

10TH ANNIVERSARY OF THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT: AN AFRICAN PERSPECTIVE.

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INTRODUCTION

The Guiding Principles on Internal Displacement adopted by the United Nations General Assembly, in 1998, remain to date, the international law principles, which, though not binding on states, describe the phenomenon of displacement, the duties and obligation of the state whose citizens suffer displacement, and the obligations of other non state actors during displacement.

During the 10 years since their adoption, they have been widely recognized by governments, civil society, and the international community generally, as the framework for dealing with displacement issues. Indeed, among the achievements attributable to the elaboration and adoption of the Guiding Principles, is the unanimous acceptance by the international community of what constitutes internal displacement, or who an internally displaced person is. However, it is also true that the adoption of the Guiding Principles, has generated positive responses by governments, civil society and the international community to deploy a various measures to deal with IDP issues.

CHALLENGES

Foremost of all, the Guiding Principles are a powerful advocacy tool for the rights of internally displaced persons.

At the institutional level, the Guiding Principles have inspired a more proactive approach towards addressing displacement issues, through the establishment of the international, regional and national offices and mechanisms, as well as coordination of efforts. The United Nations has established the office of the Representative of the Secretary General of the United Nations on the Human Rights of Internally Displaced Persons. The United Nations has adopted the inter agency coordination approach, when delivering humanitarian assistance in places or countries affected by internal displacement.

Similarly Africa, which has the largest displacement case in the world, has also adopted several initiatives and measures to address the issue of displacement. The magnitude of the displacement problem in Africa, demands both African and international solutions. It is estimated that there are between 13 and 17million IDPs in Africa, mainly being victims of displacement by armed conflicts.

Displacement caused by natural disasters, the increasing incidence of flooding in recent times, as a result of changes in global weather patterns, is increasingly affected thousands of people in a number of African countries. The flooding in Togo, Ghana, Uganda, Somalia during the last two years, caused the destruction of infrastructure, worth millions of dollars, and left several thousands of people homeless. Displacement caused by natural disasters, though not as traumatic as the conflict induced, can reverse gains of

economic development, in areas which are in some cases marginalised communities, such as the case of Somalia and Northern Uganda which are conflict affected areas.

It is therefore not uncommon in African for displaced persons to suffer double or even multiple displacements, due to various or combinations of causes of displacement.

The conflicts in North eastern Congo, where the forces of renegade Gen. Laurent Nkunda have been fighting the government forces in North Kivu intermittently in the last 10 years, and the attacks by the remnants of the LRA in the confluence of the DRC, CAR and Sudan border, have continued to bring displacement to innocent civilian populations in those parts of the continent. The conflict in Somalia has caused displacement on a massive scale. The international community has allowed itself to remain aloof on this humanitarian disaster, simply because Somalia is a “war against terror” case. Displacement in Somalia is an international humanitarian disaster. The wanton violation of human rights and international humanitarian law by the parties to the Somali conflict cannot be allowed to continue.

The efforts deployed by the African Union Mission in Somalia, AUMSOM, to consolidate the authority of the Transitional federal Government of Somalia, the TFG, and stabilize the failed state, is facing mounting challenges due to lack of resources, the internal conflict, and the indifference of the international community. Displacement continues unabated.

In Darfur, internal displacement is yet to end, with an approximately 2.5million IDPs still remaining camps. The security situation remains tense in spite of the efforts by the international community, such as the measures to support the African Union, through the adoption of United Nations Security Council Resolution...of July 31, 2007, for the creation of UNAMID, a hybrid UN/AU forces to protect the humanitarian aid convoys and workers, and the IDPs.

These are some of the challenges to the IDP protection regime faces, particularly in Africa, in the absence of a binding legal framework, or as a result of the failure by the international community to follow through the various peace agreements and resolutions for the maintenance of international peace and security in the various African conflict zones.

Development induced displacement is a growing problem on the continent. There is a major disconnect, between policy makers and victims of development induced displacement. African government have adopted economic growth oriented policies, through promotion of investments and other major programmes, which impact negatively on habitat and livelihood issues. Protection measures and mechanisms have not been incorporated in such economic development projects during the planning stages.

There is currently a growth in the demand and extraction of natural resources, leading to the grant of concessions to huge tracts of land for mineral prospecting and forest product harvesting. In certain instances there has been an increasing in population displacement,

without commensurate compensation, breeding discontent and civil strife. Hence, there is need for widening the debate on displacement issues in the area of development caused displacement, in order to ensure that African governments adopt measures to protect internally displaced persons in all situations of displacement, so that populations are not marginalized.

