social position rather than equality. It was also clearly expressed in the legal system where for murder of feudal or upper class members punishment was much higher than for murder of peasants; not to mention the fact of the legal feudal dependence of peasants. The Medieval Church was also a part of feudal society and did not contribute much to social equality and universal dignity issues.

Inequality in dignity among different members of society was not just caused by natural inequality but also by social institutions which reproduced and strengthened it through tradition, ideology and legal status, the content of which was granted by higher authority, and society was vertically based. According to the Christian view, the human being was considered as a value in itself, but this idea had a very low level of social implication even in those societies which claimed to be based on Christian faith and ethics.

With modernisation of social structures, pluralisation of identities and belonging and further development of humanities and sciences, a new shift was made concerning the image of the human being. The human being was not any more seen to depend on group of belonging, but rather was seen as a creative and rational individual. Two intellectual, cultural and social movements – the humanistic focus of the Renaissance and the theological ideas of the Reformation - had an important impact on the concept of the human being in this respect. The oration De hominis dignitate by Mirandola manifested the moral autonomy and freedom of the human being who could choose their fundamental identity and destiny, their image - to be like a plant, like an animal or to have the likeness of angels or God, the latter being the most relevant to human dignity. It is not the belonging to any group which determines a person's identity but their personal







vision. The proclaimed freedom of the individual, however, had a different interpretation in the Reformation which also has put the human being not in determination by belonging to Church or any group but by one's faith and relationship with God. The doctrines of salvation by faith not by deeds and of predestination by the main leaders of the Reformation Luther and Calvin also had an impact on the idea of the moral autonomy of a human being. However they opposed the humanist concept of the human being as having an absolute free will. At the same time, ethical autonomy did not mean ethical egoism of own interest. The Reformation with its conflict with the ruling Catholic Church has actualised freedom of belief and its practice, i.e. in daily activities, and its necessity to be protected from any intervention. A special role belongs here to Castellio, who opposed persecution of heretics by Calvin in Geneva which was an example of the lack of correspondence of initial ideas of moral autonomy of a person and the social practice of their persecution. Deriving the idea of ethics based on personal salvation and relationship with God from the Reformation, we can evaluate also the understanding of the role of social institutions and the state in ethics.

The enlightenment project with its ideas and social implications put the values of natural rights, moral autonomy, human dignity and equality on the humanitarian agenda. One of the most prominent moral philosophers of New Times, Immanuel Kant, claiming fundamental equality of all human beings and moral autonomy of the rational human being formulated his categorical imperative: 'act only on that maxim, through which you can at the same time will that it should become a universal law' and 'act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end.' The human person – and, since New Times, personality and personhood became more welcomed notions coming to human being - was recognised as the center of ethics attributed with ultimate dignity. Kant also made the distinction between dignity as an absolute value inherited by a person as a moral being endowed with reason and price as a relative, differentiated value assigned to an object: 'In the kingdom of ends everything has either price or dignity. What has a price can be replaced by something else as its equivalent; what on the other hand is raised above all price and therefore admits of no equivalent has a dignity'. So to say, human dignity in such an understanding is derived from the fact of existing and has an objective character and must be recognised and respected. Kant's formulation was closely connected with the ethical principal found in different religions, cultures and traditions famous as a 'golden rule' where others were considered as a value. This shift to personality was significant in moral philosophy, but the presented approach was only applicable to the individual moral being and action and could not be directly institutionalised as a social paradigm.

The modern era proclaiming ideals of human dignity at the same time gave a quite specific social and economic order of capitalistic society where many people were indeed means and not ends and deprived of the common welfare. Moreover, the new economic system gave birth to urban culture with people leaving their roots and local communities and moving to industrialised cities. Secularisation started which diminished the social role of Church organisations and norms. Disintegration of local communities caused an even more individualistic approach to life. Marxist critics of capitalism also touched upon alienation and egoism caused by individualistic values and practice. This criticism was not without a reason, but egoism or hedonism were not something new for the modern era, and depended not on the social order, but on the

moral approaches of the person, one's own values and one's own interests. Modern countries based on ethics of New Times, such as the United States, having a Constitution and proclaiming human rights and dignity as a modern concept still practiced slavery and discrimination against Afro-Americans. Discriminative practices were institutionalised. On the European continent, two highly repressive and discriminatory regimes appeared - Nazism and the communist regime. The former proclaimed the values of one distinctive national group of people and tried to create a new society of high moral values combined with oppression and annihilation of other groups. The latter based on Marxist collectivistic ideas interpreted by the Soviet regime and social-economic rights for the working class, built on the State where millions of people were murdered or oppressed in the name of the working class and in the name of human dignity. Following Marx in criticising capitalism of egoism and alienation, communistic ideologists linked human rights recognised in Western society with this egoism and negative phenomena of Western civilisation, which was attributed as capitalistic and trying to impose its capitalistic values (i.e. human rights) against the real values proclaimed in the communistic society of collective dignity rather than an individual one.

Modernity caused reformation and destruction of many traditional institutions; pluralistic identities resulted in alienation and demolishing of kinship ties. It posed new questions - what is the basis which unites individuals into one society, what makes social order? Return to the belonging to group as a basis of solidarity, the kind which Durkheim called a mechanical one, was not any more possible. He also proposed another kind of solidarity such as a shared values - organic one, which is coming from the independence of people and is based on their complementarity. Such solidarity cannot be imposed by any corporation or state but only achieved by society and its individual members through dialogue, negotiating, sharing, discussion of norms, coming from the independence of all the members and at the same time from the need to live in common.

The moral universalism of Western ethics of human dignity as a universal category in the context of 20th century has been repeatedly interpreted as Western imperialism, eurocentrism, as an element of confrontation between the capitalistic and socialistic world. The latter proposed values of alternative universal ethics based on class theory. Apart from this ideological opposition, moral relativism was claimed in the framework of a civilisational approach, which was based on assuming the existence of different social structures and understanding of relations of human being, society and state; so different values would derive from this social context, and these civilisations and their ideas about social order are to be respected and accepted as an alternative to Western universalism. On the other hand, there are different approaches in different cultures and societies towards human dignity and human personality, so it is also a guestion of legitimacy of who can represent a particular culture of the human race. It must be admitted that in this context it is important to have legitimated representation and articulation, which can be done by normative recognition. The UN Declaration of Human Rights drafted by representatives of different countries and traditions was one of the examples of a legitimate response to the issue of moral relativism. At the World Summit 2005 (par.121) it was clearly underlined: the universal nature of human rights and freedoms is beyond question.





### Human rights as a legal concept 2.1 Rights of the individual impose obligations on the state

The advent of the age of Enlightenment in Europe and its rationalistic doctrine of natural law meant that individual human beings were recognised as being endowed with rights against state. The individual was seen as having natural, inherent and inalienable rights. This brought about a paradigm shift in the understanding of the state and its functions. The state no longer got its justification from the divine order, but only from the need to protect the natural rights of the individual, which were inherent in the nature of human beings.

The idea of natural law was not so new for that time, finding its roots in antiquity and early Christian works. But the real shift was endorsed by the theory of the social contract. The theory had its roots in the writings of especially John Locke, Thomas Paine, Charles de Montesquieu, Jean-Jacques Rousseau and other philosophers of the 17th and 18th century. The theory was a driving force behind the French and American Revolutions at the end of the 18th century. As a result, many of the natural rights found legal expression. The U.S. Declaration of Independence (1776), the French Declaration of the Rights of Man and Citizen (1789) and the U.S. Bill of Rights (the first ten amendments ratified in 1791) articulated rights to be enjoyed by all citizens, first and foremost of which were liberty and equality. Especially the French Declaration has had a wide impact on the constitutions of other European countries as well as the European Convention of Human Rights and Fundamental Freedoms.

Wiktor Osiatyński lists six fundamental ideas, of which the modern concept of human rights consists:

- 1. The power of the ruler is not unlimited;
- 2. Subjects have a sphere of autonomy that no power can invade and certain rights and freedoms that must be respected by a ruler;
- 3. There exist procedural mechanisms to limit the arbitrariness of a ruler and protect the rights and freedoms of the ruled who can make valid claims on the state for such protection;
- 4. The ruled have rights that enable them to participate in the decision-making;
- The authority has not only powers but also certain obligations that may be claimed by the citizens;
- 6. All these rights and freedoms are granted equally to all persons.

Human rights are both moral and legal. The source of human rights is a person's moral nature. The law can decide whether or not to recognise people's pre-existing human rights, but it does not of itself grant such rights. The power of the moral principles justifies human rights, not the influence of legal institutions. Claiming a human right therefore involves exercising a right that one already has, in addition to suggesting that one ought to have or enjoy a respective legal right.

Not all human rights can be enforced, for example due to the lack of suitable mechanisms or the absence of political will. Some rights remain as moral rights due to their nature (e.g. the right of a child to be loved). As Orend remarks, human rights can however be and have been used as a mechanism through which new moral claims can thrust their way into the legal order. They also function in a negative capacity by helping to delete from law those norms that vio-

late human rights standards (e.g. ban on torture and outlawing corporal punishment). Human rights therefore play a role of conveyance between morality and positive laws. Human rights are not a mechanism of relationship between two equal persons and they emerge in the vertical relationship with the presence of power, and this is different from moral claims of justice. Still, in violations from private parties the state has a responsibility to protect the victim of violation.

Human rights have become international legal rights. Their implementation, however, remains almost exclusively national. Human rights obligations are imposed only on states and states have human rights obligations only to their own nationals and foreign nationals in their territory or otherwise subject to their jurisdiction or control. Human rights have first and foremost a vertical application between the individual and the state. Rights are also applicable horizontally as states are obliged to protect individuals against human rights violations by private parties. As Donnelly points out, the modern state is therefore both the principal threat to the enjoyment of human rights and the essential institution for their effective implementation and enforcement. A set of human rights can be seen as a standard of political legitimacy. To the extent that governments protect human rights, they are legitimate.

### 2.2. Universal Declaration as the basis of internationally recognised rights

The concept of human rights has evolved in waves and has brought about an increased scope of freedom. As a result, the content of rights has also been evolving. The 18th century's idea of rights was outlined by the needs of an emerging market economy and was thus limited to civil and political rights. Civil and political rights claim various freedoms and legal protection. In the 19th century, the evolving concept of economic and social rights reflected the needs of the industrial society. They claim concrete material goods and various social benefits. Since in the 20th century, sovereignty over land and resources become a fundamental part of the concept of rights.

The 1948 Universal Declaration of Human Rights (UDHR) established the contemporary consensus on international human rights. The main impetus for formulating the Declaration was the Nazi Holocaust. The systemic discrimination and genocide carried out by the state directed against its citizens and citizens of occupied states on the basis of their ethnic or religious background, sexual orientation or disability etc. forced the international community to react.

The Declaration became both a compromise and a synthesis of various traditions and values articulated for the first time in the language of rights. For example, the concept of civil and political rights came from the liberal Anglo-American tradition, whereas the notion of dignity was taken from Christian thought. For many, human rights mean the same as what is written in the Universal Declaration. The UDHR includes a short but essential list of rights. It has been developed further, with modest additions, in a variety of later treaties, especially the 1966 International Human Rights Convenants. The Declaration treats human rights in a holistic way. The rights form an interdependent and indivisible whole rather than a menu from which one can choose.

The rights in the UDHR, with the exception of the right to self-determination of peoples, are rights of individuals, not groups. Many individual human rights are however exercised and can





only be enjoyed through collective action. Many rights, like the freedom to practice one's own religion, would be of little significance without a community. Even where group membership is essential to the definition of a human right, the rights are held by individual members of these groups and not by the group as a collective entity. Donnelly underlines that the very idea of respecting and violating human rights rests on the idea of the individual as part of a larger social group. Rights-bearing individuals alone cannot effectively implement their rights. Nonetheless, the human rights conception of human dignity rests on the fact that human beings have an essential, irreducible moral worth and dignity independent of the social groups to which they belong and the social role they occupy.

### 2.3 From generations of rights to indivisibility of rights

During the Cold War the human rights were divided, primarily for ideological reasons, into three generations or dimensions. The Western countries claimed that the first generation rights, namely civil and political rights, constituted the only real individual rights in the sense of individual rights enforceable by law against the state. Socio-economic rights were regarded as merely desirable goals defined in the form of human rights. Socialist states for their part argued that the practical enjoyment of civil and political rights was dependent on a sufficient level of development in the enjoyment of the second generation of economic, social and cultural rights. The countries of the South argued that the full enjoyment of individual human rights was possible only in a society in which the collective rights of the so-called third generation, especially the right to development and self-determination, were fully secured.

The split between the first and second generation of rights found normative expression in the Covenant on civil and political rights and the Convenant on social, economic and cultural rights adopted in 1966. The third generation rights became visible especially in the 1981 African Charter on Human and Peoples' Rights. With the end of the Cold War, these ideological concepts gradually gave way to an understanding which stresses the equality and interdependence of all human rights. The division of rights into generations was not therefore based on real substantial differences between rights but has been used as an ideological construction.

The Second World Conference on Human Rights, held in 1993 in Vienna, advanced a new and common understanding of human rights. In the Vienna Declaration and Programme of Action it was confirmed that "all human rights are universal, indivisible and interdependent and interrelated." The doctrine of indivisibility of human rights has thus put an end to the 'three generations' theory. It is now widely accepted that no set of human rights can claim priority over other human rights.

Human rights have gained universal status in international law. Human rights conventions are a form of positive law and enjoy nearly a universal status as a result of their ratification by most states. The UDHR, which was approved as a political declaration, is increasingly recognised as an important source of customary law. Moreover, international law includes principles and norms, like the prohibition of slavery, torture and genocide, which cannot be violated or set aside for any reason or under any circumstances. These ius cogens norms have gained general acceptability in world opinion. Human rights are universal also in their generality. The same rights apply to and are available to everyone. They embody a political ideal which is attractive for groups

and individuals in their struggle for emancipation. They provide powerful arguments against political exclusion or subordination and for campaigning for equal freedom and dignity for all.

