

The Relation between Democracy and Human Rights

Peter G. Kirchsclaeger

The complex relationship between democracy and human rights shows the need for education in democracy which overcomes the reductionist understanding of democracy to recognize only the will of the majority, the need for human rights education. Human rights education is the essential fundament of the implementation of human rights as every human being needs to know about her/his rights. Human rights education is a 'must have' and not a 'nice to have' in today's pluralistic society where human rights enable us to live in peaceful coexistence with respect for the human dignity of each other and with tolerance across the boundaries of traditions, cultures, religions, world views and opinions.

Keywords: *human fights, minority, democracy, human rights education, decision-making process.*

Introduction

Having a Swiss passport as well as living and working in Switzerland, I start my reflection with the following concrete case from Switzerland which serves as a starting point for a critical reflection: on November 29, 2009, Swiss voters have supported a referendum proposal to ban the building of minarets. More than 57 per cent of electors voted in favor of the ban. In an official statement, the government said it accepted the decision. It stated: 'The Federal Council (government) respects this decision. Consequently the construction of new minarets in Switzerland is no longer permitted' (SWI 2009). The result of a democratic opinion-building and decision-making process – in this case to ban the building of minarets – is violating human rights, in this case the ban violates the freedom of religion and is discriminatory.

What does happen when a democratic decision constitutes a human rights violation? How should the reaction look like when a majority's decision discriminates a minority (*e.g.*, when Swiss majority votes against minaret construction)? Is there a democracy without human rights? These questions gain more importance everyday as we live in a heterogenic society with a variety of values and goals. The demographic development of today's society, the prognoses of migration and the overall perspective of the development of world population indicate that the heterogeneity will intensify and a qualitative handling of it will be a key criterion of the human quality and of the living conditions of next generations. Could this handling be the result of democratic processes? Are human rights the minimal standards to enable the coexistence of a society? Does a direct democracy need a human

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rights-based, juridical institution protecting the minorities from a dictatorship of the majority? Does the universality of human rights, on the other hand, lead to a neglect of democratic decisions and a disrespect of national sovereignty in a globalized world? In my paper I will address these and related questions discussing the relation between democracy and human rights based on the observation of the challenge that a majority can vote in a democratic process in favor of a law which is discriminating a minority. I will elaborate the argument that the idea and concept of democracy includes human rights as democracy is built on the fundament of human rights, and I will discuss the concrete consequences of a holistic understanding of democracy.

Human Rights Protect Every Human Being

Human rights protect the essential elements and areas of a human existence, which are necessary for survival and for life as a human being. Human rights are those rights that belong to everyone as a member of the human race, regardless of skin color, nationality, political convictions or religious persuasion, social standing, gender or age. Every individual possesses human rights. They are subjective rights because the right-holders of human rights are individuals, not collectivities. Human rights are rights with a certain complexity because they are at the same time moral, legal, and political rights. In their legal dimension, human rights are part of a legal system and individuals living in this legal system are entitled to these rights. They are 'legal entitlements of individuals against the state or state-like entities, guaranteed by international law for the purpose of protecting fundamental needs of the human person and his/her dignity in times of peace and war' (Kaelin 2004: 17). The legal dimension of human rights is a positive achievement of human history as the international community found a consensus in the Universal Declaration of Human Rights of 1948 and created and ratified a human rights system in subsequent years. One can see a progress in the tradition of human rights from philosophical ideas of human rights (*e.g.*, in the period of Enlightenment) to the implementation of the philosophical ideas of human rights on a national level (*e.g.*, Declaration of Independence of 1776, Declaration des droits de l'homme et du citoyen de 1789) with its obvious limits (only white men of a certain socio-economic class excluding other human beings, excluding all other men and women, and still not overcoming the theory and practice of slavery), initiating the implementation of human rights on a universal level (Universal Declaration of Human Rights of 1948, the UN human rights treaty body system, regional human rights mechanisms) (Bobbio 1998). One can see a progress which the tradition of human rights experienced in the legal dimension in their process of realization. Human rights are now legally defined, know a legal framework and are enforceable. Institutions like the UN Human Rights Council in Geneva, the UN Treaty Body System, ... are elements of the realization of the idea of human rights and can enhance the fulfillment of human rights. They show that human rights are a concrete *reality*, not an illusion. Human rights are legal reality in all parts of the world. Human rights legal mechanisms, instruments and human rights institutions give the idea of the protection of human dignity embodied in human rights.

