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Index Page

Sl	Particulars	Authors	Pg No.
LONG ARTICLES			
1	A Critical Appraisal of The Dam Safety Act, 2021	Prof. (Dr.) Sairam Bhat & Mr. Vikas Gahlot	7
2	Rights of Internally Displaced Persons and the Role of Guiding Principles on Internal Displacement: A Critical Analysis	Dr. Balajinaika B. G.	36
3	Dichotomy Between Trade and Environment: An Up-Hill Road for WTO To Propel Sustainable Development	Dr. Hardik Daga & Ms. Latika Choudhary	61
4	Empirical Study on The Impact of Reservations in Favour of Scheduled Tribes in The Functioning of Gram Sabhas in The State of Goa	Ms. Bhakti Chandrakant Naik	84
5	'Tilting' In Favour of Poker: An Argument for Regulating Poker in India	Ms. Gargi Whorra & Ms. Dipali Rai	117
6	Why The West Cannot Question the Russian Aggression in Ukraine	Dr. Sangeetha Sriraam	140
SHORT ARTICLES			
7	Electronic Evidence – A Need to Amend Sec. 65B of the Indian Evidence Act, 1872	Dr. O. N. Ravi	172
8	An Analysis of Clinical Legal Education in India: Initiatives in Karnataka	Dr. Suresh V. Nadagoudar	188
9	Epistolary Jurisdiction: A Tool to Ensure Human Rights of Have-Nots	Dr. N. Sathish Gowda	204

10	Establishing A Concrete Framework of Accountability for Human Rights Violations By The United Nations	Mr. Rongheet Poddar	222
11	International Impetus of Law Reform in Combating Cyber Crime: An Analysis	Mr. Dattatray Bhagwan Dhainje	236
BOOK REVIEW			
12	The Great Repression: The Story of Sedition in India	Mr. Yash Pandey	252
CASE COMMENT			
13	R.D. Upadhyay v. State of A. P.	Ms. Nidhi Saroj & Dr. Fakkires S. Sakkar-naikar	259

RIGHTS OF INTERNALLY DISPLACED PERSONS AND THE ROLE OF GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT: A CRITICAL ANALYSIS

Dr. Balajinaika B. G.*

1. Introduction

IDPs (Internally Displaced Persons) are the people who forcefully leave their place and settle elsewhere, making them one of the most vulnerable people on the earth.¹ The reasons for displacement include conflict, developmental projects, and environmental causes. As far as the protection of IDPs is concerned, they lack protection mechanisms both at the national and international levels.² At present, IDPs do not have an exclusive legal status of their own, and they face significant problems with protection and assistance.³ This does not mean that international law provides them with no protection. For instance, in situations of armed conflict, the international humanitarian law and, during normal times, the international human rights law provide protection to IDPs. But the problem that arises in the protection of IDPs is because of the lack of exclusive conventions on IDPs at the international level. In this context, this paper will highlight, in the first section, the overview of all the existing and evolving international laws on IDPs. Secondly, the applicability of international

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¹ N Geissler, The international protection of internally displaced persons, *International Journal of Refugee Law*, Volume 11, Issue 3, July 1999, P 451, <https://doi.org/10.1093/ijrl/11.3.451>

² Cohen Roberta (1998) 'The Development of International Strategies to Protect Internally Displaced Persons', Brookings, Accessed 23 July 2016, URL:<https://www.brookings.edu/research/the-development-of-international-strategies-to-protect-internally-displaced-persons/>

³ Deng, Francis (2001), "The Global Challenge of International Displacement", *Washington University Journal of Law and Policy*, 15(12): 141

human rights, humanitarian laws, international refugee law and international criminal law provisions applicable to IDPs. The third section will critically analyze the role of guiding principles of internal displacement in guaranteeing the rights of IDPs. The final section will analyze the impact of evolving international law on IDPs and their impact.

2. The Rights of Internally Displaced under International Law

The existing international legal instruments such as international human rights law, international humanitarian law, and international refugee's law provided provisions for the protection of IDPs. Though these instruments are not exclusively enacted for the protection of internally displaced people, the provisions have relevance to the problems of IDPs.

