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Human Rights and Refugees with Special Reference to Southern Africa

メタデータ	言語: English 出版者: 公開日: 2009-04-28 キーワード (Ja): キーワード (En): 作成者: Hansen, Art メールアドレス: 所属:
URL	https://doi.org/10.15021/00002633

SENRI ETHNOLOGICAL STUDIES 70: 257-271 ©2006
Updating the San: Image and Reality of an African People in the 21st Century
Edited by R. K. Hitchcock, K. Ikeya, M. Biesele and R. B. Lee

Human Rights and Refugees with Special Reference to Southern Africa

Art Hansen
Clark Atlanta University, USA

INTRODUCTION

I explore in this chapter some fundamental questions of human rights and the need to extend human rights to include a particular population, the world's refugees. My previous work on refugees has been based largely on case study material, since I have been studying Angolan refugees in Zambia since 1970 (Hansen 1979a, 1979b, 1981, 1982, 1990, 1993, 1994). This chapter addresses more general issues of refugee human rights and makes special reference to the situation of San refugees in southern Africa.

A deprived and threatened refugee population occupies the headlines and evening news programs every year. The refugees' dramatic flight across a frontier exposes their problems to an international audience. The world can see the magnitude and immediacy of the refugees' suffering and recognize that the suffering is caused by the violation of the refugees' human rights within the country of origin. This spotlight of world attention is usually denied millions of other people whose rights are similarly violated but who cannot flee, or who remain as internally displaced people within their original states, which do not permit their problems and violations to be publicized.

During the last few decades, most of the refugees in the headlines have been Asians or Africans, but Eastern Europeans have appeared frequently in the 1990s. In 1991, the spotlight illuminated the Middle East and Persian Gulf area, where the Kurds from Iraq were the most publicized displaced population. Millions of Kurds crossed the borders into Iran and Turkey. Additional hundreds of thousands fled the cities but remained in northern Iraq. In 1994, over a million people flowed out of Rwanda into Burundi, Tanzania, and Zaire (now the Democratic Republic of Congo) to escape the mass killings that were occurring there (African Rights 1995). Hundreds of thousands of people were displaced in the mid-to-late 1990s by the conflicts in the former Yugoslavia. In the 1990s, substantial numbers of refugees flowed out of Angola into Zambia, the Democratic Republic of Congo, and Namibia. The attacks on civilians in Darfur, western Sudan by the government of Sudan and the *janjaweed* Arab militias since early 2003 have led to hundreds of

thousands of Fur, Zaghawa, Masalit and other people fleeing across the border into Sudan, and some 1.7 million people are internally displaced in Sudan (Prunier 2005). The world focuses each time on the specific case, on the deaths and suffering, and on the urgent need for emergency relief.

In some ways, it is true that each refugee situation is unique. All human behavior and social actions express, and are embedded in, their specific time, place, and history, and the idiosyncrasies of the actors. For instance, the Iraqi Kurdish situation had at least three unique features. In the environment of the transformed relationship between the USA and what used to be the USSR, the USA mobilized an astoundingly heterogeneous coalition to oppose Iraq politically and militarily in 1991. Surprisingly, internally displaced people (Kurds in Iraq) received more international attention than did the refugees (Kurds in Iran and Turkey), and the international coalition and the United Nations came very close to a consensus that the internally displaced Kurds were a legitimate concern of other states, rather than an internal matter of the Iraqi government. In the case of the more recent conflict in Iraq, which began in 2003 and was ongoing at the time of writing of this chapter, the predicted refugee flows out of Iraq into neighboring countries (Turkey, Syria, Iran, Jordan, Kuwait, and Saudi Arabia) did not materialize. There are, however, thousands of people who have been displaced internally.

In other ways, each specific refugee situation expresses, and draws attention to, general and fundamental sociopolitical issues and questions of human rights. What are the bases or reasons for believing in a universal standard of human rights? How can such a universal standard be reconciled with the global diversity of cultures, religions, and legal codes? What is the rationale, and what are the general procedures, for extending human rights? What is the human rights situation of refugees? What are the major problems of rights for refugees, and what changes should be recommended? These are the questions I address in this chapter.

A UNIVERSAL STANDARD?

The keynote address to the International Conference on Human Rights in the African Context, which was held at the University of Port Harcourt, Nigeria, in June 1987, brings out clearly the existence of disagreements about the universal appropriateness of human rights. As Ake points out,

> The idea of human rights, or legal rights in general, presupposes a society which is atomized and individualistic, a society of endemic conflict ... The values implicit in all this are clearly alien to those of our traditional societies .... All of this means that abstract legal rights attributed to individuals will not make much sense for most of our people.... It is necessary to extend the idea of human rights to include collective human rights for corporate social groups such as the family, the lineage, the ethnic group.... (Ake 1987: 5, 9).