Human rights gain weight and power when they become part of a particular legal system (see Lohmann 2002), for example, of a national legal system through a democratic process, as they are then enforceable by law more directly and democratically legitimated.

Obviously the implementation of human rights at the same time faces challenges everywhere. One of the main challenges belongs to the process of the incorporation of human

rights in national legal systems: the risk of a particularization of human rights. Human rights are integrated in a national legal system by becoming part of the fundamental rights of the constitution through a democratic process. Within the national legal system the legal subjects acknowledge each other as holders of these rights within the framework of internal logic of a legal system. At the same time this way undermines the universality of human rights, because then human rights would exist only within a particular legal system of a particular legal society. Human beings who are not citizens of this particular legal society remain without human rights. Human rights run the risk of reduction of their universality through the particularization as parts of a national legal system. Justification models within the moral dimension can as already mentioned include the essential aspect of human rights that every human being – even living in a place on the planet where she or he does not benefit from a legal system respecting human rights – has human rights.

On a practical level, the process of strengthening international law and of a global institutionalization of the implementation and protection of human rights – in parallel to the integration of human rights within national legal systems – is necessary.

The legal dimension of human rights introduced above is the result of one part of the political dimension of human rights (see Kirchsclaeger 2013b: 255–260) including the political deliberation, political struggle, political opinion- and consensus-building processes, and political decisions leading to the legal entitlement of human beings to human rights. The political dimension of human rights embraces human rights as content and political arguments in public political discussion as well. Even if they do not lead to legal consequences, they can have political significance.

Furthermore political opinion-building and decision-making processes can strive for human rights, as their aim is to guarantee every human being the enjoyment of human rights. These processes can be dominated by the political duty to take the adequate political measures and decisions to further the implementation of human rights.

Beyond that, the political instrumentalization and the abuse of human rights for other political ends belong to the political dimension of human rights. They can find their worse form when these ends represent themselves violations of human rights.

From a procedural point of view, the human rights serve as a basis for a political opinion-building and decision-making process allowing every human being political participation. I will argue below that human rights protect democratic processes.

Finally, the political discourse and decisions could orient themselves at the frame of reference of human rights.

I just mentioned above that the political process leading from the idea and concept of human rights to the establishment of human rights is one aspect of the political dimension of human rights. This point makes obvious the historical dimension of human rights. This development of human rights happens in human history. If one looks closer at this aspect of the historical dimension of human rights, one can see that usually experiences of injustices trigger a common feeling that humanity should stop these injustices, get rid of them, and avoid them in the future. For example, the Universal Declaration of Human Rights of 1948 can be understood as a reaction to the violation of essential elements and areas of human existence and to the attempt of denial of human dignity during the Holocaust. Johannes Morsink argues: ‘Most of the articles and rights in the Declaration were adopted as direct and immediate reactions to the horrors of the Holocaust’ (2010: 27). This historical dimension of human rights does neither exclude a dynamic understanding of

human rights, which remains open for further development if necessary. On the contrary, taking the historicity of human rights seriously opens the eyes for similar injustices and calls for support of reactions to injustices leading to the claim for human rights. 'The human rights abuses on the minds of the 1948 drafters occurred during the Holocaust, while today we can point not only to the Nazi atrocities, but to atrocities in Bosnia, Cambodia, Rwanda, Darfur and in other contexts' (Morsink 2010: 36). Nor this historical dimension of human rights leads to the end of the universality of human rights due to their historical contingency, because the historical location and explanation of the genesis of human rights explain historic injustices in their exemplary character without any potential for a moral justification of human rights. The analysis of the historical development of human rights brings an added value to the human rights discourse, as it discovers lines of argumentation and processes from a historical perspective which opens valuable systematic insights. While in the historic dimension of human rights the question of the 'how' regarding the genesis of human rights is addressed, the question of the 'why' every human being is entitled to human rights remains open.

It is part of the moral dimension of human rights to address the question of the 'why'. The discourse about the reasons why every human being is a right-holder is of significance, because human rights did not 'fall from heaven'. Human rights are not an 'absolute truth'. The necessity of a justification of human rights is also provoked by the relation between human rights and corresponding duties: every human being is not only a right-holder but also needs to respect the human rights of others. In order to remain coherent with their own idea, the existence of human rights depends exclusively on the possibility of their justification (Alexy 1998). Human rights need to be justified to everyone concerned with human rights.

