

SET THE OPPRESSED FREE!

THE CHURCH OF NORWAY AND HUMAN RIGHTS



DEN NORSKE KIRKE

Mellomkirkelig råd



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→ «GOD HAS CREATED ALL HUMAN BEINGS IN THE IMAGE OF GOD, AND THE INHERENT, EQUAL DIGNITY OF ALL HUMAN BEINGS IS THE BASIS FOR THE RADICAL MESSAGE OF EQUALITY FOUND IN CHRISTIANITY. THE FOUNDATIONS OF THE CHURCH'S EFFORTS FOR UNIVERSAL HUMAN RIGHTS ARE THEREFORE FAITH IN GOD, THE CREATOR. FAITH IN JESUS CHRIST, WHO SHOWS GOD'S CARE FOR ALL SIDES OF HUMAN LIFE AND THE CHURCH'S CALLING AND MISSION, ALSO INSPIRES THE CHURCH'S HUMAN RIGHTS INVOLVEMENT, ENCOURAGING A CONFRONTATION WITH OPPRESSION, INEQUALITY AND INJUSTICE.»»

(THE CHURCH OF NORWAY GENERAL SYNOD, 2014)

PREFACE

The Church of Norway Synod 2014 discussed the document “*Set the oppressed free!*” and recommended it as a resource document that can lead to reflection and action in the Church of Norway – at international and national level, and at local level in the congregations. The Church Synod especially asked congregations to include human rights perspectives in the congregation’s services, diakonia and Christian education. The Synod discussed the characteristics of the church’s responsibility in human rights efforts, as well as a set of criteria for the church’s human rights involvement, which can be found in the resolution attached to this document. The Church Synod’s strong commitment to human rights makes this document (which served as a basis for the Synod deliberations) an important resource for the years ahead.

«THE SPIRIT OF THE LORD IS ON ME,
BECAUSE HE HAS ANOINTED ME TO
PROCLAIM GOOD NEWS TO THE POOR.
HE HAS SENT ME TO PROCLAIM FREEDOM
FOR THE PRISONERS AND RECOVERY
OF SIGHT FOR THE BLIND, TO SET THE
OPPRESSED FREE, TO PROCLAIM THE YEAR
OF THE LORD'S FAVOUR.» (LUK 4.18-19)

In preparation for this English edition we discussed whether we should leave out references to the specific Norwegian context, in order to make it more relevant for an international audience. However, in the end we decided to keep it close

to the original Norwegian document. We hope our specific reflections and challenges directed towards our own church can be of inspiration to people from other churches, in other parts of the world, in a common reflection on faith and human rights.

The Church of Norway’s human rights commitment stretches back many decades. This struggle has a clear theological foundation. In 1988, the first theological review of the Church of Norway’s human rights involvement was presented, with the title “For the sake of humanity...”. This present review marks a continuation and strengthening of the Church’s human rights commitment.

“Human rights” is not a concept found in the Bible. Still, churches and Christians have a strong human rights commitment. If we read the Bible through the lens of human dignity and human rights, we will find many examples that can motivate us, as a Christian community, to be involved in human rights efforts. The Bible is full of stories about how God ensures justice and denounces abuse, oppression and injustice against people. When Jesus preached in the synagogue in Nazareth, speaking about his calling, he chose a text from the prophet Isaiah. He spoke about the good news for the poor, freedom for the captive and that the oppressed shall be set free (Luke 4: 18-19).

The Universal Declaration of Human Rights and the UN human rights system reflect an international agreement on common norms irrespective of religion, life stance or political ideology. Religions and life stances have different theological

interpretations of, or justifications for, human rights, but can still agree on these rights. Human rights are well suited for dialogue and collaboration across beliefs and ideology. The Church of Norway seeks to be an active partner to states and civil society, to contribute to the respect, protection and fulfilment of all people's rights. This document demonstrates how this is done.

On the other hand, scepticism towards human rights is also strong in many churches. Isn't Christian faith first and foremost about duties, not rights?, some would ask. Or: Aren't human rights a modern idea with secular roots that endorses individualism? Can protection of the individual and safeguarding the community go together? These are questions that are also discussed here.

Legally codified human rights protect the human being from birth, but Christian ethics go beyond this. Human rights are not the same as Christian ethics. The inherent dignity of a person cannot be taken away from her or him, even though her or his rights are not fulfilled. Love, forgiveness and reconciliation are central to Christian doctrine, but they are not human rights principles. In this document, human rights are interpreted further in light of Christian theology.

The Church of Norway Human Rights Committee has written this document, in response to a mandate from the Church Council on Ecumenical and International Relations. The church's Human Rights Committee is the church's expert panel on human rights and plays an important role in supporting various human rights efforts in the church.

I would like to express our gratefulness to the members of the Church of Norway Human Rights Committee for a thorough and solid piece of work. Thank you to Gunnar Heiene (chair person), Ida Eline Engh, Kristine Hofseth Hovland, Tore Lindholm, Katrine Ore, António Barbosa da Silva, Marianne Opheim Sampo, Hilde Skaar Vollebæk and Guro Almås (secretary).

The editors of "*Set the oppressed free!*" have been Gunnar Heiene, Kristine Hofseth Hovland and Guro Almås. The text is, however, a collective product which the committee as a whole stands behind.

Berit Hagen Agøy
General Secretary, Church of Norway Council on Ecumenical and International Relations

Oslo, December 2014

PART I

THE POTENTIAL FOR A STRONG HUMAN RIGHTS INVOLVEMENT FROM CHURCH ACTORS IS LARGER THAN EVER. HUMAN RIGHTS HAVE STRENGTHENED THEIR POSITION IN NORWAY AND THE WORLD. AT THE SAME TIME, THERE HAS BEEN A DEVELOPMENT IN REFLECTIONS AND DISCUSSIONS ON THEOLOGY, CHURCH, RIGHTS AND DIACONAL PRAXIS.

THE FIRST PART OF THIS DOCUMENT ADDRESSES PRINCIPLES OF CHURCH AND HUMAN RIGHTS. IN LIGHT OF THEOLOGY, RENEWED UNDERSTANDINGS OF DIAKONIA AND HUMAN RIGHTS: WHAT IS THE ROLE OF THE CHURCH AS A MORAL DUTY-BEARER TODAY?

01 INTRODUCTION

The work on human rights in the Church of Norway is broad and multifaceted. In the day-to-day work of the Council on Ecumenical and International Relations, the human rights framework is important, both as a reference point and as a tool in addressing a number of the areas the Council deals with, whether it be climate justice, economic justice, undocumented migrants or converts who live in fear of being returned to countries where freedom of religion is under pressure, international collaboration against caste discrimination, or participation in the Oslo Coalition of Freedom of Religion or Belief. Many congregations and individuals in the Church of Norway are directly involved in human rights struggles, for example in specific asylum cases, or through mission and solidarity networks or participation in the Norwegian Church Aid's Lenten campaign.

The Council on Ecumenical and International Relations represents the Church of Norway in different civil society forums where human rights issues are raised, such as the NGO Forum for Human Rights, the umbrella organisation ForUM (Forum for Development and Environment), and in international ecumenical organisations such as the World Council of Churches, the Lutheran World Federation and the Conference of European Churches.

The Church of Norway Human Rights Committee, a subcommittee of the Committee for International Affairs, stays up to date on human rights issues and the human rights situation globally, and gives advice to the Committee for International Affairs and the Council on Ecumenical and International Relations. In various settings in the Church of Norway, a human rights perspective is actively used in the day-to-day work. For example, the Sami Church Council has developed a remarkable know-how on the rights of indigenous peoples, and works to advocate these rights both nationally and in international forums. Human rights also have impact on the work of the church in relation to issues such as gender equality, integration of persons with disabilities, and more.

Despite all this human rights involvement, it is now almost 25 years since the last time the Church of Norway had a comprehensive dialogue on the church's human rights efforts. At the time, the Church of Norway Synod commissioned a report through the Council on Ecumenical and International Relations.¹ Drawing on the report, the Church of Norway Synod adopted principles for the international human rights involvement of the council. The context at the time was one of Cold War and conflict between the East and the West, as well as an active anti-apartheid movement in the church which needed to be theologically well founded.²

Today, the context is different. After the end of the Cold War, we have seen more international unity around and support for the human rights system. In the

Church of Norway, an active human rights involvement is hardly as controversial as it was a quarter of a century ago. In 2014, Norway, and the Church of Norway, celebrate the 200-year anniversary of the Norwegian constitution. At the same time, Parliament is discussing amendments to the constitution that can hopefully strengthen the position of human rights in Norwegian law.

THE STRENGTHENED POSITION OF HUMAN RIGHTS, BOTH IN THE CHURCH AND IN SOCIETY AS SUCH, PROVIDES A GOOD BASIS FOR DEVELOPING A CHURCH RESPONSE AND A DIACONAL PRESENCE IN THESE NEW TIMES.

The strengthened position of human rights, both in the church and in society as such, provides a good basis for developing a church response and a diaconal presence in these new times. The current era is one of climate crisis, entrenched global poverty, and a Europe in economic and social crisis. Globalisation processes and increased movement within Europe means that we are confronted with poverty in a different way than before, and this challenges our legal, political and ethical thinking. On the global arena, Christian and other religious actors can be found both among the human rights defenders and sometimes also among the counter-forces, for example when it comes to women's rights.

This report demonstrates that the Church of Norway can accede to the human rights system as found in the Universal Declaration of Human Rights and the international human rights system. It seeks to show that human rights can be interpreted in light of Christian theology and ethics, and that the struggle for human rights is an integral part of the church's diaconal mission, as expressed, among other places, in the Church of Norway Plan for Diakonia. At the same time, we aim to show that human rights are not a substitute for Christian ethics. Love, forgiveness and reconciliation are examples of Christian

values that are not covered by human rights. The diakonia of the church reaches further and does more than work for the implementation of people's rights. Human rights will typically constitute minimum standards that are internationally agreed, and that are therefore crucial tools in struggles for social justice and against injustice and oppression.

The Church of Norway can and should base its human rights involvement on its theological outlook. At the same time, other religions and life stances will have their own interpretations of human rights and their own rationale for their human rights involvement, based on their own teachings. A diversity of justifications for human rights can strengthen human rights work, and human rights can be a topic well suited for dialogue and cooperation across differences in faith and life stances.

Developments and trends

In recent decades, political and normative points of view have increasingly been based on human rights, at least in Norway and other Western countries. Human rights have in many ways attained a stronger position, as seen in the extent to which they are reference points in public debates. With such extensive use of the concept of rights, there is a risk that it can become watered down and be applied without a conscious awareness of what it means and implies. Parallel to this, we see more debates on questions around the implementation of rights, such as the definition of torture, the principle of the best interest of the child or health rights. These debates have helped show why and in what way rights matter.

After the end of the Cold War, there is a noticeably increased openness for human rights work, and there is a stronger international consensus on human rights. The Cold War saw disparity between the Western countries, who focused mainly on civil and political rights, and the Communist countries, who emphasised economic and social rights. Now, there is markedly more agreement on the indivisibility and interdependence of rights. This was affirmed in the Vienna conference in 1993, where the UN Office for the High Commissioner for Human Rights was also established.³

[1] Jan-Olav Henriksen: *For menneskelivets skyld. Den norske kirkes internasjonale menneskerettighetsengasjement*. Church of Norway Council on International and Ecumenical Relations (1988).

[2] Jan-Olav Henriksen: "Developing a Human Rights Theology" I Peter Prove og Luke Smetters: *Faith and Human Rights. Voices from the Lutheran Communion*. LWF documentation, 51/2006. Minneapolis: Lutheran University Press.

[3] Vienna Declaration and Programme of Action, available at <http://www.unhchr.ch/huridocda/huridoca.nsf/%28symbol%29/a.conf.157.23.en>

The international human rights system has also seen reform with, for instance, the establishment of the Human Rights Council in 2006, replacing the former Human Rights Commission, and, not least, the yearly reviews of member countries under the Human Rights Council, called the Universal Periodic Review, which started in 2007. Through the Universal Periodic Review, the human rights achievements of one fourth of all UN member states is discussed and monitored every year, so that every UN member country is reviewed every four years.

International development work is perhaps the area where a rights based approach has really taken a noticeable position, in a marked shift from a more traditional charity based outlook. A rights based approach to development has, in the course of the 1990s and 2000s, become the dominant paradigm for international development work. This is seen in the policies of among others UNDP, UNICEF, Western countries' aid agencies such as DFID and Norad, and a range of different development organisations. The implication is a shift from seeing the purpose of development work as covering the needs of the people on the receiving end, to focusing on the rights of poor people and how they themselves can become capable of protecting and struggling for their own rights.

WHILE WORKING ON THIS REVIEW, THE CHURCH OF NORWAY HUMAN RIGHTS COMMITTEE HAS CENTRED ITS DISCUSSIONS ON WHICH NEW CHALLENGES AND TOPICS THE CHURCH SHOULD ADDRESS WHEN SHAPING ITS HUMAN RIGHTS INVOLVEMENT IN TODAY'S WORLD.

The rights based approach to development has also helped bring economic and social rights higher up on public agendas, bringing them more into the spotlight together with civil and political rights issues such as freedom of religion, freedom of expression, freedom of association, etc. Larger international human rights organisations, such as Human Rights Watch and Amnesty International, have in the course of the 2000s and 2010s expanded their work from covering primarily civil and political rights to

including, to a much larger extent, economic, social and cultural rights. They have also, thereby, contributed to bringing development and human rights organisations and movements closer together.

Rights under pressure

While human rights are strengthened both in rhetoric and to some degree in implementation mechanisms, some aspects of human rights are also under increasing pressure. In Russia and Central Asia, for example, the situation for human rights defenders is precarious. In the years following September 11th 2001, we saw tendencies in the USA towards an undermining of the prohibition against torture, with attempts to narrow the definition of torture. Parallel to this, detention without verdict as well as extra-judicial killings were increasingly accepted. DR Congo, Eritrea and Colombia are just a few examples of countries where large groups of the population are subject to rights violations every day, often outside the spotlight of international media.

In Norway, we have over the last years seen an increasing scepticism from politicians who are hesitant to ratify new conventions and monitoring mechanisms. This may be the main reason why Norway has not (as of November 2013) ratified the optional protocols of three conventions: the *Convention on the Rights of the Child*, the *International Covenant on Economic, Social and Cultural Rights*, and the *Convention on the Rights of Persons with Disabilities*. This development may spoil Norway's integrity as a country defending human rights, a position that has been central in Norwegian foreign policy for many years.

The basis for a new review of the church's human rights involvement

Human rights issues in the church have historically been understood as "national" or "international", with the Council on Ecumenical and International Relations concentrating on the international issues. This dichotomy can for example be seen in the discussions held in the council following the review done by Jan-Olav Henriksen in 1988, which concentrates on international issues.

Today, however, a partition between national and international human rights issues makes

little sense. Firstly, human rights are in their nature international, and much of their strength lies in the fact that rights issues can be treated at an international level and discussed according to internationally approved principles and mechanisms. Also, globalisation processes, increasing migration, European integration and more open borders within Europe make a national/international divide less relevant than it was 25 years ago. The Church of Norway Human Rights Committee has therefore chosen to examine the church's involvement for human rights as one integral involvement, and also suggests that the issue be raised at the Church of Norway Synod.⁴

The committee would like to suggest that the Synod addresses the issue of the church's human rights involvement in some depth, and that the ambition and purpose of the discussion is to give direction to all the human rights work done at a central church level, as well as inspire and be a resource for local work. This means that while the agenda item is presented and "owned" by the Council of Ecumenical and International Relations and its sub-committees, other groups within the church have also given their input according to the human rights issues they work on. This report is also meant to be useful for groups within the church who get involved in specific human rights cases, including congregations, diocesan councils and organisations with ties to the Church of Norway.

When a group of travelling Roma pitch their tents next to a church in Oslo, both the local congregation and the Church of Norway as such is challenged to respond to fundamental questions relating to dignity, love and human rights – on our doorstep. At the same time, the difficult situation of the Roma people is a European quandary, and the rights issues that come up for the group of Roma visiting Oslo, including their right to an adequate standard of living, to food and to shelter, are issues that also have to be solved at an international, European level.

[4] The issue of the Church of Norway involvement for human rights was raised at the Church of Norway Synod in April 2014.

[5] LGBTI = Lesbian, Gay, Bisexual, Transsexual, Intersex

In September 2010, the Council on Ecumenical and International Relations discussed the fact that Norway had not yet ratified the Optional Protocol of the International Covenant on Economic, Social and Cultural Rights. The discussion included the concept of the church as a moral duty-bearer. The council asked "its staff, together with the Church Council, to consider inviting church and diaconal institutions to a deliberation where the topic is the church's diaconal responsibility as moral duty-bearer with regards to the international human rights system." This is one of the reasons why the Church of Norway Human Rights Committee was asked to start a more comprehensive review of the church's involvement for human rights, and this report seeks to explore the church's responsibilities and possibilities in the field.

Central questions in the review of the Church of Norway human rights involvement

While working on this review, the Church of Norway Human Rights Committee has centred its discussions on which new challenges and topics the church should address when shaping its human rights involvement in today's world.

This report has a *general* part and a *thematic* part. In the general part, a presentation of human rights and the human rights system is given (chapter 2). Chapter 3 reflects on religious perceptions of human rights, before chapter 4 discusses what a theological, Lutheran understanding of human rights is and how this can form a basis for the Church of Norway human rights involvement. Chapter 5 deals with the role of the church as a moral duty-bearer and discusses priorities for the Church of Norway human rights work. Finally, chapter 6 gives special attention to human rights efforts at a local level.

In the thematic part, the Church of Norway Human Rights Committee has identified some topics that demand more in-depth discussion, especially when it comes to church involvement. More themes could certainly have been added, but the selected chapters are on topics that have become especially pertinent over the last decades: the right to live, freedom of religion or belief, environment, poverty, rights based development, migration, indigenous peoples, caste discrimination, gender and human rights, LGBTI rights⁵, the rights of persons with disabilities, and the rights of children.

02

WHAT ARE HUMAN RIGHTS?

From idea to law

The idea of human rights is historically quite new. In any case it is new if we think of it as including:

- » rights that are held in high esteem, that are commonly respected and that are specific and concrete
- » rights that are meant to protect the fundamental interests of human beings against serious threats and dangers
- » rights that make obligations on politics and the legal system, and that are binding also beyond codified laws (customary law) rights that are justified through a universal acknowledgement of the equal dignity of all human beings and that apply to all human beings in the world, regardless of nationality, gender, faith, vice or virtue

A global system of universal human rights took form after the Second World War, against the backdrop of the man-made horrors and harsh lessons of the war. This modern human rights system has all the above characteristics. There are examples of older, codified and institutionalized systems, such as the ten first amendments to the US Constitution, “the Bill of Rights”, and the French declaration on human and citizen’s rights, both from 1789, but none of these fulfil all the above criteria. This chapter will discuss our current, global human rights system.⁶

The *UN Charter* (1945) and the *Universal Declaration of Human Rights* (1948; abbreviated UDHR) were drafted and formed by state representatives, the bulk

of whom were Western states, although there were participants from all “great civilisations”. The populations of the countries who lost the world war and the colonies of the Western powers were not yet represented in the world organisation.

But this situation had changed by the time the UN General Assembly adopted the two central, legally binding, global human rights treaties: the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and the *International Covenant on Civil and Political Rights* (ICCPR). When these two conventions were adopted in 1966, the wave of decolonisation was over and Japan and Germany were again members of the international community on equal terms.

The *UDHR* and the two central UN conventions, which entered into force in 1976, are together called the *International Bill of Rights*. These are texts that were drafted through extensive international discussions and meticulous negotiation processes, where different academic traditions and rivaling value perspectives were brought forward and honed against each other. The catalogue of rights that were, in the end, included in these documents are an expression of well thought-through prioritisations of values, and to some degree compromises, made by representatives from countries with many different kinds of regimes, religions, cultural traditions and levels of economic development.

The international human rights system
When the *Universal Declaration of Human Rights* (UDHR) was adopted, with no votes against, in the UN General Assem-

[6] A concise and good introduction can be found in Thomas Buergenthal, Dinah Shelton, David P. Stewart: *International Human Rights in a Nutshell, Fourth Edition*, West Publishing: St. Paul MN, 2009.



Which rights?

This is a list of 40 public goods that, according to the UDHR, ICESCR and ICCPR, are affirmed as rights for all human beings in states that are bound by the treaties mentioned. (The numbers in brackets show the relevant articles):

- 1 Equality before the law for all without discrimination (UDHR 2; ICESCR 2,3; ICCPR 2,3,26)
- 2 Life (UDHR 3; ICCPR 6)
- 3 Personal liberty and security (UDHR 3; ICCPR 9)
- 4 Protection from slavery (UDHR 4; ICCPR 8)
- 5 Recognition as a person before the law (UDHR 6; ICCPR 16)
- 6 Equal protection under the law (UDHR 7; ICCPR 14,26)
- 7 Access to legal measures against violations of rights (UDHR 8; ICCPR 2)
- 8 Protection from arbitrary arrest and detention (UDHR 9; ICCPR 9)
- 9 A fair and public hearing in front of an independent and impartial tribunal (UDHR 10; ICCPR 14)
- 10 Be presumed innocent until proven guilty (UDHR 11; ICCPR 14)
- 11 Protection from retroactive laws (UDHR 11; ICCPR 15)
- 12 Protection of private life, family and home (UDHR 12; ICCPR 17)
- 13 Freedom of movement and residence within one's own state (UDHR 13; ICCPR 12)
- 14 Freedom to seek asylum from persecution (UDHR 14)
- 15 Citizenship (UDHR 15)
- 16 To marry and found a family by own decision (UDHR 16; ICESCR 10; ICCPR 23)
- 17 Own property (UDHR 17)
- 18 Freedom of thought, conscience, religion or belief (UDHR 18; ICCPR 18)
- 19 Freedom of opinion, expression and media (UDHR 19; ICCPR 19)
- 20 Freedom of assembly and association (UDHR 20; ICCPR 21,22)
- 21 Political participation as part of the right to democratic self-determination for all peoples (UDHR 21; ICCPR 25)
- 22 Social security (UDHR 22; ICESCR 9)
- 23 Work and decent conditions of work (UDHR 23; ICESCR 6,7)
- 24 Free labour unions (UDHR 23; ICESCR 8; ICCPR 22)
- 25 Rest and leisure (UDHR 24; ICESCR 7)
- 26 Food, clothing and shelter (UDHR 25; ICESCR 11)
- 27 Health care and social services (UDHR 25; ICESCR 12)
- 28 Education (UDHR 26; ICESCR 13,14)
- 29 Participation in cultural life (UDHR 27; ICESCR 15)
- 30 A social and international order within which the other rights can be fulfilled (UDHR 28)
- 31 Self-determination under a democratic regime for de jure citizens (ICESCR 1; ICCPR 1, cfr. point 21)
- 32 Humane treatment during detention (ICCPR 10)
- 33 Protection from jailing for debts (ICCPR 11)
- 34 Protection from arbitrary expelling of foreigners (ICCPR 13, cfr. point 14)
- 35 Protection of the culture, language and religion of minorities (ICCPR 27)
- 36 Protection from genocide (separate convention 1948, as of June 2009 ratified by 140 states)
- 37 Protection from propaganda that incites religious or racial hatred (ICCPR 20, separate convention 1966: 167 States Parties)
- 38 Special protection of women from all forms of discrimination (separate convention 1979: 185 States Parties)
- 39 Protection from torture, cruel or inhuman punishment (UDHR 5; ICCPR 7; separate convention 1984: 136 States Parties)
- 40 Special protection for children (UDHR 25; ICESCR 10; ICCPR 24; separate convention 1989: 191 States Parties)

bly 10 December 1948, it established a politically significant, common standard of achievement for all states in the world. But, it was not binding in international law. Later, as the two central conventions ICESCR and ICCPR and other important global human rights agreements came into place, parts of the UDHR have been given the status of *jus cogens*, a norm of interna-

tional law by which states are bound no matter what obligations they have or have not made. Through the UN, a majority of the countries of the world have negotiated and ratified a number of specific human rights conventions, including the UN *Convention on the Elimination of All Forms of Racial Discrimination* (CERD, 1965/1969), the UN *Convention on the Elimina-*

tion of All Forms of Discrimination against Women (CEDAW, 1979/1981), the UN *Convention against Torture* (CAT, 1984/1987), and the UN *Convention of the Rights of the Child* (1989/1990).

Most of these human rights treaties set up special treaty bodies that monitor and assist member states in fulfilling their treaty obligations. Through separate protocols (“Optional Protocols”), that the member states are free to ratify or not, a system has gradually been established where citizens of the States Parties can submit complaints regarding specific violations of rights, after domestic remedies have been exhausted.

NATIONAL IMPLEMENTATION OF HUMAN RIGHTS IS DONE BOTH THROUGH NATIONAL LEGISLATION AND THROUGH OTHER MEASURES

As part of the UN human rights portfolio, there are a number of other declarations, programs and special procedures, such as rapporteurs and independent experts on specific countries or topics. The system has with time grown complicated and somewhat jumbled. Progress was made with the establishment of the UN High Commissioner for Human Rights, in 1994. The Office of the High Commissioner supervise all UN programs for the protection of human rights, they coordinate the special procedures, and are in charge of publications and information to the public and media.⁷

If we list the UN's human rights system according to the level of supranational means, we find in the one end the human rights mechanisms that can take legal, penal measures: the *Genocide Convention* (which has not come into force as a tribunal), the war crimes tribunals in Nurnberg and Tokyo (1946), the two temporary tribunals for the former Yugoslavia (1993) and Rwanda (1994) and the International Criminal Court in the Hague, based on the *Rome Statute* (1998/2002). Next come all the treaties and conventions, and their treaty bodies that have

some degree of supranational authority, depending on the extent to which member states have ratified the optional protocols. Finally, there is the large body of declarations, programs and other, not legally binding instruments.

Somewhere in the middle we find the bodies and institutions in the UN whose human rights mandates come from the UN Charter itself, or that have been established later by the General Assembly. This applies first and foremost to ECOSOC (UN Economic and Social Council) which has an overall responsibility for human rights, the Human Rights Council (from 1946 to 2006 the Human Rights Commission), and the High Commissioner for Human Rights. The Security Council, the Secretary-General and the General Assembly also have important roles in human rights protection.

For most purposes in Norwegian law, the most important international human rights treaty is the *European Convention on Human Rights* (1950/1953), ECHR, which is overseen by the European Court of Human Rights, ECtHR, in Strasbourg. Where the UN treaty bodies, when addressing individual complaint cases, adopt views that are not legally binding, the European Court of Human Rights has the authority to make decisions that are legally binding for the state against whom a case is filed. All member states of the Council of Europe are under the jurisdiction of the European Court of Human Rights and obliged to follow its decisions. The Council of Europe does not have significant muscle to enforce the decisions, but so far the member states have by and large adhered to the Strasbourg Court's decisions.

Only states can be party to a convention, and the conventions only apply to those states that have ratified them. A state that wants to become party to a convention first signs it (a government decision), and then ratifies it (usually a parliament decision). It becomes legally binding upon ratification. For a convention to enter into force, it must be ratified by a certain number of states. This is, for instance, the reason why there is such a gap from the date the two central human rights conventions, the ICCPR and the ICESCR, were adopted (in 1966) to the date they entered into force (in 1976). For protocols, the same procedures apply.

[7] See www.ohchr.org

National implementation of human rights is done both through national legislation and through other measures such as ombud persons, appeal mechanisms, training and follow-up of staff, education, and support to NGOs.⁸

Human rights in the world: some current debates

A basic principle of human rights is that they are universal. They apply to all human beings, regardless of nationality, place of residence, gender, religion, language, etc. The human rights of a person can never be taken away from her or him. Even though states are bound only by the conventions they have ratified, they still cannot “choose” whether their citizens have human rights or not. The universal character of rights means that they apply to everyone. States choose whether or not to commit to fulfilling them.

The universality of rights is, however, debated, and sometimes human rights are labelled as Western inventions, or as being incompatible with local values and cultures. Human rights were developed at a time when European and North-American states dominated on the international arena, and the Cold War entrenched a number of ideological views on which rights were important, according to your identity as part of the “East” or part of the “West” (and more recently “North” or “South”). These discrepancies gave the impression that some kinds of rights only applied in some places, while others applied in other places.

In the implementation of human rights it is also clear that the gap between the ideal and the reality is much larger in some countries than in others. With this in mind, affirming the universality of human rights might seem like a theoretical exercise. This is amplified by the inconsistencies in the foreign policies of powerful states: Some human rights violations are strongly acted upon, while others are ignored. Against this backdrop, a principle of universality might seem hypocritical. At the same time, it is exactly the persons who do not have adequate protection and who live most exposed to human rights abuses, who remind the rest of us why human rights are needed, and why it is important that they apply to all, also those most vulnerable.

Three lines of thought can add further strength to the principle of universality:

» Human rights today are broadly accepted in all continents. All the countries in the world have adopted at least one of the UN’s human rights conventions. 80 % of the countries in the world have ratified four or more conventions.

» In questioning the principle of the universality of human rights, there is an implied suggestion that some people can be treated worse than others. Is it really the case that a person from a Western country should not be tortured, while a person from Sudan or Tibet can be tortured because torturing people is part of her or his cultural context? Should the abolishment of slavery apply only to Europeans and not to Africans? Should the mass rape of Korean women by Japanese soldiers really be seen as part of “Asian values”? Criticism against human rights must be taken seriously, but not without asking who is behind the criticism, and what their responsibility is. When duty-bearers criticise human rights, it might be a sign of the good effects of human rights, rather than a sign of their deficiency.

» The idea that human rights are typically or exclusively Western is part of a larger narrative about values and cultures that should not too readily be accepted. Europe has seen some of the last century’s worst human rights atrocities, and European states are responsible for brutal colonial histories and abuse of power. Europe as a breeding ground for racism and violence does not match well with the notion of human rights as typically European. Also (as we discuss in chapter 4), a large diversity of religions and life stances can justify and positively interpret human rights.

Debates on the universality of human rights are also linked to questions of individualism and collectivism. Rights are often seen as integral to a world view that gives little room for mutual responsibilities and duties that human beings have towards each other. On the other hand, many human rights have both individual and collective aspects. Freedom of religion, for instance, is both a freedom of every individual and at the same time a right to practice a religion in community with others. Also, the rights of an

individual are never isolated from the rights of other people. The scope of a person’s right can be limited in order to secure “due recognition and respect for the rights and freedoms of others” (UDHR art. 29).

Over the last decades, collective rights have gained visibility and standing in international human rights, through for example the African Charter of Human and Peoples’ Rights which was adopted in 1981. The charter details the rights of both individuals and peoples. An interesting parallel can be seen in the efforts to strengthen indigenous peoples’ rights (see chapter 13) which combine individual and collective perspectives on rights.

IN THE IMPLEMENTATION OF HUMAN RIGHTS IT IS ALSO CLEAR THAT THE GAP BETWEEN THE IDEAL AND THE REALITY IS MUCH LARGER IN SOME COUNTRIES THAN IN OTHERS. WITH THIS IN MIND, AFFIRMING THE UNIVERSALITY OF HUMAN RIGHTS MIGHT SEEM LIKE A THEORETICAL EXERCISE.

Another clear shift, following the end of the Cold War, is the renewed focus on the indivisibility and interdependence of human rights. In the years following the founding of the UN in 1948, ideological and political differences made it impossible to agree on one comprehensive human rights convention. The result was a split in two: the *International Covenant on Economic, Social and Cultural Rights*, and the *International Covenant on Civil and Political Rights*. This also further entrenched a tendency to value different categories of rights differently, according to where you were in the international political landscape. The World Conference on Human Rights held in Vienna in 1993, sought to bring together the whole spectrum of rights and demonstrated how the fulfilment of one depends on the respect for and fulfilment of another.

Human rights in Norway: some current debates

In 1994, a new paragraph was included in the

Norwegian Constitution, which says that the state authorities must respect and fulfil human rights. In 1999, a Human Rights Law was adopted, with the purpose of strengthening the position of human rights in Norwegian law. The law gives five international conventions status as Norwegian law: ICCPR, ICESCR, CEDAW, CRC and ECHR, in addition to some optional protocols. These are at the top of the legal hierarchy (except the Constitution), above any other Norwegian laws if there is a conflict of legislation or interpretation.

A parliamentary committee, led by Inge Lønning, were in 2009 asked to assess and suggest amendments to the Constitution in order to include central human rights in the Constitution. The committee presented its report in January 2012, suggesting that human rights be included in a separate chapter in the Constitution. Their recommendations have sparked attention and debate. They have received support from many quarters, but also been criticised by some stakeholders. As of November 2013, the Norwegian Parliament has not yet decided whether to follow the committee’s recommendations or not.

Traditionally, Norway has participated actively in the development of the international human rights system and been ready and willing to adopt new conventions and protocols. Human rights have been an area of priority in Norwegian foreign policy and development policy. Norway is in general seen as a country of integrity when it comes to human rights. In recent years, however, Norwegian authorities have met increasing criticism for a hesitance to commit to new human rights obligations. The criticism especially relates to the fact that Norway has not yet (as of November 2013) adopted the optional protocols of ICESCR, the *Convention of the Rights of the Child*, and the *Convention on the Rights of Persons with Disabilities*. The reluctance to ratify these new protocols corresponds with a more general scepticism towards the legal codification of public issues. The main argument is that democracy is undermined when more and more areas in society are administered through laws and legislation; the manoeuvring room left for democratic bodies is reduced. This debate gained momentum after a 2003 public review on power and democracy.⁹

[8] Listed items taken from Høstmølingen, Njål: *Hva er menneskerettigheter?*, 2010, p 92

[9] NOU [Norwegian Official Review] 2003: 19: *Makt og demokrati. Sluttrapport fra Makt- og demokratiutredningen*.

