

Environmental protection, human rights and gross national happiness: Legal education in Bhutan

Christina Binder / Iris Eisenberger / Wolfram Schaffar / Michaela Windischgrätz

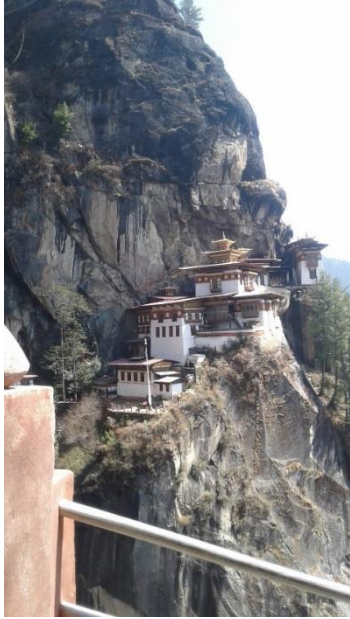
Heading for Bhutan: Soon after departing Kathmandu, the pilot of the Druk Air-plane moves the machine leftwards. The passengers moan, and it seems as if they all glue themselves to the window of the plane, because Mt. Everest towers in front of them – an unforgettable spectacle of nature. And then the descent into the valley of Paro begins. Acrobatically, the pilot winds the machine along the mountainsides. It was then that we realised why the descent to Paro counts as one of the toughest in the world and just a few pilots have the expertise to land there safely.



For the next ten days, the four of us (Christina Binder, Iris Eisenberger, Wolfram Schaffar, Michaela Windischgrätz) make up the Delegation of the University of Vienna in Bhutan to contribute to the constitution of the Jigme Singye Wangchuck School of Law in Bhutan (JSW, <http://www.jswlaw.bt>). Until now Bhutan does not have a faculty of law. Bhutanese students undertake their studies abroad, most commonly in India. Moreover, they are only able to practise after a one-year extension course in Bhutan. All this changes soon: Starting from July 2017, 25 students will form the first academic year of the JSW Law School. Every year from then on, the Law School will admit 25 new students until they reach the total number of 125. The intended duration of the degree is five years. Ashi Sonam Dechan Wangchuck, sister of the fifth King Jigme Khesar Namgyel Wangchuck, who graduated at Harvard Law School, will be president of the Faculty.

Recent developments of the Bhutanese government system led to the decision of the Bhutanese governance to establish a School of Law in Bhutan. With the signing of a constitution on 18 July 2008 by the fourth King Jigme Singye Wangchuck, the name giver of the new law school, Bhutan became a constitutional democracy. The first elections were held in 2007/2008 (Upper/Lower House). And in 2013, the second elections already led to a change of government, a virtuous indicator for the functioning of the young democracy. Soon after the implementation of the constitution, Bhutan established a court system influenced by different judiciary systems. Along with the education of law students, the JSW Law School's target is to provide academic support to the development of the Bhutanese democracy and legal order.

Austria is one of the main supporters of this project as Bhutan is a main emphasis of Austria's official development assistance. The Austrian Development Agency (ADA, <http://www.entwicklung.at/ada/>) promotes the building of new courthouses and the transfer of knowledge. Under the direction of Professor Michaela Windischgrätz, Legal and Tibetan scholar, the Law Faculty of the University of Vienna (signed by dean Paul Oberhammer and vice-rector Faßmann) and the JSW Law School (signed by dean Sangay Dorjee) concluded a Teaching Mobility Programme to delegate four teachers of the University of Vienna as support to the JSW's teaching staff each year. In the first years, the range of courses mentored by Austrian teachers will cover the fields of Political Science, Methodology, Human Rights, Environmental Law and Mediation. This year's delegation is dedicated to prepare those courses.



Consequently, the schedule is really tight and based on intercultural reciprocity: Beside the subject-specific aspects and the political and legal peculiarities, we endeavour to grasp the other attributes of Bhutan. Having just arrived, we begin our hike to one of the most sacred sites in Bhutan – the “Tiger’s Nest”. After a three-hour climb, we reach the eyrie-like monastery complex, which hangs on a precarious cliff at 3,120 metres. This imposing place is synonymous with the story of guru Rinpoche who landed there on a flying tigress. In Bhutan, he is enshrined as the second Buddha. Defying our emerging anxiety, we climb down several ladders to Rinpoche’s rocky meditation cave, experiencing blessings and the devotion to Buddhism; it is here where we truly recognise how important Buddhist belief is for the everyday life of the faithful.

