

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEN WIWA, individually and as Executor of
the Estate of his deceased father KEN SARO-
WIWA, and OWENS WIWA, and
BLESSING KPUINEN, individually and as
Administratrix of the Estate of her husband,
JOHN KPUINEN,

Plaintiffs,

- against -

BRIAN ANDERSON,

Defendant.

96 Civ. 8386 (KMW)

**DECLARATION OF WILLIAM J. ACEVES
ON FORCED EXILE**

1. I, William J. Aceves, am an Associate Professor of Law at California Western School of Law. I teach Human Rights Law, Comparative Law, Foreign Affairs and the Constitution, and Law and International Relations. I was previously a Ford Foundation Fellow in International Law at the UCLA School of Law. I have been awarded graduate degrees from Harvard University and the University of Southern California. I am a member of the American Society of International Law and the American Branch of the International Law Association. I am the Chair of the Extradition and Human Rights Committee of the American Branch of the International Law Association. I have published articles on international law and human rights in several law reviews, including those at Berkeley, Columbia, Fordham, Harvard, Hastings, Michigan, Pennsylvania, and Vanderbilt. I have also written several essays for the prestigious

American Journal of International Law. I have submitted amicus briefs on international law and human rights to the First Circuit, Fourth Circuit, Fifth Circuit, Ninth Circuit, Tenth Circuit, and the United States Supreme Court.

I. INTRODUCTION

2. The prohibition against forced exile is well-established under international law. Nationals cannot be expelled from their own country. See Jean-Marie Henckaerts, Mass Expulsion in Modern International Law and Practice 78-79 (1995); Louis B. Sohn & Thomas Buergenthal, The Movement of Persons Across Borders 85 (1992). See also U.N. Department of Economic and Social Affairs, Study on the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile U.N. Doc. E/CN.4/826/rev. 1 (1964).

3. While states maintain certain police powers as an incident of sovereignty, such powers are not absolute. For example, states cannot justify acts of discrimination, arbitrary detention, torture, or summary execution by merely arguing that these are valid exercises of their inherent police power. Government intervention must always comply with basic human rights. This is one of the most important principles of international law to have emerged from the twentieth century. Thus, states cannot simply argue that forced exile is a valid exercise of sovereignty.

4. Forced exile is a particularly egregious violation of international law because it implicates a variety of fundamental human rights, including the right to liberty and security of the person, the right to be free from arbitrary interference with one's privacy, family and home, and the right to freedom of movement and residence.

5. This declaration examines the definable, universal, and obligatory norm prohibiting forced exile. It reviews multilateral and regional instruments which clearly set forth the

prohibition against forced exile. It is an obligation that binds all states.

II. THE PROHIBITION AGAINST FORCED EXILE IS RECOGNIZED IN INTERNATIONAL INSTRUMENTS

6. The Universal Declaration of Human Rights is the most well-recognized and respected elaboration of international human rights norms. Universal Declaration of Human Rights, adopted Dec. 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948). While the Universal Declaration of Human Rights is not a treaty obligation, it is recognized to embody the rules of international law in the realm of human rights. See generally Ian Brownlie, Principles of Public International Law 574-575 (5th ed. 1998); Oppenheim's International Law 1001-1005 (Sir Robert Jennings and Sir Arthur Watts eds., 9th ed., 1996); Jordan Paust, International Law as Law in the United States 181, 191, 198-200 (1996). Forced exile violates numerous provisions of this seminal document. Specifically, Article 9 provides that “[n]o one shall be subjected to arbitrary arrest, detention or exile.” In addition, Article 3 guarantees the right to “life, liberty and the security of the person.” Article 12 grants every individual the right to be free from “arbitrary interference with his privacy, family, home or correspondence” Article 13(1) provides that “[e]veryone has the right to freedom of movement and residence within the borders of each state.” Article 13(2) adds that “[e]veryone has the right to leave any country, including his own, and to return to his country.”

7. The International Covenant on Civil and Political Rights (hereinafter “ICCPR”) was adopted in 1966 and formally codifies many of the rights set forth in the Universal Declaration of

Human Rights.¹ International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, entered into force March 23, 1976, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No.16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171. Forced exile violates several provisions of the ICCPR. Specifically, Article 12(4) provides that “[n]o one shall be arbitrarily deprived of the right to enter his own country.” According to the Human Rights Committee, which was established to monitor compliance with the ICCPR, Article 12(4) indicates that citizens have a right to remain in their own country. Human Rights Committee, General Comment No. 27, U.N. Doc. CCPR/C/21/Rev.1/Add.9 (1999). In addition, Article 9(1) affirms that “[e]veryone has the right to liberty and security of person.” Article 12(1) recognizes that “[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and the freedom to choose his residence.” Article 12(3) notes that the rights set forth in Article 12(1) “shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.” Finally, Article 17(1) states that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence” Article 17(2) adds that “[e]veryone has the right to the protection of the law against such interference or attacks.”

