

## G4

## Advocacy Cycle Stage 4

## Taking action – Using human rights

Section G4 focuses on using human rights in advocacy. It is a method of action that can be considered as part of Stage 4 of the Advocacy Cycle.



### Facilitator's notes

This section explores a series of questions and answers. A training workshop facilitator must be familiar with this material.

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## SECTION G4 Facilitator's notes

### What are human rights?

There are three principal approaches we can use to describe what is meant by 'human rights':

- **A philosophical or moral approach** says that rights are inherent to all human beings and are based on their common humanity. Article 1 of the 1948 Universal Declaration of Human Rights (UDHR) says that '*all human beings are born free and equal in dignity and rights*'. From this understanding human rights are moral rights and are universal. They come before, and are beyond, the law.
- **A legal approach** says that human rights are the rights that each human being is entitled to because they are outlined in various national and international laws. Examples include the right to housing or the right to life. Human beings are therefore 'rights holders' because 'duty bearers' (usually 'States'<sup>9</sup>) have corresponding legal and political responsibilities to guarantee these rights. They can be held accountable. Human rights are therefore legal rights.
- **A sociological approach** says that human rights come into being depending on the historical and political context. For example, the UDHR was a response to the horrors of the Second World War. Human rights are therefore dynamic and can change over time, so new rights can be created as new issues arise, such as the right to development, which was agreed in 1986, and the right to a clean environment, which is gradually being accepted. According to this approach, some rights may be culturally specific and not universal.

Any or all of these approaches may be used in advocacy. A philosophical approach helps us to see that human rights exist before and above the law. A legal approach helps us to know which rights can be demanded through political and legal processes. A sociological approach helps us to consider which new rights need to be addressed and included in formally executed, written documents known as *legal instruments*.



A rights-based approach to development calls for existing resources to be shared more equally, and helps people living in poverty to assert their rights to those resources. A needs-based approach, meanwhile, focuses on securing additional resources for delivery of services to people living in poverty. A rights-based approach is explicitly political and based on legal/ethical obligations, whereas a needs-based approach is motivated by charitable intentions. Our

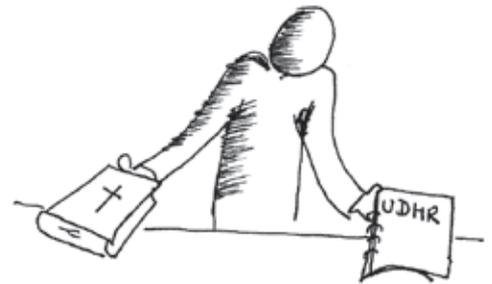
<sup>9</sup> The term 'States' in human rights instruments is used to refer to the national-level administration under the jurisdiction of the national parliament.

organisations may have a needs-based approach to project work, but we could still do rights-based advocacy. In some instances, we may be doing it without realising it or calling it that.



### Why should Christians engage with human rights and why do some not?

Some Christians have problems with the idea of human rights, saying that they are a secular idea and not in the Bible, or that we are saved by grace and do not have any rights. Others do not like the individual focus of most human rights and the lack of emphasis on corresponding responsibilities.



Here are some responses to those concerns:

- Defending human rights is one way of undertaking advocacy. It involves using the various formal written documents, prepared by a state or states, which set out basic human rights, known as *human rights instruments*. These protect people's rights through courts and legal systems, as well as through the political system.
- Human rights instruments are based on the idea of equality and the inherent dignity of every human being. Christians believe that all humans are made in the image of God and are therefore of equal worth with equal rights.
- Many of those who were involved in the initial drafting of the UDHR were Christians, motivated by their faith. The fact that the instruments are written in a secular language was to try to make them acceptable to all.
- The UDHR enshrines entitlements that most Christians would regard as basic human needs, including the right to life (Article 3). These are entitlements that most Christians would advocate for on someone else's behalf, even if not on their own behalf.
- Rights only make sense if someone has the responsibility to ensure they are respected. The Bible talks of authorities having the responsibility to do good (Romans 13), and of the requirement for Christians to defend the rights of the widows and orphans (James 1:27). Although the language of human rights is not found in the Bible, the idea of people having rights because others are responsible for them is found in numerous places (1 John 3:17; Exodus 22:22; Proverbs 31:8–9).
- A human rights framework does not need to replace a Christian understanding of the values of God's kingdom, but can be a useful legal and political instrument to improve the lives of many of the most vulnerable people.

