

Term Paper for Module D 2005

Guiding Principles: Reflection of Existing International Laws

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Introduction

During the past decade specially after the end of the cold war the concept of Internally Displaced Peoples (IDPs) has become a familiar feature of the humanitarian vocabulary. The scale and scope of this problem, the human suffering which underlies it, as well as its impact on international peace and security, have rightly made internal displacement an issue of great international concern. IDPs are among the most vulnerable victims of conflict and constitute the largest at-risk population in the world. At the end of the year 2004, the total number of people displaced within their own countries by civil or international war, political conflict or human rights violations amounted to roughly 25 million. The IDPs often go through immense human suffering. The act of displacement is accompanied by violence and the most serious violations such as arbitrary killings, torture, kidnappings and rapes. Every year millions of people are forced to leave their homes, lands and other belongings to seek refuge in more secure areas.

Unlike the refugees, the IDPs stay within their own countries and rely on their own governments to uphold their civil and human rights. In most of the cases the governments themselves are responsible for population displacement and they are unwilling to admit the fact. If the government chooses not to invite external assistance, then the international community has limited option to protect these people. As the IDPs stay within their country's border, it is very difficult for the international community to provide assistance to the IDPs.

Despite the scale of the worldwide displacement crisis and the particular vulnerabilities of the IDPs, the international community has been slow in addressing the issue. There is no single humanitarian agency for the protection and assistance of the IDPs. Although many organizations work for the protection of the IDPs but the approach is not comprehensive, systematic and predictable. The international framework for responses to internal displacement crises remain weak because states have been reluctant to allow a more systematic international involvement in an issue they consider an internal affair protected from foreign interference by the principle of sovereignty.

The Guiding Principles on internal displacement

The Guiding Principles (GP) were formulated to fill the gap in the international protection system and to promote assistance for IDPs. The aim of formulating these principles was to create an international framework for the protection and assistance of IDPs. The purpose of GP is to create symmetry in dealing with the IDPs because different countries deal with this issue of internal displacement in various ways. The GP give direction to the governments, NGOs, humanitarian, human rights and development organisations in protecting and assisting the IDPs. In 1998, the GP were presented to the UN commission on Human Rights by Mr. Francis M Deng, Representative of the UN secretary General on Internally Displaced Persons. The GP set forth the rights of IDPs and the obligations of and insurgent forces in all phases of displacement. The GP offer protection before the displacement occurs, during situations of displacement and in post conflict return and reintegration.

The GP are the result of many years of work by a team of international legal experts collaborating with international organisations, regional bodies and NGOs under the direction of the Representative of the UN Secretary General. These experts found grey areas in existing laws and wanted a specific body of principles that would consolidate into one document existing norms which at present are dispersed in many different instruments of human rights law, humanitarian law and refugee law by analogy. The GP restate the existing laws and make key provisions more explicit. It is more liberal than any other existing instrument because it is not a binding document. It reinforces and strengthens existing protections for this disadvantaged group of people because their needs are frequently overlooked.

The GP reflect existing international humanitarian and human rights law. Most of these principles are drawn from Universal Declaration of Human Rights (UDHR), Geneva Convention IV, Protocol I and Protocol II, International Covenant on Civil and Political Rights, (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), ICRC Commentary, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Covenant on Civil and Political Rights (CCRP), American convention on Human Rights (ACHR), Rome Statue etc.

Guiding Principle and Human Rights law and Humanitarian Law

The principles have their roots in different existing human rights law and humanitarian laws. They do not replace the already existing laws but they are drawn from them. Some of the principles and their similarity with the existing international law are described below:

1. General Principles

First four principles focus on equal rights and equal obligation, universal applicability of these principles, right to seek asylum and the responsibility of the states. The principles of equality and non-discrimination are firmly rooted in international law. Article 7 UDHR recognises that "all are equal before the law and are entitled without any discrimination to equal protection of the law." Moreover regarding providing protection and humanitarian assistance to nationals, including internally displaced persons, GP state that it is the primary responsibility of the state. The UN General Assembly on several occasions reaffirmed "the sovereignty of affected states and their primary role in the initiation, organisation, co-ordination and implementation of humanitarian assistance within their respective territories" (GA Resolution 46/128 of 19 December 1991).

2. Protection from displacement

Guiding Principles 5 through 9 are concerned with the issue of protection from involuntary displacement. Grounded in international human rights and humanitarian law, these principles affirm the right of individuals to be protected against arbitrary displacement and the responsibilities of governments and other authorities to prevent such displacement. They also focus on procedures to be followed to minimize the adverse effects of displacement when such movements take place. Like according to Article 13 (1) UDHR "Everyone has the right to freedom of movement and residence within the borders of each state." Similar provisions can be found in Article 17 Protocol II-"The displacement of civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand". These principles reflect the wordings of Article 49 (3) Geneva Convention IV. Similarly Article 17 (1) Protocol II, Article 2 (3) CCPR, Article 33 (1) Geneva Convention IV, Article 75 (2) (d) Protocol I and Article 4 (2) (b) Protocol II etc.

3. Protection during displacement

IDPs are particularly vulnerable during displacement. GP 10-23 address these protection issues. The first set of principles focuses on the physical safety and security of the individual, the second set focuses on the family rights, the third set focuses on economic and social rights and the fourth on civil, political and other similar rights.

For example, GP 10-15 concentrate on most basic rights of IDPs. These principles ensure the right to life, right to dignity and integrity, protection against arbitrary arrest and detention, choices of residence, protection against forcible return, protection from forced military recruitment etc. These rights already exist in different human rights law. Article 3 and 5 of UDHR state that "Everyone has the right to life, liberty and security of person; no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". According to Article 9 of ACCPR "No one shall be subjected to arbitrary arrest or detention". In article 12 it also mentioned that "Everyone lawfully within the territory of a state shall within that territory have the right to liberty of movement and to choose his residence." Article 4 (3) Protocol II states that "Children.... Shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities."

GP 16 and 17 emphasise on the importance preserving the family unit during the displacement. Many internally displaced persons are separated from their families as a result of the conflicts and other situations that uproot them. According to Article 16 (3) of UDHR "The family is the natural and fundamental group unit of society and is entitled to protection by the society and the state." These principles also have similarities with Geneva Convention IV (Article 20)- "each party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war with the object of reserving contact with one member and of meeting, if possible". Even in Article 3 Convention on the Rights of the Children it is clearly mentioned, "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration."

GP 18, 19, 21 and 23 talk about the economic, social and cultural rights. Most of the time the IDPs are deprived of these rights. These principles include right to adequate standard of living, right to health and medical care, right to participation of women, right to education, right to work, property rights etc. These reflect the articles of ICESCR. Like, according to Article 11 (1) "The states parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions." In article 12 of the same Covenant it is mentioned that "The state parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". Different Articles of CEDAW is the basic foundation of the principles relating to the equal treatment and participation of women. According to Article 23 of UDHR "Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property."

GP 20 and 22 describe the civil and political rights. Right to recognition before law, civil and political rights are based on the human rights law. "Everyone shall have the right to recognition everywhere as a person before law." (Article 16 of ICCPR). Article 19 of UDHR states that "everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any medium and regardless of frontiers."

4. Principles related to humanitarian assistance

access to humanitarian assistance is one of the most pressing problem for the IDPs. GP 24-27 deal with the roles and responsibilities of national authorities and international organisations in providing humanitarian assistance to IDPs. According to these principles states should take the main responsibility to protect its citizens but they also affirm an important role for international humanitarian organisations and other appropriate actors. The actors can be UNHCR, UNICEF, WFP, UNDP, ICRC etc. "The right to receive humanitarian assistance and to offer it, is a fundamental humanitarian principle which should be enjoyed by all citizens of all countries.... When we give humanitarian aid, it is not a partisan or political act and should not be viewed as such" (Principles of Conducting for the International Red Cross and Red Crescent movement and NGOs in Disaster response Programmes)

5. Principles relating to return, resettlement

Principles 28-30 set out standard for return or resettlement and reintegration of internally displaced persons. Because finding durable solutions is the ultimate goal for the IDPs. These include right to return or resettle, right to return of property or compensation and also the responsibilities of national authority, international organisations. Human rights law recognizes the right of an individual, outside of his or her national territory, to return to his or her country. Similar rights are mentioned in Article 13 (2) of UDHR, Article 49 of Geneva Convention IV etc.

Conclusion

Guiding Principles is the only instrument that focuses on rights and obligations of the Internally Displaced Persons. It covers all possible areas of concerns for IDPs. Although it is not a legal instrument but all the principles are based on existing

international law, humanitarian law and human rights law. Most of the countries of the world are signatories of these laws. So in a way they all are obliged to follow these principles while dealing with the IDPs. The number of IDPs is increasing in the world and it is an obstacle to the peace and development of the particular country and as well as to the world. States should take the primary responsibility to protect the IDPs and the wider use of these principles will help to address the problem in a more effective way.

References

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Prompting Equal Treatment of Post-War and Post-Tsunami Internally Displaced Persons (IDPs)

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Preamble

Internally Displaced Persons (IDPs) are persons or group 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, violations of human rights or natural or human made disasters, and who have not crossed an internationally recognized State border.^[1] Sri Lanka is facing problems related to internal displacement since 1983, due to protracted civil war between the government forces and Tamil insurgents known as the Liberation Tigers of the Tamil Eelam (LTTE). The recent natural catastrophe called the Tsunami, which occurred on 26th of December 2004 created a massive humanitarian crisis by bringing death and destruction in its wake and displacing 553,287^[2] persons in 13 Districts in the coastal area.

The different reasons for displacement and the different conditions of the war affected and tsunami-affected displaced persons have lead to different treatment for the Post-War displaced personas and Post-Tsunami displaced persons. This paper analyses the need and possibility of promoting equal treatment between Post-War and Post-Tsunami IDPs in Sri Lanka. First, the paper presents the situation of war affected IDPs and Tsunami affected IDPs. Then, it analyses the differences between the two types of IDPs. Next, the role of the Human Rights Commission in addressing IDP issues is discussed under four principles. Afterwards some concerns and issues related to IDPs are presented under several subheadings. Finally, recommendations to improve the conditions of IDPs and to eliminate discrimination between IDPs are presented.

Post-War IDPs

Post-war displacement occurred during the past 20 years due to the war between the Sri Lankan Government forces and the LTTE. According to current statistics there are 352,582 persons displaced due to war (91,427 families) who are concentrated predominantly in the Northern and Eastern provinces. (Table: 01)

Table 01: Internally Displaced Population as at 30 November 2004^[3]

	Families	Persons
IDPs in Welfare Centres	20,538	78,307
IDPs Outside Welfare Centres	70,889	274,275
Total	91,427	352,582

Issues of war affected IDPs were marginalized and were forgotten, as they are considered political IDPs.

Post-Tsunami IDPs

The Tsunami catastrophe that occurred on 26th December 2004 displaced 553,287^[4] persons living in 13 Districts in the coastal belt in Sri Lanka. 68,779 houses were completely destroyed and 43,405 houses were partially destroyed^[5].

The Tsunami could be viewed as a silver line that brought the IDP issue into the limelight and created an opportunity in which we could address IDP concerns in an efficient manner, as plenty of resources are available due to the international focus and many organizations with different mandates have started working on IDP issues. Yet the problem of disparity of treatment between Tsunami-affected IDPs and War- affected IDPs remains an unsolved issue.

