

Internally Displaced Persons and their Protection

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Abstract- Internally Displaced Persons constitutes the category of vulnerable population who suffer violations of their rights due to the lack of the development of obligatory international law for their protection. The Geneva Convention is only confined to areas of armed conflict. Therefore the Internally Displaced Persons are expose to repeated hardship due to the lack of legal framework The Guiding Principles on Internal Displcement lay down certain standards for protection of IDPS but they do not have the force of a binding instrument.

I. INTRODUCTION

In the years after the world war various factors have been responsible for the growth of large number of internally displaced persons (IDPs). These factors range from simple rivalry, regional conflict of a country, ethnic issues, unequal distribution of natural resources and development projects to simple persecution of people of minority groups due to racial discrimination. Apart from these man made disasters, natural calamities like earthquake, eruption of volcanoes, landslides, famine, flood have also played a big role for the creation of IDPs in many under developed and developing countries in Asia and Africa. In today's world internally displaced persons are one of the most vulnerable sections of the society.

Presently the United Nations Guiding Principles on Internal Displacement can be used as a tool to deal with the problems of IDPs. According to the definition as stated in Guiding Principles internally displaced persons are the persons or group of persons who have been forced or obliged to flee or leave their homes or places of habitual residence in particular as a result or in order to avoid the affects of armed conflicts, situations of generalized violence, violations of human rights or natural or human made disasters and who have not crossed an internationally recognized border. Involuntary displacement can be conceived as the total deprivation of the community life, amenities, facilities, assets, access to natural resources and the hardships involved before, during and after the process (Verma, 2004).

II. DEFINITION OF INTERNALLY DISPLACED PERSONS

The definition as provided by the Guiding Principles on Internal Displacement highlights two elements. First the coercive or involuntary nature of the movement and second such movement takes place within the boundary of the same country. It has to be mentioned here that the definition does not include persons who migrate due to economic reasons. As the definition is not included in the main body but in the introductory section, it is clear that definition is not supposed to be a legal definition.

The words 'persons or groups of persons' as used in the definition means internal displacement can affect persons in particular or an entire group. The most important fact is that displacement is coerced or involuntary. The term displacement in the definition not only include movements of people running away from immediate danger but can also take the form of prepared and organized departure in anticipation of dangers of eviction. There are certain common causes of involuntary movements such as armed conflicts, violence, human rights violations and disasters. These causes give no choice to the people but to leave their homes and deprive them of the protection mechanisms such as community network, access to services and more importantly livelihoods. Habitual residence as mentioned in the definition is not necessarily a house or building but can also be land on which groups traditionally live (IDMC, Who is an Internally Displaced Person?).

III. CAUSES OF DISPLACEMENT IN THE DEFINITION

(i) Armed conflict

As per the definition in the Guiding Principles international armed conflict as well as non-international armed conflict may be the cause of displacement. International armed conflict means fighting between the armed forces of at least two states and non-international armed conflict refers to fighting within the territory of a state between regular armed forces and identifiable armed groups or between armed groups fighting one another.

(ii) Situations of generalized violence

Situations of violence refers to situations of internal tensions and disturbances which fall short of armed conflict, but involve the use of force and repressive measures by government agents to maintain or restore public order. Such a situation may arise when it involves specific type of human rights violations such as large scale arrests, and other such measures restricting personal freedom, administrative detention or probable existence of ill treatment of inhuman conditions of detention.

(iii) Violations of human rights

Violations of human rights include governmental transgression of rights guaranteed by national, regional, and international human rights law and acts and omissions directly attributable to the state including the failure on the part of the government to implement legal obligations.

(iv) Disasters

Disasters may be natural or human made such as draughts, floods, earthquakes, cyclones, famine, landslides, nuclear disaster and so on. Victims of disasters whether natural or man-made are covered by the definition, as they too might become the

victims of discrimination and other human rights violations as a consequence of displacement.

(v) In particular

The words 'in particular' indicates that in addition to the causes as mentioned in the definition there might be other possible causes of internal displacement for large scale development projects such as dams built without making an attempt to compensate, rehabilitate and resettle the displaced. It has to be noted that the definition does not encompass the persons who move out for economic reasons, thus persons forced to flee from their homes because of economic injustice and marginalization do not come within the of the definition. However, it cannot be denied that very often economic injustice and marginalization amounts to systematic violation of human rights and as such would come within the purview of the definition.

IV. LEGAL PROTECTIONS

The primary legal protection available to the internally displaced persons is found in two legal instruments firstly the Geneva Conventions 1949 and the additional protocols adopted there under and secondly the thirty Guiding Principles adopted by the United Nations.