#### CASE STUDY

#### BOLIVIA

Mosoj Yan is a Tearfund partner in Bolivia, dedicated to helping working girls and street girls. Part of the work involves developing awareness of the rights of children. For instance, every day, some of the girls travel by bus to the market in the nearby city. It used to be common for the girls to be touched inappropriately by men on the bus, but they were often too afraid to protest. That changed as the staff team at Mosoj Yan told the girls about the UN Convention on the Rights of the Child and explained to them that they had a right not to be abused. They taught them to take responsibility for upholding each other's rights. Now, when a man on the bus touches a girl from Mosoj Yan inappropriately, she shrieks. Not only is the man publicly shamed but also everyone on the bus makes sure the girl is protected. This is a demonstration of the UN Convention on the Rights of the Child being implemented at the grassroots.

Using human rights is not without its challenges for Christians and some of the main challenges are:

- Christians will want to guard against an approach to human rights that emphasises an individual's rights over collective rights and that does not address our responsibilities to our neighbours.
- There are some rights that Christians may not feel comfortable promoting, so a rights-based approach should not be adopted uncritically.
- Due to economic pressures, states can have difficulties in fully enforcing the full range of human rights that they have signed up to in international instruments, such as the right to adequate housing for all. Their commitment is to work towards their fulfilment but this may take some time.



What types of human rights are there and how do we find out about them?

There are two main types of human rights, based on two 1966 United Nations Covenants:

1. Civil and political rights, which tend to demand immediate implementation and require the state to respect individual choice and freedom, eg the right to vote, freedom from arbitrary arrest and torture.
2. Social, economic and cultural rights, which tend to demand longer-term implementation and a more active or positive contribution from the state, eg the right to education, health, work, participation in cultural life.

Human rights are found in a number of international frameworks, known as 'soft law' and 'hard law':

- **'Soft law'** refers to commitments made by negotiating parties that are not legally binding, but which carry some authority, represent moral commitments and are expected to be met as far as is reasonably possible. It includes most international resolutions and declarations. Examples include the Declaration on the Right to Development and the Declaration on the Rights of Indigenous Peoples.
- **'Hard law'** refers to binding laws, rules, instruments or decisions that are legally enforceable. It includes international treaties (also known as conventions or international agreements) and resolutions. Examples include the Convention Against Torture, the Optional Protocol on Children in Armed Conflict, or the conventions that eliminate all forms of discrimination.

The UDHR (which is soft law) is the founding document on human rights. This includes basic rights such as:

- Life, liberty and security of person
- Protection against slavery
- Protection against torture, cruel, inhuman or degrading treatment
- Equality before the law, fair trial and effective remedy
- Protection against arbitrary arrest and detention
- Freedom of movement
- Freedom of thought and opinion
- Peaceful assembly and political participation
- Adequate standard of living, including service provision such as food, clothing, housing, water and sanitation
- Work and equal pay, and employment protection
- Education.

Some human rights are collective and some are individual. Collective rights protect groups of people, while individual rights protect individual people. The concept of collective rights emerged because individual rights do not always guarantee adequate protection for indigenous people and other groups that share collective characteristics (such as women, children or people with disabilities). The survival of these groups of people may depend on recognition and protection of their collective rights. For example, indigenous territory that passes between generations should be protected by land rights specifically related to indigenous people groups.

When advocating on poverty issues, we are almost always arguing for collective rights in order to bring greater equality. This particularly applies where a group of people needs special protection if its members are to enjoy living conditions on terms that are equal to the majority of the population, and where government action is needed for that equality to be realised. For example, where children living in poor communities are not receiving education, advocacy is needed to ensure access to education is made available to all.