Differences between war-affected IDPs and Tsunami affected IDPs can be identified as follows:

War-affected IDPs	Tsunami-affected IDPs
Persons became IDPs everyday during the war	Persons became IDPs within a matter of hours and probably once
IDPs are living within the District/ out of the District and out of the Country	IDPs are living within the District and probably within the Divisional Secretariat division
Living with unknown people	Living with same villagers

When resettling people, issues to consider include landmines and high security zones	When resettling people, issues to consider include 100 m or 200m buffer zones
Difficulty of gaining access to war-displaced persons	As the Tsunami lasted for only 20 minutes gaining access to Tsunami IDPs was not a major issue
War displacement was caused by human factors	Tsunami displacement was caused by nature
Highlighting war displaced persons' issues was considered unpatriotic. Even media did not want to report on war displaced persons	Issues of Tsunami affected persons could be highlighted in the media without resistance and every one was urged to address their concerns

Human Rights Commission Role in Addressing the IDP Issue

At the Human Rights Commission we are working with war-affected IDPs as well as Tsunami-affected IDPs.

Four Principles related to IDP focus at the Human Rights Commission include:

1. Protection and Humanitarian Assistance for War and Tsunami displaced persons
2. Government Responsibility in Providing Humanitarian Assistance
3. Right to be Protected Against Forcible Return
4. Participation

1. Protection and Humanitarian Assistance for War and Tsunami Displaced Persons

There are issues of non-equal treatment by the Government sector of the different categories of IDPs.

For example, In the case of land selection, there were many war-affected IDPs without a place for relocation yet when land was needed for Tsunami affected IDPs, priority is being given to such land rights.

2. Government Responsibility in Providing Humanitarian Assistance

Treatment of War-affected IDPs is based on different set of Circulars and Administrative Laws than the Tsunami affected IDPs. The distinctions between the circulars applicable for different types of IDPs create discrimination.

Many Ministries, Authorities and Task Forces are working on Tsunami issues without the proper integration of the different activities being carried out. As a result, there is discrimination in the administrative action carried out by these authorities.

For example, A person displaced and resettled by the Ministry of Relief, Rehabilitation and Reconciliation (RRR) is given a sum of Rs. 62,000, while the Ministry of Infrastructure Development will give an IDP only a sum of Rs.34,000 for resettlement.

3. Right to be Protected Against Forcible Return

According to a study conducted in Puttlam IDP Camps on the willingness of IDPs to be resettled by the Government Agent (GA) of Puttalam and the Ministry of RRR, only 3 percent of the war IDPs are willing to be resettled.

Tsunami IDPs are willing to resettle and think about their future but not the war affected IDPs. There are many reasons war-affected IDPs fear to be resettled, including fear of displacement in the future, fear of landmines, difficulty in accessing basic needs, etc. To clear landmines it will take at least 30 years. These concerns make people think about whether they should return or not.

4. Participation

Already the Government has decided where Tsunami IDPs are going to be relocated without proper consultation. Decisions by the Government affect people's culture and socio-economic status and also deny people's right to choose the place of their residence.

War Displacement-The Election Commissioner does not want to interpret the place of residence of IDPs as their ordinary residence. Those IDPs living with friends and with relations or permanent shelter can register to vote. But people who are living in IDP camps cannot be registered. 267,000 people in un-cleared areas who were eligible to vote were not allowed to cross the border to vote.

Concerns / Issues

1. Allocation of aid

War affected IDPs get only dry rations while tsunami affected IDPs get a livelihood allowance as well as aid from civil society organizations and foreign sources.

52% of the Tsunami victims are from the Eastern District, but the Government allocation is only 27%.

2. Distribution of Aid

It is easier for Tsunami IDPs to gain access to dry rations and other compensation as they are mostly living in easily accessible areas while the War IDPs are mostly living in war affected and un-clearer areas, which are not easily accessible.

3. Environmental Sustainability

IDP camps are set up to accommodate the displaced persons considering their direct safety as the most important concern. The impact of the camps on local ecosystems is consequently of less immediate importance. However the depletion and deterioration of areas in which camps are located is a critical problem in the medium to longer term. The high demand for wood in order to build shelters and cook food, for example, can leave local populations with enormous ecological problems after the completion of humanitarian operations.

4. Housing

There are different criteria for housing for war -affected IDPs and Tsunami-affected IDPs.

5. Cultural Diversity and Conflict Sensitive Reconstruction

It is important to link tsunami- affected displacement and war-affected displacement for equitable reconstruction in order to promote equity and reconciliation.

There has been de facto ethnic ghettoisation and ethnic mobility in resettlement. Tamils tend to move North and Sinhala towards the Northwest of the Eastern Province. It is important to maintain and respect cultural diversity and the historical co-existence of communities.

Recommendations

- The Government circulars, Policies and Administrative Laws applicable for both types of IDPs (War affected and Tsunami affected) should be equal.
 - A mechanism should be established in order to ensure that the rights of war-affected IDPs as well as the rights of tsunami affected IDPs are respected when relocating or resettling.
 - The resettlement process for both types of IDPs should be supported by the government of Sri Lanka and the international community with substantial contributions from local grassroots organisations if it is to be a success.
 - Local minorities should be protected in post-war and post-tsunami IDP resettlement.
 - Humanitarian assistance should be granted in an equitable basis.
 - Portion of land identified and the structure and quality of the houses built for both types of IDPs should be similar.
 - IDPs should not be forcibly relocated.
 - The decisions that influence the life of IDPs, such as the place of resettlement, should be taken after consulting the IDPs.
 - Resettlement programs should consider protecting multi-culturalism.
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The UN Guiding Principles on Internal Displacement base themselves on Human Rights and Humanitarian Legal Regimes

Sudhir Chowdhary,

1. Who is an internally displaced person (IDP)?

The Guiding Principles define internally displaced persons (IDPs) as those persons or groups. For the purposes of these principles, 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 generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border (emphasis added).

2. Thus, it is clear that unlike the refugees, the IDPs do not cross

international borders. They may have left their homes but they have not left the country whose citizens they normally are and remain entitled to enjoy the full range of human rights as well as those guarantees of humanitarian law that are applicable to the citizens of that country in general. Although theoretically IDPs enjoys recourse to their own governments, in practice such recourse is only an illusion and not infrequently, the government itself is a cause for displacement. The situation of IDPs is, therefore, hardly any better than that of refugees. To make matters worse no specific international convention exists for the protection of their rights. The provisions of the international human rights humanitarian, and the refugee law treaties do not explicitly address their plight.

3. The birth of the Guiding Principles

3.1. In 1992, the UN Commission on Human Rights called upon the Secretary-General to appoint a representative on the issue of internally displaced persons. His first task was to be an 'examination of existing international human rights, humanitarian and refugee law and standards and their applicability to the protection of and relief assistance to internally displaced persons.' Francis M.Deng, a former Sudanese diplomat was entrusted with the responsibility.

3.2. Deng and his team found that 'existing law covered many aspects of particular relevance to internally displaced persons' but that 'there remained areas in which the law failed to provide sufficient protection for them.'

3.3. Two categories of 'insufficient protection' were identified:

(a) instances where a norm existed in human rights law but not humanitarian law, or vice versa, meaning that the particular norm was not applicable in all situations, and

(b) instances where general norms existed (for example the right of freedom of movement) but the specific corollary right relevant to the cause of internally displaced persons had not been explicitly stated (for example, the right not to be confined in camps).

3.4. Also there was a confusion in many quarters regarding the applicable law in light of the wide dispersal of relevant provisions among many different instruments. It was, therefore, recommended that a new instrument be developed to focus specifically on internally displaced persons. The Commission gave its nod and thus was conceived the idea of Guiding Principles.

3.5. The team was clear on the format. No convention or treaty, which is a painfully slow process, requiring initial agreement followed by ratification. And the countries requiring urgent attention in that area may evade the treaty. Therefore, it was decided to formulate a non-binding instrument that would compile, restate and interpret existing law. Therefore, the existing provisions of 3 streams viz. human rights law, humanitarian law and refugee law, particularly the following instruments were studied and compiled/rehashed:-

a) Human Rights Law : Universal Declaration of Human Rights (UDHR), the International on Civil & Political Rights (ICCPR) and the International Covenant on Economic, Cultural and Social Rights (ICECSR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment (CAT) & the Convention on the Rights of the Child (CRC). These instruments have been ratified or acceded to by most of the member states.

b) Humanitarian Law : Chiefly the Geneva & Hague Conventions and the Nuremberg Principles.

c) Refugee Law : The 1954 & 1967 Conventions.

4. The Body of Guiding Principles

4.1. In 1998 were introduced Guiding Principles on Internal Displacement into the United Nations to draw international attention to the needs of internally displaced persons and to enhance protection for them. Although the Guiding Principles themselves are not a binding legal document comparable to a Treaty, their acknowledgement in resolutions of the U.N. Commission on the Human Rights and Economic and Social Council highlights the moral authority behind them.

4.2. The document details, in 30 principles, the specific meaning of the general human rights and humanitarian law guarantees for IDPs. It covers all three phases of internal displacement: the pre-displacement phase, the situation during displacement and the phase of return or resettlement and reintegration. Thus, the Guiding Principles explicitly recognize a right not to be arbitrarily displaced, and spell out in detail the rights of those who are displaced. The Principles stress that a government cannot deny access by international humanitarian organization to IDPs if it is unable or unwilling to provide the necessary assistance itself. Finally, the document underlines the right of IDPs to either return voluntarily to their homes (if this becomes possible) or to resettle in another part of the country.

4.3. The Guiding Principles are universally applicable because they are grounded in existing international law which have a sort of binding force in themselves. The universality of application has been underlined by the Under-Secretary-General for Humanitarian Affairs in his Foreword to the Guiding Principles :-

These Principles, which are based upon existing international humanitarian law and human rights instruments, are to serve as an international standard to guide governments as well as international humanitarian and development agencies in providing assistance and protection to IDPs.

4.4. Borrowing from article 14 of the Universal Declaration of Human Rights, the Guiding Principles emphasize that internally displaced persons continue to have the right to seek and enjoy asylum in other countries. Guiding Principles 5 to 9 deal with protection of person from involuntary displacement. Having a firm base in international Human Rights and humanitarian law these principles reiterate the individual's right to be protected against arbitrary displacement and the responsibility of the government to prevent such displacement. These principles also spell out the procedures so that the adverse effects of displacement are minimized. It may be noted that forced internal displacement deprives the citizen of their right to freedom of movement and residence held sacred by article 13(1) of the UDHR. This protection against arbitrary displacement exists even in times of war. For the rights to life, liberty, dignity and security are non-derogable. The displacement of population for development projects must satisfy the criteria of over-riding public interest and the displacement of civilian population for "imperative military reasons" as provided in Geneva Conventions, 1949 Protocol-II, Article-17 must also stand the test of reasonableness. In so doing the imperative military reasons must be defined narrowly to minimize the occasions and the number of persons involved. Even then alternatives to displacements should be identified and the affected populations must be consulted thorough out the whole process.

4.5. Guiding Principles 10 to 15 enumerate the most basic rights of internally displaced persons. They are also strongly grounded in international human rights and humanitarian law. For example Principle 10 providing for protection of IDPs against genocide murder, arbitrary execution and post disappearance derives its strength mainly from Article 3 of the UDHR which underlines the right to life, liberty and security of person of every human being. Likewise, Principle 11 pertaining to the right to dignity and physical, mental and moral integrity and seeking to protect the IDPs from torture, cruel, inhuman or degrading treatment is the reflection of Article 5 of the UDHR. Principle 12 lays down that IDPs shall not be ordinarily be interned or confined to camp echoes the same sentiment as provided in Article 9(1) of the ICCPR i.e. no one shall be

subjected to arbitrary or detention. Principle 13 prohibits recruitment of children to take part in hostilities which is similar to the Geneva Conventions and the Convention On the Rights of the Child.

4.6. Principles 16 and 17 of the Guiding Principles recognized the importance of preserving the family unit despite the displacement which essentially reiterates the Article 16(3) of the UDHR and Article 26 of the Fourth Geneva Conventions.

