

THE FORCED DISPLACEMENT: A LATIN AMERICAN RETROSPECTIVE TROUGH THE LAW ON THE PREVENTION AND TREATMENT FOR THE FORCED DISPLACEMENT OF THE STATE OF CHIAPAS

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Speaking of forced internal displacement of people is a relatively new issue since the study on the subject is recent in Latin America; however, this phenomenon has existed in the world for several years there have been numerous cases thereon.

To the previously stated understand this phenomena, it is first necessary to define what is meant by forced displacement of people. Numerous definitions exist; however, in order to build a proper concept on it is necessary to identify some principle elements. First, the displacement or mobilization of people is not voluntary since their displacement is caused by reasons beyond human will that force one to move abandoning his or her place of residence and their normal economic activities. Second, the motives that generate displacement are under direct threat of violating life, physical integrity, safety or personal freedom. This movement is characterized as extended under the failed conditions for displaced people to return to their place of origin. Finally, one must understand the forced displacement as an internal phenomenon, to occur within the territory of the same

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state. If the displacement exceeds national boundaries and the displaced are staying in a country other than their original, this is not a forced internal displacement of people but a refugee situation.

Through the Office for Displaced Persons the United Nations (“UN”), developed the Guiding Principles on Internal Displacement (the “Guidelines”) which are the first international standards specifically tailored to the needs of victims of forced internal displacement. These guidelines were presented to the UN in 1998 after the creation of the United Nations Human Rights Convention, which was assigned by the representative of the Secretary-General on Internally Displaced Persons. The task of this voluntary mandate created in 1992 is to examine the extent to which international law addressed the needs of the internally displaced persons.

The Guiding Principles on Internal Displacement define the forced internal displacement of people as “*coerced involuntary movement takes place within national borders*”.¹ This Act identifies the violent situations widespread human rights violations and natural disasters or human-triggered as the main causes of this phenomenon.

Internationally, the countries most affected by internal displacement phenomenon have been the African countries specifically Sudan and Angola. Internal conflicts have arisen in these territories for several years and have provided the most alarming numbers in regards to the internal displacement phenomenon. However, in Latin America there are numerous precedents in different countries have set a model for forcibly displaced persons, particularly Colombia, Peru and Mexico.

I. Colombia

Colombia, the American country where, to date, there have been the highest numbers of forced migrations within its territory. Up until the year 2004, approximately one million people have been displaced and according to official figures, about three million more have recently been displaced throughout the Colombian territory. The displaced population accounts mainly for women and children that make up this population.

In response to this phenomenon, the Colombian government recognized these actions as a concern in 1995 of which appropriate actions began to take place. The principal action occurred on 1997 with the enactment of Law No. 387 that completely addresses this issue in accordance with various international instruments. In agreement with Article I of the Act, the

¹ <http://www.idpguidingprinciples.org/> Fecha de consulta: 2 de mayo de 2013.

term shifted to any person who has been forced to migrate within the national territory abandoning his place of residence or customary occupation because of his or her life, physical integrity, safety, or personal freedom have been violated or are directly threatened, during any of the following situations: internal armed conflict, internal strife, widespread violence, massive violations of human rights, international humanitarian law violations or other circumstances arising from the previous situations that may change or drastically alter public order.

It is interesting to note is that, unlike the definition established in the Guiding Principles on Internal Displacement, Colombia's Law No. 387 recognized causes of forced displacement situations much more specific than those provided by the Guiding Principles issued by UN. Colombia recognized them as such: (i) internal armed conflicts, (ii) the internal strife, (iii) generalized violence, (iv) gross violations of human rights, (v) breaches of international humanitarian law and / or (vi) other circumstances arising from previous situations that may alter or drastically alter the public order.² These principles serve as a guide to be implemented in countries that confront problems such as adapting living to local problems, so that the Act suggests that we was drafted by way of giving. This immediate solution to the problem that then thus, although to a lesser extent from the government of Alvaro Uribe, exists in Colombia.