Besides 'internal necessity', there is an 'external necessity' as well: a reflection of the justification of human rights is also provoked by the different forms of relativism which human rights are facing today. Human rights and their essential claim of universality are doubted in the actual philosophical discussion about human rights after Georg Lohmann in three ways:

1. A cultural-relativistic way;
2. A specific cultural-relativistic way which sees in the particular and partial emphasis of the individual freedom-rights a contradiction of the claim of universality of human rights;
3. A critical relativism based on skepticism related to the small potential of realization of human rights and differences within the realization between the three categories of human rights. These cultural-relativistic criticisms on human rights and related theoretical approaches and reactions, and alternatives to those approaches must be discussed accurately to establish a human rights culture.

One possible approach of justifying human rights is based on the principle of vulnerability which I have developed more extensively on another occasion (Kirchschlaeger 2013a), and which I mention here only shortly and so far as it serves the main focus of the article. The principle of vulnerability means that one is exposed to the possibility to be attacked or hurt physically or mentally including the incapability to liberate oneself from vulnerability. A human being perceives all other human beings and her/his living context and world as possible sources of her/his vulnerability. A human being depends upon herself/himself, other human beings, the context and the world, as all of them can activate

her/his vulnerability or protect her/him from it. The awareness of one's own vulnerability which is based on self-awareness and independent of the empirical correctness of this self-perception, leads to uncertainty as it can also mean 'loss of opportunities to live better, loss of abilities to live well, and, at its extreme, loss of living' (Hoffmaster 2006: 42). Because of this awareness, human beings are willing to build social institutions in order to protect themselves from their own vulnerability. They find a consensus to protect themselves and all human beings from the possible consequences of their vulnerability regarding the essential elements and areas of human existence through human rights. The latter represent the filter to distinguish between vulnerabilities that are relevant for the protection of human rights as the highest possible protection available to the human community and those that are not. Finally, I would like to point out that human rights are not justified by vulnerability itself – this would signify a naturalistic fallacy – but by the reaction to the perception of the principle of vulnerability by human beings.

Human rights in their moral dimension are universal (every human being is a right-holder), categorical (every human being has these rights, they cannot be denied to anyone), egalitarian (every human being has the same rights), individual (human rights apply to every human being as individual and protect the latter from violations by a collectivity, recognizing at the same time the important role of a collectivity for the individual), fundamental (human rights protect basic and essential elements of human existence) and indivisible (the whole catalogue of human rights must be respected, they are complementary), and they make legitimate demands with corresponding positive and negative duties (see Kirchschaeger 2007).

On the one hand human rights in their moral dimension are 'weak rights', because they are not enforceable but appellative, and the consequences of their violations are moral sanctions (like public shame) but not legal sanctions. On the other hand, human rights in their legal dimension depend in their justification on the moral dimension of human rights, because their legal justification is mostly limited to the boundaries of a national legal system which can be compensated by the moral dimension of human rights.

Vice versa, human rights in their legal dimension cannot justify human rights in their moral dimension, due to the limited validity of the first. Therefore human rights in their moral dimension need to find their justification in the moral dimension. Therefore at the end of the day, the justification of human rights can be realized legitimately only in the moral dimension. They depend on a moral justification.

The significance of the moral dimension of human rights is built on this necessity, as human rights can only be claimed without any limits when there is a justification of human rights independent from legal or political decisions by state actors. This justification must be a moral justification, because it must be convincing for every human being, that is to say, it needs to be a universal moral justification which legitimates the concept that all human beings are equal and holders of human rights.

In addition, the moral dimension of human rights creates an awareness of the constant challenge of a legal and a political reality which neither realizes nor respects human rights completely. This awareness includes the corresponding moral obligation and responsibility of everyone to enhance the implementation of the human rights of every individual in his or her sphere of influence. The theory leads to practice...

