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Regional Workshop: Sub Sahara Africa

INTRODUCTION

- I wish to express my sincere appreciation to the Government of Portugal and to the International Federation for Human Rights-FIDH for the invitation extended to me in my capacity as a Special Rapporteur of the African Commission on Migration issues.
- The African Commission on Human and Peoples' Rights and FIDH are partners in their respective broad mandates regarding the promotion and protection of human and peoples' rights. FIDH is one of the international Human Rights NGOs which enjoys observer status with the ACHPR.
- Other FIDH member organizations also have observer status to the ACHPR. They play a key role in the promotion of HR in Africa.
- The FIDH Forum on Migration is opportune in that it enables participants from different regions of the world to share their experiences on migration issues.
- It is of particular interest to me, because Africa shares a big proportion of the migration problem.
- Migration in Africa is as old as the written history of the continent. It has various dimensions, historical and modern time migration, inwards and outwards; forced and voluntary. In the majority of these cases, the rights of African migrants, both outward and inward, have been gravely violated, historically, and even today.
- In historical terms, the slave trade was the most significant forced migration ever to befall the African continent.
- Colonization led to brutal political domination and economic exploitation. The scale of some of the political and economic problems experienced in Africa, ie the armed conflicts, the lack of stable political and economic structures trace their roots from these experiences.
- Migration phenomenon in certain regions in Africa has become endemic, due to political, social and economic forces;
 - (i) such as that which occurs during conflicts and natural disasters, ie; forced Migration,
 - (ii) voluntary migration due to pursuit of economic activities/objectives, as in the case of migration from poor regions of the continent to affluent regions in and outside the continent.
 - (iii) There is also the criminal element, such as human trafficking.

All of these cases deprive African migrants their basic rights to human dignity, and expose them to exploitation, discrimination, inequality and prejudices. In many instances thousands of migrants and asylum seekers have lost their lives, when they cross their national borders as refugees, or when they seek greener pastures as migrants crossing the Sahara, the Mediterranean Sea, the Red Sea or the Atlantic Ocean. Many thousands have also lost lives, or have been forced to migrate from one part of their national territory to another. These are referred to as internally displaced persons, IDPs.

MIGRATION TRENDS IN SUB SAHARA AFRICA

Migration, nationalism and xenophobia,

- The lack of economic opportunities to match population growth in Africa must account for one of the major factors for some of the problems of migration in Africa. Economic reforms undertaken by many countries in the last 15 to 20 years under the Structural Adjustment Programmes(SAPs) and the Poverty Alleviation Programmes PAPs), have not produced the kind of economic growth experienced in other regions of the world. The per capita GNP in many of these states is below a US \$1/day
- In a number of countries ethnicity is a factor in political and economic governance,
- Political conflicts and political instability in many states have been a result bad political and economic governance, forcing major population movements across and within national borders. The state of the economy in a particular country therefore becomes a major factor for the delivery of economic and social services, hence the capacity to manage migration.

Many countries in Sub Sahara Africa have experienced conflicts and civil strife during the last fifty years.

- Only a handful of African states have escaped these problems.
- Conflicts have accounted for massive refugee flows in almost all the five regions of Africa, ie; at different times. The majority have been internal conflicts.
- The political, social, and economic institutions, to guarantee stability at the national, sub regional and regional levels, are very much in transition;ie, OAU/AU, ECOWAS, EAC, SADC, PAP, NEPAD/APRM,ACHPR, etc.
- At the national level, institutions for the guarantee of basic rights are frustrated by inadequate material and human resources. This problem is also endemic at the sub regional and regional level.
- African states have played a significant role in providing asylum to refugees from conflict zones during this period. Lack of economic resources, notwithstanding, African states have been able to exercise the principle of burden sharing, in hosting refugee communities for many

- years. They have also benefited through international cooperation and assistance in providing protection to refugees in Africa.
- African states recognize the rights to asylum as a basic principle of international and regional refugee law instruments. The grant of asylum to refugees is a humanitarian act.
 - Unfortunately, we are hearing in Somalia that refugees are being turned away at national borders. This is an unwelcome development.

Recent changes in migration flows and consequences to development,

The last ten years have seen many conflicts being resolved through African regional efforts, with the support of the international community. The conduct of democratic elections in some states emerging from conflict has led to significant voluntary return and repatriation of refugees to their countries of origin.

