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# Promoting Human Rights in Development Cooperation



# **Promoting Human Rights in Development Cooperation**

Guidelines

## **Impressum**

These guidelines have been elaborated by the working group «**Human Rights and Rule of Law**» consisting of:

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**These guidelines have been approved by the Board of Directors of SDC on February 24, 1997.**

The units mentioned above adhere to the guidelines and will contribute towards their implementation.

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# I. Introduction

## 1 Political Basis: Foreign Policy Report, North-South Guidelines

Promoting human rights, democracy and the rule of law form part of the five core objectives set out in the Report by the Swiss Federal Council on Foreign Policy in the 1990's<sup>1</sup>. This report explicitly mentions technical and financial support for specific projects aiming to protect human rights, and political dialogue as the principal means of reaching this objective. The Report by the Federal Council on Switzerland's North-South relations in the 1990's<sup>2</sup> (hereinafter referred to as Guidelines North-South) confirms the thrust of the foreign policy report and cites «maintaining and promoting peace and security, promoting human rights, democracy and the rule of law» as one of the four strategic goals for supporting developing countries. In order to honour the commitment set out in the 1993 report, the Federal Department of Foreign Affairs (FDFA) promotes an active policy in these questions. The FDFA is accordingly preparing for this purpose a «Concept of Swiss human rights policy as an objective of foreign policy», (provisional title), describing in detail the means available to foreign policy for promoting human rights, and their fields of application.

## 2 Significance of Human Rights for Sustainable Development

Like other western donor countries, Switzerland has in the past been rather discrete as regards the internal politics of its partner countries in the south in the framework of its development cooperation, unless serious and systematic human rights violations made it necessary to reduce or suspend aid. But in recent years there have been some developments in this regard, especially because of the end of the Cold War. When it finally became possible to break the mould of East-West thinking, it was possible to address the economic, political and social structural problems of the developing countries anew. The political and economic system of authoritarian regimes in many countries in the south made it impossible to create favourable conditions for development. As funds became less freely available in the donor countries, purpose and effect of development cooperation have been analysed more critically. It is now generally accepted that respecting human rights, democracy and development are interdependent and mutually reinforcing each other. For us this means that protecting human rights is a goal forming part of the development process, that minimum standards of respect for human rights and basic freedoms are an essential precondition for all development and that this development can make a substantial contribution to protecting human rights. Human rights include all those rights that enable each person to fully realise his or her human potential, and which are based on the «inherent dignity» of every human being. This thus relates not only to civil and political rights, but also economic, social and cultural rights.

Whilst there can be no human rights without economic and social development, the reverse is equally true: real development is generally not possible in areas where human rights are systematically violated. Increased respect for human rights consequently enhances the effectiveness of development efforts.

<sup>1</sup> Report dated 29 November 1993

<sup>2</sup> Report dated 7 May 1994

### 3 The Link Between Human Rights and Good Governance

«The agendas for good governance, participatory development, human rights and democratisation are clearly inter-linked»<sup>3</sup>. The term governance relates to the exercise of public authority to achieve economic, social or political goals. This expression «...denotes the use of political authority, and exercise of control in a society in relation to the management of its resources for social and economic development»<sup>4</sup>. The rule of law, efficient public sector administration, the fight against corruption, and the reduction of excessive military expenditure are important aspects of «good governance». Democratisation aims at attaining a political order in which the exercise of state power rests on the consent of its citizens. Various forms exist: representative or direct, parliamentary or presidential democracy. Participatory development means enabling also the poorest and most needy to participate in order to influence the decisions which affect them, giving them the means to determine their own fate. The human rights set out in the United Nations' Universal Declaration of 1948 were rooted and further developed in various treaties of universal or regional application. The member States of the Development Assistance Committee (DAC) of the Organisation for Economic Cooperation and Development (OECD) have confirmed their agreement with the norms and standards of human rights of the United Nations. These norms govern their activity in promoting human rights, and thus also their development cooperation.

### 4 Promoting Human Rights and the Principle of Non-intervention

A pluralist society and respect for human rights and basic freedoms by the state are essential preconditions for peace and security. Human rights are a component of international law, and a legitimate concern of the international community. Although the unilateral use of force to establish human rights is of course unacceptable, measures to promote human rights do not constitute interference in the internal affairs of a state. Under these circumstances a state cannot therefore rely on the principle of non-intervention to prevent its human rights situation from being mentioned in an international forum, or to prevent other states or even the international community from taking action.