Advocacy using individual human rights is often appropriate for issues that are primarily to do with justice rather than poverty, such as persecution, wrongful imprisonment and torture.

Some civil and political rights, such as those that protect against genocide, slavery, torture or racial discrimination, apply to all countries, regardless of whether they have signed any treaties, and there is no opt out.

Other civil and political rights, such as the right to protection against arbitrary arrest and detention, or the right to freedom of movement, can be modified or temporarily suspended under certain circumstances, usually in times of emergency. These circumstances are outlined in the relevant treaties or legislation.

For practical purposes, we need to know what commitments our governments have made, and whether they are 'soft law' or 'hard law'. Many countries have adopted human rights into their national laws, which means that these specific rights can be defended and enforced through the national courts. Some countries also have a list of rights for all citizens written into their constitutions.

It is usually possible to find out this information from government public records, which can be viewed in government offices or libraries.

#### CASE STUDY

##### PERU

Agape, a Tearfund partner in Peru, witnessed such an escalation in sexual abuse of vulnerable children, and resultant media publicity surrounding these cases, that it decided to lobby the Congress of the Peruvian Republic to amend the national code on children and adolescents. They asked for the code to include a new provision protecting the identity of children, their families and their locations in sexual abuse cases. They argued their case on the basis that Peru had signed the UN Convention on the Rights of the Child, and that this treaty should be enshrined in national legislation. They stated that children in these cases were 'double victims', firstly because of the abuse and secondly because of the media publicity. They also said that the media needed to take responsibility for its past actions, and act responsibly towards the individuals involved when reporting sexual abuse cases in the future. Agape was supported by many organisations that promote the rights of children and adolescents and, after several years of lobbying, the bill was passed for immediate implementation.

For more information, see **TOOL 45: Checklist of international human rights treaties.**

In an increasing number of countries, governments are introducing legislation that gives citizens and communities the right to access government information about their rights and entitlements. Often this information includes details about the commitments that governments have adopted under international frameworks.

## CASE STUDY

**INDIA**

India has a national law that gives its citizens the right to access government information about their legal entitlements freely. Under the provisions of the law, any citizen may request information from a public authority or government body and expect a response within thirty days.

One of Tearfund's partners, Emmanuel Hospital Association (EHA), runs a project called 'Sayhog' (meaning 'cooperation' in Hindi), which raises awareness about the law among people living in informal settlements. This is important because many poor and vulnerable communities are not aware that the law exists and do not know how to use it. Through community meetings and training, EHA helps people to understand that they have a right to information, and teaches them the procedures to follow to access it.

In one slum in Delhi, EHA helped the community to exercise their right to information. They showed them how to complete the paperwork, where to send it and how to follow it up. As a result, the community discovered that they were entitled to a bus service, a tarmac road, an electricity connection, water, sanitation, a health clinic and a school. They also found out that each person had a right to an identity card, which would enable them to access health care and education.

At the community's request, EHA showed community members how to use this information to write to the relevant local government officials in Delhi and ask for provision of these services. This led to the community having several meetings with the officials. It was not always easy because the slum had developed on government land and the officials were fearful about losing ownership of the land. However, the community persevered because they knew their rights under the law. Eventually the local government paid for the services requested. At the same time, the empowered community members continued to use the law on an ongoing basis and to tell others about it.



How can human rights be used in advocacy?

- In collective actions
- For individual cases of human rights abuses
- As the basis for any advocacy project or programme.

**At national level**

Some states automatically incorporate international treaties into their domestic laws, while others have processes that require parliamentary approval or even specific legislation. Such rights or treaties are binding and are often considered to have the same importance as constitutional rights.

Once a treaty or the rights of a treaty are adopted into domestic legislation, there are various possibilities for members of civil society to exert pressure for these rights to be enjoyed by all people in their country. Politically, pressure can be placed on the executive and legislative branches of the government to develop and implement policies and programmes to respect the rights in question. Legally, when rights are violated, cases can be brought before the judiciary in order to seek redress.