4.7. Internally displaced persons are often confronted with the problem of inadequate assistance or opportunities to provide for themselves. Guiding Principles 18, 19 and 23 spell out economic, social, cultural rights that apply particularly to the displaced. These include an adequate standard of living, right to health and medical care, the importance involving women in the process of planning and distribution of relief and right to work, education and property. These principles have been derived from Articles 11(1) and 12 of the International Covenant on Economic, Social and Cultural Rights. Some of the thoughts have again been borrowed from Articles 17, 23 and 26 of the Universal Declaration of Human Rights and the spirit of preamble to the Convention of the Elimination of All Forms of Discrimination Against Women.

4.8. Guiding Principles 20 and 22 describes Civil and Political Rights belonging to internally displaced persons. Principle 20 provides that every human being has the right to recognition everywhere as a person before the law as a person before the law which is the same as Article 16 of the International Covenant on Civil and Political Rights. To give effect to this right for the internally displaced persons the authorities concerned shall issue them all documents necessary for the enjoyment and exercise of their legal rights such as passports, birth certificates, marriage certificates, etc. Principle 22 states that internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of their rights. This principle is a restatement of Article 19 of the UDHR which states that everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any medium and regardless of frontiers.

4.9. Principles 24 to 27 enumerated in Section 4 of the Guiding Principles relate to humanitarian assistance. They lay out the roles and responsibilities of national authorities and international organizations in providing humanitarian assistance to internally displaced persons. These principles recognize the paramount responsibility of national authorities to assist their citizens, but they also affirm an important role for international humanitarian organizations and other appropriate actors. This is in conformity with Article 3 of the Geneva Conventions which spells out that an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

4.10. Section 5 consisting of Principles 28 to 30 is regarding return resettlement and reintegration. The right chiefly flows from Article 12 of the International Covenant on Civil and Political Right which says that everyone lawfully within the territory of a State shall within that territory have the right to liberty of movement and freedom to choose his residence. Sovereignty means responsibility and national authorities have the primary duty and responsibility to ensure that durable solutions are formed for internally displaced persons. They are also expected to create conditions which would facilitate their return and settlement with dignity.

5. Concluding Remarks

We have thus seen that the Guiding Principles derive their strength and sustenance from International Human Rights Law and Humanitarian Legal Regimes. The incorporation of Guiding Principles in domestic law proves to be of great significance towards ensuring protection for internally displaced persons and safeguarding their interests. National legislation on internal displacement should be in line with the international standards as set forth in the Guiding Principles. Indeed, governments worldwide have, in UN resolutions, encouraged states with internally displaced populations to develop strengthened national legal frameworks on internal displacement, taking into account the Guiding Principles.

On the basis of a close reading of Internal Displacement in South Asia write an essay on how development often led to displacement in South Asia.

Kingsline Xavier

Introduction

It is estimated to be approximately 25 million Internally Displaced Persons (IDPs) around the world distributed between nearly 50 countries^[1]. There are number of reasons and multifaceted problems encountered by the victims of displacement. In this essay we are going to see on how development has led to displacement in South Asian countries.

'Internal displacement is the great tragedy of our times. The internally displaced people are among the most vulnerable of the human family'^[2]. It is true that it is a tragedy but many at times this tragedy can be prevented by the states if it is proactive and sensitive to its own people, whereas on the other hand it is normally insensitive and violates the human rights of its citizens and fails to safeguard them. To understand the meaning of IDPs in a global context it is defined as "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, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border"^[3]

One can understand from the definition that the reasons of displacement are due to armed conflict, violence, natural disasters, man made disasters etc. Most of it is not preventive, but the effects of man made disasters and development induced

displacement is preventive and the damages done can be minimized to a very great extent. The state has the duty and authority to safeguard the rights of its people and uphold freedom of expression as enshrined in the constitution of all democratic countries. Therefore the state should be sensitive to its people and their basic needs. Development is essential for all countries but the question is Development at what cost? The South Asian countries are in the phase of developing or underdeveloped. There is a dire need for these countries to 'develop' in the stricter sense to improve the infrastructure like railway lines, roads, building dams, developing hi-tech software parks, expanding of airports etc., all this to attract foreign investors and only a few benefit in this but in contrast it affects a million people. Development induced or related displacement can be divided into two categories direct and indirect.

Direct displacement is the outcome of displacement due to commissioning or installation of development projects. Indirect displacement emanates from a process whereby the installation and functioning of the projects continuously deplete the natural and environmental resources that leads the indigenous people to migrate to other places in need of living and sustenance. Some examples of direct displacement are building of dams whereby large number of villages will be submerged so the inhabitants are displaced. For indirect displacement there are farm labourers who make their living by working in farms when development projects displaces the inhabitants and their lands naturally the labourers are affected by not having a living though their houses may not have been displaced as a result of the project.

Internal Displacement in South Asia – An overview

Afghanistan can be termed as the land of invasions that dates back to centuries until the Soviet invasion in the 70s, the Afghans are facing worst humanitarian crisis even after crushing the Taliban rule. If one analyses displacement within and exodus of people to other countries is the result of ethnic conflicts, wars, drought and famine.

Pakistan was a predominantly agrarian society with minimal of industrial sector on the eve of independence. The process of industrialization and modernization in Pakistan officially culminated during the era of President Ayub Khan (1958-69) known as the decade of development. Although the years were remembered as the best period in terms of economic growth but the resources were not distributed equally and it did not address the marginalised sections of the society which in turn invited host of problems for Pakistan in the coming years. Large dams have been the foundation on which Pakistan's agricultural economy and industrial base has been set up. The National Motorway Network Project, Lyari Expressway Project and Islamabad capital territory case are some of the other development projects that have led to displacement of people.

Dams are the temples of modern India^[4] but if there are no people to worship what is the need for temples, It is not to criticize the statement of an eminent leader, nationalist and a freedom fighter but the context is to analyze the need for such huge dams and if there is one what are the measures to implement such projects with minimal effects on the people. The Narmada River Valley Project is described as the world's largest planned environmental disaster and minimum of 23,500 people in Gujarat, 20,000 in Maharashtra and 120,000 in Madhya Pradesh are estimated to be displaced by the Project. This is one such example in India there are numerous projects on dams, hydro electric plant, railway projects that has caused displacement. The north eastern part of India is a distinct category where most of the time they are not considered to be part of India. Development projects like dams, oil and gas fields, mines, industrial projects have displaced thousands of people in the north east. There are lots of tribal and ethnic communities living in north east and each of them are unique in language customs and practices, Therefore the problems of displacement is not the same as in other parts of the country. The government has to be very sensitive to their feelings and needs and draw a suitable rehabilitation plan in order to resettle them in another place.

Bangladesh is crisscrossed with major rivers so the displacement is due to natural disasters, like rivers changing courses. Some of the other reasons are due to conflicts between ethnic groups and Bengalis in Chittagong Hill Tracts (CHT). The displacement of the indigenous people of CHT was the consequence of a dam that was built in Katpai near Rangamati between 1957 and 1963. The resettlement of the displaced was not done properly failing to meet to the expectations and the life style of the displaced which was a failure on the side of government that caused armed conflict and massacre of people.

Burma or Myanmar as it is called now is ruled by the military. There are no official figures recorded as IDPs in Myanmar nor the state allows access to IDPs by International or Humanitarian organizations. There are cases found in the border areas in the east and in particular the Karen, Karenni and Mon ethnic groups.

Nepal has huge populations displaced as a consequence of roads, irrigation schemes, airports, promulgation of national parks and water shed management projects, but there are no records of the compensation procedure and policy and number affected. The Rara National Park, Kulekhani and Marsyangdi Hydroelectric Project are some of the development projects in Nepal that caused displacement. In the contrary there is a special group of people in Nepal called Kamaiyas who were traditionally bonded labourers who served and lived in landlords' houses for the repayment of loans of their forefathers. The Government declared them free in July 2000 by writing of their loans and all these were asked to move out from their place of habitual residence therefore this special group of people who had to be treated differently were left uncared and unaccounted so what is the type of rehabilitation measures for these kind of people is the answer to be given by the state.

Sri Lanka has the worst affected IDPs living in camps with the hope of returning homes soon as a result of ethnic war. Tsunami has further ravaged the country and produced more number of IDPs. There are not much of development induced displacements in the island nation.

Is it a need -Development Projects?

On the result of Globalization there is need for countries to meet the demands of this rapidly growing society. So the development projects will naturally help the country economy to grow which in turn will benefit the citizens of the country. If

one analyses the Government which brings into force the Projects naturally has lot of factors that are beneficial to them. There are lots of scandals that come out after the project is completed and the flaws in compensation policies.

The democratic sovereign states primary duty is to safeguard its own people. The constitution guarantees the same to every citizen. The development projects may be indicators of economic and industrial development of the country but the effects will be on the other side in social, health and poverty indicators of the displaced people. The important thing in these forced evictions by the state on the refusal of the people to move it shall adopt a participatory approach like Participatory Rural Appraisal in order to assess the damages and effects of the project and thereby formulating a suitable Plan of Action with the stake holders, civil society, Government and the Judiciary. This type of Collaborative action will lead to smooth execution of the projection and ensure Distributive Justice for the affected Population.

UN Guiding Principles on Internal Displacement

The Guiding principle was the response to the basic dilemma in the international community's response to forced displacement. It consists of an introduction followed by thirty individual principles mentioning different phases of displacement (before, during and after) and also states the rights and duties of the agencies working for the cause. Some of the highlights of the Guiding Principles are it provides with Types of Prohibited Displacement, Rights of the displaced, Rights and obligations of the humanitarian agencies working for the cause, the principles to be followed on formulating compensation on return resettlement and reintegration. This serves as a guideline and framework for all the actors in displacement, the state, and the foreign actors who collaborate/fund the project. Based on this framework the state has to work out a national framework that will meet the standards pertaining to its own conditions prevailing.

Suggestions – In view of Displacement – Development Projects

Each project before it is being approved by the state a scientific study has to be conducted by the state on the advantages, outcomes in terms of economic growth *vis-à-vis* the effects of displacement. The damages done to the displaced population have to be calculated and a suitable plan of action has to be duly prepared and approved by the civil society, humanitarian agencies participating in the resettlement process and the representatives of the affected population. Normally in these instances the state suppresses and the people protest later and the situation comes to limelight. It can very well be avoided and the process of displacement and implementation of the project can be done smoothly provided the state involves itself to the cause. Peoples Participation is very essential in a democratic state, the decision binding the inhabitants should be taken with utmost care and sensitivity.

On the basis of a close reading of "Internal Displacement in South Asia" write an essay on how development have often led to displacement in South Asia.

Barnalee Choudhury

Entire South Asia has witnessed an enormous rise of internal displaced in recent times caused by various factors like conflicts, natural calamities and development projects. While development should improve the living standards and bring happiness to all citizens, it often benefits the wealthier section, forcing the backward communities to leave their homes leading to extreme economic hardship, community disintegration, mental and physical problems. Development projects lead to both direct and indirect displacement. The first occurs when people are physically forced to move from their ancestral homes while the latter occurs when development planning and policies constrain the livelihood to the degree that people decide to move on their own will.

Most of the newly independent nations of South Asia, namely Pakistan, India, Bangladesh etc, in order to attain rapid economic development have often ignored the problem of internal displacement. Development policies of these countries are not concerned about the resettlement of the oustees of the projects. The basic argument put forwarded here is that- someone has to suffer if the nation is to prosper. In almost all South Asian countries, governments do not keep the actual data relating to displacement. Besides, there is absence of clear-cut policy of resettlement and rehabilitation of the displaced which makes the problem more complicated. These countries are not even following the UN Guiding Principles relating to internal displacement. It can be mentioned here that the problems relating to resettlement are mainly due to the inefficiency and inconsistencies of the institutions concerned.