### 5 Role of Non-Governmental Organisations (NGOs)

Non-governmental human rights organisations play an important role in protecting human rights. They not only offer a fund of information on the human rights situation in various countries, but are also crucial in promoting human rights within governments and public opinion. The organisations with consultative status by the United Nations have the opportunity to make the international community aware of human rights violations, namely at the annual conference of the Human Rights Commission (see II. 4). Through specific projects (training, consultancy, supporting particular groups, etc.) they also contribute to forming a pluralist civil society in which human beings can assert their rights, which in the long-term can also contribute to the strengthening of the institutions of the countries concerned. In many countries, the members of such

<sup>3</sup> Guidelines on «Participatory Development and Good Governance» – DAC/OECD 1995, p. 6, para. 4.

<sup>4</sup> id., p.14, para. 31

organisations sometimes take substantial risks. The NGOs are important partners, and their activity deserves recognition, protection and, where necessary, support.

## **6 Promoting Human Rights and Humanitarian Aid**

Humanitarian aid and development cooperation have much in common. Promoting human rights and human dignity is indisputably one of the main objectives in both fields. In Switzerland, development cooperation and humanitarian aid come under the same authority, facilitating joint planning and close cooperation on the ground to achieve complementary goals. The main difference is in the time frame required. Development cooperation works towards long-term improvement in the conditions in which people live, whereas humanitarian aid offers support in the form of immediate assistance where there is actual or impending distress. In such situations humanitarian aid offers primarily life-support assistance for the population groups concerned, but should also take into account the long-term effects of its actions. It is also not always possible to distinguish precisely between humanitarian aid and cooperation. Although most of the principles contained in this document also apply to humanitarian aid, there are important differences – precisely because the time frame of humanitarian aid is much tighter. We intend to concentrate below primarily on the promotion of human rights in the context of development cooperation, and on the resultant long-term measures, and therefore do not examine the particular conditions of humanitarian aid interventions.

## **7 Objective of these Guidelines**

In the context of development cooperation, there has been increased support in recent years for special measures to protect and promote human rights, given the importance of human rights for sustainable development, this support needs now to be implemented on a systematic basis. This document sets out the conceptual basis, defines the strategic principles and gives guidelines for the implementation of this objective.

## II. Human Rights and Development: Concepts and Their Origin

### 1 International Human Rights Norms

The concept of human rights has changed greatly throughout history. From the 18th century they have been of overriding importance for the economic, social and political development of Europe and the United States. The term «human rights» occurred for the first time in Europe in the Declaration of Human and Civil Rights of 1789 in France. The concept that the state alone shall decide how it deals with its citizens had been thoroughly discredited after the Second World War. In the United Nations Charter (1945), respect for human rights was made one of the organisation's goals. UN member states are duty bound to protect and promote human rights. The Universal Declaration of Human Rights adopted on 10 December 1948, together with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966, forms the International Charter of Human Rights<sup>5</sup>.

This Charter still forms the basis of the universal system for protecting human rights, which is complemented by various specific conventions of universal or regional application. Some deal with the violation of certain human rights, for example slavery and torture, others are concerned with protecting vulnerable population groups such as women, children or refugees. The conventions of the International Labour Organisation (ILO) for example protect the rights of employees (trade union freedom, campaigning against forced labour and child labour, etc.).

<sup>5</sup> The main UN Conventions ratified by Switzerland: The Covenant of 1966 on Civil and Political Rights and the Covenant of 1966 on Economic, Social and Cultural Rights, in force since 18 September 1992 – see SR 0.103. 1/2; The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in force since June 26 1987 – see SR 0.109; The Convention on Elimination of all Forms of Racial Discrimination, in force since 29 December 1994 – see SR 0.104; The Convention on the Rights of the Child (1989) and the Convention on Elimination of all forms of Discrimination against Women was ratified by Switzerland in 1997.

States are however bound in respect of human rights not only by conventions but also by international customary law. A state which has not ratified a particular convention for example must nevertheless observe its related duties under customary law (e.g. the interdiction of genocide, the interdiction of slavery, torture and arbitrary executions), see also the overview in the Appendix.

### 2 Human Rights

**Civil and political rights** ensure the fundamental freedoms of the individual: the State is on one hand bound to respect these rights and on the other hand responsible to ensure their respect in the context of public life. These rights are established in the Covenant on Civil and Political Rights (Covenant II). This includes the right to life, the right to freedom of opinion, to freedom of thought, conscience and religion, the right of assembly and the right of association as well as the right to active and passive political involvement (see also list in the Appendix). Those rights were the subject of the earliest claims, and were the first established in official documents such as the Declaration of Human and Civil Rights of 1789. From the legal point of view, the **economic, social and cultural rights** constitute goals, underpinning governments' obligation to gradually

fulfil them to the maximum of their available resources by suitable actions, specifically by introducing appropriate laws. The existence of certain economic, social or cultural rights is often a precondition for granting certain civil and political rights. Many of the first mentioned rights are named in the International Covenant on Economic, Social and Cultural Rights (Covenant I), for example the right to work, health, education, social security and an appropriate standard of living (see also list in the Appendix).

