



SUPPLEMENT

UPROOTED PEOPLE

Supplement to a Newsletter of the Ecumenical Network of churches in solidarity with uprooted people, published by the World Council of Churches Refugee and Migration Services (WCC/RMS)

Using human rights standards for uprooted people: Why and how they apply

This issue of *Uprooted People* emphasizes the dilemmas and challenges involved in the protection of the human rights of uprooted people. Basic concepts of human rights which apply to uprooted people - refugees, migrants and internally displaced persons – are well established in international law. However, these are neither well implemented nor are they adequately understood, even by uprooted people and their advocates. This supplement aims to explain how international standards apply to uprooted people, and how they can be utilized.

The rule of law is the basis of administration in nation-states worldwide. Public international law regulates relations among states, and it is now generally accepted that national law must respect and implement international law.

There are four basic sources of public international law:

- 1) "Customs," general practice as accepted by States;
- 2) International Conventions, elaborated under the auspices of the United Nations or by groups of States, such as the Organization for African Unity.
- 3) General principles recognized by States, such as the principle of non-refoulement of refugees (later also incorporated into a convention).
- 4) Supra-national legislation, adopted by common organs of States such as European Union bodies.

For the most part, existing international law applies only to States. International law retains the notion of sovereignty in that States have exclusive jurisdiction over their territory and all persons in it. Foreign legal jurisdiction and other outside interference is excluded.

By and large, the existing system of

international law, particularly regarding human rights law, remains a "primitive" system, in the sense that effective enforcement mechanisms are limited or non-existent.

Human rights standards

Notions of human rights have a very long history; there is no society that does not have some concept of human rights. Until the middle of this century, however, human rights were essentially issues of domestic and constitutional law. The first clear legal expressions of human rights were the elaboration of the Bill of Rights in the new United States and a similar declaration elaborated after the French revolution at the end of the 18th Century. These included the notion that the State has responsibility for respecting and protecting human rights of individuals.

The formal internationalization of human rights took shape only after World War II. First came the Charter of the United Nations in 1945. Shortly afterwards the Universal Declaration of Human Rights was adopted in 1948. This Declaration



A future in harmony: Frontier school, Ponca Nation, near Tulsa, Oklahoma.

Peter Williams/WCC

articulated human rights as basic components of international law. It brought together human rights standards evolved over many decades, growing out of efforts beginning in the 19th century to establish common codes of relations among States.

These two major covenants covering the broad definitions of political and civil rights, and economic, social and cultural rights, were adopted in the mid-1960s. Together with the Universal Declaration, the two covenants are often referred to as the "International Bill of Human Rights".

Further progress

During the period of the 1950s through the 1980s, human rights



standards were constantly expanded and extended. Treaties were written covering a wide range of specific issues, including the right to self-determination, prevention of discrimination, war crimes and crimes against humanity, slavery and forced labour, treatment of prisoners and prevention of torture, nationality and refugee status, freedom of information, rights of women, children and other specific groups, and social welfare. There are now more than 90 different international treaties in the arena of human rights.

The United Nations Convention on the Status of Refugees was one of the earliest specific instruments to be elaborated; it was adopted in 1951. However, it explicitly applied only to persons originating in Europe from events prior to 1951; only in 1967 did a subsequent Protocol make it globally applicable.

The first World Conference on Human Rights was held in 1968 in Teheran, Iran. That intergovernmental conference involved nearly all States existing at the time. It clearly articulated the three principles that basic human rights are indeed universal – they apply everywhere; indivisible – political and civil rights are inseparable from and on a par with economic, social and cultural rights; and, inalienable – they cannot be denied to any human being.

The extension of human rights protection to vulnerable groups, particularly uprooted people, has been a long and difficult process. The two early Covenants were elaborated with the understanding that they would be universally applicable to all human beings. However, in practice, it became evident that the principles elaborated in the “Bill of Rights” instruments were not being applied to a number of important groups. As a result, specific conventions elaborating extension of these rights to victims of racial discrimination, women, children and migrants were elaborated over the three decades from 1960 to 1990.

(continued on page 3)

How are human rights treaties established?