Again, in this region, large numbers of farmers occupy land that is classified as non agricultural or non-arable and claimed by the state agencies. These people are never compensated for those losses. When the displaced move from their original habitats, they incur immense losses in life sustaining resources including social networks, neighbours and access to common property resources. Land or house possession in one's place of origin cannot only be regarded as wealth creating resource, but also as the basis of status of identity. Here belonging is key to the enjoyment of rights. Moreover, in tribal areas, people enjoy the common property resources, which are ignored by the rehabilitation packages. Again displacement of the tribal communities has often deteriorated the ethnic relations leading to conflict in this region. The plight of the Internally Displaced Persons (IDPs) are more pathetic than the refugees as the former cannot cross international borders and has to seek help from that authority responsible for their displacement. Interestingly, in South Asia the internal displaced cannot be regarded as a national category since what happens inside a country has its implications on the neighbouring nations. E.g. the IDP problem in Myanmar has its implications for the minorities of Northeastern India and Bangladesh. Therefore, it is essential to regard them as regional categories.

In Pakistan most of the development projects have caused dislocation of human settlements and disturbed their livelihoods. The rural communities have been the major victims though the people of the semi-urban and urban areas also suffer from the negative effects of development. In all development projects, problems remain the same regarding compensation, resettlement and rehabilitation. In order to solve the financial problems in post-independent era, all governments in Pakistan have been emphasising on industrialisation. As a result, a huge number of people become homeless in their own country. The period of President Ayub Khan (1958-69) known as 'Decade of Development', shows good performance in terms of economic growth, but fails to address the issue of equitable distribution of resources among all classes. Although, many development programmes are being introduced to eradicate poverty, illiteracy, population explosion etc., Pakistan is yet to achieve the goal of sustainable development and social justice.

Like many other South Asian countries in India also, there is no reliable official statistics regarding the number of development induced displacees. Displacement was regarded as an unavoidable corollary of development here. According to official estimate the number of such displacees is 15.5 million in 1994. But calculations on the basis of the number of dams built in the country, that figure may go upto 21 to 33 million. According to an estimate, development projects have directly displaced about 21 million people during 1955-90. Besides, these projects have deprived a huge number of people of their means of livelihood causing indirect displacement.

In Nepal populations have been displaced for irrigation schemes, airports, promulgation of national parks etc. Here also, it is very difficult to find figures relating to the number of displacees. In many projects, land was acquired without any coherent plan. According to available data, there were between 6,00,000 and 1 million IDPs in Myanmar in 2002. Dams have caused displacement of good number of people in this country and these IDPs in Myanmar are deprived of the basic amenities of life. Such displacement has mostly affected ethnic minority groups of the nation. In countries like Sri Lanka and Afghanistan conflict-induced displacees outnumber the development-induced displacees. Nevertheless, many people are displaced by development and infrastructural projects in these countries and they live in a very pathetic condition.

In the following section, I intend to deal with how different development projects have intensified the problem of development induced displacement in South Asia.

Dams and hydropower projects have been the major source of displacement in South Asia. In most of the countries of this region, dams are worshipped and regarded as prerequisite of development. Till now Pakistan has 81 large, medium and small dams contributing to the problem of displacement. Concern for resettlement of victims has always been secondary in project plans. Many displacees of Ghazi Barotha Hydropower project are awaiting implementation of the resettlement projects. There are inconsistencies in the award of compensation measures. In Ghazi-Barotha Dam project a comprehensive resettlement plan has been incorporated. The total number of affected persons of this project are 21,653. The Resettlement plan's objective conform to the Asian Development Bank's resettlement policy objectives. The project was expected to be a model for future initiatives as it was addressing issues that were ignored by earlier projects. However, it is unfortunate that in 2002 the National Accountability Bureau and the Regional Accountability Bureau launched an inquiry into the irregularities and malpractices in awarding of compensations to the victims and termed it as the biggest 'Land Acquisition Scam' in South Asia.

Without any plan for rehabilitation and resettlement, the Pakistan government has introduced another hydropower project 'Vision 2025', including many small and big dams, water reservoirs, expressways, highways, roads, canals etc. It will definitely aggravate the problem of internal displacement in Pakistan. Again, number of displacees as estimated by the government is often less than estimated by NGOs. E.g. the Mangla Dam, world's third largest earth-filled dam, has displaced 5,000 persons according to official statistics, but independent agencies show the figure as 30,000. The victims did not get proper compensation. Now the Pakistan Government is raising the height of this dam by 40 feet ignoring protests from various sections. It would affect another 40,000 people.

Tarbela Dam of Pakistan launched in 1967 had displaced 96,000 persons and 120 villages came under water. The promised compensation package did never materialise. About 2100 families are still waiting to get due compensation. The Report of the World Commission on Dams has revealed that out of 96,000 displacees of Tarbela Dam, two-thirds are expected to get agricultural land. Of these 20,000 people could not be provided land due to shortage. Nor the victims receive adequate compensation to buy alternate land. In Kalabagh dam, the total estimated population to be affected is 83,000. A comprehensive resettlement plan has been designed but a section of people have reservations about it for its negative effects. In the face of the pressure from political parties as well as civil groups, the Kalabagh Dam could not be included in the 'Vision 2025'.

Dam building was equated with nation building in India. During the last 50 years almost 3300 big dams have been constructed in India. Whereas the beneficiaries of the dam are meant to be large landowners, tribal people are paying the price. Here also big gap exists in the estimate of displacees by the government and NGOs. In case of Narmada dam, the official figure states that it would displace about 42,000 families whereas the NBA put the figure at 85,000 families or 5,00,000 persons. In West Bengal about 3000 big and medium dams have adversely affected the weaker section of the society. At present 700 dams are under construction and these will definitely increase the displacement problem in the state.

India's Northeast also suffers from this problem. Here the development projects undertaken by central and state government have displaced a good number of people, mostly belonging to tribal and backward communities. The Dumbur dam of Tripura displaced a total of 35,000-40,000 people. The Loktak hydel project in Manipur displaced around 20,000 people as their villages went under water. The Pagladiya Dam Project of lower Assam is going to displace 1,50,000 people, but according to official estimate it would affect only 18,000 persons. Likewise, Tipaimukh project is displacing 40,000 people. In Arunachal Pradesh more than 20,000 would be displaced by the Siang project. In recent times, the Indian government is planning to set up a

number development projects like dams in Northeast, contributing further towards the problem of internal displacement as well as ethnic conflicts.

In the Kulekhani Hydroelectric Project of Nepal, the affected 3000 population were not compensated adequately. Moreover, the permanent losses were not taken into consideration. So the majority of the affected houses become poorer. Marsyangdi Hydroelectric Project in this country, displaced a population of about 1800. Compensation was given only in cash. The full information on the reasons and procedures of displacement has not been provided to the IDPs or would be IDPs in these projects. Hence, the displacees are deprived of many of their legal rights.

The process of urbanisation has also contributed significantly towards the problem of internal displacement in South Asia. Islamabad Capital Territory was created to develop a new capital displacing many in Pakistan. Although cash compensation and land on concessionaire rates were given to victims, it was not free from anomalies. Eviction drives are taken almost on a routine manner causing displacement of population in cities like Kolkata. Even in Delhi, the High Court has ordered demolition of *jhuggi* (shanty house) settlements on public road which will demolish the homes of more than 3 million to make a clean and green city. In Bangladesh, the governments often resort to violent eviction of slums in Dhaka, making several thousands of slum dwellers homeless. The people living in the slums are very poor and after eviction, they become further marginalised. In Agargaon area of the city, for eviction of slums the police raided the houses arresting, looting and harassing families and raping women. Data shows the number of families in slums has been decreased from 13,613 on July, 2001 to 4,620 on 10th March, 2002. This method of eviction is the violation of human dignity and fundamental rights of the poor. Thus, in the name of planned urban development people are being displaced in South Asia.

Construction of roads have also displaced a good number of people in this region. National Motorway Network Project consisting of 10 projects was launched in the early 90's in Pakistan. Thousands of families living on the periphery of the newly constructed motorway faced extreme difficulties which included division of their lands, stoppage of water supply lines, blockage of approach ways to cattle grazing grounds, human settlements and displacement of the people. The project was carried out with such irresponsibility and haphazard planning that it disturbed the entire cultural habitat and livelihood patterns of the area. Moreover, compensation was paid only to those whose lands were acquired for building metalled road. Lyari Expressway Project of Pakistan is going to displace a population of 2,03,200 and will hit mostly the urban poor in Karachi. In all 25,000 houses, 3600 shops and commercial units, 50 mosques, 5 churches, 8 temples, 10 schools, 38 clinics, 1 hospital and 66 factories would be destroyed by the project. Many big and small NGOs are protesting against it, but the government is determined to carry out the project. It has created a lot of confusion among the displaced communities as they were not taken into confidence. Nepal have also witnessed the same problem. However, there exists no records of compensation for the land acquired by many projects. The construction of infrastructural projects have also caused dislocation of population in Myanmar.

In this way, development related displacement has become a regular feature in South Asia. In countries like Nepal the problem will continue to be so as the country has a big potential for water resources and there is absence of other major economic resources. Besides, the oil and gas fields in Northeast India have also displaced a huge number of population. Paper mills in Assam and Nagaland have displaced more than 10,000 people. Many gas based thermal projects are still in the pipeline in Tripura, which will definitely aggravate the problem of internal displacement in this region.

As stated earlier, the IDPs of this region face lot of hardships. However, the women and children are more vulnerable. Women as the marginalised entities within the marginalised group are often forced to shoulder the negative affects of displacement. The worst victims of such projects are those women participating in the economic activity of the family. The women heads are even denied the status of PAF. The cash compensation usually disempowers women who lack the experience of handling financial matter. The disintegration of social network of the displaced community makes them more vulnerable. The women head of the families always find it difficult to pursue their cases with the department dealing with compensation or allotment of land. The National Commission of Women noticed that in the Tehri Dam the displaced women lost their share of livelihood and the area where they are relocated did not provide them with the supplementary sources of income. Again, one method of eviction in the cities has been to enter an area and beat up women and children. They are not safe in resettlement sites also. Sometimes women are not recognised as the owners of land. So the development projects besides displacing thousands of families have also caused severe disempowerment of women in this region.

Thus, in the South Asian countries, displacement owing to development presents a grim scenario that includes landlessness, unemployment, homelessness, marginalisation, lack of food, loss of common resources and breakdown of social networks. As mentioned earlier, the nations don't have proper resettlement policy and law on resettlement and compensation issues. Apart from lack of commitment of government towards the implementation of resettlement guidelines, there are other factors that harm the IDPs. These include the absence of community participation and inadequate funding for compensation. It also includes incompatibility of ethnic background, clash of interests between the host community and resettled families and lack of support services as well as social organisations processes to integrate the resettled population in the local communities. Moreover, implementation of resettlement action plans is faulty and poor. All these inadequacies exist in almost all the projects. In some cases families were displaced twice as the design of the project was modified.

Importantly, in the course of developmental process in South Asia, it is often the indigenous people and the minority communities who get displaced. Among these communities, the more victimised such as women, children, old and the infirm are further abused and marginalised. Government and NGOs should take such measures so that they are not discriminated in receiving compensation. Michael Cernea has rightly stated that the risk of impoverishment is intrinsically present in displacement regardless of its causes. The major challenge for the nations is risk prevention and providing safeguards. The problem of displacement should not be seen as temporary. Rather, it should be regarded as a crime against humanity. A separate legal regime is necessary to deal with the whole problem. However, the same set of laws cannot be applied to all types of

displacement. There is an urgent need to protect people against such displacement and evolve an alternative method of development. When displacement becomes unavoidable, steps should be taken to protect the victims during displacement and proper resettlement and reintegration of the people should be provided.

Some NGOs are championing the cause of the displaced of development projects. Their activities include : Policy advocacy, awareness raising, research and pressure group activities. It is often found that dams are built, people are uprooted and then the project is abandoned. So none can enjoy benefits. Although resistance has come from the victims with the support of the civil society and NGOs, it has not achieved complete success. But this should be regarded as a positive development as the common people are becoming aware of their rights and started questioning the legitimate authority of the state. The need of the hour is to evolve a people friendly model of development to avoid the problem of displacement. So, we need a humanistic approach to understand the physical as well as the psychological trauma of the displaced which is often overlooked by the people in power.