Even though human rights are universal in a legal sense and in their applicability, the moral universality of human rights continues to be contested. There is no consensus on the philosophical foundations of human rights as there are only a few cross-culturally valid moral norms. It can be argued, however, that the universality of rights does not require finding a consensus on the foundations for rights. The universality does not either mean that all parts of the world should subject themself to the Western philosophy of rights or the Western cultural model. Internationally- recognised human rights have become uniform rules and standards of behaviour, which should be observed even without knowing and sharing of their philosophical foundations. These fundamental rights cannot be violated by any government, regardless of philosophical, cultural, religious differences, and these rights cannot be abused in the name of these differences.

#### 2.4 Mechanisms as a means to exercise human rights

Since the adoption of the UDHR and the above-mentioned two covenants, a large number of general and single-issue, universal and regional human rights conventions have been adopted. However, standard-setting activities still continue in order to meet new challenges. The adoption of the Convention on the Rights of Persons with Disabilities (2006) is an example of a more recent development.

The biggest challenge of the international human rights system is not to prepare new standards but to put them into practice and monitor their implementation more effectively. As a result of the formidable normative framework, a multitude of procedures on the promotion and protection (implementation) of human rights and the prevention of human rights violations have been developed. Whereas the 1945 UN Charter only talked about the promotion of human rights, in the second half of the 20th century states have committed themselves to protect internationally binding human rights as specified in these conventions. By ratifying one or several of these treaties, all the states in the world have obligated themselves internationally to respect, fulfill and protect the human rights contained in them.

The protection or implementation is however relevant only when international bodies can effectively monitor states' compliance with these obligations. For these procedures to be effective, a monitoring body's decisions or recommendations should be enforced against the state in question. This is one of the biggest challenges and weaknesses of the current international human rights regime. Besides, effective prevention strategies are still needed. The global civil society, including churches, has a role to play in developing them. In the end, the aim of human rights protection must be to prevent human rights violations as much as possible.

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The language of rights has become the lingua franca of the modern moral discourse. Osiatyński claims that there is a need to revitalise the idea of human rights. This requires understanding the nature of rights: they are not a magic key to justice and happiness. Rather, they are just one of many principles and instruments that need to coexist in a democratic state ruled by law.

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## INTRODUCTION FOR A TRAINING ON FREEDOM OF RELIGION OR BELIEF Prof. Dr. Gerhard Robbers

## Introduction

Freedom of religion or belief is a key issue for believers as well as for non-believers. The European Court of Human Rights has repeatedly stated:

"Freedom of thought, conscience and religion is one of the foundations of a 'democratic society' within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it (Metropolitan Church of Bessarabia and others v. Moldova, 12 December.2001app. no. 45701/99)."

In the various countries, freedom of religion or belief is confronted with different challenges. The impact of history and traditions is highly relevant. Perspectives of churches themselves are different; they often depend on whether churches are in a minority position or have a traditional and majority status.

In a first step you can encourage participants to identify their own perspectives and individual cases in which freedom of religion or belief is at stake.

# Biblical and theological approaches to freedom of religion or belief

Freedom of religion or belief can be seen as part of the general idea of freedom in the Christian faith: "For freedom Christ has set us free" (Gal. 5:1 13-25), and: "the truth will set you free" (John 8:31).

It is often said that churches and religions have been opponents of freedom of religion or belief. While there is much evidence in history that this in fact is a valid assumption, there are also strong reasons to say that freedom of religion or belief is a truly religious idea. One can argue that only free belief is true belief and that forcing someone to believe is either not possible or blasphemy.

Today, most churches teach freedom of religion or belief.

The church father Tertullian (160-220 A.D.) has proclaimed in his Apologeticus the principle of freedom of religion an inalienable human right. The medieval struggles between church and secular powers about supremacy can also be understood as a struggle about the freedom of the church to teach. The Reformation in its many facets has set free the idea and the basic need to enjoy freedom of religion or belief.

The World Council of Churches has intensively contributed to formulating freedom of religion or belief in Art. 18 of the United Nations Universal Declaration of Human Rights and repeated in





its 1975 Nairobi Assembly that freedom of religion is and remains a major concern.

The Roman Catholic Church has declared in Dignitatis Humanae (1965) that the human person has a right to religious freedom; this freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits.

# International legal approaches to freedom of religion or belief

Article 9 of the 1950 European Convention on Human Rights and Fundamental Freedoms provides freedom of thought, conscience and religion: "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Similarly, Article 18 of the 1966 International Covenant of Civil and Political Rights states: "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

Also, the Organisation for Security and Cooperation in Europe (OSCE) has declared freedom of religion or belief a key human right.

Most States guarantee freedom of religion or belief in their constitutions. It is primarily a matter of implementation in fact, whether freedom of religion or belief is sufficiently guaranteed. It may be important for participants to see that legal remedies against violations of freedom of religion or belief include applications to the European Court of Human Rights in Strasbourg, but that a successful application requires a full exhaustion of all possible domestic legal remedies.

## **Best practices**

It is difficult to point to best practices. There are violations of freedom of religion or belief in probably most states. The general atmosphere concerning general acceptance of freedom of

religion or belief tends to change quickly due to the variety of developments that are today often linked with migration and security issues. On the other hand, there are steps in many states that facilitate a life according to one's own religious convictions and that try to encourage respect for other religions.

Participants could discuss their own experiences with good examples of fostering freedom of religion or belief.

# Proposals for action to strengthen freedom of religion or belief

Participants could suggest and discuss individual actions to support freedom of religion or belief. These could include steps for interreligious dialogue and common activities. It could also include taking action to show signs of solidarity in cases of violations of freedom of religion or belief of followers of other religions than their own.

# Questions which relate to the topic during the training

A number of questions might come up during training on freedom of religion or belief. Among them, you might want to raise the following:

- Are international norms sufficiently and correctly implemented in our country? What could we do to make sure they are implemented?
- What specificity do we have as CHURCH to address freedom of religion or belief, in relation to activities of the state, NGOs and others?
- ► How can we promote freedom of religion or belief in societies increasingly critical about (specific) religions?

There are many individual issues pertaining to freedom of religion or belief that might surface during the session. In the following, which is taken primarily from the 2004 OSCE/ODIHR Guidelines for Review of Legislation Pertaining to Religion or Belief (*http://www.osce.org/item/13600.html*), some while not all of such issues are highlighted:

1. The definition of "religion". There is no generally accepted definition of such terms in international law, and many States have had difficulty defining these terms. It has been argued that such terms cannot be defined in a legal sense because of the inherent ambiguity of the concept of religion. A common definitional mistake is to require that a belief in God be necessary for something to be considered a religion. The most obvious counterexamples are classical Buddhism, which is not theistic, and Hinduism (which is polytheistic). In addition, terms such as "sect" and "cult" are frequently employed in a pejorative rather than analytic way.

2. *Religion or belief.* International standards do not speak of religion in an isolated sense, but of "religion or belief." The "belief" aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world. Thus atheism and agnosticism,



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for example, are generally held to be equally entitled to protection of religious beliefs.

*3. Inter-relationship of human rights norms.* International standards pertaining to freedom of religion and belief do not arise solely from clauses in covenants, conventions, and documents addressing religion and belief specifically. They come also from other clauses, such as those pertaining to association, expression and rights of parents.

4. Margin of appreciation. International standards generally, and the European Court of Human Rights specifically, presume that there is a "margin of appreciation" that must be respected that allows States to enact laws and implement policies that may differ from each other with regard to different histories and cultures. While laws of different States do not need to be identical and while they should be allowed some flexibility, this flexibility should nevertheless respect the important underlying rights.

*5. Internal freedom (forum internum).* The key international instruments confirm that "Ee]veryone has the right to freedom of thought, conscience and religion". In contrast to manifestations of religion, the right to freedom of thought, conscience and religion within the "forum internum" is absolute and may not be subjected to limitations of any kind. The right to "change" or "to have or adopt" a religion or belief falls within the domain of the absolute internal freedom right.

6. External freedom (forum externum). Everyone has the freedom, either alone or in community with others, in public or private, "to manifest his [or her] religion or belief in worship, observance, practice, and teaching". ICCPR, Art. 18.1. The scope of protected manifestations is broad. It is both the manifestations of an individual's beliefs and those of a community that are protected. Thus, the manifestation of an individual's beliefs may be protected even if the individual's beliefs are stricter than those of other members of the community to which he or she belongs. Recognising this fact, however, does not imply that the beliefs of a community as a collectivity do not also warrant respect.

7. *Limitations*. The internal freedom rights of conscience and belief may never be limited by the State.

Manifestations of religion or belief, in contrast to internal freedom, may be limited, but only under strictly limited circumstances set forth in the applicable limitations clauses.

Thus the European Convention on Human Rights (ECHR), for example, contains a "limitations clause" that allows for the restriction of religious manifestations that are "prescribed by law and [that are] necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others" (ECHR, art. 9.2). The ICCPR's stated limitations require that they be "prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others" (ICCPR, art. 18.3).

First, is the limitation prescribed by law, meaning is it sufficiently clear as to give notice of what is and is not prohibited? Second, is the purported basis for the limitation among those that are

identified in the limitations clause? Third, is the limitation proportionate to the public interest that is served?

8. Equality and non-discrimination. States are obligated to respect and to ensure to all individuals subject to their jurisdiction the right to freedom of religion or belief without distinction of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national or other origin, property, birth or other status.

*9. Neutrality and impartiality.* In exercising its regulatory power in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial (Metropolitan Church of Bessarabia v. Moldova, § 116 (ECtHR 2001).

10. Non-coercion. No one shall be subject to coercion that would impair his or her freedom of religion or belief. This aspect of freedom of religion or belief protects against practices that use compulsion to go beyond reasonable persuasion, either by improperly inducing an individual to change a religion or belief, or improperly preventing an individual from changing religions or beliefs.

11. Rights of parents and guardians. States are obliged to respect the liberty of parents, and, when applicable, legal guardians of children to ensure the religious and moral education of their children in conformity with their own convictions, subject to providing protection for the rights of each child to freedom of religion or belief consistent with the evolving capacities of the child. (Article 5 of the 1981 U.N. Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief and Article 14 of the Convention on the Rights of the Child).

*12. Right to association.* Undue restrictions on the right to legal personality are inconsistent with both the right to association and freedom of religion or belief.

*13. Right to effective remedies.* Parties asserting religious claims have rights to effective remedies. The European Court has sustained the right of a religious community to acquire legal personality on the basis of ECHR article 9, construed "in light of" article 6 (Metropolitan Church of Bessarabia v. Moldova, § 118 (ECtHR 2001); Canea Catholic Church v. Greece (ECtHR 1997)).

*14. Parental rights related to education of their children.* It is generally recognised that parents have the right to determine the religious education of their children (See for example General Comment 22 § 6; ECHR protocol 2 art. 2; 1981 Declaration art. 5; Vienna Concluding Document 16.7).

15. Religious, ethical, or humanist education in State and community schools. There is a wide variety of State practices regarding religious, ethical, and other forms of ideological education in State schools. When considered in conjunction with the rights of the parents (see section III.B.6 above), it is presumably the case that children cannot be required to take instruction in denominational or ideological education against their parents' wishes, though general education



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about religions, beliefs, and ethics generally is permissible. Some States require students to take either religious or ethical (life studies) education, which presumably is a permissible approach, though States should be sensitive to the religious and ideological concerns of parents on behalf of their children and should seriously consider providing opt-out possibilities when the education may interfere with deeply held religious and ideological beliefs. (The State may, however, take positions against extreme ideological positions, such as Fascism and anti-Semitism.)

16. Religious symbols (and attire) in State schools. There are three principal issues that are likely to arise regarding religious symbols in State schools. First, there is a variety of State practices regarding prohibitions on teachers or other school personnel wearing religious attire while teaching. Second, there is a variety of State practices regarding the placement of religious symbols in classrooms. Third, an issue that has been growing in significance is State prohibition of school children from wearing religious attire — an issue recently sparked by the Islamic headscarf. International instruments do not speak clearly to these issues, though caution should be offered and general guidelines of promotion of tolerance and non-discrimination should be weighed.

17. Religious autonomy. States have many different practices regarding autonomy (or selfdetermination) of religious and belief groups. These range from situations where the State formally has authority over the doctrines of established churches to States that are very reluctant to involve themselves in any matter that might be considered "internal" or "doctrinal" to a religious organisation. There is a trend towards extricating the State from doctrinal and theological matters, and this trend will likely continue. It is reasonable to suggest that the State should be very reluctant to involve itself in any matters regarding issues of faith, belief, or the internal organisation of a religious group. However, when the interests of religious or belief groups conflict with other societal interests, the State should engage in a careful and nuanced weighing of interests, with a strong deference towards autonomy, except in those cases where autonomy is likely to lead to clear and identifiable harm. (For example, if the doctrine of a religious group prohibited individuals from leaving the group, the State might well intervene to prevent the group from using physical compulsion to enforce its doctrine.)

18. Registration of religious/belief organisations. Religious association laws that govern acquisition of legal personality through registration, incorporation, and the like are particularly significant for religious organisations. The following are some of the major problem areas that may be addressed: Registration of religious organisations should not be mandatory, although it is appropriate to require registration for the purposes of obtaining legal personality and similar benefits. Individuals and groups should be free to practice their religion without registration if they so desire. High minimum membership requirements should not be allowed with respect to obtaining legal personality. Other excessively burdensome constraints or time delays prior to obtaining legal personality should be questioned.