The Optional Protocol to the ICESCR was adopted by the UN General Assembly in 2008 and entered into force in May 2013, after Uruguay became the tenth country to ratify it in February the same year. The Optional Protocol establishes a complaint mechanism through which individuals and groups can file complaints to the ICESCR Committee if they feel that the state is systematically violating the rights that are affirmed in the ICESCR, and if all domestic remedies have been exhausted. Norwegian human rights organisations, such as Amnesty International and FIAN Norway, have joined the Norwegian Centre for Human Rights at the University of Oslo in advocating that Norway ratify the protocol. Key reasons why Norway should ratify the protocol include that these types of complaint mechanisms have proven efficient in the implementation of human rights, and that it will have importance for Norway's role as a supporter of international human rights protection.¹⁰

A CHURCH RESPONSE TO THESE CONCERNS MUST TAKE SERIOUSLY THE POSSIBLE TENSIONS BETWEEN DEMOCRACY AND LAW, AND AT THE SAME TIME UPHOLD THE STRONG OBLIGATION NORWAY HAS TO STRENGTHEN HUMAN RIGHTS AS AN INTERNATIONAL NORM SYSTEM.

In recent years, there has however, as mentioned earlier, been a scepticism against ratification at political level, and the decision has not yet been made (as of November 2013) as to whether Norway will ratify the protocol. An assessment done by Henning Harborg, tasked by the Ministry of Foreign Affairs, argues that although all rights are equally important, the rights included in ICESCR are less fit for court decisions than the ICCPR rights, and that court processes on economic, social and cultural

rights can lead the ICESCR committee or national courts into areas of deliberation that many would define as distinctly political.¹¹

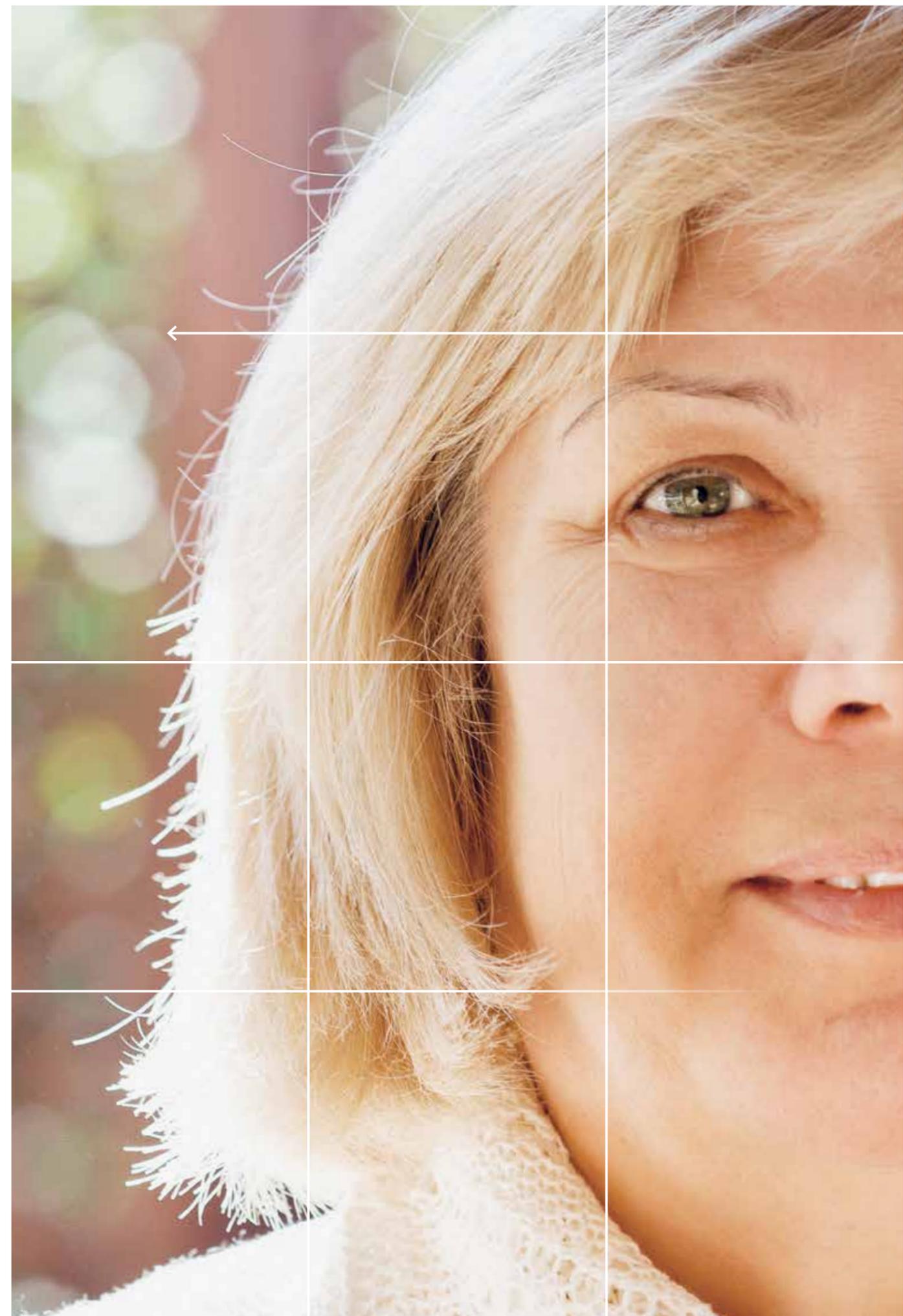
Those supporting ratification would on the other hand say that the opportunity to have these questions raised in a court of law can be a positive addition to a majority-based democracy, strengthening rather than weakening the democracy, through for example protection of minority rights. Also, the combination of restrictive criteria of admission, the condition that all national remedies be exhausted, the margin of appreciation and the opportunities for a state to choose how to implement a court decision, mean that the risk for conflicts between the democracy and the ICESCR rights is limited.

The Optional Protocol to the *Convention on the Rights of the Child* (CRC) was adopted in the UN in 2011 and entered into force in February 2012, after 20 states had ratified it. Save the Children Norway and Plan Norway have been amongst the organisations advocating for Norway to ratify it, and also the conservative parties in Parliament have criticised the (then) centre-left government for not ratifying. The arguments used in this debate are very similar to those used in the debate on the ICESCR Optional Protocol. On the 21 June 2013, a unanimous Parliament asked the Norwegian government to prepare a parliamentary discussion on the ratification of the CRC Optional Protocol, which gives children access to a complaints mechanism. In June 2013, Parliament also ratified the *Convention on the Rights of Persons with Disabilities*, but chose not to ratify the Optional Protocol, which would give individuals access to a complaint procedure.

A church response to these concerns must take seriously the possible tensions between democracy and law, and at the same time uphold the strong obligation Norway has to strengthen human rights as an international norm system.

[10] See e.g. the comments by the Norwegian Centre for Human Rights of March 2012 (in Norwegian): <http://www.jus.uio.no/smr/om/nasjonalt-institusjon/overvakning/horinget/2012/docs/SMRs-horingsuttalelse-utredning-TP-%C3%98SK.pdf>

[11] (In Norwegian) Harborg, Henning: Valgfri protokoll til ØSK: Mulige virkninger av tilslutning. Utredning avgitt til Utenriksdepartementet 16.9.2011.



Over the last 10-20 years, the theme *religion and human rights* has come up more strongly in public awareness. This corresponds with what is called the “return of religion” in the public sphere. Today, the religious dimension of many current human rights issues have become or are made more visible, both in general and more specific discussions on rights. With this resurgence, we are also made more aware of the ambivalence in religions’ approach to human rights.

OFTEN, RELIGION HAS BEEN USED TO LEGITIMISE HUMAN RIGHTS VIOLATIONS, BASED FOR EXAMPLE ON AN IDEA THAT THERE ARE CERTAIN LEVELS IN SOCIETY ACCORDING TO WHICH PEOPLE CAN BE TREATED DIFFERENTLY.

Often, religion has been used to legitimise human rights violations, based for example on an idea that there are certain levels in society according to which people can be treated differently. But religions have also been a source of criticism against human rights abuses, taking as its motivation religious visions of equality, justice, care and love for all. There is a growing trend of religious groups, both nationally and internationally, becoming involved in human rights issues. Also, religious faith communities are increasingly seeking to implement human rights standards in their own activities.

Human rights – a problematic area for religions

On no account have human rights always had an obvious place in religious traditions. Both historically and at present we find human rights critics who use arguments based on religious perceptions, and it is not difficult to list glaring examples of how religious doctrines have been used to oppress people and violate the fundamental rights of individuals and groups.

Currently, it is perhaps Islam’s view of human rights that receives the most attention, one of the reasons being that fundamentalist Islamic groups often claim that human rights are a Western invention which is not compatible with the Muslim faith. But within all religious traditions we find examples of how religion is used to legitimise breaches of human rights and to defend inequality and power abuse, leading to oppression, violence and persecution. Sometimes this can be traced back to dimensions in a religious tradition that are prone to hierarchy and discrimination between people. The Indian caste system is one example, closely tied in with Hindu traditions. In many religions there is a tendency to discredit life here and now, in anticipation of a future paradise or some other form of completeness. This can also lead to a diluted interest in human rights. These trends can be found both in religions with strong expectations of a forthcoming judgement, and in religions where the world view is shaped by ideas of karma and reincarnation.

The dominant narrative on religion and human rights has thus been the version where religions have stood against human

rights and legitimised oppression, slavery, exploitation and discrimination. This narrative often goes on to explain how modern, rational and secular thoughts have gradually won ground and overcome the religious barriers to human rights, and led us to where we are today with a large human rights regime built up since the Second World War.¹² At least in part, this narrative can find support in religious and theological statements in different religions, tending towards characterising human rights as solely a secular idea with roots in the enlightenment era, and as a foreign element in a religious world view.

These views are also known from Christian traditions. It is recognized that traditional, Lutheran political ethics for many years were critical of human rights. The same can be said of Catholic and Orthodox theology, which for many years saw human rights as a modern, liberal invention with secular roots.

But there is also an alternative narrative on religion and human rights, about how religious traditions have made positive contributions to the foundations of modern human rights ideas. Constructing a dichotomy between religious and secular ideas will not help us here. Violations of human rights have certainly also been legitimised through secular ideologies, as we have seen many examples of, not least in the totalitarian ideologies of the 20th century. And religious traditions have contributed both ideologically and practically in supporting and defending fundamental human rights such as freedom of religion and social justice.

Justifications for human rights in different religious traditions

Over the last decades, a central question has been how the different religious traditions, using their own foundations, can justify an involvement for human rights. We will therefore look at how representatives from various religious traditions, both Christian and non-Christian, have sought positive justifications for human

rights in her or his own tradition, and sought to create a foundation for dialogue between the religions on how we can strengthen the struggle for human rights together.¹³

In *Judaism*, the basic theological idea is that God is the creator of the world and also the one who owns it. Creation of human beings in the image of God is also an important justification for taking care of and protecting human life. According to Jewish belief, human beings are capable of making moral choices, of distinguishing between right and wrong. Human beings have the ability to think and speak, and also to love. Every single person is a unique individual of infinite worth. Central to Judaism is the story of God’s covenant with God’s people at Sinai, from which come many precepts and prohibitions. Covenant theology does not, however, mean that human rights only apply to Jews. The covenant can be understood as a model for how all peoples should treat each other. There is also another covenant, with Noah, from which come fundamental, ethical commandments for all human beings. Even though it is primarily *duties*, rather than rights, which are in focus in Jewish theology, it is today common to refer to Jewish law as a foundation for many different human rights, concerning both freedom, equality and justice.

For *Islam*, the current discourse on human rights has brought with it many challenges. Not least among them, radical Islamism and fundamentalism has given the impression that there is an insurmountable barrier between Islam and modern human rights ideas. Often, human rights are accused of being coloured by Western, secular ideas, and declared as incompatible with Islam. On the other side, there is a growing interest also among Muslim lawyers and theologians to see the connections between Islam and human rights, from the potential which is there in Muslim teachings. The starting point for these attempts at re-thinking and re-interpreting traditional Muslim theology is often an understanding of the law (*Shari’a*) as something that limits the authorities, deterring arbitrary use of power, and thereby giving room for human rights. The image of God as omnipotent can be the foundation for a just society, where mercy, respect for human diversity, and protection of human life are natural consequences, according to modern Muslim advocates for human rights.

[12] See Thomas Banchoff & Robert Wuthnow, *Religion and the Global Politics of Human Rights*, Oxford: Oxford University Press 2011, p. 2ff.

[13] See *Human rights and responsibilities in the world religions*, eds. Joseph Runzo, Nancy M. Martin & Arvind Sharma, Oxford: Oneworld Publications, 2008.

For *Hinduism*, the hierarchical way of thinking, not least the caste system, is problematic in a human rights perspective. But the efforts of Mahatma Gandhi to create more equality in society have become an important impulse for a modern human rights outlook also from Hinduism. Gandhi based his involvement in the fundamental notions of a Hindu world view and in the respect for the dignity of all persons. When universal and egalitarian aspects of *dharmā* are highlighted, modern Hinduism can accept equality and individual rights, combined with an emphasis on mutuality and complementarity rather than a hierarchical model.

In *Buddhism*, the meaning of human rights has been underscored in recent decades, not the least by Dalai Lama. But also in Buddhism, there are critical voices that would brand human rights as Western colonialism. Still, many Buddhists have recently posited that Buddhism in its essence is open to human rights, but that the seeds to human rights philosophies, which are there, implicit, in ancient Buddhism, must be brought out into the light and made explicit. Also, modern Buddhists have pointed out the differences between traditional Buddhist teachings and ethics, and liberal, Western perceptions of rights.

Human rights in different Christian traditions

There have also been several important contributions to the understanding of human rights from a Christian perspective, demonstrating how the different Christian denominations have gradually developed a more positive understanding of human rights and sought to find justifications for them in their own tradition.

John Witte, Jr and Frank S. Alexander in 2010 published the book “Christianity and Human Rights: An Introduction”.¹⁴ The first part of the book consists of a number of contributions of more historical character, where the growth and development of human rights in Judaism and Christianity is discussed. The second part addresses the modern body of human rights seen from a Christian perspective,

addressing specific topics such as religious proselytism, freedom of religion, the rights of children, the rights of women, the right to clean water, etc. Desmond Tutu has written the opening article with the title “To be human is to be free”, while Robert Bellah in his closing article asks: “Can Christianity contribute to a global civil religion?” In the last part of the article, written in 2009 against the backdrop of the financial crisis, he concludes as follows: «It is possible, though by no means certain, that the present crisis might provide the environment for a major step forward in the creation of a global civil society and a global cultural consensus with a religious dimension».

A general trend within Christian traditions is that justifications for human rights on the basis of natural right theories are less commonplace than before. This includes Catholic social teaching, where the classical natural rights thinking has lost its dominant position. In part, it is substituted by a justification for human rights based on human dignity, on every person’s worth as created in the image of God and a subject of God’s salvation. The common phrase now is that the mind is “enlightened by the revelation”, and most Christian traditions would agree that human rights must be interpreted in light of the faith in a triune God. Still, it is also common to say that there is considerable overlap between the moral wisdom that is found in the rational mind of human beings and Christian ethical principles and values, and that it is important for Christians to work together with all people “of good will” to defend and strengthen human rights.¹⁵

There continue to be differences between the theological justifications for human rights within Christian traditions. We can identify four different positions in ecumenical efforts for human rights: Orthodox, Roman-Catholic, Lutheran and Reformed. Orthodox theology emphasises a Trinitarian theology, while Catholic theology holds up creation and natural rights as a basis for human rights. Lutheran theology has often taken its cue from the doctrine of justification, as the basis for Christian freedom and responsibility for one another, while Reformed theology emphasises the new covenant in Christ as a criterion for assessing natural rights and human rights. In all traditions, there is an

increasing tendency to interpret human rights in light of a Christian anthropology where a central theme is the human being as created in God’s image, and drawn from the human being’s inviolable dignity. In Christian theology, human rights are therefore not connected to an image of the human being as good or to human traits or behaviour. Rather, they are connected to a theological understanding of the work of God in creation and salvation.

IN ALL TRADITIONS, THERE IS AN INCREASING TENDENCY TO INTERPRET HUMAN RIGHTS IN LIGHT OF A CHRISTIAN ANTHROPOLOGY WHERE A CENTRAL THEME IS THE HUMAN BEING AS CREATED IN GOD’S IMAGE, AND DRAWN FROM THE HUMAN BEING’S INVIOLEABLE DIGNITY.

Despite differing views on human rights ecumenically, and despite differing theological interpretation – as mercy or the covenant, creation or salvation – there is widespread agreement within the larger theological traditions that Christians have a responsibility to support and defend human rights, because they, in light of Christian faith, can be understood as expressions of neighbourly love and our obligations towards other people in our community. From this follows an emphasis on the community and a critical view on any tendency to treat human rights as purely individual, set apart from the community.

The theoretical discussion on the relation between human rights and religious traditions shows that there are differences and partly contradictory attitudes within the different religions. Traditionally, most religious traditions have been sceptical to or rejected human rights. Both the Catholic Church and many Protestant churches were critical of the ideals of the enlightenment and the French revolution, “freedom, equality, brotherhood”. In the other world religions there have been – and in part

still are – similarly sceptical voices who warn against the recognition of human rights. Parallel to this, we also see a movement in the opposite direction, towards an acknowledgement and implementation of human rights in most religious traditions today, although some conservative groups or religious extremists still reject the idea.

In addition to an interest in theological justifications for human rights, many different faith communities are involved in practical human rights work, both locally, nationally and globally. A number of different Christian communities and groups have become involved in the struggle for democracy, human rights and freedom of religion, for the rights of women, for the rights of children, for the rights of minorities and marginalised groups, for the abolishment of the death penalty and torture, for climate justice and ending poverty.

Interreligious dialogue on human rights

As we have seen, there have been efforts in most religious traditions to find justifications for human rights in one’s own tradition and theology. This has also opened up for dialogues across religious divides. Over the last 20 years especially, we have seen the growth of interreligious dialogues that also address ethical questions and human rights. One outcome of such dialogue on human rights is the *Universal Declaration of Human Rights by the World’s Religions*, which has been developed and drafted through a multi-religious dialogue that started in USA in the mid-1990s.¹⁶ The dialogue had four themes as its starting point: 1. Religion and the roots of conflict, 2. Militant or fundamentalist religion, 3. Universalism versus relativism in human rights, 4. The positive resource of religions for human rights. The *Declaration of Human Rights by the World’s Religions* can be perceived as a “top-down” approach to the issue at hand, as the document has been developed by a small group, and then opened up for those who wish, from different religions.

[14] John Witte, Jr. and Frank S. Alexander (eds.): *Christianity and Human Rights: An Introduction*. Cambridge: Cambridge University Press 2010.

[15] See among others John Witte, Jr. and Frank S. Alexander (eds.): *Christianity and Human Rights: An Introduction*. Cambridge: Cambridge University Press 2010.

[16] http://gcwr2011.org/universal_declaration_of_human_rights_by_the_worlds_religions.htm. See also *Human rights and responsibilities in the world religions*, p. 131-147.

Abdullahi A. An-Na'im, in the article «The synergy and interdependence of human rights, religion and secularism»¹⁷, argues that these three elements (human rights, religion and secularism) should interact in a fruitful exchange, and that all three need the “corrective” of the other two. An-Naim uses this with regards to the human rights discourse in Islam especially, but states that all religious traditions need to be corrected by the human rights discourse and by secularism, while secularism needs the religious approach to not become too single-minded.

In the article “The religious perspective: Dignity as a foundation for human rights discourse”¹⁸, Arvind Sharma argues that “human dignity” is a basis for human rights that is neither too narrow legally nor too “lofty”, as can be the case when human rights are based on religion or morals. Sharma discusses how “human dignity” can also build bridges between secular and religious approaches to the human rights discourse. At the same time he points out the links between “human dignity”, “human rights” and “human duties” that can strengthen and expand efforts for human rights.

Looking at the above outlined development, it is clear that the Church of Norway can continue to interact with the many new perspectives coming out of the larger, global conversation – both within different Christian traditions, and between representatives from different religions and secular life stances – about the role of religion for human rights, both as a theoretical foundation and as a practical motivation.

Human dignity and human rights

The notion of *human dignity and worth* as a justification for human rights has played an important role for the trend of positive approaches to human rights within religious traditions in general, and within many Christian traditions, such as Catholic and Orthodox theology, in particular. There is reference to the *inherent dignity* of human beings as a foundation for

human rights in the preamble to the *Universal Declaration of Human Rights*, of 10 December 1948: «the inherent dignity and [...] equal and inalienable rights of all members of the human family [...]». This means that everyone, every human being, has inherent dignity and “equal and inalienable rights”.

Human dignity is a key concept not only in religious traditions; in our Western, humanistic tradition it is common to use the concepts *human dignity*, *the integrity of a person*, and *the objective worth of a person* as synonymous concepts. When Immanuel Kant uses the term “the inherent dignity of a person”, the meaning corresponds to human dignity or the objective worth of a person. Both in a Kantian meaning and in a classical humanistic understanding, *human dignity and worth* is something that is absolute and never-ending, and cannot be replaced with anything else. When something has other forms of worth or value, they can be replaced or can change in value, according to Kant.¹⁹ These things or phenomena that are replaceable only have instrumental value. They can be used as means to an end that has inherent value.

The “objective worth” is, according to classical humanism, constant, the same for all persons, cannot be ranked, is not empirical, is inviolable, inalienable and unconditional. That the objective worth of human beings *cannot be ranked*, means that all human beings have the same objective worth, i.e. human dignity, regardless of factors such as ethnicity, gender, age, health condition, level of abilities or culture (cfr. articles 1 and 2 in the Universal Declaration of Human Rights). That the objective worth of human beings is *non-empirical* means that human dignity can neither be observed nor measured quantitatively. The attribute *inviolable* must be understood ethically, i.e. that the human worth should not be violated, although we know that it is in fact violated every day worldwide. That the objective worth of human beings is inalienable, means that human dignity can never be taken away from a person; a dead person also has dignity and should therefore be treated with respect and given a dignified funeral. The *unconditionality* of the objective worth of human beings means that a person does not have to fulfil certain criteria or conditions (nationality, gender, religion, social status etc) to achieve it, and it is not depen-

dent on what we do or what we have done. The human being thus has its *objective worth* simply from the fact of being a human being (*latin: homo sapiens*).²⁰

IT IS INTERESTING TO NOTE THAT THE NOTION OF HUMAN DIGNITY HAS PLAYED AN IMPORTANT ROLE IN MANY RELIGIOUS TRADITIONS AS THE ANCHOR POINT FOR HUMAN RIGHTS.

There are different answers to the question of whether human dignity and human rights have a religious or a humanistic foundation. Still, it is clear that both religious and non-religious life stances can be linked to the notion of the dignity and worth of the human being, to justify and motivate an involvement for the protection and fulfilment of human rights. It is interesting to note that the notion of human dignity has played an important role in many religious traditions as the anchor point for human rights. It has made room for a positive interpretation of human rights.

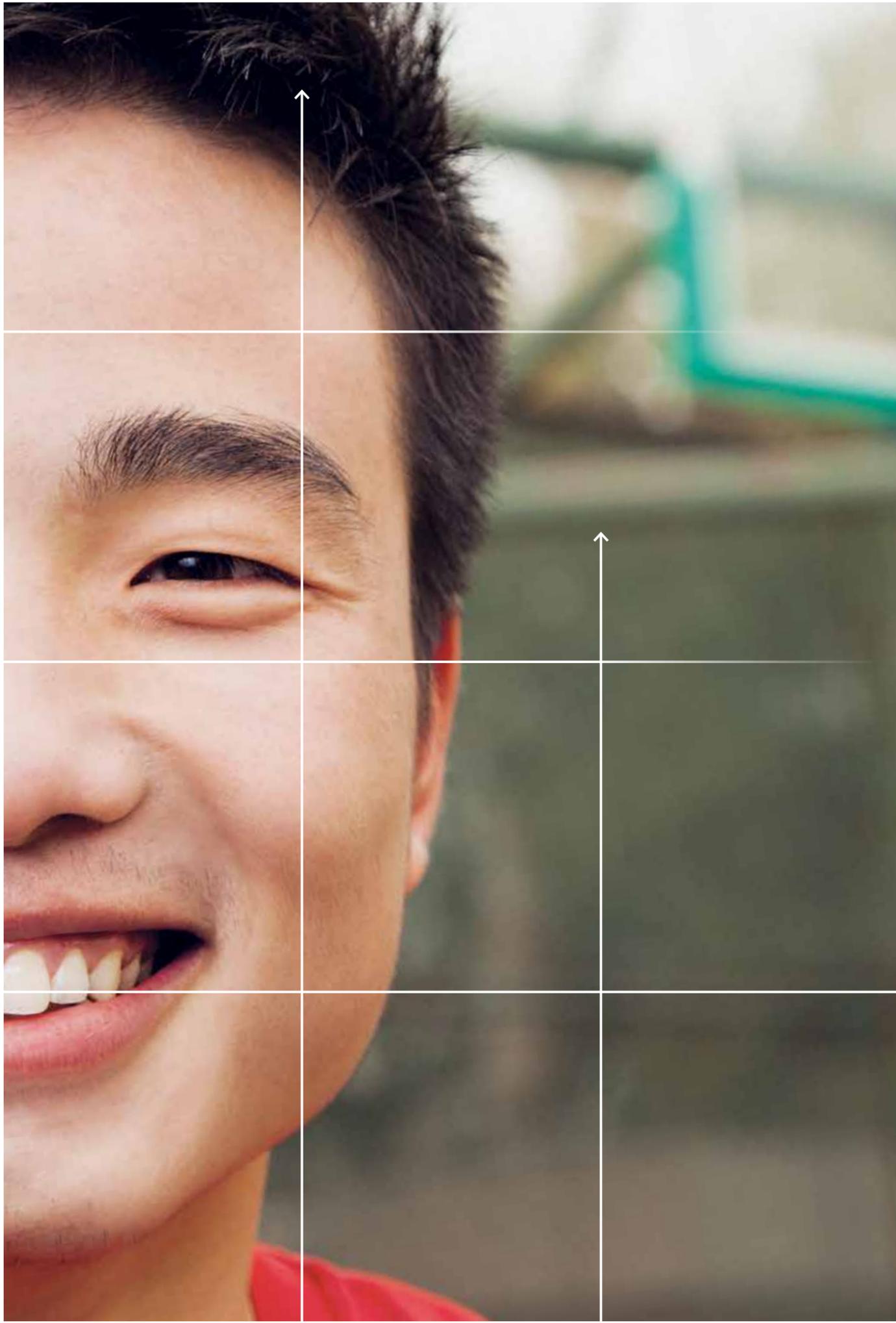
The notion of human dignity is thus a bridge between a secular and a religious interpretation of human rights. Human dignity can also serve as a clarification of human rights, since it highlights three dimensions of humanity: That every human being is unique, that every human being also has similarities with other human beings, and that any human being has something in common with all human beings. Human dignity thus highlights both the individual and the universal dimensions of human beings.

[17] *Human rights and responsibilities in the world religions*, eds. Joseph Runzo, Nancy M. Martin & Arvind Sharma, Oxford: Oneworld Publications, 2008, pp. 27-49.

[18] *Ib.*, pp. 67-95

[19] See for example António Barbosa da Silva, «Autonomy, dignity and integrity in healthcare ethics – a moral philosophical perspective.», in Aasen, Henriette S., Halvorsen, Rune og Barbosa da Silva, Antonio (eds.), *Human rights, dignity and autonomy in health care and social services: Nordic perspectives*. Antwerp, Oxford, Portland: Intersentia, 2009, p. 13- 51.

[20] See for example A. Barbosa da Silva (2011), Michael J. Sandel, *Justice, What's the right thing to do?* New York: Farrar, Straus and Giroux, 2009.



04 THE THEOLOGICAL FOUNDATIONS OF THE CHURCH OF NORWAY HUMAN RIGHTS INVOLVEMENT

A Lutheran perspective

In the Lutheran churches, like in many other religious communities, we find, in the decades since the Second World War, an increasing interest in questions on the church's involvement for human rights and what the foundations are for that involvement. In the preparatory work to the Universal Declaration of Human Rights, Frederick Nolde, professor at the Lutheran Theological Seminary in Philadelphia, played a key role as a representative of the World Council of Churches' Commission on International Affairs (CCIA). He had access to the meetings in the UN Human Rights Commission and was especially influential in the article on freedom of religion, where he helped avert a narrow understanding of freedom of religion or belief.

«WE MUST THEREFORE ASK AGAIN WHAT THE CHURCH OF CHRIST, BOTH HERE AT HOME AND OUT IN THE WORLD, CAN DO TO RELIEVE HUMAN SUFFERING, TO STOP THE OPPRESSION OF NATIONS, PEOPLES AND INDIVIDUALS, AND TO CHANGE THE SOCIAL CONDITIONS THAT TRAP HUMAN BEINGS IN DEGRADING SOCIAL CIRCUMSTANCES.»

The Lutheran World Federation, which was founded in 1947, has several times discussed the issue of the theological foundations of human rights. One clear shift is seen at the LWF General Assembly in Evian in 1970, where the focus was no longer whether the churches should or

should not be involved in human rights issues, but rather what form that involvement should have. A resolution on human rights affirmed that it was both right and necessary for the churches to care about social justice, human rights and world peace, with special emphasis on the situation in the country from which one came, as delegates or churches.

The extensive study process in many Lutheran churches was the basis for a new discussion on human rights during the LWF General Assembly in Dar es Salaam in 1977. On the question of the socio-political function and responsibility of Lutheran churches, the Assembly declared: "The defence of justice is an essential and integral part of the mission of the church, which goes hand in hand with preaching the Word. Justice under the law of God is a testimony of the universal reign of God's law over his whole creation." An important backdrop to this was the denouncement of the South African apartheid system as incompatible with Christian faith and theology. Human rights work has become increasingly integral to LWF's activities. Through its office for International Affairs and Human Rights, LWF guides and supports the human rights efforts of its member churches.

Review of the Church of Norway's involvement in international human rights issues, 1988

The Church of Norway has also given increasing attention to human rights in the decades since the Second World War. Human rights were put broadly on the agenda in 1968, which was named a "human rights year", 20 years after the

Universal Declaration was adopted. The Bishops' Council gave a declaration called "In the human rights year" where they affirm that the church, given its message of creation, salvation and neighbourly love, "cannot stand indifferent in the face of violence, injustice and suffering". The declaration continues: "We must therefore ask again what the church of Christ, both here at home and out in the world, can do to relieve human suffering, to stop the oppression of nations, peoples and individuals, and to change the societal conditions that trap human beings in degrading social circumstances. We must ask what the church can do to stop the arms race and the blood spill of war and to help ensure that the world's resources are used in a way that benefits all rather than bringing profit for the few."

HOW JESUS LIVED AND WHAT HE DID SHOWS US THAT ALL DIMENSIONS OF HUMAN LIFE, NOT ONLY THE SPIRITUAL, BUT ALSO THE PSYCHOLOGICAL, SOCIAL AND PHYSICAL DIMENSIONS ARE ENCOMPASSED BY GOD'S CARE, AS SEEN FOR EXAMPLE IN THE WONDERS JESUS DID AND IN HIS VICTORY OVER THE POWERS OF DEATH AND EVIL.

Within the Church of Norway, the growing involvement for human rights was primarily channelled through the Council on Ecumenical and International Relations (the Council). For example, the Council in 1975 shared a document with the LWF expressing that the Church of Norway was ready to support the secular version of norms that we find in the modern codification of human rights. In fact, this might make it possible to seek broader support in common compassion for humanity, the Council said, adding that the churches should be the first to accept that human rights were written for the benefit of human beings, not for the benefit of the churches.

When the Church of Norway Synod in 1985 discussed the annual report from the Council, one of their comments was that "it is important that the Council continue working on criteria for deciding which conditions, in both the East

and the West, the North and the South, demand the attention of the Council, hereunder which socio-ethical and political measures are appropriate for the church to take." This was the kick-off for a review of the international human rights work of the Church of Norway. The review was written by Jan-Olav Henriksen, in cooperation with a consultative group, and was published in 1988 under the title: *"For the sake of humanity... The international human rights involvement of the Church of Norway"*. In the protocol for agenda item nr 26/88, the Council accedes to the content of the review and recommends it as a starting point for further discussion and action on human rights at all levels of the Church of Norway.

The review gives a comprehensive reflection on the theological foundation of the Church of Norway human rights involvement. The outlook and opinions put forward in the review are still very much valid, and it is not necessary to do a similarly thorough assessment at this point. We will therefore, in this document, limit ourselves to repeating the main points from the 1988 review, adding impulses from the later debates on theology and human rights, especially in a Lutheran context.