The construction site for the new campus of the JSW Law School, which shall be completed in two years, is the next station on our visit. Chief Karma, the construction supervisor and Buddhist engineer, welcomes us warmly. With protective helmets on our heads we inspect the site, where about 200 – most of them are Indian labour migrants – occupied

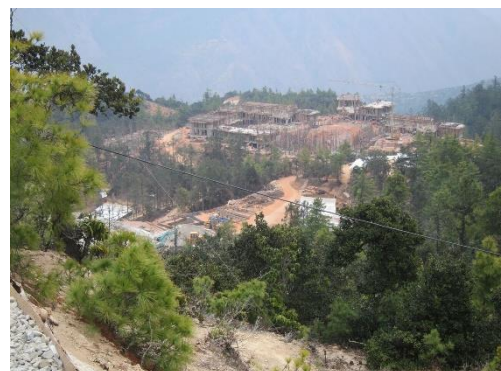


workers are busy. Soon the campus will be the home of 125 students and domestic and foreign teachers. Next to lecture halls, a library, common areas and dormitories, there will obviously also be a temple. After our visit we are invited for lunch by Chief Karma and his family. It is Losar, Buddhist New Year’s, and so we all drink 'Ara', traditional



rice spirit. The hosts surprise us with a feast consisting of beef, chicken curry, red rice, trout from local waters and 'Ema Datsi' (chilli peppers and cheese), the Bhutanese national dish.

On our third day we leave for Thimphu, the capital city of Bhutan, where the temporary administrative centre of the JSW Law School is located. On the trip to Thimphu we pass Tamchog Lhakang, a monastery, which can only be reached over an iron chain suspension bridge built by Thangtong Gyalpo in the 15th century. Those massive iron chains were manufactured in an iron mine above the monastery. Around 58 bridges were built by Thangtong Gyalpo in Tibet and Bhutan. The constructions contribute to ease the lines of human communication in a landscape that is gashed by a vast number of low river valleys.





Our first meeting in Thimphu is located in the temporary quarter of the JSW Law School, in the district Taba. Thirty people already work in the cosy, wooden building, which reminds us of a mountain hut. We mainly discuss the curricula, teaching units and teaching content. A prime topic is what learning methods can and shall be applied. Traditionally, Asian Schools require their students to study vast quantities of subject matter by heart. Thus, our future students are used to teacher-centred teaching. Since it is the declared aim of JSW University management to encourage and train Bhutanese law students to critical thinking and analysing law independently, we are devoted to introduce creative and discursive teaching methods.

The remaining week entails further meetings; partly all together, partly divided in research-specific groups on the following topics: Environmental law, human rights/dignity and political science. In those conversations we receive vital information from several Bhutanese contacts.

Iris Eisenberger, who will teach a course about environmental law at the Law School, attends the National Environment Commission (NEC) – the national branch of WWF – and the Royal Society for the Protection of Nature (RSPN), to get first impulses for the future environmental law lessons. The NEC is situated within the Tashichhodzong, which is where the official rooms of the king as well as those of Monk Body are. The atmosphere seems to be from a different world. Countless officials, women in Kira and men in Gho picture the scene and awake associations with pre-modern institutions. The building further intensifies that impression: We stride over centuries-old floorboards into the room of the chief jurist. She talks with pride about the nature, which she describes as the heart of the Bhutanese kingdom, and which is essential to preserve through the implementation of new laws. In the constitution of Bhutan, it is explicitly set down that 60 percent of Bhutan's territory must be forested. However, when asked whether she could recount any pending cases at the court, she denies such because: New laws are supposed to prevent disputes, rather than allow those to emerge. Staging conflicts in public is neither a political nor a legal culture in Bhutan. We hear the same information from the director of RSPN, Dr. Kinley Tenzin. He welcomes us warmly, perhaps as he has a special connection to Austria since he studied at the University of Natural Resources and Life Sciences (BOKU) in Vienna, where he graduated with a research paper about Bhutanese mixed conifer forests in 2008. He also embodies the attachment of the Bhutanese people to nature when he talks about various programmes of RSPN, which range from species conservation (black-necked crane and imperial heron), environmental education and activism, to sustainable tourism and cultivation of natural



resources by local communities. In every conversation, the people convey the impression that the legislation is good, but that indeed the implementation is still problematic. The personal as well as the functional capacity constraints seem to be responsible for that.