19. Proselyting/missionary activity. The issue of proselytism and missionary work is a sensitive one in many countries. However, it is important to remember that, at its core, the right to express one's views and describe one's faith can be a vital dimension of religion. The right to express one's religious convictions and to attempt to share them with others is covered by the

right to freedom of religion or belief. At some point, however, the right to engage in religious persuasion crosses a line and becomes coercive. It is important in assessing that line to give expansive protection to the expressive and religious rights involved. Thus, it is now well-settled that traditional door-to-door proselytizing is protected, though the right of individuals to refuse to be proselytised also is protected (Kokkinakis v. Greece, (ECtHR 1993). On the other hand, exploiting a position of authority over someone in the military or in an employment setting has been found to be inappropriate (Larissis v. Greece (ECtHR 1996).

*20. State financing.* Many States provide both direct and indirect financing for religious and belief organisations. In addition to the indirect (but very real) benefits that come from tax exemptions and tax deductions, a variety of funding systems operate, including: paying salaries (or providing social benefits) for clergy; subsidising religious schools; allowing organisations to use publicly-owned buildings for meetings; and donating property to religious organisations. In many cases, State financing schemes are directly tied to historical events, (such as returning property previously seized unilaterally by the State), and any evaluations must be very sensitive to these complicated fact issues.

21. Conscientious objection to military service. Although there is no controlling international standard on this issue, the clear trend in most democratic States is to allow those with serious moral or religious objections to military service to perform alternative (non-military) service (Recommendation Rec(1987)8 on conscientious objection to compulsory military service, adopted by the Council of Europe Committee of Ministers on 9 April 1987, at the 406th meeting of the Ministers' Deputies, link: http://cm.coe.int/stat/E/Public/1987/1987r8.htm (Commission on Human Rights resolution 1998/77; Commission on Human Rights resolution 2002/45).

*22. Other issues of conscientious objection.* In addition, other places in which objections may arise are in regard to refusing to take oaths or to perform jury service. To the extent possible, the State should attempt to provide reasonable alternatives that burden neither those with conscientious beliefs nor the general population.

*23. National security/terrorism.* While State laws pertaining to national security and religious terrorism may well be appropriate, it is important that such laws not be used to target religious organisations that do not engage in objectively criminal or violent acts. Laws against terrorism should not be used as a pretext to limit legitimate religious activity.

24. Religious-property disputes. There are two classic religious-property disputes. The first is where the ownership of religious property is disputed as a result of a prior State action that seized the property and transferred it to another group or to individuals. This has been particularly problematic in many cases in formerly communist countries. The second case is where a dispute within a religious community leads to one or more groups contesting ownership rights. Both types of disputes, as well as other related issues, often involve historical and theological questions. Such disputes can be very complicated and demand expertise not only on strictly legal issues involving property, but also on technical questions of fact and doctrine. To the extent that laws deal with such issues, it is important that they be drafted and applied as neutrally as









possible and without giving undue preferential treatment to favoured groups.

*25. Political activities of religious organisations.* States have a variety of approaches towards the permissible role of religious and belief organisations in political activities. These can range from the prohibition of religious-political parties, to preventing religious groups from engaging in political activities, to eliminating tax exemptions for religious groups engaging in political activities. While such issues may be quite complicated, and although a variety of differing but permissible laws is possible, such laws should not be drafted in a way either to prohibit legitimate religious activities or to impose unfair limitations on religious believers.

*26. Labour.* Three of the principal issues regarding the relationship between labour (employment practices) and religion or belief involve the hiring and other personnel practices of first, religious or belief groups, second, private enterprises, and third, State offices. To the extent that State laws prohibit discrimination on the basis of religion or belief, religious and belief organisations will likely seek exemptions for their own hiring practices so that they may hire and retain people whose sympathies correspond to the interests of the associations. A variety of legal approaches are possible. With regard to private (non-religious) enterprises, the typical standard will be to prohibit discrimination in such matters such as hiring. Employers may be allowed to restrict some manifestations of belief. States should not discriminate in personnel practices, though some States prohibit officials from wearing religious insignia.

# Resource material for the training on freedom of religion or belief

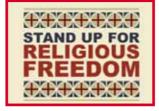
International Covenant on Civil and Political Rights (1966) (ICCPR) International Covenant on Economic, Social and Cultural Rights (1966) Universal Declaration of Human Rights (1948) (UDHR) Relevant obligations from other international conventions Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) United Nations Human Rights Committee General Comment 22 Reports of United Nations Special Rapporteurs [European] Convention for the Protection of Human Rights and Fundamental Freedoms

Decisions of the European Court of Human Rights

(1950) (ECHR)

Commitments and Concluding Documents of the OSCE process (particularly the 1989 Vienna Concluding Document)

OSCE/ODIHR Guidelines for Review of Legislation Pertaining to Religion or Belief (2004) http://www.osce.org/item/13600.html



# INTRODUCTION FOR A TRAINING ON EQUALITY AND NON-DISCRIMINATION

#### Mr Johannes Brandstäter

## Introduction

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In that sense, equality is a fundamental human rights principle. As the Universal Declaration of Human Rights of 1948 says in its article 2 "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

The discrimination status that the Universal Declaration mentions at the beginning of the list, "race", is a special one, as it was used falsely as a category of natural science and for the justification of segregation, oppression and genocide. In 1950 UNESCO said in its "Statement on Race": "races", in the taxonomic biology as well as applied to the human being, are socially constructed and do not have any biological basis. Although science continues to maintain this realisation, the term is still used in international documents and statements. Meanwhile, the European Parliament has requested that the term should be avoided in all official texts. See more on: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51996IP013 5:EN:HTML.

Human rights experts, instead, prefer to speak about "racist discrimination". Racist discrimination may be seen as a severe form of discrimination against or oppression of certain groups of people, who are stigmatised, and where institutional power is exerted.

## **Biblical Approaches**

The creation of God is based on diversity, a rich diversity, where each kind of living thing was named and pronounced "good" (Genesis 1). The bible affirms the growing number of peoples, languages and cultures. It also reports on the temptations to diminish or wipe out diversity through violence and repression. With Cain's murder of his brother, the sin of the rejection of the other enters the world, and since then it accompanies the history of mankind.

The story of the tower building in Babylon may be interpreted as an effort to make the heterogeneous world uniform in an imperialist manner. The ONE language means, translated word by word, the ONE speech with analog words. God confuses languages and disperses people – that is not a bane or punishment. God saves the richness of diversity against the elimination of the otherness, in that he destroys uniformity.

Also the church is designed for diversity. During the council of the apostles in Jerusalem it was said that the belief in Jesus Christ does not prejudice a distinct culture, that Jewish and non-Jewish convictions may co-exist. The narrative of Pentecost tells how people from distant places and with different mother tongues assemble and, suddenly, understand each other. So Pentecost may be seen as celebration of an intercultural gathering (Col. 3,11). Within the community



social and cultural differences are cancelled through the emphasis on the unity of all believers "in Christ".

The Biblical message deals with the creation of the human being in the image of God (Genesis 1,26-27), with no distinction. Christian thinkers have dealt with racism and discrimination probably as long as these secular categories have been in common use. Dietrich Bonhoeffer was perhaps the first prominent one among them. He experienced the impacts of racism as a scholar in New York when he lived in the Ghetto of Harlem around 1931. His encounter with the African-American church was rarely noted in Europe http://www.highbeam.com/ doc/1G1-76158041.html.

"His concern that the Church be a church of the proletariat entails that it always be sensitive to unique elements of each sub-culture in which it ministers. His contention that we are created differently and so will all serve God in our own unique way, coupled with his insistence that only in the Word of God do individuals find their unity, makes it clear that the unity of the Church does not depend on unity of external form." (Mark Ellingsen, Bonhoeffer, Racism, and a communal model for healing, Journal of Church and State, Spring, 2001 http://www.nathaniel-turner.com/negrochurchbydb.htm)

African theology also offers an approach to equality. Ubuntu is an African concept and means humanity. Archbishop Desmond Tutu referred to it in order to temper the hatreds that Apartheid caused. It means to care about the deepest needs of the other. It suggests hospitality, to share, to be generous.

#### WCC: Racism is a sin

After Bonhoeffer and others had brought the issue of the injustice of racism to the international ecumenical community, and after the disastrous experiences due to the Nazi ideology and genocidal crimes, WCC was founded and then became an important player in the ecumenical movement against racism. In 1968 the General Assembly in Uppsala declared racism a sin and "a blatant denial of the Christian faith".

The World Council issued a number of studies and declarations on racism, a tradition that was started against the background of apartheid, and that was continued after the overcoming of apartheid. At its 1995 meeting the WCC Central Committee noted that "institutional racism and the ideology of racism, in their most pernicious forms, continue unabated in contemporary societies and still affect churches dramatically while ongoing social, political and economic trends are producing new expressions of racism". "The reality is that we all live in multi-cultural, multi-ethnic, multi-religious, multi-lingual societies -- though sometimes we don't see the strangers as Christ among us. When churches close themselves to the strangers in their midst, when they no longer strive for an inclusive community as a sign and foretaste of the Kingdom to come, they lose their reason to be ... We challenge the churches worldwide to rediscover their identity, their integrity and their vocation as the church of the stranger. Service to uprooted people has always been recognised as diaconia -- although it has been peripheral to the life of many churches. But we affirm that it is also an ecclesial matter. We are a church of the Stranger - the Church of Jesus Christ the Stranger. (Matthew 25:31-46)" (WCC 1995, Uprooted People).

In 2002 again the Central Committee adopted a study on "Being Church and Overcoming Racism", with reference to the United Nations World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance that was held in the previous year in Durban, South Africa."Today as in the past, the call from people struggling to advance the racial-ethnic justice cause is a call to churches as well. ... It is a call for a deeper commitment by churches to face their own racism, not only the racism elsewhere. It is a call to churches to face their own past - in the present, that is, today - in relation to their own people - Indigenous Peoples, African-descendants, Ethnic minorities, Dalits - and not only the racism of others. It is a call for churches to reflect on what it means to a church to overcome racism. To be the church today requires deliberate, consistent and constant action in the struggle for racial justice. To be the church today requires an effort to overcome racism through actions to transform society and its structures of power and exclusion."

#### **Ethnic and Cultural Minorities**

The ecumenical movement has always been concerned about ethnic and cultural minority communities. Religious belief is often a characterising feature for the cultural survival of minorities, and contributes to the construction of their identities. This is particularly the case in situations of migration, a life in diasporas or in oppressive conditions. Cultural freedoms and freedom of belief are essential for these communities to enjoy a life in dignity. Therefore, discipleship and advocacy should be directed to strengthen these communities and respect their identities.

## **International Legal Tools**

The principle of equality before the law is laid down in the Universal Declaration of Human Rights as well as in both of the core human rights covenants, ICESCR and ICPPR. The human rights conventions on the rights of women, of children, of migrant workers and of people with disabilities, that the UN have agreed upon afterwards, may be understood as the effort to strengthen the principle of non-discrimination for special vulnerable and discriminated groups. The United Nations has even passed the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which was, in 1966, the first human rights convention of the UN ever. With this convention the UN human rights system puts special emphasis on the combat of racist discrimination.

The Convention does not only oblige States parties to exclude acts of racist discrimination. It requires states to proactively provide legal protection against discrimination and to grant remedies for victims. The States have to take action to eliminate prevailing prejudices and to facilitate communication among the "superior" and "inferior" groups. Groups who are likely to suffer discrimination may be fostered with positive measures (sometimes known as affirmative action) according to the Convention. All States parties are obliged to submit regular reports to the UN on how the rights are being implemented. The Committee on the Elimination of Racism and Discrimination (CERD) receives the States' reports as well as the comments by civil society on the states' reports. The Committee is a body of independent experts. It has issued a number of General Comments to interpret the Convention, which may be referred to by civil society for their advocacy efforts.

A landmark in the UN human rights system is the Convention on the Rights of Persons with

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**Disabilities** (CRPD). Many of the rights that the Convention defines mirror rights affirmed in other UN conventions, but with specific state obligations ensuring that the rights can be fully realised by persons with disabilities. Rights specific to this convention include the rights to accessibility including information technology, the rights to live independently and to be included in the community (Article 19), to personal mobility (article 20), habilitation and rehabilitation (Article 26), and to participation in political and public life, and cultural life, recreation and sport (Articles 29 and 30). Although the Convention addresses the rights of people with disabilities explicitly, it could be used as a reference tool for concepts of inclusion of persons who are discriminated against for reasons other than disability as well.

The **Convention on the Elimination of All Forms of Discrimination against Women** (CEDAW) condemns any form of discrimination against women. The States parties agree to undertake measures "by all appropriate means and without delay" to eliminate discrimination against women. Under the Convention discrimination means "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". Non-state actors also have obligations under the Convention.

The **European Convention on Human Rights** (ECHR) of the Council of Europe is the principal and most effective human rights instrument in Europe. It entered into force in 1953. Article 14 prohibits discrimination under a potentially unlimited number of grounds. The realisation/ violation of the rights under the Convention can be the basis of a lawsuit at the European Court for Human Rights in Strasbourg. More effective protection against discrimination is provided for in the 12th Protocol to the Convention. However, the Protocol has been ratified by some 18 European States only.

The Council of Europe has set up the European Commission on Racism and Intolerance (ECRI). ECRI is mandated to combat all forms of discrimination since 1994, on the basis of the European Convention on Human Rights and its 12th Protocol and the judgments of the European Court on Human Rights. The Commission is composed of independent experts and presents legal comments on the ECHR and every five years undertakes missions to the member States that are followed by State reports with recommendations made to the member State. Usually, the reports are presented during a public event. This is an opportunity for civil society organisations to hold their governments accountable.

#### **Current Debate**

The terror acts of 11 September 2001 and the counter-terrorism measures afterwards have made the international human rights situation more difficult. The report of the two Special Rapporteurs (Human Rights Council 2006) gives a good insight from a human rights point of view.