## CASE STUDY

**EGYPT**

Joint Relief Ministry (JRM), a ministry of the Episcopal Church, was a Tearfund partner in Egypt that worked with displaced people from the Horn of Africa. Many of the displaced people wanted to be allowed to remain in Egypt or settle permanently in another country, so JRM helped them apply and appeal to the UNHCR (the UN refugee agency), which has responsibility for determining refugee status. JRM, together with other supporting organisations, trained and guided members of the displaced community on how to advocate to UNHCR. With particularly difficult cases, legal advice was obtained. This was only possible because JRM had, and maintained, ongoing good relationships with the UNHCR to ensure that the help given was useful and procedurally up to date.

**At inter-governmental or regional level**

Each convention has many similar rights and is based on the universality of human rights, but there are also some differences, such as the emphasis on peoples' rights in the African Charter. Each commission or court permits state complaints and individual complaints and gives advisory opinions to the states in question. To present a complaint, certain criteria need to be met that depend on the body in question.

For more information, see **TOOL 44: Inter-governmental or regional human rights systems.**

**At international level**

When a government signs an international human rights treaty, it commits to implement these rights and to be accountable to the treaty body that is monitoring their implementation. Some rights can be implemented more easily with immediate effect (eg protection against torture), and others will require more progressive measures towards their full realisation (eg access to quality health care or employment for all). Even those that may take more time have certain minimum standards that must be met immediately. One advantage of the international treaties is that they give specific details for what many rights mean in practice.

The different treaties have different mechanisms to monitor state implementation. Civil society bodies can participate in or activate most of these procedures, depending on the treaty body. The treaty body cannot enforce compliance with the relevant treaty but findings can have significant political clout and can be used to raise awareness of human rights abuses and bring the desired change.

## CASE STUDY

**LATIN AMERICA**

A Tearfund partner in Latin America that uses a rights-based approach co-convened three International Tribunals of Opinion as part of a coalition of NGOs and faith-based organisations. The tribunals focused on the role of the paramilitary groups and the police in forced military recruitment and forced displacement. Public hearings took place before each formal session, and the evidence given exposed mass breaches of human rights, such that the tribunals found the government guilty. This was later upheld by the European Parliament.

For more information, see **TOOL 45: Checklist of international human rights treaties.**



## TOOL 43

**Questions to address when dealing with a human rights case**

If you are considering bringing a case of human rights violations to the national, regional or international system, you will need to think about some of the following issues:

- What are you trying to achieve (raise awareness, gain a favourable judgment, persuade the government to address the issue)?
- What are the chances of success?
- Does the organisation or network have enough legal expertise or are additional allies needed?
- Do you have enough resources? Is this the best use of our time and resources (bearing in mind that some cases can take years to complete)?
- If you are representing people whose rights have been violated, do you have their permission? What implications may this have for them?
- Do you have enough evidence to show that there has been a violation of human rights?
- What specific domestic law, policy or practice contravenes the international or regional agreement, or is being violated?
- In the case that you have exhausted domestic procedures, is it best to address the issue at an international or regional level?
- Does the case fulfil the criteria put down by the relevant body? (For example, have domestic remedies been exhausted? Is it presented on time?)
- Is a human rights approach the best approach to take, or would it be better to focus efforts on raising awareness and changing laws, policies and practices at the domestic level?



TOOL 44

## Inter-governmental or regional human rights systems

The African, Inter-American and European systems all have complaints procedures. If you want to submit a case, it must fulfil certain criteria, which are shown here:

### The Inter-American Commission on Human Rights

Use when a case:

- Is compatible with rights under the Conventions of the Inter-American System
- Contains the necessary information
- Has exhausted domestic remedies
- Is lodged within six months of exhaustion of domestic remedies
- Is not pending before another international process

Articles 23–33 of the Rules of Procedure

### The European Court of Human Rights

Use when:

- A case is compatible with the European Convention on Human Rights
- All domestic remedies have been exhausted
- The application is not anonymous nor substantially the same as a matter already examined by the Court
- The applicant has suffered significant disadvantage

Article 35 of the European Convention on Human Rights

### The Arab States system

In 2004, the League of Arab States adopted a revised version of the Arab Charter on Human Rights (1994). In 2008, it came into force, overseen by the Arab Human Rights Committee.