Treaties and other standards generally come into being at the initiative of one or - more usually - several concerned States that call for drafting a standards in relevant UN fora. A number of treaties have come out of recommendations first declared in the UN Commission on Human Rights; some are made directly in the General Assembly. The Commission on Human Rights is the principle subsidiary body of the Economic and Social Council (ECOSOC), comprised of delegates of a large number of UN Member States. Its annual six-week sessions in Geneva serve as a forum for hearing concerns from governments and non-governmental organizations relative to human rights violations around the world, and for preparing recommendations to the UN for responses.

UN General Assembly

The General Assembly is the main deliberative and policy setting body for the UN; all member States have a voice and a vote. It meets annually in New York for sessions which continue over nearly two months.

Once promoters get the approval of the UN General Assembly for the creation of a new instrument, an intergovernmental working group or drafting group is appointed. Such groups normally include participation by States from all regions. They are usually led by representatives of governments seeking to promote the new standards.

Drafting groups generally study existing standards to draw on what may be relevant, comparable or applicable. They also often draw on expertise of independent legal and human rights organizations, including non-governmental bodies with competence in the field.

Signing, ratifying, acceding

Once the drafting group agrees on a consensus text, it is submitted to

the UN General Assembly for adoption, either by vote or consensus. In the public forum of the General Assembly, few States will object to adoption of standards since adoption by the General Assembly carries no binding commitment for individual States.

Any treaty must be agreed to formally by a minimum number of States before it becomes authoritative as an international standard. For example, 20 States are required as the minimum number for the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Accountability

By formally agreeing to a treaty, a state agrees to incorporate and be accountable to its standards. Such agreement can be made in two formal steps or all in one. A State may sign a treaty, which may be considered an expression of intent to adhere to it. Then, ratify a treaty, which is a formal agreement to the text of the treaty and to adopt its standards as national law. If necessary, a government may indicate the steps that will be taken to bring national law into compliance with the treaty.

A State may also proceed directly to accede to a treaty without the preliminary signing by taking the necessary legislative action to adopt the treaty. By ratifying or acceding, a State becomes a State Party to the treaty.

The national incorporation of standards is the most significant value of international human rights treaties. It establishes minimum acceptable standards for national law and policy, and assists States in developing their own law and jurisprudence by providing a well-developed set of standards, definitions and even specific legal language. μ



As with the Convention on the Elimination of Discrimination Against Women and the International Convention on the Rights of the Child, the 1990 International Convention on migrants rights was elaborated to ensure that basic standards set out in other instruments explicitly apply to this particularly vulnerable group who are present in virtually all States.

Application

In principle, the standards in the "International Bill of Human Rights" apply to all uprooted people. In addition, many other human rights treaties include elements which implicitly and even explicitly apply specifically to refugees, migrants, and or internally displaced persons (see *Uprooted People* Issue 3 for a summary and discussion of the recently elaborated Guiding Principles on Internal Displacement).

Seven human rights instruments are considered to be the major and essential instruments of the global

human rights legal regime. These are the two covenants elaborating civil and political rights and economic, social and cultural rights, the Convention Against Torture, and the four conventions covering major vulnerable groups: children, women, victims of racial discrimination, and migrants. All but one of these are now in force and widely ratified. Thus there is a very substantial body of international human rights law applicable to uprooted people.

The chart on page 3 provides some indication of the provisions in these various treaties which are explicitly or implicitly applicable to the protection of human rights of migrants.

Utilizing international standards

There is no lack of international instruments and standards whose provisions guarantee rights to uprooted people. The two main challenges are to ensure full



"Christians advance together!": Churches played a major part in creating space and giving protection to refugees returning home to Guatemala from Mexico during the mid 1990s.

adherence by states to all basic standards, and to ensure compliance with these standards.

Activities and areas for action

- a) Both adherence to, and implementation of, standards require adequate **dissemination of information** on these human rights. At a minimum, all authorities of a State must be aware of the fundamental human rights and treaty obligations of a



State. All too often, such obligations are not respected, simply due to ignorance of their provisions or even of their existence, on the part of local or national authorities. Proposing and developing training courses and information materials are basic activities to pursue. Discrimination is not only practised at an official level, however, and human rights education must be more widely encouraged to make the general public aware of human rights, including migrants' rights.