II. Peru

In Peru, we can say that the internal displacement of people in this country is also due largely to the widespread violence. This conflict has been apparent in Peru since the seventies and eighties. When the paramilitary group *Sendero Luminoso* originated, armed conflicts resulted due to the "against insurgent" policy when the Peruvian armed forces deployed in order to counter the growing terrorist group.

Initially it was estimated that during 1998 there were around 600,000 and 1'000,000 people displaced in Peru. These people stemmed mainly from very poor areas such as Ayacucho, Huancavelica, Apurimac and parts of the forest in the valleys of the Ene River and Huallaga. Still around 65% of the displaced were women of whom 13.3% were widows, information certainly showed the displacement to be due to the widespread violence

² Law No. 387 by adopting measures for the prevention of forced displacement, the care, protection, consolidation and socioeconomic stabilization of forced displaced by violence in the Republic of Colombia, published by the Congress of Colombia on July 18, 1997.

and clashes between paramilitary groups and the Peruvian armed forces in those years.³

Following the same path as in Colombia, the Peruvian government took action in such a situation, so in 2003 during the government of Alejandro Toledo, Peru's Congress passed the Law No. 28,223 concerning Forced Internal Displacement of Persons approving a year later in 2004. Its rules, ultimately articulating that the law in Peru came into force in May of that year. The second article of the law defines displaced as "*persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result or to avoid the effects of a armed conflict, situations of generalized violence, violations of human rights and who have not crossed an internationally recognized state border*".⁴

This same article classifies the movement into two categories, (i) the violence of forced displacement by internal or international conflict or action of armed groups, which is characterized by spontaneous and unpredictable, and (ii) the removal or evacuation, caused by unforeseen violent action by agents, which, unlike the previous one, is organized and conducted. This law certainly supports the study of the characteristics and the feasibility of the displaced, whether it is organized or not, elements not captured the Guiding Principles on Internal Displacement and UN Law 387 of Colombia.

III. Mexico

With respect to Mexico, diverse backgrounds on this phenomenon have been documented throughout history since about fifty years ago, but have recently grown with the organized crime. The unleashing of the displaced from Ciudad Juarez to Veracruz (better known as the "*juarochos*"), or the various events that occurred in the state of Chiapas worsened the situation of the displaced, so much so that recently the first law in Mexico Latin America and fourth in preventing forced internal displacement of people was locally enacted. It was developed in accordance with the highest international standards and world renowned for their effectiveness in this respect.

³ Information obtained from the Common Country Assessment of Peru prepared by the United Nations system in the year of 1998 (<http://www.onu.org.pe/Upload/Documentos/CCA-Perurevisado.pdf>). Fecha de consulta: 2 de mayo de 2013.

⁴ Law No. 28,223 concerning Forced Internal Displacement of Persons published by the Congress of the Republic of Peru on May 19, 2004.

To understand the significance of this phenomenon in Mexico it is required to first mention that gathering the information was difficult because in Chiapas was officially documented until long after the displacements started. This emphasizes the authorities' initial disinterest on the subject but, thanks to the invaluable journalistic testimonies, the tireless work done by various human rights organizations and recently the notorious work of different government bodies, today we have a vast knowledge of the subject and it is possible to determine the approximate date this started but mostly the causes that led to it.

With respect to the causes, the best known are the rise in Chiapas' guerrilla group called the Zapatista Army of National Liberation and its clashes with the Mexican army during the nineties and during the recent increase of drug trafficking nationwide, specifically in northern states of the country. Focusing on a more local approach, there is no doubt that the state of Chiapas has been the most affected by this phenomenon, which is due to various causes which have not only attributable to social conflicts but have been a result of natural disasters and infrastructure projects. Forced migrations have existed in this state since 1980 as a result of the construction of the dam Chicoasén and because of the eruption of Chichonal on November 1982.