During the Durban Review Conference 2009 in Geneva there was a harsh controversy between the Western and the Islamic countries. The Islamic countries requested that defamation of

Islam be considered a human rights violation. The Western countries and human rights organisations opposed this view. They argued that international human rights law protects individual believers and their rights, not a religion. However, this does not answer the question as to how the distressed feelings of many Muslim people, because of the domination of the West over their religion, could be effectively resolved. Consequently, the controversy is not over.

#### **EU Law**

Laws exist throughout the European Union to protect everyone against discrimination on the grounds of religion or belief, disability, age and sexual orientation in the workplace and on the grounds of racial or ethnic origin in all areas of life. European legislation in this field is based on Art. 19 of the Treaty of Lisbon. Current legislation comprises two directives: The Employment Equality Directive (2000/78) protects everyone in the EU from discrimination based on age, disability, sexual orientation and religion or belief in the workplace. The Racial Equality Directive (2000/43) prohibits discrimination on the grounds of racial or ethnic origin in the workplace as well as in other areas of life such as education, social security, healthcare and access to goods and services. The Directives were agreed by all EU Member States in 2000. Each Member State was then obliged to incorporate these new laws into their national system.EU law addresses also indirect discrimination, i.e. when an apparently neutral specification, criteria or practice would disadvantage people on the grounds of racial or ethnic origin or belief, disability, age or sexual orientation unless the practice can be objectively justified by a legitimate aim.

National governments are required under the Racial Equality Directive to designate or set up a body, or bodies, to help people who have been discriminated against on the grounds of their racial or ethnic origin to pursue their complaints. In some European countries the equality bodies also help people who have been discriminated against on the grounds of religion or belief, age, disability, sexual orientation and gender. The organisation and the role of each body or bodies vary from country to country.

The European Union Agency for Fundamental Rights (FRA) is an Advisory body of the EU. It helps to ensure that fundamental rights of people living in the EU are protected. It does this by collecting evidence about the situation of fundamental rights across the European Union and providing advice, based on evidence, about how to improve the situation. The FRA is the former European Monitoring Centre on Racism and Xenophobia (EUMC).

### **Ethnic and Cultural Minorities**

The UN Convention on the Elimination of All Forms of Racial Discrimination, in its article 3, puts special emphasis on minorities. For minorities, special measures of protection may be adopted. Within the jurisdiction of the Council of Europe a particular legal instrument has been set up:

The Framework Convention for the Protection of National Minorities (FCNM) aims to ensure that the signatory States respect the rights of national minorities, undertaking to combat discrimination, promote equality, preserve and develop the culture and identity of national minorities, guarantee certain freedoms in relation to access to the media, minority languages and education and encourage the participation of national minorities in public life. States have to



report to the Council of Europe on the measures they have undertaken. However, there are no specific provisions as to how a minority can be recognised legally under the convention, if the minority wishes to.

The European Charter for Regional or Minority Languages (ECRML) is another treaty of the Council of Europe. The Charter aims to protect and promote historical regional and minority languages in Europe. It only applies to languages traditionally used by the nationals of the States Parties (thus excluding languages used by recent immigrants from other States), which significantly differ from the majority or official language (thus excluding what the State party wishes to consider as mere local dialects of the official or majority language) and that either have a territorial basis (and are therefore traditionally spoken by populations of regions or areas within the State) or are used by linguistic minorities within the State as a whole (thereby including such languages as Yiddish and Romani, which are used over a wide geographic area. For more information about the issue please see http://www.globalwarmingart.com/wiki/Wikipedia:European\_Charter\_for\_Regional\_or\_Minority\_Languages

## **Good Practice**

The current WCC "Programme for Just and Inclusive Communities" calls upon churches to address cultures and structures of exclusion in their midst. It points towards the need to address racism in their own structures and life. The aim is to encourage churches to learn from the experiences of advocacy by and on behalf of people who experience discrimination and exclusion, with regard to Indigenous People, Dalits and people with disabilities. Member churches could set up similar programmes.

The United Church of Christ (UCC) in the U.S.A. adopted a pronouncement and proposal for action on "Becoming a Multiracial and Multicultural Church" in 1993. All settings of the UCC are called to participate affirmatively and actively in ensuring the ongoing inclusiveness of the entire community of faith. Recently a broad campaign has been launched under the title "God is still speaking" in order to promote the welcoming character of the church to all. *http://www.ucc.org/god-is-still-speaking/* 

Upon the initiative of UNESCO the "European Coalition of Cities Against Racism" was established in Nuremberg on 10 December 2004. It was dedicated to establish a network of cities interested in sharing experiences in order to improve their policies to fight racism and discrimination. In times of growing globalisation and urbanisation, the municipalities are a key factor in ensuring that all their citizens, regardless of their nationality, ethnic, cultural, religious or social origin, enjoy a life in dignity, security and justice. The basis for the activities of the network is provided by the "Ten-Point-Plan of Action", which is to serve member cities for their future activities. As of November 2010, 104 municipalities from 22 European countries have joined the network and adopted the «Ten-Point-Plan of Action» *http://www.citiesagainstracism.org/*.

The Council of Europe launched a public awareness campaign "all different – all equal" in order to promote the idea of diversity and equality. A lot of awareness building materials have been prepared. Just one example: Under the following link *http://eycb.coe.int/Compass/en/chapter\_2/2\_6.html* may be found a quiz - short and provocative enough to be interesting in

itself but also the basis for a great group discussion.

There was an Ecumenical church visit on group-related enmity in Germany in May 2010. Four German churches invited five international experts to visit congregations and sites of interest. The group of experts made a report that reflects the experiences they made during their visit, and ends with special recommendations. The report was presented to a big gathering during the Oekumenischer Kirchentag in Munich.

For more than three decades, German Churches have called annually for the implementation of "Interkulturelle Woche" or "Intercultural Week". It aims at providing a welcoming climate for immigrants and refugees. There are 3.000 public events in 300 towns, organised by congregations, municipalities and grass roots groups. The Woche runs usually from the end of September to the beginning of October. The central office in Frankfurt/Main supports the local organisers with a resource book, posters, flyers and post cards. *www.interkulturellewoche.de* 

Diaconia Germany has set up a manual on gender-sensitive language. The publication aims at encouraging a more sensitive use of language and at honoring the attainments of women who work with the social service organisation of the Protestant Churches and who are 70 percent of the employees.

#### http://www.agmav.diakonie-

*wuerttemberg.de/mitteilungen/83/83\_berichte\_gendergerechte\_sprache.html* The Evangelical Churches of Baden and Wuerttemberg and their Diaconia service organisations in South-West Germany have founded an anti-discrimination network. Under *www.mittendrinundaussenvor.de* information is available that is useful in a church context.

## **Proposals for Action**

The World Council of Churches has made many suggestions for action. An excellent reference tool is the resource guide of 2004. It contains useful information and proposals of what churches, congregations, or communities could do. What follows are options for those who consider further engagement.

Action Groups, youth groups or organisations that want to sensitise themselves on internal patterns of prejudice and racism should conduct anti-discrimination trainings that may be offered by social workers and educators. Through simple joint exercises and without attending tiring lectures, it is possible to learn a lot about imaginations of "otherness" that we have constructed in our minds, and one can learn how to deconstruct and overcome these patterns.

Action Groups who would like to do advocacy work on a national or regional level can screen the state reports that their own governments have compiled for the UN Committee on the Elimination of Racial Discrimination (CERD). They can write their own report (called Shadow Report) and present it to the UN, the FRA or the public.

If an organisation is supposed to take profound action, it should at first review its own structures and patterns of cultural behavior. As a consequence, measures in organisational development (OD) might be chosen. With regard to justice between women and men, strategies

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of gender mainstreaming are recommended. Intercultural opening or cultural mainstreaming are OD measures that seek to sensitise on the different ethnic groups and cultures within an organisation and their clients. The respective OD measure that addresses principally all grounds of discrimination is diversity management, which has been developed in the USA. It tries to make use of diversity, which is regarded as an asset, as it increases the opportunities for the organisation and its employees.

Anti-discrimination units or Ombudsmen are independent bodies who receive complaints from employees, customers, or other individuals who believe that they have been discriminated against. Organisations or business operations can use such complaints procedures in order to ease and solve conflicts based on discrimination. The bodies should be independent and the office bearers should have the trust of their constituency.

## Questions which relate to the topic during training sessions

At the beginning of the training session, you may ask yourself which "inferior" or discriminated groups are there in your community or State. Are there stigmas that are put on them? Which fears and prejudices against them are common?

You may then wish to check the language that you use in this context - just to give an example, "xenophobia" may be analysed as a term to describe racism but that tends to be racist itself, as it declares one part of the population "other" and, at the same time, the "one" part an innocent victim of a mental disease ("phobia"). Another example: "irregular migrants" makes a group of people who live as workers, refugees, women, children etc. among us "irregular", whereas all others seem to be regular or "normal". You may think about whether "undocumented people" would be more appropriate to respect the dignity of the kind of people that are talked about with regard to their right to freedom of movement.

How do public or private services exclude certain people and what could they do for inclusion? You may discuss ideas such as darkroom restaurants with regard to blind persons, or handball tournaments for wheel-chair users.

What can faith-based communities do in order to strengthen discriminated and stigmatised groups? In order to find that out it may be useful to listen what these groups say – how they call themselves, how they perceive their position in the society, and what is appropriate to get their identity respected by the dominating group?

During the course of the training, you may be interested to reflect on the role of your own Church, or the Christian organisation you work in. Churches can be found in virtually every European country. The status and power position of the church in the respective countries differ a lot, as the membership of the churches represents different parts and segments of society, smaller or bigger ones. Some of the Christian communities may even not be represented in the CEC. How do the trainees assess the position of their own Church in society, under the criterion of equality? What kind of relations does your Church or organisation have towards the discriminated groups? Which tasks do you identify with regard to making communities or congregations inclusive?

In a number of European countries, organisations with Christian identity occupy considerable quantities of hired staff. In order to be inclusive without discrimination, what recruitment policies have the organisations adopted, or could wish to adopt? Are there diversity management strategies to be put in place, and how would that relate to the Christian identity of the organisation?

### Resource Material for the Training on Racism and Anti-Discrimination International and European legislation and expert opinion

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) http://www.institut-fuer\_menschenrechte.de/fileadmin/user\_upload/PDF-Dateien/ Pakte\_Konventionen/ICERD/icerd\_en.pdf

**Convention on the Rights of Persons with Disabilities**, (CRPD), *http://www.institut-fuer-menschenrechte.de/fileadmin/user\_upload/PDF-Dateien/Pakte\_Konventionen/CRPD\_behindertenrechtskonvention/crpd\_en.pdf* 

**UN Human Rights Council, Report of the Special Rapporteur** on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance, A/ HRC/2/3, Geneva 20 September 2006

**Committee on the Elimination of Racial Discrimination**, General Comments on ICERD, *http://www2.ohchr.org/english/bodies/cerd/index.htm* - the Committee monitors the implementation of the Convention and receives complaints against its violations.

The Agency for Fundamental Rights (FRA) does a lot of research and analysis on equality and discrimination in the EU member states. *http://fra.europa.eu/.* 

**EUMC**, Perceptions of Discrimination and Islamophobia, Voices from members of Muslim communities in the European Union, EUMC 2006, Vienna

Forum Menschenrechte, Eliminating racist discrimination in Germany, Parallel report addressed to the Committee on the Elimination of all forms of Racial Discrimination of the United Nations, Berlin 2008. It is a shadow report done by civil society organisations in order to provide more substantial information than was contained in the official state report. Forum Menschenrechte is the common platform of some fifty human rights organisations who work on the federal level, http://www2.ohchr.org/english/bodies/cerd/cerds73.htm

### **Theology and Churches**

World Council of Churches, A Moment to Choose: Risking to be with Uprooted People, Statement issued by the WCC Central Committee in 1995, Geneva, *http://www.wcc-coe.org/wcc/ what/international/uprooted/moment1.html* 



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Hint State



World Council of Churches, Understanding Racism Today - a Dossier, a revised and expanded version of a dossier produced for the WCC Harare Assembly, 1998 http://www.oikoumene.org/fileadmin/files/wcc-main/2006pdfs/racismdossier.pdf.

World Council of Churches, Being Church and Overcoming Racism: It's time for transformative justice, Central Committee, Geneva, Switzerland, 26 August - 3 September 2002, Document PLEN 4, *http://www2.wcc-coe.org/ccdocuments.nsf/index/plen-4-en.html* (This paper is a discussion-starter on churches acting through transformative justice to overcome racism that offers important and path breaking suggestions for action that churches may undertake on their way to search for justice. It contains also three case studies on good church practice, one The Lutheran Church of Norway: Apologies to the Roma People).

World Council of Churches, Central Committee, A Church of All and for All, An interim statement, Geneva, Switzerland, 26 August – 2 September 2003, Document No. PLEN 1.1, *http:// www2.wcc-coe.org/ccdocuments2003.nsf* (on people with disabilities).

World Council of Churches, Transformative Justice, Being Church and Overcoming Racism, Resource Guide, Geneva, 2004.

World Council of Churches, Just and Inclusive Communities - Report of the la Paz theological consultation 2007. This report attempts to outline a theological framework for WCC's new programme: Just and Inclusive Communities that has been put in place by integrating four areas of its on-going work: Overcoming Racism, Indigenous Peoples, Dalit Solidarity and the Ecumenical Disabilities Advocates Network. It reflects a consultative process of sharing and conversation among persons impacted by these and other concerns.

http://www.oikoumene.org/de/dokumentation/documents/oerk-programme/unity-missionevangelism-and-spirituality/just-and-inclusive-communities/2007-la-paz-report-just-andinclusive-communities.html.

World Council of Churches and World Islamic Call Society, International Consultation on Transforming Communities: Christians and Muslims Building a Common Future, Geneva, Switzerland, November 2010, Final Statement, *http://muslimsandchristians.net/*.