2.1. International Human Rights Law

International human rights law which consists of both customary and treaty laws, guarantees the rights and requires the states to respect and fulfill their obligation to protect and realize the human rights of all persons without discrimination of any kind. These rights are prohibition of discrimination based on ground of age, gender, ethnicity, language, religion, political or other opinion, as well as national or social origin, poverty, place of birth or having been displaced. International human rights regime is very relevant to the situation of internal displacement because displacement in itself raises a wide range of human rights issues. IDPs like other human being benefit from protection offered by international human rights law without any distinction or discrimination.⁴ In circumstances that do not qualify as armed conflict, for instance, situations involving internal strife or unrest where international

⁴ Phuong, Catherine (2006), "The International Protection of Internally Displaced Persons" New York: Cambridge University Press.

humanitarian law cannot apply, human rights law is the only form of legal protection left for IDPs. Human rights law can offer legal protection in all phases of internal displacement, including its causes, prevention of the condition for displacement, protection during displacement, and, eventually, the search for a solution for the displacement.⁵

The existing human rights regime is appropriate for handling the situation of internal displacement because the fact of leaving one's home is already a violation of certain rights under international human rights law, such as freedom to choose one's own residence, right to security of persons etc.⁶ In addition, the situation of internal displacement also puts people into a vulnerable situation and it leads to the violation of human rights law. It includes, health risk, lack of residence, breakdown of social structure, separation of families resulting women and children exposed to dangerous circumstances such as sexual violence, and forceful removal from sources of income and livelihood. This increased vulnerability required a form of protection that human rights is better equipped to offer through imposing the obligation on the state to protect and assist IDPs. In fact, under the human rights regime, IDPs were not taken into account as a specific category but there are existing human rights instruments that contain general provisions that are of particular relevance to IDPs. The following section will highlight the important document on human rights and their relevance to the situation of IDPs. It includes the Universal Declaration

⁵ Risse, Thomas, and Kathryn Sikkink. (1999) "The Socialization of International Human Rights Norms into Domestic Practices: Introduction." Cambridge Studies in International Relations, 66: URL:

http://www.langtoninfo.com/web_content/9780521650939_excerpt.pdf (visited on 4, April, 2022)

⁶ Brookings Institution (2006), "Guide to International Human Right Mechanism's for Internally Displaced Persons and Their Advocate" Brookings Institution –University of Bern Project on Internal Displacement, URL;

<http://www.brooking.edu/fp/project/idp/human-right-mechanisum-for-IDPs.pdf.2006> (visited on April 12, 2022)

of Human Rights, international covenants and other relevant human rights instruments.

Universal Declaration of Human Rights: This is a detailed human rights document, created at the eve of the Second World War as a way of addressing human rights violations committed by different nations during and after the war. Article 55 and 56 of the UN Charter provides that UN members will promote universal respect for, and observance of human rights and fundamental freedom for all. In line with this idea, in 1945 the UN Charter entered into force and it was recommended that the economic and social council should immediately establish a commission on human rights which should be tasked with preparing an international bill of human rights.

The Human Rights Commission deals with the elaboration of legal instruments that identify and define human rights, as well as maintaining and outlining procedures for implementation. The Universal Declaration of Human Rights was adopted on 10th December, 1948.⁷ This document clarifies the duty of the human rights commission, the UN and the international community at large. In addition, the declaration also managed to lay down the protection norm that reflected in the specific protection mechanism for IDPs. In addition, the declaration also establishes the civil, political, economic, social and cultural rights to which persons, including the IDPs are entitled without discrimination.

International Covenant on Civil and Political Rights and its Optional Protocol: the covenant on civil and political rights contains states legal

⁷ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html> (visited on May 1, 2022)

obligation and correlating implementing measures.⁸ Article 12 of the Covenant specifically deals with the freedom of movement. It provides for liberty of movement and freedom to choose residence within a particular territory to every one lawfully within the territory of state. Furthermore, the article provides to everyone the right, not to be arbitrarily deprived of the right to enter one's own country.

The above rights provided by the covenant on civil and political rights can also be applied in the event of internal displacement, but these are rights applicable where one is regarded to be lawfully within the territory of a certain state. There is also no provision that such rights may not be derogated from. In fact, it should be noted that most of the time internal displacement occurs during times of internal conflicts and other similar causes. Under most circumstances, the state regards the circumstances as an emergency situation and may mostly claim derogation from the application of this right.

International Covenant on Economic Social and Cultural Rights (ICESCR): The ICESCR contains the most explicit international legal provisions establishing economic, social and cultural rights.⁹ The ICESCR is one of the two binding laws originating from the UDHR; the other one being the ICCPR which has been discussed above. It also represents one of the widest provisions applicable to the situation of internal displacement. The economic, social and cultural rights became very significant in the case of IDPs. Their most necessary survival needs include: food, water, emergency shelter, healthcare, education, and

⁸ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html> (visited on 14 April 2022)