Human rights practice needs this theoretical fundament:

Human rights are a theory-based social construct. Human rights practice is commonly understood as actions through which we advocate for the protection of human rights [...] Social action and behaviour which actually do respect human rights, through which we promote their protection, protest against their violation, and organise action or establish institutions that realise and protect human rights, remain guided by theoretical considerations. Indeed, the theory must not become an end in itself; there is something like a prohibition of self-gratification for human rights theory. However, a practice that renounces theoretical considerations will, like similar practices, become blind and runs the risk of getting lost or doing something wrong (Lohmann 2004: 307; translation mine – P.K.).

Finally, the following five situations illustrate the necessity of understanding human rights in their moral dimension and not only in their legal, political and historical dimension. In these exemplary situations human rights could not be claimed at all, or at least not integrally, if their moral dimension were not considered:

– In a state in which human rights cannot be claimed legally, every human being is still a holder of human rights independently of the official position of the state. The understanding of human rights as pre-state-rights (which means before becoming legal positive rights respectively therefore in their moral dimension) needs to be upheld. ‘Pre’ refers here to the validity of human rights, not the genesis, therefore they are not depending upon the state (Sandkuehler 2010: 1539). If human rights were not understood with a moral dimension including its pre-state origin, human rights could not be claimed at all or at least not integrally.

– Where theoretical and practical obstacles block or obstruct the implementation of human rights, or where the political will favors human rights violations, every human being is still a holder of human rights based on the moral dimension of human rights.

– If majority-decisions try to reduce the rights of a minority, every human being is still a holder of human rights which means the protection of the minority and its members in their essential elements and areas of human existence.

– When certain currents in traditions, cultures, religions and world-views interpret human rights in a way denying or restricting a right or some rights to some human beings (*e.g.*, the equality of woman and man, the relation between individual and collective rights, *etc.*), every human being is a holder of human rights and (on the fundament of the above-mentioned principle of indivisibility) of the entire catalogue of human rights to the same extent without any difference.

– If human rights would only be understood in a horizontal way with negative consequences from a human rights perspective regarding the human rights violations by non-state actors and the responsibilities corresponding with human rights of non-state actors, the recognition of every human being as a holder of human rights in their moral dimension ensures that human rights can be applied in horizontal (between individuals) and vertical (between individual and state) relations with a critical potential.

The Universality of Human Rights

The universality of human rights (see Kirchschlaeger 2011) shows the significance of the moral dimension of human rights as background of the just mentioned exemplary five situations. Universality is mentioned above as one of the essential characteristics of human rights. By definition, human rights are rights that apply to all human beings and are therefore universal. All human beings are holders of human rights, independently of what they

do, where they come from, where they live and from their national citizenship, their community...

The universality of human rights is constantly challenged by particular interests, for example, by states which claim the priority of their sovereignty or alleged democratic decisions over the universality of human rights or by the private sector which claims self-regulating approaches and uses this to define its sphere of influence within certain limits. These challenges are part of the political and legal dimension of human rights and as a consequence of the moral dimension of human rights as well. One can recognize a positive tendency to acceptance of human rights by states, a growth of an international institutionalization for the protection of human rights and a progress of the mechanisms for monitoring human rights performances by states to respect the universality of human rights and some small steps by the corporate world. At the same time, it has to be stated that the implementation of human rights is not yet there where it should be, and that the vast majority of human beings are still victims of violations of their human rights. The universality is still a claim, not a reality.

Furthermore, cultural diversity can be seen as an obstacle for the universality of human rights in the moral dimension of human rights. In spite of the different philosophical, religious, cultural and traditional sources and texts transmitting elements of the concept of human rights, although the broad inclusion of the international community in the drafting process of the Universal Declaration of Human Rights and the reconfirmation of the validity of the universality of human rights by the UN Conference in Vienna (1993), the universality faces criticisms from different sides because of its alleged Western origin, for example, in the so-called 'Asian values debate' (see Senghaas 1995; Geiger and Kieserling 2001; Burke 1987).