Since two international conventions were drawn up instead of just one, a distinction can be made in terms of the legal nature and implementation of the rights established. As general universal documents for protecting human rights, the conventions form a unified whole despite of their differing legal nature, since civil and political rights on one hand and economic, social and cultural rights on the other hand are interdependent (principle of indivisibility of human rights).

The principle of **non-discrimination** is central for the protection of human rights. Governments have a duty to ensure respect for human rights «**without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status**» (Article 2, Paragraph 2 of Covenant II; and Article 2, paragraph 2 of Covenant I). Under the principle of equality, women are to be able to participate in all aspects of political, civic, economic, social and cultural life without restriction.

The rights propounded in the two Covenants do not form a definitive catalogue of human rights. Further rights are guaranteed by other conventions of general or regional application. Other demands, such as the freedom to decide to have children, are gradually becoming accepted, as witnessed by the concluding declarations of the major international conferences such as the Conference on Population and Development in Cairo (1994), the World Conference on Women in Beijing (1995) or the Social Summit in Copenhagen (1995). There is increasing discussion at international level of other pretensions whose recognition as international rights is currently still a matter of dispute, and which are still not rooted in any convention for protecting human rights. The collective rights under discussion expand the classical understanding of human rights and basic freedoms, since it would involve adopting a new category of **rights on the basis of collective claims**. This includes for example the right to development (recognised in 1986 by the UN General Assembly), the right to peace or the right to an intact environment.

### 3 Results of the Vienna Conference

The debates of the Vienna World Human Rights Conference in 1993 showed that views on human rights in industrialised countries differ from those in developing countries. Certain countries of the south in particular attempted to «justify» the difficulties with respecting human rights on the grounds of economic problems and the state of development or with cultural differences. Despite these differences of opinion, the Vienna Declaration was able to confirm the validity of the Universal Declaration on Human Rights and the universality of these rights<sup>6</sup>, and to move the international community to recognise the significance of the dialogue, in order to promote understanding of the different value systems. Moreover in the Vienna

Declaration, the right to development was established as a basic right. The significance of poverty as an obstacle to full enjoyment of human rights was likewise recognised<sup>7</sup>. But it was also confirmed that human rights infringements can never be justified by the state of development of a country<sup>8</sup>. The Vienna Declaration also confirmed the connection between promoting human rights and development.

<sup>6</sup> «All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.» (Para. 5, Chapter 1 of the Vienna Declaration, July 1993)

<sup>7</sup> «The existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights; its immediate alleviation and eventual elimination must remain a high priority for the international community.» (Para. 14, loc. cit.)

<sup>8</sup> «While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgment of internationally recognized human rights» (Para. 10, section 3, loc. cit.)

#### 4 Institutional Framework and Organs/Institutions Involved in Human Rights

The UN Charter grants numerous organs and institutions relatively extensive powers to examine various aspects of human rights. The most important bodies of the United Nations (the General Assembly of the Security Council, the Economic and Social Council (ECOSOC), the International Court of Justice and the Secretariat) are directly or indirectly concerned with the question of human rights. The Human Rights Commission and the Sub-Commission on Prevention of Discrimination and Protection of Minorities were created under the auspices of ECOSOC, forming the main organs for protecting human rights in the UN system.

The **Human Rights Commission** includes representatives from 53 member states who are appointed by ECOSOC on the basis of a geographical distribution formula. They meet once a year for a 6-week session. The Commission regularly appoints working groups or special rapporteurs to analyse specific topics (torture, summary execution, arbitrary arrest, exploitation of children, coercive disappearance, violence against women, etc.), or to investigate the human rights situation in particular countries, often based on individual communications in the context of public or closed proceedings. The Commission consistently condemns countries found guilty of gross and systematic human rights violations. It also proposes the creation of new norms. For example, the Human Rights Commission is debating how to implement the Declaration on the Right to Development, which was adopted by the General Assembly of the United Nations in 1986.

The **Human Rights Committee, the Committee for Economic, Social and Cultural Rights and the human rights committees established by the other conventions** (such as the Committees Against Torture, on the Rights of the Child, on the Elimination of Racial Discrimination and on Elimination of Discrimination Against Women) comprise independent experts acting in their personal capacity. Their task is to monitor the implementation of the norms listed in the conventions in the countries having ratified those standards. There are several tools available to them for this

purpose. They can for example publicly check the reports regularly submitted by the countries and make recommendations. Certain conventions allow for interstate complaints, which are admittedly rare, and individual complaints. The committees also make general comments on certain aspects, contributing to the concrete interpretation of the often abstract norms of the conventions.