Theological interpretation of human rights

The review points to the fact that it is not necessarily easy for the church to just adopt a modern human rights discourse (p. 35-36): Firstly, the Bible does not name any concepts similar to our human rights concept. Secondly, it has been argued that human rights are built on an individualistic, very optimistic anthropology which is difficult to make fit with a theological view on human beings. Thirdly, there is a tension between people's rights and people's duties. The development of modern human rights discourse has in part happened in clear opposition to church and theological points of view. It is therefore important that the church, in its work for human rights, does not "make them Christian", but rather attempts to interpret or read them within a theological context. The review posits that Christian theology can have a "critical/accepting" relation to the codification of human rights. The different, separate rights must be tested critically from a Christian ethical perception, while a Christian theology at the same time can have an accepting understanding

of human rights as such, with reference to the universal revelation of God's will of creation (Romans 1: 19-20, 2:14-15) and the Lutheran doctrine of the two kingdoms (p. 36-37).

Still, it is possible to see connections between parts of modern human rights discourse and the ethical material in the Bible (pp 37-42). The notion of human beings as created in the image of God indicates a universal understanding of the equal worth of all people. The laws in the Old Testament in many cases give legal protection to the weak and vulnerable, and the way the prophets criticise oppression and injustice confirm this impression. The Old Testament contains many texts of general, ethical character, especially in the Wisdom Literature, expressing kindness and justice. Also in the New Testament, there are universalistic pieces, both in light of creation and salvation in Christ. The Sermon on the Mount puts emphasis on peace and justice, compassion and reconciliation. The notion of solidarity comes out clearly in many of the admonitions given in the New Testament, and the text about authorities in Romans 13 can be read as a contribution to the development of the rule of law.

God's covenant with the people and the prophets' criticism of power

The discourse on justice in the Old Testament often has as its starting point the covenant God made with the Israelites. The legal order that was established on Sinai was an integral part of the covenant between God and the people, and it held the leadership of the people responsible for securing the rights of "widows and orphans" and all those who had been put in a vulnerable position in life. The Hebrew word for justice (tsedakah) has clear social aspects and means good relations where everyone has a safe place in the community.

The prophets were sent by God to expose injustice and declare the dramatic consequences injustice could have for all the people. They urged the responsible to repent and to reinforce justice (Amos 5: 7-15). In this perspective, the commitment of the prophets can be described as rights based. It was clearly anchored in the covenant relationship with God and the correlated recommendations to secure a social order with equality and justice for all.

Jesus is described as part of the same prophetic tradition in the New Testament, with reference to the promise in Isaiah of the one who will come to "bring justice to victory" (Matthew 12:20). Paul teaches that "the kingdom of God is righteousness, peace and joy in the Holy Spirit" (Romans 14:17). In the speech Jesus himself gives in the synagogue in Nazareth, he recites words from Isaiah on the good news to the poor, freedom for prisoners, and that the oppressed will be set free (Luke 4:18).

In the review done in 1988, the human rights involvement of the Church of Norway is therefore understood in light of a theological reading of human rights that makes it possible to see this involvement in connection with a Christian world view and life view, based in Biblical traditions. The review points to how human rights efforts can be motivated, in a systematic theological reading, by all three articles of faith: the worth of the human being as created in the image of God, the faith in Jesus Christ, and the calling and mission of the church (pp.42-53).

The belief that every human being is created in the image of God, gives a strong justification for the particular worth of the human being. The worth and dignity of a person is not conditioned on specific abilities or attributes, but is seen as a gift from God to all people. From this comes a clear prohibition against violations of human dignity. From the point of view of creation theology, human rights can be understood as attempts to codify norms meant to protect human dignity. The image of God in every human being is a gift, but also a mission that demands active involvement to protect the dignity of every person in a world where God's will as creator is constantly breached.

Promoting human rights can therefore be seen as a way of promoting the free will of humankind and God's will as creator. Interpreting human rights in this way lets us see them as universal and reasonable, based on a theological understanding of the general revelation of the law, although human rights can also be interpreted from a specific Christian understanding of Christ and the church. The human rights involvement we find among persons of many different life stances and faiths, can theologically

be understood in light of creation theology and the universal or “natural” revelation that the Bible speaks of (Romans 2:14). This gives room for conversations across religious and life stance divides, where the church can also make use of ethical insights from others, and where Christians can become involved in human rights both in a church context as well as more generally in society.

The second article of faith is about salvation in Jesus Christ, understood against the backdrop of the fall of man and the negative consequences it had on the relationship between humans and God, between humans and between humans and nature. In Christ, the relationship with God is restored, and human beings’ understanding of themselves and their relationship with others and with nature is also reshaped. Through the revelation in Christ, creation theology is deepened and reinterpreted. How Jesus lived and what he did shows us that all dimensions of human life, not only the spiritual, but also the psychological, social and physical dimensions are encompassed by God’s care, as seen for example in the wonders Jesus did and in his victory over the powers of death and evil.

Human rights can also be read, theologically, in light of the third article of faith and the doctrine of the church. Henriksen writes: “The Christian church shall not remain passive in the face of injustice. It is obliged through God’s word and gospel to struggle for the realisation of God’s will and to make known the salvation in Jesus Christ to all mankind.” (p.48). The struggle against sin entails a calling to the church to denounce oppression, inequality and injustice, across ideological divides. The church can be a sign unto the world and seek the eschatological fellowship that is the goal of God’s creation. The struggle for human rights is also closely connected to the work to strengthen democratic processes and the equality of all human beings. The church’s viewpoint is anchored in both creation and salvation. The Lutheran doctrine of the two kingdoms must be interpreted to mean that neither the “secular” nor the “spiritual” kingdom is separated from the teaching of God’s will for all creation. Even though human rights are temporary and incomplete in light of the coming and complete Kingdom of God, it is the duty of the church to speak out on human rights

violations, also if this means that it must declare its opinion on concrete, political alternatives.

Through its testimony, in words, deeds and diakonia, the church participates in the struggle to bring into being God’s will as creator. Such a perception implies that the struggle for human rights must become an integral part of the church’s preaching, also in the local congregations.

The 1988 review authored by Henriksen outlines the following basic ideas in a theological understanding of fundamental human rights (pp 54-55):

- » A human being cannot have rights in relation to God, but as created by God can claim rights in relation to other people
- » Because God is the giver of life and dignity, we must denounce all forms of violations of human life and human dignity
- » Human rights apply to all human beings, and therefore all forms of discrimination must be rejected
- » The understanding of human beings as sinful obliges the church in a special way to accentuate human rights as protection of the human being
- » Humans are created by God to be in community, and therefore human rights should not be narrowed to a simply individualistic version
- » Human rights can also not be taken as unlimited rights to use and exploit nature
- » A Christian can in certain situations declare that she or he will not claim her or his human rights, but this cannot be understood as a general demand
- » The freedom claimed in a human rights context is not identical with the Christian freedom, but the Christian freedom is a calling to struggle against sin and injustice

Lutheran theological consensus on human rights

It is not only in the Church of Norway that the theological justification for and interpretation of human rights has been on the agenda. This work has been central both in the Lutheran World Federation and in many of its member churches in the decades following the General Assemblies in Evian in 1970 and Dar es Salaam in 1977. Here, we will give some examples of different trends in this work, within the Lutheran context.

MISSION AND HUMAN RIGHTS

Ed Brown has taught human rights in many different countries and contexts for many years. His experience is that human rights can contribute remarkably to change in society.

– *Why is it important for the Stefanus Alliance International to support human rights work?*

– We have been called to struggle for our sisters and brothers in faith who are exposed to threats and violence. For persecuted Christians, knowledge about human rights is an important tool to strengthen their own standing. Furthermore, respect for human rights will benefit all individuals and society, not only Christians.

– *How do Christians in other countries perceive human rights?*

– Both in India and other places, many Christians believe that persecution is the will of God, and that we are called to persevere and suffer in silence. I often speak of stories from the Book of Acts, with examples of how the first Christians responded in different ways to persecution. In some cases, God calls followers to persevere in suffering. In other cases, he saves Peter from prison, and Peter escapes. Paul, who was a Roman citizen, also demonstrates that it is legitimate to speak up for one’s rights.

Ed tells how the last example of Paul opens up for new reflections.

– It is as if a light is switched on, people’s eyes are opened and they see that rights are not something dangerous or immoral. In North Africa, I have met many with a Christian background who have reached a new awareness of their rights through human rights education, and their confidence and self-assurance is increased.

The Stefanus Alliance supports human rights education for persecuted Christians in India. And through human rights education in Burma,

Human rights seminar in the town Tanuku, in the Indian province Andhra Pradesh, organised with support from the Stefanus Alliance International.

[PHOTO: Marianne Haugerud]



the Stefanus Alliance wishes to contribute to a society led in such a way that freedom is not sacrificed at the hands of a small power elite. In Belarus, Ed Brown has facilitated seminars where representatives from local authorities have met lawyers, academics and civil society leaders.

– The aim is to let the authorities see that freedom of religion, expression and association are not dangerous, but beneficial to society.

– *Some say that human rights should not be above a country’s own laws or cultural norms. What is your response to that?*

– In these cases, we have to ask who is making that claim. Is it the national leader, who wants to secure his own power, or is it the person suffering oppression? I have often witnessed that human rights instinctively make sense to people who suffer state oppression, no matter their cultural or religious background. Human rights do not promise human harmony, and it can be hard to tolerate the rights of others. But that does not mean it is not the right way to follow, says Ed and smiles.

SOURCE: Interview by Hilde Skaar Vollebæk, Stefanus Alliance International, March 2011. Available in Norwegian at http://www.stefanus.no/?module=Articles&action=Article_publicOpen&id=730

A debate we find in Lutheran contributions to the field, as in many others, is the question of whether it is possible or even an objective to find a theological basis for human rights. One response is that it is not necessary to justify why the churches and Christian should work for human rights, since this is obviously a legitimate part of Christian work in our time. From a Lutheran perspective, the idea of identifying a justification in a timeless “natural right” or in the nature of mankind has often been rejected, especially if emphasis is put on the rights of the individual. Lutheran theology has often pointed out the need to balance individuals’ rights with the needs of other people and society as a whole. This is for example formulated by the Swedish theologian Gustaf Wingren when he posits that the single person can only have her or his rights fulfilled if the state increases its activities and expands the public sector. Human rights require a balance between the individual and the collective that functions best in a democracy, Wingren wrote in an article in 1975.²¹

THE STRUGGLE FOR HUMAN RIGHTS IS CLOSELY LINKED TO THE UNDERSTANDING OF DIAKONIA FOUND IN MANY LUTHERAN CHURCHES

Especially among German Lutherans, a lot of work has been done on a theological understanding of human rights, and a number of books were published on the theme in the 1970s and 1980s.²² Several of these books have quite thorough discussions of various ways to understand and interpret human rights in a Lutheran context, distinguishing it from the Catholic natural rights discourse and the Reformed endeavours to give a specific theological basis for human rights.

[21] Gustaf Wingren, «Human Rights: a Theological Analysis», *The Ecumenical Review* 27/2 (1975), pp. 124-127, cfr. Torleiv Austad, «The Theological Foundation of Human Rights», *A Lutheran Reader on Human Rights*, eds. J. Lissner & A. Sovik (LWF Report 1/2), Geneva 1978, pp. 55-65.

[22] W. Huber & H. E. Tödt, *Menschenrechte. Perspektiven einer menschlichen Welt*, Stuttgart – Berlin: Kreuz Verlag 1978 (2. Aufl.).

[23] David Pfrimmer, «Human Rights as a Public Theology», *Faith and Human Rights: Voices from the Lutheran Communion* (Documentation No. 51), eds. P.N. Prove & L. Smetters, Minneapolis: Lutheran University Press, 2006, pp. 55-67; Jan-Olav Henriksen, «Developing a Human Rights Theology», *ib.*, pp. 77-82.

Compared to the many theological contributions of the 70s and 80s, recent decades have seen more attention given to how the churches can best promote and protect human rights in the world today, working to uphold human dignity and empower vulnerable groups. The struggle for human rights is closely linked to the understanding of diakonia found in many Lutheran churches, as seen for example in the LWF document “Diakonia in Context”. While the debate of the 70s and 80s was set against a background of polarisation between East and West, today’s challenges relate to various consequences of globalisation, multicultural and interreligious issues, and economy and climate crises.

A LWF book from 2006 on faith and human rights hardly discusses theological justifications of human rights. Rather, a “theological consensus” on human rights is recognised, including a consensus on the need to develop the theological response to human rights as a form of “public theology” closely linked to the core of Christian faith.²³ But the book also reflects newer theological movements, not least feminist theology which has brought in new angles in (among others) Lutheran perceptions of human rights. In today’s Lutheran theology, the purpose is not so much to justify a human rights involvement – this is seen as a clear and central concern for the churches – as to reflect on how the churches can best act to promote and protect human rights in a world where there are still so many victims of violence, injustice and violations.

Scope of the church’s human rights work

It is important to be aware of the scope and limitations for the human rights involvement of the Church of Norway. On the one hand, one might end up in a socio-ethical “reductionism” and “Christian monopolisation”. On the other hand, a misunderstood involvement might provoke a reaction leading to the demonization of human rights in some church groups.

Reducing Christian social ethics to a human rights involvement would be socio-ethical reductionism. It is true that human rights require new perspectives, new attention and new practice within the Church of Norway, from congregations and the individual Christian, but still Christian social ethics encompasses far more

than what human rights norms strictly cover: for example loyalty, conscience, love, and the will and ability to forgive. Christian ethics go far beyond the requirements of human rights, and many questions that are central in Christian ethics cannot be answered by referencing human rights. One example is care for the unborn life, which cannot depend on human rights, but requires a deeper justification in a Christian anthropology and Christian ethical norms (see chapter 7).

A *Christian monopolisation* could be the result if we postulate that human rights can only be justified and motivated through Christianity, or that human rights have their historic roots exclusively in Christian tradition. In the 1988-review, this kind of monopolisation is explicitly warned against (p 53): “A Christian involvement for human rights must be interpreted in such a way that it feels right, whether we believe or not. It should feel right, coming from the fact that we are human beings, not only from Christian faith. The Christian faith, however, deepens the involvement and gives the believer a framework within which she or he can search for her or his calling to serve the world and her or his neighbour.”

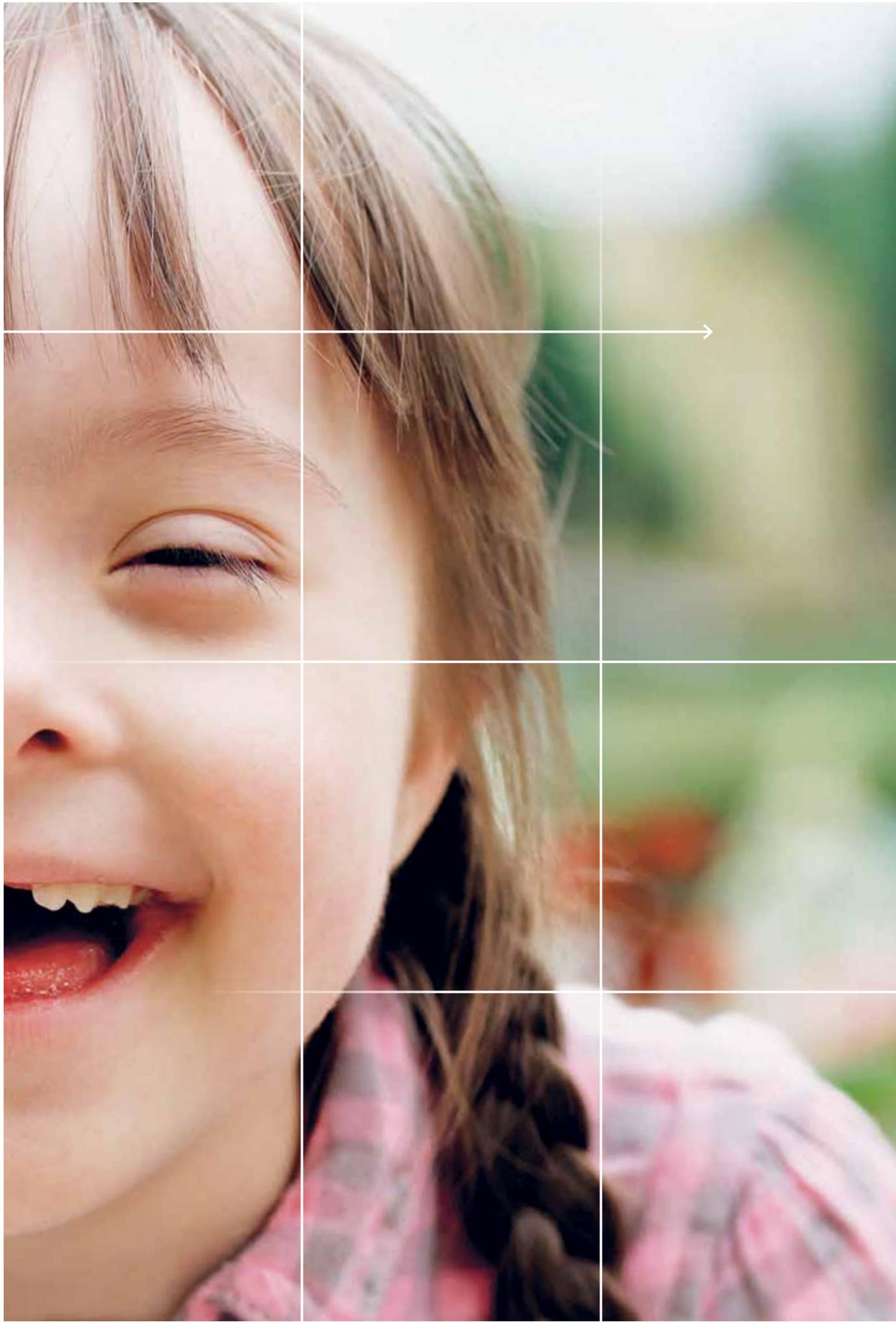
Human rights, like all good things, can be abused. Sometimes they have been labelled secular ideology and been “demonized” by religious voices as a type of secular life stance substitute. Understood correctly, human rights are not an alternative to or a separate life stance. Rather, they open for a common arena of dedicated involvement for human dignity, for cooperation and solidarity in today’s world, across religious and life stance differences. When all participants can hold on to their foundations found in their own tradition, and respect the foundations of others, a solidarity based involvement for human rights can grow.

Challenges for the Church of Norway

From the development outlined above, the Church of Norway can find encouragement to continue working with the many new perspectives coming out of the larger, global conversation – both within different Christian traditions and between representatives from different religions and life stances – about the role of religion for human rights, as a theoretical foundation and as a practical motivation.

There is also good reason to keep engaging with the theological interpretation of human rights as found in the 1988 review, not primarily with a purpose to give a theological justification for Christians’ human rights involvement, but rather to contribute to “placing the involvement in relation to the life view that a Christian life interpretation implies” (p. 37).

In light of this interpretation, we can point at some fundamental challenges to the Church of Norway in its human rights involvement: The church is encouraged to defend the creation theology concern implied in seeing human beings as created in the image of God, with the protection of human dignity as an irrevocable consequence. We can also interpret the struggle for human rights as a consequence of the core Christian message of salvation, reconciliation and liberation. The church is encouraged to take seriously the universal character of human rights, with the opportunities for cooperation across religious and life stance divides that follow, in common efforts to promote human rights and prevent violations. How can the church make visible the place of a strong human rights involvement in the Christian community, as a sign of the wonderful Kingdom of God? How can the church, through teachings and diaconal acts, let the struggle for human rights become a sign of hope?



05 A MORAL DUTY-BEARER: THE CHURCH OF NORWAY INVOLVEMENT FOR HUMAN RIGHTS

If we look at the Biblical and theological material presented in chapter 4, together with knowledge on human rights and the role they play today, it makes sense to speak about the church as having moral human rights obligations. But of what do these obligations consist, and what role can and should the church play in human rights work? How does the church understand its role compared to other actors, and which factors should church actors keep in mind when choosing priorities and strategies in their human rights work? In Norway, these questions are made especially pertinent by the changing relationship between the Church of Norway and the state, as a result of an amendment to the Constitution in 2012.²⁴

Legally speaking, the state is the duty-bearer of human rights, with an obligation to respect, protect and fulfil them. Individuals and non-state institutions are also required to *respect* human rights, as detailed in the country's legislation. However, the role and responsibility of individuals and non-state actors in *protecting* and, not least, *fulfilling* human rights is much more debatable. There are good reasons why the role of legal duty-bearer is exclusively for the state, and good human rights work strengthens the state's ability to fulfil the rights of its

citizens. Non-state actors that "take over" the role of the state in places or areas where the state is mal-functioning, risk undermining the state's authority and responsibility, as we have seen examples of in the history of development aid.

The concept "moral duty-bearer" is commonly used in the rights based approach to development. In a report from the Danish Institute for Human Rights, moral duty-bearers are defined as individuals and institutions who have the power to influence other people's lives. In other words, with power comes moral responsibility, and thereby also a duty to be accountable toward the rights-holders.²⁵ Local leaders, companies and civil society organisations are duty-bearers by this definition, although in other circumstances they might be rights-holders. Understood like this, the universality of human rights means that not only do all human beings have rights and all states have obligations, but also all actors in the various power relations in society are encompassed.

Norwegian Church Aid (NCA) uses a similar definition of the concept "moral duty-bearer" in their Statement of Principles from 2008²⁶: "Moral duty-bearers comprise individuals or institutions having the power and/or the resources necessary to influence people's lives." For NCA, the use of the concepts *rights-holders*, *legal duty-bearers* and *moral duty-bearers* are part of a comprehensive understanding of relations between poor and rich, and of the organisation's strategy to combat poverty – all NCA work is meant to empower the poor and hold the rich and the powerful accountable,

[24] See (in Norwegian) <http://www.regjeringen.no/nb/dep/fad/dok/regpubl/prop/2011-2012/prop-71-l-20112012/2/1.html?id=675342>

[25] Jakob Kirkemann Boesen and Tomas Martin: Applying a Rights-Based Approach. An Inspirational Guide for Civil Society. The Danish Institute for Human Rights, 2007.

[26] Norwegian Church Aid: "Together for a Just World. Norwegian Church Aid's Statement of Principles" (2008). Available at https://www.kirkensnodhjelp.no/globalassets/strategiske-dokumenter-og-foringer/kn_prinsippdok_en_2011.pdf

according to the Statement of Principles. While challenging the state as legal duty-bearers, they also want to challenge the moral duty-bearers, and among these they especially mention churches, church organisations and other religious institutions.

What does it mean to be a moral duty-bearer for a congregation who receives an asylum-seeking family on their doorstep, or for a development organisation that becomes aware of systematic discrimination of people, due to caste, ethnicity or gender, in relief work after a catastrophe? What responsibility does the Church of Norway have when the Christian faith is used to defend the death penalty, as in some states in the USA, or as in Uganda, where some groups are lobbying for death penalty for homosexuality?

A moral duty-bearer will seek to address rights violations by engaging with both the rights-holder and the legal duty-bearer. The moral duty-bearer will in the first instance perhaps seek to alleviate the situation for the rights-holder: by giving her food, by offering church asylum, by building a school for girls in a rural areas where there is normal no schooling, etc. But this approach alone will often be either very short-sighted or contribute to entrenching a harmful dependency on the donor and undermine the responsibility of the actual duty-bearer. Therefore, one must also concurrently address those who are legally responsible to fulfil the right in question.

The moral duty-bearer can hold the legal duty-bearer accountable by directly contacting the authorities about an individual case, or through coordinated and long-term advocacy work or campaigning. But the goal of rights work is that the rights-holder can stand up for her rights herself. Awareness-raising, rights education and capacity building can help those who have been subjected to violations to stand

up and speak out for their rights, and become someone who struggles for other people's rights.

Respect: To sweep around your own front door

The first element in the church's duty is to *respect* human rights, i.e. to not become perpetrators ourselves of human rights abuses. Human rights violations committed by representatives of the Church of Norway are not commonplace, but there are both historical and more recent cases. Situations where church leaders or people with authority are guilty of abuse are severe examples of breaches of human rights where the power of the church is used to violate the dignity of a person. The church as an institution is responsible to do what is possible to prevent and deter abuse, and to have good procedures in place to respond to suspected cases of abuse.²⁷

Historically, the Church of Norway as an institution is responsible for systematic human rights violations through its participation in the Norwegianisation policies that were enforced on the Sami population. The Church of Norway Synod in 1997 said: "The Synod acknowledges that the Norwegianisation policies of the Norwegian authorities and the role of the Church of Norway constitute abuse against the Sami people. The Synod will seek to end any injustice still ongoing."²⁸ In these cases, where the church has a historic responsibility for violations, it has a special obligation to contribute to the fulfilment of rights and the realization of justice and reconciliation for those affected. The church's involvement in Sami issues and in indigenous peoples' situation worldwide is especially important in the light of past abuse and the need for reconciliation.²⁹

The obligation to respect human rights includes an obligation not to discriminate. It can be important to note that not all unequal treatment is discrimination in a human rights definition. In the Church of Norway, the issue of women in ordained service has sparked discussions on discrimination, with references to the right to work, the rights of women, and freedom of religion or belief. In chapters 15, 16 and 17, we will look more closely at how human rights challenge the Church of Norway in relation to gender, LGBTI (lesbian, gay, bisexual, transsexual and intersex persons) and persons with disabilities.

The Church of Norway is part of a mutually accountable, ecclesiological fellowship in the Lutheran World Federation, and also has other, strong ties in the global church community. These ecclesiological ties also mean that the involvement of some churches in human rights

WHAT DOES IT MEAN TO BE A MORAL DUTY-BEARER FOR A CONGREGATION WHO RECEIVES AN ASYLUM-SEEKING FAMILY ON THEIR DOORSTEP, OR FOR A DEVELOPMENT ORGANISATION THAT BECOMES AWARE OF SYSTEMATIC DISCRIMINATION OF PEOPLE, DUE TO CASTE, ETHNICITY OR GENDER, IN RELIEF WORK AFTER A CATASTROPHE?

violations is a real concern for other churches. The backing given by some South African churches to the apartheid regime, the legitimisation of the Rwanda genocide, the support for jailing homosexuals and support for the death penalty are examples of situations where churches are partially liable for breaches of human rights. These issues must therefore be an integral part of the dialogue between the Church of Norway and sister churches.

Protect and fulfil: The church as a civil society actor

When speaking of the church's obligations to *protect* and *fulfil* human rights, we are no longer referring to obligations within the church internally, but rather how the church, faced with rights violations in society, relates to the state as the legal duty-bearer.

In the document *Diakonia in Context* from the Lutheran World Federation, the role of the church and faith based organisations in civil society is discussed.³⁰ The document highlights how the civil society arena gives the church a

new opportunity to play an active role in society, compared to earlier times when the churches, especially in Europe, were part of the state authorities. A shift from a state church to a civil society church involves, according to the document, a shift from seeking power as part of a hegemonic model, to looking for opportunities to be involved in important public concerns, and serve with the best interest of the population in mind.³¹

We have chosen to connect the role of the church to the role of civil society as a moral duty-bearer that can protect and promote human rights. This means that the responsibility of the church is not limited to a legal responsibility where the church itself is legally bound, but rather that the responsibility of the church comes from the moral obligation of civil society to protect and promote human rights, as discussed earlier.

In the previous chapter, we saw that the struggle for human rights can be theologically interpreted as a calling not only for the individual Christian, but also for the church. The 1988review authored by Henriksen also uses the words *duty* and *obligation* in this connection, for example that it is the duty of the church to speak out on human rights violations. This is tied to the mission of the church: to be a sign for the world and take part in the struggle to bring about God's will as creator.

In *Diakonia in Context*, the concepts transformation, reconciliation and empowerment are used to give direction to the diaconal work:

"It is the conviction of the church that God continues to empower people, not only the Apostles and others who have assumed leadership, but especially those who are rarely, if ever, given the opportunity to speak. (...) It should be remembered that empowerment always implies shifting of power, which means that imbalances of power must be dealt with critically. Diakonia should constantly raise this issue, not only in society and in the relations between helpers and those helped, but also with reference to diaconal praxis and how power is established and lived out in the life of the church." (*Diakonia in Context* p. 46)

[27] The Church of Norway has since 1996 had procedures and guidelines for responding to abuse cases where the accused is a church employee. In 2011 a guide was also developed on responding to abuse cases in volunteer-based work ("Kirkens frivillige arbeid: Forebygging og handtering av seksuelle overgrep." Church Council, 2013).

[28] Church of Norway Synod Resolution 13/97, "Urfolk i den verdensvide kirken med utgangspunkt i samisk kirkeliv", see <http://www.kirken.no/?event=DoLink&famID=6709>

[29] See Church Of Norway Synod resolution 07/06 <http://www.kirken.no/?event=DoLink&famID=6716> and resolution 13/97 (see *ibid.*)

[30] *Diakonia in Context: Transformation, Reconciliation, Empowerment*. Lutheran World Federation (2009), p. 64.

[31] *Diakonia in Context: Transformation, Reconciliation, Empowerment*. Lutheran World Federation (2009), p. 64.

MARCHING BACKWARDS TO PROTEST POVERTY

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The City Mission service centre "The Battery" was among the organisers of the event where around 100 people marched backwards around Parliament, to illustrate that the work against poverty in Norway is moving backwards.
[PHOTO: Per Frogner / Kirkens Bymisjon]



Around 100 people marching backwards around the Norwegian Parliament did not go unnoticed on Friday 23 August 2013. Their message was that the political efforts against poverty are moving in the wrong direction.

Before the march, speeches were held on the lawn in front of Parliament. The leader of the Welfare Alliance, Johanna Engen, opened the gathering by asking whether the politicians and authorities can search for room in their hearts for the poor.

– Many poor people cannot keep up a normal day-to-day life. The worst part for people living in poverty in Norway is the experience of losing your dignity, Engen said.

Spirits were high as the crowd which had gathered started to move backwards, singing together. However, their placards had grave messages:

- » The number of poor families in Norway is increasing
- » Dental health must be included in public health goods
- » Free lunch for all school pupils
- » Politicians cannot starve people into working
- » Social security benefits lag behind the general price hikes
- » Not enough public housing

The march was organised by the Welfare Alliance, the Salvation Army, and the Forum against poverty in Norway, which is coordinated by a City Mission service centre for self-help called "The Battery".

SOURCE: Church City Mission, 26.8.2013. Available in full in Norwegian at <http://bymisjon.no/no/Byer/Oslo/Oslo/2013/Baklengsmarsj-mot-fattigdom/>

This is followed by a warning against a diakonia that is not rights based:

“It certainly is the case that much diakonia has been organized as charity work through the action of the rich and powerful towards the poor. Such practices should be profoundly questioned. Such help tends to be paternalistic and alienating.” (*Diakonia in Context* p. 49)

THE DIACONAL VISION REACHES BEYOND THE SCOPE OF HUMAN RIGHTS. HUMAN RIGHTS CANNOT GUARANTEE INCLUSION IN A GROUP OR RELATIONSHIPS FILLED WITH CARE AND LOVE, WHILE THESE ARE KEY GOALS FOR DIACONAL WORK.

Advocacy is in this context a method to fight for the rights of human beings through coordinated and systematic efforts to influence those with decision-making powers, while at the same time empowering those whose rights are being violated. Advocacy can find motivation in the prophetic tradition, and involves holding those in power accountable for injustice and oppression. In advocacy, an actor (church, organisation, network – here called the moral duty-bearer) often speaks on behalf of those most marginalised in a community (the rights-holders, whose rights are being violated) to change policies or practice that is leading to the violations. In advocacy, whoever is speaking on behalf of someone else has a direct relation to that group and is also accountable to them. This makes advocacy different from lobbying, where efforts to influence are made on behalf of a narrow interest and where a direct connection to rights-holders is not implied. The goal for advocacy work is always that rights-holders themselves can be empowered and able to struggle for their own rights and participate as active and responsible citizens.

Diakonia and human rights: Dignity, respect and empowerment

The Church of Norway Plan for Diakonia understands diakonia as loving your neighbour, creating inclusive communities, caring for

creation and struggling for justice. The diaconal discourse found in the plan is closely connected to a human rights based approach, with emphasis on mutuality and respect for human dignity. Marginalised people are seen as actors rather than passive recipients of care, and the mission of diakonia is to empower people to struggle for their rights. The goal is that people are made capable to take responsibility as citizens and thus also join in struggle for the fulfilment of other people's rights.

When *struggling for justice*, a human rights based approach is especially important, as is also detailed in the *Plan for Diakonia*. Struggles for justice must always refer in one way or another to human rights, even if the goal of justice reaches further than the minimum standards that human rights are. Using a human rights discourse in diaconal work means to have a set of internationally acknowledged standards that reality can be measured against. If people's human rights are not fulfilled, you have a tangible method that can be used to hold the legal duty-bearers accountable – whether they are national or local authorities, or in some cases international organisations or institutions. Knowing the human rights discourse and system well can give diaconal actors an important tool.

The diaconal vision reaches beyond the scope of human rights. Human rights cannot guarantee inclusion in a group or relationships filled with care and love, while these are key goals for diaconal work. Human rights establish minimum standards for the life conditions of all human beings, while diakonia has bigger ambitions. Not all diaconal work can or should be defined as human rights work. But precisely as minimum standards human rights can be used to monitor the quality of diaconal work: Where diakonia is faced with or uncovers violations of human rights, a central mission will always be to struggle for the fulfilment of human rights. Knowledge of human rights then becomes a key to care for people's fundamental needs.