Destitute of Development

Nandini Basistha

Development is an inalienable comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well being of the entire population.¹ But the governments of most of the third world countries put stress on the process of industrialization and modernization as means of development. For helping such process, governments generally manifest developmental projects, like building of dams, expressways, highways, canals, airports and new towns. Every developmental project requires land. So governments generally encroach lands from the local inhabitants. The segment of population that is 'developed' by the development projects is different from the segment that is 'displaced'.² Displacement provides a grim scenario of landlessness, homelessness, lack of food, loss of common resources, marginalisation and breakdown of social networks. Sometimes the directly displaced people, who have inhabited the project-sides for generations, get meager amount of compensation from the government. But indirectly displaced, who losses the control over natural and environmental resources, thereby deprives of the traditional means of livelihood, are the forgotten people of governmental rehabilitation and resettlement (R&R) policy. Thus the 'Displaced' has to bear the price of development in the larger interest of 'Nation'.³ They are the 'Destitutes of Development'.⁴

All of the countries of South Asia (viz. India, Pakistan, Afghanistan, Nepal, Bhutan, Srilanka, Bangladesh and Maldives) are developing countries. So displacement of communities from their ancestral lands has been integral to the developing economics of South Asia.⁵ The heavy emphasis on large scale projects for infrastructure development of the country has laid to the displacement of millions in South Asia.⁶ But the R&R programme of the displaced persons are marginalized in project plans for many reasons.

Firstly, being low-income countries, South Asian states have to accept loans from different international organizations (like World Bank, Asian Development Bank etc.) for fulfilling monetary requirements of the developmental projects.⁷ These large, foreign funded projects had too many aid related conditions, attached by funding agencies.⁸ In most of the cases, there are no recommendations rehabilitation policy.

Secondly, no Govt of South Asia has concrete policy for rehabilitation and resettlement of the displaced people. Even they do not follow the international principles on IDPs and human rights.

Thirdly, sometimes the govt. tries to follow comprehensive rehabilitation and resettlement policy. But for corruption and malpractices of the authorities this good will cannot transform into good effort. According to Dr. Paula Banerjee, "States have rarely produced well thought out policies on relief and rehabilitation of the IDPs and have failed to carry out measures with a long perspective. Whatever has happened as relief measures has been the product of ad hoc steps taken by the state."⁸

For all these reasons, for sake of 'development', thousands of families are displaced and threw in the path of uncertainty. The brunt of displacement sweeps away the separate identities of people. According to one observer, 'When people are uprooted because their land is wanted for economic reasons usually associated with visions of national development, their multiple identities tend to disappear; they become engendered, uprooted'.⁹

As in any other kind of displacement women and children are also particularly vulnerable in development - induced displacement.¹⁰ Women as marginalized entities within marginalized communities are of ten forced to shoulder the on deal of displacement far more intensely.¹¹ But gender disaggregated data are seldom available in any developmental project involving displacement.¹² Women are marginalized even in compensation policy in many ways.

Firstly, as women generally do not own land, they do not get any compensation. But, they have lost their means of livelihood for developmental projects. So they are affected economically.

Secondly, the cash compensation generally disempowers women, just because women do not handle cash or for that matter have control over financial resource within the family.¹³ Therefore, the decision to spend the money lies with the men of the family.¹⁴ In many cases, the male member spent the money for their own amusement, not for the family.

Thirdly, the disintegration of social network of the displaced communities and loss of land and common resources compels the women to do domestic work or other jobs for survival. All of these severely impacts on the health and nutrition of women, as well as on their children, who remain without education in most of the cases.¹⁵

Fourthly, even women face severe problems in resettlement sites. These problems start from something as apparently small as no separate toilets for women to bigger problems such as refusal to give women headed households the status of PAF.¹⁶

Now, I like to cite the example of some countries of South Asia, in which development brings disaster for the displaced people.

Pakistan

From the eve of independence in 1947, the government of Pakistan have been considering industrialization and modernization as the panacea of development, as the mere dependence on agriculture produce would not make the state viable and stable.¹⁷ Apart from dam building, numerous other projects have been planned, like expressways, highways, roads, canals, water reservoirs and new towns. For these developments it is included among the Newly Industrializing Countries and its growth rate has increased. But this development is not holistic development. Because concern for resettlement of uprooted communities has always been secondary in project plans and the experience has shown that the implementation of resettlement action plans continued to be faulty and poor.¹⁸ As a result, Pakistan's record on the scoreboard of forced eviction of the people, lack of comprehensive plans for resettlement and rehabilitation of livelihood, undervalued compensation, delayed payment, relocations and problems of integration of dislocated communities is quite dismal. ¹⁹ If we critically analyze some developmental projects it can be bitterly understood that development often led to displacement.

Case Studies : Ghazi - Barotha Dam

Large dams have been declared the bedrock of Pakistan's agricultural economy and industrial base from the early decades of its national policy and planning.¹⁹ But there dam projects had evolved many controversies as these had ignored community participation and R & R policy.²⁰ So, the government of Pakistan cam up with the Ghazi - Barotha Hydropower Project with a comprehensive resettlement plan and minimal environmental and resettlement impacts.²¹ It was tried to avoid displacement through site selection. But, in spite of that this project affected 21653 persons.²² They include 3412 persons who would loss all of their land.²³ It was expected that impact of land acquisition would largely be mitigated by the provision of irrigated land on the spoil banks and by measures of fair and prompt compensation. ²⁴ The other 1778 persons that did not own the Regional Development Plan, which would ensure that the project affected families, assured any land but loss livelihood for this project would have a standard of living. At least equal to that which they had before the project.²⁵

For implementing these proposals, WAPDA has provided Rs. 100 million as seed money with assurance of providing an additional amount of Rs. 176 million. ²⁶ A project non-governmental organization (PNGO) would be assist the Environmental and Social Division of the Ghazi-Barotha Project Organization (GBPO) for in monitoring the social aspects of the resettlement action plan including land acquisition and compensation, formation of tube-well users' association and allocation of developed spoil bank.²⁷ Transparency of compensation process, resettlement housing, employment, training and credit schemes and environmental protection under the integrated rural development programme was implemented.²⁸

This well thought policies cannot be materialized for the irregularities and malpractices of WAPDA officials and landowners. So, the investigators - the National Accountability Bureau (NAB) and the Regional Accountability Bureau (NWFP) termed it as the biggest 'Land Acquisition Scam' in South Asia.²⁹ With the connivance of Land Valuation Assessment Committees, Land Acquisition Collectors, officials of Agriculture Development and land owners of the area, the payment of compensation was made at highly inflated rates for low category of land, non-existing facilities, infrastructure and orchards. Investigation is under way and 200 affected people, including 80 women, have been accused of receiving excessive land compensation.³⁰

Without going into the debate of maltreatment of the Ghazi-Barotha Project, I can clearly say that this type of humanitarian consideration about the destitute of displacement have ushered a new hope for future in which development projects will bring holistic development for all segments of people.

Besides the Ghazi-Barotha Hydropower Project, the government of Pakistan have completed Mangla Dam, Tarbela Dam, Islamabad Capital Territory, National Motorway Lyari Expressway, Cholistan Dam and Gawadar Port in which millions of people plan displaced. Now, without having a comprehensive plan for development of rehabilitation and resettlement, the government of Pakistan has launched another controversial and ambitions hydropower project named "Vision 2025", which is likely to add to the number of displaced in the country.³¹ Being aware of the cost of development, now many civil society organizations and political parties are now protesting united these projects. So, the government of Pakistan needs to develop comprehensive plans for R & R of the displaced before initiating other developmental projects.

India

India has one of the highest development-induced displacements in the world.³² As a result of the developmental projects like mines, dams, industries, wildlife sanctuaries and others about 21 million people were internally displaced in India.³³ With 4300 dams in place, India is one world's major dam building countries for which about 37500 square kilometer areas was submerged and at least 42 million people have displaced.³⁴ In the Indian context, it is of interest to note that most of the developmental projects are located in the most backward areas and populated by various small nationalities - otherwise called tribals.³⁵ While the tribal form only 7 percent of the country's population, they account for almost 40 percent of the country's displaced population.³⁶

Table – 1 Statistics of Displaced Persons (DPs) and Project Affected Persons (PAPs) for some Developmental Projects

Sl.No.	Name of the Projects	State	Area (Hacter)	DPs & PAPs (Number)	Tribal IDPs (Number)
1.	Bhilai Steel Plant	Madhya Pradesh	13500.46	31300	2400
2.	Bokaro Steel Plant	Bihar	12442.18	68700	14900
3.	Rourkela Steel Plant	Orissa	13185.00	23400	11300
4.	Durgapur Steel Plant	West Bengal	6633.44	11800	400
5.	Mangalore Harbour & I E	Karnataka	890.00	17080	NA
6.	Mangalore Refinery	Karnataka	1174.00	16500	NA
7.	Sea-Bird Naval Base	Karnataka	12500.00	16100	NA
8.	Chakra Savehaklu	Karnataka	2372.00	1425	NA
9.	Singrauli STPP	Madhya Pradesh	1932.00	55000	13000
10.	NALCO (Angul)	Orissa	948.00	2628	73
11.	Karjan Reservoir Project	Gujarat	3677.00	2106	2106
12.	Sukhi Reservoir Project	Gujarat	2904.00	1453	1453
13.	Balimela Hydroelectric Project	Orissa	17516.00	1200	1174
14.	Bodhaghat Hydroelectric Project	Madhya Pradesh	12250.00	2300	1700
15.	Kokrapar Project	Gujarat	1480.00	200	200
16.	Malajkhand Project	Madhya Pradesh	2012.68	777	497
17.	Mahi Bajaj Irrigation Project	Maharashtra	14340.00	6975	5321
18.	Tultuli Irrigation Project	Maharashtra	5420.00	2470	1275
19.	Koel-Karo Hydroelectric Project	Bihar	17764.00	37600	32954
20.	Dumbur dam of the Gumti hydel Project	Tripura	X	35000-40000	35000-40000
21.	Rajarhat New Town Project	West Bengal	X	131000	X

Source for 1 – 19 : Ministry of Home Affairs, 1985: 18 – 19 ; Subrata De 1998 : 145; CWC 1996.

Source for 20 : The essay of Subir Bhawmik, 'India's Northeast: Nobody's People in No – Man's – Land' in the book, "Internal Displacement in South Asia, *ibid*, p147.

Source for 21 : The essay of Samir Kumar Das, 'India: Homelessness at Home' in the book, 'Internal Displacement in South Asia', *ibid*, p.137.

Case Study: The Narmada Valley Development Project

The Narmada Valley Development Project (NVDP) is supposed to be the most ambitious river valley development project in the world.³⁷ It envisages building 3200 dams that will reconstitute the Narmada and her 419 tributaries into a series of step-reservoirs.³⁸ Two of them the Sardar Sarovar in Gujarat and the Bargi dam in Madhya Pradesh have already been built. This project is important for many reasons.

Firstly, the NVDP was described as 'The world's greatest planned environmental disaster'.³⁹ According to one report, 'the Narmada Valley Development Project will affect the lives of 25 million people who live in the valley and will alter the ecology of an entire river basin'.⁴⁰

Secondly, the Narmada Bachao Andolan (NBA), which was spearheaded by a women activist. Medha Patkar, revealed systematically for the first time how building dams can result in total dislocation of tribal societies.⁴¹ The Sardar Sarovar Project, often described as one of the most flawed projects, displaced largely the Tadvis, Vasavas, Bhils and the Bhilalas, but very few caste Hindus.⁴² Whereas the beneficiaries of the dam are meant to be large land owners, tribal people are paying the price.