The **Centre for Human Rights** has an important role in monitoring human rights. Since 1982 it has been the most important instrument of the Secretariat of the United Nations for human rights questions. The Centre supports the General Assembly, the Commission and the various committees. It also provides advice and technical support (e.g. in Rwanda and Cambodia) and provides technical cooperation (e.g. in the education and training of soldiers and/or policemen and in legal questions). On the basis of the recommendation of the 1993 Vienna Conference, the General Assembly created the office of the **High Commissioner for Human Rights** in 1994, and charged it with coordinating UN human rights activities. The High Commissioner's responsibilities include strengthening international cooperation in questions of human rights, entering into dialogue with governments with a view to ensuring respect for human rights, and coordinating the efforts of the various UN organs responsible. The Centre and the High Commissioner are to act jointly, with the Centre implementing the political purpose determined by the High Commissioner.

## 5 Development Cooperation and Promoting Human Rights – Which Rights?

Human rights have an impact on development in many respects. Extreme poverty prevents those concerned from fully exercising their rights. Combating poverty therefore remains one of the main objectives of all development efforts, and should also contribute to improving the position of the most needy groups of society, thus better protecting their rights. Promoting human rights and respecting basic freedoms, such as freedom of opinion, freedom of assembly and freedom of association, gives human beings, specially disadvantaged people, more means of improving their situation. This opens up opportunities for them to influence public decision-making. Promoting civil and political rights and promoting economic, social and cultural rights are therefore both important for development. The former allows the participation of the population to the development process as well as the emergence of an organised civil society offering the population the necessary means to influence developments in the fields of politics and economics. The latter ensure a minimal social standard for all the individuals and provides the guidelines for sustainable economic, social and cultural development. It is often assumed that development cooperation programmes and projects contribute to the promotion of economic, social and cultural rights – or at least should do so. The promotion of civil and political rights has only recently been a concern of development cooperation, therefore only little experience has been made, especially in operational activities.

### III. Ten Strategic Principles

The ten methodical principles set out below are intended to provide direction for increased commitment of Swiss Development Cooperation in the field of human rights.

#### 1 A Different Approach from Country to Country

There is a broad spectrum of measures which can contribute to promoting human rights, ranging from positive measures through political dialogue to conditionality<sup>9</sup>, and ranging thematically from advocacy to capacity/institution building, and in terms of agencies from NGOs to public institutions. Depending the situation in different countries, different approaches are appropriate. The decisive criterion should always be the ultimate impact on human rights of the measure in the partner country concerned. The partner country's room for manoeuvre in implementing human rights principles must be respected. In a particularly difficult environment, discreet work in the background may be preferable, whereas in other contexts an open, high-profile human rights initiative may strengthen positive forces in state and civil society. There is no blueprint which applies to all countries. A good knowledge of the social, political, cultural and legal environment of the partner country is essential for human rights work.

<sup>9</sup> In the frame work of the Bretton Woods Institutions (BWI) programmes, the term conditionality has a precise meaning: They link payment of loans to developing countries to the implementation of specific objectives, normally macro-economic objectives, as for example set out in the structural adjustment programmes. In this context we use the term **economic conditionality**. If on the other hand provision of development cooperation is made conditional on demands in the field of human rights, a different category of conditions is involved, often referred to as **political conditionality**. This concept of conditionality is the one used in this text. **Negative conditionality** refers to the threat of termination of aid relations or actual termination thereof if the conditions set are not fulfilled by the recipient country. The term **positive conditionality** is used where recipient countries are offered the prospect of being provided with additional aid funds as a reward if they achieve significant progress in the field concerned.

#### 2 Emphasis on Positive Measures...

The focus should always be on the possible effect of our action on the situation of human rights in the partner country. Our efforts in promoting human rights will therefore emphasise positive measures and dialogue. The purpose of positive action is to strengthen observance especially of the central aspects of civil, political, social, economic and cultural rights. They include measures for raising the awareness of the population, supporting groups subject to discrimination, strengthening the civil society, improving legislation, jurisdiction, application of the law, legal protection, education, and media support (cf. IV.1.). Positive measures can promote disadvantaged groups (e.g. minorities and indigenous peoples), in order to enable them to exercise their human rights just like other sectors of the population, without having to relinquish their distinctive characteristics. Projects for promoting the rule of law and political participation often have central human rights objectives. This positive approach also includes involving human rights concerns in the context of specific support measures in other areas of development cooperation (e.g. health and education).

