Public policy to address displacement in Mexico

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At hearings of the Inter-American Commission on Human Rights in November 2013 on the human rights situation in Mexico the issue of the internally displaced in particular caught my attention, both due to its current serious level and for its potential impact in the not too distant future.

There are an estimated 160,000 displaced persons in our country. Until 2007, this phenomenon was the result of land disputes, local conflicts, religious intolerance, large-scale building projects and projects of enforced urbanisation, the building of dams, natural disasters and the Zapatista conflict. Since then the main causes have been criminal violence, the activities of some members of the security forces and corruption. The vulnerability of most of the families or individuals who have been forced to abandon their homes is clear but the mistreatment to which they are exposed does not end when they leave their homes; they are often subsequently subjected to further serious abuses and acts of corruption as they lack identity documents and therefore cannot access essential services or even the minimal requirements for living. Women, children and indigenous peoples seem especially affected.

The first point to make is that this has been given little attention by Mexican society, practically remaining at the level of denial. Legally there is some limited coverage given to this issue, including the law for the Prevention and Attention to Internal Displacement in the state of Chiapas (February 2012, the first state to legislate on this matter), and an initiative for a General Law on the Prevention and Treatment of Internal Displacement presented to the Senate in December 2012, which is currently working its way through the house. Similarly, the Senate has approved various motions to call for a report on the situation of the internally displaced from the President of the Republic along with the enactment of public policies to provide them with due assistance.

The second point is that there is a complexity inherent in the causes of forced internal displacement. Residency in Chiapas, the presence of conflict and being a mother or even simply a woman are circumstances that combine to force individuals from their homes. Similar associations can be seen with residency in Sonora, Michoacán or Oaxaca, the war on drugs, the construction of dams, and membership of an ethnic group, for example. Without having direct causal or linear explanations, it is possible to warn of likely sets of conditions that may expose an individual to the risk of displacement. On the basis of this conclusion, it seems there are two types of public action to be taken, through the corresponding legal pathways.

The first of these, of a preventative nature, must be the identification of the general factors that may lead to displacement. These may be aggravating factors and there should therefore be public action taken to help remedy these – but if what leads to forced migration is a coincidence of factors, the appropriate action would be to counteract one or several of these in order to avoid ever larger segments of the population going down this path.

The second type of public action is remedial. Given that forced displacement is in itself a violation of human rights, it is necessary to remedy the situation of those who are displaced and who suffer the effects of displacement – including stigmatisation, rootlessness, feelings of frustration, family disintegration, and limited hopes for reparation, compensation or access to justice.

We must start by recognising that displacement is a serious issue in Mexico today. Given the way in which the criminal
Reflections from the encampment decision in the High Court of Kenya

Anna Wirth

Civil society groups are embracing a recent victory in the High Court of Kenya as a reminder of the important role that strategic litigation can play in the enforcement and promotion of refugee rights.

On 26th July 2013, the High Court of Kenya delivered a judgment in a remarkable vindication of the rights of refugees. The Court struck down a government policy that, if implemented, would have fundamentally violated the freedoms and dignity of all refugees living in Kenya’s urban areas.

The case, which was brought by Kituo Cha Sheria, a local non-governmental organisation (NGO), stands as a reminder that strategic litigation has the potential to alter the legal landscape for all refugees. When executed properly, it has the potential to provide large-scale recourse for rights violations, create positive human rights jurisprudence, and send a strong message to governments and members of public that refugees are not just people with needs but people with rights to be claimed and enforced. When appeals to the legislative and executive branches of government go unacknowledged, civil society groups, such as the NGO that drove the case to victory in Kenya, are increasingly turning to strategic litigation as a means of enforcing and advancing the rights of refugees.

Urban refugees in Kenya

Although an informal encampment policy has operated in Kenya since the 1990s, approximately 150,000 refugees live in urban areas. For these urban refugees, life operates as normal – children attend school, adults work to support their families, roots are put down and lives are rebuilt. In December 2012, however, this normality came under threat.

Following a series of grenade attacks in Kenya linked to Somali non-state armed group Al Shabaab, the Department of Refugee Affairs issued a press release in December 2012 announcing its decision to stop the registration of urban refugees and to relocate them to refugee camps. On 16th January 2013, an inter-ministerial letter was circulated giving effect to the press release, instructing the first phase of the ‘rounding up’ of refugees to occur on 21st January. For refugees who had called the urban areas of Kenya home for years, some even for decades, the implementation of the policy would have meant another forced relocation and a dislocation from sector operates in the country and the way their operations are being combated, it is highly probable that the number of displaced persons will increase, perhaps even by a considerable number. We must propose solutions based in empathy towards those amongst us who have lost nearly everything. The issue deserves general and inter-disciplinary consideration, the issuing of regulations and the implementation of intelligent and ongoing public policies, both to repair that which has already occurred and to mitigate the impact of what may come. The phenomenon is slow, silent and incremental, and is therefore in need of urgent and clear-sighted resolution.

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1. Dealing with protection, care, and implementation of durable solutions, and emphasising the state’s obligation to guarantee humanitarian protection and to assure Mexicans the enjoyment of their human rights to international standards.