A central human rights principle is every person's right to participate in important decisions that affect her or his life and in the betterment of her or his life conditions. The diaconal vision of empowerment mirrors a rights based approach in its emphasis on human dignity and its efforts

ECUMENICAL PEACE BUILDING IN COLOMBIA

Official statistics indicate the existence of three million people who were pushed away from their land and property in Colombia due to armed conflict that has taken place for years in the country. Human rights organizations claim, however, that the number of displaced people is actually close to 5 million people.

Guerrilla groups - FARC and ELN – have perpetrated massacres, indiscriminate attacks, evictions of farmers, torture and sexual violence. In the Department of Arauca alone, there were 194 homicides in 2009.

A new accompaniment programme, coordinated by the Latin American Council of Churches (CLAI), supported by the World Council of Churches (WCC) and other actors, both locally and globally, has been organized to address these human crises.

The central aspect of the Programme of Ecumenical Accompaniment in Colombia (PEAC) is the option for nonviolence and seeks to support local and international efforts to achieve a negotiated solution to the conflict in Colombia. The programme supports the restitution of land to "displaced people", the defense of human rights, seeking justice and peace building through dialogue, and it aims to encourage the presence of international ecumenical observers in specific areas for a period of three months each.

SOURCE: World Council of Churches, 12.10.2011, <http://www.oikoumene.org/en/press-centre/news/churches-inaugurate-accompaniment-programme-for-victims-of-violence-in-colombia>



John Nduna, General Secretary of the ACT Alliance, met with displaced people in Soacha during a visit to Colombia in November 2010.

[PHOTO: Sean Hawkey/ACT]



to raise people up rather than leave them as passive recipients of someone else's charity.

A political church?

According to the understanding of diakonia described above, an obvious and central task of the church is to be involved in society and in public debates on behalf of and together with everyone whose rights and dignity is being violated. Sometimes, this type of involvement will take the church into debates that are political. It is important to say that the involvement of the church in specific public issues is always founded on normative deliberations that draw on a Biblical world view. Party politics are not and should not be part of the church's human rights involvement. It is possible that an ethically founded line of argument is similar to the opinion of a specific political actor or party, but this should not stop the church from making its line of argument clear. The level of specificity in the church's ethics-based recommendations will have to be decided from case to case, according to what serves the cause best.

IN PRINCIPLE, IT IS DIFFICULT TO IMAGINE A HUMAN RIGHTS VIOLATION THAT WOULD NOT BE RELEVANT FOR THE ATTENTION OF THE CHURCH OF NORWAY.

Jan-Olav Henriksen sums up his discussion (in the 1988review) on the relation between ethics and politics in the church involvement for human rights as follows:

"Ethics (rules for a good life) have clear implications for politics (the running of the state). In modern society, the church communicates an ethical resource material, and these teachings will always have political consequences. But, only when the church's involvement starts to be part of the running of the state, is the Church doing politics in a way that is not legitimate. It can certainly happen in cases where so-called ethical recommendations from the Church are not related to a Biblical world view, but are instead dictated by political party interests. It can also happen when the Church's political power functions become near identical with the state authorities' political hegemony." (Henriksen p 67-68)

The question of hegemony is different for an autonomous church and a state church. However, this is not an absolute distinction. Henriksen in 1988 argues that also a state church can have a legitimate, independent voice if it takes care not to exercise power. On the other hand, a nominally autonomous church (or organisations or institutions) can be too closely linked to the authorities in a way that makes it difficult to have an independent political voice. In both cases, keen attention to power and the use of power is needed, accompanied by a critical reflection on one's own role.

Criteria for prioritising cases

In principle, it is difficult to imagine a human rights violation that would not be relevant for the attention of the Church of Norway. Given that violations of human rights in a theological sense are violations of the God-given dignity of human beings, it is a Christian duty to seek to restore the dignity of the human being in all such situations. Struggling for justice is a central part of the church's diakonia, as expressed in the *Church of Norway Plan for Diakonia*, and the diaconal mission implies struggle against all forces and structures that create injustice, both in our neighbourhoods and at a global level.

In practice, though, it is difficult to imagine that the Church of Norway can be involved in addressing all human rights violations happening in the world. In reality, choices and priorities are made all the time about which cases receive attention and resources. It can be useful to try to systematise some criteria for how these priorities are made. Outlining criteria for priorities does not imply any ranking system where some rights violations are considered as more serious than others, but rather a realistic acknowledgement that resources have to be prioritised, and when making such priorities the decisions should be made on as principled grounds as possible.

The criteria that are listed here are not in a specific order. It is also not possible to base strategic choices on a rigid use of such criteria. They must be understood as part of a larger picture, and as a help to consider the various thematic areas in which an involvement is possible.

Suggested criteria for prioritising the church's human rights involvement ³²

1 WHEN CHRISTIAN FAITH IS USED TO LEGITIMISE VIOLATIONS OF HUMAN RIGHTS, OR WHERE THE CHURCH ITSELF IS RESPONSIBLE FOR VIOLATIONS

In situations where those who are violating human rights do so with reference to Christian faith, Christian churches have a special responsibility to criticise this and to struggle for human rights. Breaches of human rights that happen in a church context or where the church or church representatives are the perpetrators are also particularly severe, and the effect might be that the church setting gives such violations a veil of legitimacy. Such cases should have high priority for the Church of Norway. This of course applies all the more when our own church is responsible (or in part responsible) for rights violations. Areas where the Church of Norway has a history of complicity in rights violations are areas the church should pay extra attention to.

2 REQUESTS AND CONCERNS FROM ECUMENICAL ORGANISATIONS WHERE THE CHURCH OF NORWAY IS A MEMBER, AND REQUESTS AND CONCERNS FROM OTHER CHURCHES AND ORGANISATIONS

As a member of international, ecumenical organisations, the Church of Norway has a strong institutional and moral obligation to follow up concerns that are shared with us by other churches through these organisations. The Church of Norway also has the possibility, through its membership in ecumenical organisations, to work together with others in a global fellowship, with potential synergies and combined impact. In addition, concerns shared by churches and sister and brothers in Christ from other parts of the world are often brought to our attention, though these are deliberated on case by case.

3 CASES THAT ARE FORGOTTEN BY OTHERS AND ARE NOT ON THE INTERNATIONAL AGENDA

Some situations are left in the shadows, away from the spotlight of the media and the political agenda, although they might be situations of severe and widespread human rights violations.

This might in itself be a reason for the church to become involved in the issue. Jesus' example encourages Christians and the church to take care of the most marginalised. This criterion also implies an obligation to stay well informed about the human rights situation worldwide.

4 SCOPE OF HUMAN RIGHTS VIOLATIONS

Although every incident of a breach of a human rights in principle deserves attention and response, it is reasonable that the scope of the problem, i.e. how many people are affected, is seen as one among several criteria for how to prioritise resources. Following this criterion too strictly can lead to a cold utilitarianism that legitimises turning away from injustice against individuals since "more people are suffering somewhere else" or "people are worse off somewhere else". However, if we ignore this criterion completely, we risk overlooking grave violations of rights affecting large numbers of people because they are not in our immediate vicinity.

5 ESPECIALLY SEVERE AND COMPLEX VIOLATIONS OF HUMAN RIGHTS

Many places in the world, people are subject to violations of a number of human rights at the same time, making their situation especially severe. In such situations, there is also typically little chance to fight for one's own rights. Slavery or slavery-like conditions can serve as examples. In such situations, it is particularly pertinent that the church speaks on behalf of people and supports people's capacity to fight for their rights.

6 CASES WHERE THE NORWEGIAN STATE OR OTHER NORWEGIAN ACTORS ARE RESPONSIBLE FOR VIOLATIONS OF HUMAN RIGHTS

If Norwegian authorities or other Norwegian actors are seen to be responsible or in part responsible for human rights violations, whether in Norway or anywhere else in the world, every Norwegian citizen and the church as part of Norwegian civil society have the responsibility to advocate the respect of people's rights. One reason for this is ethical: Norwegian authorities act on behalf of the population, and as part of a democratic society we have both the possibility and the responsibility to influence what our authorities do on behalf of the country. Another reason is pragmatic: It is often easier for the

Church of Norway to impact the behaviour of Norwegian authorities than that of other countries. Likewise, when other Norwegian actors are complicit in human rights violations, the churches in Norway have a special responsibility and possibility to advocate change.

A COMPREHENSIVE AND CREDIBLE HUMAN RIGHTS WORK IN THE CHURCH OF NORWAY SHOULD OVER TIME INCLUDE A CERTAIN RANGE OF CASES, WITH DIVERSITY IN THEMATIC CONTENT AND COUNTRIES INVOLVED.

7 POSSIBLE IMPACT

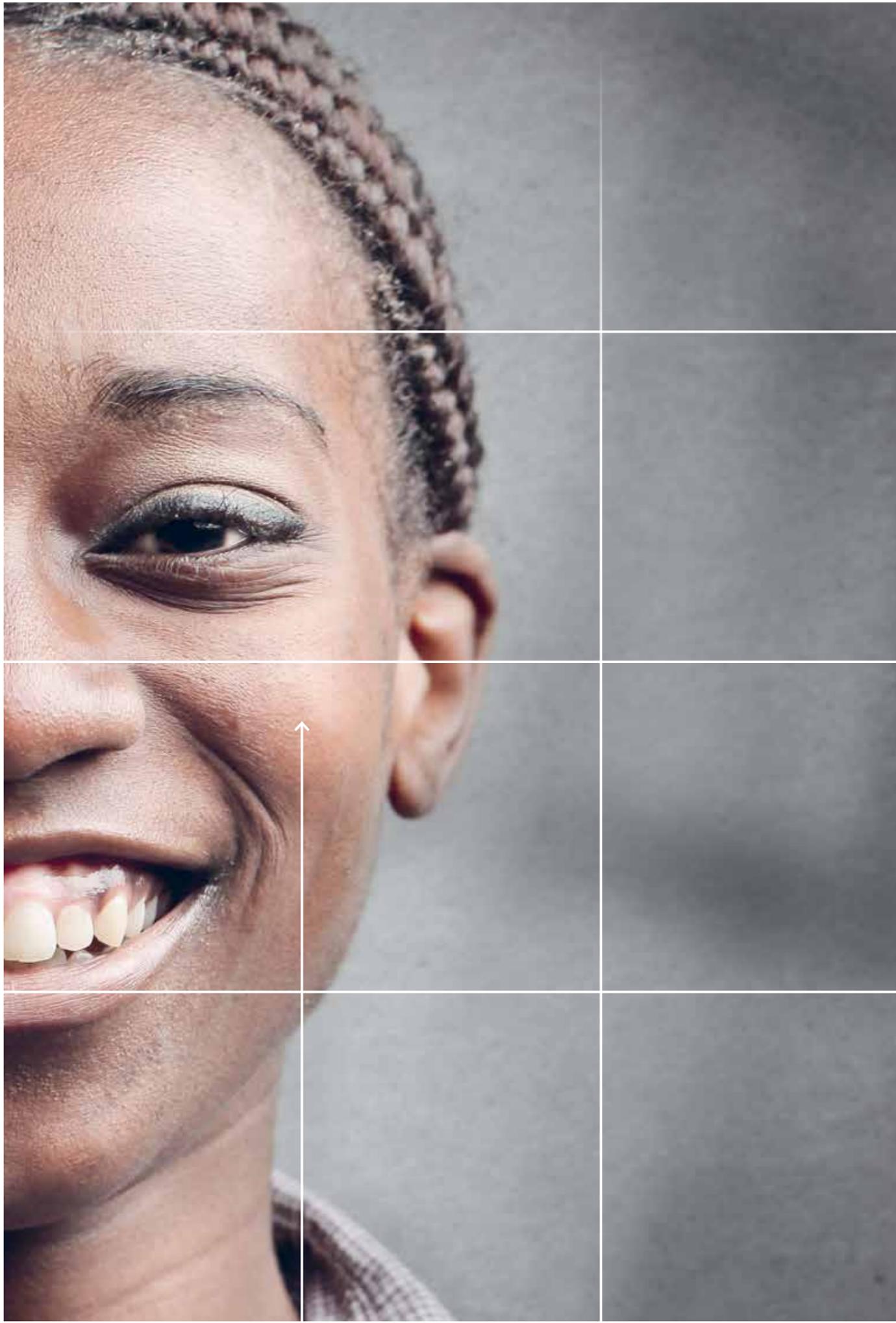
If our involvement for human rights is not just a theoretical exercise, but has an agenda of change, then one of the questions we have to ask is where and how we as church actors have the best opportunities to make an impact. This question becomes a central criterion for where we should focus our efforts. How best to determine our potential impact will vary with time and context, but relevant factors might include:

- » Closeness to decision makers (like e.g. Norwegian authorities, as mentioned further up)
- » Relation to any of the persons or groups affected, knowledge of the thematic area, or good church or other networks
- » Momentum in a case: Attention to or political interest in an issue can expand the room for advocacy
- » Cases where religious know-how and a religious vocabulary are especially important assets

8 GEOGRAPHICAL AND THEMATIC RANGE IN THE OVERALL INVOLVEMENT

A comprehensive and credible human rights work in the Church of Norway should over time include a certain range of cases, with diversity in thematic content and countries involved. This criterion of range should, however, not be used to hinder or bring to a close work which is successful. It should rather inspire to keep an eye open for issues or areas that might have been overlooked earlier.

[32] The idea for these criteria are from Jan-Olav Henriksen: *For menneskeverdens skyld. Den norske kirkes internasjonale menneskerettighetsengasjement*, Church of Norway Council on Ecumenical and International Relations (1988), and the corollary resolution from the Council in 1988.



06

LOCAL HUMAN RIGHTS EFFORTS IN THE CHURCH OF NORWAY

The local congregations in the Church of Norway demonstrate their concrete involvement for human rights in many different ways. Through the *Church of Norway Plan for Diakonia* and *Plan for Christian Education*, the church has committed itself to a wide-reaching concern for human dignity and human rights. A lot of effort has already been put into resources for thematic services where human rights and global justice are especially in focus, often developed in collaboration between the church and various organizations. Most congregations are involved in the Lenten Campaign of Norwegian Church Aid. “Mission pledges” can also be a good tool for congregations to participate in, and be inspired by, the rights based work done by different mission organisations.

THE STRUGGLE FOR JUSTICE INVOLVES
STANDING NEXT TO A FELLOW HUMAN
BEING, NOT AS A PASSIVE SPECTATOR,
BUT IN ACTIVE INVOLVEMENT.

Some congregations also come face to face with human rights issues closer to home, through their interaction with vulnerable groups in their own communities. It can be challenging in practice to know how to live up to the shining vision of a church committed to human dignity and human rights – both for a local congregation, and for the central institutions of the Church of Norway.

Human rights are not the equivalent of Christian ethics, and they are not motivated by a Christian ethical context alone. What human rights may do, is to give us a good starting point for defining a minimum standard, and a useful check-list of fundamental, human justice. They have a moral language for justice, and at the same time their status in international law and in global consciousness makes them unique as codified, concrete targets. This makes it possible to cooperate broadly on human rights issues. There is plenty of room for collaboration between the church’s central institutions, local congregations, state entities and civil society.

In its *Human Rights Training Manual*, the Conference of European Churches (CEC) writes that the churches are on the frontline in perceiving and responding to the needs in society, and are therefore often in a position to expose human rights violations in their local communities. At the same time the churches, through their visibility, have opportunities to influence political leaders, “speaking truth to power”.³³

Church of Norway thematic plans that touch on human rights

The *Church of Norway Plan for Diakonia*, adopted in 2007, declares that all suffering persons, both in our local community and in other countries, are a concern for us as a church. “The struggle for justice involves standing next to a fellow human being, not as a passive spectator, but in active involvement.”³⁴ In defining diakonia, four areas of work are emphasised and recommended for the attention of the congregations: *loving your neighbour, creating inclusive communities,*

[33] <http://csc.ceceurope.org/issues/human-rights/csc-human-rightstraining-manual/>

caring for creation and struggling for justice. At the congregational level it is the congregational council who are responsible for including and developing diaconal work in the area, while the diocesan councils are responsible for overseeing that this happens in line with national strategies and plans.

Human dignity and human rights are highlighted as key perspectives in all church work and in the local strategic plans. In their implementation of the *Plan for Diakonia*, congregations are encouraged to get involved in public debates locally when someone's dignity is being violated. Local congregations can also be involved in human rights issues in a global perspective, through mission pledges, or by supporting campaigns by Norwegian Church Aid or Amnesty International.

In the *Plan for Christian Education*, "*Greatest of All*", one expressed goal is that children and youth take part in the church's diaconal work. The document puts forward that children and youth can be invited as co-workers wherever faith is practiced through active involvement in church or society, with the aim of upholding human dignity and a more just world. Biblical texts suggested include texts from the prophet tradition that voice claims for social justice. As with the *Plan for Diakonia*, the implementation of the *Plan for Christian Education* is also the responsibility of the congregational council.³⁵ Diakonia, mission and service are emphasised as central dimensions of Christian education. This challenges the congregations to think comprehensively and to use different perspectives and angles to include children and youth in the work for justice and dignity. Over the last years, many different resource materials have been developed by different organisations, for use in Christian education and confirmation classes. Among these are resource materials on human rights.³⁶

Services and days with a thematic human rights focus

In the development of the Church of Norway's new liturgy, human rights have been given renewed attention through the Biblical texts chosen for two thematic Sundays in particular: "Justice and peace Sunday" and "Sunday for the persecuted". Congregations can celebrate these during the autumn semester.

North/South Sunday

The Church of Norway North/South Sunday is traditionally on the same day as the big, annual telethon organised by the Norwegian Broadcasting Corporation in October. In 2012, the telethon featured Amnesty International, with the theme *Stand up against injustice*. Resource materials for a service under the same heading as the telethon are developed by the Church of Norway North/South Information Desk and the Council on Ecumenical and International Relations.

Sunday for the persecuted

The second Sunday in November marks the international day of prayer for persecuted Christians across the world. The *Stefanus Alliance* publishes resource materials for the service, among them a "Service for the persecuted".

St. Stephen's Day

On 26 December, St. Stephen's Day is commemorated in the Church of Norway. This is a day for congregations to become more aware of and take action against violations of the freedom of religion taking place in different countries of the world.

Sunday for peace and human rights

The Council for Ecumenical and International Relations encourages congregations to mark 2nd Sunday of Advent as the church's peace and human rights Sunday. This is often the Sunday that is closest the UN Human Rights Day and the Nobel Peace Prize ceremony, both on 10 December.

Lenten campaign

The Norwegian Church Aid (NCA) invites congregations to take part in an annual Lenten campaign, where human rights violations and poverty are in focus. Through the campaign, congregations raise money for NCA's work for a more just world, while also involving themselves in an advocacy campaign on a specific, yearly theme. The Lenten campaign can also be the focus of a church service or in confirmation classes, in addition to fund raising and collection of signatures.

Human rights and mission

The Church of Norway Synod in 2012 discussed mission, and appealed to members of the church to live "as disciples: Seeking Christ, sharing faith, and caring for our neighbour and creation. The church therefore encourages all its members to choose a personal service of donation and pattern of consumption that contributes to global justice and care for creation."³⁷ The congregations are challenged to find concrete forms of practicing discipleship and following Christ, through for example prayer for the church worldwide, through mission pledges, by getting involved in international diakonia through different organizations, or by becoming an "eco-congregation".

Mission is one of the key characteristics of the church. The right to mission is ensured through article 18 of the *Universal Declaration of Human Rights*, through which everyone has the right to practice her or his faith, and to convert. In recent years, many mission organisations have given increased attention to human rights work in the countries where they have partners and projects. Through a long history of cooperation and experience at a local level, they are often well placed, together with local partners, to raise issues such as the right to food, education, health, environmental safety, freedom of religion and freedom of association with local and national authorities. Mission pledges can be a good tool for local congregations to participate in and be inspired by the rights based work of

different mission organisations, and include it in Christian education, diaconal work and services.

The Joint Council for Congregations in Mission (SMM), in cooperation with the Church of Norway North/South Information Desk, encourage congregations in the Church of Norway to work for climate justice. Through the campaign "Climate elections 2013", all congregations were invited to join and strengthen their involvement in climate issues. The coordinator of the Evangelical Lutheran Free Church of Norway Desk for Children and Youth sums up why Christian organisations and congregations should put climate politics on the agenda: "*Christian organisations work for justice and hope. In today's situation, these are lost, unless we manage to agree on a sustainable climate policy. That's why we belong in the common platform 'Climate elections 2013': Fair distribution and ending poverty are also important issues to us. And we know who are the hardest hit by climate change.*"³⁸

Congregations and local human rights issues

Through the work of employees and volunteers, and through the people coming to church, congregations are often in touch with people who have suffered injustice or whose dignity has been or is being violated. Congregations can play an important role in recognising and making known human rights violations locally, but also internationally through contacts with immigrants and refugees. The churches in Oslo have in recent years come face-to-face with central human rights issues through the mere fact that their physical space has been used by vulnerable groups, and because several vulnerable groups have contacted the church hoping to be taken seriously and listened to. In the summer of 2011, Ethiopian and Iranian immigrants who had been denied asylum in Norway set up tents outside Oslo Cathedral. Palestinian refugees without asylum camped for one and a half years outside Jacob Church in Oslo. In the summer of 2012, a group of Roma people made camp on the grounds of Sofienberg Church in Oslo, while another family lived in the garden of Bishop Tor B. Jørgensen in Bodø. At both central and local level, the church has also been concerned for the situation for undocumented immigrants. In December 2012, the bishops of the Church of Norway together expressed their

[34] *Church of Norway Plan for Diakonia*, available at <http://www.gammel.kirken.no/?event=downloadFile&famID=117564>

[35] See e.g. <http://www.gammel.kirken.no/?event=dolink&famID=11298>

[36] Resource materials for Christian education in the Church of Norway can be found in the resource pool "*Støst av alt*" [in Norwegian]

[37] Church of Norway Synod 2012, agenda item 07/12: Response to the challenges from Edinburgh 2010. See <http://www.kirken.no/?event=doLink&famID=218698>

[38] Our translation. Full-length interview (in Norwegian): <http://klimavalg2013.no/hvem-er-vi/samler-seg-til-klimavalg-artikkel5246-559.html>

disappointment when the Supreme Court turned down the appeal of two children of asylum-seeking families who had lived in Norway for many years. A unanimous Bishops' Council criticised the majority ruling of the court for what they deemed to be a prioritisation of immigration policies ahead of the best interests of the children. (The decision will probably be appealed to the European Court of Human Rights in Strasbourg). In addition to paying special attention to the situation of undocumented immigrants and the rights of children, the church has also become involved in the situation for asylum seekers who have converted to Christianity. Several priests

THROUGH THE WORK OF EMPLOYEES AND VOLUNTEERS, AND THROUGH THE PEOPLE COMING TO CHURCH, CONGREGATIONS ARE OFTEN IN TOUCH WITH PEOPLE WHO HAVE SUFFERED INJUSTICE OR WHOSE DIGNITY HAS BEEN OR IS BEING VIOLATED.

have publicly spoken out on what they experience as increasingly strict requirements in such asylum cases. The church, in its involvement and efforts in these cases, has to keep in mind the risk that a conversion can also be used opportunistically.

The siblings Fozia and Abbas Butt spent 15 months in "church asylum" in Holmlia Church in Oslo. The brother and sister had spent most of their lives in Norway, but were expelled in 2009 after their final appeal was rejected. In December 2012, they won their case in the European Court of Human Rights in Strasbourg and gained permanent residency in Norway.

Challenges for further involvement

The *Church of Norway Plan for Diakonia* affirms that "All human beings have the right to a life in dignity. We cannot be indifferent to people

struggling for life. In this struggle, we must be on the side of justice and solidarity, together with them." The church is faced with many challenges when it seeks to live according to these goals, both at the level of local congregations and at central level. In all parts of the church it can be difficult to connect plans and documents on the struggle for justice and solidarity with the real-life church, striving to be a community, acting together. Still, the Church of Norway and many organisations have developed good tools that congregations can use to include human rights issues in their liturgy, diaconal work and Christian education, even when the strength to carry out plans and resolutions feels far removed from the ambitions.

Many congregations in Norway have for many years been involved in protesting human rights violations abroad, through campaigns like the Lenten campaign, through Human Rights Sundays or mission pledges. Often, human rights issues are now literally coming closer.

Many immigrants and asylum seekers experience an increasingly tough immigration climate in Norway, with long periods of undecided processes and decisions that are difficult to understand.³⁹ A local congregation can often feel alone faced with such cases or with the destiny of individuals who approach them.

A human rights based assessment of Norwegian asylum practice is called for, to decide whether or when human rights are breached in such cases, as is often claimed. These questions are examined further in chapter 12. From the point of view of the local congregation, guidance is needed in specific cases and training in practical human rights perspectives is needed in general, if the church wishes to live up to its own visions for diakonia and faith education.

PART II

→ WITHIN SOME AREAS, THERE HAVE BEEN SUBSTANTIAL CHANGES OVER THE LAST 25 YEARS – IN THE HUMAN RIGHTS SITUATION WORLDWIDE, IN THE INTERNATIONAL BODY OF TREATIES, OR IN THE DEBATES ON SPECIFIC RIGHTS. WITHIN OTHER AREAS, HUMAN RIGHTS VIOLATIONS MAY HAVE BEEN GOING ON FOR A LONG TIME, WITHOUT SUFFICIENT AWARENESS FROM THE CHURCH OR OTHER CIVIL SOCIETY ACTORS.

THE 12 FOLLOWING CHAPTERS PRESENT SOME THEMATIC AREAS WHERE THE CHURCH OF NORWAY IS CHALLENGED TO RENEWED REFLECTION ON THEOLOGY AND PRACTICE.

[39] As documented in e.g. the report (in Norwegian): *I god tro* (2009) <http://www.kirken.no/index.cfm?event=downloadFile&famID=69058>

07

HUMAN RIGHTS AND QUESTIONS OF LIFE AND DEATH

IN SHORT: IN THE LATER YEARS, THE QUESTION ON WHAT IS ENCOMPASSED BY THE RIGHT TO LIFE HAS COME UP WITH RENEWED STRENGTH, ESPECIALLY RELATING TO WHETHER ABORTION AND EUTHANASIA CAN BE DEFENDED THROUGH HUMAN RIGHTS BASED ARGUMENTS. HUMAN RIGHTS HAVE INCREASINGLY BEEN USED TO SUPPORT LEGALISING ABORTION, AND SOME HAVE ALSO USED THE PRINCIPLE OF SELFDETERMINATION TO DEFEND EUTHANASIA. AT THE SAME TIME THE RIGHT TO LIFE ALSO RELATES TO CAPITAL PUNISHMENT, AND THE LIMITS TO LEGITIMATE USE OF FORCE BY THE STATE.

Questions of life and death – ethics and human rights

Some of the most important and most discussed ethical questions in our time relate to issues of life/death. Abortion and euthanasia are two important topics that have created debate in many countries in recent decades. Increasingly, these questions have also been looked at through a modern human rights lens. Sometimes the ethical and the rights based approach to these questions guide us in the same direction; at other times human rights based arguments can point in a different direction from where traditional ethical arguments point. We therefore recognise the need to discuss more closely how questions on abortion

and euthanasia can be understood in a human rights perspective. The abolition of the death penalty also belongs in this chapter, and has a central place in modern human rights discourse.

The right to life

The right to life is a fundamental human right. Article 3 of the *Universal Declaration of Human Rights* declares that “[e]veryone has the right to life, liberty and security”. In the *European Convention for Protection of Human Rights and Fundamental Freedoms*, article 2 bears the title “Right to life”. In this article, it is established that everyone’s right to life shall be protected by law. For states to fulfil their obligations, they should at a minimum have a functioning legal system that protects life, and capacity to investigate and take punitive measures in murder cases. Implicitly, this entails that the state should have adequate police forces and other units that can uphold the law in a good way.

But the right to life can also be understood in a broader sense, and the UN Human Rights Committee at one point warns states against interpreting the right to life too narrowly. They highlight the need for pro-active initiatives from the state, for example to decrease infant mortality, and to combat epidemics.⁴⁰ Thus, the right to life is closely connected to the right to health and access to health services. This does not, naturally, mean protection from illness or old age or death. But states are expected to offer a basic service that can underpin the right to life and raise life expectancy (see also chapter 10 on human rights and poverty).

Death penalty and use of force by the state

The right to life is not an absolute right. This means that in certain specific situations it can be limited. When human rights were articulated after the Second World War, death penalty was part of the law in many countries and the human rights treaties reflect this. On this topic, international law has developed, keeping pace with strong movements to abolish death penalty. Especially in Europe, the effort against death penalty has seen results, including two protocols to the *European Convention on Human Rights* that aim to prohibit death penalty.⁴¹

SOME OF THE MOST IMPORTANT AND MOST DISCUSSED ETHICAL QUESTIONS IN OUR TIME RELATE TO ISSUES OF LIFE/DEATH.

Amnesty International and a range of other civil society organisations work to completely abolish capital punishment. For the Church of Norway, the arguments given should be easy to identify with: A person’s human dignity is inherent in that person, no matter what he or she has done. A life is priceless. Death penalty is often defended by pointing to the need for revenge and justice, but it has not been shown to have preventive effects. Capital punishment, then, can be seen as premeditated murder by the state, and an irreversible violation of a person’s right to life.

The treaties name other situations where the right to life can be limited, such as “in defence of any person from unlawful violence”, “in order to effect a lawful arrest or to prevent the escape of a person lawfully detained”, or “in action lawfully taken for the purpose of quelling a riot or insurrection” (from the *European Convention on Human Rights*, art. 2). This is part of the state’s monopoly of violence and obligation to protect its citizens against violence. For example, an individual might be killed in a hostage situation, in an attempt to prevent the loss of innocent people’s lives. Still, a state’s use of force can go terribly wrong and lead to loss of life in

situations where this was not strictly necessary, or where actions are based on false or incomplete information. The fight against terrorism has drawn renewed attention to this risk.

Abortion and the right to life

When looking at the topic of abortion in a human rights perspective, one pertinent discussion is whether the unborn child is to be understood as being protected under the right to life. The most commonly held view is that the scope of the right to life is from birth, and that the *Universal Declaration of Human Rights* and the *European Convention of Human Rights* therefore cannot be seen as prohibiting abortion.⁴² The *American Human Rights Convention* (for the American continent) is the only international convention that explicitly states what it considers as life’s beginning: “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception.” (art. 4.1).

In recent years, human rights have increasingly been used to defend a woman’s right to self-determined abortion. Being able to access legal and safe abortions in one’s own society is understood as part of women and young girls’ right to a decent life, and to autonomy and self-determination. For the church, the topic of sexual and reproductive health is difficult and demands ethical and theological reflection together with a rights perspective. These questions are discussed further in chapter 15. The issue of unwanted pregnancies and abortion are profound ethical questions that raise serious dilemmas – and where protection of human life in all its phases, from conception onwards, must be considered while also considering the situation of the pregnant woman and her family. In some situations, abortion is a question of a conflict between the life of the foetus and the life and health of the mother. The church must contribute to the ethical reflection on how we can kindle the respect for both born and unborn life, and also take seriously the rights dimensions.

Euthanasia and human rights

The same is true for the question on euthanasia or active assistance to ending life. Also here, it seems that the human rights texts do not give comprehensive answers to the challenges faced.

[40] UN Human Rights Committee, General Comment 6 (1982), paras. 1, 5

[41] [In Norwegian] Høstmølingen, Njål: “Hva er menneskerettigheter?” Oslo: Universitetsforlaget 2010, p.32f.

[42] Ibid.

The clearest text, the *European Convention*, has strict restrictions on what are legitimate exceptions to the right to life, and can therefore in all probability not be interpreted as allowing for euthanasia. Recently, there have been court cases where people have approached a court to be allowed the right to choose to end their lives, and in some countries, especially the Netherlands, the legal framework has moved far in the direction of allowing a self-determined end to life. In Norway, euthanasia is not allowed.

For the Church of Norway, euthanasia is first and foremost a question that must be seen in light of Christian ethics and a Christian understanding of human dignity and the inviolability of life. The Church of Norway Synod discussed euthanasia in 1998 (agenda item 13/98), and underlined the right to dignity in life and death. They also reflected on the rights dimensions:

EVERYONE HAS THE RIGHT TO LIFE, LIBERTY AND SECURITY OF PERSON AND PRESUPPOSES THAT EVERY PERSON HAS AN INHERENT DIGNITY, NO MATTER THEIR MENTAL OR PHYSICAL CONDITION.

“The UN Declaration of Human Rights declares that ‘everyone has the right to life, liberty and security of person’ and presupposes that every person has an ‘inherent dignity’, no matter their mental or physical condition. It is the duty of a society to protect the citizens against an undermining of this basic right. On a humanistic foundation, it is important to uphold the absolute and unassailable worth of the human life.”⁴³

[43] Our translation.

CHALLENGES FOR THE CHURCH OF NORWAY:

How do we talk about the difficult deliberations that lie behind a choice to have an abortion – without going against the understanding of human life as inviolable?

What is the contribution of the church to the public discussions on life's ending?

How can the church be actively involved in the global struggle against death penalty?



THE HUMAN RIGHT TO FREEDOM OF RELIGION OR BELIEF

IN SHORT: RECENT STUDIES INDICATE THAT THE FREEDOM OF RELIGION OR BELIEF IS UNDER INCREASING PRESSURE IN THE WORLD. THIS AFFECTS BOTH CHRISTIANS AND MEMBERS OF MOST OTHER RELIGIONS. IN SOME CASES CHRISTIANS ALSO TAKE PART IN THE RESTRICTION OF RIGHTS OF THOSE WHO BELIEVE DIFFERENTLY FROM THEM. THE CHURCH OF NORWAY'S INTERNATIONAL INVOLVEMENT IN THIS FIELD LARGELY TAKES PLACE WITHIN THE FRAMEWORK OF ECUMENICAL ORGANISATIONS AND IN COOPERATION WITH OTHER COMMUNITIES OF FAITH AND LIFE STANCES AS WELL AS OTHER ACTORS.