### 3 ...and on Political Dialogue

The function of political dialogue is to convince the representatives of the partner country that improving human rights conditions has a beneficial effect on their country's development in the longer term. Political dialogue allows to invoke common international obligations as well as important issues related to the human rights programme, thereby improving the political framework for development. It is at its most effective when it can rely on specific operational experience. Political dialogue should also make systematic use of both bilateral and multilateral avenues (cf. IV.2.).

### 4 Differentiated Application of Human Rights Conditionality

Where respecting human rights is a «technical» condition for the success of a programme or project (e.g. in the case of a reform of criminal justice or in promoting a pluralist media landscape), support must naturally be conditional on fulfilling human rights conditions.

In other cases where the poor human rights situation is not a direct threat to the actual success of development cooperation, suspension of individual projects and programmes or complete termination of cooperation is the ultimate means («ultima ratio») in the case of gross and systematic violations of human rights. Termination is appropriate only if it can in fact exert pressure on the government responsible for the human rights violations to improve the situation. Coordinated action by the donor countries is of decisive importance in this. Precipitate disengagement endangers not only the long-term objectives of development cooperation, but also contradicts the interests of human rights policy in contributing progressively, to the improvement of the state and social structures in the recipient state in the future.

If the actual will of the government to improve the human rights conditions is in doubt, consideration may be given to extending the programme for a limited period (e.g. on an annual basis) linked to clearly defined progress in the human rights situation («navigation à vue»). Another possibility is redirecting aid from state agencies to non-state agencies (NGOs). In this case transparent and clearly articulated conditions are just as essential as observance of certain principles (cf. IV.3.). The use of double standards between different countries must be avoided in defining conditions.

### 5 Calculated Risk

Engagement in support of human rights is always a politically delicate matter. Those groups evoking human rights generally belong to circles that do not share in political and social power. The government concerned will often regard international intervention to promote respect for human rights as taking the part of the political opposition. A human rights programme makes it necessary to adopt a position on human rights violations, and thus risks «politicising» the whole cooperation programme. Even with an excellent knowledge of the political and socio-economic cir-

cumstances, and careful selection of our partner organisations and institutions, there remains a certain risk of adverse effects on other fields of our cooperation, bilateral, political and possibly economic relations. We must therefore be prepared to take a calculated risk. It should however be pointed out that ignoring a precarious human rights situation can be just as risky, and can have adverse political effects.

## **6 Projects and Programmes**

Isolated individual projects for promoting human rights may still be possible, since there is often an opportunity to achieve a substantial effect with relatively modest resources. It is however essential to seek a programmatic approach where different support measures are to be used or where there are special human rights challenges in connection with our development cooperation. A programme should contain both specific measures in favour of human rights (sectoral approach) as well as the human rights aspects in other fields of cooperation (cross-sectoral or transversal approach). The latter is required in sectors where human rights issues, are particularly concerned for example in the area gender, in strengthening basic organisations, administration reform, decentralisation, promoting the rule of law and also in the health and education sectors.

## **7 Resources, Patience and Endurance**

Rapid success is rarely possible in the field of human rights, as in most sectors of development cooperation; the «quick fix» is an illusion. Patience and endurance are necessary, long-term commitment essential. Human rights can moreover not simply be tackled «on the side». They require substantial commitment, particularly of human resources. The necessary competence has to be built, both at headquarters and in the coordination offices or embassies in the partner countries. Training employees and evaluating early experience are also urgent concerns.

## **8 International Coordination**

It is necessary to seek international coordination in all forms of intervention - positive action, dialogue and conditionality. Local donor coordination mechanisms and multi-bilateral forums are suitable for this purpose, such as the Consultative Groups of the World Bank or the Round Tables of the United Nations Development Programme UNDP. Synergistic relationships must be sought with local and international partners, both governmental and non-governmental.

## **9 Preventing Negative Effects of Projects/Programmes**

In both bilateral and multilateral development cooperation the aim is firstly to stop projects and programmes which violate human rights or have negative effects on human rights. It is therefore necessary to check with all projects and programmes whether there are grounds to fear negative

consequences as regards human rights. Special care is needed in the case of major infrastructure projects (forced resettlement, etc.), and with economic structural adjustment measures (e.g. restriction of access to basic health and education facilities resulting from economic conditionalities). But also smaller projects with a strong focus on the population run certain risks, e.g. by strengthening authoritarian or inegalitarian structures of power or by weakening the position of women, which also should be taken into account. All projects and programmes showing any potential for negative effects on human rights require corresponding countermeasures to be taken.