Thirdly, the official figure has not counted people who will lose their livelihood as a result of the NVDP as project-affected families (PAFs).⁴³

Fourthly, the women from the affected tribal communities are the worst affected. The governmental relief programmes tend to overlook women's crucial roles as producers, providers and organizers and have delivered assistance directly to male heads of households, whether it is food, seeds and tools or training.⁴⁴ This reduces women's influence over areas previously controlled by them such as the production and provision of food-undermining their position within the household and the community.⁴⁵ In Sardar Sarovar Project women with land titles (Patta) were not given land for land.⁴⁶

Fifthly, Govt. of India had shown extreme negligence in time of rehabilitation and resettlement of the displaced in NVDP.

Thus, the catchall promises of development in India hide a shuffling mass of hundreds of thousands of families displaced by the inexorable engines of progress.⁴⁷ Studies indicate that development – induced displacement has been one of the major causes of deprivation of livelihood of the people in India.⁴⁸ According to one of the Indian leader, "If displacement is bad, not creating storage to avoid displacement of tribal communities is worse."⁴⁹ However, I am not against development. But, as a

human being, I want holistic development for the entire population. For this, government of India must manifest R&R policy fully and properly.

Nepal

Nepal seemed to be lesser affected by the problem of development-induced displacement. Moreover, the absence of the records of the displacement helped in hiding the exact feature. However, there are displacement due to road construction, irrigation projects, airports, promulgation of national parks and watershed management projects.⁵⁰ For example, I can refer to three projects-viz. Rara National Park, Kulekhani Hydroelectric Project and Marsyangdi Hydroelectric Project-which had displaced a number of peoples -viz. 331, 450 and 222 households.⁵¹

Unlike other South Asian states, displaced people of Nepal got proper R&R. The affected people of Rara National Park project were compensated with land in Terrain plains in the south and additionally provided with facilities like food for a certain period, timber for construction of houses and there were provisions for tube wells and schools.⁵² Even after leaving the resettlement site, the displaced people got governmental support. In 1989 Harka Gurung found that those displaced from the area around the Rara Lake were better off economically at their new location with multisectoral governmental support.⁵³

However, government of Nepal cannot hold this good will in later projects. It gave the option of cash or land compensation in the Kulekhani Hydroelectric Project.⁵⁴ But the affected households had become poorer than before even after getting compensation because the compensation was not at prevailing market price nor was the permanent loss of potential resources and the loss of production taken into consideration⁵⁵. Though the Govt. of Nepal had given compensation close to the market price in the Marsyangdi Hydroelectric Project, the majority of affected remain unaware of their legal right.⁵⁶ Even the recommendations of the project consultants - like 15 percent disturbance allowance, special assistance to hardship cases, priority for employment on the project work and assistance to increase production on remaining land-was never implemented.⁵⁷

Nepal has a big potential for water resource development, for which development-related displacement is and will be a regular feature in the country. ⁵⁸ So the Govt. of Nepal must retains its good will and effort for the displaced with proper R&R policy in the future.

Bangladesh

The country of Bangladesh is very remarkable in development-induced displacement. Though the Govt. of Bangladesh has not started any major developmental project, here we see some distinguish features of displacement.

Firstly, Bangladesh is a classic example of economic displacement. With the assistance of government, Bangladesh is gradually succumbing to monoculture of shrimp cultivation.⁵⁹ As the shrimp cultivators do not use local labour for their farms, the indigenous people lost their livelihood.⁶⁰ All of these are affecting not only the poor in the region, but more specially the women.⁶¹

Secondly, here we see how the areas of developmental displacement can converted into the areas of conflict. The displacement of indigenous people from the CHT has been started from the construction of the Kaptai dam. But now CHT have become the volatile area of conflict between the Bengalees and indigenous people. Now, to minimize the power of the local people, government has been wooing the Bengalisation process as part of 'development' programme.

Thirdly, now the Govt. of Bangladesh is thinking to clean the urban areas. So it has started to evict the slums and the brothels. For example, I can refer to the forced eviction of the slums of Agargoan and brothels of Tanbazaar and Nimtoli.⁶²

As these developmental activities are not proper projects, the Govt. of Bangladesh is not giving R&R to the affected peoples. But the trauma and economic instability of the affected peoples is not lesser than those who are displaced by developmental projects. If Govt. of Bangladesh can understand this, it will be better for all Bangladeshis.

Conclusion

Thus we see how development often led to displacement in these South Asian countries. There are no records on development-induced displacement in other countries. But, surprisingly, there are developmental projects in all South Asian states. Academics of South Asia must research on that. All the states must develop proper R&R policy to give a better life to the displaced people. In next SAARC meetings if all the South Asian states develop a principle (like the Guiding Principles), which will give proper direction for the R&R policy for the displaced, it will be better for all South Asians.

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Show how the UN Guiding Principles on Internal Displacement base themselves on human rights and humanitarian legal regimes.

Vinai Kumar Singh

The formation of an international UN Guiding Principle on Internally Displaced Person (IDPs) is one of the outcomes of the evolution of the ideal of law of humanitarian assistance, which has been present in international relations and its normative system for a long time. This ideal is embodied in a range of international instruments which pertain to international human rights law, international humanitarian laws and international refugee laws. These includes the Universal Declaration of Human Rights 1948, the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, four Geneva Convention of 1949 and the two Additional Protocols of 1977, and the 1951 Convention Relating to the Status of Refugee and the 1967 Protocol. The efforts of creation of institutional measures to respond to situation of internal displacement viz., Emergency Relief Coordinator (ERC) in 1991, Inter-agency Standing Committee (ISAC) in 1992,

the Executive Committee on Humanitarian Affairs (ECHA) in 1997 were culminated into establishment of Office for the Coordination of Humanitarian Affairs (OHCA). This trend was consolidated by the adoption of UN Guiding Principle on IDPs. Since then there are debates to understand the value of these layers of laws and provisions of humanitarian assistance *vis-a-vis* principle of sovereignty and non-intervention. In other words, does the provision of humanitarian assistance violate the principles of sovereignty and non-intervention?

In 1992, the United Nations Commission on Human Rights called upon the Secretary-General to appoint a representative on the issue of internally displaced persons and asked to examine standard of the existing international human rights, humanitarian laws and refugee law and their applicability to the protection of and relief assistance to IDPs. Francis M. Dang, a Representative with help of legal experts presented a preliminary study in 1993 followed in 1996 and 1998 by a two part '*Compilation and Analysis of Legal Norms*' related to IDPs. The compilation found that 'existing law covered many aspects of particular relevance to IDPs' but that 'there remained areas in which the law failed to provide sufficient protection for them.'^[1] These studies and the discussion that followed, paved the way for the preparation of the UN Guiding Principles on IDPs, which was eventually adopted in 1999.

The Guiding Principles on IDPs consists of 30 principles which are comprehensive in scope and apply to all phases of displacement. For example, Principle 6 expressly recognizes a right not to be arbitrarily displaced. This right is inferred from various human rights guarantees, including freedom of movement and residence, and humanitarian law provisions dealing with the forced displacement of civilians during armed conflict.^[2] Paragraph 2 of Principle 6 sets forth categories of prohibited displacement, including displacement occasioned by armed conflict. This principle reflects several provisions of the Fourth Geneva Convention and the Additional Protocols to Geneva Conventions. However, UN Guiding Principles covers other basic guarantees such as protection of IDPs from discriminatory arrest and detention resulting from their displacement [Principle 12(3)], right to an adequate standard of living (Principle 18), protection of property (Principle 21), right to education (Principle 23) etc.

However, UN Guiding Principles adopts a 'need-based', rather than a 'right-based' approach. In other words, it dilutes the progress of bringing rights based approach in various international human rights, refugee law instruments. In fact it is noted that rather than to take one step ahead, UN Guiding Principles is the result of compromise.

It is also observed that there is absence of clarity regarding some of the rights mentioned in the UN Guiding Principles. There is a disagreement over whether the right to property is a civil and political right covering registered property, as opposed to economic, social and cultural right applicable to customary claims of indigenous people who link the land to their rights to food, housing, work and the right to life itself.^[3] Moreover, general human rights instruments do not set forth a right to restitution of property and the soft law is vague.^[4]

There is growing concern of issue such as do we need to decide when the entitlements and benefits as well as possible restrictions of IDPs status should end? In other word, when does displacement ends? or when these principles no longer apply or cessation in international law? Unlike Article 1(c) of 1951 Refugee Convention, the principle do not contain any cessation clauses that would determine when their application ceases. However, it is noted that the idea of 'cessation' is absolutely alien to human rights law.^[5] Three sets of possible criteria have been noted in this regard. One way to look at the issue would be focus on the causes of internal displacement. Another possible approach emphasises the ability of IDPs to either return to their home communities or resettle in another community. A third possible approach would look for when the needs and vulnerabilities specific to IDPs no longer exists.^[6] Status can be determined by looking the mandates of humanitarian agencies involved in assisting and protecting IDPs. It is important to mention that the factual situation of displacement in most cases changes and ends gradually and not abruptly. Relevant human rights and humanitarian law guarantees contained in hard law may remain applicable even if the person concerned, due to return or resettlement, no longer has special needs related to the former displacement.^[7]

In brief, UN Guiding Principles emerges in large part as a response to the call by internally displaced persons actors in which effective assistance and relief would reduce the perceived hardship caused to them. The Guiding Principles give legal expression to the standards and procedures applicable in humanitarian assistance which have been developed over the years. Moreover, the Guiding Principles do allow an assessment of whether state policy to end IDP status infringes key principles of protection, such as non-discrimination, safety and freedom of choice.

Rights Based Approaches to Forced Migration in the Chittagong Hill Tracts, Bangladesh

Jessica Skinner

The relationship between human rights and human displacement has been long neglected and assistance to displaced people has not historically been seen as a human rights activity. Displacement though is 'no longer just a humanitarian issue, but a political one – it [is] a question of *rights* (Samaddar 2005 my emphasis). This changing attitude towards internal displacement has yet to see much change in policies or humanitarian approaches to internally displaced persons (IDPs). This paper will assess what is meant by a rights based approach to internal displacement and the possibility for implementing such an approach in the Chittagong Hill Tracts (CHT) of Bangladesh.

This paper is based on a study carried out from April to August 2005. This comprised of an extensive review of literature, policies, reports and interviews with political leaders, academics, NGOs, IDP community leaders and internally displaced persons living in 6 villages in Kagrachari district.^[1] Through a combination of village focus group discussions and household interviews the views of approximately 50 IDP families were collected. The focus of this study was not on documenting the reasons for displacement, although an understanding of the issues is paramount to the conceptualisation of a rights-based approach, but on institutional actors' reactions and policies towards the displaced. The main aim of the study was to provide an analytical

assessment of the situation of IDPs in the CHT, document current humanitarian assistance and possibilities for improved rehabilitation with a view to providing a practical basis for participatory and community-oriented 'rights-based' interventions.

Internal Displacement in the CHT

The situation of displaced persons in the CHT is caught up within a political, demographical, environmental and social web of competing factors. The Chittagong Hill Tracts is unlike other parts of Bangladesh in terms of landscape, people, culture and religion. There are 11 different indigenous communities and each community was historically fairly self-contained. Although these communities are by no means homogenous they have come to be referred to collectively as the jumma people due to their unique form of Jum cultivation. The CHT region of Bangladesh and the indigenous populations residing here have experienced a complex and inter-connecting history of development induced and conflict induced displacement. These incidences of forced displacement have been heavily embroiled in state majoritarian politics and attempts to create a unified nation-state typified by the Bengali Muslim. All minorities within Bangladesh have suffered under this approach to nation-building and the indigenous peoples of CHT are a case in point.