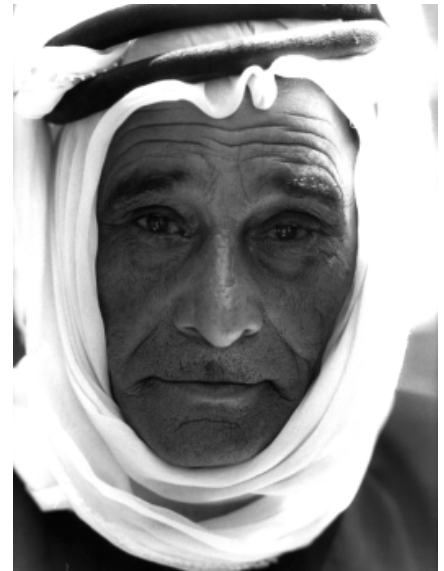
- b) International standards have a powerful moral value. The very existence of a treaty, such as the one against torture, has been a very powerful information and pressure tool in international fora against governments that insist on continuing such practices. **Advocacy in international fora** such as the UN Commission on Human Rights and specific treaty bodies can point out discrepancies between standards and government practice. Such international public exposure can provide an important incentive for governments to improve practice and laws.
- c) Proponents of better standards and opponents of abuse of human rights can emphasize the moral and ethical value of treaty standards by citing these standards in public, press and parliamentary debates.
- d) International standards serve as a necessary **guide in the development of specific legislation** incorporating some of the standards, even if a government is unwilling or unable to incorporate the entire content, and thus resists ratifying or acceding. Advocates can and should use international treaties in proposing, contributing to, and/or critiquing the drafting of relevant national and local legislation and administrative policies.
- e) Treaties have many other values and uses independent of whether they have "entered into force".

This is often particularly so in countries which may refuse to ratify precisely because of problems or abuse. Domestic jurisprudence in a number of countries has allowed international treaties to be **cited in legal complaints and court proceedings** even when that country has not ratified or acceded to the particular treaty.

- f) International standards may also provide valuable **basis for organizing groups** or communities of affected people. For marginalized, excluded, and often disempowered groups such as migrants, the existence of a treaty defining their rights affirms that they exist, that they are recognized, and that they have rights. This alone can be empowering in upholding and restoring a sense of dignity to affected individuals. It can motivate organization and collective action by confirming international recognition and support for their situation.
- g) **Campaigning for local recognition of human rights** can also be a specific rallying point around which to build self-help organization, and for cooperation by affected groups with other concerned groups and sectors. Campaigning for ratification and implementation of human rights treaties, such as the migrants rights convention, also offers a clear basis for alliances among the various domestic groups and sectors concerned about human and civil rights, including trade unions, religious groups and others.

Using treaty bodies

Most major treaties establish formal "treaty bodies" or committees for purposes of reviewing implementation, monitoring compliance, and/or hearing complaints regarding the provisions of the treaty. These committees are generally named from among persons nominated by governments of States Parties to the treaty. Most treaty bodies are mandated to report annually to the UN General




Peter Williams/WCC

A Palestinian in Hassun refugee camp.

Assembly through the Secretary General.

A number of treaties stipulate that States Parties are to provide regular reports to the respective Committees on legislative, judicial, administrative or other measures taken to implement the treaty, and on how problems arising from issues of the treaty are dealt with. For example, States Parties to the International Convention on the Elimination of All Forms of Racial Discrimination are expected to prepare reports every two years. Some governments allow, even encourage, public or non-governmental contributions towards their reports. The treaty bodies may also receive reports and documentation submitted directly by non-governmental sources. μ

(Supplement prepared by Patrick A Taran, WCC and Migrants Rights Watch).


 This supplement accompanies
 Uprooted People newsletter,
 Issue 6, December 1998.
 Refugee and Migration Service,
 World Council of Churches, PO Box
 2100, 1211 Geneva 2, Switzerland