Whether freedom of religion is an old or a newer right is contested; the answer depends on the definition we give. A comprehensive human right to freedom of religion or belief, as established in modern international human rights treaties, was given its legal wording as late as after the Second World War.

However, the elected representatives who wrote the Norwegian constitution in 1814, had American and French role models. They initially (in April 1814) proposed that the Norwegian constitution should follow liberal principles also in the field of religion. But abolishing state religion in Norway proved to be an insurmountable challenge; the Evangelical Lutheran Church was too strongly incorporated in the state apparatus. For instance, most of the representatives present were elected in

local parish meetings held after prayer services and patriotic oaths, in February and March 1814.

The *Universal Declaration of Human Rights* (1948), the *European Convention on Human Rights* (1951) and UN's *International Covenant on Civil and Political Rights* (ICCPR, 1966/1976) are therefore the first instruments that secure the principle of freedom of religion or belief as a universal human right. Norway had to declare a reservation to the *European Convention* at first, due to a paragraph in the Norwegian constitution prohibiting Jesuits from entering the kingdom (this was abolished in 1956). Norway's problematic state religion was often questioned, but the European Court of Human Rights in Strasbourg did not see state religion itself as a violation of human rights.

The core norms in freedom of religion or belief

The central norms in the human right to freedom of religion or belief are found in the *Universal Declaration of Human Rights*, article 18, the *European Convention on Human Rights*, article 9, and the *UN International Covenant on Civil and Political Rights*, article 18. The three articles are similar in wording and substance.

The legally binding norms in the human right to freedom of religion or belief can be summed up as follows:

1. Internal freedom. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom for

JOINT DECLARATION ON THE FREEDOM OF RELIGION AND THE RIGHT TO CONVERSION

On August 22, 2007, the Islamic Council of Norway and the Church of Norway Council on Ecumenical and International Relations presented a joint declaration on the freedom of religion and the right to conversion. This is supposedly the first time a church and a representative Muslim, national organisation publish an agreement together on the right to conversion.

- We denounce, and are committed to counteracting all violence, discrimination and harassment inflicted in reaction to a person's conversion, or desire to convert, from one religion to another, be it in Norway or abroad, the declaration says.

Since 1993 important processes of interfaith dialogue have taken place between the Islamic Council of Norway and the Church of Norway Council on Ecumenical and International Relations. In this dialogue work, freedom of religion is a core issue. Freedom of religion is a value that is reflected in our attitudes to people of other faiths. The right to change religious belief is inherent to the freedom of religion.

In Norway there are few conversions from Christianity to Islam or vice versa. Nevertheless, the two councils underline that there should be no doubt that freedom of religion, with the right to conversion, is a fully acknowledged principle, reflected in attitudes and accepted in practice, both by the Islamic Council of Norway and the Church of Norway Council on Ecumenical and International Relations.

Joint Declaration:

The Islamic Council of Norway and the Church of Norway Council on Ecumenical and International Relations jointly declare that everyone is free to adopt the religious faith of their choice. We denounce, and are committed to counteracting all violence, discrimination and harassment inflicted

The contact group between the Islamic Council of Norway and the Church of Norway Council on Ecumenical and International Relations in 2007 adopted a joint declaration on the freedom of religion. The declaration is part of the groups work to prevent conflicts and to create space for understanding between Muslims and Christians as they relate to each other and to Norwegian society in general. Left to right: Leader of the Islamic Council of Norway, Senaid Kobilica, Church of Norway pastor Anne Hege Grung, General Secretary for the Islamic Council of Norway, Shoaib Sultan and General Secretary for the Church of Norway Council on Ecumenical and International Relations, Olav Fykse Tveit. [PHOTO: Gunnar Westermoen/Kirkerådet]



in reaction to a person's conversion, or desire to convert, from one religion to another, be it in Norway or abroad.

We interpret our religious traditions such that everyone has the right to freely choose their religious belief and faith community, and to practice their religion publicly as well as privately.

Missionary activity and information to others about our faith must be done according to ethically accepted standards, that is, without the use of any form of force or manipulation. If freedom of religion is to be upheld, all conversion must happen freely.

As religious communities we experience joy within our respective contexts whenever a person wishes to share our faith and join our religious community. Therefore we also respect a person's right to convert to a different religion than our own.

Oslo, 22nd of August 2007

*Shoaib Sultan, General Secretary Islamic Council of Norway
Olav Fykse Tveit, General Secretary Church of Norway Council on Ecumenical and International Relations*

SOURCE: Church of Norway web page, 22.8.2007, available at <http://www.gammel.kirken.no/english/news.cfm?artid=149142>

everyone to confess, adopt, keep or change his or her religion or belief.

2. External freedom. Everyone has the right, either alone or together with others, in public or in private, to manifest his religion or belief in worship, observance, practice and teaching.

3. Without force. No one shall be put under forceful pressure in attempts to hinder her or his freedom to confess or choose a religion or belief of his or her own choice.

4. Without discrimination. States are obliged to respect the freedom of religion or belief, and secure this right for everyone within their territory and jurisdiction, without discriminating on the grounds of race, gender, language, religion or belief, political or other opinion, nationality, property, status of birth or any other status.

5. The rights of parents and guardians. States are obliged to respect parents' or guardians' freedom to secure a religious or morally grounded upbringing for their children in accordance with their own conviction, and relative to the age and maturity of the child.

6. Organisational freedom and legal status. Organisations of faith and life stances have freedom of religion or belief, including autonomy in internal cases. One aspect of this is the freedom to have legal status as an organisation and to be able to work for one's rights and interests as communities of faith or life stances.

7. Limits to permissible limitations on external freedom. Freedom to practice one's religion or belief can only be put under limitations that are (a) prescribed by law and (b) are initiated by the state with the intention of protecting (I) public safety, (II) order, (III) health, (IV) morals or (V) the fundamental rights of others and (c) are proportionate, i.e. do not exceed what is necessary to secure the purpose.

8. Non-derogable. States cannot waive the freedom of religion or belief, even in a state of emergency. This is determined in the International Covenant on Civil and Political Rights, though not in the European Convention on Human Rights. However, since

all States Parties to the European Convention on Human Rights are also States Parties to the International Covenant on Civil and Political Rights, the non-derogability of this norm applies.

The human right to freedom of religion or belief: Important, seriously violated, and still controversial in our time

Our religion or belief is part of who we are and what we stand for as human beings, individually or collectively. It is part of what we can contribute to others and towards society.

Today, the human right in this field is seriously violated in many countries and in many ways. Demography and politics make minorities particularly vulnerable: Baha'is in Iran, Ahmadis in Indonesia and Pakistan, Muslims in many (also European) countries, Tibetan Buddhists, Uyghur Muslims and Christians in China, Christians and Jews in Egypt and in other Arabic countries. There are many examples of serious violations where states do not fulfil the human right to freedom of religion or belief. Often the state distorts or neglects its obligations under international law, for instance through excessive restrictions on the practice of religion or belief, draconian conditions for registration, demonization of faith communities, or persecution, imprisonment or banishment of religious leaders.

The Church of Norway is not complicit in violations of the freedom of religion or belief through what we do. The challenges rather lie in what we do not do.

How does the freedom of religion or belief challenge the Church of Norway?

At a global level, the scope and intensity of state-sponsored cutbacks of the freedom of religion or belief has increased over the last years. A broad and thorough study, published in September 2012⁴⁴, shows a tendency over the last four to five years of increasingly restrictive legal and political measures taken across the world against religious belief and practice. The study also shows a significant increase in aggressive actions taken by individuals, organisations or certain groups in society hostile to religion (sectarian violence, attacks on houses of worship and similar locations, bullying because of religious clothing, etc.). The Church

[44] The Pew Forum on Religion and Public Life: *Rising Tide of Restrictions on Religion* <http://www.pewforum.org/Government/Rising-Tide-of-Restrictions-on-Religion-findings.aspx>

of Norway has an obligation to stay informed and not evade the obligation to support full-fledged freedom of religion or belief, for Christians and non-Christians, for life stance minorities as well as majorities.

The Church of Norway contributes to the protection of the freedom of religion or belief through various means. In Norway, the involvement is channelled through the Oslo Coalition on Freedom of Religion or Belief, through the NGO Forum on Human Rights, and through direct contact with Norwegian authorities. Internationally, the Church of Norway works for freedom of religion through organisations such as the World Council of Churches, the Lutheran World Federation, and the Conference of European Churches. In addition, freedom of religion is a central aspect in other human rights work, as seen for example in the church's involvement in asylum cases (see chapter 12).

In Norway, a public report was released in 2013, with recommendations on government policies in the field of faith and life stances.⁴⁵ This added new vigour and involvement in the public debate on the topic. Many aspects affect the Church of Norway, and some questions are also controversial within the church.

One of the most controversial suggestions is that government economic support should not be given to faith or life stance communities that exclude women or homosexuals from elected positions. It is important to note that this debate is not, strictly speaking, about a human rights issue, since receiving economic support from the state is not a human right. Still, a state practice where faith and life stance communities are treated differently can be seen as discriminatory.

On the other hand, it is not a human right (for example for women or homosexuals) to be electable to positions in an autonomous faith community. However, this also becomes a question of equal treatment and whether the state should support faith communities that do not treat their members equally. These are thus political deliberations that are not human

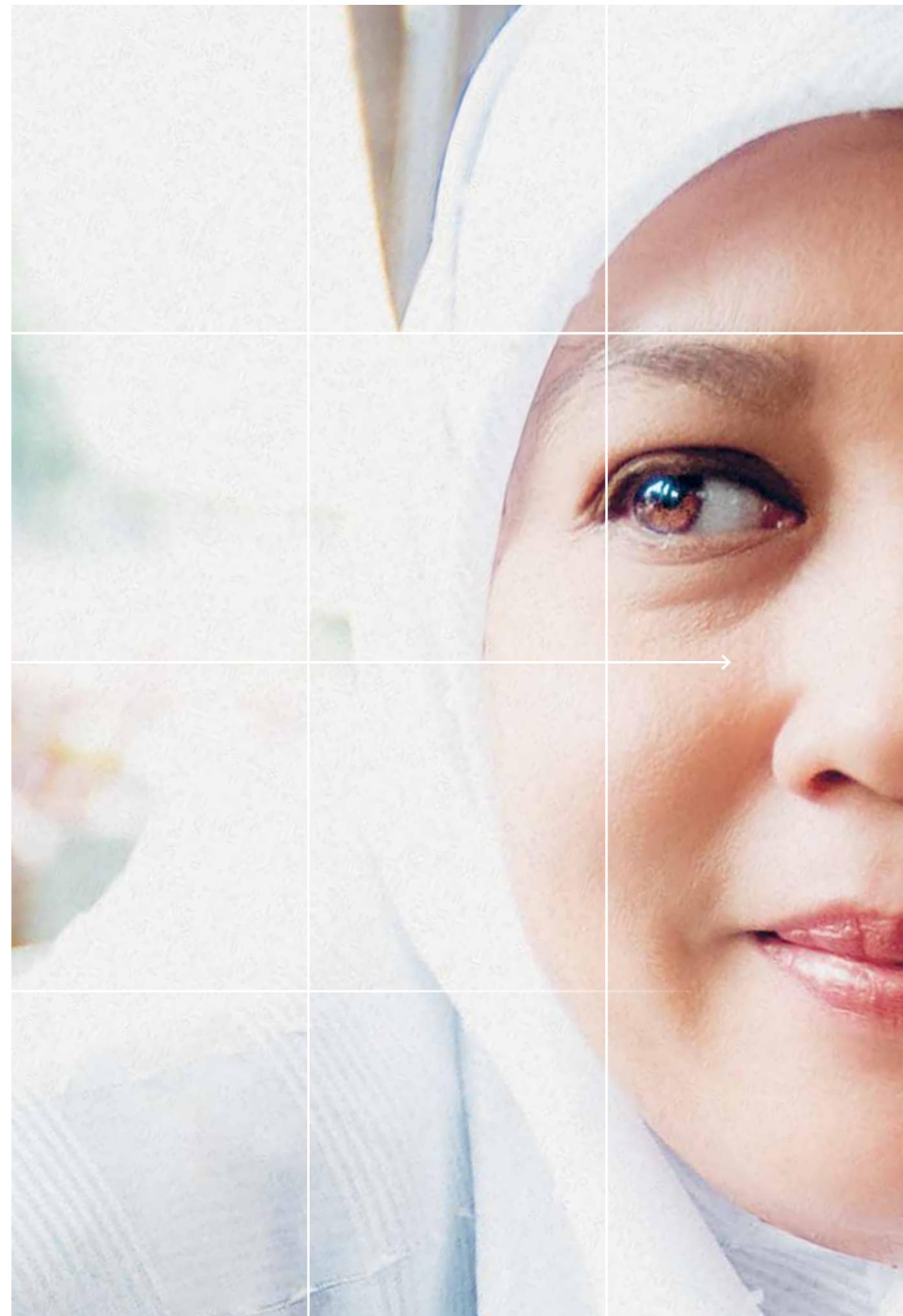
rights questions strictly speaking, but that are so closely linked to human rights norms that it is natural to use such norms in ethical assessments of the issues. Some aspects of these questions are discussed further in chapter 15.

CHALLENGES FOR THE CHURCH OF NORWAY:

Where does the church stand today in cases where there is a conflict of rights between women's rights and freedom of religion?

Does the church have a special responsibility to support the religious freedom of Christians in countries where the freedom of religion or belief is violated?

In which ways is the commitment to freedom of religion or belief included in the church's involvement in interreligious dialogue?



[45] NOU 2013:1 *Det livssyns åpne samfunn: En helhetlig tros- og livssynspolitik*

IN SHORT: CLIMATE CHANGE AND ENVIRONMENTAL DEGRADATION TOUCH ON MANY HUMAN RIGHTS ISSUES. SINCE THEY ARE COLLECTIVE PROBLEMS, THEY HIGHLIGHT THE NEED FOR COLLECTIVE RIGHTS AND COMMON RESPONSES. THEY ARE ALSO OFTEN SHARED INTERNATIONAL PROBLEMS, AND THUS THEY CHALLENGE THE CONVENTIONAL PARADIGM OF NATIONAL SOVEREIGNTY WHERE EVERY COUNTRY IS RESPONSIBLE FOR ITS OWN TERRITORY AND ITS OWN CITIZENS. FOR THE CHURCHES' INVOLVEMENT IN CLIMATE AND ENVIRONMENTAL ISSUES, A RIGHTS PERSPECTIVE CAN BE USEFUL, KEEPING IN MIND THAT THE WORK FOR CLIMATE JUSTICE AND ENVIRONMENTAL PROTECTION ALSO GOES BEYOND WHAT IS COVERED IN A PURELY LEGAL FRAMEWORK.

Environmental law

In both national and international law there are regulations for protection of the environment. These cover and regulate questions on, among other things, health,

[46] See e.g. Ole Kr. Fauchald, lecture materials on environmental law (in Norwegian), <http://www.uio.no/studier/emner/jus/jus/JUR2000/v10/JUR2000MIL1/undervisningsmateriale/Miljorett.ppt>

[47] "The tragedy of the commons" is a definition from game theory about what happens when a common good is overused by the users because each user is doing what is to his or her best interest – even though in the long run it can be harmful to everyone (e.g. overgrazing, overfishing, climate change). "Common pool resources" are natural or man-made resource systems that are so large scale that it is not cost efficient to exclude anyone from accessing them (e.g. irrigation systems, fishing banks).

[48] Ecuador included rights of nature in its constitution of 2008.

access to resources, biodiversity and landscaping. Environmental law is strongest at a local and national level. Despite an increasing understanding that environmental problems are international, the body of international environmental law is still in large part ad hoc and with few palpable tools and institutions.

In environmental law, there is an ongoing debate on the fundamental understanding of the environment as an object of law, which includes these different perspectives⁴⁶:

- » Environment as an object of private property, where the right to property is central
- » Environment as a common good, which implies dilemmas such as the tragedy of the commons, but also possibilities such as "common pool resources"⁴⁷
- » Environment as a goal in itself. Protecting biodiversity can illustrate this perspective.

Interestingly, in relation to the last point, the rights of nature have been legally codified or are being discussed (as of 2013) in some countries. In these laws, ecosystems are given legal status and rights independently of human need or use.⁴⁸ However, in a human rights perspective, which at its core is anthropocentric, the two first perspectives will be the more dominant.

Collective rights

Human rights were largely developed and written with a focus on the individual human being. During the last three decades, this way of thinking has been challenged and altered through the elaboration of collective rights (such as control over natural resources), the right

CHURCH LEADERS FAST IN SOLIDARITY WITH INDIGENOUS CHIEF

– This fast is about more than the rights of indigenous groups in Canada. It is about human dignity, says Anne Dalheim, chairperson of the Sami Church Council in Norway.

Together with Bishop Erling Pettersen and chairperson of the Church of Norway Council on Ecumenical and International Relations, Kjetil Aano, she is now at the head of a solidarity fast for the Attawapiskat First Nation Chief Theresa Spence in Canada. On Friday 11 January 2013, the church leaders will not have anything to eat.

Letter to the Prime Minister of Canada.

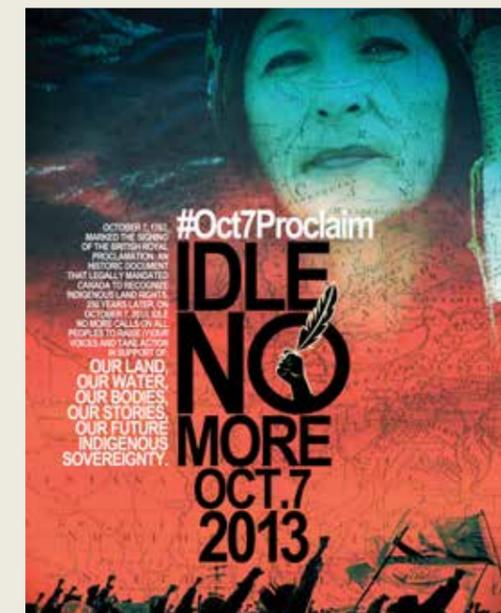
The Church of Norway, through the Council on Ecumenical and International Relations and the Sami Church Council, have today sent a letter to the Prime Minister of Canada, Stephen Harper, with a copy to Norwegian Prime Minister Jens Stoltenberg. (...) In the letter, the Church of Norway expresses its solidarity with Chief Spence who is on hunger strike, and encourages Prime Minister Harper to meet Chief Spence on the upcoming Friday, after a month's hunger strike, as a first step towards a just relationship with the indigenous peoples of Canada, and a climate where human rights conventions are upheld.

Canadian grassroots movement.

In the course of the last few weeks, a grassroots movement has spontaneously grown among indigenous people in Canada. The movement is called Idle No More, in reaction to changes in the law which undermine indigenous peoples' rights. (...) Several churches in Canada have expressed support, and KAIROS, an organisation which represents the human rights efforts of eight churches in Canada, has asked for a day of solidarity fasting on the upcoming Friday.

The grassroots movement *Idle No More* in Canada struggles for indigenous peoples' rights.

In October 2013 they organised marches throughout Canada for the protection of the right to land and water.



Tar sand

The Church of Norway has become involved in this case because it has clear links to the Norwegian company Statoil's tar sand projects in Canada. The Church of Norway Synod in 2012 took a clear stand against Statoil's involvement in Canadian tar sands, and the church was one of the sponsors of a two-week tour by Chief Francois Paulette. These and similar church efforts provoked criticism from the Norwegian Minister of Oil and Energy, Ola Borten Moe, who said the church should stay out of this.

Worrying development

- We had a follow-up meeting with the minister in November, where we explained to him our reasons for being worried about the development in Canada, says Tore Johnsen, General Secretary of Sami Church Council.

SOURCE: The Church of Norway, article on web page, 09.01.2013, *Kirkeledere faster i solidaritet med indianerhøvding / Girkkojodiheddjit fástuditt doarjjan indíánaovámuzžii*

to development, the right to peace and security, and the right to a safe environment.

The African Charter on Human and Peoples' Rights (1981) establishes a number of collective rights and is the international convention where these perspectives are most developed. *ILO Convention 169 on the rights of indigenous peoples* (1989) is especially strong on collective rights to land and natural resources. These international legal standards are relevant when addressing for example Norwegian oil company involvement in tar sands in Canada or the Norwegian Pension Fund's investments in mining companies that are responsible for serious environmental degradation in different parts of the world.

The Rio Declaration on Environment and Development from 1992, as well as other non-binding agreements, also confirm and elaborate on the right and obligation to secure sustainable societies. Some efforts have been made to make such obligations more binding, but at present this initiative is strongest in the civil society sector. One example is the international cooperation on an Earth Charter.⁴⁹

Violations of rights

Some situations, such as infringements on (indigenous) peoples' autonomy over natural resources, are direct violations of human rights norms. More often, however, human rights violations are an indirect consequence of environmental and climate related problems. Some examples: Polluted rivers or fields lead to decreased possibilities to grow food and thus the right to food and health is put under pressure. The increase in natural disasters leads to a global increase in refugees and internally displaced persons. Longer drought periods due to climate change threaten food security, and young girls might be taken out of school because they have to walk further to fetch water. Unusually strong floods take houses and livelihoods from people. Inhabitants of islands in the Pacific Ocean risk losing the entire territory that is the foundation of the state that is supposed to guarantee their rights.

Human rights perspectives on environment and climate questions are therefore intimately

connected with a range of other rights, especially economic and social rights, but to some degree also political, civil and cultural rights.

Duty-bearers

In the World Council of Churches' involvement in climate justice issues, the message, simply put, is: The rich countries are causing climate emissions, while the poor countries are paying the price. The rich countries should therefore take more responsibility for the plight of citizens in poor countries that are hit by climate change. These kinds of perspectives are difficult to include in the international human rights framework. When we speak about rights, the primary duty-bearers are states and their obligation is to protect the rights of their citizens and others who reside within their territory. Political deals, such as the Kyoto protocol, become part of international law, but are not grounded in human rights obligations.

The efforts to protect biodiversity follow a parallel pattern. Pollution, exhaustion of natural resources and climate change are causing devastation of a common good. The world's ecosystems are not confined within national borders, and increasingly the effort to safeguard biodiversity has received international attention, for example through the *Convention on Biodiversity* (1992) and the UN International Year of Biodiversity in 2010.

The need for global solutions is to some degree recognised in the *Universal Declaration of Human Rights* (1948). Article 28 reads "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." This article has to little extent been developed or concretised. At the same time climate change and environmental degradation make it flauntingly apparent that human rights abuses take place across state borders. Climate and environment might therefore prove to be issues that nudge the international human rights system in the direction of a common responsibility for people's rights, no matter which state you live in.

CHALLENGES FOR THE CHURCH OF NORWAY:

How can we, as church, think beyond the established dichotomy between human beings (the custodian) and nature (the object in custody)?

Churches in the global South point out human rights abuses they are suffering due to climate change. How do we listen, understand and act when we are reminded of our own responsibility in this?

What are the connections between efforts for climate justice and efforts for the protection of rights? What can be a church contribution in this field?

[49] <http://www.earthcharter.org>.

10

HUMAN RIGHTS AND POVERTY

IN SHORT: POVERTY IS OFTEN A CONSEQUENCE OF THE LACKING IMPLEMENTATION OR PROTECTION OF RIGHTS, AND CAN ALSO LEAD TO MORE VIOLATIONS OF HUMAN RIGHTS. EACH STATE IS OBLIGATED TO SECURE THE ECONOMIC AND SOCIAL RIGHTS OF ITS CITIZENS, BUT A NUMBER OF FACTORS INFLUENCE THE STATUS OF SUCH RIGHTS, INCLUDING THE ROLES PLAYED BY OTHER STATES, COMPANIES, AND CIVIL SOCIETY.

Poverty and rights violations

The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) declares (art.11) that everyone has the right to “an adequate standard of living for himself and his family”. The article goes on to say that this includes “adequate food, clothing and housing” and “the continuous improvement of living conditions”. Closely tied to this are health rights and the right to education.

Definitions of poverty can be absolute (for example the UN poverty line at 1\$ a day) or relative (living standard seen in relation to the society in which one lives, and which affects one’s participation in that society). Around 1 billion people today live in extreme poverty, i.e. for less than 1 \$ a day. For them “an adequate standard of living for himself and his family” is not a reality, and thus poverty in itself can be seen as a breach of human rights that affects very many people.

Poverty also often has consequences for people’s ability to participate in society

and in political processes that concern them. People living in poverty will often experience discrimination and marginalisation. Poverty impacts many aspects of life. It can impact a person’s ability to marry who she or he wishes, to choose a safe and decent work, or to hire a lawyer. Poverty limits a person’s influence over his or her own life situation. Furthermore, poverty hits some people harder than others: it has the hardest impact on those who are most vulnerable, whether they are women, minorities, persons with disabilities, children or other groups. Relative poverty can entrench mechanisms of exclusion and marginalization.

Poverty is often a symptom, not only of lacking resources, but also of unequal distribution of wealth. This can be seen today in many countries where economy is growing, but where large portions of the population still live in extreme poverty. It becomes clear that access to resources and politics of distribution have consequences for the fulfilment (or lack of fulfilment) of the rights of poor people.

At a global level, poverty is also a question of international, structural inequality, tied into trade, debt, food security, tariff barriers and subsidies, policies that apply to multinational companies, and a range of other factors.

By all appropriate means

States that are parties to the ICESCR have committed themselves to securing a decent standard of living for the people living on the state’s territory. Many of the rights mentioned above do not become fulfilled simply by including them in a legal document. They must be implemen-

JERUSALEM HEALTH INSTITUTION PROTECTS PATIENTS’ RIGHT TO HUMAN DIGNITY



East Jerusalem/Geneva – The Mount of Olives, a mountain ridge east of Jerusalem’s Old City in East Jerusalem, serves as the footing for the Augusta Victoria Hospital (AVH) and the ultra modern medical services provided here.

Nadia is only five years old, but she is familiar with the corridors and staff at the AVH, a health institution run by The Lutheran World Federation (LWF). Her father does not want her picture taken or her real name used, but he willingly says that without the treatment Nadia gets at AVH, she would not be alive. Her kidney is not working properly, so she needs to come to the hospital three times a week for dialysis.

– The hospital bussing [bus transport] program helps us to assert the right to the treatment that Nadia so desperately needs, he says.



Children playing in the corridors of the Augusta Victoria Hospital, before their turn in the dialysis ward. Three times a week a shuttle bus collects young dialysis patients throughout the West Bank and heads to Augusta Victoria Hospital on the Mount of Olives in Jerusalem. The shuttle bus is vital in overcoming the lengthy delays and restrictions of travel that often prevent patients from reaching the hospital on their own. The hospital is run by the Lutheran World Federation. [PHOTO: Jill Granberg]

No other hospital in the occupied Palestinian territories offers pediatric kidney dialysis. In addition, the AVH Cancer Care Center is the only radiation oncology facility operating in East Jerusalem, the West Bank and Gaza. Ear, nose and throat surgery, adult and pediatric kidney treatment, and pediatric oncology are a few examples of the specialized services available at the hospital, services that are not easily accessible or are unavailable in other hospitals in the occupied Palestinian territories.

SOURCE: Lutheran World Information and The Evangelical Lutheran Church in Jordan and the Holy Land 01.10.2012, <http://www.elcjh.org/2012/10/01/jerusalem-health-institution-protects-patients-right-to-human-dignity/>

ted through long-term national policies and measures, and they require relevant priorities to be made in budget allocations. In the ICESCR, this is reflected in article 2, on the obligations of states: Each state undertakes “to take steps (...) to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means ...”

To better understand what might be appropriate means, it might be useful to look again at the nature of the state’s obligation to respect, protect and fulfill human rights (see also chapter 5):

- » *Respect!* is the first and most fundamental obligation of the state: the state shall not violate the rights of citizens, such as taking their house or job from them, or hindering girls from going to school. The state shall also ensure that people are not discriminated against in their access to public goods and facilities on the grounds of social class.
- » *Protect!* is the second responsibility of the state. The state shall protect its citizens against others who might breach their rights. One example might be protection against discrimination in the housing market. Another example might be reactions against multinational corporations and mining companies who violate the working rights of its workers or damage the health of a local population.
- » *Fulfill!* is the third responsibility of the state. Where needed, the state must actively engage, plan and invest for rights to be fulfilled. Here, emphasis is put on the progressive realisation of rights, but this should not be used as an excuse. The state must show that it is taking active choices. School and health services are to be established, people need housing that they can afford to live in, a democracy where everyone can participate, and to the extent possible a social system that gives a safety net to those who are in dire life conditions. To manage such tasks, the state must use its natural resources and other income in a strategic way.

Poverty as a global challenge: more duty-bearers than the state?

While the primary responsibility to hinder poverty lies with each state, poverty in many countries is largely a result of processes that are outside of state control. In the ICESCR, we find (in typically careful wording) the following addition (article 11),: “The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.” Poverty, like climate change and environmental issues, is so clearly a global challenge that protecting people from poverty and protecting poor people strongly depends on more and other actors than each individual state.

The document “*The Church and Economic Globalisation*”, which was presented to the Church of Norway Synod in 2007, raises the question of what shared, international responsibility there is for poverty relating to circumstances such as trade, import barriers, subsidies and access to markets, debt and creditor’s accountability, and international investments.

The questions of global structural inequality and distribution have been high on the agenda of the UN, especially in the 1970’s when the developing countries through UNCTAD (United Nations Conference on Trade and Development) demanded a “New International Economic Order” that would give developing countries better conditions in the international economic system. Some of the remedies that were suggested included tariff preferences, better and more stable prices on raw materials, better access to markets and transfer of technology. The suggestions, however, were met with resistance and were not realized, and international cooperation on trade and finances have largely been moved to organisations with a weaker connection to the UN, where developing countries have less power, such as GATT and the World Trade Organisation (WTO) that followed it, the International Monetary Fund (IMF) and regional development banks.

The large-scale development work done through the UNDP (United Nations Development Program) and other UN bodies, as well as the Millennium Development Goals, are an expres-

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Norwegian Church Aid has through many years supported interfaith networks in Tanzania in their work for economic justice, concentrating especially on the mining industry.

CHURCH REPORT: GOLD INVESTORS EXPLOIT TANZANIA

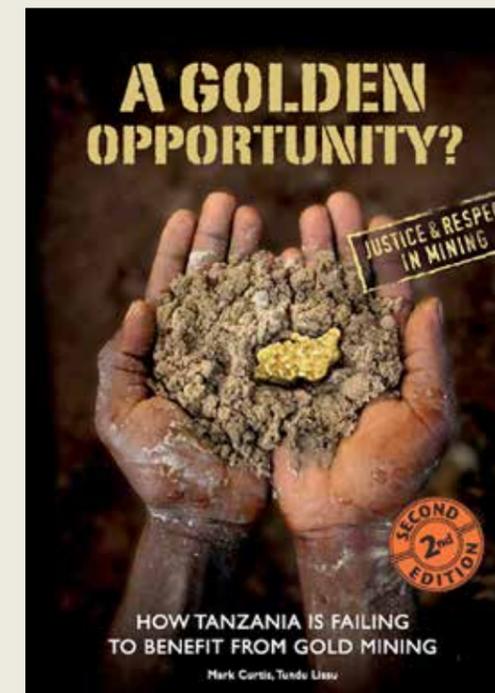
The Norwegian Government Pension Fund Global is a large investor in two mining companies which African and international church leaders accuse of plundering Tanzania’s gold. The companies pay minimal tax and fees to the poor, East African country.

According to the report “A Golden Opportunity: How Tanzania is Failing to Benefit from Gold Mining”, written by the researchers Tundu Lissu and Mike Curtis, Tanzania makes close to no profit on the gold that is mined in the country. They say the tax laws of the country favour the large mining companies.

Destruction. The report has been written on commission from the Christian Council of Tanzania (CCT), National Council of Muslims in Tanzania (Bakwata) and Tanzania Episcopal Conference (TEC), with financial support from Norwegian Church Aid and Christian Aid.

– The country’s authorities are not doing anything to prevent the plundering of our natural resources, says Salum Fereji from the National Muslim Council of Tanzania. Bishop Peter Mtura of the Christian Council explains how visits to the mining areas have uncovered the destruction suffered by local villages and the local environment due to chemicals from the mines that have been poured into the rivers. Several families have been forcibly removed due to expansions of the mines.

– Exploitation of a land’s natural resources should benefit the whole population. It seems this is not happening in Tanzania, says General Secretary of the Christian Council in Norway, Ørnulf Steen, who was invited as a guest at the launch of the report.



The report is presented at the same time as a special committee, selected by President Kikwete, is finishing an inquiry into the mining sector. The church initiative is timed to be a relevant input in this process and put pressure on the government to toughen the laws that regulate mining activities in the country, so that income from the mining sector can contribute to development in the country.