(i) Geneva Conventions and Protocols

The International Humanitarian Law provides some protection to internally displaced persons in situations of armed conflict whether international or non-international. However, in situations of internal armed conflict, most combatants unfortunately are reluctant or have failed to grant displaced persons the fundamental protections under humanitarian law.

The fourth Geneva Convention, 1949, grants protection to certain categories of civilians qualified as 'protected persons' (Article 4, 1949). The protection under the Convention is granted not only to refugees, but extended even to the internally displaced people. But the lack of specific mention to this group may place the IDPs in more vulnerable position in times of war, when compared to refugees. Though the IDPs do not come within the meaning of 'protected persons', they are entitled to basic guarantees as provided for individuals to be treated with humanity in all circumstances (Article 75 Protocol I, 1977). Article 49 of the Geneva Convention IV prohibits displacement of civilians during armed conflict. Further, Additional Protocol I of 1977 supplies an ingredient missing from the fourth convention that protects civilians against dangers arising from military operations as well as from indiscriminate attack which do not distinguish between civilians and combatants (Article 51). Protocol I also elaborates on the Fourth Geneva Conventions provision that relief actions be undertaken if a civilian population living in areas other than occupied territories is not adequately provided with the basic supplies essential to its survival (Article 70(1)).

The first explicit treaty provision regarding the protection of protected persons in non-international armed conflicts or civil conflicts is found in Common Article of 1949 Geneva Conventions. Under the international law, insurgency is recognized only when it satisfies conditions firstly, insurgents

must have occupied control over a considerable part of the territory. Secondly, a majority of people inhabiting the territory must lend support to the rebels out of their own free will. Thirdly, the insurgents must be capable and willing to carry out international obligations imposed upon them (Agarawal). Lastly, civilian commotion should reach a certain degree of intensity and duration. In other words conflict or violence may not simply consist of riots or sporadic acts of short-lived violence (Claphan, Sept 2006).

One of the advantages of International Humanitarian Law over human rights law is that, in internal armed conflicts, common Article 3 and 1977 Additional Protocol II are also binding on armed opposition groups. Moreover, there can be no derogation from the rules of international humanitarian law. The basic principle of the Common Article 3 to the four Geneva Conventions is to ensure human treatment without adverse discrimination. The Article also calls for the basic obligation to collect and care for the wounded and sick.

Under the international humanitarian law attacks are also prohibited against dams, dykes and nuclear power stations if they may result in severe civilian losses (Article 15 Protocol II, 1977). Similarly attacks on objects necessary for the survival of the civilian population such as foodstuffs, agricultural crops, livestock, drinking water installations and supplies, and irrigation works are prohibited. Additionally starvation of civilians as a method of combat is also prohibited (Article 14 Protocol II). If forced displacement is needed to be undertaken for security or imperative military reasons then such displacement are to be carried out after taking all possible measures so that civilian population may receive satisfactory conditions of shelter, hygiene, health, safety and nutrition (Article 17 Protocol II). Again deportation or transfer of civilian population within or outside the occupied territory is a grave breaches of crime under the international humanitarian law. Moreover, according to Article 77 (2) Protocol I of the Geneva Conventions, the parties to the conflict should refrain from recruiting any child who has not yet attained the age of fifteen and should exercise caution in permitting children between the age of fifteen and eighteen to join military forces.

(ii) Guiding Principles

The Guiding Principles on Internal Displacement 1998 include the norms applicable before the displacement occurs, those that apply in actual situations of displacement and those that apply to the post displacement period. The revised definition used in the Guiding Principles aims to remove two difficulties that existed in the working definition. First it has done away with the temporal and quantitative aspect of the working definition which created complications. For example in Iraq, there was nothing 'sudden or unexpected' about the displacement of Kurds which took place over a considerable period of time in late 1970s, 1980s, and early 1990s. In Colombia, internally displaced people often flee in 'small' rather than in large numbers in order to make them less conspicuous (Cohen, 1998). Secondly the revised definition has also broadened the notion of coerced flight to include not just 'forced to flee' but those 'forced to leave'.

Generally the Guiding Principles seek to protect all internally displaced persons in internal conflict situations, natural disaster and other situations of forced displacement. Some

development agencies have proposed to expand the definition to encompass the persons forced to leave their homes due to economic injustice or extreme poverty. But the problem is that even though the economic injustice and marginalization tantamount to systematic violation of their economic rights, the element of coercion is not clear.