What are the bases or reasons for believing in a universal standard of human rights? How can a universal standard be reconciled with the global diversity of cultures, religions, and legal codes?

Natural law and human nature have been presented as sources of some or all human rights. When something is considered to be natural, that means it was not created by humans or by social life. The universal laws of nature could provide a universal basis for human rights. In this regard, religion or religions have been associated with the concept of natural law or natural rights, since religions incorporate views and observations about the nature of the world and of humanity. Proponents of the natural law argument mention most often certain specific rights, such as the rights to live, to defend one's own life, to have children, to freedom, to private property, and to have a private life (or some privacy). The American Declaration of Independence is an example of the linkage between human rights and natural law: "We hold these truths to be self-evident ...that men were endowed by their Creator with certain inalienable rights ...."

A major difficulty with the natural law argument has been the obvious tendency for ethnocentrism. A person may perceive that the morality embodied in his or her particular society, culture, or religion is somehow natural rather than normal. When behavior or ideas are considered normal, it recognizes that they are based on norms, or rules for behavior that were created, and evolved through use, by people in a particular society. The rules are relative to a specific society or culture (culturally specific) rather than being universal. Another difficulty with both natural law and reliance on common sense is that they are concepts or arguments based on unknowable and untestable authorities.

Culture or cultures, as opposed to nature, are another possible source of rights. A culture is a set of ideas and the expression of those ideas that are shared by a collectivity of people. The concept of culture includes a people's customs, religion, common law, and law. The concept of cultures emphasizes that there are differences among peoples. Although different peoples may have lived through the same historical period, with some of the same experiences, they may have begun with very different sets of values and beliefs and learned different lessons. Proposing that cultures are the sources of rights, combined with the awareness of cultural differences, calls into question the possibility of a universal set of human rights. For instance, the most fundamental document in international human rights, the Universal Declaration of Human Rights (United Nations 1948), is said to express "the values and institutions of modern liberal-democratic industrial society ... (and) modern social-welfare rights" (Milne 1986: 2, 6).

This inherent problem has been recognized and dealt with by the European countries that proposed and signed the European Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe 1950). The European Convention clearly expresses the perspective that human rights evolve historically within a social or political unit. The document is limited in scope to a set of peoples, represented by their governments, who share many cultural features

and historical experiences. The Preamble of the European Convention states: "Being resolved, as the Governments of European countries which are likeminded and have a common heritage of political traditions, ideals, freedom and the rule of law ..." (Nedjati 1978: 249). The African countries also dealt with this issue in the African Charter on Human and Peoples' Rights (Organization of African Unity, Banjul, 1981), which will be discussed below.

The question then becomes whether, or to what degree, the cultural origins of values and rights may be reconciled with the desire for a universally applicable set of rights. Milne (1986) confronts this question and seems to reconcile successfully the ethnocentric tendencies of universalism with the particularism and heterogeneity of diverse cultures. He notes that morality and certain universal moral principles and human rights appear to be essential for, and inherent in, society and all social life. Morality could be expressed through religion or ideology. Morality, custom, and the law were sources of human rights. Law differed from custom in that law could be innovative; "law can deliberately create new rights but custom cannot" (Milne 1986: 115).

Milne concluded that seven human rights form a minimal set that is essential for all social life. This minimal set is universal and constitutes a 'common morality.' These rights are necessarily inherent in the norms and practices of all societies, even though these rights are not always explicitly recognized in all societies, and all societies do not have specific linguistic terms for rights per se, or for these specific rights. The seven rights that he includes in this minimal and universal set are:

> the rights to life, to justice in the form of fair treatment, to aid, to freedom in the negative sense of freedom from arbitrary interference, to honorable treatment, to civility and, in the case of children, to care (Milne 1986: 139).

In addition to this shared common set of rights, each culture will have its own elaboration of rights and obligations, so that each culture or society has its 'particular morality' as well. Milne's line of reasoning parallels the anthropological study of 'cultural or human universals' (Brown 1991) but develops this more rigorously in the context of human rights.

EXTENDING HUMAN RIGHTS

What is the rationale, and what are the procedures, for expanding the scope of universal human rights beyond the minimal, common, and original set that is inherent in the diversity of human cultures?