SOURCE: Kizito Makoye and Jan Speed, Bistandsaktuelt 05.03.2008. Full article available in Norwegian at <http://www.bistandsaktuelt.no/nyheter-og-reportasjer/arkiv-nyheter-og-reportasjer/visning-artikkel-arkiv?key=116610>

sion of the UN and member states' attempts to uphold a common responsibility to combat global poverty. In the first decade of the new millennium, processes were also initiated to more systematically identify the human rights obligations of multinational actors. In 2011, the *UN Guidelines on Business and Human Rights* were launched and unanimously endorsed by the UN Human Rights Council. They ascertain that the primary responsibility of private, for-profit actors is to respect human rights in the way they run their business. At the same time, the state's responsibility to protect its citizens against human rights abuses is again confirmed. A less official but all the more interesting initiative, from among others the International Commission of Jurists, seeks to identify state responsibility for violations of economic, social and cultural rights that take place outside their territory.

POVERTY LIMITS A PERSON'S INFLUENCE OVER HIS OR HER OWN LIFE SITUATION. FURTHERMORE, POVERTY HITS SOME PEOPLE HARDER THAN OTHERS: IT HAS THE HARDEST IMPACT ON THOSE WHO ARE MOST VULNERABLE, WHETHER THEY ARE WOMEN, MINORITIES, PERSONS WITH DISABILITIES, CHILDREN OR OTHER GROUPS.

Still, the international response falls short in the face of for example trade agreements that favour richer countries, extremely low taxes for multinational companies in poor countries, tax evasion through tax havens, lack of funds for climate mitigation in those countries who have not been part of causing climate change, and patent laws that disfavour the poor. Poor countries see themselves put in a situation where they have little manoeuvring space to protect their own citizens from the negative impact of different international agreements and processes on life conditions and living standards. Many

[50] World Council of Churches, Commission for Justice, Peace and Creation: *Alternative Globalization Addressing People and Earth – A call to love and action*. (2005)

countries also lack adequate democratic processes and have authorities who do not prioritize the needs of the poor segments of their population when international processes are run. Poverty places a challenge on the doorstep of the international human rights system: to strengthen a collective fulfilment of rights grounded not only on free consent, but on common obligation. From a church perspective, this is a logical way to go. The dignity of each person should be upheld, no matter which country she or he lives in. At the same time, holding each state responsible is essential. This is another illustration that churches, present in almost every country in the world, have a role to play.

A church response

In the worldwide fellowship of churches, poverty has been a mission calling and a challenge long before human rights were put on paper. The diaconal service of the church has to a large extent been centred on alleviating poverty and suffering. But also criticism of and uprising against oppression and power abuse have been and remain part of church involvement against poverty.

In Norway, the state to a large extent guarantees a minimum standard of living, but poverty still exists. It is often a product of social and relational challenges, and finding a way out of poverty can be as much about building a person's capacity to take charge of his or her own life, and to affirm everyone's dignity, as it is about money. In these circumstances, the contributions of civil society organisations, including church organisations, may be different from those of the state, and may be crucial in supporting vulnerable persons. Civil society organisations are also in a position to make known possible political solutions that they believe might improve the situation.

In the World Council of Churches (WCC), the fight against poverty has been raised in the AGAPE process (Alternative Globalization Addressing People and Earth) that was given its mandate at the General Assembly in Harare in 1998. The *Agape* document from 2005⁵⁰ has been both praised and criticised for its stance on the current economic system. The document makes the case for an *economy of life* with fair global systems for trade and finance. The WCC General Assembly in 2013 discussed the document *Economy of Life, Justice and Peace*

*for All: A Call to Action*⁵¹ which seeks to establish a common platform for action against poverty and for climate justice and peace.

In response to the *Agape* document, the Church of Norway Committee on International Questions wrote *The Church and Economic Globalisation*⁵² where the role of Norway in the global economy and the challenge this brings to the Church of Norway is given special attention. The Church of Norway Synod in 2007 discussed economic globalisation as a challenge to churches and confessed that "...we, as a church in the global North, carry a heritage that clearly makes us co-responsible for a political and economic development that is based on grave exploitation of people and natural resources in the global South."⁵³ According to the resolution, the church wishes to "stand in solidarity with those suffering under the injustice caused by the current system of trade and finance". The resolution goes on to list a number of concrete challenges to political authorities and to the church concerning how this solidarity can be expressed.

IN THE WORLDWIDE FELLOWSHIP OF CHURCHES, POVERTY HAS BEEN A MISSION CALLING AND A CHALLENGE LONG BEFORE HUMAN RIGHTS WERE PUT ON PAPER.

A genuine fulfilment of people's economic and social rights will entail the abolishment of extreme poverty. Many different church organisations are part of the global fight to make poverty history, and to ensure the rights of poor people. In the next chapter we will look at how this work can be done using a rights based approach.

[51] https://www.oikoumene.org/en/resources/documents/wcc-programmes/publicwitness-addressing-power-affirming-peace/poverty-wealth-and-ecology/neoliberal-paradigm/agape-call-for-action-2012/economy-of-life-justice-and-peace-for-all?set_language=en

[52] Church of Norway, Committee on International Questions: *The Church and Economic Globalisation* (2007). Available at <http://www.gammel.kirken.no/?event=downloadFile&famID=18606>

[53] Church of Norway Synod, resolution on agenda item 10/07: Economic globalization as a challenge to the churches. Available at http://www.gammel.kirken.no/english/doc/engelsk/KM07_vedtak_global_english.pdf

CHALLENGES FOR THE CHURCH OF NORWAY:
In which ways can the church's understanding of human dignity be a contribution to the fight against poverty, both at a national and a global level?

How does the church relate to the tradition of giving unto to the emperor what belongs to the emperor, versus the need to hold authorities responsible?

What should be the contribution of the Church of Norway in the World Council of Churches and other ecumenical organizations, in dialogue and partnership with churches that understand and analyse global poverty differently?

IN SHORT: THE TWO LAST DECADES HAVE SEEN HUMAN RIGHTS NORMS USED MORE AND MORE ACTIVELY IN DEVELOPMENT WORK. THIS IS REFLECTED BOTH IN THE NORMATIVE FRAMEWORKS AND IN PRACTICAL IMPLEMENTATION OF DEVELOPMENT WORK. FOR CHURCH DIACONAL WORK, THESE ARE USEFUL TOOLS THAT GO HAND-IN-HAND WITH THE AFFIRMATION OF EACH PERSON'S INHERENT DIGNITY. THIS OPENS UP NEW QUERIES THAT ARE WORTH EXPLORING FURTHER.

From charity to rights based: Shifts in the perceptions of rights and development

Within the development field there has been a shift from basing the work on a notion of charity to seeing the work as rights based. *Charity* literally means “to do good” and has long been a central Christian ideal, understood as giving money or making an effort to help people with whom one is not directly related, for example those who are socially excluded or poor. The tradition of charity stems from a time before human rights norms were established, and before the notion of state obligations towards citizens. Charity was often the only social life line that existed, providing food, clothing and shelter for those who were not cared for through traditional family networks. The church has been one of the most important institutions in organised charity.

In the course of the 1900s, state welfare systems became more and more developed in many countries, and with human rights norms established, all states were obliged to fulfil the rights of their citizens, including the fulfilment of basic needs such as food, clothes, shelter and health care. In this context, the church and other civil society actors who have traditionally been involved in charity have found themselves in new roles. While charity is based on the donor's wish to give, a *rights based approach* is based on the principle that all human beings have rights that can be found in the international human rights conventions, and often also in national law. Addressing violations of those rights (for example hunger, lacking health care, discrimination, maltreatment) is the responsibility of the state. Rights based work seeks to help people claim their rights. A rights based understanding of development is a framework for development work that *normatively* is based on international human rights standards and in which the *operational* goal is to promote and protect human rights.⁵⁴ This means, among other things,

- » that goals for any development project are based on human rights standards
- » that inequalities are analysed to disclose discriminatory systems and practices, and seek to change these
- » that people, and especially the most marginalised, are empowered to participate and influence processes that affect them
- » that the capacity of those responsible for protecting and fulfilling human rights, is increased and strengthened

This approach can be anchored in Christian theology and in the definition

of diakonia that is found in for example the *Church of Norway Plan for Diakonia*⁵⁵. The *Plan for Diakonia* puts emphasis on the principles of equality, mutual respect and empowerment. While a charity based approach is easily tainted by a “top-down” attitude where the marginalised are seen as passive victims in need of help, a rights based diakonia is preconditioned on every person's equal worth and aims to strengthen people's ability to shape their own lives and to stand up for their own and other's rights.

MANY CHURCHES AND CHRISTIAN ORGANISATIONS USE A RIGHTS BASED APPROACH IN THEIR DEVELOPMENT WORK. THIS FITS WELL WITH THE CONVICTION THAT ALL PEOPLE ARE CREATED IN THE IMAGE OF GOD, AND WITH THE MISSION OF CARING FOR THE LEAST PRIVILEGED AMONG US.

After the end of the Cold War, international human rights work has gone through significant changes. One important change with regards to development work is the reduction of the perceived gap between political and civil rights on the one hand, and economic, social and cultural rights on the other hand. There is increased international consensus on the fundamental and interdependent nature of all categories of rights.

In 1986, the UN General Assembly adopted the *Declaration on the Right to Development* that records both individual and collective rights to development. In 1997, Kofi Annan started a process of “mainstreaming human rights”, through which human rights were to be included in all of the UN's work. For the UN's development work this has meant that the goals for and implementation of development projects have been closer tied in to human rights norms.

Consequences for the Church of Norway

Many churches and Christian organisations use a rights based approach in their development work. This fits well with the conviction that all

people are created in the image of God, and with the mission of caring for the least privileged among us. For the Church of Norway, a rights based approach to development can be especially important in contexts where the church takes part in movements for justice (cfr. the *Church of Norway Plan for Diakonia*). A rights perspective is relevant:

- » when analysing injustice within the Norwegian society, in other societies where the church has sister churches and partner organisations, and globally
- » in the input and responses given by the Church of Norway to government, when relating to unjust structures or cases
- » in how development issues are communicated in congregations and church networks

The Church of Norway does not itself implement development projects, but both Norwegian Church Aid and many mission organisations with links to the Church of Norway do run projects where this is a highly relevant theme. Relevant questions to ask might be whether a rights language is being used, and whether the project is contributing to holding government (Norwegian or other) responsible for the implementation of human rights.

CHALLENGES FOR THE CHURCH OF NORWAY:

What is the Church of Norway's contribution in dialogues on development and human rights within faith based organisations?

Where do the Church of Norway and other church actors place themselves in the spectrum between charity and justice?

In some cases, a rights perspective is questioned by church based development actors. One example: In international HIV work, some churches seeking to protect human dignity conclude against reproductive health rights, and are therefore also critical to the use of any rights language at all in the field of HIV. Which conversations do we engage in, within the church and between churches, on these questions?

[54] OHCHR: Frequently Asked Questions to a Human Rights Based Approach to Development Cooperation (2006) <http://www.ohchr.org/Documents/Publications/FAQen.pdf>

[55] <http://www.gammel.kirken.no/?event=downloadFile&FamID=117564>

12 HUMAN RIGHTS AND MIGRATION

IN SHORT: ALL PEOPLE HAVE FREEDOM OF MOVEMENT, BUT STATES CAN PLACE SOME RESTRICTIONS ON THAT MOVEMENT. MANY RIGHTS ISSUES FOR MIGRANTS CONCERN QUESTIONS OF WHAT ARE LEGITIMATE RESTRICTIONS TO THEIR FREEDOM OF MOVEMENT, THEIR RIGHT TO BE IN SAFETY, TO SEEK ASYLUM, TO HAVE A FAMILY, TO SEEK EMPLOYMENT AND GET AN EDUCATION, ETC. MIGRANTS ARE OFTEN VULNERABLE GROUPS, AND FOR THE CHURCHES A BURNING QUESTION IS WHAT A CHURCH CONTRIBUTION CAN BE, BOTH FACE TO FACE WITH THE HUMAN BEINGS IN QUESTION AND IN RELATION TO THE RELEVANT LEGAL PROCESSES.

The right to seek asylum

The Universal Declaration of Human Rights, article 14, declares that *[e]veryone has the right to seek and to enjoy in other countries asylum from persecution*. Article 13 adds: *(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.*

The Refugee Convention (1951) was one of the first international conventions to be agreed on in the UN. A refugee is defined in legal terms as a person who is outside the country of his or her nationality “owing to well-founded fear of being

persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” (art. 1).

Most asylum seekers that are given asylum in Norway do not obtain refugee status, but are granted residency on humanitarian grounds.

Migration and the UN's rights mechanisms

The *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*⁵⁶ (1990) seeks to strengthen the rights of migrant workers. Many of the countries at the receiving end of work-related migration have not ratified the convention, and the implementation is therefore weak. The Churches' Commission for Migrants in Europe (CCME) and the Church of Norway Council on International and Ecumenical Relations have asked EU states and Norway to ratify the convention.

Considering the weak status of the binding treaty, the non-binding processes in this field can be just as interesting to refer to. One example is the UN Human Rights Council's Special Rapporteur on the human rights of migrants whose mandate is to report on the situation in all UN member countries. The UN Human Rights Council also has a Special Rapporteur on trafficking in persons, especially in women and children.

The principle of non-refoulement

A central principle in refugee law is that people shall not be returned to areas where their lives are in danger, where they risk torture, etc. Which rights violations

[56] <http://www2.ohchr.org/english/bodies/cmw/cmw.htm>



The Multicultural Church Network of the Christian Council of Norway encouraged individuals, congregations and organisations to give their support to the campaign “Love your neighbour”.

SEARCHING FOR NEIGHBOURLY LOVE



The Norwegian documentary film *The others* put the spotlight on the situation for asylum seeking children travelling alone.

In 2009, the Norwegian government put several restrictions in place to prevent immigration from what it called unqualified asylum seekers. One of the measures was to grant temporary residence to asylum seekers under 18 years old who were on their own, but who according to the authorities were not qualified for protection. They are to be returned to their country of origin when they reach 18 years. In the film “The others”, made by Margreth Olin, we meet some of these children who are in Norway on temporary residence, as they wait to be expelled.

When the film was launched, the campaign “Love your neighbour” was re-launched. The Christian Council of Norway is one of many organisations that support the campaign. Individuals, congregations and organisations are encouraged to sign on to the campaign. Hamar Diocesan Council discussed the issue at one of their meetings and decided to send a letter to

the government asking them to take responsibility and care for these children.

The appeal “Love your neighbour”:

Children who are displaced have a special right to protection. This means we must ensure that all children have sufficient care. You can give your support by signing the following demands:

- 1. The policy of giving temporary residence to single, asylum seeking children, and then deport them to often violent countries of origin at the age of 18, must be brought to an end.*
- 2. The Child Welfare institutions must be put in charge of the care of single, asylum seeking children between the age of 15 and 18 years, to ensure that all children who reside on Norwegian territory are given adequate care.*

SOURCE: Christian Council of Norway, 20.11.2012. Full article available in Norwegian at <http://www.norgeskristnerad.no/index.cfm?id=386338>. Campaign information available in Norwegian at www.nestekjærlighet.no

that trigger the use of this principle is a point of constant discussion. One example: An HIV positive woman is sent back to Angola where the medicines that she depends on cost many times more than the wage she can reasonably expect to receive. Does this constitute a situation where the Angolan state is not capable of protecting her right to life, and where the Norwegian state should therefore grant asylum in Norway?

Another dilemma faced by Norwegian churches in recent years, is the situation for converts. In some cases, converts have been sent back to a country of origin where they will not be able to practice their new faith without risking persecution. The reasoning from Norwegian authorities has been that freedom of religion or belief is upheld as long as people have a right to think what they like, though without practicing their faith openly in society. The Court of Justice of the European Union in 2012 however decided differently in a case where they established that a lack of freedom to practice your faith in public is a ground for asylum in the EU.

Similar issues come up for asylum seekers from sexual minorities. This is a part of law where practice is changing, and the analyses of risk of persecution are important and interesting to follow.

The asylum process in Norway

In cases of people who have converted, as referenced above, the credibility of the asylum seeker is considered. In some cases, church representatives have testified to the asylum seeker’s involvement in a congregation, but their testimony has not been sufficient or has not been considered relevant in the decision of the case.

Every state is free to establish procedures for the management of and decision on asylum applications. From a rights perspective it is important that information about the procedures is available, and that the rules are applied equally. The UN has a list of recommendations for processing applications for refugee status, though these are advisory and not binding.

For churches, it can be important to critically examine to what extent asylum regulating authorities implement their own procedures, for example in cases where the asylum seeker’s

credibility is to be determined. However, irregularities will not necessarily constitute violations of human rights norms.

An especially pertinent rights dimension in asylum cases is the rights of children. The *Convention on the Rights of the Child* declares that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration” (art. 3.1).

There are various opinions on how the principle of the best interests of the child should be implemented in asylum cases. The Norwegian Supreme Court in December 2012 ruled on two cases involving asylum seekers under the age of 18, where the principles for granting or denying asylum (which applied to their parents) were weighed against the rights of the children. The majority ruling was that the principle of the best interests of the child was not, in these cases, sufficient reason to reject earlier decisions denying asylum to the family. A minority argued for the opposite conclusion.

Another relevant rights issue in asylum cases is the right to found a family. Asylum seekers that apply for family reunification and those waiting for them in Norway, often have long and arduous processes before being able to start their lives together.

As a general rule, states are responsible for the people who are on their territory, whether citizens or not. Basic human rights therefore also apply to migrants, “legal” or “illegal”, but there are differing understandings of how wide that protection is. For example, how is it implied in the Norwegian state’s obligations to provide a decent standard of living for every person who resides in Norway?

Minorities and rights

Migration is also closely related to minority rights, to discrimination and racism. In Norway this has become increasingly noticeable in the debates about migrant groups such as Roma people, African women and Muslims from non-Western countries. The status of minority

13

INDIGENOUS PEOPLES' RIGHTS

groups brings out many ethical concerns. From a rights perspective it is especially important to look at what the Norwegian state provides in form of legal guarantees, minimum standard of living, protection against exploitation and protection against hate speech and violence.

A test case of all the above is the situation for people living in Norway without legal residency. Health care, legal and other services are to a large extent provided by NGOs, because this group has very limited access to public services.

CHALLENGES FOR THE CHURCH OF NORWAY:

What might be the role of the church and of congregations in facilitating contact between refugees and asylum seekers, Norwegian authorities, and the Norwegian public at large?

What is the church's contribution in the public debate about immigration, identity and rights?

How do we as a church relate to people who have fled their country due to deep economic crisis?

IN SHORT: ALMOST ALL THE WORLD'S INDIGENOUS PEOPLES HAVE SUFFERED EXTREME DISCRIMINATION AND VIOLATIONS OF A RANGE OF RIGHTS, OFTEN DONE BY THE STATE OR THE SOCIETY THEY LIVE IN. THE CHURCH OF NORWAY HAS HISTORICALLY BEEN PART OF THE OPPRESSION OF THE SAMI PEOPLE, AND HAS RECENTLY CRITICALLY EXAMINED ITS OWN HISTORIC ROLE. THE RACISM AND HATRED THAT SAMI PEOPLE STILL EXPERIENCE, AS WELL AS OPPRESSION OF INDIGENOUS PEOPLES IN OTHER PARTS OF THE WORLD, CONTINUE TO CHALLENGE THE CHURCH TODAY.

Definition of indigenous peoples

Although there isn't one, exact definition of "indigenous peoples", human rights do give clear indications for what shall be seen as indigenous peoples. The objective criteria place the concept of indigenous peoples in a certain historical, political and cultural context or situation. The subjective criteria relate to a self-identification; that is that people understand themselves as an indigenous people. *ILO Convention 169 - Indigenous and Tribal Peoples Convention*, which is an important normative framework on indigenous rights, says:

1. *This Convention applies to (...)*
- b. *Peoples in independent countries who are regarded as indigenous on account of their*

[57] The *ILO Convention* is from 1989. A definition formulated today might put less emphasis on original inhabitation and more on vulnerability / marginalisation.

descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

*2. Self-identification as indigenous or tribal shall be regarded as a fundamental criteria for determining the groups to which the provision of this Convention apply."*⁵⁷

Indigenous peoples are the original inhabitants of a country or parts of a country. "Original" is not understood as referring to a very distant past, but to a time when colonisation happened or when national borders were drawn. In other words, an experience of colonisation, invasion, or other forms of marginalisation is part of the definition. Indigenous peoples are therefore most often minorities (not always in numbers, but almost always in a political sense), but not all national minorities are indigenous. Furthermore, the definition entails continuity in culture, language, tradition and faith, often including own political and legal traditions and institutions.

Many indigenous peoples emphasize their relation to the earth and to nature in their area of origin. This is implicit in the legal codification of indigenous rights. ILO 169, article 14 on land rights is one example. Another is article 25 of the *UN Declaration on the rights of indigenous peoples*:

Indigenous peoples have the right to maintain and strengthen their distinctive

spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Only in recent years have indigenous peoples been unambiguously recognised in the international community as *peoples*. This is a significant step because a people, according to international law, have the right to self-determination. Article 3 of the *UN Declaration on the Rights of Indigenous Peoples* now mirrors article 1 of the *International Covenants on Civil and Political Rights*, and *Economic, Social and Cultural Rights* in this regard. This development can also be traced in the language used by the UN. While “indigenous populations” and “indigenous people” were the established concepts for a long period of time, the core concept used today is “indigenous peoples”.

ONLY IN RECENT YEARS HAVE INDIGENOUS PEOPLES BEEN UNAMBIGUOUSLY RECOGNISED IN THE INTERNATIONAL COMMUNITY AS PEOPLES. THIS IS A SIGNIFICANT STEP BECAUSE A PEOPLE, ACCORDING TO INTERNATIONAL LAW, HAVE THE RIGHT TO SELF-DETERMINATION.

Law texts and UN mechanisms

The two most important legal texts in this field are *ILO Convention 169 on Indigenous and Tribal Peoples* and the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP). These establish universal, minimum standards for indigenous peoples’ rights. *The Convention on the Rights of the Child* and the *International Covenant on Civil and Political Rights* also include important articles.

ILO Convention 169 was adopted in 1990 and ratified by Norway the same year, as the first country in the world. The convention has been of tremendous significance in setting standards in the field of indigenous rights and was the first international legal text against assimilation of indigenous peoples. Only a small number of countries (22 in 2012) have actually ratified the convention. For example, the Sami population

lives in Sweden, Finland and Russia in addition to Norway, but none of Norway’s three neighbours have ratified the convention.

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the UN General Assembly in 2007. The declaration includes the most recent legal developments and is currently the most comprehensive expression of the international legal rights of indigenous peoples. There were negotiations on the declaration for 25 years. When it came it was a result of increased attention to the situation of indigenous peoples in the UN structures, through e.g. the Permanent Forum on Indigenous Issues and the Human Rights Council.

The UN is an arena for states, and indigenous peoples are almost without exception not represented at state level. The Permanent Forum was therefore established to create a platform for dialogue on an equal footing between indigenous peoples and states. The Permanent Forum has an annual two-week session in May in New York.

The UN Expert Mechanism on the Rights of Indigenous Peoples and the UN Special Rapporteur on the Rights of Indigenous Peoples are the most significant human rights mechanisms within the UN with the objective of examining and monitoring the implementation of international standards on indigenous issues.

The rights of indigenous peoples

The developments in the field of the rights of indigenous peoples are not so much about establishing new rights compared to earlier UN conventions, but rather about how these rights apply to indigenous peoples, taking into account their specific situation. In the law texts about the rights of indigenous peoples, it is therefore often specifically noted that general human rights norms of course apply to indigenous people and peoples as much as they do to anybody else. The legal texts on the rights of indigenous peoples are therefore concerned with areas and challenges that especially affect indigenous peoples and where they are especially exposed to rights violations:

Key points include:

» **Non-discrimination:** Indigenous peoples have historically experienced grave discrimination, and many have been subject to unequal treatment, racism and situations where their rights were not upheld on an equal basis with other citizens.

» **The need for special measures:** Taking into consideration the discrimination, marginalisation and systematic violence often experienced by indigenous peoples, states are obliged to use special measures to ensure the rights of indigenous peoples, both as a collective and as individuals. “Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.” (*ILO Convention 169*, art. 4.1)

» **Self-determination:** Indigenous peoples, like other peoples, have the right to self-determination. “By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development” (*UNDRIP* art.3). In practice, this means a degree of political autonomy⁵⁸ and authority to decide in matters that concern one’s own society. What the right to self-determination actually entails will vary from context to context.

» **Consultation and participation:** Indigenous peoples are always to be consulted on questions that impact them in one way or another. Consultations are to take place in good faith and with the objective of reaching agreement or consent (*ILO 169*, art.6.2). *UNDRIP* on this point emphasises the importance of free, prior and informed consent. Indigenous peoples have “the right to determine and develop priorities and strategies for exercising their right to development” (*UNDRIP* art. 23). They shall be able to participate freely in and be informed of political and other processes that affect them. In many cases this is done through representative institutions (such as the Sami Parliament in Norway) which function as tools of political representation and co-decision, but other rights holders might also be involved.

» **Language, culture, identity:** The culture and identity of indigenous peoples is normally different from that of the majority group in the countries in which they live. Many factors come into play, such as language, customs and traditions, norms, social networks, livelihoods, knowledge and practice with regard to the use of natural resources, etc. Human rights acknowledge these differences and affirm that the culture and identity of indigenous peoples is to be protected and to be taken into consideration when measures are taken that might affect them. This also has implications in the fields of education, health and media. A number of identity markers are protected: social, cultural, religious and spiritual values; cultural practices; medicinal practices; spiritual and religious traditions, practices and ceremonies; history, language, oral traditions and philosophies; scripts and literature; laws and common law, and a range of other elements that are part of ensuring a people’s integrity as a people. Indigenous peoples have the right to education in their own language, and are explicitly protected against forced assimilation.

» **Land and natural resources:** The *UN Declaration* on the rights of indigenous peoples affirms that “[i]ndigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired” (art. 26). Human rights thus recognise traditional forms of ownership of land and resources (often collective). Related to this is the right to be given back or receive compensation for land that has been occupied and taken away from an indigenous people. Human rights also protect an indigenous population against forced evictions, except in very specific situations. *ILO Convention 169* article 14.1 differentiates between rights of ownership / possession (in cases where the indigenous people have exclusively occupied an area) and rights to access (in cases where the indigenous people is one of several groups that have used an area).

The Sami population in Norway

The Norwegian state is established on the territory of two peoples: Norwegians and Sami. When the state was established, the Sami were not counted as equal to Norwegians. The Sami population for a long time lived under a forced policy of Norwegianisation. This was especially

[58] Self-determination is a contentious right in international law, because many states fear internal independence movements. As with certain other collective rights, “self-determination” can be difficult to define concretely. Self-determination is closely linked to the next point on the list: consultation and participation.

implemented in the schools, where Sami language was de facto banned from the 1880's to the end of the 1960's. The forced assimilation was detrimental to cultural, religious and social customs (see more about the role of the church further down). It split families, with children being sent off to boarding schools.

The Norwegian Land law of 1902 ordered that anyone buying land must have a Norwegian name and speak Norwegian well. Also in other, similar ways the Sami population lost land and resources that they had earlier had access to. The authorities had actually for a long time acknowledged Sami customary use of the nature as legitimate, but this changed in the second half of the 1800's when this was re-classified as "tolerated use" of state land. This is an important historic backdrop for today's debates on Sami land rights, as well as fishing rights in the coastal Sami areas.

Sami in Norway have experienced, and still experience, racism, hate speech and violence.

The Sami Parliament is the elected institution for Sami in Norway. It is mandated to ensure Sami influence over questions that concern their future as a people, and to develop Sami language, culture and community.

The role of the church

The Church of Norway took part in the state's policies of Norwegianisation towards the Sami population, and thus became part of what was almost the annihilation of a whole culture. In many areas, holding church services in a Sami language was practically forbidden, and Sami religious (and often also cultural) traditions were labelled as suspicious and sinful.

In many places, the church reinforced a feeling of shame among Sami over their identity. At the same time there were important voices within the church that objected. Especially in the southern parts of Finnmark County Sami language was used actively in the Church of Norway throughout the period of Norwegianisation. The Lestadian revival became a confidence boost and served as a counterculture to the pressures from outside.

In 1997, the Church of Norway Synod gave a

public declaration, confessing its participation in the abuse of the Sami people, and committing to contribute to ending any still ongoing injustice. Five years earlier, the Sami Church Council had been set up as the Synod's nucleus for Sami church life and indigenous issues.

The Sami Church Council has raised a number of rights issues through the years, both regarding the Sami population and regarding other indigenous peoples. For example, in 2003 the council did the background work leading up to a Church of Norway Synod declaration on government suggestions regarding Finnmark County law. In 2012, the Synod, following a suggestion from Sami Church Council, urged Statoil to pull out of tar sand projects in Canada where the life conditions of indigenous peoples are deteriorating.

Ecumenical cooperation for the rights of indigenous peoples has its focal point in the World Council of Churches (WCC) and in part in the Lutheran World Federation. The WCC General Assembly in 2006 affirmed a commitment from the ecumenical community to work for justice and rights for indigenous peoples. Two main areas of work are highlighted: advocacy in relevant forums in the UN (including human rights structures) and theological dialogues between theologians from different indigenous peoples, linking in to the larger theological conversation in WCC.

CHALLENGES FOR THE CHURCH OF NORWAY:

In what ways is a rights perspective part of the reconciliation processes between the church and the Sami population? What can we learn from this process about the relationship between rights, justice and reconciliation?

Which perceptions of "ownership" and stewardship of nature can we find in indigenous values and world views, and how can the church include this in its work to protect people and life on the planet?

What is the church's response to continuing shame, racism and other signs of inequality for the Sami population in Norway?

IN SHORT: THE PERVASIVENESS OF CASTE DISCRIMINATION, TOGETHER WITH THE DAMAGE IT INFLICTS, GIVES US REASON TO CALL IT ONE OF THE MOST SERIOUS HUMAN RIGHTS PROBLEMS THE WORLD FACES TODAY. THIS CHALLENGE IS BROUGHT CLOSER TO THE CHURCH OF NORWAY BOTH THROUGH APPEALS FROM CHURCHES IN INDIA, CONVEYED THROUGH THE ECUMENICAL COMMUNITY, AND THROUGH THE INCREASING NORWEGIAN CORPORATE INVOLVEMENT IN AFFECTED COUNTRIES, ESPECIALLY INDIA.

Since the beginning of the 21st century, the UN and the international community have identified caste discrimination as an international human rights problem found in areas such as South East Asia, East Asia, the Middle East and Africa. Caste discrimination affects around 260 million people and implies violations of a series of civil, political, economic, social and cultural rights, often mutually reinforcing.

Caste systems divide people into social groups (castes), where an individual's rights and duties are decided according to which caste you were born into. It is a hierarchical system where those on top have many rights and few duties, while

[59] In India there are still 1,8 million people whose work is "manual scavenging", although this is in fact illegal. In Pakistan, it is often the Christian who work with water and sewage, leaving them stigmatized and vulnerable to enhanced discrimination.

[60] Sets norms but is not legally binding

those at the bottom have the fewest rights and the most duties. The system is sustained through strong sanctions against people who try to break out of the system. This hierarchical social structure, which gives privileges or limitations according to birth, violates the first article of the *Universal Declaration of Human Rights*, which states that all people are born equal and with equal rights.

Those who fall outside the caste system are seen as unclean and "untouchable". Many harmful traditions are tied to untouchability. The "untouchables" are often forced to do labour that is seen as unclean, such as manually cleaning toilets, or handling dead animals, slaughtering and leather work.⁵⁹ In many languages, we have called this group low-caste or caste-less, but in India and some other countries this group has chosen to call themselves Dalit. Dalit means "oppressed", and the name includes both a reference to the injustice that is carried out towards them and a will to resist.

In 2005, the then UN Human Rights Commission gave two Special Rapporteurs the task of preparing a study on caste discrimination, in UN language called "discrimination based on work and descent". The final report from the Special Rapporteurs was presented to the UN Human Rights Council in May 2009. It outlines a so-called "soft law"⁶⁰ framework for ending caste discrimination, called *Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent*. In this report, a number of human rights are identified as especially relevant (because they are often violated) in the context of caste discrimi-

nation. The international network of civil society organisations working against caste discrimination are pushing for this framework to be discussed further in the Human Rights Council, and for member countries to make action plans based on this framework.

Some relevant human rights violations

THE RIGHT TO PHYSICAL SECURITY AND FREEDOM FROM VIOLENCE

Caste discrimination forces some groups of people into labour that is directly dangerous. Furthermore, violence against vulnerable groups is seldom investigated or punished. A 2007 report from the UN Committee on Racial Discrimination for example concluded that India's law of 1989, *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act* has not been implemented, and that crimes against Dalits are often not investigated by the police and the judicial system.

CASTE DISCRIMINATION AFFECTS AROUND 260 MILLION PEOPLE AND IMPLIES VIOLATIONS OF A SERIES OF CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, OFTEN MUTUALLY REINFORCING.

FREEDOM OF RELIGION OR BELIEF

Although caste discrimination in India does also occur in Buddhism, Christianity and Islam, conversion to these religions from Hinduism has been a way to escape caste discrimination within Hinduism. For example, the Dalit leader Ambedkar, who led the fight for freedom and equality for Dalits in the 1960s, mobilised a mass conversion to Buddhism in 1956. Today, Dalits are in majority in India's Christian communities. Some Indian states have passed laws prohibiting conversion, often adding to the oppression of Dalits. The question of religious freedom is complex because some limitations put on the freedom of religion are also a reaction

to foreign-financed and in part aggressive evangelisation of the poor, which in itself can be problematic seen both from a rights perspective and an ethical perspective. What is often reported as violence against Christians in India, might have its roots in caste conflict rather than religious conflict, but is at the same time a serious violation of the freedom of religion.

