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Mass Displacement of Destitute People: A Trigger for Non-Refoulement Protection?

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Research Panel: Mass Displacement and Migration

Presenters: Bernardo de Souza Dantas Fico, Visiting Professional at InterAmerican Court of Human Rights; Leticia Machado Haertel, Ludwig Maximilians University of Munich and University of Sao Paulo

Title: Mass Displacement of Destitute People: A Trigger for Non-Refoulement Protection?

Abstract:

This paper focuses on two problems around the mass displacement of people in extreme poverty: the characterization of such people as refugees and the application of the non-refoulement principle to mass displacements.

Extreme poverty is causal to grave human rights violations such as deprivation of water, of food, and of an adequate standard of living. These circumstances may reach a degree in which life in a country is unbearable — forcing people to move in order to enhance their likelihood of survival.

The classic understanding of the non-refoulement obligation, as enshrined in the 1951 Refugee Convention, forbids states from returning people to a territory where he or she fears threats to life or freedom.

As poverty, unlike persecution, tends to be untargeted and unplanned, it is arguable that it does not trigger this traditional non-refoulement protection. Nevertheless, considering the emergence of different forms of complementary protection deriving from several human rights instruments, this prohibition might be extended to people fleeing extreme and unbearable poverty. The authors intend to analyse this possibility.

However, establishing this expanded complementary protection is not the only challenge human rights defenders face when attempting to protect people who flee extreme poverty in the world. Of the Syrian refugees that fled to Jordan and Lebanon, 90% were considered poor by the host countries' standards (World Bank, 2015).

Poverty tends to be a generalized phenomenon that forces people to engage in collective mass migration. In most of these occurrences, states have availed themselves of a “massive inflow exception” to return these people to their homelands, which consistently led to deaths.

More than surveying the conceptual foundation of applying non-refoulement to outflows caused by poverty, this paper aims to analyse the legal permissibility of returning people in cases of mass displacements.

About the presenters:

Bernardo de Souza Dantas Fico: Bachelor in Law at University of Sao Paulo; nominated for Young Jurist Prize for the thesis “The susceptible of being decided: jurisprudential analysis of the InterAmerican Human Rights System regarding popular legitimacy and minority rights.” He is a visiting professional at the InterAmerican Court of Human Rights and won the 20th Inter-American Human Rights Moot Court Competition. He co-founded the LGBT front at University of São Paulo Law School.

Leticia Machado Haertel, Ludwig Maximilians University of Munich: Research interest in the religious rights of Muslim women; won the prize for Best Memorial at the 19th Inter-American Human Rights Moot Court Competition and the prize for Best Memorial on German rounds at the 58th Philip C. Jessup International Law Moot Court Competition, which dealt with an environmental refugee crisis.