The Government of Bangladesh (GoB) since its inception has been conspicuously and successfully promoting policies that change the demographic composition of Bangladesh and in particular the CHT. The CHT is traditionally an area composed of a large indigenous majority. Prior to and during colonial rule the area was composed of 97% Jumma people and due to a policy of special protection against settlement in the area, it remained so until 1947. The ratio of Jumma to Muslim Bengali changed drastically in the years following the formation of East Pakistan and the subsequent liberation of Bangladesh in 1971. Currently official figures show Bengalis composing over 50% of the region. This extreme and rapid change was the result of mass population movement and represents a case of population engineering and ethnic marginalisation. In pursuing the agenda of Bengali Muslim Nationalism the Pakistani Government started a campaign to gain greater control over the region by developing large infrastructure projects and the GoB intensified this campaign by settling large numbers of Bengalis in a planned strategy aimed at 'Bengalizing' the CHT. Large numbers of troops were also deployed in the region to protect the settlers and bring down insurgent group. The militarisation of the region has also led to further displacement through conflict and land grabbing.

The creation of large dams and the increasing population in the CHT put pressure on land resources and forced many Jumma peoples to leave their ancestral lands to find space to carry out their traditional Jumma cultivation practices. Land grabbing by both settlers and state was common and conflict ensued displacing huge amounts of indigenous peoples both over the border into India and internally away from fertile lands and up into the hills, forests or into small towns. After two decades of war a peace agreement was signed in 1997 and although peace has prevailed, reconstruction and rehabilitation of the thousands of war-affected people has failed to materialise and forced displacement is a continuing problem in the region.

Information about those displaced is virtually non-existent and although figures range from tens to hundreds of thousands of persons there is a fairly clear consensus that a significant portion, as much as 50% of the indigenous population, have been internally displaced. The highly political nature and state responsibility in this instance of internal displacement makes the assessment of rights and the possibility for implementing a rights-based approach both complex and significant.

Rights and IDPs in the CHT and Needs of IDPs

Despite the signing of the Peace Accord in 1997 and the various provisions that it made for rehabilitation of the internally displaced and the demilitarisation of the region the rehabilitation of the IDPs has not yet begun to anywhere like the degree that was expected. In fact it is hard to ascertain what has actually taken place to benefit those internally displaced by conflict and militarisation. The IDP population continues to have restricted access to farming lands, homestead land and dwellings, safe drinking water, sanitation facilities, health care and education. There has also been little movement towards resolving issues of land ownership or towards creating an environment inductive to the peaceful co-existence of Bengalis and indigenous communities in the region. Not only do IDPs need economic rehabilitation, but this must go hand in hand with the strengthening of their legal, economic and social rights.

The effects of internal displacement and the pressure placed on communities and individuals in areas both deserted and settled are extensive and can be extremely damaging, often 'socio-economic systems and community structures break down, impeding reconstruction and development for decades' (Cohen 2003: 188). IDPs need priority attention because 'they are already the weakest, most vulnerable and most ignored of all the hill communities' (Hume 2003: 24). Those who remain internally displaced in the CHT have had to cope with re-establishing livelihoods in often unfamiliar environments. They have had to rely on friends, families and loans to support them in settlement. Children's schooling will have been disrupted and often due to a feeling of impermanency or the inadequacy of educational provision in place of settlement, they may never have started again. Most, if not all, of their capital in the form of land, trees and livestock will have been lost during conflict and movement; 'wherever they may have settled, people were bereft of their land, possessions, cattle and a stable income' (AI feb 2000, para 5.3).

The process of in-migration also placed increased pressure on the land and on resources. Therefore the IDPs not only had to re-establish themselves and their livelihoods, they had to do so in areas that were short on resources often leading to environmental degradation. This will have also affected those already living in these areas, but they at least have access to land, homesteads and established social networks. Of course not all IDPs suffer in the same way and there may be some who cope well with self-settlement and may be in a better socio-economic position than many of those living in remote areas. In general, though, IDPs are very vulnerable, especially to new shocks. In this regard the IDPs in the CHT were seen to suffer greatly during the floods in 1998 that created severe food shortages, malnutrition, illness and deaths.

Areas identified by the IDPs as inadequate and in need of development were fairly uniform, although orders of priority varied by village. IDPs interviewed highlighted access to land and income as their number one priority. It became clear that the key problems were land and livelihood, infrastructure and communication, education, health and housing. All the IDPs spoken to had owned land before displacement, since displacement their economic circumstances, access to education, health and healthcare had all deteriorated.

Not only is forced displacement caused by a violation of peoples social, cultural and economic rights and a direct violation of Article 36 of the constitution of Bangladesh against compulsory resettlement, but the impoverishment and vulnerability exacerbated by such displacement are violations of peoples rights to livelihood (Article 32), dignity (Article 11), and basic necessities for life and the right to social security (Article 15). These constraints to livelihood security are thus both caused by and are themselves a violation of basic and citizen rights. The risks associated with displacement are those of landlessness, joblessness, homelessness, marginalisation, food insecurity, increased morbidity, loss of access to common property resources and community disarticulation. It is thus easy to see how these impoverishment risks fit into a discourse of rights and rights protection (Cernea ?).

Current Legal protection

Apart from some scattered provisions in law, Bangladesh and the South Asian region in general has no policy aimed at dealing with the issue of internal displacement, 'there does not exist any comprehensive and effective rehabilitation or re-settlement programme established by government to assess the magnitude of the problem and provide the IDPs with basic necessities of life' (Hasan 2003: 111). Internally displaced people are some of the most vulnerable migrants and suffer from what is known as the 'protection gap'; 'unable to avail themselves of the protection of the government, often denied access to international assistance, and unable to return home' (Haque and Vohra 2003: 199; Hasan 2003: 111). Although there is no international law covering the protection of IDPs various regional and national laws or policies are being created across the globe, but in this sense South Asia lags behind.

Even though there is no national strategy in Bangladesh to address the problems and specific needs of those internally displaced by conflict and persecution their vulnerabilities and needs are paid lip service to in the Constitution and laws that address the responsibility of the state to guarantee certain rights. So although displaced persons are not recognised as such in legal documents 'their economic and social status makes them subjects of various laws' (Hasan 2003: 122). The law though is Janus faced and while the internally displaced should be protected under one legal right they often lose out under another.^[21] It is also difficult to talk about constitutional rights in a country where the majority struggle to obtain even their basic rights.

While the Constitution contains the principles of fundamental rights in the country, Bangladesh is also a member of a few UN agencies and a signatory of the Universal Declaration of Human Rights. However, among other international conventions Bangladesh has still not ratified the 1951 UN Convention on Refugees, the 1966 Political and Civic Rights Covenant, the 1966 International Convention on Economic, Social and Cultural Rights, nor conventions relating to torture, genocide or the status of stateless persons.^[31] However the majority of these provisions are present in its Constitution and the question remains to what extent becoming a signatory to such conventions leads to further protection.^[41] Importantly Bangladesh is a member of UNHCR and is thus bound to abide by its mandate and take on board the guiding principles on internal displacement.

However in the present political climate legal obligations, binding or non-binding, do little to secure peoples rights. The specific responsibilities of the state in the protection of its citizens 'are essentially flouted with involuntary displacement' (Hasan 2003: 121). This is especially true in cases of development-induced or badly managed population settlement schemes. In the case of forced displacement policies by the state the 'displacement has taken place as a result of an executive order and not empowered through proper legal processes as in the case of the settlement of Bengali settlers in the Hill tracts' (Guhathakurta and Begum ...).

Rehabilitation

From first appearances there appeared to be literally nothing in the hill tracts targeting the internally displaced and no developments taking place towards their rehabilitation. Although returnee refugees have received a great deal of attention IDPs in CHT and Bangladesh in general have received little to no recognition or rehabilitative assistance. This was the observation of many of the key informants and reports and was also supported by field-work findings. After a little probing, Government, NGOs and international donors were shown to have made a few attempts at offering rehabilitative support.

Government Protection and Assistance (cut this down to two or three paragraphs)

As mentioned in the previous section there is no clear policy or national strategy to address the issue of internal displacement. The Government of Bangladesh (GoB) has not designed any comprehensive or effective rehabilitation or resettlement programmes aimed at assessing the magnitude of the problem or at providing the IDPs with even basic necessities. After the signing of the Peace Accord there was some attempt to register IDPs in the CHT, but due to poor organisation and bad administration the numbers and information gathered did little to throw light on the real situation.

The Untold Story documents the official government line with regards to development assistance to indigenous communities in the CHT pre-1997. A number of rehabilitation projects for both landless and IDP communities are recorded alongside programmes for non-tribals (Bengalis) and general infrastructure developments.^[51] *The Untold Story* by inadvertently documenting a Bengali settler bias to Government development support and a military strategic influence over development projects in the region, actually begins to tell the same story that has been offered time and again. Rehabilitation programmes for tribal families in the early 1990s targeted less than half the number of non-tribal (Bengali) families and received over three times less per family than that allocated to the Bengalis; yet, according to these figures, four times as much money was allocated to the indigenous communities (Shelley 1992: 150). Although these figures do not seem to add up, what is clear is

that less than half the number of indigenous people were rehabilitated during this period. This was the case up until 1992, since then many changes have taken place including the signing of the Peace Accord, which makes special provisions for the IDPs and also several changes in Government. A number of my informants believed that the situation of Government assistance to the indigenous IDPs has increasingly worsened in recent years.

The Peace Accord paved the way for the return of refugees from India, but 'did not resolve the problem of internal displacement in the CHT' (IDP database 2003: 4). Although the 20 point agreement between the government and leaders of the jumma refugees saw the return of 64,609 refugees, the implementation of most of its provisions, specifically those relating to the return of land and homesteads was only partial. Of the 12,222 families that returned 9,780 still do not have their land back and according to a report by the CHT Returnee Jumma Refugees Welfare Association 40 villages remain illegally occupied (PCJSS 2004: 39). This situation has thus exacerbated the problem of internal displacement within the region.

The Peace Accord also made provisions for the rehabilitation of IDPs, but according to the PCJSS 'it is a fact that no internally displaced jumma people have been rehabilitated so far' (PCJSS 2004: 41). The clause in the Accord reads that 'The Task Force shall, after determination, rehabilitate the internally displaced tribal people of three districts' (D:1)?check. The creation of a CHT Land Commission was also included in the Accord to settle land disputes and return the rightful land to those displaced (D:4). Although little progress was made, the previous Government at least began to design a rehabilitation programme. This was brought to a halt with the change in Government in 2001 and currently IDP rehabilitation, the Land Commission and Task Force are inactive due to disagreements over implementation of the Accord and definitions of the internally displaced. The Government claims that 38,156 Bengali settler families (nearly a quarter of the total IDPs identified) are also internally displaced and require rehabilitation within the CHT (PCJSS 2004: 42). Establishing the identity of those internally displaced has been a key impediment to offering any form of assistance. There are no recent reports of reintegration or rehabilitation, while there have been several reports of continuing displacement. It is therefore likely that the number of displaced persons is increasing rather than declining.

Protection and assistance from the state has been hard to ascertain. Key informants stated that there was no Government assistance targeting the indigenous internally displaced and that the majority of assistance from the CHT Development Board was being given to the Bengali settler communities living in cluster villages. None of the IDPs interviewed had ever received any assistance nor compensation from the Government. Nor had they received any rations due to displacement, while rations continue to be provided to the Government settled Bengalis decades after settlement.

NGOs and Multilateral Donor Organisations

There are currently no IDP specific rehabilitation programmes being carried out by local, national or international NGOs in the Hill Tracts. Samren Dewan, the Task Force Chairman, and Raja Devasish Roy, Chakma Chief, both felt that due to tight restrictions local NGOs may find it easier to work with IDPs than national or international NGOs. From discussions with small local NGOs it became apparent that they felt that gaining permission from the Government to target conflict-affected people was not easy. Although some of the small NGOs that I met were working with displaced communities none could target them officially. International and national NGOs work in the CHT, but do not carry out any work that focuses on the specific needs or rehabilitation of IDPs.