⁹ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <https://www.refworld.org/docid/3ae6b36c0.html> [visited on May 30 2022]

sanitation. These are basically what make up the essence of socio economic rights. The provisions which are contained in the covenant are very important because it gives people within a state the freedom to choose their political status, and even determine their own economic, social and cultural development. Since IDPs are usually within the boundaries of their own state they should by virtue of this provision be afforded the above freedom and opportunity in whatever part of the country they might have relocated to. Some of the specific provision of the covenant includes the rights of everyone to an adequate standard of living, including housing.¹⁰ This right has been described as an equal to the rights to live with dignity. In fact, this applies directly to the situation of IDPs who by virtue of disturbance have to leave home or place of habitual residence. In addition, the rights contained in the covenant include rights to work, the right to protect the family, the rights to an adequate standard of living which includes adequate food, clothing, as well as continuous improvement of living standard. Other relevant rights include having the highest standard of physical and mental health which IDPs are usually lacking either as a result of psychological traumas associated with forced movement and most importantly the right to culture also relevant to the displaced, who usually lose socio, cultural and traditional tie as well as values as a result of displacement.¹¹

Other Human Rights Instruments relevant to IDPs: Other human rights instruments that are relevant to the IDPs include The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.¹² This Convention defines and prohibits torture under all

¹⁰ Ibid, Article 11(1)

¹¹ Article 15, ICSCER

¹² UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series,

circumstances. It also provides that state cannot transfer a person to another state if there are grounds for believing that he or she will be tortured.¹³ This principle is the main basis of refugee protection and would have been ideal for IDPs protection, but the circumstance of application is different. The other relevant human rights instrument is the International Convention on the Elimination of All forms of Racial Discrimination.¹⁴ This convention prohibits racial discrimination, which happens in most cases when a person or a group is treated differently because of race, colour, descent, national origin, or ethnic origin with the aim of denying their human and fundamental rights. This convention is relevant to the circumstances of IDPs because when actual displacement takes place, there is usually a form of discrimination advanced against certain communities. The Convention on The Elimination of All Forms of Discrimination against Women provides provision for the protecting the rights of women.¹⁵ The convention protects their rights in all fields including employment, education and property. The Convention also ensures that they are protected against threat from physical safety, rape, and sexual exploitation. In fact, in the situation of internal displacement, women being the most vulnerable population require extra care and protection. The Convention, like other human rights instruments, provides protection to all women not specifically to displaced women but the convention provisions are very much relevant to the protection of

vol. 1465, p. 85, available at: <https://www.refworld.org/docid/3ae6b3a94.html> (visited on 15 may 2022)

¹³ Ibid, Article 3

¹⁴ UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: <https://www.refworld.org/docid/3ae6b3940.html> (visited on 18 march 2022)

¹⁵ UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, A/RES/34/180, available at: <https://www.refworld.org/docid/3b00f2244.html> (visited on 15 May 2022)

internally displaced women. Apart from the aforementioned provisions, the Convention on the Rights of the Child¹⁶ provide for the protection of the rights and best interest of the children. Like the previous convention, this convention also does not specifically address the problems of displaced children but provides important provisions for the protection of the interest of displaced children. This instrument requires the state to take reasonable measures to ensure protection, care, education, health, and psychological recovery of internally displaced children. In addition, another vulnerable group that is easily affected by the internal displacement are the tribal and indigenous people. The Convention on Tribal and Indigenous People provides equal rights to tribes with other people.¹⁷ The convention specially addresses the issues of land, their relocation, and ensures that when this has to happen it is done lawfully and provides guarantee of protection against arbitrary displacement.

2.2. Protection under International Humanitarian Law

Humanitarian law is constituted of internationally accepted norms that are responsible for determining parameters within which warfare can be conducted by parties involved. This set of international law strives to offer protection to non-combatant and civilians from the effects of war, and to control or limit certain methods of warfare.

Failure to observe humanitarian principles, total disregard for applicable norms of engagement during wars and situations of generalized violence or conflict has resulted in the rise of a new crisis in international law. Humanitarian law provides for the protection and assistance of vulnerable

¹⁶ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html> (visited on May 9 2022)

¹⁷ International Labour Organization (ILO), Indigenous and Tribal Peoples Convention, C169, 27 June 1989, C169, available at: <https://www.refworld.org/docid/3ddb6d514.html> (visited on 10 April, 2022)

populations, including IDPs in times of conflicts and civil strife.¹⁸ The two Geneva Conventions of 1949 and their additional protocols of 1977 provide for the protection and assistance to the lives and dignity of victims of war.¹⁹ The provisions of the Geneva Convention include prevention of human suffering by promoting and strengthening humanitarian law and humanitarian principles. International humanitarian law relevant to the situation of IDPs is because armed conflict and situations of violence constitute main causes of internal displacement of the civilian population. The Geneva Convention and their additional protocols spell out the principles that, in times of armed conflict, those not directly participating in the aggression are entitled to protection.²⁰

Under international humanitarian law, everyone who is not a combatant is categorized as a civilian. In the case of international armed conflict, combatants are defined in international humanitarian law as members of the armed forces of a party to the conflict and they have a right to participate directly in hostilities. This means that other parts of the population, including people who are displaced, should be distinguished from the combatants by both parties to the conflict. In addition, International humanitarian law requires the exercise of 'precaution' to minimize civilian causality and prohibits the use of acts or threat of violence, the primary purpose of doing this is to curb the displacement of population from the threat of attack and abduction.