Athanasios N. Papathanasiou, Encountering Otherness, Christian Anthropology for a Culture of Peace, in: Theological Reflections on Migration, A CCME Reader, Brussels, 2008.

Beate Küpper and Andreas Zick, Religion and Prejudice in Europe, New empirical findings, NEF Initiative on Religion and Democracy in Europe, London 2010, ISBN 978 1 907376 02 3. The study presents empirical data on patterns of prejudice among people of differently strong religious affinities.





# INTRODUCTION FOR A TRAINING ON MIGRATION

Dr. Torsten Moritz

## A) Introduction

Migration is a topic which emotionally engages people –it is an issue that for many people is reflected in their everyday reality. For Christians it is an issue with a strong biblical narrative and related to some of the central biblical commandments.

In a human rights training session on migration you are likely to meet participants, who will have both clear ideas and often strong opinions on migration. Even those who will not yet have an opinion on migration will have an idea what migration is and who migrants are – however they will often talk about very different things and different people.

When planning a training session on migration, which is limited in time, it is essential to clarify some key concepts of migration and (already beforehand) decide on the more precise thematic focus of your training. Central categories in this context may include refugees and asylum-seekers, labour migrants, undocumented migrants, persons migrating due to family reunification or trafficked persons.

Depending on your focus, you will have slightly different theological references and distinctly different international, European and national legislative and human rights standards. The importance of different European standards will depend on whether your country is an EU member state and if the migrants in question are EU nationals or not. Your choice of focus theme will also influence whom you might invite as resource person(s) and inform your discussions.

You should also allow enough time and elements for participants to formulate their own issues and concerns relating to migration and to agree on follow-up.

# B) Biblical and theological approaches to Migration

Migration was a common experience throughout the Old and New Testaments.

Some of the most striking and emblematic examples of faithfulness in both Old and New Testaments are related to migration and hospitality being extended to strangers.

The supreme example of a faithful human response to the directing of God is Abraham. He is told, "Leave your country, your people and your father's household and go to the land I will show you" (Genesis 12:1). The history of the Israelites is traced back to this story of emigration and journeying. God's promise of a better life and a better future to Abraham (Genesis 12:2-3) are not so far from the motivations that still prompt many migrant people to make their journey towards Europe or other world regions.

The language of 'stranger' and 'foreigner' is nothing unfamiliar in the Old Testament period. Their language contains several possible terms for the person who was not Ezrach, literally a 'native of the Land' or an Israelite. Each of these terms conveys its own special nuances in







meaning. The terms nokrim and zarim are usually translated 'foreigners' (sometimes 'aliens') and describe foreigners who were feared or loathed by the Israelites. Gerim is usually translated 'sojourners' or 'aliens'. The gerim were expected to keep the Sabbath (Exodus 20:10) and participate in other festivals. They could be employed (Deuteronomy 29:11) and, above all, were to be protected from abuse (Leviticus 19:33-34). The status of the ger contrasts with that of the toshav. Both lived among the Israelites but the ger had voluntarily embraced the religious and community life of the Israelites. This extension of the communal and societal rights enjoyed by the Israelites reflected their own experience of migration and exile. "You shall treat the alien no differently than the natives born among you, have the same love for him as for yourself; for you too were once aliens in the land of Egypt" (Leviticus 19:33-34). The ger, no less than other Israelites, occupied a moral category. The welcome and welfare for aliens was laid out in the Levitical law and included gleaning and tithing laws (Leviticus 19:9-10; Deuteronomy 14:28-29). A response towards the alien, other than one of fear and hostility, was expected of the Israelites by God.

Of course, the experience of being a foreigner in Israel has no direct overlap with the contemporary experience of migration in Europe, arguably even less so in the area of detailed policy making, but it offers revealing insights into the manner in which God expected his people to relate to the 'other'. This attention to the 'other' continues in the New Testament. The Prologue of John's Gospel opens in such a way, "He came unto his own, but his own did not receive him" (John 1:11). Shortly after his birth, Jesus was taken with some urgency by his parents to Egypt. Fleeing the political violence of Herod, Jesus and his parents became refugees. The personal experience of 'otherness' finds its parallels in the parables of Jesus. This leads Mgr. Keith Baltrop, a Roman Catholic leading an agency involved in ministry among migrants in England, to comment that, "The parable of the Good Samaritan invites us to project ourselves imaginatively into the situation of others, as he did with the man who had been robbed, not just patching him up but thinking of all the needs he would have as the situation developed. Many groups who have begun with simple care for homeless people by inviting them into Church and giving them a cup of tea, have gone on to cater for all their needs, such as medical care, drug rehabilitation, alcohol dependency programmes, education, job-finding etc., and the same will be true of our immigrants.

The English sociologist and theologian, Nick Spencer in his book Asylum and Immigration (2004) discusses whether it is possible for Churches to urge the adoption by a Government of migration policies that will necessarily be short-term, detailed and circumstantial. He cautiously suggests several guiding principles that are reflected in the themes we have been discussing above.

These principles, he states, may serve the function of delineating a framework within which policy can be shaped. He expounds what these are at length and we merely list them here in a summary form. An appropriate Christian response to policy-makers must therefore pay proper attention to:

a. The essential unity of the 'one human race' (or humanity). b. The reality of nationhood.

- c. The fact that national borders are permeable to people but not necessarily to values.
- d. The loving care and welfare of the alien.
- e. The rights of immigrants.
- f. Reminding immigrants of their responsibilities within the host society.
- g. Urging a willingness to integrate the migrant.
- h. Urging a similar willingness on the part of the migrant to accept integration.
- i. Compassion for the vulnerable.
- j. The Church as a model of cross-cultural community.

## C) International Legal approaches to Migration

The international, European and national legal and human rights context varies considerably for the different groups of migrants and depending on the countries of origin/of residence of the migrants.

While important international instruments pertaining to specific groups such as the ILO Migration for Employment Convention or the UN Refugee Convention were drawn up as early as 1949 and 1951 respectively, binding European legislation is mainly related to the area of refugee protection. In the particular case of EU countries and EU nationals (and in some cases nationals of states associated to the EU), a strong framework is provided by the EU legislation and jurisprudence on free movement of EU nationals.

In contrast, several of the more broad instruments such as the 1990 Migrant Workers Convention have been poorly ratified by European countries.

The alignment of national legislation with international standards varies considerably from country to country. In addition, your country may have concluded bi-lateral agreements on migration with other countries. In addition, case law both on European and national level is developing fast. It is therefore often difficult even for experts to keep informed about all details of applicable legislation.

It may in this context be useful to invite an expert to your training in order to explain the exact legal framework regarding your specific country and the different groups of migrants hosted in your country. This expert may come from an UN agency, a national administration, an expert NGO or may be an immigration lawyer.

## References

Among the most relevant international instruments on migration the following should be mentioned:

- 1949 ILO Convention concerning Migration for Employment (ILO convention 97)
- 1951 UN Convention and its 1967 Protocol Relating to the Status of Refugees
- 1975 ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (ILO Convention 143)
- 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- 2000 UN Protocol against the Smuggling of Migrants by Land, Sea or Air,







Supplementing the United Nations Convention Against Transnational Organized Crime

- 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children...

As outlined above, there is far-reaching EU legislation as well as jurisprudence and jurisprudence of the European Court of Human Rights relating to migration. It will however depend on the specific legal system of your country what cases are of relevance for you (for summary overviews see section G).

# D & E) Best practices & proposals for action to support migrants

The examples of churches working on the various aspects of migration are manifold: be it assistance to refugees or detained migrants, be it counselling of migrant workers or initiatives to build intercultural congregations with migrants and migrant-led churches. An important aspect of churches' work on migration is the advocacy for the rights of migrants towards political authorities.

Various aspects of churches' work on migration with regards to unity, witness and advocacy were presented at the launch of the year "Migration 2010 – year of European churches responding to migration", and can be found at:

http://migration.ceceurope.org/migration-2010/

# F) Questions which relate to the topic during the training

A number of questions might come up during a training on migration. Among them, you might want to raise the following:

- are international norms sufficiently and correctly implemented in our country? What could we do to make sure they are implemented?
- what specificity do we have as CHURCH to address migration, in relation to activities of state, NGOs and others ?
- how can we promote human rights of migrants in societies increasingly critical about immigration ?

Proposal for a structure for the training:

- Welcome
- Interactive exercise on terms or opinions: ask participants to complete sentences and write down "a refugee is...", "a migrant is..."; ALTERNATIVELY: exercise: for my church the central question on migration is....; ALTERNATIVELY: ask people to agree/disagree on statements on refugees; (this can also be done as a short version of a "statements game", cf. Domino Manual, Council of Europe, page 85);
- explain the definition of these terms: refer to national, European and International legislation;
- expert input by speaker: depending on the precise issue this could be a speaker of the UNHCR (the UN refugee agency) or ILO (on labour migrants), someone from your national government,

an NGO activist or someone from a church organisation on European level or another country;

- Discussion with speaker;
- Discussion and agreement on follow-up (consider issues of advocacy, support and inclusive ministry).

# G) Resource material for the training on Migration

## Definitions

Churches' Commission for Migrants in Europe/Nova research Institute/World Council of Churches: TALKING ABOUT MIGRANTS: ATTEMPTING TO DEFINE MIGRANT PEOPLE IN EUROPE in "Mapping Migration, mapping Churches responses to it" Brussels/ Geneva/Gloucester 2008

The Hague Process on Refugees and Migration (THP Foundation)/ UNESCO Section on International Migration and Multicultural Policies: people on the move, handbook of selected terms and concepts. Paris/the Hague 2008

http://www.thehagueprocess.org/documents/THP-UNESCO-HANDBOOK-version-1.pdf

## Theology

Churches' Commission for Migrants in Europe: Theological Reflections on Migration A CCME Reader, Brussels 2008 http://migration.ceceurope.org/fileadmin/filer/mig/10\_migration\_2010/2008\_CCME\_ Reader-\_Theological\_Reflections\_on\_Migration.pdf Spencer, Nick: Asylum and Immigration A Christian Perspective on a Polarised Debate, Carlisle 2004

## International and European Legislation

European Commission: ACQUIS OF THE EUROPEAN UNION, TITLE IV OF THE TEC, PART II OF THE TEC, TITLE VI OF THE TEU, Brussels 2009 *http://ec.europa.eu/home-affairs/doc\_centre/intro/docs/jha\_acquis\_1009\_en.pdf* (on migration of non-EU citizens to the EU: page 3ff on asylum, immigration, irregular migration...)

European Commission: New legislation will simplify conditions and administrative formalities for applying EU citizens' right to move and reside freely throughout the European Union *http://ec.europa.eu/justice/policies/citizenship/movement/policies\_citizenship\_movement\_en.htm* (on inner-EU migration)

The Hague Process on refugees and Migration: Compendium of Rights Related to Migration I, The Hague 2008 *http://www.thehagueprocess.org/documents/Compendium-of-Rights-Related-to-Migration.pdf* 

The European Convention on Human Right and Migration: http://www.yourrights.org.uk/yourrights/rights-of-immigrants/european-convention-on-humanrights/the-european-convention-on-human-rights-and-immigration-law.shtml

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### Methods

Domino, A manual to use peer group education as a means to fight racism, xenophobia and intolerance, Strasbourg 1996 http://www.coe.int/t/dg4/youth/Source/Resources/Publications/DOmino\_en.pdf

OVERVIEW OF CHURCHES POSITIONS ON MIGRATION IN EUROPE: www.ccme.be







# INTRODUCTION FOR A TRAINING ON SOCIAL RIGHTS

Ms Diane Murray

## Introduction

Social rights along with cultural and economic rights are often referred to as second generation rights. They differ from political and civil rights in that social rights demand that governments act and provide services. Such rights can be seen as relating to the meeting of people's needs, rather than the protection of their rights from abuse or interference.

The underlying assumption is that individuals have the right to an adequate minimum income, housing, health care, and education. Although it is often advocated that such rights must be entrenched in the constitution of a democratic state, it should be noted that this does not usually happen.

In 1993 the Vienna Declaration and Programme of Action which resulted from the World Conference on Human Rights in Vienna emphasised that 'all human rights are universal, indivisible and interdependent and inter-related'. Following on from this it can be understood that fundamental rights, such as the right to life, are diminished if people have no food, or housing, and that they can only exercise their civil rights and protest effectively against abuses of their human rights in a responsible way if they are educated.

## **Biblical and Theological Approach to Social Rights**

The starting point is the doctrine of creation - human beings are created "in the image of God" (Genesis 1.27). This fundamental biblical affirmation gives human beings a very special dignity. This dignity is conferred on all human beings without distinction, which is the basis for a belief in equality. Human dignity and equality are the philosophical and theological basis for the concept of human rights.

The covenant of the Old Testament expresses this in terms of law. The Torah sets out in some detail God's will for the kind of society that is appropriate to his own people. Yahweh is a God of justice, so justice must be the basis for this society. A society built on justice is an expression of the righteousness of God.

In the social field, the Old Testament law lays down a particular responsibility to provide for the needs of those who are weak and vulnerable (in ancient society, this meant especially widows, orphans and foreigners). It also laid down measures to prevent the emergence of an excessive gap between the rich and the poor. The prophets denounce neglect of this law. Failure to observe the law, a failure of our social duty towards others, will result in disaster for the nation, and particularly for the rich and powerful.

The New Testament does not set out to legislate for the wider society, but lays down broad general principles.

Thus, Jesus summarises the law in the two commandments to love God and neighbour (Mat-



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thew 22.37-40). The New Testament inspires Christians with a vision of a kingdom based on justice and peace. Again, there is special concern for the poor and the vulnerable. Jesus'"manifesto" states that he has come "to bring good news to the poor" (Luke 4.18). The rich should not look down on the poor, but treat them with dignity (Luke 16.19-31). Wealth is not evil but it does bring responsibility (to be responsible stewards of the resources entrusted to us by God). See also 1 Timothy 6.17-19 and James 5.1-6 for the spiritual dangers and the responsibilities of wealth.

