



Supporting the Rule of Law Worldwide

The Konrad-Adenauer-Stiftung
Rule of Law Programme

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Foreword



The German Fundamental Law ...

... is committed to the Rule of Law in Articles 20, 28 I 1 (Fundamental Law). It is among the elementary constitutional principles that cannot be abolished even by amendments to the constitution. At the core of the idea of the Rule of Law is the requirement that all state actions are bound by applicable law. This commitment to the Rule of Law in both a formal and material sense was ceremonially sealed with the signature of the Fundamental Law by the President of the Parliamentary Council, Konrad Adenauer, on 23 May 1949.

Guaranteeing the Rule of Law and legal safeguards is also one of the core tenets in the debate on development and foreign policy, especially as an efficient legal system that meets the principles of Rule of Law is a fundamental prerequisite for any form of democratic system. In its international work, the Konrad-Adenauer-Stiftung is also guided by the creation of an international order of peace, freedom, democracy and justice. For this reason, the Foundation has been complementing its global projects with a transnational programme for promoting the Rule of Law since 1990 – the Rule of Law Programme. German jurists with international expertise direct the regional Rule of Law programmes from bases in Bogotá, Singapore, Nairobi, Bucharest and Beirut, working in close cooperation with KAS national offices in Latin America, Asia, Africa, South-East Europe and the Middle East / North Africa.

In accordance with its function and identity, and in contrast to other bilateral and multilateral donors and advisors the Konrad-Adenauer-Stiftung does not adopt a purely technical stance, but rather takes an explicitly political, dialogue-based approach. Thanks to trusted contacts often nurtured over decades, the foundation is able to credibly promote the principles of the Rule of Law in numerous countries. This is of particular importance because even the best constitutions, laws and decisions can have little impact unless there is a general awareness of applicable law and its ensuring rights and obligations among actors within the justice system and the population as

a whole. Such awareness, however, can only be established and maintained through ongoing political education.

The relevance to development policy also stems from the knowledge that sustainable development and security is not viable without stable democracies – and stable democracies are not possible without the Rule of Law. In the absence of a functioning Rule of Law, corruption, nepotism, mismanagement, abuse of power and extreme social inequality are able to thrive and prosper. Especially in the age of globalisation, the requirement of the Rule of Law is a structural precondition for social and economic progress.

This brochure is intended to present the Konrad-Adenauer-Stiftung's global activities concerning the Rule of Law to a broader public. I trust that you will find it both interesting and informative.

A handwritten signature in blue ink that reads "Gerhard Wahlers". The signature is written in a cursive, flowing style.

Dr Gerhard Wahlers

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

Promotion of the Rule of Law by the Konrad-Adenauer-Stiftung

German expertise in the area of law and justice is in demand worldwide. There is considerable interest in our legal culture in many countries of Latin America, Asia, Africa, South-East Europe and the Middle East. This applies in equal measures to German legal doctrine, jurisprudence, legislation and legislative procedures, implementation of laws and questions of legal organisation.

There has always been an intensive exchange and dialogue with Latin American countries. There is hardly a textbook on, for example, public and constitutional law or criminal law in those countries that does not cite German legal teaching. But there is also a remarkable demand for advisory services in many countries in Africa, Asia, Central/Eastern Europe and the Middle East.

There are manifold reasons for this. German legal culture stands out as highly differentiated in terms of doctrine and sub-specialisation. As a result, sufficiently consolidated and reliable material, and as a rule, the corresponding specialists are available for each required area of law. Unlike in the area of common law, German solution models are ready to hand and supported by a broad base of experience.

Thus, the Konrad-Adenauer-Stiftung offers advisory services and training programmes on specific legal topics, but by no means attempts to implement German legal concepts that go beyond the legal culture of the respective beneficiary country. When advising on the Rule of Law, those who fail to afford local legal traditions the same consideration as social, religious and cultural factors will have little success.

Our local partner organisations act as 'cross-cultural interpreters' who can indicate precisely what support is actually required, which issues are really relevant and how best to approach them. This need-based and dialogue-oriented approach has proven itself over many years and engendered the trust of decision-makers and local advisory institutions.

It should also be stressed here that the advisory services of the Rule of Law Programmes are not a one-way street. On the contrary, we encounter such a wealth of concepts, ideas and expressions of the Rule of Law in our regions of action that the exchange of experience ensured by the Rule of Law Programmes can and should also enrich the Rule of Law and understanding of democracy in Germany. The German experts deployed abroad become ambassadors of these ideas and regard them as a source of inspiration for their own work.

The value and impact orientation of the Rule of Law Programme is particularly apparent in its clearly defined profile of subject areas and objectives, which also derives from the Konrad-Adenauer-Stiftung's nature as a political foundation. It is from a basis of shared values that the foundation, in collaboration with its partners, gains the necessary credibility for engaging in a fruitful politico-legal dialogue. Its extensive yet clearly defined portfolio comprises the promotion of structures supporting the Rule of Law in the long term, a commitment to the separation of powers, in particular to an independent judiciary system and a public administration acting in accordance with the law, promoting fundamental and human rights, and strengthening regional networks.

The regional character of its work has often proven itself to be more suitable, especially in dealing with sensitive issues, for openly addressing problems with the Rule of Law than would be the case at the national level. For this reason, the foundation has deliberately chosen to follow a transnational approach with its Rule of Law Programmes. It does so also because processes of reform in the Rule of Law often run in parallel in different regions of the world. Finally, another advantage of this transnational approach is the formation of regional networks of experts. Thus, the foundation brings together experts and decision-makers from the individual countries of a given region, allowing them to exchange their experiences from having faced or still facing similar challenges. This includes regular meetings of constitutional and Supreme Court judges and regional study groups. Transnational seminars, training events and conferences offers participants the opportunity to benefit from the knowledge and experience of other participants while at the same time receiving an impetus for transnational collaboration. Such collaboration promotes mutual understanding between countries participating in the programme and contributes to overcoming differences and conflicts of cultural, historical and political origin in the region.

The Konrad-Adenauer-Stiftung's approach to promoting the Rule of Law worldwide is not purely technical, but explicitly political and oriented towards dialogue and values. This is reflected in the instruments the foundation makes use of in its work. The main pillar of the foundation's work is carrying out training measures, that is, international conferences, seminars, workshops and training events for judges, public prosecutors, attorneys, academics and law students, among others. These are complemented by publications issued periodically by the Rule of Law Programme. This work is also increasingly done in social networks, using the internet and the 'new media' for disseminating the ideas of the Rule of Law Programmes. The foundation's study and dialogue programmes in Germany form another important component of this educational work. They offer regular opportunities to selected participants, usually decision-makers and knowledge multi-

pliers from the world regions mentioned, to gain first-hand knowledge from representatives of the administration of justice and legal culture in Germany. Furthermore, the foundation offers grants and scholarships to particularly talented law students and young law practitioners.



Strategy Workshop of the Rule of Law Programmes in Berlin – left to right: Dr Franziska Rinke (coordinator), Hartmut Rank (South-East Europe), Gisela Elsner (Asia), Dr Anja Schoeller-Schletter (North Africa / Middle East), Dr Arne Wulff (Sub-Saharan Africa), Dr Marie-Christine Fuchs (Latin America)

The Konrad-Adenauer-Stiftung is committed to the promotion of

- rule-of-law structures and central institutional elements of the Rule of Law, such as effective constitutional courts;
- the separation of powers, in particular a strong, established and independent judiciary and legitimate executive and
- the guarantee of fundamental and human rights in both their substantive and their procedural dimensions.