THE RIGHT TO CHOOSE ONE'S WORK, THE RIGHT TO DECENT WORKING CONDITIONS, AND FREEDOM FROM FORCED LABOUR

In the traditional caste system, certain types of labour are reserved for certain castes. Dalits are often forced to do work that is seen as unclean, and that is also often both health-hazardous and degrading. The UN Special Rapporteur on contemporary forms of slavery identifies clear connections between caste discrimination and different forms of forced labour within agriculture, brick production, mining, and more.⁶¹ Many Dalit women are forced to live from prostitution.

THE RIGHT TO EDUCATION

Many countries affected by caste systems do not have laws that protect the right to education of Dalits. India, however, has good quota schemes for Dalits. The quotas, however, are only practiced in public schools, and cannot be offered to Dalits who have converted to for example Christianity, Buddhism, or Islam. For many Dalits, education is made even more difficult by discrimination in schools and at educational institutions, through for example customs of untouchability (segregation in the class room or being denied use of school water), exclusion, and physical maltreatment. Also, many Dalits are not able to go to school because of poverty, long distances to school, or because they are forced to work.

RIGHT TO FOOD, CLOTHING AND SHELTER, AND RIGHT TO WATER AND SANITARY SERVICES

These rights are breached both because Dalits in general are below average poor, and because of the discriminatory practices that force them to live in separate areas, often with dire sanitary conditions. Discrimination of Dalits also occurs in humanitarian relief work, as documented, among other examples, after the tsunami in 2004. The right to water is violated in cases where Dalits are prohibited from using the same

[61] A/HRC/12/21: Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development. Report of the Special Rapporteur of contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian

GRASSROOTS PROGRAMME AGAINST CASTE DISCRIMINATION



Evidence was established in 2005 and is an organisation that works for the rights of the Dalit and Adivasi populations in Tamil Nadu and Pondicherry. Monitoring and reporting human rights abuses is one of the strategies *Evidence* use in their work. Other activities include advocacy, access to courts, strategic capacity building and strengthening of solidarity platforms.



Nagamuthu (21) was beaten for being a Dalit Hindu priest at T.Kallupatti in Periyakulam Taluk Theni district Tamil Nadu. Unable to bear the discrimination and mental torture inflicted by a section of Caste Hindus, the Dalit priest committed suicide. *Evidence* approached the Madurai Bench of the Madras High Court. Following a court directive on August 31st 2012 the Thenkarai police registered a case. The issue was exposed through *Evidence* press reports that in turn made the local residents stage demonstrations for the arrest of the perpetrators. *Evidence* sent several complaints with compilations of evidence to police officials, and the *Evidence* fact finding team met with higher officials to pressure them to move the case forward. Nagamuthu's parents are now fighting for justice in court. [Foto: *Evidence*]

Through information gathering and inquiries, the organisation focuses on the situation for Dalits, and the state's shortcomings in protecting and fulfilling the rights of these groups. In the course of their first year, *Evidence* reported inquiring into 105 cases in Tamil Nadu and Pondicherry. Furthermore, information about 80 cases of violence and abuse against Dalits was collected and documentation compiled so that the victims and/or their families could access the courts or other similar legal mechanisms.

The goal for *Evidence* is to have in place legal measures that ensure protection and rehabilitation for affected groups. In 2013, *Evidence* organised a campaign against caste discrimination in five districts in Tamil Nadu, where local organisations and affected victims mobilised on a common platform to protest. Around 1200 volunteers have been trained by *Evidence* and are active in campaigns.

Evidence is supported by the Norwegian Human Rights Fund, where the Church of Norway Council on Ecumenical and International Relations is one of the owners.

Source: The Norwegian Human Rights Fund, www.nhrf.no

water sources as others, due to the belief that they are unclean. Dalits are also often hindered from owning land.

AS A PART OF NORWEGIAN CIVIL SOCIETY, THE CHURCH OF NORWAY HAS AN ETHICAL RESPONSIBILITY TO HOLD NORWEGIAN AUTHORITIES ACCOUNTABLE, BOTH IN THEIR INVOLVEMENT AS A MEMBER OF THE UN, IN THEIR BILATERAL RELATIONS WITH COUNTRIES WHERE CASTE DISCRIMINATION OCCURS, AND IN THE BUSINESS COOPERATION FACILITATED BY THE AUTHORITIES.

The duty-bearers

The authorities of the countries in question are the primary duty-bearers that must be held responsible for violations of human rights happening due to caste discrimination. In some countries the lack of legal protection is a problem, while in India the lacking implementation of the *Prevention of Atrocity Act* and other relevant laws is the main challenge. Therefore, the international effort against caste discrimination concentrates on holding states responsible, mainly through UN mechanisms such as the Universal Periodic Reviews and the work of the Special Rapporteurs.⁶² International corporate actors who operate in the affected countries must also be conscious of the heightened risk that they are in fact contributing to caste discrimination, staying attentive to the situation and working actively to avoid becoming complicit. The authorities in countries with development or business cooperation with the affected countries are also duty-bearers, since they risk participating in violations of human rights through their collaborations with the authorities in question.

[62] In addition to the Special Rapporteur on discrimination based on work and descent, others whose work might be pertinent include the Special Rapporteurs on business and human rights, as well as on racial discrimination.

[63] A/HRC/17/31: Guiding Principles on Business and Human Rights: Implementing the United Nations «Protect, Respect and Remedy» Framework. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie.

Corporate cooperation

Many cases of caste discrimination happen within the realm of business or work. An increasing involvement by Norwegian businesses in India, both through private and governmental initiatives, makes caste discrimination a concern that is increasingly relevant also in Norway. Norwegian companies and Norwegian authorities here risk becoming complicit, profiteering from the systematic and widespread oppression of a group. This gives us an ethical responsibility and a possibility to actually have an influence. In a human rights perspective, the responsibility is first and foremost that of the Norwegian state, to the extent that the state is responsible for facilitating activities that involve rights violations. According to the principles developed by the Special Representative of the UN Secretary-General on the issue of human rights and businesses⁶³, Norwegian companies also have a separate obligation to not contribute to human rights violations.

Religion and criticism of religion

Caste discrimination is most common in South Asia, where the practice has roots in Hindu religion and tradition. Given the strong connection to Hinduism, any criticism of caste discrimination also involves some element of criticism of religion. However, in these countries the other religious traditions have also, to differing extents, adopted and upheld caste systems and discriminatory practices. This indicates that caste discrimination is a cultural as well as a religious phenomenon. In Western Africa, caste discrimination is connected to traditional religions.

Dalit theology is a strand of liberation theology with a critical outlook on both Hinduism and oppression within the churches. It seeks to read the Gospel in light of Dalit experiences, and with the goals of empowerment and practical action. Indian churches have, through forums such as the World Council of Churches and the Lutheran World Federation, asked sister churches worldwide to stand with them in the fight against caste discrimination.

The Church of Norway and caste discrimination

As a part of Norwegian civil society, the Church of Norway has an ethical responsibility to hold Norwegian authorities accountable, both in their involvement as a member of the UN, in their bilateral relations with countries where caste discrimination occurs, and in the business cooperation facilitated by the authorities. This is especially relevant since Norwegian authorities aim to increase business cooperation with India.

As a part of the global fellowship of churches, the Church of Norway has a responsibility to support churches and Christians who are combating caste discrimination, and also to criticise caste discrimination when it occurs within the churches. The Lutheran World Federation has identified caste discrimination as an area of priority in its strategic plan for 2012-2017, and the World Council of Churches also has this topic high on its agenda. It is natural that the Church of Norway should participate in this work and make use of the reflections and networks developed in ecumenical organisations.

Norwegian mission organisations have a significant involvement in countries and communities affected by caste discrimination. The Church of Norway can contribute by linking them with other civil society actors working within the realm of the UN and international politics.

As one of the owners of the Norwegian Human Rights Fund, the Church of Norway supports local human rights organisations that work for the rights of Dalits in India as well as minority rights in Pakistan where caste discrimination is also rampant.

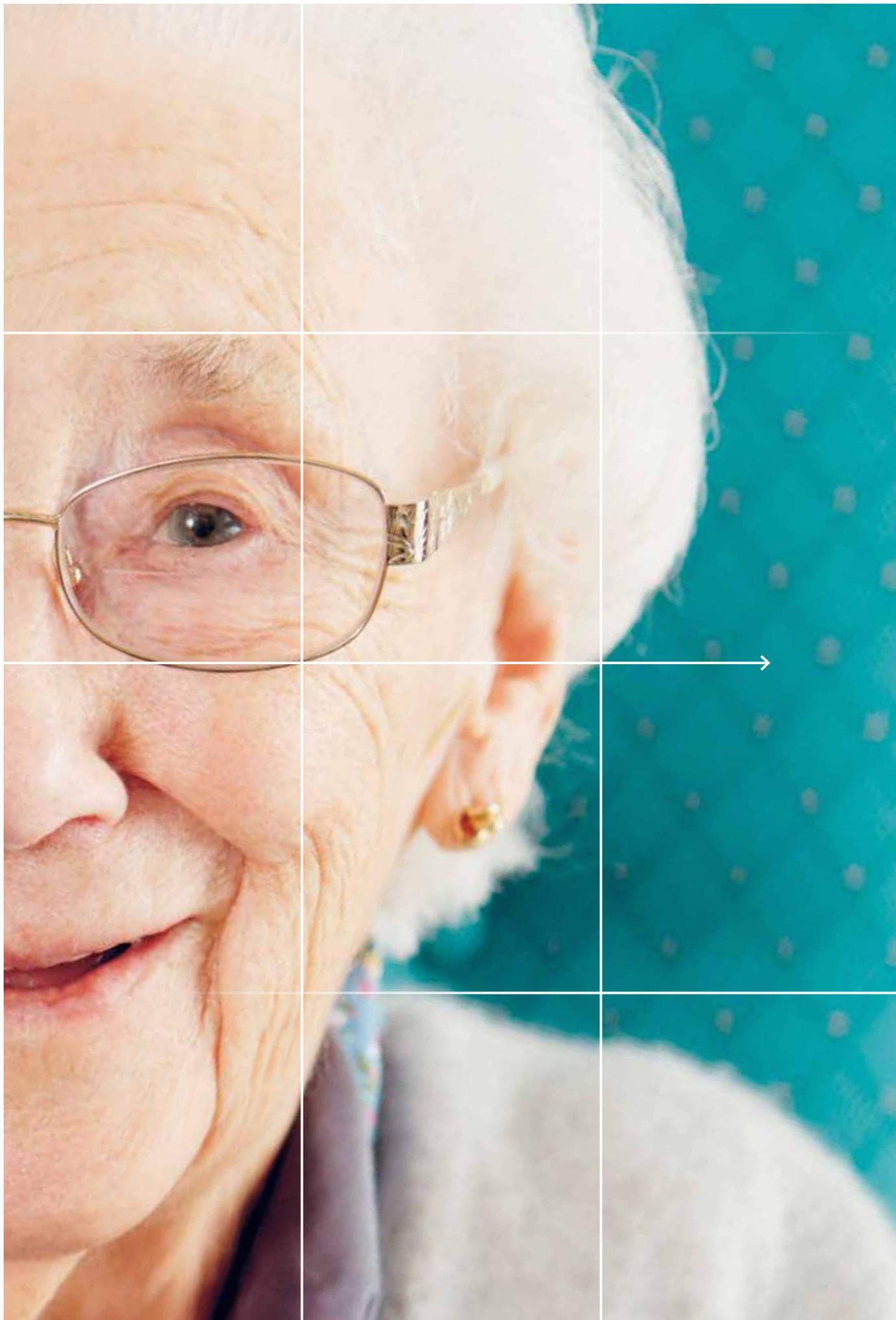
The Church of Norway Council on Ecumenical and International Relations is one of the initiators of the newly formed Norwegian Dalit Solidarity Network (NDSN) through which these issues can be raised in Norway. NDSN strives for the abolition of caste discrimination and seeks to challenge Norwegian authorities, companies and other Norwegian actors operating in countries where caste is an issue, so that they become more aware of the problem and more conscious of their own role.

CHALLENGES FOR THE CHURCH OF NORWAY:

How can the church use Dalit theology and other critical tools of analysis to contribute to an increased awareness of caste based power structures both internally in the church and in global ecumenical network?

Are there possible arenas for the church to become involved in interreligious, rights based discussions on caste discrimination, including Hindus, Buddhists, Muslims, Sikhs and other Christians?

How can the church help prevent Norwegian business, development work and other activities from causing or aggravating caste discrimination?



15

WOMEN, MEN AND HUMAN RIGHTS

IN SHORT: HUMAN RIGHTS AFFIRM THAT WOMEN AND MEN HAVE THE SAME RIGHTS, AND THAT DISCRIMINATION ON THE BASIS OF GENDER IS NOT ALLOWED. STILL, THERE ARE IMMENSE DIFFERENCES BETWEEN MEN AND WOMEN WORLDWIDE. WOMEN AND GIRLS ARE MORE OFTEN SUBJECT TO HUMAN RIGHTS VIOLATIONS, AND MANY PEOPLE LIVE THROUGH GENDER BASED VIOLENCE AND DISCRIMINATION. FOR THE CHURCHES, ENSURING WOMEN'S RIGHTS IS AN INHERENT PART OF AN INVOLVEMENT IN HUMAN RIGHTS WORK. STILL, TRADITIONAL RELIGIOUS CULTURES CAN MAKE THIS WORK MORE DIFFICULT.

In 1995, representatives from most countries in the world came together in Beijing, at the UN's fourth World Conference on Women. One of the decisions made there, was to mainstream gender in all of the UN's programs, a decision that reflects how interwoven gender is with most challenges on the UN agenda.

In the Church of Norway, the most prominent debate on women's rights has been on the question of whether women can serve as priests. At the same time, a range of other rights issues for women have been and continue to be raised and addressed, both nationally and internationally. A number of these issues are presented and discussed here.

[64] <http://www.ohchr.org/EN/News/News/News/Workingtowards-morewomenleaders.aspx>.

Some relevant human rights

The most important treaty on women's rights is the UN *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW), adopted in 1979. The title itself captures the core challenge: discrimination. CEDAW is not a set of separate rights for women; rather, women enjoy the same rights as men, as already affirmed in the international covenants on human rights. But in the implementation of these rights, women may experience inequalities, marginalisation, or in other ways being kept from what is rightfully theirs.

The rights that are included in CEDAW can thus be read as mirrors of areas where women are especially vulnerable or often subject to discrimination. Among these rights are:

» **Participation in public and political life**

Women constitute half of the world's population, but only 20 % of elected parliamentarians.⁶⁴ By now, women have the right to vote in most countries. The lack of women in political leadership is thus the biggest gap when looking at women's right to participate in public and political life. CEDAW underlines women's right "*on equal terms with men* (...) to participate in the formulation of government policy and the implementation thereof" (art. 7, our emphasis).

» **Right to education**

UN Millennium Development Goal number 3 is a general one: "promote gender equality and empower women". The goal has one single target, which is

LWF SUPPORTS CONGOLESE
CHURCH CONTRIBUTION
TO NGO SHADOW REPORT



The Lutheran World Federation also provides humanitarian support to Congolese women, here in a refugee camp in Bundibugyo in Uganda.
[PHOTO: ACT/DCA/Mai Gad]



Growing support from churches towards initiatives addressing sexual and gender-based violence in the Democratic Republic of Congo (DRC) is heightening awareness about “a taboo subject that continues to weigh down heavily on thousands of women” caught in the long-standing conflict in the country.

Ms Atty Mireille Ntambuka, coordinator of the RAFEJE women lawyers’ network in eastern DRC, made these observations when she reflected on her participation in the 55th Session of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), held, 8 – 26 July in Geneva. The Lutheran World Federation (LWF) supported RAFEJE’s contribution to Congolese civil society shadow reports during the DRC government 2013 periodic report to the CEDAW Committee that reviews signatory states’ implementation of the international bill of women’s rights.

RAFEJE works with community-based groups including the Evangelical Lutheran Church of Congo (EELCo) to raise awareness among women and men about safeguarding women’s rights. It is making an impact, although more needs to be done.

– When we convince a pastor about the need to stop SBGV [sexual and gender-based violence] in our current context, we have seen that the message goes beyond one group; they sensitize fellow pastors, women and youth groups. And slowly more people are beginning to talk openly about rape, more women and girls know where to report such cases, and the community is becoming supportive instead of rejecting victims of such violence, Ntambuka explained.

SOURCE: Lutheran World Information, 05.08.2013, <http://www.lutheranworld.org/news/daring-talk-about-taboo-subject-women-drc>

much more specific: to reach gender disparity in education. The logic is simple: Educated women have an increased freedom of choice, they have more economic possibilities, they have a greater chance of choosing who they wish to marry and how many children they should have, and they have a better basis for participating in public and political life. CEDAW makes clear that gender disparity applies to all levels of education, and that the right to education is to be understood as something more than being enrolled in school. It must also be reflected in the curricula, in scholarship schemes and in school sports. It also includes putting a stop to stereotyped gender roles in schools.

» **The right to work, decent working conditions and fair remuneration**

The UN’s CEDAW Committee follows up the implementation of CEDAW. One of the actions they have recommended is a more systematic effort to have comparable levels of remuneration in work where women typically dominate compared to work where men typically dominate.⁶⁵ The committee also expresses concern with the situation of women who work in family companies without receiving pay, both in rural and urban contexts. The committee remarks on the disproportion in situations where men often run and administer the property or the company, while women have little profit to show for the work expected from them.⁶⁶

» **Right to health and access to health care**

This includes sexual and reproductive health (see more on this further down).

» **Equality before the law**

This includes protection against discrimination based on marital status, as well as the right to citizenship independent of marital status.

[65] UN Committee on the Elimination of Discrimination against Women, *General recommendation 13* (1989).

[66] UN Committee on the Elimination of Discrimination against Women, *General recommendations 16, 17* (1991).

[67] [In Norwegian] FOKUS, Say No – Unite og Krisesentersekretariatet: Faktahefte om vold mot kvinner <http://www.fokuskvinner.no/PageFiles/8005/Faktahefte%20vold%20mot%20kvinner%20norsk.pdf>

» **Rights relating to founding a family and life in the family**

Women and men have the same rights to choose who they wish to marry and when to marry, and how many children they wish to have. These are among the rights affirmed in CEDAW article 16. It also states that women and men shall have the same rights and duties as parents, the same rights regarding ownership of property and the same rights and duties if the marriage ends.

The states that are parties to CEDAW have agreed to “pursue by all appropriate means and without delay a policy of eliminating discrimination against women” (art. 2). Every fourth year they report to the UN’s CEDAW Committee that follows up the implementation of CEDAW. Both the reports and the comments from the committee indicate that gender based discrimination is still widespread and that there is still a gap between rhetoric and real-life politics in issues of gender equality.

CEDAW explicitly accepts (art.4) the use of “temporary special measures aimed at accelerating de facto equality”. Such measures might include quota positions for women or other models of preferential treatment aimed at redressing disadvantages. This is, for example, used in some countries during elections to parliament, with a certain number of seats reserved for women candidates.

Gender based violence

Gender based violence is violence against and abuse of a person on the basis of gender. An overwhelming share of gender based violence is violence against girls and women. At a global level, every third woman has been subject to sexual abuse or other forms of violence in the course of her life.⁶⁷ Violence against women happens in all societies and at all levels of society. There are many cases that are not reported, and gender based violence remains a taboo topic of discussion in many settings.

Violence, whether of physical, sexual or psychological character, and whether it is done towards women or men, is a grave violation of the right to life, liberty and security of a person, and it can also be detrimental to a person’s health, education, participation in society, economical

situation, legal protection, and more. **Domestic violence** is often considered as a private issue, and therefore the protection given by the larger society is lacking. Women's protection under the law is weakened by the number of unsolved cases and inadequate investigation in situations where women have experienced violence. The cost of taking a case to court might then feel too heavy, even with the possibility of having a verdict in one's favour. The UN's CEDAW Committee has repeatedly criticised Norway for inadequately preventing, investigating and punishing rape.⁶⁸

Also **sexualised violence in war** is difficult to remedy through a court system. However, this part of international law has been strengthened: A number of verdicts from the International Criminal Tribunal for the Former Yugoslavia have held that the use of sexualised violence in war is a crime against humanity. This marked an important shift from a time when abuse, and especially rape, were first and foremost seen as mistakes done by individuals, to a perception of these atrocities as systematic human rights violations and war crimes.

Another area in which there have been positive tendencies is the work against **female genital mutilation**. Still, around three million girls are mutilated each year. In many African countries, this custom has been forbidden for many years, yet it is still practiced, demonstrating that implementation demands more than signing a legal text.

Power and violence is also used in large scale in **trafficking**. Exploitation of women, girls and boys in prostitution and forced labour amounts to grave violations of human rights and can in some cases also be called slavery. In this, as in many other questions, civil society (including the churches) is needed both to do work "on the ground" and to put pressure on the authorities.

Some areas of contention

CULTURAL PATTERNS OF CONDUCT AND RELIGIOUS LAW

CEDAW has been and is still a convention that sparks enthusiasm, resistance and debate.

Among the most debated articles are article 5 that requests states that are parties to take all appropriate measures "to modify the social and cultural patterns of conduct of men and women", article 16 on women's rights in marriage and family, and article 2 concerning legislation and criminal law.

A number of states have stated reservations to parts of the convention, especially articles 2 and 16. This means that, upon ratification of the convention, they announce that they do not regard themselves as bound by a certain article or certain parts of an article. A number of countries that have sharia-based family laws have stated reservations to certain parts of CEDAW saying that the implementation will take place within the frameworks of existing sharia legislation. Also a number of other countries have stated reservations on the basis of culture and/or religious traditions, including Ireland, Malta, Monaco, India and Israel, to mention some.

An example of a reason given for a reservation: India states that they will respect article 16 as long as it is "in line with India's policies of non-interference in the personal relations in a group, unless this is requested and happens with the group's consent."

These reservations have been protested by other states that object that the reservations are against the object and purpose of the convention, and therefore should not be considered valid. The rule is that reservations and other exceptions from human rights are not allowed to undermine the fundamental protection of rights affirmed by the convention. Rights are also interrelated and interdependent. They are not an "a la carte" menu where some can be adhered to and others left out. This is an area of contention in the implementation of many treaties. The sovereignty of states and states' autonomy stand against the principle of universal protection of rights for all people.

EXCEPTIONS TO THE PROTECTION AGAINST DISCRIMINATION, ON THE BASIS OF RELIGIOUS FREEDOM

In the implementation of CEDAW we also find contradictions between the principle of non-discrimination and the freedom of religion or belief. The same contradiction can sometimes be found in relation to the cultural rights of minority groups.

As a starting point, it can be useful to note that not all unequal treatment amounts to discrimination. We have already seen that CEDAW accepts special measures where necessary. The normal criteria for when unequal treatment is deemed discriminatory, is when it is not based on objective and reasonable grounds, or when it is disproportionate.

There are also exceptions to the protection against discrimination. Some kinds of unequal treatment in religious communities are among the exceptions. These are deemed within the freedom of religion. For example, Norwegian religious communities are allowed to advertise certain job openings where only male candidates will be considered, if they can show why such unequal treatment is reasonable, related to religious beliefs and proportionate. Both in Norwegian law and in international human rights, the autonomy of religious and life stance communities is strong, and faith based movements are largely protected from state interference in internal affairs.

The exception is, however, not to be understood as a general permission to discriminate based on gender, but rather as a restricted exception. CEDAW has become part of Norwegian law through the Gender Equality Act (in Norwegian: *Likestillingsloven*), in which paragraph 3 outlines these restrictions on the above discussed exceptions:

*Unequal treatment in religious communities, based on gender, that is necessary to reach a reasonable goal, and that is not a disproportionate interference against the person or persons who are being treated unequally, is allowed. In addition, in appointments for positions in religious communities, any gender requirement must be of critical importance to the fulfillment of the work or duty in question.*⁶⁹

The long battle for women's right and opportunity to work as priests in the Church of Norway has therefore first and foremost been a battle about the understanding within the church of what are or are not reasonable grounds for unequal treatment. While discrimination on the grounds of ethnicity or social class is not

accepted, there are differing views within the church on gender and sexual orientation as legitimate or non-legitimate grounds for unequal treatment. For other employers, the current practice of the Church of Norway would be deemed gender based discrimination. The fact that the church is dependent on an exception from the law illustrates the fundamental contradiction between a theologically grounded asymmetry between the genders on the one hand and a human rights principle of gender equality on the other hand.

The Church of Norway's position as a state church has meant a comparatively active involvement and influence from the state in these questions. The state has been a driving force to strengthen women's rights in the Church of Norway. As conversations on these questions continue within religious communities, the larger society and the state must also continue its deliberations on which exceptions from the principle of non-discrimination should be permitted.

The state's protection against gender based discrimination is related to (at least) two other perspectives:

- » The state must secure the freedom of religion or belief in such a way that it both protects the autonomy of a religious community and protects an individual's right to convert. Persons who are subject to discrimination in a religious community, must have a viable way of opting out.
- » Economic support from the state is not a human right, and it is up to the state to consider which criteria must be in place before a religious community is qualified for state funding.

SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS

Sexual and reproductive health is a sensitive topic for churches. Many aspects of reproductive and sexual health are important means to reduce abortion levels. At the same time, legalisation of and access to abortion is central to these rights, sparking criticism from a number of faith based actors.

[68] Ibid.

[69] Our translation.

Sexual and reproductive rights include the right to sexual education, the right to choose whether to be sexually active or not, freedom to choose who to marry and when, and freedom to choose a partner according to one's sexual orientation or background. Sexual and reproductive rights are also about gender roles, for both men and women.

For women and girls, particularly vulnerable aspects of reproductive health include the ability to influence, through one's own choice, how many children to have and when to have them, and the likelihood of having a safe pregnancy and birth. The risk of dying during pregnancy or while giving birth is 1 to 30 in Sub-Saharan Africa.⁷⁰ Improving maternal health is therefore one of the UN Millennium Development Goals.

The starting point for sexual and reproductive rights is every person's autonomy and physical integrity. Control over one's own body is fundamental to the protection of one's rights. With little degree of control over one's own body and sexuality, the risk of abuse increases, as well as the risk of unwanted pregnancies and of sexually transmitted diseases. Therefore, access to information and advice, access to family planning, and transformed gender roles are important measures to reduce abortion numbers. A large study of abortion worldwide between 1995 and 2008 shows a trend where the total number of abortions is relatively stable, while the percentage carried out by persons without medical qualifications increased from 44 to 49 percent.⁷¹ An overwhelmingly large share of unsafe abortions are carried out in developing countries, and subsequent complications are one of the main causes of death during pregnancy for women.

Access for women to legal and medically safe abortions is inherent in sexual and reproductive rights and is rooted in the mother's right to life and health, and in the physical integrity of every

person.⁷² The study mentioned above finds that the abortion rate in countries with strict abortion legislation, or where abortion is prohibited, is as high and in some cases higher than in countries where there is common access to abortion. Faced with these realities, a central ethical question is what the best measures are to reduce abortion numbers and at the same time protect the life and health of the mother.

Opponents of sexual and reproductive rights include a number of religious actors. Often this is based on a certain definition of "family", including an understanding of a couple as one man and one woman where the man is the head of the family, and an understanding that sexual relations only happen between a man and a woman who are married to each other. This creates tension around access to family planning (for young people, for single people, for women) and around access to abortion or to health care after an unsafe abortion. It is a set of values that also risks legitimising discriminatory gender roles.

The antagonism against sexual and reproductive rights is found both at service level (for example in hospitals and schools run by religious institutions) and at political level (for example in negotiations in the UN where lobby groups seek to remove any mention of women's reproductive health from resolution texts). At an international, political level this has been such a strong push recently that analysts say women's rights are now in a weaker position than they were after the Beijing conference in 1995.

Consequences for the Church of Norway

The issue of gender and human rights challenges the Church of Norway in several ways. The first is the light it sheds on internal structures and cultures within the church. Gender equality is a work in need of continued attention, through sharp analyses, clear leadership and well discerned ways of working. The goal of *mainstreaming gender* might be a useful perspective for the churches.

The human rights violations discussed in this chapter involve many large-scale, diaconal challenges, both in Norway and globally. The churches are called to care for individuals who have suffered

abuse, to advocate political change, and to raise awareness on gender roles and their impact.

In ecumenical relations and in interreligious dialogue there are good opportunities to strengthen women's rights and combat gender based violence and discrimination. At the same time, these are arenas where patriarchal cultures and traditions are visible. For the Church of Norway Council on Ecumenical and International Relations, a significant challenge lies in contributing to constructive dialogues on these challenges and creating room for women's contributions and leadership.

Where the practice of the church goes against the principle of non-discrimination, extra attention and awareness is needed from the church. This also applies to the cases that are legally within the exception clause of the Gender Equality Act. Discrimination that takes place on religious grounds concerns the church in a special way. While freedom of religion shall be protected, it must not become an excuse to hide behind.

Another challenge for the Church of Norway is how to relate to the religious actors who undermine sexual and reproductive rights. What is a rights based approach to these questions for the Church of Norway, and for other churches? Is it different to an ethical or a theological approach? The years ahead will demand both a will to dialogue and a will to speak out clearly.

CHALLENGES FOR THE CHURCH OF NORWAY:

Are men and women, boys and girls equal in the church?

What and where is the added value of the church in efforts to strengthen women's rights?

Where does the church stand in questions on sexual and reproductive rights – and what kind of dialogue is sought with those who think differently?

[70] Statistics from the Norwegian Agency for Development (Norad). Available in Norwegian at <http://www.norad.no/no/tema/helse/helsetusen%C3%A5rsm%C3%A5lenc/tusen%C3%A5rsm%C3%A5l-fem/tusen%C3%A5rsm%C3%A5l-fem>

[71] Bankole, Henshaw, Shah, Sedgh, Singh, and Ahman: Induced abortion: incidence and trends worldwide from 1995 to 2008. The Lancet, Vol. 379, Issue 9816, 2012. <http://www.thelancet.com/journals/lancet/article/PIIS0140-6736%2811%2961786-8/fulltext>

[72] For more discussions on abortion, see also chapter 7 on the right to life.

IN SHORT: THE LAST YEARS HAVE SEEN INCREASED AWARENESS OF ISSUES OF RIGHTS AND PROTECTION AGAINST DISCRIMINATION FOR PEOPLE OF DIFFERENT SEXUAL ORIENTATIONS (LGBTI – LESBIAN, GAY, BI-SEXUAL, TRANSSEXUAL AND INTER-SEX). THIS IS CONCURRENT WITH SHIFTS IN PEOPLE'S PERCEPTION OF HOMOSEXUALITY, AND INCREASING ATTENTION PAID TO VIOLENCE, ABUSE AND DISCRIMINATION HAPPENING TO PEOPLE ON THE GROUNDS OF THEIR SEXUAL ORIENTATION AND GENDER IDENTITY. THIS ALSO CHALLENGES THE CHURCH IN ITS COMMITMENT TO HUMAN RIGHTS, GIVEN THE BACKDROP OF A POLARIZED CHURCH DEBATE ON HOMOSEXUALITY AND SAME SEX MARRIAGE.

The UN involvement

In English the abbreviations LGBTI (Lesbian, Gay, Bisexual, Transsexual, Intersex persons) and SOGI (Sexual Orientation Gender Identity) are most common, with the latter being used in UN documents. The first time the question of rights for LGBTI was raised in the UN was in December 2008 when a Dutch/French statement, with support

from the EU, was presented to the UN General Assembly. The goal was to have it adopted as a resolution, but it was countered by a statement supported by the Arab League. None of them were officially adopted by the UN General Assembly, but both are open for signatories.⁷³

The situation broke the taboo around LGBTI, but it also ignited fierce criticism from the opponents. 66 countries, Norway among them, signed the original declaration.⁷⁴ The counter-declaration was signed by 57 member countries, mostly from Africa and Asia. In March 2011, a new version of the original declaration was presented at a session in the UN Human Rights Council and was signed by 85 member countries, including all EU members and most Western countries. In June 2011, South Africa asked the UN Human Rights Council to commission a report on the situation for LGBTI around the world. The resolution was voted in at 23 against 19 votes (3 countries abstained) and is seen as historic. In November 2011 the report was presented, documenting a number of violations of rights of LGBTI persons, such as hate crime, criminalization of homosexuality, and discrimination.⁷⁵ The report cited the UN Secretary-General's speech on Human Rights Day in 2010:

As men and women of conscience, we reject discrimination in general, and in particular discrimination based on sexual orientation and gender identity. (...) Where there is tension between cultural attitudes and universal human rights, rights must carry the day. Together, we seek the repeal of laws that criminalize homosexuality, that permit

[73] <http://www.un.org/News/Press/docs/2008/ga10801.doc.htm>

[74] <http://www.amnesty.org/es/library/asset/IOR40/024/2008/en/269de167-d107-11d0-984e-fdc7fcd27a6/ior400242008en.pdf>

[75] *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*. Report of the United Nations High Commissioner for Human Rights, 17 Nov 2011. Available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_en.pdf

APPEAL TO UGANDA'S PRESIDENT



A similar bill was proposed in 2009, but was stopped by President Museveni at the time.