The rationale is largely moral and political, while the procedures are both legal and political. Politics are the motive force for both change and conservation. Politics means that people (as individuals, groups, and states) are involved in arguing about and choosing their public goals and objectives, and deciding how public resources should be allocated. Human rights are being created by the

political process. Rights need not be common to nor found in the original structures of societies, but may be introduced or imposed through political action.

The violation, obstruction, and extension of human rights are on many peoples' political agenda and are being debated globally. Arguments to extend, contract, or modify human rights legislation and the policies that direct the implementation of laws express their authors' views about many current issues and problems and about what the social and political world should become. Since this chapter and this book are intended to inform and persuade, they are part of the political process.

Western liberal democracies with developed social welfare systems are actively involved in this ongoing global debate, but they are not the only ones. The demand for human rights expresses more than the "values and institutions of modern liberal-democratic industrial society ... (and) modern social-welfare rights" (Milne 1986: 2, 6). Many non-western peoples have their own perspectives, opinions, and desires regarding human rights (Ake 1987). For instance, the relationship between politics, law, and human rights is clearly seen in the Preamble to the African Charter on Human and Peoples' Rights. In setting out their concern for human rights, the African states affirm:

> their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence and undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism and to dismantle...all forms of discrimination (Organization of African Unity, 1981, as quoted in Hamalengwa et al. 1988: 6).

Legal declarations, conventions, and national legislation are an important means by which people around the world express their political wills. Law is a dependent variable. The political process, with its leveraged action and competitive conflict for resources, influences law. Law has its own traditions and is not always immediately dependent or responsive to political process. Instead, law is often seen as a stabilizing factor. But when the political will and consensus change and remain firm, when people effectively demand an extension of human rights, law changes to suit the will.

Changes in national legislation, which affect changes in the particular morality or practices of that society, and changes in international treaties, which affect changes in regional or universal morality and practice, are the obvious means for this expansion of human rights. The United Nations Charter specifically provides for "the progressive development of international law," which is defined in a later resolution as follows:

> progressive development ... (means) the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States. (Statute for Resolution 174, 1947, as quoted in Elias (1988: 64–65).)

This development of universal human rights has been expressed in both declarations and conventions. A declaration is "a set of moral imperatives by which nations have agreed to be guided in the conduct of their national and international affairs," while a convention is "a body of binding rules to which all the contracting parties have subscribed" (Elias 1988: 181).

In addition to formal conventions, international law also develops through the "accumulation of custom over a period of time" (Elias 1988: 179). These customs may originate in the actions of states or international bodies, as when rights that are specified in one context become, over time, "customary rules of international law which would be binding on non-signatories" (Naldi 1889: 112).

REFUGEES ARE HUMAN

What is the status of human rights for refugees? What are their major problems concerning human rights? What do I recommend?

I will not focus here on the circumstances and violations of rights that cause people to become refugees, but concentrate on clarifying the consequences for people who become refugees. All refugees are fleeing from gross violations of human rights in their countries of origin. In all of the situations that produce refugees (and internally displaced victims of hostilities), people are fleeing the violation, or threatened violation, of basic rights such as the rights to life, to liberty, to the security of the person, and to equal protection of the law. The simple presence of refugees and internally displaced victims of hostilities is a clear indication and indictment of the conditions of life and the lack of protection of human rights within their countries of origin. The violator may not be the government of the state of origin, but, in any case, the government has failed to protect basic human rights, or the people would not flee.

The initial violation of human rights is compounded because people who are unfortunate enough to become refugees suffer further denial of their human rights. The status of refugee is rights-deprived. Refugees are not treated as if they were human, with the rights that every individual human is supposed to enjoy. Human rights should apply to all humans. Unfortunately, refugees seem not to be considered legally human. If they were considered to be human, then they would and should be awarded the rights that have been recognized already in many legal documents as being universal (Hansen 1993).

The most important declarations and conventions for discussions of universal and African human rights are as follows:

1) Universal Declaration of Human Rights (United Nations, 1948).
2) International Covenant on Economic, Social and Cultural Rights (United Nations, 1966).
3) International Covenant on Civil and Political Rights (United Nations, 1966).
4) Optional Protocol to the International Covenant on Civil and Political Rights

(United Nations, 1966).

5) African Charter on Human and Peoples' Rights (Organization of African Unity, Banjul, 1981).