Supporting the Rule of Law worldwide: The Konrad-Adenauer-Stiftung local offices

Rule of Law Programme Latin America
Bogotá, Colombia www.kas.de/rspla

Rule of Law Programme Asia
Singapore www.kas.de/rspa

Rule of Law Programme Sub-Saharan Africa
Nairobi, Kenya www.kas.de/rspssa
Dakar, Senegal

Rule of Law Programme South-East Europe
Bucharest, Romania www.kas.de/rspsoe

Rule of Law Programme the Middle East / North Africa
Beirut, Lebanon www.kas.de/rspno

Rule of Law Programme Coordination
Berlin, Germany www.kas.de/rechtsstaatsprogramm



- Rule of Law Programme locations
(areas of activity in dark blue)
- KAS offices abroad

The Rule of Law Programmes are run by German jurists and coordinated from our Berlin headquarters. We focus on constitutional law, fundamental and human rights, procedural and integration law.



Rule of Law Programme Latin America

As early as the 80s of the past century, almost all countries of Latin America started having intensive debates on the Rule of Law and judicial reforms in the context of the ongoing democratisation and departure from authoritarian systems, which triggered many constitutional reforms. That is where the roots of the Konrad-Adenauer-Stiftung's work on the Rule of Law are found. In addition, there has always been a particular interest in German legal experience in Latin America, especially in the areas of constitutional law, fundamental rights, administrative law, criminal law and the philosophy of law. The democratic constitutional state in the Federal Republic has enjoyed an ever-increasing degree of credibility, in particular because it arose out of overcoming the experience of totalitarianism and is regarded as particularly efficient and little prone to corruption.



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

Thus, the Foundation’s Rule of Law Programme Latin America (RLP LA), encompassing all of Latin America, was developed in the early 90s to support the new democracies in their efforts towards the Rule of Law and to maintain an exchange with Germany on politico-legal issues.

Through its long-term and continuous involvement in the aforementioned areas and trusting collaboration with local partners, the Rule of Law Programme has established a broad, high-calibre network of judicial decision-makers, legal experts and organisations. Targeted networking and maintaining existing networks within the different countries of the continent and with Germany are the real strength of the RLP LA.

There is a need for mutual understanding and some coordination if state and indigenous judiciaries are to collaborate successfully in delivering a pluralist administration of justice.

Fundamental and human rights protection

Important areas of action of the RLP LA include the protection of human rights, both nationally and internationally.

The supreme courts as well as the constitutional tribunals, courts and chambers in the region play an important role here. Just as with the political developments across the continent – some welcome, some worrying – there are also brighter and darker sides to constitutional jurisdiction. In a way, the highest courts are a mirror of successful, future-oriented politics or, as the case may be, of backward steps on the road towards stable democratic structures. Those courts in particular that have earned the respect and the trust of the population at large by their steady, balanced, well-argued jurisdiction respectful of fundamental rights are now proving themselves to be unassailable. Whereas, in the early years of their sometimes still rather short existence, they played a more subordinate, sometimes academic role, in recent years they have become a focus of attention for civil society and politics as a result of their increasingly political decisions. In many countries of the continent, the Rule of Law and democratic rules have recently repeatedly been bent or broken, though often under the pretence of constitutionality or by claiming legitimacy through majority support. The constitutional courts have frequently been at the centre of this, be it as an instrument of the executive or legislative powers or as an inconvenient guardian of the constitution which needed to be weakened. This tendency has been observed particularly in the countries ruled by the so-called ‘Socialism of the 21st century’, in particular Venezuela, where the Rule of Law has de facto ceased to apply for some years now.

The main actors in the area of human rights protection in the region are the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights (both abbreviated as IACHR; in what follows, 'IACHR' refers to the Court). The Court is the final instance for the application of the American Convention on Human Rights (ACHR), which came into force in 1978 and whose contents resemble those of the European Convention on Human Rights. Both awareness of the IACHR and its case-load have been steadily increasing in recent years. The Court has been making its mark as a driving force for the effective – and not just nominal – protection of human rights in Latin America. The reception and implementation of the decisions of the IACHR is already routine in some countries; in other places they are met with massive opposition. While in its early years the Court primarily presided over cases regarding serious violations of which took place during the Latin American dictatorships and civil wars of the 70s and 80s, in recent times the Court has moved to new, no less controversial ground. More and more often it deals with legal-ethical issues that strike at the very core of Latin American societies still profoundly influenced by Catholicism or, in recent times, even by evangelical churches. In other cases, it ventures into areas of labour and social law that have traditionally seemed to have been the sole prerogative of the political decision-making powers of national rulers. Obviously, this does not find favour in all places and can strengthen the hand of populist movements.

Alongside the poverty and marginalisation of large parts of the population, extreme inequality in most countries of the continent has also increasingly shown itself to be a hindrance to the stability of the democratic Rule of Law. People's lack of prospects, coupled with their perception of the unjustified privileges of a few small elites, makes them easy prey to populists making promises of salvation, who in return, to implement their ideologies, then limit the very political and civic liberties that brought them to power.

While most legal systems in the region, on paper, guarantee comprehensive social rights, things often look very different in practice. The responsibility for this discrepancy between aspiration and reality lies, in part, with the political representatives in parliaments and executives who keep seeing more active social policies fall at fiscal and budgetary hurdles. Against this backdrop, some of the supreme courts on the continent and, most recently, the IACHR no longer resist social demands and have initiated a jurisdiction geared towards encouraging or even impel the other powers of the state to pursue a more just social policy, e.g. in the areas of education, health, infrastructure, and other elements of fundamental social security. While this may contradict the German understanding of the separation of powers, this new line of jurisdiction may be justified by the necessities of Latin American reality.

The future the Rule of Law in Latin American states is in the hands of their youth. For this reason, the RLP LA is particularly keen on working with talented young people. This is a group photo of the Argentine branch of the group 'Jóvenes formando justicia en Latinoamérica'.



Legal pluralism

The same discrepancy between paper and reality can be observed in the area of legal pluralism, another key focus of the RLP LA. While many Latin American states – with Bolivia and Ecuador at the forefront – have now given constitutional status to the recognition of the legal systems and customs of indigenous people, or their recognition has been ordered, as in Colombia by the constitutional court, the disadvantaged position of and structural discrimination against the indigenous and afro-american population in Latin America remains a sad reality. The challenge is to adapt policies and rights to the social realities of plural societies that have been sidelined for centuries. This involves fundamental issues such as those concerning the compatibility and coordination between different legal systems and ideologies co-existing in one state (legal pluralism) and the sustainable socio-economic development of the aspiring economies of Latin America while paying particular attention to the cultural and territorial rights of indigenous communities.

These developments prove that merely creating an exemplary legal system on paper with its attendant institutional framework is insufficient for establishing the Rule of Law and democracy and for combating structural inequalities. Legitimate action by the state in all of its three powers is also necessary. Civil society wants to experience its state as just, effective, incorruptible and

inclusive. Citizens seek protection from organised and political crime and the accompanying excessive corruption of the judiciary and political systems. Furthermore, they expect to be treated professionally by a public administration that meets their requirements. They demand that crimes are prosecuted and justly punished. And they expect that the human rights now extensively recognised in the constitutions, as well as relevant decisions, are enforced. Sadly, all of these things are often still lacking in Latin America.

The key issues identified when the RLP LA was set up, and discussed above (constitutional jurisdiction, human rights, procedures under the Rule of Law, and regional cooperation) still dominate the programme's work today, while in recent years the issues of combating corruption in the judiciary, international criminal law, law of criminal procedure and transitional justice have become more and more important. In collaboration with its partners in the judiciary, politics, administration, civil society, and academia, the Rule of Law Programme makes a variety of efforts to bring about, strengthen, and/or disseminate the credibility of the institutions defending the Rule of Law and the welfare state as well as the idea of the common welfare.