¹⁸ Gillard, Emanuela Chiara. (2005), "The Role of International Humanitarian Law in the Protection of Internally Displaced Persons", *Refugees Survey Quarterly*, 24 (3): 40

¹⁹ International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287, available at: <https://www.refworld.org/docid/3ae6b36d2.html> (Visited on 8 April 2022)

²⁰ *Supra* note, 18, Emanuela

The law governing internal conflicts is less developed than the body of law set up to deal with international conflict. This is because the establishment of international humanitarian law reflected the prevailing condition of its time. State and their representative who played a part in settling up international humanitarian law had a vested interest in limiting conflicts between each other rather than curbing internal disturbances. This can be seen in prevailing international humanitarian law protection reflected in the case of non-international armed conflict by article 3 of the Geneva Convention.²¹

Article 3, which is common to all the four conventions, is applicable to armed conflicts of non-international nature, the circumstances leading to internal displacement fall within this provision. This article prohibits the taking of hostages and specially provides for the personal dignity of persons who find themselves in situations of armed conflict which is not of international nature but happens to occur in the territory of one of the contracting parties. In fact, the article does not specifically define what ‘armed conflict of an international character’ means, but it excludes international armed conflict from its application. It provides that, in case of armed conflict not of an international character occurring in the territory of one of the high contracting parties, each party to the conflict shall be bound to apply, as a minimum.²²

2.3. Protection under International Refugee Law

This is a branch of law that provides for the protection of refugees. Refugees are defined as people that are compelled to leave their habitual countries of residence across borders to another country to seek refuge as

²¹ Ibid

²² Kellenberger, Jakob. (2009) "The ICRC's Response to Internal Displacement: Strengths, Challenges and Constraints." *International Review of the Red Cross*, 91.875:475 (visited on 20 March 2022)

a result of fear of prosecution.²³ Over the years the definition of a refugee has altered, but the main content is the 'crossing the border' factor.²⁴ This law does not apply directly to the situation of internal displacement, and in as much as there are numerous references to refugee law by analogy in the process of protecting IDPs.²⁵ Refugee law mainly focuses on issues arising during displacement, this means that some of its principles can be useful in matters of internal displacement.

There are nevertheless key differences between the systems of law that are meant to protect refugees and those created to protect IDPs. The main difference can be noted in the definition adopted. While IDPs are regarded as having much in common with refugees, the critical and most important distinction that sets them apart is that the IDPs have not crossed internationally recognized state borders, and thus cannot formally claim the protection of international refugee law.²⁶ The UNHCR, despite these limitations, has undertaken to protect internally displaced people.²⁷ In addition, the United Nations General Assembly through its various resolutions has over the years conferred limited mandate on UNHCR to undertake humanitarian assistance and protection activity on behalf of the IDPs provided certain conditions are met.²⁸ Even though the UNHCR may undertake these activities in certain isolated cases, IDPs are not automatically entitled to the international protection of refugee law. In

²³ Article 1, Refugee Convention.

²⁴ Ibid

²⁵ Phuong, Catherine. (2005), "The Office of the United Nation High Commissioner for Refugees and Internally Displaced Persons" *Refugee Survey Quarterly*, Vol. 24, No. 3: p 73

²⁶ Article 1, Guiding Principles

²⁷ Cohen, Roberta. (2005) "UNHCR: Expanding its Role with IDPs." *Forced Migration Review*

Supplement, :9:11 accessed 5 April 2016, URL https://www.brookings.edu/wpcontent/uploads/2016/06/20050923_rc_idp_supplement.pdf (visited on 15 February 2022)

²⁸ Ibid

fact, border crossing still remains a critical factor in the service they can get.²⁹

Although the aforementioned legal instruments offer protection to IDPs, there are situations where the existing law is insufficient to address these Issues. The gaps in the existing legal framework are categorized as normative gaps and applicability gaps. The normative gaps refer to such gaps where no explicit norms exist to address the protection needs of IDPs. For instance, the rights not to be arbitrarily displaced is not expressly provided in any general human rights instruments and provision can only be inferred from a number of provisions. It can be inferred from the general provision contained in the human rights treaties. It includes the rights to freedom of movement and rights to choose one's residence. However, the above right which is available in the ICCPR can be derogated from and can also be subject to some restriction.³⁰ In addition there is no right of restitution of property as a consequence of displacement or compensation to the displaced people. In fact, there are provisions in the human rights law on cruel and inhuman treatment but there is no explicit provision which prohibits forcible return of IDPs to the place of danger. In case of the prohibition of arbitrary detention, although this norm clearly exists, the preconditions for lawful detention of IDPs in camps are unclear. Apart from the aforementioned gaps, the other gray areas include internal conflict, gender based violence, free movement, need for identification, documents and access to international humanitarian assistance.