## 10 Coherence

The coherence of all government measures relating to human rights objectives in respect of a partner country is a key element of a credible and effective human rights policy. It is therefore important to take into account the human rights policy dimension within the political decision-making process. The demand for coherence relates in particular to

- Federal Department of Foreign Affairs (FDFA) initiatives in the fields of development cooperation, political dialogue, conditionality and general human rights policy that require close consultation within the FDFA in all human rights activities;
- All measures of Swiss development cooperation, including the economic and commercial measures of the Federal Office of Foreign Economic Affairs (FOFEA);
- Measures of financial incentives to return for refugees;
- Export and investment promotion measures;
- Export permits for war material;
- Other fields of politics with external implications (e.g. migration policy).

## IV. Notes for operational implementation

### 1 Positive Action: Possible Steps, Partners, Topics

#### Ownership

In promoting human rights, as in all other fields of development cooperation, the particular circumstances, needs and potential of the partner country concerned should be taken into account. The crucial factor is local ownership. Support for local initiatives should be sought at government and non-government level. There is a wide spectrum of support opportunities available which can be broadly categorised into action to create consciousness («advocacy») and strengthening the civil society on the one hand, and state capacity/institution building («capacity building in government and state institutions») on the other.

#### Advocacy, Strengthening Civil Society

- Initiatives for creating awareness in the population (meetings, publications, conferences, seminars and university education, etc.);
- Support for representatives of those sectors of the population subject to discrimination (e.g. minorities and indigenous groups) by means of information, education, contributions to NGOs, etc;
- Promoting the rights of women (e.g. legal reforms, especially prohibition of gender-specific violence; actions for long-term improvement of the social position of women; promoting ratification of international instruments for the protection of women);
- Strengthening the civil society by supporting human rights NGOs, and supporting NGO networks;
- Supporting organisations providing improved access to justice (advice, legal assistance);
- Supporting independent media organs (press, radio, TV, journalist education).

#### State Capacity/Institution Building

- Supporting human rights improvements in law making and in the application of the law with the aim of creating political and administrative decision making processes which are more transparent, qualitatively better, and respect human rights fundamentals;
- Promoting human rights improvements in the field of justice and executive measures (security forces, prisons);
- Promoting human rights education activities for officials, the judiciaries, lawyers.

#### Spectrum of Possible Partners

- At **government level**: ministers/administrations (justice, police/security, education, foreign office, possibly human rights ministry), justice system including the executive authorities (prison authority, courts, prisons), educational institutions (universities, schools), legislative bodies (parliament, parliamentary groups);
- **civil society**: local NGOs in the fields of human rights, women, children, education, and the corresponding regional and international networks; churches; media; professional associations (lawyers, policemen, etc.); trade unions; international NGOs/foundations;
- **multilateral/international organisations/funds**: UNDP, United Nations Children's Fund (UNICEF), United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA); United Nations Educational, Scientific and Cultural Organization (UNESCO);

High Commissioner for Human Rights and UN centre for human rights; UN fund for victims of torture, slavery, indigenous peoples, technical assistance for human rights; international courts of justice.

### **Commitment**

Experience of DAC members to date illustrates that the attitude of the government («commitment») is a crucial criterion for selecting partners and the type of action. If human rights violations are attributable to actions or the tacit consent of the government, then programmes oriented towards state institutions are to be avoided. There may be some exceptions if niches or allies for reforms can be identified in the state apparatus. But in principle in such situations, action in the field of raising awareness and strengthening the civil society is more appropriate. If the government is however demonstrably committed to improving respect for human rights, then long-term cooperation with government institutions is also to be sought.

### **Flexibility**

In the light of the variety of human rights needs in our partner countries, it makes no sense to seek to restrict the Swiss contribution globally to one or two areas (e.g. support for minorities, or combatting child labour). The Swiss contribution must be flexible; there may often be a need not so much for typically Swiss know-how as for technical and financial support for local processes.

### **Concentration of Effort**

Since financial and human resources are finite, it is appropriate to initially limit the systematic (programmatic) promotion of human rights to a few partner countries (selected concentrations countries and certain other countries).

## **2 Political Dialogue**

### **Authorities, Bodies**

Which authorities and bodies are to be systematically selected for political dialogue in matters of human rights? At the **bilateral le vel**: contacts between the Federal Council, the Headquarters of the FDFA and the embassies, the Headquarters of the SDC and the coordination offices and the representatives of the government of the host country. At the **multilateral le vel**, Consultative Groups of the World Bank, UNDP Round Tables and local coordinating mechanisms are the suitable forums for political dialogue. But human rights concerns should also be raised in a suitable form at the purely **multilateral le vel**, i.e. in the UN organisations (UNDP, UNICEF administrative councils; human rights commission, etc) and (as far as statutorily possible) in the Bretton Woods Institutions and in regional development banks and funds.