Way of working

The programme meets this demand mostly through consultancy activities, seminars, conferences and publications. This involves working with elites such as politicians specialising in law, constitutional judges and justice ministers, other judges at different levels, prosecutors, attorneys, lecturers in higher education, ombudspersons, ministerial officials or representatives of NGOs, junior lawyers and students and interested parties in civil society. With a mixture of the classical tools that have helped shape the programme's reputation over the years and of innovative, especially digital solutions to economic challenges, the RLP LA thus takes a position on the major politico-legal developments on the continent and contributes to them in the interest of the idea of the Rule of Law and democracy.

Thus, for 25 years now, the foundation has been organising an annual multi-day conference for presidents of constitutional courts and constitutional judges of the continent as well as judges of the IACHR. Beyond that, collaboration with regional study groups, partly with an international membership, has shown itself to be extraordinarily effective in recent years. Colleagues monitor and comment on relevant developments in their own judicial and politico-legal field and discuss them with each other and with external actors at events for dialogue. Their findings are presented to a broader public in periodic publications. The groups' unique know-how resulting from their regular regional exchanges increasingly feeds into ongoing reform processes and is passed on at professional development events.



The Rule of Law Programme is operating throughout Latin America.

Study groups

The first of these study groups, the Latin American Study Group on International Criminal Law, was created in 2002 in the context of a collaboration between the RLP LA and the Faculty of Law of the University of Göttingen. At present, it is the only continuously active study group with an international membership having an academic/comparative-law objective which contributes to the implementation of the Rome Statute and accompanies relevant developments in the area of international and national criminal law on the continent. The group's expertise is recognised internationally. Considering the corruption scandals across the continent, the group is currently working on a comparative law project in the area of corruption and criminal law, critically analysing criminal legislation in the countries of Latin America and comparatively scrutinising it.



Judges of the Inter-American Court of Human Rights on a visit to the German Federal Supreme Court in Karlsruhe

Building on many years of experience in the area of constitutional jurisdiction and the national and regional protection of human rights, the Foundation, together with the Human Rights Research Center of the Universidad de Chile, also founded the study group for constitutional jurisdiction and fundamental rights 10 years ago which brings together researchers and practitioners from all over Latin America, including judges at the Inter-American Court of Human Rights and former and current constitutional judges.

Since 2007, the RLP LA with its legal pluralism study group (PRUJULA), whose members are lawyers, anthropologists and social scientists from Mexico, Guatemala, Panama, Colombia, Ecuador, Peru, Bolivia, Chile, Argentina, and Brazil, has been making comprehensive efforts to find appropriate answers to the issues described above concerning the implementation and recognition of the rights of the indigenous population and to develop solutions for the compatibility of their legal systems with applicable law.

Transitional justice

As a result of the peace process in Colombia, in recent years the RLP LA has also increased its focus on the topic of transitional justice and the judicial addressing and handling of past dictatorships and armed conflicts. Considering the flagrant corruption on the continent already mentioned, which represents the polar opposite of any kind of Rule of Law and of the effective substantiation of fundamental and human rights, the programme, in collaboration with other NGOs and the Inter-American Commission on Human Rights, also seeks to give an account of the close connection between combating corruption and protecting human rights in various study groups and publications. Furthermore, e.g. in collaboration with the Peruvian Ministry of Justice department and the Supreme Court of Costa Rica, it champions the development of judicial systems and merit-based procedures for the appointment of judges to combat corruption in the judiciary. Beyond that, its work with judges, prosecutors and human rights advocates is intensified by professional development events on fundamental and human rights and on the Inter-American human rights system.

With its commentaries on the American Convention on Human Rights and the amnesty law passed in the context of the peace process in Colombia, the Foundation has made available important tools for the interpretation of the law in conformity with fundamental and human rights and of applicable international standards in the area of transitional justice. The application and interpretation of standards in ordinary law in the light of fundamental and human rights demanded by the jurisdiction of the Inter-American Court of Human Rights can succeed only if the requisite tools, in the shape of appropriate commentaries, are available to lawyers not trained in this area. Furthermore, in this way legal scholars in Latin America are encouraged even more to accompany the relevant national and international jurisdiction critically and constructively.

The RLP LA also seeks to make the still very theory-oriented jurisprudence on the continent more oriented towards practice and solving cases. A virtual course in solving fundamental-rights cases serves to teach Latin American legal practitioners a methodological, systematic-schematic and generalisable technique for solving cases based on the principle of proportionality. Schemes for solving judicial problems are still in very short supply in Latin America. Structured techniques for formulating expert opinions or decisions are not yet much used, making decisions often seem unstructured and poorly argued. The RLP LA has much pioneering work to do in this area.

Young people shaping justice in Latin America

While in its early years the programme was geared towards judicial elites, it has recently recognised the importance of working with talented young lawyers and law students. Under the slogan 'jóvenes formando justicia en Latinoamérica (young people shaping justice in Latin America)', active youth groups have been formed in several countries, critically and constructively discussing important issues on the continent in innovative formats. Driven by the conviction that human rights are not just something for lawyers, the RLP LA supports and participates in the Latin American Human Rights Film Festival held annually in Bogotá to bring questions and issues surrounding fundamental rights to a wider public through short, feature, and documentary films and accompanying panel discussions.

Digital media

Furthermore, the network of experts of the RLP LA contributes to public opinion both within and outside the Foundation's network by continuously offering information and comments on current affairs in the key areas of the RLP LA via digital media. The aim is to use new media not only to impart technical knowledge, but also to generate enthusiasm for a democratic and social state under the Rule of Law among a younger audience, e.g. via a blog on the RSP LA's new website, www.dialogoderechoshumanos.com.



Dr Marie-Christine Fuchs, the Director of the RLP LA, at the opening event of the 2017 meeting of constitutional judges at the Supremo Tribunal Federal do Brasil (STF), together with then President of the STF Cármen Lúcia Antunes Rocha and Federal Constitutional Court Judge Dr Sibylle Kessal-Wulf

Annual Meeting of the Presidents and Judges of the Constitutional Courts and Constitutional Chambers of Latin America



Group Photo XXIVth Meeting of Constitutional Judges in Peru in 2018

For 25 years now, the Rule of Law Programme Latin America of the Konrad-Adenauer-Stiftung has been holding a multi-day conference for presidents of constitutional courts and constitutional judges of the continent as well as judges at the Inter-American Court of Human Rights (IACHR). There are work meetings at which judges debate current developments and politico-legal and judicial issues together with renowned experts in constitutional law. Furthermore, one judge of the Federal Constitutional Court always takes part in these meetings of constitutional judges to add a European and German perspective to the discussions with judicial colleagues. Meeting regularly in an environment of trust provides these highest judges with an exchange that allows them to form professional, institutional, and personal networks

beyond the conferences, which they can draw on in their everyday work. This network will be further extended by the Rule of Law Programme in 2019 by a digital exchange platform of the constitutional courts on which, among other things, the most important decisions of all constitutional courts in the region could be found. Increasingly so, the meeting of constitutional judges also shows itself to be a platform for dialogue between national constitutional jurisdictions and the IACHR, which is often characterised by external tensions. Particularly interesting contributions are included in the Yearbook of Latin American Constitutional Law which has been issued by the foundation alongside the meetings of constitutional judges for 25 years as well.



Rule of Law Programme Asia

As a complex region caught between tradition and modernity, between regional differences and commonalities, Asia presents very particular challenges for the work of the Rule of Law Programme. Since its foundation in 2005, the Rule of Law Programme Asia based in Singapore has been calling for and encouraging promotion of the Rule of Law and democracy in many countries in South Asia, South East Asia, and East Asia, including the ASEAN region.