²⁹ Ibid

³⁰ See article 12(3) of the ICCPR which reads 'The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant'.

3. Guiding Principles on Internal Displacement

There was a criticism that the existing international legal framework is inadequate and does not provide protection and assistance to IDPs. In response to the criticism, the UN adopted the Guiding Principles on Internal Displacement.³¹ The guiding principles are based on international humanitarian law, human rights law and refugee law by analogy. These principles set forth the rights of IDPs and explain the obligation of national authorities, the international community and non-state actors towards these peoples.³² In addition, the guiding principles also identified various causes of displacement. It includes natural and man-made disasters, conflicts, developmental activities and violations of human rights. In addition, guiding principles also address the problems of displaced people in their different phases such as the pre-displacement phase, during displacement and finally the return or resettlement and reintegration phase. Although not legally binding like a treaty, the guiding principles are the first exclusive legal document on IDPs. In fact, the document is the first attempt to articulate what protection should mean for the internally displaced and the document gives international and non-governmental organizations an important tool to use in their advocacy work on behalf of the displaced. Since its adoption, the guiding principles gained substantial acceptance in the forms of domestic legislation in many countries.

3.1. Origin and Development

The need for international standards for IDPs became apparent in the 1990s due to the large number of IDPs and increasing violations of their

³¹ UN High Commissioner for Refugees (UNHCR), Guiding Principles on Internal Displacement, 22 July 1998, ADM 1.1,PRL 12.1, PR00/98/109, available at: <https://www.refworld.org/docid/3c3da07f7.html> (visited on 10 March 2022)

³² Cohen, Roberta. (2004)"The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting", *Global Governance*, 10 (4): 460

rights. IDPs were easy targets for human rights violations and when the relief organization in the field began to try to help IDPs, they found they had no clear rules for doing so. Indeed, the UNHCR, the UN Children's fund and NGOs began to appeal for a document they could turn to what would define IDPs and their entitlement. A group of NGOs, the Friends World Committee for Consultation, the Refugee Policy Group, the World Council for Churches undertook a joint campaign in 1990 to spotlight the legal and institution gaps in the international system and to mobilize support both for the appointment of the RSG and for the development of international standard to protect IDPs.

In 1990, after receiving a report from the two NGO sponsored conferences, the UN ECOSOC formally recommended that the UN Secretary-General initiate an internal assessment of the UN's capability to provide adequate protection and assistance to the internally displaced. The UN Secretary General appointed Francis M Deng, the first Representative of Secretary General on IDPs, in 1992. One of his first tasks was to examine the applicability of international human rights, humanitarian and refugee law to the protection of IDPs.³³ Deng presented the 'Compilation and Analysis of Legal Norms' to the UN Commission on Human Rights in 1996 and a supplement in 1998.³⁴ The compilation and analysis report found that IDPs are not explicitly mentioned in international law, and there are significant areas in which the law fails to provide adequate protection.

³³ UN Economic and Social Council (1996) 'Internally displaced persons Report of the Representative of the Secretary-General,' Mr. Francis M. Deng, Submitted Pursuant To Commission On Human Rights Resolution 1995/57, Compilation and Analysis of Legal Norms, URL:<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G96/106/78/PDF/G9610678.pdf?OpenElement> P. 28. (visited on 23 April 2022)

³⁴ UNCHR (1992) Analytical Report of Secretary General on Internally Displaced Persons, UN Doc. E/CN.4/1992/23 Para 17

Although the compilation and analysis report did not recommend the precise form a future international instrument should take, it concluded that to improve protection for IDPs, a restatement of the would be needed to make it more relevant to the IDPs and to clarify the gaps and gray areas. According to Roberta Cohen, a member of the legal team that drafted the guiding principles, there were three main reasons for the decision to develop the Guiding Principles as opposed to a treaty. Firstly, there was no support from the governments for a convention. This is because the subject of internal displacement was still too sensitive and hence it was feared that a treaty on IDPs would be an infringement on sovereignty. Secondly, time was a factor. Treaty making is normally a lengthy process, whereas there was an urgent need for a document to address emergency needs of IDPs. Thirdly, sufficient international law applicable to IDPs already existed. What was required was to bring together the myriad of provisions now dispersed in a large number of instruments and to adapt them to specific needs of the internally displaced. Finally, It took two years from 1996 to 1998, to draft the Guiding Principles and although the actual drafting was done by a core team of lawyers under the direction of RSG Deng, the process was broad based and a wide range of international legal and institutional organization, non-state actors were consulted. Finally the Guiding Principles were finalized at a conference in Vienna hosted by the Austria government.³⁵

3.2. Salient Feature of Guiding Principles

3.2.1. Definition

³⁵ Supra note, 3 Deng

When the issues of internal displacement emerged onto the international agenda in the early 1990s there was no definition for IDPs. In order to identify these people the necessities of definition IDPs arose. The task of defining IDPs was given to the representative of UNSG and his group. In 1992 Francis Deng and his group came out with a working definition on IDPs.