The five documents above list many rights; I note below only a few that are most immediately relevant in a discussion of refugees. The African Charter on Human and Peoples' Rights (as reprinted in Hamalengwa *et al*. (1988: 5–19)) contains the following, most of which are also included in the other documents:

1. Every individual shall be equal before the law (Article 3: 1).
2. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law (Article 12: 1).
3. Every individual shall have the right to leave any country including his own, and to return to his country (Article 12: 2).
4. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions (Article 12: 3).

The documents agree on the universality of the rights that they contain. As the Charter clearly states:

> Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status (Article 2).

Refugees differ in "national and social origin ... or other status," but that should not cause them to be less entitled than "Every individual." Freedom of movement means that they should be able to travel within the host country; they should not be confined for months or years to camps and schemes. Equality before the law and all of the other rights listed in the covenants should apply to refugees as well.

> It could be that the definition of the word "individual" is not intended to include refugees but in the absence of any indication to that effect the word "individual" must be taken to refer to any person (Naldi 1989: 93–94).

The rights of "Every individual" include the rights to leave and seek asylum (and, thus, become refugees). The right to asylum is not a customary right, that is, part of customary law, but is a conventional right, meaning it is based on international conventions. Unfortunately, the individual's right to seek and enjoy asylum is not complemented in any convention by the state's corresponding obligation to grant asylum. States retain absolute discretion in deciding whether or not to grant or refuse asylum in any given case. For instance, although a state may define clearly

the requirements to be a refugee, and an individual may fit those requirements, the state may decide that the individual is really an economic migrant, or may decide not to grant asylum for any other reason. This means that a person may exercise his or her rights to become a refugee (the rights to leave the country and to seek asylum), but may not be granted that status by the authorities of a receiving country.

If refugees had freedom of economic opportunity, that would mean that refugees were allowed to compete equally and openly for employment and business opportunities, but economic human rights are more restricted. The International Covenant on Economic, Social and Cultural Rights (United Nations 1966) states that:

> Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals (Article 2: 3).

This same qualification is not extended in the Covenant on Civil and Political Rights. Developing countries are not excused from extending civil and political rights for economic reasons.

THE RIGHT TO CHANGE NATIONALITY AND STOP BEING REFUGEES

In addition to the general point that all human rights should be extended to refugees, I am most concerned about one specific right. The Universal Declaration of Human Rights (as reprinted in Hamalengwa *et al*. 1988: 163–166) contains the following important right that is not incorporated into any succeeding covenants: ""No one shall be arbitrarily deprived of his nationality nor *denied the right to change his nationality*" (Article 15: 2; my emphasis). Host countries should recognize the right of refugees to change their nationality (and become citizens of the host country) if the refugees so desire.

Other immigrants are permitted to become naturalized citizens of their host country. Refugees should not be arbitrarily denied the same opportunity. There may be regulations, delays, and specific requirements to be obeyed, as there are for "Every individual," but there should not be an arbitrary denial of this right to people because of their refugee status. Whether the refugees are Afghan, Angolan, Palestinian, Sudanese, or Guatemalan, they are individuals with the same humanity as every other individual.

Millions of refugees around the world continue to occupy this rights-deprived status for years, and sometimes decades, in their host countries. These people should be allowed to stop being refugees. Exchanging the status of refugee for another status (such as resident or citizen) requires a decision or action by the society, or government, of the (host) state in which the refugee resides. The refusal by host governments to allow refugees to settle permanently, if they so desire,

maintains millions of people in the rights-deprived status of refugee. These people suffered violations of their human rights for weeks, months, sometimes years, in their countries of origin before becoming refugees. But they continue to suffer the denial of their human rights for years, and sometimes decades, in their host countries. The continued long-term existence of refugees is an indictment of the denial of human rights by the host countries.

The Office of the United Nations High Commissioner for Refugees (UNHCR) uses the term 'durable solutions' to signify the three ways that refugees may stop being refugees. One durable solution is for refugees to repatriate. The second solution is for refugees to settle permanently within, and become citizens of, the host country where they first receive asylum. The third solution is for refugees to resettle in another host country that will allow permanent settlement. The second and third solutions are essentially the same: the refugee changes his or her nationality. The precedent for this right has been established in the Universal Declaration, as noted above.

The UNHCR states that repatriation is the preferred durable solution. I disagree with this in the case of prolonged warfare. If a war or civil disturbance is over in a short time, and the refugees feel safe in returning, then repatriation allows them to re-establish themselves quickly. Unfortunately, from the viewpoint of many individuals who have been displaced, most wars and civil disturbances seem to last forever. These people, their children, and sometimes their grandchildren, continue to exist in the rights-deprived situation of refugees. Integration into the host country is a solution that may be implemented without waiting for the end of warfare.