Meeting with the Directors of the National Judicial Academy of Nepal in Katmandu

The region exhibits an extraordinary level of heterogeneity in its state of development, with extensive diversity in terms of elections formats, pluralistic composition of societies, nature of civil rights, governance structures, extent of political participation and culture. Laos, Vietnam, and Cambodia have communist one-party systems. Political stability in Thailand remains jeopardised by frequently changing governments and periodic military coups, most recently in 2014. On the other hand, Myanmar has opened up itself to the rest of the world and has initiated its engagement with democracy after having been isolated for decades under a military regime, albeit in a cautious manner and with significant setbacks. While a multi-party system with democratic elections does exist in countries like India, Indonesia and Malaysia, these countries also continue to face serious political issues in the form of electoral fraud and ethno-religious tensions that restrict their capacity to function as full-fledged democracies. Asia also covers a broad economic spectrum, from developed industrialised nations such as Japan, South Korea, and Singapore to emerging economies such as Malaysia and Indonesia to developing countries such as Nepal and Bangladesh. These differences have an impact on the relations among citizens and between citizens and the state.

For this reason, the Rule of Law Programme collaborates with local partners in each country – ranging from constitutional judges and universities to think tanks and non-governmental organisations – to gain a better understanding of its particular circumstances in order to pursue its key objectives – the separation of powers, respect for fundamental and human rights, and the Rule of Law as an integral component of social reality – effectively and sustainably.

Legal implementations a challenge

While there has certainly been some progress with establishing and developing legal systems in the region, there are still obstacles to their practical implementation. On the one hand, corruption and nepotism play a role in public institutions, and the law is often seen as an instrument of power (*rule by law* rather than *Rule of Law*). On the other hand, in many states there is a lack of open discussion of political issues, an essential element of a liberal democracy. In many countries, effective opportunities for political participation have barely increased. In addition, there is a lack of understanding and awareness of the significance and value of structures supporting the Rule of Law – which, where they exist at least on paper, often

have no effect on the lives of individual citizens. Even at the level of the citizenry, Rule of Law is seen as a means to personal economic development rather than as a means for wider civil rights. As a result, an active, influential civil society calling for improvements in response to grievances is only partially developed in the region.

Law, religion and politics: an explosive blend

In particular, increasing populism, combined with the rapid rise of religious intolerance, poses new challenges for the region. Even despite having partially secular constitutions (as in Indonesia and India), structures supporting the Rule of Law are at risk of being undermined by the influence of faith and religion in all areas of politics in Asia. A particular phenomenon that continues to be observed in the region, in both South Asia and Southeast Asia for instance, is majority religions comporting themselves with a kind of inferiority complex, even though there is no cause for this in social reality.

For this reason, the Rule of Law Programme Asia offers a series of workshops on the topic of law and religion as a forum for legal scholars, attorneys, politicians, representatives of the major world religions present in the region (Buddhism, Christianity, Hinduism, Islam) as well as representatives of non-governmental organisations to discuss the influence of religion on politics, the law and society. One focus here is the question how both the younger generation and religious leaders can promote harmonious coexistence in multi-religious societies. This workshop series also offers an interdisciplinary discussion on how best to respond to religious intolerance and hate speech on social media channels.

Digitalisation

Digitisation and its opportunities and risks for the Rule of Law in the region is another topic that the Rule of Law Programme Asia will be addressing at events and in policy papers. Of interest here, among other things, is how technological developments may be utilised in the development of the Rule of Law in Asian countries. In this context, there is a need for analysis and discussion of whether and to what extent existing legal frameworks may have implications for the respect of human rights and what ethical consequences result from automated decision-making. There are also open questions regarding responsibility and liability for the use of artificial intelligence.

Multipliers for accompanying Asia's rapid development – not only in the digital sphere – with a rule-of-law perspective include Asian past scholarship holders in the field of law, who, through their network Alumni Lawyers Asia, regularly take part in events on current affairs with a rule-of-law aspect at the invitation of the Rule of Law Programme.



Event on the independence of the judiciary with the Philippine Judicial Academy

Judicial independence

The separation of powers as a fundamental principle of democracy and the Rule of Law remains an urgent challenge and the core objective of the Rule of Law Programme Asia. The courts as an independent supervisory entity for executive decisions are an elementary component of the implementation of the principle of the separation of powers. This includes both a functioning constitutional jurisdiction that breathes life into fundamental rights as rights of defence against the state, and its various agencies and administrative practices which observe the Rule of Law, along with an independent, transparent and effective judiciary which by its incorruptibility and credibility enables the enforcement of substantive law.

Overall, in the light of structural dependencies and corruption, the judiciary in Asia may only rarely be described as truly independent. It is frequently abused as a political tool: executive measures against undesired political opponents are not infrequently confirmed by the judiciary. At the same time, disputes between the executive branch and the supreme courts escalate, while in

other cases senior positions in the judiciary are subject to political power play. Therefore, in collaboration with Asian institutions for the training of judges and other experts, the Rule of Law Programme uses case studies to raise awareness for judicial ethics and independence among young judges in the region.

Constitutionalism

Even if the foundations for the Rule of Law are laid down in the text of a constitution, the constitution of a state is not yet understood as a fundamental law that truly governs actions and binds all organs of the state as well as every citizen. The principle of constitutionalism has not yet caught on in most Asian countries and has not yet been internalised. For instance, Thailand has passed more than 20 different constitutions since 1932. In contrast, the Korean constitutional court enjoys a high degree of trust among the population and has continually confirmed citizens' freedoms vis-à-vis the state on the basis of the constitution. Guaranteeing a core content of the constitution that cannot be amended by the executive branch is a crucial



*Workshop
on Access
to justice in
Bangkok*

pillar for the achievement and safeguarding of the separation of powers. This development is precisely what the Rule of Law Programme wants to further in its region of action by means of its 'Constitutionalism in Asia' study group founded in 2016. Its members include sitting and retired constitutional judges, their judicial clerks and academics from the Asia-Pacific region as well as German scholars who tackle the issues of development of the Rule of Law and constitutional law in the region. The study group, which forms an inter-generational network of scholars and practitioners, meets annually in different Asian countries and discusses and compares views on current issues in constitutional law and the protection of human rights. Through public events and publications, the findings reached also feed into a wider discourse.

Protection of human rights

Very few Asian countries have ratified international conventions for the protection of migrants or indeed general international instruments for the protection of human rights. The perception of human rights as universal rights is often inadequate. Not least, this is a result of the co-operation based on consultations and consensus among the ASEAN states. The principles of independence, sovereignty, and non-interference in the internal affairs of another member state enshrined in the ASEAN Charter do not make this alliance a particularly powerful actor, at least with respect to defending the Rule of Law and democracy and thereby of human rights. Against this backdrop, the Rule of Law Programme Asia collaborates with institutions and experts from all countries in the Asia-Pacific region affected by migration and refugees to discuss options for a regional protection framework and challenges with respect to the recognition of international legal instruments for the protections of refugees and migrants.



MP Tankred Schipanski on a visit to Singapore discussing digitalisation issues with Singaporean MPs Charles Chong and Pritam Sing

Environmental law

Where political actors at times express an interest in the Rule of Law, this is often seen as a means to promoting economic development; for this reason, the field of activity is increasingly being limited to legal issues relevant to the economy. Nevertheless, there have been efforts by Asian countries that have positively impacted the cause of human rights. For example, there is a growing political willingness in Asia to give room to environmental law in their legislation and political agenda. Many Asian nations have by now adopted comprehensive laws for the protection of biodiverse and resource-rich areas, and of indigenous peoples. Through this protection of the environment and nature, human rights, forming a cornerstone of the principle of the Rule of Law – such as the right to life and to bodily integrity –, are also realised. It is necessary, however, to press further for the implementation of environmental regulations and to call for and support the effective enforcement of the subjective rights of indigenous people before the courts.