However, one of the regions that has experienced the largest population displacement is the town of San Juan Chamula, where forced migration records date back to 1974. It was during the years of 1988 and 1989 when the expulsions were constant and there were a great number of victims, about 23 cases of forced displacement were recorded. This means that about 80 families from different populations were affected, suffering in most cases the abuse, threats, arbitrary arrests and the seizure of assets and property, as consequence of the excess the political and religious chieftdom in the area.⁵

In 1994, in San Juan Chamula nine cases of forced evictions were recorded, affecting about 350 people. These evictions worsened the problem in this region, which resulted in the decision by the National Commission of Human Rights issuing the Recommendation No. 58/94,⁶ the first in the field. It is the result of a series of complaints about various human rights violations in the region of San Juan Chamula since 1990 as a result of various expulsions. To date, about 50,000 victims can be quantified as for-

⁵ According to official information, published by the State Government of Chiapas, in recent years.

⁶ Published by the Mexican Commission of Human Rights on April 19, 1994, and sent to (i) the Governor of the State of Chiapas, (ii) the President of the LVIII Legislature of that State and (iii) the Mayor of San Juan Chamula, Chiapas, and referred to the case of the expulsion of indigenous in different places of the municipality of San Juan Chamula.

ced displacement in this area, not counting those generations born during displacement.

This phenomenon has affected the country since 2007, particularly as a result of violence caused by drug cartels and the military response, which has caused shifts in the states of Chihuahua, Tamaulipas, Nuevo León, Durango, Guerrero, Sinaloa, and Michoacán. The State of Chiapas has the longest history of displacement in the country and as a consequence of it on February 14 of this year the State Congress of Chiapas by Decree No. 158 adopted the Law on the Prevention and Treatment of Internal Displacement after published it in the Official State Journal No. 355 dated February 22, 2012. It consists of 41 items, which for the first time provides an official definition of displaced, which is referred to as persons or groups of persons who have been forced or obliged to flee, flee or to leave their place of residence. It is also the first law on the subject passed in Mexico and in Latin America's fourth level; it is considered that it incorporates the highest standards of human rights protection of the displaced population to fully adopt the Guiding Principles on Internal Displacement Nations United. The main purpose is to establish the basis for preventing internal displacement in the State of Chiapas and creating a legal foundation that protects the rights of those who have been forced to leave his or her place of habitual residence in order to ensure attention during displacement and facilitate the action of the state in creating lasting and preferably permanent solutions to displacement.

Likewise, the law creates the State Program for Prevention and Internal Displacement for the main purpose of designing and implementing measures to prevent displacement and to resolve the causes that gave rise to them and develop contingency plans. In addition to providing humanitarian assistance to affected persons during displacement, the law creates mechanisms to provide legal assistance to the displaced population to investigate the facts and the restoration of violated rights and the defense of their collateral. According to the law, the program will be implemented and monitored by a newly created body, the State Board of Comprehensive Care Internal Displacement, which in terms of Article 20 the functions will include: (i) develop, implement and evaluate the State Program, (ii) promote the creation of a state fund contingency prevention and internal displacement, (iii) research and analysis on the causes and effects of displacement, (iv) developing legal assistance programs for the rights of the displaced population, (v) develop and update the State Registry of Displaced Population and, (vi) promote cooperation with international organizations for care and humanitarian assistance to internally displaced persons as well as the various public, private social and immersed in the area.

The relevant knowledge and study of the Law on Prevention and Internal Displacement of Chiapas shows that this study is eminent locally. The problem of forced displacement is clearly not exclusive to one state within Mexico but has become a national problem under the many movements registered in the states of Chihuahua, Tamaulipas, Nuevo León, Durango, Guerrero, Sinaloa and Michoacán. Despite being a significant effort by the Government of the State of Chiapas, it is insufficient for lack of national impact and does not represent an effective solution to the problem that plagues the rest of Mexico. This situation invites reflection on the need for a Law on the Prevention and Treatment of forced internal displacement of people in Mexico at the federal level.