- NB; The Role of ECOWAS in Liberia, Sierra Leone, States of the Great Lake Region, to resolve conflicts in the DRC, and Burundi, Comprehensive Peace Agreement between the Republic of Sudan and the SPLM/A regarding Southern Sudan)
- A number of conflicts however continue to generate refugees and IDPs. The Darfur conflict is responsible for generating Sudanese refugees to Chad, as is also responsible for generating other conflicts in Chad and the Central Africa Republic.
- Peace initiatives and security measures at the African Union level and the international community, including efforts to deploy a UN peacekeeping force in Darfur, and the indictment of suspects for committing genocide in Darfur are continuing.
- Unfortunately, these conflicts have compounded massive violations of human rights to the Darfur people due to the indiscriminate armed attacks on the displaced civilian population by some the parties to the conflict, in particular the Janjaweed militia. These armed groups are also reported to have attacked and killed several African Union peace monitors.

Displaced persons

- The worst internal displacement cases in Sub Sahara Africa have always been associated with the conflicts I have surveyed above. DRC, Darfur/Sudan, There are cases of internal displacement due to natural disasters too, ie during prolonged drought, flooding, famine, ie Niger, 2005, Kenya 2006.
- In the absence of peace and reconciliation, such as is the case in Darfur, Sudan, or the continued fighting in Somali, the problem of internal displacement in these countries will continue to rise. The Somalia internal strife which has lasted for 16 years now, continues to generate more refugees and IDPs.

In the midst of this gloomy scenario, there are a few positive signs;

- The prospect for peace in Northern Uganda, notwithstanding the suspension of talks by the LRA, has seen a number of IDPs returning to their villages from the IDP camps. This followed the conclusion of a ceasefire agreement between the Ugandan Government and the LRA in August 2006.
- The States of the Great Lakes Region in November 2006 adopted a protocol for the protection of the rights of IDPs within the framework of the Great Lakes Regional Peace Initiative.
- The Great Lakes region had not known peace for about 50 years. In 1994 Rwanda suffered the tragedy of the genocide, ethnic conflicts in DRC and Burundi in 1990s made the region very unstable, and were constant source for refugees and IDPs.
- It is expected that with the establishment of regional institutions to deal with peace, security and development, stability shall prevail and decrease the incidence of forced migration in this region.
- At the African Union level, efforts to elaborate a draft Convention on Internal Displacement are still underway, in order to increase the level of IDP protection in Africa.
- Both the Great Lakes Protocol on IDPs and the AU initiative complement the United Nations Guiding Principles on Internal Displacement.
- Angola, Burundi, and Liberia adopted legislations to protect the rights of IDPs. Uganda has a very strong National Policy on IDPs based on the Guiding Principles which has been the basis for the IDP Protection programmes in Northern Uganda.
- The SADC and ECOWAS sub regional blocs, through the SRSG UN/ACHPR have undertaken IDP policy dialogue with a view to developing national IDP policies or legislations.

Whether or not these measures are adequate, shall be the topic for discussion during the next forum on international protection of migrants and refugees.

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The Legal framework.

- The 1951 Geneva Convention and the 1967 Protocol provide the International legal framework for the protection of refugees. The 1969 OAU Convention on the Specific Problem of Refugees in Africa is the regional complement for the protection of refugees on the African continent.
- Other African regional human rights instruments, namely, the African Charter on Human and peoples' Rights and its two protocols on the Rights of women in Africa and the Protocol establishing the African Human Rights Court, and the African Charter on the Rights and Welfare of the Child in Africa provide a basis for better protection of refugees.

- Article 12 of the Africa Charter provides for the right to freedom of movement and the right to asylum. Article 12 (5) of the African Charter prohibits massive expulsion of non nationals, (ie; asylum seekers, migrants.)
- Article 11 of the protocol on the rights of women in Africa protects women during armed conflicts, by requiring parties to conflict to respect IHL. Article 11(3) specifically requires state to undertake measure to protect asylum seeking women, refugees, and IDPs against all forms of sexual violence, rape, sexual exploitation, and other violations of IHL, and to punish perpetrators.
- Article 23 of the African Charter on the Rights and Welfare of the Child provides protection to a refugee child, by requiring states to provide appropriate humanitarian assistance to the refugee child and the enjoyment of rights set out in the Charter and other international instruments.

These instruments have also created regional institutional mechanisms to monitor the implementation of these rights and obligations.

- The African Charter established the African Commission on Human and peoples Rights, which examines communications and state reports in order to determine the situation of human and peoples' rights on the continent. The members of the Commission undertake missions to member states to review the human rights situation and in certain cases conduct investigation missions regarding specific human rights situations. The Commission has considered a number communications regarding refugee and migrants rights, ie refer Communication *OMCT vs Rwanda*, in which the Commission found that Rwanda had violated the Charter for expulsion of Burundi refugees. Another case of expulsion of West Africa migrants from Zambia, the Commission found that mass expulsion by was a violation of the Charter. The Commission has also established that expulsion of Sierra Leone refugees in Guinea was a violation of the Charter.