Persons who have been forced to flee their home suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, and systematic violations of human rights or natural or man-made disasters; and who are with in the territory of their own country³⁶

The working definition was largely criticized; the reasons for criticisms are first, the cause for displacement is not always sudden or unexpected. The displacement takes place by the government's long term policies. Therefore displacement cannot be all of a sudden or unexpected. Second, the displaced people could also flee on a small number or individual basis. Therefore, the numerical consideration was not an appropriate method for the identification of displaced people.

The critique of the working definition led to the reformulation of the definition and was adopted in the guiding principles. The guiding principles states that:

Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situation of generalized violence, violation of human rights

³⁶ United Nations Commission on Human Rights (1992) Analytical Report of Secretary General on Internally Displaced Persons UN Doc. E/CN.4/1992/23 Para 17 (visited on 10 April 2022)

or natural or man-made disasters, and who have not crossed an international recognized state border.³⁷

The definition in the guiding principles is inclusive. It includes all kinds of displacement, it includes conflict induced displacement, disaster induced displacement, development induced displacement, and other displacement due to the violations of human rights. Secondly, the definition states that the displaced people, unlike the refugees, remain within the border of their own countries.

3.2.2. Restating Human Rights and Humanitarian Law

The Guiding Principles codify most of the provisions of human rights and humanitarian law. These two legal regimes i.e. IHRL and IHL directly address the problems of IDPs. The key human rights instruments which are the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic Social and Cultural Rights and the Geneva Conventions are considered the main source of the Guiding Principles. The human right and humanitarian principles are right to equality³⁸, freedom³⁹, prohibition of discrimination of any kind, such as race, colour, sex, language, religion belief, political or other opinion, national ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria,⁴⁰ right to life,⁴¹ right to dignity.⁴² Displaced people are protected against rape, torture, cruel, inhuman or degrading treatment.⁴³ They provide the right to an adequate standard of living that includes essential food and potable

³⁷ Article 1, Guiding Principles.

³⁸ Guiding principles on internal displacement Principles 1.1

³⁹ Ibid,

⁴⁰ Ibid, principle 4.1

⁴¹ Ibid, principle 10.1

⁴² Ibid, principle 11

⁴³ Ibid, principle 11.2(1)

water, basic shelter and housing, appropriate clothing, essential medical service and sanitation.⁴⁴

3.2.3 State has Primary Responsibility for the Protection of IDPs.

One of the conditions to identify people as displaced is when they are out of their home and settled elsewhere within the territories of their own states. The IDPs are deprived from the international refugee protection regime because they settled within the state. In the absence of protection from the international community the state has to provide protection to these people. According to the guiding principles, national authorities have primary responsibility for the protection and provide humanitarian assistance for IDPs.⁴⁵ If the state fails to perform its duty the responsibilities shift to international community⁴⁶. The state responsibility for the protection of IDPs is controversial only when a state fails to perform its duty and refuses to allow international humanitarian assistance. The concept of sovereignty as responsibility is propounded by F Deng, who argued that the state has primary responsibility to protect IDPs and if the state fails to provide protection the responsibility shifts to the international community.

3.2.4. Special Emphasis on Women and Children

The women and children are most vulnerable among IDPs. As of an estimated total number of IDPs eighty percent are women and children⁴⁷. The women and girls are target of sexual violence. Most of the time women trade their body for food. The children also face sexual violence

⁴⁴ Ibid, principle 18 .1

⁴⁵ Ibid, principle 3.1

⁴⁶ Ibid, principle 3.2

⁴⁷ Dale Buscher and Carolyn Makinson “Protection of IDP Women Children and Youth” FMR/BROOKING – BERN SPECIAL ISSUES 2012 URL: <http://www.fmreview.org/en/FMRpdfs/BrookingsSpecial/09.pdf>, P 12 (visited on 12 January 2022)

and are also recruited in armed forces. In this regard the guiding principle gives special emphasis on protection of women and children. It includes protection of children against recruitment by armed groups,⁴⁸ special attention for the health protection of women,⁴⁹ and educational facilities for women and children.⁵⁰

3.2.5. Prohibition of Arbitrary Displacement

The prohibition of arbitrary displacement is one of the important contributions by Deng and his team. This is because the provision for prohibition of arbitrary displacement is not mentioned in the legal instruments dealing with human rights and humanitarian law. The guiding principles mention five kinds of arbitrary displacements. These are first, displacement by apartheid or ethnic cleansing. Second, displacement due to armed conflict. Third, large scale development projects which are not justified by compelling and overriding public interest. Fourth is because of disaster. Fifth is from collective punishment. In the following five forms of arbitrary displacement the development induced displacement today causes a large number of displacement. Most of the time the public interest is not taken into consideration.