Furthermore, in collaboration with the University of Cebu School of Law (Philippines), the Rule of Law Programme Asia launched a moot court in 2018 which, going forward will take place annually. By participating in a mock trial scenario before an international court, students from the region address issues in international environmental law and the rights of indigenous people and thus achieve a better awareness of these issues. In addition, a series of workshops organised annually by the Rule of Law Programme Asia offers researchers and practitioners of environmental law in the Asia-Pacific region an opportunity to exchange best practices for national frameworks for traditional forms of land use and the sustainable use of resources.

Tool kit: transparency, authenticity and partnership

To the Rule of Law Programme Asia, it is always an essential feature of successful and sustainable local work that transparency and authenticity are maintained and the special needs and idiosyncrasies of the Asian region are addressed. Alongside this, the programme maintains a lively exchange of information with political and social decision-makers in Germany.



Rule of Law Programme Sub-Saharan Africa

Traditionally, the western understanding of the concept of the Rule of Law is not well-rooted in Sub-Saharan Africa, making it a rather small part of the political culture of the region. However, for a number of political, administrative, civil-society and especially judicial actors, the Rule of Law is an important topic and they are committed to promoting it. The worldwide Rule of Law Programme of the foundation with its partial programme in Sub-Saharan Africa is intent on supporting and enlarging this group of people.



The two Chief Justices David Maraga of Kenya (left) and Mogoeng Mogoeng of South Africa

High Court of Botswana in Gaborone

Conceptions of the Rule of Law or comparable ways of thinking in line with European legal traditions were not part of pre-colonial Africa. Nor were they brought to Africa or supported there by the colonial powers, whose main objective was economic exploitation. This may be regarded as one of the factors underlying the fact that after, in some cases, more than five decades of independence, many parts of the continent still show significant deficits in the Rule of Law. Often the machineries of government see themselves as accountable to no one, act arbitrarily, sometimes also violently, exploit ethnic diversity by playing off different groups against each other, and are led by people whose chief motivation is their own personal gain. In many African states, the culture of the Rule of Law now predominant in Europe, developed over centuries as a result of both warring and peaceful, especially philosophical disputes, appears as an import for which there is little demand. Political structures copied or constructed from western models after independence often seem artificial against the backdrop of African lives, are not accepted, indeed they come across as something alien.

Therefore, western values, unlike Western technologies and expertise, do not always find the desired acceptance. Among these values is the social and political model of governance of the modern state. This also includes the rules and mechanisms identified as core elements of the principle of the Rule of Law by the European legal tradition, and enshrined in institutions as values of the highest order. A particular problem in the African context is an indifference towards principles of the Rule of Law by government functionaries in dealing

with human rights, with institutional checks and balances, especially where the independence of the judiciary is concerned, and generally with the willingness to comply with rules set by the state. In not a few countries, people are still arrested and tortured arbitrarily, decisions by the courts are ignored, and laws are broken deliberately by governments and administrative bodies.

Thus, presidents stand for election for more terms than is permitted by the relevant constitution, or constitutions are changed for this purpose. Electoral fraud is meticulously prepared by governments for them to remain in power against the will of the people. A particular phenomenon here is the 'big man' rooted in African social and political traditions. This so-called 'big man' is an authoritarian political leader acting arbitrarily, concentrating as much power as possible in his person, and creating an apparatus protected by personal loyalties. He is, as it were, the striking polar opposite of the rule-of-law-based institution of the head of state or government in parliamentary democracies. Many African countries are governed, better said, ruled by 'big men'. It seems to form part of the traditional role of these leaders not to have to follow rules or to make their own rules to their own advantage.

Africa remains the poorest continent

Thus, the Rule of Law is not respected or used as a fundamental guideline for values and actions by many African functionaries, nor by a large part of the public either. The consequences of actions not guided by the Rule of Law are widespread corruption and legal uncertainty to the point to lawlessness, which in turn becomes a breeding ground for the lack of economic development and poverty. Despite some notable progress in recent years, Africa remains the poorest continent by a considerable margin, a fact largely due to the lack of the Rule of Law.

Terrorism

At the same time, Sub-Saharan Africa is increasingly becoming a focus of terrorist activity. Under the pretence of converting 'infidels' to Islam, paramilitary-criminal groups such as Al Shabaab in Somalia or Boko Haram in Nigeria are gaining political influence. This contrasts with the fact that Islam, which is gaining ground in Africa as well, is generally regarded as moderate and tolerant in Sub-Saharan Africa. Nevertheless, there are increasing tendencies to align state action with Islam and its law, the Sharia. In criminal law in particular and in the relation between citizen and state, which is reflected in administrative law or its absence, but also in private law, this has consequences in legal systems characterised or influenced by Islam which are incompatible with internationally recognised concepts of the Rule of Law and of human rights.

Participants of the 2018 'Administrative Justice Workshop' in Gaborone, Botswana





The former South African constitutional judge at a conference against corruption in Entebbe, Uganda

Terrorist attacks on the civilian population as well as the heterogeneity of legal systems then lead to uncertainty and unease, and to doubts about the state's monopoly on the use of force. Many people's impression that life and limb and property can only be protected in quasi-democratic or even autocratic systems undermines democratic developments and fosters a tendency to replace unstable democracies that cannot guarantee the protection of the individual with autocratic rulers. This too is something that the Rule of Law Programme wants to counteract.

Corruption

It is corruption, in particular, and the lack of respect government institutions show towards their own laws that have led to more and more dissatisfaction in many countries. In those states where there is a growing middle class and an educated youth, there is also a gradually emerging desire for a functioning state that acts rationally, protects the rights of citizens and respects the constitution.

Call for a stronger Rule of Law

In recent decades, figures from politics, public administration, the judiciary, academia, and civil society have increasingly managed to call for a stronger Rule of Law in many African countries. With the support of the community of western donors and their potential to exercise pressure, many institutions in African states have been persuaded to take sides officially in favour of the Rule of Law. Opposition groups, organisations in civil society, churches and universities have been taking up of these demands more and more – as a

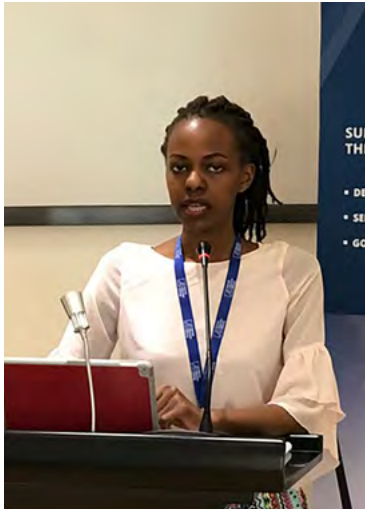
result, internal pressure on governments has been growing in many of these countries. It is here that we find one of the most promising connections with the Konrad-Adenauer-Stiftung's work promoting the Rule of Law. However, not infrequently those actors trying to promote the Rule of Law are subject to unofficial restrictions imposed by actors within the machinery of government who oppose the establishment of the Rule of Law. As a result, in many institutions, behind the official scene of engagement for the Rule of Law, there exists an opaque and complex situation of both a drive towards the Rule of Law and opposition to the Rule of Law driven by greed.

Way of working

The Rule of Law Programme Sub-Saharan Africa launched in 2006 takes up the task of identifying and strengthening those individuals oriented towards the Rule of Law, of promoting their activities, and of expanding their circle of members by persuasion, providing them with networking opportunities, information and education. In terms of topics, the foundation limits itself to the above-named areas of human rights, democratisation, the independence of the judiciary, dealing with laws, especially constitutions as the supreme statutory sets of rules, and regional integration.