Challenges

- Not all cases of violations of migrants' rights are brought before the Commission.
- There is a general problem whereby African states do not implement the recommendations made by the Commission in respect of these findings, because decisions of the Commission are not binding.
- The capacity of the Commission to monitor all aspects of migration issues in Africa is very limited.
- The Special mechanisms established by the Commission, ie the Special Rapporteur on the Rights of Refugees, asylum seekers and IDPs, and the Special Rapporteur on Human Rights Defenders, to mention but a few, and the Commission itself are severely limited resource wise.

In order to enhance human rights protection on the continent, the African Union has established the African Court on Human and Peoples' Rights which shall complement the human rights protection mandate of the African Commission.

The judges of the African Human Rights Court were elected at the Banjul AU Summit in July 2006.

- It is significant that the Court, unlike the African Commission, will render binding decisions, rather than recommendations. (Article 27 (1) of the Protocol states that “ *[i]f the Court finds that there has been a violation of a human or peoples’ right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation*”
- Article 30 of the protocol states further that, “*[t]he states parties to the present Protocol undertake to comply with the judgement in any case to which they are parties within the time stipulated by the Court and to guarantee its execution.*”

The sources of law for the Court when considering violations and remedies, (see Article 7 of the Protocol), include (*....the Charter and any other relevant human rights instruments ratified by states concerned.*)

- This means that unlike the African Commission, which can draw inspiration from international human rights conventions and as subsidiary sources of law, the African Human Rights Court shall apply international human rights convention, including the International Convention on the Protection of Migrant Workers and members of their Families, as a principal source of law.
- It must be pointed out that ratification of the International Convention on Migrant Workers has been very slow. The convention was adopted in 1990 and to date only 35 states have ratified it. This calls for intensified advocacy towards the broad ratification of the Migrants’ Convention by African states, as well as states in other regions of the world.
- As of now there are only 12 African Union states which have ratified the Migrants’ Convention , these are, Algeria, Burkina Faso, Cape Verde, Egypt, Ghana, Guinea, Lesotho, Libya, Mali, Senegal, Seychelles, and Uganda, (by November 2005.) (Morocco, which is not an AU member, and which hosts transiting migrants from Sub-Saharan African states, has ratified the instrument.)
- It has been recognized that African states are at different times, countries of origin, transit states and in some cases, countries of destination.
- Looking at the numbers, out of the 200 million migrants worldwide, a third of them (roughly 70 million) are in Africa. There are currently about 3 million refugees, 12 to 13 million IDP. This leaves about 55 million people, (other than refugees and IDPs), who live in countries other than their own, on the African continent, who are undocumented and irregular migrants, asylum seekers.
- The International Convention on Migrant Workers was adopted to deal with the problem of illicit and clandestine migration. In spite of its adoption of principles to ensure non discrimination for the rights of migrant workers, the establishment of humane and equitable living

conditions, employment rights, and access to social services for migrants, and the obligation imposed on states to inform migrants about conditions of migration at every stage, the convention does not eliminate the right of states to impose restrictions on entry, (see article 79).

The question is therefore how should international and regional bodies adapt their mandates in order to guarantee effective protection to migrants?

- From the African perspective, advocacy and awareness of Migrants issues and rights need to be emphasized. The promotional role to be played by civil society is crucial.
- The Global campaign for the ratification of the International Convention on Migrant Workers, including the ratification by African states, must be intensified.
- The regional human rights institutions require the necessary material support in order to discharge their respective mandates. Without the necessary material resources, the promotional and protection mandate of the African Commission shall continue to remain constrained.
- The new African Court on Human Rights which has the capacity to offer remedies may not be able to fulfill its mandate for a number of reasons, ie; if it does not get adequate resources. Secondly, NGOs which bring most of the Complaints to the Commission, and the Court, must enjoy observer status with the Commission. Thirdly, the majority of states have not made the declaration upon ratification, under article 34(6) of the Protocol, accepting the competence of NGOs and individual to file complaints before the Court.
- In the final analysis, it is up to states to ensure that they fulfill their obligations under the various instruments to safeguard the rights of migrants in Africa and in the different regions of the world.
- Civil society has the duty to ensure that they constantly remind states of their primary responsibilities to respect and guarantee the human rights of migrants at every stage of migration.

Thank you.