Today the large-scale development projects such as industrial projects, dams, roads, mines, are taking place in the tribal areas. The tribal people because of the development project lose their land, job, home which marginalizes them. The government authorities responsible for rehabilitation of tribal displaced people neglect their responsibility. For example, the Narmada Valley project, Sardar Sarovar dam, Tehri projects and many other development projects have displaced thousands of people

⁴⁸ Ibid, principle, 13.2

⁴⁹ Ibid, principle, 19.2

⁵⁰ Ibid, principle, 23 (1)(.2)

and these people are still waiting for compensation from the government.⁵¹ It can be argued that development is inevitable and we cannot stop construction of dams, industry, and roads. But development should not be at the expense of people. The state should not only provide monetary compensation for the displaced people but also protect their dignified life in the society. The Guiding Principles impose an obligation on the states to prevent arbitrary displacement.

3.2.6. The Authorities take necessary Measures to Minimize Displacement

Today the numbers of IDPs are increasing day by day and the reasons for this increase are many. These include conflicts, developmental activities, environmental induced displacement such as disasters and many more. The truth is, the state cannot avoid displacement in all situations, developmental activity is inevitable and these activities cause large numbers of displacement and due to the climate change today large numbers of people are displaced. Therefore the state is in no position to prevent people from becoming displaced however they must take necessary measures to minimize displacement. It includes proper accommodation, safety, nutrition, health and hygiene. In case of armed conflict state authorities should take control of law and order. Full information and reason must be provided for their displacement and compensation for their resettlement. In addition the authorities must take free and informed consent from displaced people and give them opportunity in the management of relocation. The state authorities are not

⁵¹ Nalin Singh Negi and Sujatha Ganguly (2007), “Development Project vs. Internally Displaced Population in India: a Literature based Appraisal” Working Paper Center on Migration, Citizenship, and Development URL: http://www.uni-bielefeld.de/tdrc/ag_comcad/downloads/workingpaper_103_negi_ganguly.pdf (visited on 3 April 2022)

willing to take free consent from the displaced during acquisition of their land. The state authority claims that national interest overrides local interest. The national interest versus local interest debate is very controversial because there is no instrument which defines what national interest is. Therefore state authorities must take the consent from local people before acquiring their property and this is one of the obligations of states as provided under the Guiding Principles.

3.2.7. Protection of Property Right

Principle 21 and 29 of guiding principles guarantees the property rights of IDPs. It includes property left behind by IDPs such as home and land that are to be protected from destruction, arbitrary and illegal occupation. In addition the guiding principles ensure that the competent authorities have duty and responsibility to provide durable solutions for IDPs and provide compensation if it is possible to return property to IDPs.⁵²

3.2.8. Humanitarian Assistance for IDPs

Several provisions of guiding principles deal with humanitarian assistance for IDPs. It includes humanitarian assistance in accordance with the principles of humanity, impartiality, and without discrimination. And humanitarian assistance should not be utilized for political or military reasons.⁵³ Principle 25 provides that national authorities have primary responsibility to offer humanitarian assistance for IDPs. International humanitarian organizations also have the right to offer humanitarian assistance for IDPs and the state without proper reason cannot refuse international assistance. The humanitarian assistance for IDPs is very controversial when the state itself is violating human rights of IDPs and also refuses to allow international humanitarian assistance for their

⁵² Ibid, principles 29

⁵³ Ibid, principle 24

protection. The above issues raise two questions. First, is consent of the state for humanitarian assistance for IDPs necessary? Second, can an international humanitarian organization deny state consent for the protection of IDPs?

Today most Third World Countries (TWC) deny international humanitarian aid because they fear that it will disturb the internal affairs of the state. The reason is that today TWC is hosting a large number of IDPs and these countries cannot offer humanitarian assistance for IDPs because of their weak financial position. On the other hand, international humanitarian organizations cannot intervene without state consent. This is because often the intention is not to protect IDPs. The problems can be solved with a balanced approach. On the one hand, the state should not treat activities of international humanitarian organizations as unfriendly and on the other hand humanitarian agencies need to strictly follow humanitarian principles of neutrality and impartiality.