Educational trips

Educational trips abroad to international courts and institutions, as well as to Germany, e.g. to the Federal Constitutional Court, are organised for the relevant professional groups, acquainting them with the work of those institutions. As there are similar institutions on the African continent, such trips lead to a better understanding of work promoting the Rule of Law worldwide. They serve professional exchange and also expand existing networks.



Presentation on the 'Leaders for Justice'-seminar in Mombasa



A group of visitors from Africa at the International Criminal Tribunal for the former Yugoslavia in The Hague

'Leaders for Justice'

'Leaders for Justice' seminars are held in various regions, often in collaboration with African universities. At these seminars, young and interested functionaries in public administration and the judiciary discuss topics connected with the Rule of Law in writing and thus acquire a better awareness of the Rule of Law. The best results are published as e-books in the KAS African Law Study Library.

Together with our partner, the 'International Commission of Jurists' (ICJ), an annual regional conference of lawyers is held to discuss important legal developments in the region. In collaboration with the African Court on Human and Peoples' Rights and the East African Court of Justice, opportunities for exchange and co-operation with other supra-regional courts are promoted. Conferences take up current political topics such as the personal immunity demanded by many African leaders for their governmental activities and the attendant protection from prosecution, or the introduction of constitutional jurisdiction.

Protection of human rights

The protection of human rights is another of the programme's particular concerns, whether it be the disregard for these rights in everyday life, e.g. by police and other law-enforcement agencies, or violence against women and children in civil war zones and refugee shelters; respect for human beings and the protection and implementation of their rights remain clearly underdeveloped in Sub-Saharan Africa. Training events for members of the judiciary, as well as workshops and seminars with those affected and those responsible in government positions, contribute to raising awareness of this issue.

Furthermore, annual publications on important topics relevant to the Rule of Law are issued and made accessible to a wide audience. The Konrad-Adenauer-Stiftung regards all these measures as a small – in the reference frame of the whole continent – but, in places, very effective and therefore important contribution to the development of promoting the rule of law in Africa and thereby to the development of Africa.



Preventing corruption by independent and effective budgetary control

One of the biggest challenges for Africa is rampant corruption. It affects people like a plague – often nothing works any more without ‘tea’ and ‘soda’. If you don’t pay, you have to wait for a long time for your application to be processed, if indeed you receive a reply at all. If you do pay, you escape prosecution by police or the judiciary – hence the saying ‘Why pay a lawyer if you can buy the judge?’ Obviously unlawful permissions are granted for money, prohibitions that make sense to everyone become ineffective by means of sliding over a brown envelope. Corruption undermines all efforts for good governance and infringes human rights. Not only does it violate the right to freedom and property – it also obviates equality before the law. It is one of the gravest dangers for economic investment in the future of Africa that is so badly needed.

Combating corruption is a key issue for the Rule of Law Programme for Sub-Saharan Africa. But how do you discover it, and how do you combat it effectively? Corruption is characterised by operating covertly. That makes it all the more difficult to bring it to light.

Transparency is the enemy of those who operate in secret. Transparent public administration, transparent financial transfers, transparent budgetary policies. Where there is transparency, corruption loses its protective shield of coyness. Fearing discovery, it no longer functions.

Against this backdrop, the Rule of Law Programme Sub-Saharan Africa, in collaboration with various organisations and institutions, has been holding an annual Anti-Corruption Conference since 2014. At these conferences and workshops, politicians, lawyers, and multipliers from the most diverse regions of Sub-Saharan Africa discuss the typical manifestations and problems of the cancerous growth of corruption and develop solutions for combating it. For instance, one conference dealt with working out efficient measures against the proliferating misuse of public funds for the purposes of corruption. Another conference tackled the issue of better integrating social groups such as churches, the media, employees’ and employers’ associations into the fight against corruption. As different states in Africa have very different approaches to combating corruption, the Rule of Law Programme is championing the harmonisation of penal provisions following the model of experiences with ‘best practice’ at the international level.



Rule of Law Programme South-East Europe

The Konrad-Adenauer-Stiftung has been present in South-East Europe with its Rule of Law Programme since 2006. In addition to the three newest member states of the European Union – Bulgaria, Romania, and Croatia – the foundation is active in the six West Balkan states (Albania, Bosnia-Herzegovina, Kosovo, Macedonia, Montenegro, Serbia) and in Moldova. Despite all the differences characterising the South-East European countries, the decision to become active in this region with a regional programme was based on their commonalities. What these states have in common is that, three decades on from their change of political system, the process of their transition from a totalitarian or authoritarian one-party state to a democratic constitutional state under the Rule of Law is still ongoing. For the justice system, this transition has meant, above all, changing from an understanding of the judiciary as an extension of the executive branch to that of an equal power in the state.

*Bucharest, silent protest of judges, prosecutors and law clerks against plans for judicial reform in front of the Bucharest district court. 18.12.2017
©Inquam, Fotograf: Octav Ganea*



The post-communist/socialist transformation of the political system has been and continues to be strongly influenced by the states' efforts to satisfy the criteria for accession to the European Union and, in the case of Bulgaria and Romania, more than ten years after their accession, certain post-accession requirements monitored annually by the EU's co-operation and control mechanism. The accession criteria specify a framework for the development of the Rule of Law in these transition countries. Political accession criteria include the stability of institutions, democracy and the Rule of Law, human rights as well as respect for and protection of minorities. Nevertheless, there were no methodological approaches that could be drawn on for reforming the judicial system in South-East Europe. A 'shock treatment' as used for the economy was not possible in the area of the Rule of Law. But the law forms the indispensable foundation for the economic and political unification of Europe. European integration can succeed only if Community law applies and is applied uniformly in all member states.

Creating common standards of values

The greatest challenge here is not the formulation of appropriate legal texts. These are now available in most of the new EU member states and also the (potential) candidate countries. Rather, what is more important is to create common standards of values and a common legal culture. Here it must be noted that personal relations and interests often take precedence over objective standards. The modern idea of the state as having abstract, objective standards which apply equally to all people does not have same historical roots

in the transition countries of South-East Europe as it does in central, northern, and western Europe. Therefore, establishing and consolidating a system based on the Rule of Law requires a change in awareness and mindset. Only when a critical mass of reform-oriented politicians specialising in the law and members of legal professions has been reached will the transformation of the legal system become sustainable in the long term.

„Vetting“

Important topics for current debate in South-East European states include the issue of cleansing the judiciary and prosecution authorities from members of no integrity, as is the case in Albania, where a far-reaching vetting process is underway.

Transitional justice

The complex subject area of 'transitional justice' in general, and in particular dealing with many crimes from the time of the disintegration of Yugoslavia not yet processed under criminal law, present a challenge for the judicial systems of the states concerned, now that the International Criminal Tribunal for the former Yugoslavia ceased operating at the end of 2017 and this responsibility has passed to national judicial institutions.



'Leaders for Justice'

Justice reform

Not only the EU candidate countries and those aspiring to that status are characterised by comprehensive judicial reform projects. The new EU member states, such as Romania, are also in the throes of intense debates about the influence of the executive branch on judicial institutions and far-reaching reforms of the judicial system.

A further subject area relevant to the region is the rights of various minorities, including religious minorities. The Konrad-Adenauer-Stiftung contributes to all these subject areas with appropriate publications and measures.

Independence of the judiciary

Another focus of the work of the Rule of Law Programme South-East Europe is to promote an independent judiciary of integrity. Consolidating integrity in the public sector has become a cornerstone of a functioning democratic state under the Rule of Law. The Rule of Law Programme South-East Europe contributes to enlivening public discussion in this area. It organises conferences and prepares publications to raise public awareness of the issues of integrity and combating corruption. It also promotes the exchange of experience between multipliers such as politicians as well as experts from civil society on best practices in guaranteeing the ethical conduct of members of the legal professions.