The fact that the universality of human rights is challenged by cultural diversity is even more astonishing as firstly human rights protect the individual's freedom of religion and belief and the right to a cultural life (article 18 and 27 of the Universal Declaration of Human Rights of 1948) and therefore are enhancing cultural diversity. Secondly human rights as individual rights protect especially the members of minorities from violations and injustices by majorities, for example, with the right to equality, right to non-discrimination, *etc.* Simone Zurbuchen points out: 'While I do not deny that human rights establish moral boundaries, it needs also to be seen that these rights enable members of religious communities and of other variants of cultural groups to maintain their distinct identity' (Zurbuchen 2009: 285). Often religious, cultural, traditional or world-view communities run the risk to be discriminated because of their religion, culture, tradition or world-view, and human rights protect them from this risk; thus religions, cultures, traditions, world views and beliefs benefit indirectly from the universality of human rights as they can find themselves somewhere in the world in the situation of a minority. Minorities benefit as well indirectly from the human right to freedom of religion and belief. This right enables and enhances the authentic practice of an individual and through that also the peaceful coexistence of religions, cultures, traditions and world-views, as well as the dialogue between them. It is an achievement of humanity that it seeks to protect this variety. As the fundament of protection of ideas, traditions and beliefs, human rights can therefore in exchange expect to be respected by religions, cultures, traditions, world views and beliefs (see Hoeffe 1999). Actually the realization of human rights needs the support and contribution by societal actors like religious, cultural, traditional or world-view communities (Kirchschlaeger 2013a, 2013b).

At this point, I need to emphasize that religions, cultures, traditions, world-views and beliefs should be understood as open for change, not as eternal absolute entities. Human rights do not find an end before religions, cultures, traditions, world-views and beliefs, but influence them on a theoretical level. On a practical level, cultural mediation and an adaptation of the implementation of human rights to the specific religious, cultural and traditional context is necessary to respect cultural diversity which is protected by human rights.

Concerning the dialogue about differences between religions, cultures, traditions and world views, the recognition of the differences leads to a better understanding and supports human rights on a practical level. This inter-cultural and inter-religious dialogue would benefit from a frame of reference, how this dialogue should be led in order to exclude the possibilities of discrimination and of arbitrariness. Human rights could serve as this frame of reference.

Of course, human rights are individual rights and embrace the perspective of the individual, not of the community: human rights do not protect traditions, cultures, religions as such, but *the freedom* of the individual to share the beliefs, thoughts and world-views of a community, to be part of a community and to practice their way of life. This difference is criticized as an individualistic bias of human rights, overlooking article 29. The latter positions the individual within its community and underlines the important role of the community for the development of the individual and the responsibilities of the individual within the community.

Participation – A Human Right

Discussing the relation between democracy and human rights it is of significance to emphasize firstly that democracy is based on the human right to participate in the political decision process (Article 21 of the Universal Declaration of Human Rights of 1948), also called the ‘democracy principle’:

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

We have a human right to democracy. Human rights and democracy go hand in hand as democracy is the political system which embodies the autonomy of the individual inherent within the idea and concept of human rights.

Chances and Challenges of a Democratic Justification of Human Rights

One possibility to legitimate human rights is on the legal or political dimension through a democratic process. Juergen Habermas (1994) and others link the reason why a human being is a holder of human rights to a national legal system in which human rights become part of the fundamental rights of the constitution through a democratic process. In the framework of internal logic of a legal system the legal subjects acknowledge each other as holders of these rights. At first sight, legitimating human rights through a process in which every human being has a right to participate seems to be convincing. But this approach

undermines the universality of human rights, because human rights can then exist only within a particular legal system of a particular legal society. Human beings who are not citizens of this particular legal society remain without human rights. This would be against the universality of human rights. Human rights open a global horizon and start locally at the same time. In 1958, Eleanor Roosevelt said, on the occasion of the tenth anniversary of the Universal Declaration of Human Rights of 1948:

Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world.

The perception of violations of human rights in one's own living context leads to recognition of one's own responsibility for the cause of human rights and one's own self-understanding as a global citizen with her/his responsibility for the realization of human rights.

Human Rights – Fundament of and Frame of Reference for a Democracy

As the democratic principle is part of human rights, a democracy is built on the fundament of human rights. Democracy can also be seen as the institutional expression of the respect of the individual's autonomy, giving an individual the possibility to participate in the opinion-building and decision-making process of the legal system she/he lives in as a citizen.

At this point, one challenge of today's democratic societies appears to be the problem that within legal society not all right holders can participate in democratic decisions, for example, persons living in this particular legal society without citizenship of this particular state. Changes in the access to vote on the community level are first small steps to a solution of this problem.

