

Human Rights Brief

Volume 2 | Issue 2

Article 6

1995

The African Approach to Refugees

Fernando González-Martín

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Human Rights Law Commons](#)

Recommended Citation

González-Martín, Fernando. "The African Approach to Refugees." Human Rights Brief 2, no. 2 (1995): 5, 14.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kcley@wcl.american.edu.

Displaced Persons, continued from previous page

The ad hoc nature of the international community's response to the ever increasing problem of the internally displaced prompted the United Nations Commission on Human Rights to adopt Resolution 1992/73, in which the Secretary-General was urged to appoint a special representative on internally displaced persons. This representative is to seek views and information on human rights issues related to the internally displaced, to examine current human rights

law mechanisms and the applicability of humanitarian and refugee law, and to evaluate the standards of protection and provision of relief assistance for the internally displaced. Dr. Francis M. Deng, appointed to the post by the Secretary-General, has set out to fulfill this mandate and has published reports in which he concludes that "there is still no adequate system of protection and assistance for internally displaced persons."

Washington College of Law Professor, Robert K. Goldman, the International

Human Rights Law Group, and the American Society of International Law have embarked on a joint project for Dr. Deng to compile international legal norms applicable to internally displaced persons, to identify possible deficiencies and gaps in the law, and to suggest remedies. This study will form an important resource for the United Nations when that organization attempts to develop guiding principles later this year. 🌐

The African Approach to Refugees

by Fernando González-Martín

Of the approximately 20 million refugees in the world today, six million are found on the African continent. Not included in these figures are the so-called "internally displaced," which raise the numbers to 15 million in Africa alone and 25 million across the globe. To put the African figures into perspective, in 1969, the number of African refugees rose to a total of 700,000. At the time, even this relatively low figure was considered alarming and prompted action on the part of African nations to address problems resulting from the ever-increasing number of refugees. Since its inception in 1963, the Organization of African Unity (OAU) has sought to lessen the plight of this often ill-defined category of individuals.

The legal regime governing refugee law in Africa is comprised of three main legal instruments: the 1951 UN Geneva Convention (45 States Party in Africa) and its 1967 Protocol (46 States Party in Africa), the 1969 OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa (42 States Party), and the African Charter on Human and People's Rights (49 States Parties). It is noteworthy that most of the 53 States on the African Continent have ratified these international agreements.

The OAU Convention, in particular, which was adopted in 1969 and entered into force on 20 June 1974, was prepared, in part, to take into account the unique aspects of the refugee situation on the African Continent. The Geneva Convention definition of refugees as "persons fleeing a well-founded fear of persecution" had not considered several problems encountered by African refugees and was too narrow within the African context. As a result, Article One

of the OAU Convention's definition adds a second paragraph which reads as follows:

The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

The OAU provisions of *non-refoulement*



further illustrate what is often referred to as "the traditional hospitality of African Societies." These provisions provide more protection to refugees than the provisions contained in the Geneva Convention. For example, Article Two of the OAU Convention provides that:

(1) Member States of the OAU shall use their best endeavors consistent with their respective legislation to receive refugees and to secure the settlement of those refugees who for well-founded reasons are unable or

unwilling to return to their country of origin or nationality.

(2) No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion which would compel him to return to or to remain in a territory where his life, physical integrity or liberty would be threatened.

As with most international and regional laws, problems have been encountered in implementing the OAU Convention at the national level. With few exceptions (i.e. Zimbabwe), most countries have been reluctant to replace their domestic legislation governing immigration, aliens, national security and the like with the Convention. In many instances, this legislation is contrary to the protective regime provided for by the OAU Convention. The lack of human resources needed to implement the regime is yet another serious obstacle to the implementation of the OAU Convention's provisions. Several countries have adopted the necessary implementing legislation but lack adequately trained personnel to see that it is observed. Paradoxically, the government agencies charged with refugee protection are often the police, immigration authorities, and, at times, even the army, the very agencies responsible for the plight of the refugees.

Criticism of the refugee protection regime set up by the OAU Convention goes far beyond the practical nature of the implementation of its provisions. One major legal *lacuna* in the body of the Convention is the specific problem of the "internally displaced," often referred to as *de facto* refugees as opposed to *de*

continued on page 14

ALUMNUS PROFILE

WCL Alumna Works on International Standards for the Internally Displaced

by Ayesha Qayyum

Since May 1994, Cecile Meijer, LL.M. '93, has worked with the International Human Rights Law Group and the American Society of International Law (ASIL) to develop legal principles for the protection of internally displaced persons. The project was undertaken at the request of Dr. Francis Deng, Repre-

sentative of the UN Secretary-General on Internally Displaced Persons. (see related story page 4). Meijer is part of a three-member team, along with Janelle Diller and WCL Professor Robert Goldman, working on this project.

In order to accurately analyze the existing law, the team is utilizing a "needs approach." This involves first determining what particular problems internally displaced persons face, and then examining how the existing international legal regime treats those needs. In particular, Meijer focuses on the sufficiency of human rights law, humanitarian law, and refugee law in meeting the needs of the internally displaced.

The team was also asked to draft principles addressing the protection and assistance needs of internally displaced persons, particularly in areas where the law is currently inadequate. As a result, Meijer, Goldman, and Diller are involved in the drafting and development of new international standards, which Meijer hopes that the United Nations will eventually adopt.

Meijer, who is originally from the Netherlands, describes the time she

spent as an LL.M. student at the Washington College of Law as "excellent preparation" for her current work. Although she was always interested in the problems of refugees and the movement

"I really learned about the issue of internally displaced persons once I came to WCL."

of peoples, "I really learned about the issue of internally displaced persons once I came to WCL," she says. In addition to her WCL education, Meijer feels that her previous experience—working in civil, comparative, and private international law in the Netherlands—provided her with the skills she is currently applying to her work on the internally displaced. ☉



Gabriel Eckstein



Cecile Meijer

Asylum, continued from page 11

ty are required to assist in peacefully resolving many conflicts, such as ethnic or tribal-based secessionist disputes, before they develop into environments which foster well-founded fears of persecution. Unless and until such cooperative and pacific dispute resolution mechanisms become a practical reality, however, it appears that alternative measures must be taken which provide genuine asylum seekers with humanitarian assistance and protection from persecution, and at the same time take into account the financial and social pressures on states traditionally capable of accommodating refugees.

One possible approach could be for developed countries to work together to establish a centralized international immigration system to fairly allocate refugees among the developed countries according to their respective sizes, populations, and resources. Alternatively, developed

countries might consider establishing and supporting, on a multilateral basis, temporary refugee communities outside of their borders in territories of amenable third countries. Such temporary facilities would provide refugees with short term protection and assistance. Unlike past arrangements such as the strategy at Guantanamo Bay, however, future accommodations should either provide refugees with meaningful opportunities to apply for asylum in other countries, or incorporate equitable resettlement plans to prevent refugees from being placed in long term "limbo".

In the absence of concerted efforts on the part of developed countries to find a balance between domestic concerns over proliferating refugee crises and the need to provide refugees with humanitarian assistance and genuine protection from persecution, current trends suggest that the right to seek asylum is in danger of becoming a right without substance. ☉

African Approach, continued from page 5

jure refugees. The OAU Convention is silent on this point. This problem, however, concerns three times as many people and is potentially even more explosive than the refugee crisis.

Although the protection of refugees in Africa is far from complete, it is at least in principle more inclusive than in many, if not all, other regional systems. One of the most significant aspects of this relatively new model of protection is that it has prompted other regional systems, in particular the Inter-American system, to emulate its positive factors and minimize its inadequacies. ☉