One particular focus of the Rule of Law Programme South-East Europe is the support of regional networks of specialists and the dialogue with German institutions at the federal and state level in whose expertise there is a keen interest in the region.

'Leaders for Justice'

Since 2009, the Rule of Law Programme South-East Europe has been, in the context of the annual 'Leaders for Justice' project, promoting the continuing professional development of especially qualified Romanian junior lawyers with the potential to take a leading role in strengthening democracy and the Rule of Law and in establishing a transparent and ethically responsible judiciary.

The programme is based on the insight that a sustainable reform of the justice system critically depends on the availability of a new elite of lawyers whose members have not only internalised the principles of the Rule of Law, but are also willing to champion their consistent application in the justice system as multipliers and to defend the position of the judiciary as a genuine third power in the state, including against political pressures.

The programme is designed for a duration of six months alongside professional practice and consists of monthly several-day training units locally in Romania. Complementing these, there are regular educational trips to Germany for an exchange of experience with representatives of the judiciary and of professional legal associations in Germany.

This training measure to support young professionals is also grounded in the conviction that the consolidation of a sustainable democratic system in Romania – as in other transition countries in South-East Europe – can succeed only if the future elites of these countries develop an adequate awareness of the Rule of Law and democracy early on and are cognisant of their responsibility – above all their ethical responsibility – for society. Accordingly, the programme is not so much about imparting technical knowledge as about making the 20 participants taking part annually consider topics such as 'humanity as a fundamental value of the judiciary', 'law and morality', 'law and justice', 'human rights and the modern concept of the judiciary', 'fundamental principles of justice and the judiciary', and 'principles of professional ethics'.

The almost 200 alumni of this support programme now independently conduct their own expert discussions and training programmes for members of the Romanian judiciary, as well as measures for the general public. More recently, joint conferences and other professional events with lawyers from Moldova have also been taking place, more strongly underscoring the regional character of the programme.



Event with Dr Diego Garcia-Sayan, UN Special Rapporteur for the Interdependence of Judges and Lawyers



Rule of Law Programme Middle East / North Africa

The newest of the five Rule of Law Programmes of the Konrad-Adenauer-Stiftung was established in Beirut at the end of 2012 and focuses on the Middle East and North Africa. The MENA region comprises the subregions of the Maghreb, the Mashreq, and the Gulf states. The relevance of a Rule of Law Programme for the Middle East / North Africa – in a region where different cultures, religions and legal systems clash – has increased through the events of the Arab Spring and the ensuing political, security-policy-related, social, and economic upheavals.



*Training of Tunisian administrative judges on the occasion of the establishment of twelve new regional courts of first instance
Tunis, Tunisia*

Court of appeal in Fez, Morocco

The Rule of Law Programme Middle East / North Africa focuses on legal systems of countries that show commonalities, but also significant differences. The development of the Rule of Law in the MENA region has been strongly influenced by the legal tradition of the former colonial powers. At the same time, a lot of states of the Middle East and North Africa cite the Sharia as an important source of law. Thus, in some areas of law, there are tensions between secular and Islamic law. As a result, pluralist legal structures have been formed in the different countries of the region, which are partly applied alongside each other and so may run counter to the state's claim to hegemony and the implementation of the state's monopoly on the use of force.

The legal changes taking place in the MENA region since 2011 thus present a major challenge to the countries concerned. The Arab Spring was followed by upheavals of a political, social, and economic nature, but also, at the same time, by many attempts and efforts for reform. Above all, this concerns the area of constitutional and ad-

ministrative jurisdiction. Constitutional courts or constitutional councils have been set up, existing ones reformed, the competences of constitutional institutions extended, and new procedures introduced in various countries in recent years. There are also endeavors to restructure or decentralise administrative jurisdictions.

The Rule of Law Programme Middle East/North Africa supports and accompanies this regional transition process, in particular by enabling a continuous exchange of experience and information between representatives of government institutions, legal scholars and legal practitioners from the MENA region and other international experts. It is designed as a programme geared towards dialogue; its ambition is to establish political decision-making processes in the region and to strengthen structures supporting the Rule of Law, to promote the establishment of a functioning system of the separation of powers, and to work towards protecting fundamental rights. Its immediate target audiences are policy-makers and legal practitioners, so as to work with them towards structural changes in the form of legislative and organizational reforms and to initiate and accompany their practical implementation. To that end, the Rule of Law Programme for the Middle East/ North Africa organizes seminars, professional development events, conferences and produces publications on topics related to the Rule of Law.



Debate in the Lebanese Parliament in Beirut

By collaborating with local partner organizations, we ensure that we are able to respond to and connect with developments and initiatives in the region. The cross-border approach can also offer target audiences an incentive for regional collaboration and supports building a collaborative network between the countries and between experts in the region.

Consolidation of legal institutions

Guaranteeing an effective constitutional jurisdiction which also manages to respect the social consensus is a fundamental precondition for a stable democratic society and a cornerstone of structures supporting the Rule of Law. In this context, the Rule of Law Programme started a series of workshops on constitutional control in the MENA region. These workshops offer a forum for judges and other law practitioners to discuss core issues such as the role of the judiciary in the constitutional order. A different approach is taken by a project realized in collaboration with photographic archives in the region. A planned series of photographs visualizing collective memory shall highlight the countries' merits and achievements in the area of developing constitutions, institutions and civil rights in the MENA region.



Participants from the Kuwaiti Ministry of Justice, Constitutional Court and Bar Association with colleagues from the MENA region at the 4th Mapping Workshop „Control of Elections and Election Disputes“. Kuwait City, Kuwait

Effective separation of powers and mutual control

The separation of powers and a system of checks and balances are the core elements of democracy and the protection of individual rights. They are indispensable for a functioning judicial system. For that reason, another focus is to promote an effective and independent judiciary. To name one example, the Rule of Law Programme has been accompanying the decentralization of administrative jurisdiction taking place in Tunisia since 2012. In this context, a number of professional development events for administrative judges have been held in collaboration with the Haut Tribunal Administratif in Tunis.

Protection of fundamental rights and liberties

As a result of the security situation in the MENA region, the protection of fundamental rights is a focus of the programme's work. Emergency regulations and limitations of the freedom of press face an increasingly dynamic constitutional jurisdiction. The main emphasis lies on strengthening individual rights protection mechanisms and the control of state institutions. In this regard, the Rule of Law Programme supports the introduction of new procedures to protect human rights, such as the ex-post control of laws, in collaboration with Constitutional Courts (e.g. in Morocco, Algeria and Tunisia). In addition, The Rule of Law Programme organized as well a regional forum for journalists, experts and scholars in media law to discuss the role of the media in protecting fundamental rights.

Fundamental Rights, Constitutional Courts and Legal Culture in the Middle East and North Africa

Protecting fundamental rights:

In many states of the region, political interference, despotism and lack of transparency often lead to the erosion of fundamental rights that are guaranteed by the constitution. One approach taken by the Rule of Law Programme is thus to encourage legal and civil society actors to raise awareness of the discrepancy between the legal situation in theory and its effective implementation in reality.

Constitutional courts:

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

Legal culture:

Within many states in the region, there is evidence of considerable distrust of the legal system and its institutions. Political, religious, social and familial authorities grant and also revoke personal security, individual freedoms and access to resources on a more or less arbitrary basis. Due to fear, powerlessness and ignorance, those affected by oppression often fail to make use of judicial procedures to assert their fundamental rights. The foundation's work on the Rule of Law therefore also strives to establish and raise awareness of the connection between democracy and the rule of law.