It is the vocation of the Church down the ages, of Christian tradition, to work out the practical implications of these principles for the many and varied social contexts in which Christians find themselves at different times and in different places.

Christians have always recognised that they have a duty of charity towards those in any kind of need. Typically this includes the sick, the poor, the prisoner, the foreigner, but potentially many others too, depending on the social context. Charity can be put into practice by helping individuals or by working through Christian (and other) organisations set up to help people.

But is charity enough? "Charity" often has a bad name because it can easily lead to condescending attitudes. Moreover, however necessary it is, charity is in the end only a remedy, a palliative; it treats the symptoms of social ills but does not attack their causes.

People involved in charitable work often become convinced of the need to change the social, economic and political structures that lead to poverty. This leads them into work of an advocacy or campaigning nature, which may bring them into the sphere of politics.

Human dignity implies many things but must include things like having enough to eat, decent housing and safe conditions of work as well as being cared for in illness and old age. Christians have a duty to try and ensure that all (including particularly the least of Christ's children, Matthew 25.40) enjoy conditions of life that correspond to their God-given dignity.

This means setting up structures that guarantee the dignity of all. Expressed in legal terms, each person, by virtue of their God-given dignity, has an equal right to these things; and governments have a duty to ensure that these rights become a practical reality for all.

Therefore such measures as social security, social assistance, social services and redistributive taxation are not a matter of charity or generosity but they are the means of ensuring, as far as possible, that everyone enjoys the dignity inherent in our humanity. Far from being special privileges conferred on the poor and weak, they are rights to which all are entitled.

## Legal approach to social and economic rights

On the international level three of the most important texts on social rights for Europe are:

1. The UN International Covenant on Economic, Social and Cultural Rights (ICESCR) The ICESCR is monitored by the Committee on Economic, Social and Cultural Rights, a global body of human rights experts tasked with monitoring the implementation of the Covenant. It is

a follow-on from the Universal Declaration of Human Rights of 1948. Recently it has become possible to submit individual complaints. *http://www.un-documents.net/icescr.htm* 

#### 2. The revised Social Charter of the Council of Europe

On a pan-European basis this is probably the most wide ranging agreement on social and economic rights and the one on which we shall concentrate. It is the natural complement to the European Convention on Human Rights and guarantees social and economic human rights. It was adopted in 1961 and thoroughly revised 30 years later. The European Social Charter (from now on referred to as "the Charter") established a supervisory monitoring mechanism to guarantee respect for social rights in the States Parties. States have to report to the European Committee of Social Rights. The revised Charter introduced the possibility for approved non-governmental organisations, such as CEC, to make collective complaints to the European Committee for Social Rights against a country which they consider is not fulfilling its obligations under the Charter. In the last twelve years over 60 complaints have been made. A list of them can be found on the following website. *http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/Complaints\_en.asp* 

It would be useful to look at the most recent report of your own country on its implementation of the Charter. Countries report annually on a specified area of the Charter and their reports are examined by the European Committee of Social Rights.

http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm

#### 3. The European Union Charter of Fundamental Rights

The European Union Charter is in some senses different from the other instruments mentioned because it sets out in one single text the whole range of civil, political, economic and social rights of European citizens and all persons resident in the EU. These rights are divided into six sections: dignity, freedoms, equality, solidarity, citizens' rights and justice. Chapters 2, 3 and 4 cover, respectively, freedoms, equality and solidarity. The main aim of the Charter is to make these rights more visible, not to establish new rights. It brings together in one text existing rights that were previously scattered over a range of international sources. *http://www.europarl.europa.eu/charter/pdf/text\_en.pdf* 

See the following art. in the Charter 30,31,34,35, as well the social clause in the Lisbon treaty (art. 151).

## Social rights on the national level

At the national level when social rights are enshrined in a constitution or current legislation some experts think that the parliamentary majority should not have the power to repeal the laws or constitutional articles that guarantee social rights, except by special procedures (e.g. by two-thirds majority or by referendum). Certain institutions (for instance, the judiciary) should even be given the power to strike down laws passed by the legislature that are in breach of those rights. In many European countries they already may do so if a piece of legislation undermines the civil or political rights of the population and is in contravention of the European Convention of Human Rights.

Thus, particularly, at present with the economic crisis, Europe is at the crossroads of two major issues of contemporary political philosophy, namely the issue of democracy and the issue of distributive justice. There could be conflicts between the demands of democracy and the demands of distributive justice, both of which are crucially important.

# The relationship between social rights and full participation in society

There is a current theory of social justice based on a principle called participatory parity. This principle recognises the right of everyone to participate and interact with others as peers (i.e. equals) in social life, the "level playing field" concept. However, a major obstacle to participatory parity arises when one group of people lacks the necessary resources to interact with other groups on the same footing as equals. If they do not have a decent income, education, healthcare or adequate housing, people can find themselves marginalised and cut off from others and unable to take part fully in mainstream society.

Social injustice has thus (at least) two distinct dimensions:

- maldistribution this is usually defined as faulty distribution or apportionment, as of resources, over an area or among a group
- misrecognition this is usually defined as 'misrecognition' of the true relations between the structure of that field and the structures of economic and political power not really being aware of an existing relationship.

Two strategies are suggested for coping with this situation. One strategy which can be called the affirmative strategy for redressing this injustice aims to correct the inequalities present in society, without in any way disturbing or changing the underlying social structures that have generated them. In contrast the other strategy aims to correct unjust outcomes by restructuring the society that generates them and this can lead to political and social upheaval.

On the other hand one of the key disadvantages of affirmative strategies to remedy maldistribution, such as programmes of help or social assistance is that they tend to provoke 'a recognition backlash'. They may brand those who are benefitting as in some way inferior and always needing more and more. Their net effect can be to add the insult of disrespect to the injury of deprivation.

## **Good** practices

Thus churches and religious bodies in Europe are more likely to remedy social injustice and try to correct maldistribution by giving material help – food, clothes shelter - to those lacking such necessities. This might unfairly be described as everlastingly plugging holes in the dyke instead of building a new one. For example, it has been said if you give a man a fish you feed him for a day, but if you give him a fishing rod you feed him for a lifetime. On the other hand if you give him neither he may well starve.

A church might similarly allow organisations that work for social rights or social welfare to use church property for meetings.

Individual Christians may feel that they should join or support the work of the political or social organisations or movements in order to advance social rights such as Diaconia, Secours Catholique in France etc.

# **Proposals for Actions to support Social Rights**

There is a need for actual programmes to both support social rights and give aid to those in need. As such programmes cost money and usually need trained staff, churches have to concentrate on voluntary help. A simple training programme on helping in a dignified manner those in need, centred on the words of Christ that "in as much as you have done it unto one of the least of these my brethren you have done it unto me" might be useful.

Education is a social right and churches could help children in difficulties, especially migrant children, with homework and provide drop-in centres after school.

The churches should be mindful of the needs of the elderly and marginalised.

# Points to ponder and discuss

#### **Questions for Discussion**

Think about the differences between social justice, which involves the redistribution of goods, and the concept of social rights, which insists that as human beings, made in the image of God, people have the right to a decent standard of living.

Social rights place obligations on States through international treaties. If States have obligations to provide various services, however, which ones are the most important? Is there a hierarchy? What social rights are missing? For example, the right to work is enshrined in Article 4 of the Italian constitution, which states that "the republic recognises the right of all citizens to work and promotes conditions to fulfil this right.". The right to work appears in the UN International Covenant on Economic, Social and Cultural Rights (ICESCR) but is related to States educating people to be able to work, find suitable jobs etc. In the revised version of the European Social Charter Part 2, Article 1 States are asked:

"I to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;"

Give examples of how churches in your country are helping those suffering because their social rights are not being taken into account.

How can one design measures to ensure that the dignity of those who receive help is respected? The relationship between church and state is always a thorny issue. To what extent do you consider that churches should campaign for better social rights and how should they do this?

Should a democratically elected government be able to change legislation or constitution articles when the result would be to penalise those living in poverty or injure social rights? Discuss whether social rights should be protected at all costs, even to the point of the judiciary interve-



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ning as may already be the case in the question of civil and political rights?

Is there an area where any organisation, to which you belong, might consider an injustice worthy of making a collective complaint under the provisions existing in the revised European Social Charter?

How can one stop a culture of dependency developing and the creation of an over-protective State which can stunt initiative, development of personal independence and responsibility?

Should individual Christians and Churches join or even perhaps found bodies to campaign against the actions of States and governments, which negate social justice, as affirmed by social rights?

# **Resource Material**

The three treaties mentioned at the beginning of this article all have helpful websites, the details of which can be found in the text. Besides the actual texts there is also a lot of general information on the web pages.

**Practical Impact of the Council of Europe monitoring mechanisms** pp 27-31 published by the Council of Europe, DG of Human Rights and Legal Affairs 2010, gives an overview of changes countries have made in recent years in order to comply more closely with the European Social Charter.

#### On the connection between social rights and participatory parity see :

Sandra Liebenberg: Needs, rights and transformation: adjudicating social rights Center for Human Rights and Global Justice, Working, Economic and Social Rights, Series Number 8, 2005

#### On the right to work see:

Massimo D'Antonio: The right to work in the Italian Constitution and the European Union http://aci.pitt.edu/606/01/n1-dantono.pdf





# INTRODUCTION FOR TRAINING ON CHILDREN'S RIGHTS Dr. Chrystalla Kaloyirou

# 1. Introduction

In contributing to the construction of a new Europe, the European Churches are facing the challenge to meet the spiritual needs of European citizens. Within this perspective, children should be regarded as individuals with particular rights and spiritual needs that have to be met by European Churches through specific practices and actions that refer to children as members of the church and as European citizens and that acknowledge, protect and promote their rights.

# 2. Theological approach to the rights of children

A theological approach to the rights of children can provide an understanding of children's rights in the light of a Christian perspective that is developed around two main notions related to Christian ethos: the notion of the "image of God" and the notion of "otherness".

# 2.1. Children as "image of God"

"Childhood" is a central concept in our relationship with God since we, Christians, refer to God as our Father and perceive ourselves as images of Him. This self-perception of us, as "children of God" and as an image of our Creator, who created and constantly renovates the world, constitutes the basic element of Christian anthropology and, as such, it is reflected in the way children are seen in the framework of a human rights' theology and, consequently, in the way they are treated within churches.

Children are similarly images of their Creator who deserve the right to be respected and to participate in a constantly developing world. They are not just "adults-to-be" or parts of their families, rather, they are socially active human beings affected by public problems like poverty, discrimination and violence, who seek to construct meaningful human relations and who "share a command to love one another creatively and inclusively in the image of an ultimately all-loving creator" (Wall, 2007).

In this sense, the manifestation of children's rights aims towards the transformation of our dispirited world in a more loving, just and inclusive way, reflecting the incarnation of God's transforming love that leads to a reconstruction of a more loving and inclusive society. When children's rights for protection and provision of welfare are respected, they are enabled to participate as images of their Creator in the fully cycle of social development.

# 2.2. The notion of "otherness"

Children, as the images of a Creator, who exists as a Triadic community characterised by love and reciprocation, have an innate tendency from the beginning of their life to construct networks of interpersonal and social relations ("embodied relationality", Wall, 2008), through which they form their personal meaning of life and their unique perception of themselves and others. This process results in the development of the two-fold concept of "otherness" that refers to the realisation of one's uniqueness and diversity in relation to others, as well as to the realisation of other's uniqueness and diversity in relation to self. In this sense, otherness makes every child







different from everyone else but, simultaneously, interdependent with others.

The "embodied relationality", deriving from the characteristics of the Triadic community, and the active contribution of "otherness" in the formation of social relationships form the meaning and underline the importance of children's rights within a theological perspective. Every child enters the world asserting "a different other" that deserves to be loved, protected and accepted "in their greatest possible otherness" (Wall, 2008).

In addition, throughout their development children are becoming gradually more responsible to accept and protect the "otherness" of others. In a continuously socially developing world children are called upon to go beyond their primal emotional relationships with their caregivers and reach people outside their family borders. This requires a sense of "self-transforming responsibility" (Wall, 2008) to others that is obtained in childhood and lasts for a life time. What makes childhood a crucial period in broadening the network of relationships with others is the fact that children extend their relationships based on their experience of relating with the "significant others" (Hamacheck, 1992) in their life, whoever these are.

In this sense, the challenge for European churches is to acknowledge and admit the purpose and the meaning of children's rights in protecting and supporting children's "otherness" as well as in promoting children's capacity to expand the diversity and inclusiveness in their relationship with others. To achieve this, churches have to gain a place in children's heart and mind as a "significant other" in their life by treating them as full members and participants in the common life of Christian communities.

#### 2.3. Child abuse and its effects on Children's Spirituality

Child abuse in all its forms (physical, emotional, mental) is a fundamental mistreatment of children's rights that takes place in interpersonal relations with children. Spirituality, having its natural source in childhood, (Nye, 2009) is, also, primarily developed along with the child's initial basic relations. It is through interpersonal relations within the community of the church that children construct their relationship with God. Children tend to project the quality of their relationship with the persons in church to their relationship with God.

When a child enters an interpersonal relationship, it participates in it in a holistic way: physically, mentally, emotionally and socially. Thus, if a child is experiencing positive relationships in church it is the whole of his/her existence that develops. In the same way, child abuse experienced by children through their interpersonal relations affects equally their physical, mental, social and spiritual development.

The relational character of spirituality, as well as of child abuse, stresses the immense responsibility of the people in church dealing with children to create safe and fruitful relationships with them which reflect the loving relationship between God and with His creatures.