SAN REFUGEES IN SOUTHERN AFRICA

These human-rights issues concerning displaced people apply to the San. Over the past several decades there have been a number of instances in southern Africa where San groups and individuals have had to seek refuge in other countries in order to gain safe haven and avoid persecution.

In the latter part of the 1990s and into the new millennium, there were sizable numbers of refugees in southern Africa, a substantial proportion of whom were Angolan. In 1995, it was estimated that there were some 103,700 Angolan refugees in Zambia, 12,700 Angolans in the Democratic Republic of Congo (DRC), and 11,000 Angolans in Namibia (United Nations High Commissioner for Refugees 1998: 248–249, Table 3). As Robins *et al*. (2001: 54) note, war has dominated the lives of Angolans for most of the past 40 years. The conflicts resulted in outflows of Angolans into neighboring countries, where they were assisted by the United Nations High Commissioner, by the governments of Zambia, the DRC, and Namibia, and by non-governmental organizations (NGOs) such as the International Committee for the Red Cross (ICRC).

A small percentage of the Angolan refugee population in Zambia and Namibia was made up of San (Robins *et al*. 2001; Hitchcock 2001, 2002). There were

Angolan San in refugee camps and in small communities in western Zambia. One group of Ngarange Kxoe San was housed in the Meheba refugee camp located close to Solwezi in the North-Western Province of Zambia. Another Angolan San group, also Ngarange Kxoe, was making a living as farmers on the Sioma Plains in western Zambia. In the former case, the San had lived in the Meheba Refugee Camp for thirty years; they were only a small minority in the camp, and they were isolated from their kin and friends in Angola. Some of the San had difficulties in the camp because of what they felt was discrimination; there were complaints, for example, that they did not receive the same kinds of assistance as did members of other groups. One of the objectives of at least some of the San in Meheba was to establish themselves on the land as farmers. In order to do this, they had to obtain the permission of national and provincial officials as well as refugee authorities (for a discussion of Zambian policies *vis a vis* indigenous people, see Akpan *et al*. 2004).

In 1999, over 1,000 San left the Caprivi Strip region of Namibia and moved into Botswana after outbreaks of fighting (Hitchcock and Biesele 2002). Some of the problems in the Caprivi Region were a result of conflicts between the Namibian government and a secessionist movement in East Caprivi, while others were a result of incursions by Angolan fighters in West Caprivi. The refugees were housed at Dukwe Refugee Camp in northeastern Botswana. Some of the Caprivi San who had relatives in northern Botswana simply crossed the border and lived with kin. At one point, the Botswana government rounded up people who had fled across the border and transported them to Dukwe; as it turned out, a number of the San who were housed at Dukwe had Botswana identification documents. A Botswana-based NGO, Ditshwanelo, the Botswana Center for Human Rights, helped in the process of identifying people who were from Botswana at Dukwe and facilitated their return to their homes.

In 2000 the government of Namibia decided to resettle the 21,000-plus refugees at the UNHCR and Namibian government refugee camp at Osire, located near Otjavarango in central Namibia. The refugees were to be resettled in the M'kata area of Tsumkwe District West in northeastern Namibia. The problem was that there were already several thousand San and other people residing in Tsumkwe, many of whom had been resettled there in the 1970s and early 1980s by the government of Namibia. Many of the !Kung, Vasekela, and Mpungu San in Tsumkwe had been associated with the South African Defense Force as military personnel or their families (Hitchcock 2001, 2002; Suzman 2001: 41–42). The San in the M'Kata area expressed their concern about the proposed refugee resettlement plan, and they sought the assistance of human rights organizations and San support groups such as the Working Group of Indigenous Minorities in Southern Africa (Pakleppa 2004). San leaders such as John Arnold requested audiences with Namibian government ministries and with the United Nations High Commissioner for Refugees in Namibia. Preparations were made by the San and their supporters to take the government of Namibia to court to stop the refugee resettlement program. As it turned out, the relocation of the Osire refugee camp did not take place, primarily

because of events that occurred in Angola.

On April 4, 2002 a ceasefire agreement was signed in Angola between the government and the National Union for the Total Independence of Angola (Uniao Nacional para a Independencia Total de Angola, UNITA). This agreement brought an end to thirty years of conflict. Among the challenges facing the country since 2002 has been repatriation and reintegration of hundreds of thousands of refugees from surrounding countries. Within a year of the peace accord, some 25% of Angolan refugees had returned to their former homes or other places in Angola (Human Rights Watch 2003). In addition, some two million internally displaced persons had gone back to their places of origin. The former refugees and internally displaced persons have faced some serious problems, including deaths and injuries from land mines that have been sown across sizable portions of the Angolan landscape. The former soldiers and fighters in the military are going through a demobilization process and are attempting to re-establish themselves socially and economically.