Special Rapporteur on the Independence
of Judges and Lawyers



Konrad
Adenauer
Stiftung



Left to right: Dr Franziska Rinke, Dr Diego García-Sayán, Dr Marie-Christine Fuchs

Global Issues in Rule of Law

The work in the five regions of the Rule of Law Programmes is coordinated from Berlin. This is done with two different approaches. On the one hand, the successful work carried out by the Rule of Law Programmes over many years is to be brought closer to legal circles in Germany. On the other hand, the individual programmes are to be networked more globally. This is done, for instance, by means of a global topic of the year on which work is done in the individual regions and the findings are then brought together at a global closing conference.

www.kas.de/rechtsstaatsprogramme



Collaboration with UN Special Rapporteur

On 19 April 2018, Dr Diego García-Sayán, in his capacity as Special Rapporteur of the United Nations on the independence of judges and lawyers, signed a memorandum of understanding with the Konrad-Adenauer-Stiftung. This was occasioned by the 2018 global topic of the year of the Rule of Law Programmes, 'Judicial Independence'.

Landmark decisions

Landmark decisions of the Federal Constitutional Court have been translated into, so far, 12 languages in the form of collections of decisions both in the context of the Rule of Law Programmes and by country offices of the Konrad-Adenauer-Stiftung. Constitutional judges worldwide consult German jurisprudence due to its well-argued, clearly structured, rigorous and balanced landmark decisions made by the Federal Constitutional Court.

www.kas.de/courtdecisions

Current Publications (Selection)

Latin America



Commentary on the American Convention on Human Rights, Steiner/Fuchs (eds.) (2018)

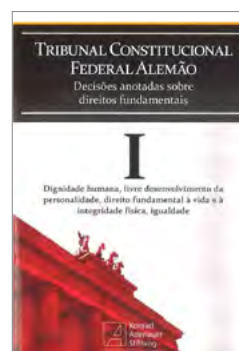
The second edition of the practical commentary on the American Convention on Human Rights, in collaboration with noted authors from the region, represents a long overdue instrument of fundamental significance for legal and politico-legal practice in the region. As a result of the jurisdiction of the IACHR, national legal practitioners are required to interpret and apply national law in the light of the ACHR. With its concise presentation of the current state of development of the ACHR in jurisdiction and legal scholarship, the commentary makes this task easier.



Yearbook of Latin American Constitutional Law

Since the inception of the work of the Rule of Law Programme for Latin America, the Yearbook of Latin American Constitutional Law has been collecting contributions by noted authors from Latin America and Europe dealing with current questions of constitutional law in the region in a broad sense. In 2019, the 25th issue of the handbook will be published as an anniversary edition. Recent issues of the handbook have been dedicated each year to one current politico-legal subject area affecting the whole region. While the subject of the year 2017 was the relationship between the constitution and the economy, the 2018 Yearbook contains articles from the area of citizens' participation and forms of direct democracy along with the problems surrounding the lack of implementation of decisions of consti-

titutional courts and the IACHR in the region. By virtue of its regional reach in the combination of authors, the Yearbook serves as a yardstick for developments in the aforementioned legal areas across the continent.



Translation into Portuguese of the most important decisions of the Federal Constitutional Court

The Foundation provides an overview of the jurisdiction of the Federal Constitutional Court in Karlsruhe for Portuguese-language readers in 5 volumes. The larger part of these publications is dedicated to fundamental rights, but they also include important decisions on the law of the organisation of the state and in constitutional procedural law.



Indigenous Peoples' Rights: Between Law and Practice

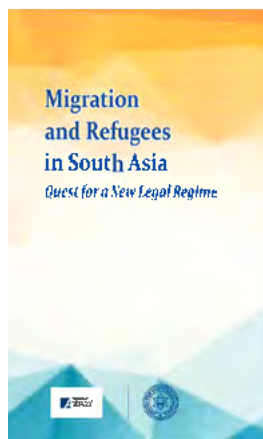
This book is a joint product, arising from a seminar under the same title, by experts in the area of legal pluralism and the rights of indigenous populations. Together, the authors work to develop for strategies for closing the still yawning and sometimes even widening gap between, on the one hand, applicable legal standards for the protection of indigenous peoples and recognition of their legal systems and, on the other, the reality in which indigenous people remain victims of structural discrimination.

Asia

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

The Fundamental Law for the Federal Republic of Germany has proven itself as the foundation of our democratic state under the Rule of Law over the more than 60 years in which it

has been in force. One of the most important aspects of this is the comprehensive protection of fundamental rights developed by the Federal Constitutional Court on the basis of a large number of individual cases. In view of the growing interest not only from European countries, but increasingly also from the area of English law, 50 selected decisions of crucial significance have been translated into English and complemented with brief explanatory notes. <http://www.kas.de/rspa/de/publications/32858/>



Migration and Refugees in South Asia – Quest for a New Legal Regime“ (2018)

The publication provides an insight into the challenges, that South Asian countries face as a result of migration and flight. Most countries in the sub-region are affected both as countries of origin and destination. The authors examine, among other things, the role that law can play in this context as part of overcoming the challenges.

New Narratives to the Refugee Crises: Perspectives from the Asia-Pacific (2018)

The compilation of contributions from Asia and Europe is dedicated to an inventory of questions at the interface of law and politics with regard to current refugee crises in Asia and beyond. Some of the articles provide a broad overview of current legal and legal policy issues relating to refugee rights, while others look at country-specific case studies in Asia, Australia and Europe.

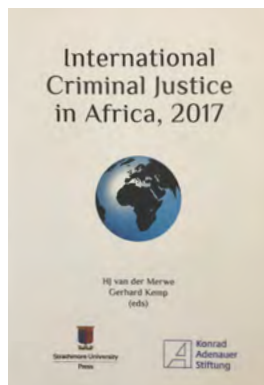
Best Practices of the Environmental Rule of Law in Asia (2019)

The contributions of Asian environmental law experts from academia and practice consider legal issues related to climate change, landgrabbing and the legal protection of indigenous peoples' rights with regard to the environment.

Sub-Saharan Africa

The Constitution of Kenya, 2010, Lumumba/Franceschi (2nd edition, 2019)

This book is the first commentary on the Kenyan constitution of 2010. It offers a comprehensive review of the fundamental significance of a constitution, of the history of the origins of the Kenyan constitution, and of its fundamental values. The authors also comment on the individual articles of the constitution.



International Criminal Justice

For several years now, the Rule of Law Programme has been conducting an authors' workshop on topics revolving around international criminal law. At these meetings, young lawyers discuss current issues in criminal law under the guidance of experienced editors and present papers they have prepared on these. The most scholarly articles most closely aligned with the subject matter of the series are then published annually in newly edited volumes, which are also available as e-books.



The Implementation of Modern African Constitutions

In many African countries, the end of the last century and the beginning of this one were characterised by intense constitutional debates. Should we draw up a constitution, and what should its contents be? What of the rights of the population, especially their human rights? What obligations should be imposed on future governments? And to what extent is there a separation of powers? Many modern and future-oriented constitutions having been drawn up, the question now is to what extent their provisions have been implemented. This book offers an insight into the fascinating relation between constitutional theory and constitutional reality.



South-East Europe



Handbook – the Romanian Presidency of the Council of the EU explained (2017)

- › A dynamic guide which answers in simple, but comprehensive terms to the following questions:
- › What is the rotating Presidency of the Council of the EU?
- › What is the relevance of the rotating Presidency for Romania and for its citizens?
- › What shouldn't Romania miss in terms of political, expertise and image opportunities?





Translation into Croatian of the most important decisions of the Federal Constitutional Court (2015)

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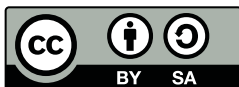
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