### The African Commission on Human and Peoples' Rights

Use when a case:

- Has exhausted local remedies
- Is submitted within a reasonable period of time after local remedies have been exhausted
- Is compatible with the Charter of the Organisation of African Unity or the African Charter on Human and Peoples' Rights
- Is not based exclusively on news disseminated through mass media

Article 56 of the African Charter

### The Asian system

Asia does not yet have a region-wide, legally-binding human rights charter. However, the ten Association of Southeast Asian Nations (ASEAN) member states signed the ASEAN Charter in 2007, which is effectively legally binding and which includes the promotion and protection of human rights.



## TOOL 45

## Checklist of international human rights treaties

To find the treaties, and discover which countries have ratified them, visit [treaties.un.org](http://treaties.un.org)

### International treaties

Within the UN system, there are nine international treaties (with optional protocols) with treaty bodies that oversee their implementation:

- International Convention on the Elimination of all forms of Racial Discrimination (1965)
- International Covenant on Civil and Political Rights (1966)
  - First Optional Protocol (1966)
  - Second Optional Protocol on the Abolition of The Death Penalty (1990)
- International Covenant on Economic, Social and Cultural Rights (1966)
  - Optional Protocol (2008)
- Convention on the Elimination of all forms of Discrimination Against Women – CEDAW (1979)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment – CAT (1984)
- Convention on the Rights of the Child – CRC (1989)
  - Optional Protocol on the Involvement of Children in Armed Conflicts (2000)
  - Option Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000)
- Convention on Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Convention on the Rights of Persons with Disabilities (2006)
- Convention for the Protection of All Persons from Enforced Disappearances (2006)

There is also the Convention on the Prevention and Punishment of the Crime of Genocide (1948), which does not have a separate treaty body.

### Treaty bodies

Each international treaty is overseen by a treaty body or committees made up of 10 to 25 independent experts that have been nominated by state parties.<sup>10</sup> They seek treaty compliance by states through:

- State reporting on each treaty, usually every two to five years. The committee evaluates state reports and adopts concluding observations of actions that need to be taken
- Formal complaints procedures from individuals who believe their rights have been violated eg under the Convention Against Torture
- Inquiry procedures where the committee considers there is a gross or systematic violation of human rights eg under the Convention on the Elimination of all forms of Discrimination Against Women
- Visits to a country that has ratified a treaty eg to inspect conditions in prisons.

### Declarations

Important international human rights declarations (without mechanisms or bodies to monitor their implementation) include:

- Universal Declaration of Human Rights (1948)
- Declaration on the Right to Development (1986)
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)
- Declaration on the Rights of Indigenous Peoples (2007).

<sup>10</sup> The Optional Protocol of the Convention on Economic, Social and Cultural Rights came into force in 2013.