### **Treaties and Agreements**

Where expedient, the significance of human rights criteria as a facilitating condition for development and effective development cooperation should expressly be included in **treaties** and agreements with developing countries.

### 3 Differentiated Human Rights Conditionality

#### Negative Conditionality: Arguments For and Against

The use of negative human rights conditionality is the means of last resort. Where other more positive measures than termination are possible and promising, they are always to be preferred, such as reorienting and complementing existing programmes and projects and selecting other channels. The following human rights policy arguments for and against termination should be considered in each case:

- Projects and programmes that could have the effect of political legitimisation for the government responsible for serious human rights violations and make the donor jointly responsible politically should be terminated;
- Termination is appropriate when it is in the power of the government concerned to improve a bad human rights situation. Where in particular structural defects are in evidence, termination does little to improve the situation; increased support to build suitable structures would be more appropriate;
- Where specific programmes and projects primarily serve disadvantaged groups of the population who are already under pressure from a government violating human rights, there is little value in terminating them. On the contrary, termination would rather serve the interests of the government;
- The loss of future opportunities to exercise influence in favor of human rights and the loss of «external view» – that can often protect the endangered population groups against repressive action – are both considerations against general termination of development policy relations;
- Effective conditionality generally depends on the existence of effective international coordination.

#### Human Rights Criteria in Selecting Partner Countries

Human rights criteria are one of the factors to be considered in selecting new concentration countries for Swiss development cooperation. Where systematic and gross human rights violations are being committed and the government has no will to significantly improve the situation, important preconditions for long-term development are absent. Such countries can therefore not be considered as partners for long-term cooperation. Factors favouring the selection of a country are opportunities of supporting from outside a process for improving the human rights situation in the country concerned. In assessing the human rights situation, absolute measures are in principle less crucial than the political will to work towards improving the situation.

### 4 Human Rights as an Intersectoral/Transversal Concern

#### Human rights as an integral component of country and sector programmes and evaluations

- Given their significance and their function as a favourable condition for development and as an objective of development, human rights are to be taken into account in the situation and needs analysis of medium-term strategies, regional and country programmes and sector policies.
- Human rights criteria should increasingly be included in the evaluation of development cooperation programmes and projects.

### **Measures for avoiding human rights risks**

Projects and programmes whose objectives intrinsically violate human rights are not to be supported (for example financing an educational programme that can discriminate a specific group of population; public health programmes based on coercive interventions).

As regards the approach required in weighing up the interests of human rights and development policy in project and programme selection, the following elements are of particular human rights interest:

- Integrating mechanisms (e.g. regular human rights reviews; individual legal protection) to detect and prevent potential human rights violations through the project;
- participative approach enabling persons affected by the project to assert their human-rights interests in designing the project;
- positive measures which can counteract the feared or actual negative effects of the project.

### **Using opportunities in other sectors**

Use should be made of opportunities for introducing the promotion of human rights in other sectors such as: health, education, gender, promotion of the rule of law, etc.

## **5 Further Operational Issues**

### **Information**

An information collection plan is of great use for partner countries with a human rights emphasis. The plan considers information needs and identifies information sources with the aim of providing the foundation for a comprehensive analysis of the local human rights situation from the point of view of development cooperation.

Particularly important sources of information are:

- the country desks of Political Division II and SDC
- embassies and coordination offices
- the Human Rights Policy Section of Political Division IV
- specialised local and international human rights NGOs
- intergovernmental human rights bodies
- analyses of other donors
- specialised institutes and universities in Switzerland and in the partner country

### **Training**

Basic human rights training is desirable for all employees. It should serve to sensitise trainees to human rights questions, inform them about the fundamentals of international human rights standards, and introduce them to the complex relations between human rights and development. Specific examples and experiences drawn from Swiss development cooperation should be used.

### **Specialist competence**

Current projects and programmes should be systematically evaluated with human rights or related objectives in order to analyse experience and apply it to the conception of new programmes. The international experience now available should also be utilised. Compiling «best practice» will

help to bring the benefits of experience to bear on future work. Institutional specialist competence must be built up in order to evaluate experience with human rights questions in the context of individual country and sector programmes, and monitor individual programmes and projects from sector and transversal standpoints. It is necessary to check which form is appropriate for this purpose.



# Appendix

# What are the established international human rights?

## An updated overview

### 1 The customary-law standard

Universal international customary-law standards are binding on all states. They are underpinned by a common legal conviction and corresponding practice of the community of states. Both elements are often not easy to determine, and are subject to the process of change.