The second challenge is the following. It is imaginable that a majority is in favor of something which violates the human rights of a minority. We do not have to look back in history too far to find some examples for this theoretical observation. The Swiss case to ban the building of minarets is an example for this, I am afraid. A majority voted in a democratic process in favor of a law discriminating a minority within the national legal system, in this case that they are not allowed to build minarets at all. (Beforehand everybody – religious communities and of course the Muslim community as well – had to respect the Swiss building code in planning and raising a building.) Furthermore, the ban violates the freedom of religion of this minority as well. The example shows that a reductionist understanding of democracy can lead to human rights violations within so-called democratic processes. Why 'reductionist'? The idea and concept of democracy includes human rights, as democracy is built on the fundament of human rights, in front of all on the democratic principle as part of human rights. Therefore, the respect of human rights is a part of a democratic system. So a democracy must integrate mechanisms which ensure that human rights are respected regarding the access to democratic opinion-building and decision-making processes and in the way these processes are taking place, as the possibility of a democratic decision violating human rights is excluded from the start. Human

rights are the frame of reference for a democracy. Different forms to guarantee the respect within a democratic system are known, for example, the Constitution, the Supreme Court, *etc.* and need to be established in democracies in which they do not exist for purposes of the further realization of human rights.

What do I expect to happen in Switzerland? As Switzerland ratified the European Convention of Human Rights by a democratic decision, when for the first time a request to build a minaret in Switzerland will be denied based on the new legislation, this decision will be challenged in the European Court of Human Rights and lead to a judgment which then must be respected by Switzerland. Therefore, at the end of the day it will not be possible to implement this human-rights-violating law.

In the aftermath of this vote, a public discussion started with the result that a new way of dealing with initiatives which are not respecting human rights is examined to prevent something like this can happen again. I see this as a positive reaction.

At the same time I am concerned by the negative impact this entire process will have on the political participation.

I am concerned by the attempts of political forces in Switzerland to create an alleged conflict between democracy and human rights – describing human rights as ‘foreign power’ violating the national sovereignty and the will of the people – in order to bash human rights and to damage the reputation of institutions working for the realization of human rights, for example, the UN human rights bodies, the European Court of Human Rights, and so on.

I am concerned that in this way the ground is created for ridiculing the criticisms coming from human rights institutions regarding human rights violations in Switzerland.

Although these concerns are provoked by the concrete example from Switzerland, nothing indicates that this represents an isolated problem of Switzerland. This concrete example helps to illustrate some general challenges linked to the relation between democracy and human rights which exist and could exist in every corner of the world.

Automatically Democratic? Human Rights Education Contributing to the Functioning of a Democracy

Human rights education could meet these challenges and address the naïve assumption as well that every human being is born democratic and with the skills and competencies to participate in a democratic opinion-building and decision-making process. Thomas Hammarberg emphasizes: ‘Educating citizens in their human rights creates an informed society which in turn strengthens democracy’ (Hammarberg 2008). In the occasion of an expert-seminar during the preparation-process of the UN Declaration on Human Rights Education and Training in Marrakech 2009,¹ Navanethem Pillay, UN-High Commissioner for Human Rights, outlined the expectations from human rights education: ‘Human Rights Education is essential for the prevention of human rights abuses, the promotion of non-discrimination, equality and sustainable development, and the enhancement of people's participation in democratic decision making processes’. Human rights education contributes to the functioning of democracy.

¹ The author has contributed as a consultative expert to the development of the UN Declaration on Human Rights Education and Training during the entire preparation process of the Declaration.

The fundamental role of human rights education is to empower citizens to defend their own rights and those of others. ‘This empowerment constitutes an important investment for the future, aimed at achieving a just society in which all human rights of all persons are valued and respected’ (de Mello 2004: 3). The idea of ‘empowerment’ means the capability to determine one's own present and future with self confidence and awareness of one's own rights and to participate actively in the political decision process.

The UN Declaration on Human Rights Education and Training (Article 2/2) defines human rights education and training as:

Human rights education and training comprises all educational, training, information, awareness-raising and learning activities aimed at promoting universal respect for and observance of all human rights and fundamental freedoms and thus contributing, inter alia, to the prevention of human rights violations and abuses by providing persons with knowledge, skills and understanding and developing their attitudes and behaviours, to empower them to contribute to the building and promotion of a universal culture of human rights.