– We are deeply concerned about the development in Uganda and a number of other African countries. When, in addition, we know that Christian theology and church movements are behind this, we feel an extra responsibility to distance ourselves from this line of argument, says Berit Hagen Agøy.

In the letter to President Museveni, Byfuglien and Agøy write:

– No matter what we consider right or wrong from a faith perspective, we believe that the laws of a country must protect all persons, especially those who are the most exposed, and prevent the misuse of power by individuals or groups.

The Christian Council of Norway has also protested the bill, and written a similar letter to Uganda's prime minister, Amama Mbabazi.

Source: The Church of Norway web page, 06.12.2012. Available in Norwegian at <http://www.gammel.kirken.no/?event=doLink&famId=327220>

– This kind of law belongs in a totalitarian state, not in a democracy. We hope and implore that you will not support a law that promotes violence, discrimination, oppression and injustice.

These are the words of the Church of Norway Presiding Bishop, Helga Haugland Byfuglien, and the General Secretary of the Church of Norway Council on Ecumenical and International Relations, Berit Hagen Agøy, in a letter to Uganda's president, Kaguta Yoweri Museveni. The backdrop is a suggested bill to introduce death penalty for homosexuality in Uganda.



Kasha Jaqueline Nabagesera, leader of Freedom and Roam Uganda, works for the rights of lesbian, bisexual and transsexual women in Uganda. In February 2013, the authorities interrupted and closed down an LGBTI conference and attempted to arrest Nabagesera, who managed to escape the conference area. Photo: Freedom and Roam Uganda. [PHOTO: Freedom and Roam Uganda]

discrimination on the basis of sexual orientation or gender identity, that encourage violence.

According to the report, homosexual behaviour is illegal in 76 countries, of which at least five still have death penalty. The report also points out discriminatory practices in the labour market, in health services, in education, in families, and in society in general.

FOR THE CHURCH OF NORWAY, AN IMPORTANT CONTRIBUTION CAN BE TO DEMONSTRATE A WELL THOUGHT-THROUGH OUTLOOK TO THE QUESTION OF HUMAN RIGHTS FOR PERSONS WITH DIFFERENT SEXUAL ORIENTATIONS AND GENDER IDENTITIES, AND TO PROTEST VIOLATIONS OF HUMAN RIGHTS ALSO IN THIS AREA.

The report refers to international standards and obligations that are especially relevant to LGBTI:

- » The principles of universality, equality and non-discrimination
- » The obligation of the state to protect the right to life, liberty and security of persons, irrespective of a person's sexual orientation or gender identity
- » The obligation to prevent torture and other inhuman or degrading treatment
- » The obligation to protect the right to privacy and to prevent arbitrary detention
- » Protection against discrimination on the grounds of sexual orientation or gender identity (with reference to the *Universal Declaration of Human Rights*, art. 19-20)

The report concludes with a number of recommendations to UN member countries, including full investigations of all cases of murder or other serious attacks on LGBTI persons, measures to prevent torture, prohibition

to return LGBTI refugees and asylum seekers to areas where they might be in danger, abolishment of laws that discriminate homosexuals, securing freedom of speech and other freedoms, information and campaigns against homophobia and transphobia, and easing the process of ID documents for transsexual persons.

LGBTI work in Norway

The Norwegian government's strategic plan *Improving the quality of life for lesbian, gay, bisexuals and transsexual persons 2009-2012* was published on 26 June 2008.⁷⁶ The overall goal of the plan was to end the discrimination that lesbian, homosexual, bisexual and transsexual persons experience in different phases of life, in various social settings and in work settings, and to contribute to better living conditions and quality of life for these groups. Over the last years, some local municipalities and regional administrations in Norway have developed their own strategic plans against discrimination of LGBTI.⁷⁷

A national centre for knowledge on sexual orientation and gender identity was established in 2011, connected to the Norwegian Agency for Children, Youth and Families.⁷⁸ The centre, established as a pilot project, is tasked with making sure that LGBTI persons can access all services and arenas and be met with inclusiveness, relevant information and respect. The centre is also a resource centre on sexual orientation, gender identity and expressions of gender. In January 2013, the centre published a report documenting widespread discrimination, stigmatisation and aggression against transsexual persons in Norway, seeing this as a result of low levels of knowledge about and understanding of transsexual identity.

LGBTI is a short form that demonstrates the diversity found in sexual and gender identity. It is sometimes used to refer to anyone who is not heterosexual or living in the gender expression within which they were born. Another image used to symbolise this diversity is the rainbow, the international symbol for LGBTI organisations.

Consequences for the Church of Norway

The Church of Norway has been through a long process since homosexuality was raised for the first time as a topic in 1954 – at the time in a

sharply worded statement from the Bishop's Council against the decriminalisation of homosexual behaviour. Most of the debate has been on theological and ethical understandings of homosexuality, but human rights perspectives have also been discussed.⁷⁹ Homosexuality is among the themes mentioned in the mandate of the Church of Norway's Committee on Human Rights.

There is reason to closely follow developments in this area in the UN and in different human rights organisations such as Amnesty International and Human Rights Watch. Today, human rights abuses in this area are clearly documented. The International Lesbian, Gay, Bisexual, Transsexual and Intersex Association (ILGA) conducts inquiries worldwide on breaches of rights. The Human Rights Campaign in the USA monitors the human rights situation for LGBTI persons and does advocacy work.

Churches in various parts of the world have responded quite differently to these challenges. For the Church of Norway, an important contribution can be to demonstrate a well thought-through outlook to the question of human rights for persons with different sexual orientations and gender identities, and to protest violations of human rights also in this area. One key area of concern for the churches is criminalisation of homosexuality. An example of a church response is a letter from the Church of Norway to the president of Uganda, dated 4 December 2012, protesting a suggested law that would increase the punishment for LGBTI persons.⁸⁰ Like in many other African countries, homosexuality is criminalised in Uganda, with a maximum punishment of 14 years. The suggested law was set to increase the maximum punishment to death penalty and to penalise individuals and organisations who did not report persons or activities they suspect to be homosexual.

CHALLENGES FOR THE CHURCH OF NORWAY:
What can be the church's contribution in combating systematic discrimination and stigmatisation of people because of their sexual orientation?

How can the church discern between a theological-ethical discussion of sexuality and relationship ideals, and a human rights based involvement against discrimination on the grounds of sexual orientation and gender identity?

How can the church become more involved against criminalisation of people on the grounds of their sexual orientation or because they defend LGBTI rights?

[76] http://www.regjeringen.no/upload/BLD/Handlingsplaner/Hpl_lhbt_september_2008.pdf (2nd edition from September 2008. In Norwegian)

[77] http://www.llh.no/nor/homofil/politiske_dokumenter/kommunalt (in Norwegian)

[78] <http://www.bufetat.no/bufdir/lhbt-senteret/Om-LHBT-senteret> (in Norwegian)

[79] Gunnar Heiene, «Homofile og kirken», *Håp for verden. Kirken og menneskerettighetene*. Oslo: Norwegian Church Aid et. al. 1998, pg. 120-128.

[80] <http://www.kirken.no/index.cfm?event=dolink&famId=327220>



17 THE RIGHTS OF PERSONS WITH DISABILITIES

IN SHORT: THE ISSUE OF THE RIGHTS OF PERSONS WITH DISABILITIES HAS FOUND ITS PLACE ON THE INTERNATIONAL AGENDA OVER THE LAST 20-30 YEARS. THROUGH THE UN THIS WORK HAS RESULTED IN A CONVENTION AFFIRMING THESE RIGHTS. IT IS IMPORTANT THAT ALSO THE CHURCH AND THE DIACONAL WORK OF THE CHURCH IS INFORMED BY THIS, THROUGH AN ACTIVE INVOLVEMENT FOR THE DIGNITY AND HUMAN RIGHTS OF PERSONS WITH DISABILITIES.

The work of the UN

A fundamental principle for the UN's approach to any group is the equal rights of all, based on the dignity and equal worth of all people, and implying a concern for social justice. This also includes people with disabilities, as pointed out in article 25 of the *Universal Declaration of Human Rights*:

“Everyone has the right to a standard of living adequate for the health and well-being 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” (our emphasis).

[81] <http://www.un.org/disabilities/default.asp?id=121>

In the course of the 1970's the human rights of persons with disabilities were put on the UN agenda, through the General Assembly resolutions on the *Rights of Mentally Retarded Persons* of 20 December 1971 and *The Rights of Disabled Persons* of 9 December 1975.⁸¹ As a next step, 1981 was declared the International Year of Disabled Persons. The following year the General Assembly adopted a strategic plan, which was the foundation for the *UN Decade of Disabled Persons 1983-1993*. In 1993, the General Assembly adopted the *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*. In the *International Convention on the Rights of the Child*, adopted in 1989, the rights of children with disabilities are integral.

In the so-called *Beijing Declaration* (2000), five international NGOs working on disability asked governments to develop a convention. The following year the UN General Assembly appointed a committee to draft a convention. On the 13th December 2006 the *Convention on the Rights of Persons with Disabilities* was adopted by the General Assembly, and on the 3rd May 2008 it entered into force after having been ratified by 20 countries. By July 2013, 156 member countries had signed the convention and 133 had ratified it. Norway ratified the convention in June 2013.

To monitor the implementation of the convention, an independent expert group has been established, the Committee on the Rights of Persons with Disabilities. The committee receives regular reports from the states that are parties. The Optional Protocol to the convention

mandates the committee to receive and investigate individual complaints regarding violations of the rights affirmed in the convention. Norway has not yet (as of November 2013) ratified the optional protocol.

Outline of the convention

In article 1, the purpose of the convention is presented: to promote, protect and ensure persons with disabilities the full and equal enjoyment of all human rights and fundamental freedoms, and to promote respect for their inherent dignity. The article goes on to define persons with disabilities as including “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

THE CHURCH IS THUS ENCOURAGED TO UNDERSTAND THE SITUATION OF PERSONS WITH DISABILITIES FROM A RIGHTS PERSPECTIVE, NOT JUST AS A QUESTION OF HEALTH AND SOCIAL AFFAIRS WHERE PERSONS WITH DISABILITIES ARE TREATED PRIMARILY AS PATIENTS AND PERSONS IN NEED OF CARE.

In article 3, general principles are laid out: respect for the inherent dignity and individual autonomy of persons, non-discrimination, full and effective participation and inclusion in society, respect for differences and acceptance of persons with disabilities as a part of human diversity and humanity, equality of opportunity, accessibility, equality between men and women, and respect for the evolving capacities of children with disabilities and respect for their right to preserve their identities. Articles 4 through 32 detail a number of obligations and rights. Articles 33 through 39 concern reporting, and articles 40 through 50 treat the process of ratification.

Relevant issues

A Norwegian law on discrimination and access (Prohibition against Discrimination on the Grounds of Disabilities Act⁸²) entered into force in 2009. It gives persons with disabilities protection against discrimination not only in work settings, but in all areas of public life. The law also extends to the people closest to persons with disabilities, for example a parent who finds it hard to find work or reach elected positions due to the situation at home. Still, there are many examples of persons with disabilities who do not have access to what is granted in the law, because of a lack of economic resources and sometimes a lack of political will. Among the most common concerns are the right to transport and to assistance. Another related issue, which is not yet included in the law text, is access to the use of modern communication technology. With Norwegian legal standards now in line with the international convention, the pertinent question to ask for both the church and others is how well the rights are implemented in practice.

The church is thus encouraged to understand the situation of persons with disabilities from a rights perspective, not just as a question of health and social affairs where persons with disabilities are treated primarily as patients and persons in need of care. A life in dignity and respect includes the right to education, work and leisure time, but also the right to establish and keep friendships, to a spiritual life and to be able to express one's own preferences. A central issue in Norway is the housing situation for persons with disabilities, where there is a strong push for access to one's own home rather than an institution – though the isolation and loneliness that might be the consequence must also be discussed. The family situation of persons with disabilities should be part of the church's diaconal work, and the church can help bring this aspect up in public discussions.

The church should also keep in mind a global perspective, with the situation for persons with disabilities differing enormously from country to country, due especially to economic inequality. There is strong correlation between disability and poverty. The Church of Norway participates in the worldwide ecumenical fellowship for persons with disabilities, the Ecumenical Disability Advocates Network (EDAN).

A fundamental challenge is to think through how the work of the churches themselves in a better way can include persons with disabilities, in church liturgy and in other aspects of congregational life. This requires an active effort to remove both physical and psychological barriers that might stand in the way of full participation in the life of the church, and can be rooted in a theological reflection on what is implied in human dignity and equality. In the Church of Norway, the order of service adopted in 2012 requires services to be universally accessible, and includes a detailed guide to how this can be done in practice.⁸³ In 2006, the Church of Norway Synod discussed the question of the Church of Norway as a working environment for persons with disabilities, and asked the church to go beyond what is required by law in ensuring that persons with disabilities can find employment in the Church of Norway.⁸⁴

People with both physical and mental disabilities must have the opportunity to take part in and be part of the congregational community, also through special programs adapted to the needs of different groups. This might require the training and hiring of more church staff with knowledge and experience in this field.

The Church of Norway Synod of 2012 discussed the situation for children with disabilities in the church. The Synod recommended measures to strengthen the opportunities for persons with disabilities to participate in church. The Synod also challenged the authorities to, amongst other things, strengthen the help given to families with special needs, to move forward in the ratification process of the international convention, to keep in mind the freedom of religion or belief in health care and other services for persons with disabilities, and to not include early ultrasound in maternal health care, out of fear that this will lead to more abortions of foeti with detectable disabilities.

CHALLENGES FOR THE CHURCH OF NORWAY:
In what ways can the church adapt its work to also fit people with physical and mental disabilities, including them in the life of the congregation, while taking care of their individual needs?

In what ways can the church make the human dignity and human rights of persons with disabilities evident through its employment practices?

In what ways can the church act to enhance the rights of persons with disabilities, in addressing political authorities on issues such as assistance, a place to live, and other measures to support families with disabled children or youth?

[82] <http://www.lovdata.no/all/nl-20080620-042.html>

[83] (In Norwegian) Alminnelige bestemmelser for Ordning for hovedgudstjeneste. Fra Gudstjenestebok 2011. <http://www.kirken.no/?event=downloadFile&FamID=241170>

[84] Church of Norway Synod, resolution 13/06 (in Norwegian): Den norske kyrkja -ein arbeidsplass for menneske med funksjonshemmingar? <http://kirken.no/?event=download-File&FileID=10827>

18 THE RIGHTS OF THE CHILD

IN SHORT: THE RIGHTS OF THE CHILD IS A TOPIC WHICH HAS RECEIVED INCREASING ATTENTION OVER THE LAST DECADES, ESPECIALLY AFTER THE *INTERNATIONAL CONVENTION ON THE RIGHTS OF THE CHILD* WAS ADOPTED IN 1989. IN TODAY'S WORLD, CHILDREN ARE SUBJECT TO MANY RIGHTS VIOLATIONS, IN PARTICULAR AS A CONSEQUENCE OF POVERTY AND LACKING RESOURCES. VIOLENCE, ABUSE AND SEXUAL EXPLOITATION ARE ALSO SEVERE CONCERNS. EFFORTS TO PROTECT THE RIGHTS AND DIGNITY OF CHILDREN SHOULD BE AN AREA OF PRIORITY FOR THE CHURCH OF NORWAY.

As early as in 1924, the rights of children were raised in the *Geneva Declaration on Children's Rights*. The document was not legally binding, but is significant as the first document to raise the wellbeing of children and their right to development, help and protection. The context, in which this declaration was written, was the suffering children were subject to during the First World War. After the Second World War, the issue of the human rights of children was implicitly included in article 16 of the *Universal Declaration of Human Rights*, which covers marriage and family, and where the family is affirmed as the natural and basic unit in society with a right to the protection of the society and the state.

The rights and responsibilities of the family for the child are thus given priority

in this and other UN treaties. In the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), article 10.1 is about the protection of and the support for the family "particularly for its establishment and while it is responsible for the care and education of dependent children". Article 10.3 says the following on the rights of children and youth:

Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law.

The *International Covenant on Civil and Political Rights* (ICCPR) also underlines the family as the basic unit of society and affirms children's rights, especially in situations where marriages end (art.23). In 1959, the *UN Declaration of the Rights of the Child* was adopted. It draws on the *Universal Declaration of Human Rights* from 1948, but is not legally binding for the member states, although many UN agencies, UNESCO among them, work to implement the intentions found in the declaration: ensuring the child's right to social security, to healthy conditions while growing up, and to education. It also encourages the teaching of tolerance and compassion for other human beings as core values in children's upbringing.

A further step towards affirming the rights of the child came with the *UN Convention on the Rights of the Child* (CRC),

adopted in 1989 and ratified by Norway in 1991. The convention acknowledges the rights of children in a number of different spheres. In the preamble, it is pointed out that the *Universal Declaration of Human Rights* "has proclaimed that childhood is entitled to special care and assistance" and that the family is the basic unity in society. Therefore the convention recognizes that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding". Through the convention, states that are parties are obliged to respect the right of the child to preserve his or her identity (art.8), and to ensure that a child shall not be separated from his or her parents against their will, except where necessary for the best interests of the child, for example in cases involving abuse or neglect of the child (art.9). The convention also emphasizes the right of the child to be heard, the freedom of expression, thought, conscience and religion, and the freedom of association. Article 23 is about the rights of children with mental or physical disabilities and the rights of the child to special care according to its special conditions and needs (see also chapter 17). The convention also affirms the right of the child to health care, to an adequate standard of living, to education, rest and leisure, and to protection from economic and sexual exploitation, torture, and other inhuman or degrading treatment.

Norway is one of few countries that have included the *Convention on the Rights of the Child* in its constitution. In 2012, around 35 countries signed an optional protocol to the CRC giving children in these countries access to a complaint mechanism for cases of rights violations. Norway has not yet signed this optional protocol (as of November 2013), although some parliamentarians have been pushing for this to happen.

An important principle in the *CRC*, which is also part of Norwegian law, is the principle about the best interest of the child. *CRC* article 3 reads: "In all actions concerning children, (...) the best interests of the child shall be a primary

consideration." Article 12 affirms the right of the child to be heard in any proceedings affecting it, either directly or through a representative. The complexity and ethical dilemmas this involves become especially apparent in cases where the care of a child is taken away from its parents or where the right to see a child is denied, or in cases of adoption. The best interest of the child is also a relevant consideration in some asylum cases.

Violations of the rights of children

Poverty is a major source of violations of the rights of children. Every day several tens of thousands of children die from poverty-related causes. Poverty is a condition where the most basic necessities of life are missing. Poverty therefore has an economic and material dimension, whether it is a question of absolute or relative poverty, but is also about the ability to use the resources to which one has access (see also chapter 10).

Poverty also impacts other fundamental rights and the dignity and self-understanding of a child. Poverty can obstruct an individual from exercising his or her freedom and can be a threat to fundamental security, such as housing, health care and fair treatment. Poverty undermines opportunities for personal development and growth, and for children this is a severe attack on basic rights and future prospects.

In many countries, children's rights are undermined by widespread child labour, discrimination, abuse and sexual exploitation. Sexual exploitation involves abuse of the imbalance in power between an adult and a person under the age of 18, whether for satisfaction or profit.⁸⁵

In Norway, the rights of children are also often discussed in relation to children in asylum seeking families who have not been granted asylum in Norway. In these cases, the rights of the child and the principle of the best interest of the child have often been waived due to more pragmatic and political considerations relating to immigration policies and regulations.

The rights of the child in a Christian perspective

For all Christian churches, children's human rights should be an obvious area of work. One of the most important advocates for including

[85] See World Congress against Sexual Exploitation of Children and Adolescents, Brazil 2008 - <http://www.ecpat.net/worldcongressIII/overview2.php>

family and children's rights in the *Universal Declaration of Human Rights* was the Lebanese, Christian philosopher and politician Charles Malik. He was not successful in his attempt to include "the Creator" as the source of the inherent rights of the family, but his suggested phrase on the family as the natural and basic group unit of society was included.

THE BALANCE BETWEEN THE BEST INTEREST OF THE CHILD AND THE PARENTS IS ALSO A CENTRAL QUESTION WITH REGARD TO FREEDOM OF RELIGION. THIS IS BOTH A QUESTION OF THE BEST INTEREST OF THE CHILD, THE CHILD'S FREEDOM OF RELIGION, AND THE RIGHTS AND DUTIES OF A PARENT, IN A COMPLEX BALANCING ACT.

The UN documents on children's rights thus draw on an "integrated" understanding of the family, defining the family as more fundamental than the state, and emphasising that the family also needs protection against state abuse of power. In Norway, this issue was for example raised in struggles for parentage rights against the Nazi authorities during the Second World War.

In a modern, individualistic world view, this integrated understanding of children's rights within the scope of the family has been challenged by the view that emphasizes the individual rights of adults, both with regard to relational forms and the dissolution of marriage or partnership. For the church, it is imperative to uphold an understanding of relationship and marriage that respects the rights and needs of children. Still, many children live in violent or abusive homes. In such cases, divorce can be important to protect the best interest of the child. Finding a good balance between the rights of the child and the rights of adults is an important perspective in the Church of Norway's current discernment process on relationships and marriage practices.⁸⁶

The balance between the best interest of the child and the parents is also a central question with regard to freedom of religion. This is both a question of the best interest of the child, the child's freedom of religion, and the rights and duties of a parent, in a complex balancing act. For many parents, these decisions can be difficult to make, and therefore these questions also need to be discussed in arenas such as schools, kindergartens and faith communities. The child's right to make his or her own decisions in the area of faith and life stance is also a question of the relation between the rights of parents and the rights of a child. A Norwegian public report of 2013, on religion, life stances, society and the state, outlines how the rights of parents is limited by 1) time, until the child is capable of making his/her own decision, and 2) the best interest of the child, by which the child has the right to an opinion.

Grave violations of the rights of children are also found in situations where children are subject to violence in the form of physical punishment. In different cultures there are many different perceptions of punishment, and in Norwegian society there has been a relatively rapid shift. In some faith communities, religion has been or is in part used to legitimise physical punishment. In some instances, there is a conflict of rights between the rights of the child and the right to privacy or freedom of religion of the family.

CHALLENGES FOR THE CHURCH OF NORWAY:

Are the rights of children and youth a noticeable part of faith education, church services and diaconal work in the church?

How can the church be involved in the struggle for the rights of children in asylum-seeking families, in a way that highlights the obligation to protect the human dignity of the smallest and weakest?

How can the church encourage a focus on children's rights in debates on adults' relationships and reproductive rights?

«THE SPIRIT OF THE LORD IS ON ME, BECAUSE HE HAS ANOINTED ME TO PROCLAIM GOOD NEWS TO THE POOR. HE HAS SENT ME TO PROCLAIM FREEDOM FOR THE PRISONERS AND RECOVERY OF SIGHT FOR THE BLIND, TO SET THE OPPRESSED FREE, TO PROCLAIM THE YEAR OF THE LORD'S FAVOUR.» (LUK 4.18-19)

[86] A committee mandated by the Church of Norway Bishop's Council in 2013 wrote a report on relationships and marriage practice in a church perspective. Title in Norwegian: *Sammen – Samliv og samlivsordninger i et kirkelig perspektiv*.

THE CHURCH OF NORWAY AND HUMAN RIGHTS – CHURCH OF NORWAY GENERAL SYNOD RESOLUTION (2014)

1. God has created all human beings in the image of God, and the inherent, equal dignity of all human beings is the basis for the radical message of equality found in Christianity. The foundations of the church's efforts for universal human rights are therefore faith in God, the Creator. Faith in Jesus Christ, who shows God's care for all sides of human life and the church's calling and mission, also inspires the church's human rights involvement, encouraging a confrontation with oppression, inequality and injustice. The inherent dignity of a person can never be taken away from a person, even though his or her human rights might not be fulfilled. Human rights protect human beings from birth. The Christian understanding of a person and ethics extends beyond this, striving to protect human beings from conception until the life's end.

Universal human rights protect human beings against abuse and oppression. In light of Christian faith, human rights are expressions of the inviolability and equality of human beings.

2. The Universal Declaration of Human Rights and the UN human rights system reflect an international agreement on common norms irrespective of religion, life stance or political ideology. Religions and life stances have different theological interpretations of, or justifications for, human rights, but can still agree on these rights. Human rights are well suited for dialogue and collaboration across beliefs and ideology.

3. Human rights are a tool in the struggle for human dignity, freedom and justice. When states have made a commitment to

uphold human rights, those rights have strong and unique legitimacy. The human rights system also has procedures through which states can be held accountable when rights are violated.

4. Human rights have a legal and a moral side:

» Human rights obligations are first and foremost held by states. Each individual state has the responsibility to respect, protect and fulfil human rights, as expressed in the Universal Declaration of Human Rights and the various human rights conventions.

» Human rights also involve the efforts of individual Christians and the church. The church's role as a moral duty-bearer has various dimensions:

» Respecting human rights: The church shall not violate human rights. If other churches or church actors breach human rights, the Church of Norway has a responsibility to address this.

» Protect and fulfil human rights: The church shall hold the state (the legal duty-bearer) responsible to protect and fulfil human rights. Advocacy and criticism of power are relevant methods. The church is also called to strengthen the ability of rights holders to fight for their own rights.

5. The Church Synod recommends that the document "*Set the oppressed free! The Church of Norway's involvement for human rights*" be discussed and thus lead to reflection and action in the Church of Norway.

6. The Church Synod asks the central church councils and congregations to let

the respect for human rights be an integral part of church work, including:

» to further develop the human rights approach to diakonia on the basis of the Church of Norway *Plan for diakonia*. It is particularly important that the diaconal work done locally and by the specialized agencies serves in accompaniment of people in their encounters with local authorities, to ensure that human rights are fulfilled.

» to continue working on including a human rights perspective in Christian education and worship.

» to consider how the Synod's resolution and the document *Set the oppressed free!* can be used to strengthen the congregations' involvement for human rights, and further develop resources in this field. The Church Synod encourages congregations to use their local knowledge, channels and capacities, to help provide fellow human beings with an experience of being heard, seen and respected.

» all believers are encouraged to work for human rights.

7. Prioritising

The Church Synod recommends the following criteria for use in prioritising the Church of Norway's efforts for human rights nationally and internationally. The criteria are not listed in any specific order:

a) When Christian faith is used to legitimise violations of human rights, or where the church itself is responsible for violations

In situations where those who are violating human rights do so with reference to Christian faith, Christian churches have a special responsibility to criticise this and to struggle for human rights. Breaches of human rights that happen in a church context or where the church or church representatives are the perpetrators are also particularly severe, and the effect might be that the church setting gives the violations a veil of legitimacy. Such cases should have high priority for the Church of Norway. This of course applies all the more if our own church is responsible (or in part responsible) for rights violations. Areas where the Church of Norway has a history of

complicity in rights violations, are areas the church should pay extra attention to.

b) Requests and concerns from ecumenical organisations where the Church of Norway is a member, and requests and concerns from other churches and organisations

As a member of international, ecumenical organisations, the Church of Norway has a strong institutional and moral obligation to follow up concerns that are shared with us by other churches through these organisations. The Church of Norway also has the possibility, through its membership in ecumenical organisations, to work together with others in a global, ecumenical fellowship, with potential synergies and combined impact. In addition, concerns shared by churches and sister and brothers in Christ from other parts of the world are often brought to our attention, though these are deliberated upon case by case.

c) Violations of indigenous peoples' rights

The Church of Norway has a special responsibility to direct the spotlight on indigenous peoples' rights in general and the Sami people's rights in particular. Almost all indigenous peoples in the world have been subject to human rights violations, often inflicted by the state and the majority population in the community. The Church of Norway has in recent years apologised for its previous attitude to and actions against the Sami people. The reconciliation process that has begun must find its continuation in a strong commitment to indigenous peoples' rights, nationally and internationally, by contributing to ending any violation of the rights of indigenous peoples.

d) Cases that are forgotten by others and are not on the agenda locally, nationally and internationally

Some situations are left in the shadows, away from the spotlight of the media and the political agenda, although they might be situations of severe and widespread human rights violations. This might in itself be a reason for the church to become involved in the issue. Jesus' example encourages Christians and the church to take care of the most marginalised. This criterion also implies an obligation to stay well informed about the human rights situation worldwide.

e) Freedom of religion

As a faith community, the church has a special responsibility to secure all peoples' right to believe, to not believe, or to change belief. The freedom of religion or belief is under pressure. As a church we have a special responsibility to defend the freedom of religion or belief nationally and internationally. The church should pay special attention to areas where religious minorities are subject to grave human rights breaches. This work finds strength in ecumenical collaboration and interreligious dialogue.

f) Especially widespread, severe and complex violations of human rights

Many places in the world, people are subject to violations of a number of human rights at the same time, making their situation especially severe. In such situations, there is also typically little chance to fight for one's own rights. Slavery or slavery-like conditions can serve as examples. In such situations, it is particularly pertinent that the church speaks on behalf of people and supports people's capacity to fight for their rights.

g) Cases where the Norwegian state or other Norwegian actors are responsible for violations of human rights

If Norwegian authorities or other Norwegian actors are seen to be responsible or in part responsible for breaches of human rights, whether in Norway or somewhere else in the world, every Norwegian citizen and the church as part of Norwegian civil society have the responsibility to advocate for the respect of people's rights. One reason for this is ethical: Norwegian authorities act on behalf of the population, and as part of a democratic society we have both the possibility and the responsibility to influence what our authorities do on behalf of the country. Another reason is pragmatic: It is often easier for the Church of Norway to influence the behaviour of Norwegian authorities than that of other countries. Likewise, when other Norwegian actors are complicit in human rights violations, the churches in Norway have a special responsibility and possibility to advocate for change.

h) Geographical and thematic range in the overall involvement

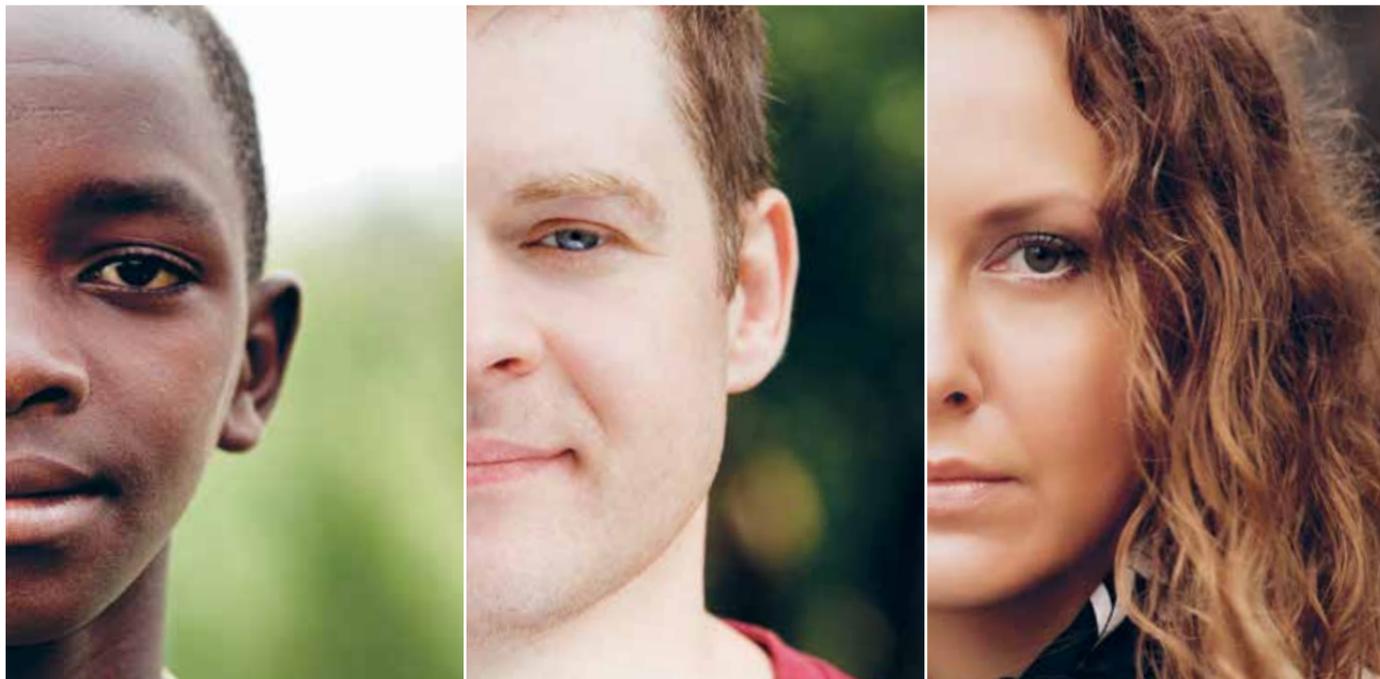
A comprehensive and credible human rights

work in the Church of Norway should over time include a certain range of cases, with diversity in thematic content and countries involved.

i) Possible impact

If our involvement for human rights is not just a theoretical exercise, but has an agenda of change, then one of the questions we have to ask is where and how we as church actors have the best opportunities to make an impact. This question becomes a central criterion for where we should focus our efforts. How best to determine our potential impact will vary with time and context, but relevant factors might include:

- » Closeness to decision makers (like e.g. Norwegian authorities, as mentioned further up)
- » Relation to any of the persons or groups affected, knowledge of the thematic area, or good church or other networks
- » Momentum in a case: Attention to or political interest in an issue can expand the room for advocacy
- » Cases where religious know-how and a religious vocabulary are especially important assets



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