# 3. Legal approach to rights of children

The ecumenical Declaration of Human Rights by the General Assembly of the UN in 1948 was a crucial step towards the protection of human rights as a component of the international legal status. However, it was only in 1989 that considerable attention was given to children's rights, as a special vulnerable group of individuals, with the Convention on Children's Rights adopted by the UN General Assembly. In addition, there are many international legal instruments concerning the rights of children in Europe produced by different European Institutions e.g. European Union's and the Council of Europe's directives and recommendations. Here is a basic list of recent documents related to children's rights produced by the UN, the EU and the Council of Europe, which can also be found on line.

# 3.1. The United Nations

- United Nations Convention on the Rights of the Child (UNCRC) (1989)
- World Declaration on the Survival, Protection and Development of Children (1990)

# 3.2. The European Union

- Communication "Towards an EU Strategy on the Rights of the Child" (2006)
- EU Guidelines on the Rights of the Child (2007)
- EU Guidelines on Children in Armed Conflicts
- Communication "A Special Place for Children in EU External Action" (2008)
- Council Conclusions on children in development and humanitarian settings (2008)
- Commission Staff Working Document on combating child labour (2010)
- Council conclusions on child labour (2010)
- Proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA (2010).

# 3.3. Council of Europe

- Recommendation Rec (2002)12 of the Committee of Ministers to member states on education for democratic citizenship
- Resolution 1193 (1999) on Second-chance schools or how to combat unemployment and exclusion by means of education and training
- Recommendation 1346 (1997) on human rights education
- Recommendation 1346 (1997) of the Parliamentary Assembly Human rights Education
- Recommendation 1849 (2008) for the promotion of a culture of democracy and human rights through teacher education.

Children's rights included in these instruments can be grouped according to three main concepts: protection, equality in the provision of well-being and participation. Special reference is also given in the UNCRC to the spiritual rights of children. In the table below the articles of the UNCRC related to the spiritual needs of children are listed according to the above mentioned trends.

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Concept	Article number	Article Content
Protection	2	States Parties shall respect and ensure the rights set forth in the present Convention to each child irrespective of the child's or his or her parent's religion
	14	States Parties shall respect the right of the child to freedom of thought, conscience and religion
	20	A child temporarily or permanently deprived of his or her family environment []due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's [] religious [] background
	32	States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be []harmful to the child's [] spiritual, moral or social development
Participation	14	Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect []freedoms of others
	30	In those States in which religious [] minorities or persons exist [], a child belonging to such a minority shall not be denied the right, in community with other members of his or her group, [] to profess and practise his or her own religion.
	17	States Parties [] shall ensure that the child has access to infor- mation and material from a diversity of national and international sources, especially those aimed at the promotion of his or her [] spiritual and moral well-being.
Provision of well being	29	<ul> <li>States Parties agree that the education of the child shall be directed to:</li> <li>(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;</li> <li>(b) The development of respect for human rights and fundamental freedoms [];</li> <li>(c) The development of respect for the child's parents, his or her own cultural identity, language and values [];</li> <li>(d) The preparation of the child for responsible life in a free society in the spirit of understanding, peece, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;</li> </ul>

Despite universal agreements on the importance of children's rights, these are not universally implemented, and both state organisations and international institutions play a crucial role in ensuring that the rights of children are respected and upheld.

# 4. Best practices (protection, equality and participation)

European churches are challenged, not only to coordinate with state institutions within member states in order to contribute to the provision of children's rights in different countries, but to respect and to meet these rights, in their own space, understanding spirituality as a basic and stable trait that influences everything that is done with and for children within churches. Undertaking this obligation, different churches in Europe initiate different activities and best practices. Some of them are presented in the table below according to the three concepts mentioned above.

Concept	Activities	
Protection	Manifestation of a clear and sound declaration that children's rights are respected within church	
	Training of parents on Christian parental roles (Parents' school)	
	Training of priests and people involved in catechism on children's rights within churches	
Participation	Participation of children in the liturgical part of churches life	
	Participation of children in the pastoral life of church	
Provision of well- being	Coordination with educational authorities in order to contribute in the provision of a human rights education for children	
	Provision of extra individual tutorials for children with learning difficulties in order to reduce school dropouts	
	Provision of basic life resources (e.g. food and accommodation) for single parent families or for deprived children	
	Coordination with social work authorities in order to help migrant children be socially included and avoid social isolation	
	Provision of counselling services for parents and children	

Most importantly, the role of churches in relation to children is to promote religious communities in which every child is valued and all children are given the opportunity to grow up as competent and confident citizens, healthy in every dimension of their existence, with a secure sense of belonging and with a belief that they can make a difference in the world.

# 5. Proposals for action in support of rights of children

Despite the acknowledgement of the churches' crucial role in promoting and respecting children's rights and the different practices mentioned above, there is still much to be done on behalf of the European churches. Based on a human rights theology and the ecclesiastical tradition, churches are called upon to care for children within their space and beyond. To achieve this, churches need to have an action plan to support the rights of children on parish level. This action plan should include actions referring to children, parents and people of the church teaching children. Below there is a proposed list of activities that can be initiated by churches in order to protect and support children's rights.





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# 5.1. Including children as full members and participants in the common life of church

Spirituality is an innate trend in children's personality that allows children to be regarded as full members and participants in the common life of church from the beginning of their life. Thus, children must be given their own space in all dimensions of the church's life: the liturgy, the catechism and pastoral care. Children should be given the chance in their parish, and broadly in their church, to actively participate in all the activities that are included in the church's life, but most significantly, to have a voice on issues that concern their life in church. The below mentioned activities can promote active participation of children in church:

- *Children's committees,* which can represent children in the church committees and ensure their participation in decision making
- *Debates* on issues related to children's life in church and beyond
- · Regular children's meetings with clergy on issues related to their life in church,
- Working Groups of children that decide on and participate in different activities of their parish,
- Leading younger children in church activities
- *Publication* of a newsletter by the children

# 5.2. Supporting the formation of loving and safe families

In order to support the formation of loving and safe families, churches can initiate:

- *counselling services* for parents and children, provided on a regular basis by suitably educated family counsellors in different parishes, can enhance the support of parents and children facing problems in their family life.
- *training activities* for parents to enhance the skills and knowledge needed to develop, support and sustain loving homes.
- working groups, according to the different activities in their parish to promote parents'
  participation with their children in the parish's life. Active participation of parents
  together with their children should be initiated in a democratic process, that is to say,
  with respect to dignity and diversity of every family as well as to the child's bond with
  parents. Parents and their children should have the chance to choose together, through
  completing a handout presenting the activities of the parish, in which area of church's
  life they feel like participating.
- *parents' and children's circles* can provide them with the opportunity to talk about and share their experience of working together in and for the church. Circles' meetings should be led by adequately trained facilitators.

In this way, church becomes the "meeting point" for children and their parents. Throughout counselling, training and participation parents can be prompted and supported in recognising and appreciating their children's abilities, in attending the spiritual development of their children and in re-creating healthy parent-child relations.

#### 5.3. Promoting quality of religious education within church

To achieve this goal, churches should focus on quality training of the persons that undertake the role of catechism in different parishes.

- Suitable *training programmes-workshops* should be planned and applied for people teaching in and for the church. The thematic areas included in the training should be related to issues of developmental and counselling psychology, theology, and teaching methodologies. Participants, after finishing their training, should be able to respect each child's differences and capacities to learn, recognising the needs of those children with special needs and with special gifts, and to teach children to understand, respect and celebrate diversity within church.
- *Production of suitable educational material* (booklets, manuals, worksheets etc.) to be used for the purposes of religious education within church. A formation of a committee composed by theologians, educational professionals and psychologists could enable the production of suitable material that would include the theological, educational and psychological dimension of religious education provided by the church.

In this task churches can be assisted by schools and other training institutes in their area in order to ensure the provision of adequate training and educational resources.

# 5.4. Promoting physically and emotionally safe environments

Churches should form physically and emotionally safe environments encompassing children in a holistic way. Any approach aiming at the protection and upholding of children's rights in church should refer, not only to the development of children's spirituality, but to all dimensions of their development: physical, mental and social development. This can be achieved through

- safe indoor and outdoor games or game-like activities children should be given the chance to physically exercise, practice healthy conflict resolution, challenge their prejudices, eliminate discrimination and gain positive images that respect the dignity of every human being. In addition, it is very important that children talk about the group dynamics in their games with their suitably trained young leaders.
- *cultural activities* where children can have the chance to meet the tradition of their community and to develop alternative and creative ways of expressing themselves as members of the church referring to the broader community.

# 5.5. Enhancing research initiatives

*Research projects* initiated by the church, in coordination with academic institutions or NGOs, can give a clearer idea on the needs of children regarding their rights and their expectations from church. Research can be seen by churches as another means of "giving voice" to children and can provide churches with valuable evidence for the assessment and renewal of their approaches regarding the protection and promotion of children's rights.





# 6. Ouestions which relate to the topic during the training

Some guestions which are important to stimulate further discussion on children's rights.

- How can churches persuade the broader society that they respect and promote children's rights?
- How can the participation of children in the life of the parish be enhanced?
- What is the theological approach to bullying and child abuse?
- How does church support children who have been bullied or abused?
- In what ways is the church contributing to the prevention of bullying and child abuse?

# 7. Resource material for the training on rights of children Pestalozzi Programme of Council of Europe:

http://www.coe.int/t/dg4/education/pestalozzi/default\_en.asp

#### European Charter for Democratic Schools without Violence

http://www.see-edc.info/contenido/english/database/products/european-charter-for-democratic-schools-without-violence.html

Exploring Children's rights www.coe.int/edc

#### Children's spirituality: Christian Perspective http://childspirituality.org/

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CHECKLIST "How to organise a training, a seminar or a workshop" This document is drafted on the basis of the Manual on training methodology for human rights training of the Council of Europe HELP Programme

In this document you will find a list of practical details, to be taken into account when organising a training activity. It goes from aspects such as the place of venue to questions of a more methodological character.

# 1. Why are you organising this event?

What made you decide to organise a seminar, a workshop or a discussion?

Please do not be satisfied too easily with the answer to this question. You have to be aware of the direct and probably obvious reason. But there is more: what do you want to change? Would you hope for better knowledge and understanding of the issue at stake? Would you like people to change their moral convictions? Would you like to inspire people to take action? If yes, what should be the outcome of the action taken?

You have to be very clear on your motives, aims and drive – if your focus is not clear the organisation and programme of the event might suffer from this lack of focus.

# 2. Who will be your target group?

The target group is decisive for the translation of your aims mentioned above and the actual programme of your event: their needs, their level of understanding, their position in society or work is decisive for what you can do.

Again: be very precise in identifying your target group. It is easier to have an effective and profound study or discussion if you invite a homogenous group of people; they share background, needs or level of understanding and can easily exchange.

Heterogeneous groups will not have this advantage and you will find it more difficult to offer a programme satisfactory to the different needs and expectations. However, it is not always possible to create homogenous groups.

The advantage of heterogeneous groups is that the participants have the opportunity to encounter people they normally would not meet and can benefit from new insights and experiences.

# 3. Deciding on the trainers/speakers/experts

Can the habitual team of trainers/speakers you generally invite cover the subject?

Is it necessary/preferred to invite 'outsiders', e.g. journalists, psychologists, lawyers, the Ombudsman, national experts, victims of a violation or others?

Is it necessary/preferred to invite foreign experts? For example: experts from religious or other communities, NGOs, representatives of relevant international institutions or organisations (European Union, Fundamental Rights Agency, Council of Europe, OSCE, UN and so on).



# 4. Deciding on materials and methods

The (team of) trainers/speakers/experts should decide at an early stage how they want to conduct the event.

This means they should identify:

- The materials the participants will be provided with, either in advance or during the training (programme, handbooks, readers, handouts, case studies).
- The tools they would like to use (PowerPoint, overhead projector, video/DVD, flipchart).

# 5. Establish the best possible learning environment

Whatever methods are adopted, there is one general issue which needs to be addressed: how to ensure that participants feel comfortable and receptive. In other words, how to establish the best environment?

Location: if you invite participants related to work: providing an environment geographically distinct from the working place of participants is helpful: There will be less chance of interruption on work-related issues (provided mobile phones are very definitely turned off!) making it easier to achieve training aims and outcomes.

Accommodation issues, etc: physical comfort is important. Consider: room temperature room ventilation seating capacity seating arrangements – can everyone see the speaker? Can the speaker see every member of the audience? Are there enough rooms (or areas) for 'breakout' small group activities?

# 6. Deciding on the activity

Decide on the budget available for the event.

Timing: duration of the event (one day, several days)

Level of training: are you organising a seminar or workshop for participants with advanced knowledge on the topic or beginners?

Aim of the event: transfer of knowledge or skills, change of values or attitude? Formulate the intended learning outcomes in advance; they are the basis for all further decisions and preparations.

# 7. Practical organisation

- 1. Send the invitations or the confirmations of participation to the participants. (min. 2 months in advance);
- 2. Send the materials well in advance to participants, so that they have enough time to prepare themselves (min. 2 weeks);

3. Inform the trainers and participants about the 'house rules';

TIP: Make sure that mobile phones are kept off during training and explain to participants they have opportunities to phone during breaks;

- 4. Prepare the evaluation tools (e.g. questionnaires);
- 5. Prepare the badges for participants and trainers;
- 6. Coffee breaks/ lunch: ensure that coffee, tea and lunch are available at the right time;
- 7. Prepare the documents to be distributed at the venue;
- 8. Prepare PowerPoint, overhead projector, flipcharts and pens etc.;
- 9. After the event: compile the evaluation results and plan a follow-up. Discuss the evaluation outcome with the trainers and within the institute.