- a) education about human rights, which includes providing knowledge and understanding of human rights norms and principles, the values that underpin them and the mechanisms for their protection;
- b) education through human rights, which includes learning and teaching in a way that respects the rights of both educators and learners;
- c) education for human rights, which includes empowering persons to enjoy and exercise their rights and to respect and uphold the rights of others.

I suggest an understanding of human rights education (Kirchschlaeger and Kirchschlaeger 2009) including the ‘when’ (duration of the educational process), the ‘why’ and the ‘how’ in the definition of human rights education. Regarding the ‘when’, I recognize human rights education as a ‘lifelong-learning process’ which can never be concluded completely. This echoes the understanding of human rights whose realization is always an on-going task and whose character is very dynamic as new elements and spheres of human rights protection can be explored or developed. Human rights education is not a subject which can be taught, learned, and tested and which will then be followed by another subject. Instead, it will be recognized as an aspect which accompanies the process of education beyond the boundaries of individual subjects. It will play the role of a leitmotif for teaching any subject matter.

Regarding the ‘why’, I understand human rights education as ‘education *to* human rights’, a philosophy-based education process aiming at understanding the idea, the concept and, before anything else, a profound examination of the justification of human rights respecting the reflected autonomy of every individual as coherent to the idea of human rights, acknowledging cultural diversity, diversity of religions, diversity of traditions, diversity of world views, *etc.* and emphasizing the critical maturity of every individual supported by the helpful framework of critical questioning – human rights.

Regarding the ‘how’, ‘education *in* human rights’ means that the methods, instruments, tools, context (which can be formal, non-formal and informal) and process of human rights education must be in coherence with human rights as well, for example they must convince in their participatory mode.

In this definition of human rights education as ‘lifelong and formal, non-formal, informal education *to, in, about, through* and *for* human rights’, the single elements are interrelating and complementary, for example, the ‘education *to*’ is crucial for the ‘education

for human rights as human rights theory in general – corresponding to human rights practice – is a necessary fundament for human rights education and the human rights practice.

Human rights education has a global horizon, as Irene Khan points out

If citizenship education empowers people to become active citizens of their own country, human rights education empowers them to take up the challenges of global citizenship, by teaching them about global values. It is not just a question of learning skills and acquiring abilities. Human rights education teaches you to take action, and it empowers you to defend your rights and the rights of others (Khan 2006: 38).

Based on the universality of human rights, human rights education uses an inclusive approach.

Human rights can only be realized if every human being knows about her/his rights, understands her-/himself as a rights-holder and is able to identify the corresponding duty-bearers. Only this way human beings can claim their rights and claim the rights of others in solidarity ('empowerment') (Lohrenscheit 2006). This awareness of human rights is the basis for the possibility to defend her-/himself and to prevent violations of her/his rights and the rights of others. Knowing and being aware of her/his own rights and the rights of others and corresponding duties make human rights alive (Tibbitts and Kirchschlaeger 2010) – including the human right to participation.

Conclusions

I conclude with emphasizing that democracy and human rights go hand in hand. This means that every human being has a human right to democracy. Can human rights also be realized in a political and legal system which is not democratic? No, human rights cannot be fully implemented if the political and legal system is not democratic as every human being's participation in opinion-building and decision-making processes is protected by human rights.

Going hand in hand means also that human rights can be legitimated by democratic processes, but in addition a moral justification which goes beyond the boundaries of national democratic systems is necessary to ensure that every human being – even outside of these boundaries – are holders of human rights.

The going hand in hand of democracy and human rights embraces the essential role human rights play for a democracy as its fundament and its frame of reference. Democratic opinion-building and decision-making processes have to respect human rights in the access to them, in the way they are implemented, but also in their conclusions.

This complex relationship between democracy and human rights shows the need for education in democracy which overcomes the reductionist understanding of democracy to recognize only the will of the majority, the need for human rights education. Human rights education is the essential fundament of the implementation of human rights as every human being needs to know about her/his rights. Human rights education is a 'must have' and not a 'nice to have' in today's pluralistic society where human rights enable us to live in peaceful coexistence with respect for the human dignity of each other and with tolerance across the boundaries of traditions, cultures, religions, world views and opinions; where human rights empower the individual to participate in a democratic opinion-building and decision-making process; where human rights protect minorities from the human rights-violating decisions of a majority.

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