## SECTION G4 Training exercises



### EXERCISE 48 Understanding human rights

**Aim** To understand different types of human rights

**TYPE** This exercise works well in groups but could be done by individuals working on their own

**METHODS** Buzz groups, brainstorm, plenary discussion

**HANDOUT** TOOL 45: Checklist of international human rights treaties

- STEPS**
1. Ask participants to work in small groups to brainstorm as many different human rights as possible. (For example, freedom of speech, right to privacy, right to education, protection against arbitrary arrest and so on.) Each group should nominate someone to write their suggestions down in a list. Allow at least five minutes for this.
  2. Ask the groups, one at a time, to suggest one human right from their list. Record each answer on flipchart paper as it is shared. Keep going until there are no new suggestions and all the items on each group's list have been shared.
  3. Hand out TOOL 45: Checklist of international human rights treaties to see if there are any treaties containing rights that have not been identified. Add these to the list on the flipchart paper, if applicable.
  4. Ask participants to consider the list and invite them to suggest which rights might be collective rights and which might be individual rights, and why.
  5. Lead a plenary discussion around the differences between collective and individual rights and why this matters for advocacy. Use the Facilitator's notes to help. The discussion should also cover the differences between civil and political rights, and social, economic and cultural rights. Include the different roles that the state should normally play in ensuring each type of right is upheld.
  6. Discuss how the participants would find out what their government's stance on different rights is and how they could use that information in advocacy. If appropriate, refer to Section E1 on Research and analysis.



### EXERCISE 49 Recognising human rights violations

**Aim** To consider whether to file a case of human rights abuse

**TYPE** This exercise works well in a group but could be done by individuals working on their own

**METHODS** Sticky notes or blank cards, brainstorm, plenary discussion

**HANDOUT** TOOL 43: Questions to address when dealing with a human rights case

- STEPS**
1. Give all participants some sticky notes or blank cards.
  2. Explain to participants that human rights advocacy will often involve presenting a case of a human rights abuse or a situation where a human right has not been fulfilled. Give examples of abuses, using the Facilitator's notes to help with ideas.
  3. Ask participants to consider presenting a case for alleged human rights violations at the national level and to write a key question to ask (eg 'Why is the government not providing

water and sanitation for everyone in the country?'), or an action to undertake (eg 'We need to educate children about their right to be protected from abuse and exploitation'), with just one question or action on each sticky note or card. If appropriate, they should consider a real situation that they or their organisation is dealing with.

4. Stick the sticky notes or cards on the wall or place them on the floor.
5. Invite participants to group the ideas in themes.
6. Lead a plenary discussion around the key questions and themes, and consider what first steps participants and their organisations would take to address the abuses.
7. Distribute **TOOL 43: Questions to address when dealing with a human rights case**.



## EXERCISE 50 Drafting a human rights complaint

**Aim** To understand what is needed to draft a complaint of a potential human rights abuse

**CONTEXT** This exercise may require access to the internet or advance preparation by participants. Otherwise, the facilitator will need to provide relevant human rights documents and forms to file complaints. If the facilitator does not have much experience, it may be useful to bring in a human rights lawyer for this session. Please be aware that the exercise is only designed to provide a taster; in real life, it can take a long time to draft a full complaint.

**METHODS** Advance internet preparation, research, document writing, small group discussions, individual work, plenary discussion

**HANDOUTS** **TOOL 44: Inter-governmental or regional human rights systems**  
**TOOL 45: Checklist of international human rights treaties**

- STEPS**
1. Give participants a brief description (and written details) of a potential human rights abuse, or ask them to think of one themselves.
  2. Explain that they need to draft a complaint before the appropriate human rights body. Use the Facilitator's notes to help with guidance for this.
  3. Here, the facilitator will need to gauge the level of the group to determine whether he or she will ask them to draft a complaint at a national, regional or international level. Whatever the decision, the facilitator will need to be armed with the relevant information about the processes to go through. This includes details of regional and international procedures, which are provided in the **TOOL 44: Inter-governmental or regional human rights systems** and **TOOL 45: Checklist of international human rights treaties**, but consideration must be given to the fact that each national context will be different.
  4. Distribute copies of **TOOL 44: Inter-governmental or regional human rights systems** and **TOOL 45: Checklist of international human rights treaties** and highlight the internet links to the relevant treaty body, treaty and application procedure. Alternatively, provide printed material with all of this information on it, prepared in advance.
  5. Ask participants to work individually or in small groups to draft the complaint.
  6. Invite each group (or selected individuals) to present their findings in plenary.
  7. Facilitate a plenary discussion that encourages participants to highlight issues, concerns, difficulties and things that went well.
  8. Lead a plenary discussion on methods of presenting cases.