A successful transition from wartime to peace in Angola requires that the fundamental rights of the various groups involved (refugees, internally displaced persons, former fighters, and host populations) be respected. While the Angolan government passed new legislation in 2002–2003 (e.g. Norms for the Resettlement of Internally Displaced Persons), there have been some problems, including lack of sufficient food for people when they return to their homes, conflicts between people over land, and restricted access to health and other social services. Some people attempting to cross borders have had to cope with extortion and have had to pay bribes in order to facilitate their movements. Clearly, efforts must be made to observe human-rights standards and to ensure that adequate resources are made available to refugees and others who have suffered as a result of the protracted conflicts in southern Africa.

Some San refugees in southern Africa have been able to obtain recognition of their needs and rights. An example of a situation in which San refugees have been resettled and have been able to obtain land and homes of their own is found in the Schmidtsdrift region near Kimberley in South Africa (Robins *et al*. 2001: 13–25; Chennels and du Toit 2004). !Xun and Khwe San from Angola and Namibia were resettled at Schmidtsdrift by the South African Defense Force in 1990. Organized originally along the lines of a large-scale refugee camp, Schmidtsdrift had lines of tents, sanitation facilities, water points, a clinic, a store, a corrugated iron school, and, more recently, an art center. The !Xun and Khwe organized a corporate representative body, a trust, and they initiated development projects. Later on, because of concerns about the power of non-San members on the trust board, the !Xun and Khwe formed a communal property association (CPA). The !Xun and Khwe Communal Property Association now owns several farms (Platfontein, 5,265 ha; Wildebeeskuil, 6,940 ha; and part of Droogfontein, 868 ha). The CPA has mineral prospecting rights on these properties. The !Xun and Khwe are hoping to carry out diamond mining on their lands, but that has yet to happen. Some of the

land at Platfontein has been leased out to a farmer for grazing purposes, in exchange for which the CPA receives rental payments.

While the !Xun and Khwe in South Africa face a variety of problems ranging from health difficulties (hepatitis, tuberculosis, and HIV/AIDS) and poverty to intra- and inter-group conflicts and high rates of unemployment, especially for women, they are engaging in efforts to build local leadership and management capacities and forge coalitions with other peoples in South Africa. A major human-rights issue that continues to dominate discussion is that of equity with regard to participation in decision-making. !Xun and Khwe appeared before the South African Truth and Reconciliation Commission (TRC) and described in graphic terms ways in which they had been treated by the military and the apartheid state of South Africa. Like other San in southern Africa, the !Xun and Khwe of Schmidtsdrift continue to feel vulnerable and have a marked distrust of outsiders and of government and local institutions. The trauma to which they were and are exposed has made the !Xun and Khwe, like other southern African San, deeply aware of the importance of human rights and fundamental freedoms.

SUMMARY

I have addressed in this chapter several fundamental questions about human rights and the rights of refugees and noted some problems of San refugees in southern Africa. A debate continues about the basis for, and the universal relevance of, human rights as now defined. Milne presents a good argument that certain rights are inherent in the logic of social life, but more sociopolitical analysis is required to explore our underlying assumptions about the nature of social and political life. Whatever the basis and rationale for the beginnings of human rights, the continuing expansion of rights legislation at state and international levels is caused by moral and political concerns and by the political process.

I am particularly concerned about the vulnerability and deprivation suffered by refugees, who are not now covered by the human rights conventions that are supposed to be universal in scope. Refugees are human and should have the same rights as all other individuals. In addition to this, many people now live for years, and even decades, as refugees. They should be allowed to naturalize and settle permanently, if they desire, in the same way as other migrants.

ACKNOWLEDGMENTS

A number of my colleagues and students have contributed to my ideas about human rights. Special thanks to Tony Oliver-Smith, Buzzy Guillette, and Winston Nagan. Two students, Mark Walkup and John McDonnell, spent many hours discussing human rights and refugees at my house and brought me many references. Robert Hitchcock provided some of the information on Angolan refugees in Zambia, Botswana, and Namibia, and I wish to thank him for his help. My wife, Holly Williams, knows how much I owe to her. I am solely responsible for any errors and controversies.

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