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Protecting human rights – promoting gradual processes rather than demanding quick results

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Protecting human rights – promoting gradual processes rather than demanding quick results

Stockholm, Bonn, 29 November 2010. A great deal has been achieved: 62 years ago the adoption of the Universal Declaration of Human Rights (UDHR) on 10 December 1948 marked the beginning of a period of "standard-setting" in the field of human rights, which continues to this day. The Declaration has come to form the basis of more than 60 international and regional human rights treaties. Human rights have been refined, defined and reinforced. Nearly all countries have committed themselves to the most important of these rights. Today hardly a national constitution can do without its detailed list of human rights, copied largely from the UDHR. Has it helped the people on the ground? Hardly in many cases. Rules on human rights and their protection are often worth little more than the paper they are written on.

There are many reasons for this, some being sufficiently well known: as a rule, the desire of the ruling elites of many countries to hang on to power is incompatible with postulated human and civil rights. Under authoritarian regimes in particular, as in Ethiopia and Egypt, despots cannot give them any room if they are not to endanger their claim to power. Lists of human rights degenerate into a façade because such countries lack the independent and effective national control mechanisms needed to enforce them. This façade is frequently tolerated. During the Cold War, for example, the aim was to keep the despots on side (as in Zaire, Angola and Nicaragua). Today an active human rights policy often has a hard time holding its own against economic and security interests.

But there are other reasons, too: first of all it cannot be denied that in many societies high human rights standards may be the goal and the incentive for achieving ideals. They may trigger processes of transformation and provide a necessary framework for moving closer to the goal. Other societies adhere to norms alien to many current human rights standards, whether the prohibition of discrimination in general or the call for women's rights in particular. Formal national law into which human rights standards have been integrated and (usually informal) traditional law of the community exist side by side. Official, statutory rights have not evolved from traditional law, but stand apart from it. Furthermore, it is often the case that only one life in the traditional community actually guarantees the foundations for individual survival, since state mechanisms that enable social safeguards to be provided outside that community do not in fact exist.

The human rights standards of state law then remain an illusion, even if there are effective mechanisms for enforcing them (as these mechanisms, too, are absent in many states, those concerned start from an even more desolate position). The de facto irrelevance of formal law thus threatens to erode the understanding of settled law, and the idea of the rule of law is devalued.

The change from traditional, socioculturally moulded norms is rarely accomplished in a single leap forward, but is rather the outcome of a long process. Instead of demanding that leap forward, it may often be more appropriate to lend external support to processes of change, if human rights are to be effectively protected and the law is to be understood. After all, the present standard of human rights in Western Europe is partly the outcome of a lengthy change of sociocultural values. In various essential respects that change of values largely occurred in harmony with the development, application and interpretation of formal law.

Two examples may illustrate this: women in Switzerland did not gain the right to vote and to stand for election at national level until 1971, and it took almost 20 years more for that right to be introduced in the last canton. This was mainly due to Switzerland's political system: amendments to the constitution are decided solely by the people of Switzerland who are entitled to vote and by the cantons. Consequently, a majority decision by the male population was needed before the right to vote at national level was granted to women.

In Germany it was to be 1969 before many of the provisions that made "immoral" acts (such as sexual relations between men) criminal offences were either removed from the Penal Code or moderated.

It took until 1994 and the need to approximate East and West German penal law for discrimination against homosexual men to be completely abolished. In 1957, the Federal German Constitutional Court approved the constitutionality of the provision in the penal code that penalised the sexual relationship between men (noteworthy, the penal code was silent on the same relationship between women). The court declared its conformity with the bill of rights enshrined in the constitution. The relevant articles in the bill of rights have not been amended ever since. Yet it can be assumed that the then law would today be declared unconstitutional, that the change of sociocultural values has thus reached the highest German court.

What these examples are intended to show is that even universal human rights are usually so worded and/or interpreted that they continue to exist side by side with a society's own system of values. They may be slightly ahead of the change to society's values, support it or accelerate it, but they always retain their link to that system of values. Otherwise, the social acceptance of human rights cannot be guaranteed. Where that link is absent, human rights are in danger of being seen as exogenous products and of not, in substance, being enforced. Any attempt to foreshorten the process of sociocultural change will be limited in its success.

Many development cooperation programmes have recognised the need for human rights to be introduced gradually. There are, for example, projects designed to curb the genital mutilation of women in Africa. Gaining access to the circumcisers/imams and persuading them to become the leaders of the new way of thinking has often been more successful than legal proscriptions and attempts to enforce them.

An approach of this kind shifts the focus from the adoption of standards by institutions to the process of the people's internalisation of norms, since it is, after all, on their system of values that the effectiveness of formal law depends. The fact that constitutions and laws can be changed more quickly than systems of values may explain the tendency to focus on the outcome rather than the process. Recalling that in Western Europe, too, the socialisation of human rights was a slow process may increase patience and thus the willingness to accept that process.

This Current Column represents the author's personal opinion and does not therefore necessarily reflect the views of IDEA, TransMit or the German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE).

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