8. According to the well-regarded Restatement (Third) of the Foreign Relations Law of the United States, a state party to the ICCPR is responsible for even a single, isolated violation of these rights. Restatement (Third) of the Foreign Relations Law of the United States § 702 cmt. m

¹ As of June 15, 2000, there are 144 State Parties to the ICCPR. The United States has signed and ratified the ICCPR.

(1987).

III. THE PROHIBITION AGAINST FORCED EXILE IS

RECOGNIZED IN REGIONAL INSTRUMENTS

9. In addition to being recognized in multilateral instruments, the prohibition against forced exile is well-recognized in numerous regional instruments. These regional instruments are indicative of the customary international law status of the prohibition against forced exile.

10. The European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “European Convention”) is perhaps the most well-regarded regional human rights agreement in the world.² European Convention for the Protection of Human Rights and Fundamental Freedoms, signed Nov. 4, 1950, entered into force Sept. 3, 1953, 213 U.N.T.S. 222, E.T.S. No.5. Article 5 recognizes that “[e]veryone has the right to liberty and security of the person.” Article 8(1) establishes that “[e]veryone has the right to respect for private and family life, his home and correspondence.” Article 8(2) adds that “[t]here shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.” In addition, Protocol No. 4 to the European Convention provides in Article 2(1) that “[e]veryone lawfully within the territory of a State shall, within that territory have the right to liberty of movement and freedom to choose his residence.” Protocol (No. 4) to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed Sept. 16, 1963, entered into force May 2,

² As of April 1, 2001, there are 41 States Parties to the European Convention.

1968, E.T.S. No. 46. In particular, Article 3(1) provides that “[n]o one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.”

11. The American Convention on Human Rights (hereinafter “American Convention”) also prohibits forced exile.³ American Convention on Human Rights, signed Nov. 22, 1969, entered into force July 18, 1978, O.A.S. Treaty Series No. 36, at 1, O.A.S. Off.Rec. OEA/Ser.L/V/II.23 doc.rev.2. In particular, Article 22(5) provides that “[n]o one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.” In addition, Article 5(1) states that “[e]very person has the right to have his physical, mental, and moral integrity respected.” Article 7(1) provides that “[e]very person has the right to personal liberty and security.” Article 11(2) recognizes that “[n]o one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence” Article 11(3) adds that “[e]veryone has the right to the protection of the law against such interference or attacks.” Finally, Article 22(1) affirms that “[e]very person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.”

12. Additionally, the American Declaration of the Rights and Duties of Man (hereinafter “American Declaration”) affirms the prohibition against forced exile. American Declaration on the Rights and Duties of Man, O.A.S. Res. XXX, adopted May 2, 1948, O.A.S. Off. Rec. OEA/Ser. L/V.I.4 Rev. (1965). Article I recognizes that “[e]very human being has the right to

³ As of January 1, 2001, there are 25 States Parties to the American Convention. The United States has signed the American Convention.

life, liberty and the security of his person.” Article VIII provides that “[e]very person has the right to fix his residence within the territory of the state of which he is a national, to move about freely and not to leave it except by his own free will.”

13. Finally, the African Charter on Human and Peoples’ Rights (hereinafter “African Charter”) also prohibits forced exile.⁴ African Charter on Human and Peoples’ Rights, adopted June 27, 1981, entered into force Oct. 21, 1986, OAU Doc. CAB/LEG/67/3 rev. 5. Article 6 recognizes that “[e]very individual shall have the right to liberty and to the security of his person.” Article 12(1) provides that “[e]very 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(2) adds that “[e]very individual shall have the right to leave any country including his own, and to return to his country.”

IV. CONCLUSION

14. In sum, these multilateral and regional instruments evince a clear and unequivocal prohibition against forced exile. This definable, universal, and obligatory norm is a fundamental principle of international law and an essential feature of human rights.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 19th day of April 2001
in San Diego, California

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⁴ As of January 1, 2000, there are 52 States Parties to the African Charter.