AFRICAN MECHANISMS

Africa has put in place a number of different measures, include institutions and legal instruments, to deal with internal displacement, The African Union Commission has established within its ranks the Humanitarian, Refugees and Displacement Unit, which coordinates AU policy on forced displacement issues, including internal displacement matters. This is a political approach to dealing with the problem. At the representation level, the Permanent Representatives Committee has established a Sub Committee of Ambassadors to coordinate policy on displacement issues. The PRC reports to the Executive Council of Ministers, which reports to the Assembly. This is part of an elaborate structure established to deal with peace and security, as well as human rights issues on the continent, under the terms of the Constitutive Act of the African Union.

Displacement is a violation of human rights. Displacement violates the dignity of the human beings. Displacement infringes a bundle of rights. The deprivation of livelihood, shelter, the unhealthy environment during displacement, and lack of respect of rights, such as the rights to freedom of movement, affects access by Internally Displaced persons of their rights to their individual and collective rights, ie; civil, political, and economic, social and cultural rights. All these are well articulated by the Guiding Principles.

In response to the prevalence of displacement, and the gross violations of the human rights of IDPs in Africa, the African Commission on Human and Peoples' Rights, the organ charged by the African Union to promote and protect human rights, established a special mechanism to monitor and report to the Commission on a regular basis, the displacement situation on continent, and violations of the rights of IDPs.

The mechanism of the Special Rapporteur on Refugees, Asylum Seekers, IDPs and Migrants in Africa was established pursuant to a resolution of the African Commission in December 2004. The Special Rapporteur has been involved in awareness creation, by engaging representatives of African governments, civil society, as well as inter-governmental organizations, on the plight faced by IDPs on the continent, the causes of displacement, and the rights of IDPs. The Special Rapporteur has undertaken investigation missions to a number of African states where displacement has occurred. He undertook missions to Darfur in 2004 and 2006.

The Special Rapporteur has also reported extensively on the displacement occurring in all conflict zones, and as a result of natural disaster, highlighting the human rights issues, and urged African states involved, the African Union and the international community to respond to the displacement situations.

The reports by the Special Rapporteur, which highlight the violations of the rights of IDPs, are submitted to, and adopted by the African Commission, and subsequently, to the states involved and the Assembly of the African Union, are widely circulated by the Secretariat of the African Commission.

The African Union, recognizing the growing displacement problem on the continent, has embarked on a bold initiative of codifying a legal instrument on the prevention and suppression of internal displacement in Africa. The instrument traces its roots to the principles enunciated by the Guiding Principles. Upon its adoption, it shall establish a binding legal framework on the continent to regulate state conduct in dealing with internal displacement, during the various stages of displacement, including adoption of measures to prevent displacement, as well as providing a legal basis for the protection of IDPs.

The draft AU Convention on the Prevention and Protection against Internal Displacement, reminds state parties to abide by their international obligations assumed under various human rights and international humanitarian law instruments. It obliges non state actors during armed conflicts to abide by their international humanitarian law obligations under the 1977 additional protocols to the Geneva Conventions. The draft convention is a document aimed at harnessing Africa's collective efforts to combat the scourge and effects of displacement, whatever their causes.

It reiterates the rights of IDPs to the protection by the state, and the right of IDPs to enjoy their rights, including the guarantee to the right to life, freedom of movement, the exercise of political and civil rights, rights to property, and other economic and social, cultural rights. It enshrines the principle that IDPs have a right to receive humanitarian assistance, and an obligation by the state to provide protection to humanitarian assistance, subject to the respect by humanitarian community for the sovereignty of the state. It is expected that the draft AU convention shall be adopted not later than the summer of 2009.

The draft AU Convention is the work of African legal experts and representatives of African governments, who recognize that the problem of displacement on the continent cannot be left to governments as an internal issue. After all the Constitutive Act of the African Union no longer allows African states to act with impunity on matters of human rights, democracy, governance, peace, and security.

The states of the Great Lakes Region, adopted the 2005 Declaration on Peace, Democracy and Development, adopted a number of Protocols including the Protocol on Internal Displacement, which incorporated the Guiding Principles en bloc.

A number of African states, such as Angola, Burundi and Liberia have been inspired by the Guiding Principles and adopted legislations, or as in the case of Uganda, a national policy for dealing with internal displacement in their countries.

CONCLUSION

The adoption of the Guiding Principles on Internal Displacement ten years ago generated a movement for the protection of internally displaced person. Whereas all the legal principles contained in the Guiding Principles are derived from international human rights and humanitarian law instruments, it is evident that the Guiding Principles helped in focusing on the problem which had hitherto remained and been considered a domestic issue.

The legacy of the Guiding Principles in Africa is far reaching. With the adoption of the various legal instruments and mechanisms highlighted hereinabove, it is evident that the problems of displacement on the continent will continue to receive the attention of all states and other actors, notwithstanding the challenges.

The commemoration of the 10th Anniversary of the Guiding Principles is thus a tribute to the United Nations for its foresight in adopting the principles and thus a framework for recognition and protection of IDPs through out the world, as well as Africa.

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