The customary-law character of the prohibition of genocide, slavery, slave trading and torture has been undisputed for a long time. This is now complemented by the fundamental rules of humanitarian international law, such as the prohibition of arbitrary killing, inflicting serious physical injury and suffering, arbitrary extensive destruction and expropriation of property, disregard of fair legal procedure, unlawful deportation and hostage-taking. Customary-law standards are also taken to include prohibition of systematic discrimination (on grounds of race or gender), prohibition of enforced disappearance, prohibition of arbitrary detention, and prohibition of expulsion or return of refugees threatened by torture («refoulement») and, as a general clause, prohibition of systematic and gross violations of other human rights.

### 2 The standards anchored in international conventions

These human rights standards are binding on the individual states as far as they have ratified the conventions concerned without making reservations.

#### a) The human rights in the two covenants of 1966

##### **Civil and political rights** (International Covenant on Civil and Political Rights, 1966)

##### ■ Rights for the protection of personal integrity

the right to life, prohibition of forced labour and slavery, the right to liberty and security of person, the right to privacy, the right to the recognition as a person before the law, the prohibition of detention for debts, the prohibition of torture, the right to be treated with humanity when deprived of liberty

##### ■ Fundamental liberties

the right to liberty of movement and freedom of residence, freedom of thought, conscience and religion, freedom of opinion and information, the right to peaceful assembly, the right to associate freely with others, freedom of marriage and equality of rights for married people

##### ■ Rights in court

the right to equality of treatment in court, entitlement to a fair and public judgment, in both criminal and civil law, by an independent and impartial, legally constituted and responsible court, specific rights of the accused in criminal proceedings, no retroactive effect of criminal law

- **Participation rights**

the right to participate in the conduct of public affairs either directly or by representation, the right to vote and to be elected at genuine periodic elections, by universal and equal suffrage and by secret ballot.

- **Prohibition of discrimination and minority rights**

the right to enjoy human rights without discrimination by race, sex, language, religion, political or other opinion, national or social origin; equal rights for men and women; entitlement of ethnic, religious and linguistic minorities to enjoy their own culture, practise their religion and use their language.

**Economic , social and cultural rights** (International Covenant on Economic, Social and Cultural Rights, 1966)

- the right to work, and to just and favourable conditions of work

- the right to join in trade unions

- the right to social security

- special protection of families, motherhood and children

- the right to an adequate standard of living (food, clothing, housing) and the continuous improvement of living conditions

- the right to health

- the right to education

- the right to participate in cultural life, scientific progress and its application, and to the protection of intellectual property

- the prohibition of discrimination

**b) Special conventions relating to particular human rights**

These conventions specify the claims relating to particular human rights, e.g.:

- Convention on the Prevention and Punishment of the Crime of Genocide; 1948

- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

- International Convention on the Elimination of All Forms of Racial Discrimination, 1965

- Various ILO conventions on abolishing slavery and forced labour

- Various ILO conventions on freedom of association

**c) Special conventions to protect specific groups and for special situations**

These claims usually specify the general human rights relating to the particular needs of population groups exposed to special threats as regards their human rights. They are found in specific conventions, e.g.:

- Geneva Conventions, 1949 and Additional Protocols 1997, relating to the protection of victims of armed conflicts

- Convention on the Elimination of All Forms of Discrimination against Women, 1979

- Convention on the Rights of the Child, 1989
- Convention relating to the Status of Refugees, 1951
- ILO Convention No 107, Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries and ILO Convention No 169 concerning Indigenous and Tribal Peoples in Independent Countries, 1957 and 1989 respectively
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, from 1990 – not yet in force

### 3 Standards that are not (yet) legally binding

The community of states has recognised some human rights in policy documents, without acknowledging that they were legally binding. Such declarations of the UN General Assembly can nevertheless become customary law, or their substance can be incorporated in future, binding conventions. Political declarations include in particular those rights that are binding as collective claims less on individual states than on the community of states; such as:

- The right to development (cf. UN Declaration on the Right to Development, 1986)
- The right to peace
- The right to an intact environment
- The right to participate in mankind's common heritage

They also comprise individual human rights, such as:

- Claims of minorities (UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, 1981; UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992).
- Claims for protection from and elimination of violence against women (UN Declaration on Eliminating Violence Against Women, 1993)
- Claims in connection with enforced disappearance (cf. UN Declaration on the Protection of All Persons from Enforced Disappearance, 1992)
- Specific rules of behaviour for governments authorities dealing with detained persons (cf. various declarations on the treatment of prisoners).

The declarations of various world conferences (such as the 1993 Vienna World Human Rights Conference, the 1995 Copenhagen Social Summit, the 1995 Beijing World Women's Conference, the 1994 Cairo Conference on Population and Development) are furthermore fostering the emergence of new human rights and the advancement of existing ones.