3.2.9. Return, Resettlement and Reintegration of IDPs.

The guiding principles impose obligations on the state to provide durable solutions for IDPs. It includes the state authorities creating opportunities for voluntary, safe, and dignified return to their home. Once the displaced reach their own place the concerned authorities' make efforts to restitution the property of the displaced and if not possible, at least provide compensation for their livelihood. In addition, guiding principles support participation of IDPs in planning and management of their return, reintegration, family unification, and information for IDPs regarding their place of return. The proper implementation of a durable solution for IDPs is a challenge for state authorities. In order to guide national authorities Walter Kalin and Brookings Institution has created a framework for the

durable solution of IDPs.⁵⁴ In addition the World Bank has adopted involuntary resettlement policies for the resettlement for development induced displaced persons.⁵⁵ But implementation remains a challenge for national authorities.

4. Impact of the Guiding Principles

At the international level, the UN General Assembly as well as the Security Council began to cite the Principles in its resolutions. This is an indication of the influence of the guiding principles of the international community. In addition, another milestone in the influence of guiding principles at the international level is in 2005, the heads of state at the World Summit Outcome recognized the Principles as “an important international framework for the protection of internally displaced persons.”⁵⁶ The UN agencies, humanitarian and developmental organizations and Non-Governmental organizations used these principles in their assistance to IDPs. UNHCR directly incorporated the Principles into its protection and human rights activities for IDPs. The IASC, composed of the major international humanitarian, development and human rights agencies, developed several tools based on the Guiding Principles to provide operational guidance to their staff, including a Manual on Field Practice in Internal Displacement,⁵⁷ a Framework for

⁵⁴IASC (2010) “Framework on Durable solutions for Internally Displaced Persons” The Brookings Institution-University of Bern Projects on Internal Displacement,” URL: http://www.brookings.edu/~media/Research/Files/Reports/2010/4/durable%20solutions/04_durable_solutions.PDF (visited on 25 April 2022)

⁵⁵ Michael M. Cernea and Elizabeth Ferris, Is the World Bank Retreating from Protecting People Displaced by its Policies? <https://www.brookings.edu/blog/up-front/2014/11/24/is-the-world-bank-retreating-from-protecting-people-displaced-by-its-policies/> (visited on 8 February /2022)

⁵⁶ (UNGA Resolution A/RES/60/1, 2005, para. 132)

⁵⁷ IASC Policy Package on Internal Displacement (2004), “Implementing the Collaborative Response to situation of Internal Displacement, Guidance for United Nation Humanitarian and/ or Resident Coordinator and Country Team,” URL:

Durable Solutions for Internally Displaced Persons⁵⁸ and the IASC Handbook for the Protection of Internally Displaced Persons.⁵⁹

At the regional level, In Africa, the 11 states in the Great Lakes Region adopted a Protocol in 2006, obliging its member states to adopt the Guiding Principles as a regional framework and incorporate their provisions into domestic law.⁶⁰ In 2009, 53 African states adopted the legally binding Kampala Convention, which came into force in December 2012.⁶¹ Its provisions, some of which are based on the Guiding Principles, oblige states to take concrete measures on the ground to improve conditions for IDPs.

At the national level, many countries began to develop policies and laws based on the Principles and some have directly incorporated the Principles into their national law. In some countries this has resulted in clear benefits for IDPs, such as increased resources for food and shelter, assistance with returns, compensation for having been displaced and the right to vote in their current place of residence. Sometimes, national courts have cited the Guiding Principles in rulings to ensure that the displaced are provided with adequate material assistance.

5. Conclusion

<http://www.humanitarianinfo.org/iasc/pageloader.aspx?page=content-products-products&productcatid=10> (visited on 22 April 2022)

⁵⁸ IASC Framework on Durable Solutions for Internally Displaced Persons Published by The Brookings Institution – University of Bern Project on Internal Displacement, available at <https://www.unhcr.org/50f94cd49.pdf> (visited on 12 April 2022)

⁵⁹ Handbook for the protection of Internally Displaced Persons, available at <https://www.unhcr.org/4c2355229.pdf>

⁶⁰ Great Lakes Protocol on the Protection and Assistance of Internally Displaced Persons of 2006. URL: http://www.brookings.edu/fp/projects/idp/greatlakes_idpprotocol.pdf (visited on 17 March 2022)

⁶¹ African Union, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("Kampala Convention"), 23 October 2009, available at: <https://www.refworld.org/docid/4ae572d82.html> (visited on 20 May 2022)

IDPs are a highly vulnerable community in the present situations. The absence of legal instruments both at the national and international level make their life even more difficult. The guiding principle is the first legal document adopted to address the needs of IDP. The Guiding Principles played an important role in providing protection and assistance to IDPs. The guiding principles now are in the form of domestic legislation in many countries and many more countries are in the process of adopting new legislation on IDPs in consensus with the provisions of guiding principles. In addition, the African region adopted a regional convention on IDPs in consensus with the guiding principles. Despite the success of the guiding principles, problems of IDPs remain unaddressed due to the lack of international binding convention on IDPs. In the present contest the number of IDPs is more than the refugees and therefore it is high time that the international community adopted a binding convention on IDPs.