Section I of the Guiding Principles comprises the general principles that relates to the equality and equal treatment of IDPs in the rights and freedoms under the national and international law. Internally displaced persons can be distinguished from other persons only in respect of their forced displacement. Therefore, the section asserts that the displaced cannot be discriminated against because of their displacement. Both the domestic and international law apply equally to internally displaced people and to those who do not leave their homes. Government cannot discriminate against internally displaced population because of their displacement (Principle 1(1)). Similarly internally displaced people cannot violate international and domestic law with impunity. Like all other persons these people are subject to individual criminal responsibility for genocide, crime against humanity and war crimes (Principle 1(2)). The principles emphasize on non-discrimination as many displaced population have been forced to flee because they are minorities or have racial, religious or other characteristics that make them vulnerable to discriminatory practices. The Guiding Principles recognizes four categories of persons who need specific protection (Principle 4(2)) and established that internally displaced persons must not be discriminated simply because of their race, sex, language, religion, social origin or other similar factors.

The Principle 6 of the Guiding Principles restate the right not to be arbitrarily displaced and explicitly states the grounds and conditions on which displacement is prohibited. However, the Guiding Principles does not specifically mention development projects as possible cause of displacement. as noted by Walter Kalin development projects can contribute significantly to the realization of human rights and therefore such development-related displacement is permissible only when compelling and overriding public interest justify this measure. The word 'compelling' indicates the notion of proportionality whereas the word 'overriding' demands the balancing of public and private interest (IDMC, Development Induced Displacement).

The right to life is the most valuable fundamental right. The Guiding Principles therefore prohibits the arbitrary deprivation of life. The principles have made it clear that displacement should not be carried out in a manner that violate the right to life, dignity, liberty or the security of those affected (Principle 8). Moreover, States have a particular obligation to provide protection to indigenous people and other groups with a special dependency on and attachment to their land (Principle 9).

After prescribing the general norms prohibiting cruel and inhuman treatment the principles specified that internally displaced persons must not be forcibly returned or resettled to conditions where their life, safety, liberty and health are at risk (Principle 15(d)). Principles also contain norms in respect of family life specifying that families separated by displacement should be reunited as quickly as possible (Principle 17(3)). Recognition of a person before the law is universal human right (Article 6 of Universal Declaration of Human Rights, 1949). The

right is given effect by specifying that IDPs shall be issued all documents necessary to enable them to enjoy their legal rights and that authorities must facilitate the replacement of documents lost in the course of displacement (Principle 20(2)).

In the Guiding Principles special attention is paid to the needs of women and children including prohibition against gender specific violence (Principle 11 (2) (a)). As the women are often not included in community consultation and decision making process the principles therefore, call for the full participation of women in the planning and management of their relocation. Further women's health needs not often met because of which the Guiding Principles affirmed access by women to female health care services (Principle 19(2)).

V. FORCED DISPLACEMENT AS INTERNATIONAL CRIME

International criminal law is a relatively new branch of criminal law. International crime consists of violations of international customary rules as well as treaty provisions. Violation of international humanitarian law is considered to be war crime and thus entails individual criminal responsibility of the perpetrator under international law. The prohibition on transfer of civilians goes back to Lieber Code. (Article 23 Lieber Code, 1863). Under the London Charter of the International Military Tribunal (Nuremberg), deportation of civilian population for slavery labour or for any other purpose constitutes war crime (Principle VI (b) Nuremberg Principles, 1945). Under the Statute of International Criminal Court, deportation or transfer of all or part of the population by the occupying power within or outside the occupied territory constitutes a war crime in international armed conflict (Article 8 (2) (e) (vii) Rome Statute of ICC, 1998). Similarly deportation or forcible transfer of population is a crime against humanity (Article 7 (1) (d) of Rome Statute).

Protocol II of Geneva Convention 1949 supplements and develops Article 3 Common to the Geneva Convention and these laws are applied for most instances of non-international armed conflict. However, there are certain serious gaps in Article 3 as it simply states the principle of assistance and protection of the wounded and sick and does not contain implementation clauses, such as respect for medical or the Red Cross emblem. Further judicial guarantees and conditions of detention of persons deprived of their liberty are not specified and no rule of protection of civilian population is included as such (Junod, Vol 33.29).

The UN General Assembly, the UN Security Council and UN Commission on Human Rights have condemned instances of forced displacement, not only in international armed conflicts but also in non-international armed conflict in the context of Bosnia and Herzegovina, and in Burundi and Sudan.