Christina Binder's and Wolfram Schaffar's focus is primarily on Human Rights. They both visit national NGOs (RENEW, an organization that works against domestic violence), the National Commission for Women and Children and UNICEF/UNDP. Concerning the schedule of the future human rights course, it is most important to clarify the question whether a human-rights-based approach should be pursued or the similarities and congruencies with the autochthonal 'human dignity'-concept of Bhutan should be the main focus. Particularly in the field of women's and children's rights there is a clear answer: A human-rights-based approach will be applied, since it is essential and does not conflict with the concept of 'human dignity'.

The meetings concentrating on human rights are also used for the preparation for other modules, such as the one called 'Law Clinics', which is planned to take place in the fourth and fifth academic year. The students will engage with legal questions through counselling disadvantaged groups pro bono. Therefore, Stephan Sonnenberg and Kirsten DeRemer, who are employed at the JSW Law School, conduct the fundamental research for the 'Law Clinics'. Both are also enrolled at the Department of Development Studies at the University of Vienna, where they are supervised by Christina Binder and Wolfram Schaffar. Their research is based on fundamental questions of Bhutan's legal culture, which challenges both the researchers and the university management equally. Previously, there were very few lawyers in Bhutan. Here, too, the conflict prevention, that is characteristic for the Bhutanese culture, is prevalent. For that reason, the extra-judicial, traditional mechanisms for dispute settlement strengthened.

Michaela Windischgrätz dedicates her work to another research project, which will also be incorporated in the teaching. Initiated by the president of the JSW Law School, hundreds of interviews with the elders of Bhutan were conducted by the employees of the Bhutanese National Legal Institute (BNLI) in the last few years, in order to document the unwritten legal history of Bhutan. The project's aim was not just to preserve the cultural and legal heritage, but also to assess the still prevalent impact of old customary law within the scope of the modern Bhutanese legal order.

In the course of our conversations, constantly, we are confronted with Bhutan's uniqueness. Gross National Happiness, as a normative framework for development, plays a key role. This concept dates back to the 1970s, when the fourth king Jigme Singye Wangchuck, who then reigned as a monarch in a regime of absolutism, rejected a development strategy that solely focused on mere economic expansion. Instead, he introduced an alternative path of development based on and inspired by Buddhism: The Happiness of the people should be the centre of attention, not the climax of the gross domestic product. The concept proved to be compatible to international debates concerning the 'boundaries of growth', which are carried out since the early 1980s. Consequently, it evolved to be the trademark of Bhutan, not least because it was highly promoted by the Bhutanese government: The principles of Gross National Happiness are anchored in the constitution of 2008 and shape the base for nationwide polls, through which the level of happiness of Bhutan's population is compiled on a regular basis. Then the results are used as a foundation for political decisions.



The concept of Gross National Happiness is also relevant for our activity (the support of the JSW Law School). The Law School is subordinated to the Gross Happiness Commission, which verifies every political project on its compatibility with the Bhutanese concept of development. However, our collocutors explain, that this surely does not mean that human rights or other obligations, that Bhutan agreed to follow, will be relativized through this national framework. The new Law School will also address the question how the international legal standards influence the Bhutanese legal order, which still develops and upholds the principles of Gross National Happiness. The research for the Law Clinics and Michaela Windischgrätz's research project about traditional law break new grounds. That fundamental question will also be the main focus of the first international academic conference held by the JSW Law School in the autumn of 2018. The conference will take place under the

working title 'Gross National Happiness and Law / Law and Gross National Happiness' and will also be funded financially by the Austrian Development Agency.

Our journey displayed the challenges of third-mission-projects, which are highly supported by the University of Vienna, and it also demonstrated the complex difficulties of development assistance: How can Viennese researchers and scientists contribute to such complex projects - such as the constitution of a foreign Law School? What is the academic and normative basis? What impact does our cooperation have? One thing is clear: these questions can only be worked out through an ongoing dialogue with our cooperation partners. Hence, our visit was an essential part of building trust and a sense of security with our colleagues in Bhutan, as well as being able to thoroughly address these questions anytime.



Verena Reiter translated the text into English.