# LIST OF ACRONYMS

Human Rights Manual - ACRONYMS

AIDS: Acquired immunodeficiency syndrome **BEPA:** Bureau of European Policy Advisers **CAT:** Committee against Torture CCME: Churches Commission for Migrants in Europe **CCPR:** Committee on Civil and Political Rights **CEC:** Conference of European Churches **CED:** Committee on Enforced Disappearance **CEDAW:** Committee on the Elimination of Discrimination against Women **CERD:** Committee on the Elimination of Racial Discrimination **CESCR:** Committee on Economic, Social and Cultural Rights **CMW:** Committee on Migrant Workers CoE: Council of Europe **COMECE:** Commission of Bishops' Conferences of the European Community **CPCE:** Community of Protestant Churches in Europe CRC: Committee on the Rights of the Child CRPD: Committee on the Rights of Persons with Disabilities **CSC:** Church and Society Commission **CSCE:** Conference for Security and Cooperation in Europe DG: Directorate General DRC: Democratic Republic of the Congo EC: European Commission ECHR: European Convention for the Protection of Human Rights and Fundamental Freedoms **ECHRT:** European Centre for Human Rights Training **ECRI:** European Commission against Racism and Intolerance **ECRML:** European Charter for Regional or Minority Languages ECSC: European Community of Steel and Coal ECtHR: European Court of Human Rights **EEAS:** European External Action Service **EECCS:** European Ecumenical Commission for Church & Society **EIDHR:** European Instrument for Democracy and Human Rights **EKD:** Evangelische Kirche in Deutschland

EPP: European People's Party

ESC: European Social Charter

EU: European Union

EUMC: European Monitoring Centre on Racism and Xenophobia

EurAc: European network for central Africa

EUROFEDOP: European Federation of Employees in Public Services

FCC: Federal Council of Churches (of the USA)

FCNM: Framework Convention for the Protection of National Minorities

FIAN: FoodFirst Information and Action Network

FRA: Agency for Fundamental Rights

FROB: Freedom of Religion or Belief

**GDP:** Gross Domestic Product

GG: Grundgesetz

HCNM: High Commissioner for National Minorities

HELP: Human Rights Education for Legal Professionals

HIV: Human immunodeficiency virus

HR: Human Rights

HRC: Human Rights Committee

HRC: Human Rights Council

HRDN: Human Rights and Democracy Network

ICC: International Criminal Court

ICCPR: International Covenant on Civil and Political Rights

ICERD: International Convention on the Elimination of all forms of Racial Discrimination

ICESCR: International Covenant on Economic, Social and Cultural Rights

ILO: International Labour Organization

IMF: International Monetary Fund

INGO: International Non-Governmental Organisation

**IRA:** Irish Republican Army

LGBT: Lesbian, Gay, Bisexual and Transgender

LIBE: EP Committee on Civil Liberties, Justice and Home Affairs

LWF: Lutheran World Federation

MEP: Member of the European Parliament

NGO: Non-Governmental Organisation

NPT: Non-Proliferation Treaty







**OD:** Organisational Development **ODIHR:** Office for Democratic Institutions and Human Rights **OHCHR:** Office of the High Commissioner for Human Rights **OPCAT:** Optional Protocol to the Convention against Torture **ORG:** Oxford Research Group **OSCE:** Organisation for Security and Cooperation in Europe PACE: Parliamentary Assembly of the Council of Europe SEK: Schweizerischer Evangelischer Kirchenbund **SOC:** Serbian Orthodox Church SPT: Subcommittee on the Prevention of Torture **TEU:** Treaty on the European Union **TFEU:** Treaty on the Functioning of the European Union UCC: United Church of Christ **UDHR:** Universal Declaration of Human Rights **UEPAL:** Union of Protestant Churches in Alsace and Lorraine UK: United Kingdom of Great Britain and Northern Ireland UN: United Nations UNCRC: United Nations Convention on the Rights of the Child **UNDP:** United Nations Development Programme **UNESCO:** United Nations Educational, Scientific and Cultural Organization **UNHCR:** United Nations High Commissioner for Refugees UPR: Universal Periodical Review US: United States USA: United States of America WCC: World Council of Churches WG: Working Group WSCF: World Student Christian Federation WT0: World Trade Organization WWII: Second World War

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**Prof. Dr. Malcolm Evans** is a Professor of Public International Law at the University of Bristol and Director of its Human Rights Implementation Centre. His interests focus on the international protection of the freedom of religion or belief and on issues concerning torture and torture prevention. He is a member of the OSCE ODIHR Advisory Council on the Freedom of Religion or Belief and of the United Nations Subcommittee for Prevention of Torture.

**Mr Dennis Frado** has served as the main representative of the Lutheran World Federation at United Nations headquarters since 1991. Prior to that he was on the staff of the LWF in Geneva and has served twice as a Lutheran public policy advocate in Washington, DC.

**Dr. Göran Gunner** is a researcher at the Church of Sweden Research Unit and an Associate Professor at the University of Uppsala. He lectures on human rights at the Stockholm School of Theology. He is the author and the editor of several books on human rights issues.

**Ms Kati Jääskeläinen**, human rights secretary (2004-2010) in the Church Council of the Evangelical Lutheran Church of Finland. Holds a MA in international relations from the University of Kent at Canterbury, currently MA student of theology in the University of Helsinki. Member of the CSC-CEC Working Group on Human Rights and Religious Freedom.

**Rev. Frank Kantor** is a Secretary for Church and Society of the United Reformed Church based in London, where he works in an ecumenical partnership with Baptist and Methodist colleagues responding to public issues challenges in the UK and Europe. Before this he was based in Durban, South Africa, where he worked ecumenically on a range of projects related to human rights, economic and social justice, and peace and reconciliation initiatives across the Southern African region.

**Dr. Chrystalla Kaloyirou** is a teacher trainer at the Cyprus Pedagogical Institute. She holds a B.Ed and an M.Ed (University of Nottingham) and a Ph.D (University of Warwick). She is a member of the committee of the Cyprus Ecumenical Forum of Christian Women. Her main academic and research interests are school bullying, children's social development and multicultural education.

**Dr. Peter Krömer** has worked professionally as a lawyer since 1978; he has a leading personal interest in questions of religious freedom, human rights and legal questions of church and state. Since 1984, he has been a member of the Synod of the United Protestant Church of Austria.

**Rev. Dr. Marjory MacLean** served from 1996-2010 as a Deputy Clerk of the Church of Scotland's General Assembly. After training first as a civil lawyer and then for ordination, she served as parish minister of Stromness, Orkney, before taking up her General Assembly role full-time in 1998, along with doctoral studies in Church-State relations. Dr MacLean will be deployed by the Royal Navy for the latter part of 2010, before returning probably to a civilian pastoral ministry in 2011.

**Ms Hermine Masmeyer** founded the European Centre for Human Rights Training (http:// www.echrt.org). She is a consultant and trainer on human rights and learning methodology, including E-learning. She is an honorary judge in Amsterdam and Zwolle (the Netherlands). From 2006, she was the manager of the Council of Europe's Programme for Human Rights Training for Legal Professionals (HELP).

**Dr. Torsten Moritz** holds a Ph.D. in political science from the Free University Berlin and has broad research experience in Eastern and Central European transformation after 1989. Having been involved in the leadership of various pan-European Youth networks in the late 90s, he has been working for the Churches' Commission for Migrants in Europe (CCME) since 2002 as an Executive Secretary on EU policy and projects.

**Dr. Jochen Motte** studied theology in Wuppertal, Tübingen (Germany) and Bern (Switzerland). He became an assistant pastor at the Kirchliche Hochschule, Wuppertal (a Church

university), was ordained in 1990 and in 1992 further studied systematic theology at the Kirchliche Hochschule Wuppertal on the theme, "Gesamtbiblische Theologie nach Walther Zimmerli". Since 1992 he has been a co-worker at the United Evangelical Mission, Wuppertal, member of the board of directors and leader of the department for justice, peace and the integrity of creation.

**Ms Diane Murray** grew up in England and New Zealand but has spent most of her adult life in France. She worked for over 30 years with the Council of Europe in a number of areas, including librarianship, youth information and human rights, particularly the right to equality between women and men. She was the Secretary of the European Committee for the Development of Sport and worked with a number of countries in East and Central Europe to develop sport as a social and leisure activity and in Bosnia where sport for the disabled was used to help war victims. She is an Anglican.

**Rev. John Murray** was brought up in England but spent most of his working life as an international civil servant with the Council of Europe in Strasbourg, where he was secretary of several inter-governmental committees in the field of social affairs and migration. A priest of the Church of England, he served as Anglican Chaplain in Strasbourg from 2006-2009. He is also an associate staff member of the Church and Society Commission of CEC.

**Rev. Anthony Peck** is a British Baptist minister who currently serves as the General Secretary of the European Baptist Federation, which brings together Baptist Unions in Europe, Central Asia and the Middle East. He has long experience of both reflection and action in responding to issues of human rights and religious freedom.

**Prof. Dr. Vladan Perisic** has a PhD in Philosophy and was educated in Belgrade and Athens. Present position: Professor of Patristics and Theological Epistemology at the Faculty of Orthodox Theology (University of Belgrade). Field of interest: relation between philosophy and theology.

**Prof. Dr. Gerhard Robbers** was born in Bonn, Germany, in 1950. He received his doctoral degree in law in 1978 and obtained his final law degree in 1980 in Freiburg. From 1981-1984 he served as law clerk to the President of the German Federal Constitutional Court. In 1986 he obtained his habilitation in Law. From 1988 to 1989, he was a Professor of Law at the University of Heidelberg. Since 1989, he has been Professor for Public Law at the University of Trier. He is a Director of the Institute for European Constitutional Law and the Director of the Institute for the Legal Policy at Trier University.

**Ms Donatella Rostagno** Donatella has been working on human rights issues for the past 13 years for different international NGOs based in Brussels. She is a human rights advocate and has developed an in-depth knowledge on development, gender and security issues. Since January 2007, she has been working as a political analyst for the European network for central Africa (EurAc), a network of 50 European NGOs active in Rwanda, Burundi and DRC, where she has developed work on issues such as democratisation, security sector reform, gender and security. Donatella has also managed EurAc's electoral observation missions in

Burundi (2010) and DRC (2011). Donatella has developed a broad network of contacts with civil society organisations in the Great Lakes region in Africa. Donatella holds a BA in Public Relations and Communications and a BSc in International Studies as well as a Certificate in human rights law.

**Dr. Simona Santoro** is the Adviser on Freedom of Religion or Belief at the Office for Democratic Institutions and Human Rights, OSCE.

**Bishop Dr. Martin Schindehütte**, born 1949, studied theology 1969-1974. Parish minister 1975-1987. Member of staff at the Evangelical Academy of Hofgeismar 1987-1992. 1992-1994 executive secretary for asylum and refugee policy for the Evangelical Church in Germany (EKD). 2002-2006 Vice President at the Church Office of the Evangelical-Lutheran Church of Hannover. Since 2006 Bishop and Head of the Department for Ecumenical Relations and Ministries Abroad at the EKD church office Hannover.

**Rev. Dr. Patrick Roger Schnabel** studied theology/divinity at Bethel College, Bielefeld, St Mary's College, St Andrews, and at Göttingen University. He also read Church Law, State-Church-Law and European Law at Göttingen and at the University of Potsdam, where he completed a doctoral thesis on the Dialogue of the EU with Churches and Religious Communities according to Art. 17 TFEU. He worked as a Vikar near Hanover and took his Church Examination at the Loccum Monastery. He has been the Legal Advisor and Deputy Head of the Brussels Office of the Protestant Church in Germany (EKD).

**Dr. David Stevens** 1948-2010 was a Leader of the Corrymeela Community (2004-2010), an ecumenical community of reconciliation in Northern Ireland. He was formerly General Secretary of the Irish Council of Churches and a member of the Government's Standing Advisory Commission on Human Rights 1988-92.

**Rev. Dr. Georges Tsetsis** is a former member of the WCC staff and former Permanent Representative of the Ecumenical Patriarchate to the WCC and the CEC.

**Ms Natallia Vasilevich**, political scientist, lawyer and journalist from Minsk, Belarus. Director of cultural and educational Centre "Ecumena". Works on issues of religious identity, social ethics, human rights, freedom of religion or belief, ecumenical movement. Teaches constitutional law, public administration and human rights in Belarusian Law Institute (Minsk) as well as in European Humanities University (Vilnius). Holds a master in political science from Belarusian State University. Member of the CSC-CEC Working Group on Human rights and Religious Freedom (representing WSCF-E). Belongs to Orthodox Church.

**OKRin Katherina Wegner** is a historian and jurist – specialised in international public and European law – who has worked for the Evangelical Church in Germany (EKD) since 1993, mainly in human rights and migration law. She currently represents the "Diakonisches Werk der EKD" at the seat of the European Union in Brussels.

# APPENDIX : UNIVERSAL DECLARATION OF HUMAN RIGHTS

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations, Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLA-RATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

# Article 1.

• 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.

#### Article 2.

• Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional

or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

# Article 3.

• Everyone has the right to life, liberty and security of person.

# Article 4.

• No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

# Article 5.

• No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

# Article 6.

• Everyone has the right to recognition everywhere as a person before the law.

# Article 7.

• All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

# Article 8.

• Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law.

# Article 9.

• No one shall be subjected to arbitrary arrest, detention or exile.

# Article 10.

• Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

# Article 11.

- (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial, at which he has had all the guarantees necessary for his defence.
- (2) No one shall be held guilty of any penal offence on account of any act or omission, which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

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# Article 12.

• No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

# Article 13.

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

# Article 14.

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

# Article 15.

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

# Article 16.

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

# Article 17.

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

# Article 18.

• Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

# Article 19.

• Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

# Article 20.

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

# Article 21.

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

# Article 22.

• Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

# Article 23.

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

# Article 24.

• Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

# Article 25.

• (1) Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances



beyond his control.

• (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

#### Article 26.

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

# Article 27.

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

# Article 28.

• Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

# Article 29.

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

# Article 30.

• Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

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