VI. HUMAN RIGHTS LAW AND LEGAL PROTECTION OF INTERNALLY DISPLACED PERSONS

International humanitarian law and human rights law are two distinct but complementary branches of international law. IHL applies during armed conflict while human rights law applies at all times, in peace and in war. International human rights law that

provide some protection to IDPs are mostly found in International Bill of Rights—the UDHR, ICCPR and ICESCR. However, many human rights may be derogated during the times of national emergencies. Human rights law also aims to prevent displacement when it occurs. The prohibition on torture, cruel, inhuman or degrading treatment or punishment, and the right to peaceful enjoyment of property and to home and family life are of particular importance for the prevention of displacement. Many of these rights have relevance to the issue of return.

In General international law prohibits any form of forced displacement. However, forced displacement is not always unlawful. Under the international law there are few exceptions to this rule. Even though there is no specific guarantee against forced displacement, it is inherent in a number of human rights instruments, including the right to freedom of movement and the choice of residency like Article 133 of Universal Declaration of Human Rights and Article 12 (1) of International Covenant on Civil and Political Rights, the right to respect for home and for privacy, The right to an adequate standard of living that includes food and housing.

VII. RIGHT TO FREEDOM OF MOVEMENT AND RETURN

In the context of internal displacement, return is used to mean the process of going back to one's place of habitual residence and resettlement. The term is used to describe the process of starting a new life in any place other than the place of habitual residence, but still within the same country. Reintegration is the process which makes the return or resettlement sustainable or durable. In the context of internal displacement reintegration is used to describe the formal entry of IDPs into social, economic, cultural and political fabric of their original community where displaced persons have settled.

The rights of movement is the most crucial right for displaced persons as they tend to protect IDPs from involuntary movement and expulsion as well as from forcible return or resettlement to any place where their health, safety and liberty is at risk. The right is similar to the Principle of 'Non-refoulement' which protects refugees from forcible return. International law not only prohibits forcible transfer but also provides a remedy for persons displaced forcibly. There are number of international human rights instruments that recognize the right to return to one's country. This right is called 'right to return' Article 12 of UDHR and Article 13 of ICCPR). Although there is no specific international convention affirming the right of internally displaced persons to return to their place of origin, from the provisions available in various international instruments it can be implied that at least there is obligation of States not to impede the return of people to their places of origin.

Recognizing these various rights of displaced persons, the UN Sub-Commission on the Promotion and Protection of Human Rights approved the 'Principles on Housing and Property Restitution for Refugees and Displaced Persons on August 11, 2005, known as Pinheiro Principles. The Principles are not a treaty or formal law and they do not attract the authority like other international legal documents. Nevertheless, the principles do have persuasive authority and are explicitly based on existing international, regional and national law.

The Pinheiro Principles apply in all cases of involuntary displacement resulting from international or internal armed conflict, gross human rights violations such as ethnic cleansing, development projects, forced evictions and natural and man made disasters. Whenever a person or community is arbitrarily displaced from their homes and lands the Principles can be used as guidance (OHCHR, 2007). The principles are primarily concerned with the rights of refugees and displaced persons to land, housing and property which they owned, held right or otherwise lived at the time of displacement. The principles do not make any distinction between refugees and internally displaced persons including those displaced by disasters, and those who flee across national boundaries but are not refugees. Guiding Principles also provides for compensation or just reparation when relocation of property is no possible.

The UN Security Council and other bodies have also asserted the right of IDPs to return to their homes. The Security Council in its resolution while dealing with Bosnia and Herzegovina, states that all displaced persons have the right to return in peace to their former homes and should be assisted to do so mandated to assume full responsibility for the protection of displaced population.

VIII. CONCLUSION

Today major challenge before the international community is the increase in the number of internally displaced persons all over the world and the number has been continuously increasing surpassing the number of refugees. There is no official institution to keep tract of the internal movement of the population both in the states and international level. The institutions which keep account tend to vary from one organization to another. Guiding Principles are not legally binding document and that may be considered as a serious lacuna for the protection and assistance of IDPs.

There are a number of provisions in the Geneva Conventions, 1949 and 1977 Protocols which apply to internally displaced persons in situations of conflict. But these instruments often difficult to apply in situations of internal conflict as the States concerned are reluctant to recognize them as non-international armed conflict and termed such conflict as law and order situation or internal disturbances.

Another most important reason as to why the international community fails to provide an effective regime is that there exists no single organization within the UN system that has been mandated to assume full responsibility for the protection of displaced population.

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