There have been some developments made by the UN to address the issue of internal displacement, but this is at an early stage. The most that has occurred on the ground, to date, is the expansion of the World Food Programme to include IDPs among its recipients, now also including ex-combatants, former tribal rebels and returnee refugees among others.^[6] UNDP in October 2004 started implementing a 5 year and 50 million dollar multi-donor programme for the Promotion of Development and Confidence-Building in the CHT. Unlike all other projects taking place in the CHT the UNDP has been given direct execution rights by the GoB. It is in this way that UNDP has been able to include within its programme targeted work on IDPs, returnee refugees and excombatants. The work is in its initial stages and the focus for the time being is the collection of data and assessment of the situation to determine their location, socio-economic status and priority needs for full reintegration. This programme is also placing a lot of emphasis on peace building and institutional strengthening to resolve land disputes and other governance and confidence building structures that will impact indirectly on the rehabilitation of IDPs. Other multilateral donor agencies have offered support to the peace process, but the political deadlock has not seen the implementation of these programmes.

Rights Based as opposed to needs based Approaches

In recent years it has come to be recognised that respect for human rights is 'one of the principle building blocks of peace, security and development' and yet protecting and ensuring basic human rights is not an easy process (UNHCR 1995). The concept of rights-based approaches are little understood and under-theorised – even by those trying to implement them. This is due in some extent to the multiplicity and overlapping conceptualisations of 'rights'. A good starting point for understanding a rights-based approach to IDP rehabilitation and protection is to recognise the marginal position that the displaced inhabit. IDPs suffer from a loss or violation of civil, economic and social rights on an almost daily basis.

Traditional approaches to rehabilitation of IDPs has focussed on the provision of basic (physical) needs and the provision of the bare minimum in compensation without considering the link between basic human needs and human rights (UNHCR 1995). The relationship between humanitarian aid and sustainable development is slowly being realised, with the recognition that basic needs should and could be protected by strengthening structures that support basic human rights. Unlike human needs approaches, rights-based approaches to social and economic security believe that people's access to basic needs is a 'right'. IDPs should be encouraged to see the fulfilment of their basic needs as entitlements and not charity (Mehta and Gupta 2003?: 25).

Bangladesh

Due to the complex inter-relations between development, conflict and environment induced displacement both past and present the GoB would do well to develop a 'rights regime' for the issue of internal displacement. This could be based on Deng's *Guiding Principles for Internal Displacement* and Cernea's *Impoverishment Risks and Reconstruction* (IRR) model.

The Guiding Principles identify rights relevant to the protection and assistance of the internally displaced. They are based on international human rights, humanitarian law and refugee law and each principle has a legal origin within an international covenant. These include protection from arbitrary displacement, non-discrimination, physical security and integrity, freedom of movement, protection of family and communal structures, basic freedoms and subsistence needs and access to services. Interest in and use of the Guiding Principles in assessing or planning rehabilitation and national policies on IDPs has been steadily growing. This is true of South Asia, but here the mobilisation of the principles lags somewhat behind the rest of the world.^[2]

While the Guiding Principles are largely protection focused the IRR model has an explicit action orientation. The model was designed for the World Bank as a good practice guide for development projects that may cause displacement. It explores the way that displacement goes hand in hand with physical, social and economic impoverishment, exclusion and disarticulation – common denominators in refugee, oustee and IDP experience (Voutira and Harrell-Bond cited in Cernea 2001). In this way the model can be used to guide rehabilitation for all forms of forced migration.

Difficulties with operating a Rights Based approach

Whose rights are right? It is important to recognise the difference between actual rights, desired rights and assumed rights and needs. This includes differences based on gender, ethnicity, social and economic status. These differences become especially pertinent in situations of ethnically-based conflict-induced displacement such as that found in the CHT. Often socio-economic status and political power are all tied up in issue of ethnicity and specific needs and perceived rights may often feed into the conflict, inducing or prolonging it. In the CHT this has been connected to land allocation and land rights.

Other issues to include:

- 1) Addressing the underlying rationales and working practices of the different agencies involved
- 2) It may also place significant strain on the institutions of receiving areas
- 3) There are issues around responsibility and accountability
- 4) There are issues around universality and enforceability.
- 5) Rights-based approaches, it could be argued place great strain on the host country.
- 6) There may also be a problem with financial backing that tends to go to life-support and basic needs.
- 7) States have to relinquish some power to marginalised groups to make them equals in the process.
- 8) Lack of means to provide what is demanded of the state, whether financial or other (eg. land, livelihood support).
- 9) It could also jeopardise the rights of indigenous peoples, women and ethnic minorities if customary law is not taken into account, because their lack of formal legal rights may disadvantage them.

'The pressures of a rights-based regime can at times be seen as unrealistic for a poor country to bear' (mehta and gupta: 31)

Disarticulation

The very structures often used to protect a communities rights are broken down through the processes of relocation, that a community is no longer able to articulate itself affectively as 'social networks that once mobilized people to act around common interests' are dismantled and difficult to rebuild (Cernea 2001). Importantly it is essential to recognise that impoverishment caused by displacement is not just caused by the violation of rights to income and assets, but is also compounded by social and psychological marginalisation. It is important to recognise that not only is the vulnerability of the displaced people 'based on their lack of property and access to resources', but in most cases their legal status is also affected. They often suffer physical and political marginalisation that prevents them fully realising their rights. (Guhathakurta and Begum). Community disenfranchisement is another consequence of internal displacement and often removes people's sense of empowerment and ability to articulate their rights, 'resulting in virtually no community initiatives to solve their problems' (Care 2005: 12).

Agents

This community disarticulation has a negative impact on the corollaries of poverty such as powerlessness, dependency and vulnerability. Community re-articulation can overcome material deprivation and precede economic wellbeing (Cernea 2001). It is thus important to keep in mind the right of individuals and communities to take part in their own rehabilitation as a right to self-determination. The Guiding Principles emphasise that 'special efforts should be made to ensure the full participation of IDPs in the planning and management of their return, resettlement and reintegration' (GP 28:2).

Despite this, not all IDPs are destitute and it is important no to forget their role in their own resettlement and rehabilitation. One woman displaced in 1981 told me that she had lost everything in 1981 during the violence, including her parents, brother and sister. She received help only from the local people. Before she had her own place and the freedom to cultivate now there is no land and times are hard. Despite this – things are getting better, her work as a daily labourer is becoming more regular, 'the situation is not so bad here' she told me. She is too fearful to go back to her land while the Bengalis are still there and she has nothing there any more. One of the villages visited had been successfully mobilising itself around its rights. The villagers had met and agreed upon the need to lobby the local government for a primary school in the area. The local leader had visited the district commissioner and put in an application, but they have still not heard anything. A rights based approach to internal displacement must first and foremost recognise the right to self-determination and the agency of the IDPs themselves. Support

should be offered to them in their quests for resettlement, rehabilitation, livelihood security, dignity, political recognition or what ever it is they seek for fulfillment of their basic and civil rights.

Programmes to restore the livelihoods of the displaced need to focus on the displaced people as agents in their own rehabilitation and reconstruction. The question of what 'adequate protection' or rehabilitation means to the IDP or refugee is seldom asked. The rights-based approach to internal displacement allows for the utilisation and recognition of IDP agency. Such an approach would explore the way that IDPs make the best of their adverse conditions and mobilise around their rights. IDPs need to have a good understanding of their entitlements and thorough knowledge of their situation so they can respond appropriately. Legal frameworks, information about rights and pre-existing networks and skills are frequently unavailable to displaced people and in these situations 'massive resistance is often the only way to struggle and mobilise around their rights' (Mehta and Gupta 2003: 22). The failure to rehabilitate and provide for the rights of those displaced by the Kaptai dam not only led to further impoverishment, but also conflict and further displacement.

Conflict resolution

In many situations of internal displacement in which the state is often ineffective or hostile towards the displaced practical protection is provided 'first of all by the local community, through a complex social network including families, clans, villages and ethnic groups. The role of the state and its legal institutions is often secondary' (UNHCR...). Social networks will always be the first point of call for assistance and this offers a good opportunity for promoting peace-building exercises. Protection and solutions for the internally displaced 'require the reconciliation of different groups within the society' (UNHCR...). Respect for human rights needs to be promoted at the grassroots level. In some locations humanitarian agencies have been able to support such a grass roots approach to human rights protection by mediating disputes and helping individuals and communities to overcome their distrust.

The reconstruction of communities and social cohesion is often overlooked in current government and needs-based humanitarian assistance. In the case of Bangladesh and other instances of post-conflict resettlement and rehabilitation, what is often missing is a focus on inter-ethnic, cross-cultural relationship building. In the case of Bangladesh where settlers have often seen multiple displacements and tension between the two communities is high, an important first step is clearly the facilitation of cross-cultural dialogue and a reintegration process that address the underlying fears, prejudices and misunderstandings.

A compromise needs to be reached. Settlers need to be consulted and opportunities for return to the plains need to be offered, with no reduction in Government assistance. Rations in the region need to stop targeting settlers and become needs based with attention to all communities. As part of this the long path to peace in the region there needs to be cross-community participation and understanding. As there has been no attempts at this in the region and because much of the population seems to have a limited and biased view of the situation there is still much anger and insecurity. If this is not addressed soon, peace in the region and equal development of all communities can not be envisaged. At the moment compromise seems remote.

Definition

Who is an IDP is a very contested issue, globally defined norms and standards do not often match up with local definitions and claims and this is abundantly clear in the conflict that has ensued around definitions in the CHT. An important question to address in any situation of internal displacement, and particularly in the case of Bangladesh, is who falls under the definition of an IDP and for how long. There is a desperate need in Bangladesh to establish a clear definition and to delineate IDP rights. Bangladesh would do well to use the Guiding Principles as a base for such a definition. This would allow the Government to identify and target those most vulnerable, the standards for adequate living and the regulation of property restitution. Although without the efficient implementation mechanism this may not bring about institutional change. What it will do is allow a greater awareness surrounding the needs and vulnerabilities of IDPs, opening up doors for international and national non-governmental intervention and encouraging strong partnerships between government and civil society.

Problems with offering rehabilitation in the CHT

- he internecine conflict between the two parties representing the indigenous peoples discourages intervention by the international community.
- Defining the IDPs.
- Gaining official permission and accessing IDPs in remote areas is also a problem. Development restrictions in many of the forest areas settled by IDPs limit livelihoods, social care and education.
- The return of land and the resettlement of Bengalis in the plains remain debilitating issues. The return of IDPs to their land will be impossible until an agreement is formed and the peace accord and land commission have been successfully implemented. It is important to recognise that the majority of the settlers are unlikely to leave. The Government has not acted to carry out its obligation as defined in the Peace Accord and in direct violation of the spirit of the Accord it has been offering continued support to these communities to remain.
- One of the biggest problems with implementing a rights-based approach to IDP rehabilitation is the extensive military control of the region.

These problems need to be addressed but in the mean time action to offer rehabilitative assistance and rights based support for IDPs can begin.

Conclusion

IDPs are often very vulnerable because they have to remain within a system that is often responsible for their displacement and little interested in their rehabilitation and because they are not supported by a definite international protection

mechanism. The limitations of humanitarian actions undertaken by humanitarian and civil organisations is one factor that led this study to address what is being done and what could be done to address the specific problems of the IDPs in the CHT. One important question is whether a more coercive form of action or intervention can or should be taken. Humanitarian responses to IDP protection are often guided by geo-political considerations and 'in many cases the plights and sufferings of small [and not so small] groups of internally displaced population remained unattended and forgotten' (Mrinal Kanti Chakma). The IDPs are among the most disadvantaged and vulnerable in the Hill Tracts and humanitarian responses are falling short of adequate protection and rehabilitation of these people most at need. A stale mate has been reached between the political parties involved that has put a stop to affective action. It is here that the international community should intervene to at least make clear Bangladesh's legal obligations within international law and step in to assert these rights. GoB and the PCJSS came to an agreement on the obligations of the state towards the IDPs in the CHT, but gaps have allowed for confusion and biased interpretations. Internal legal instruments, the Guiding Principles and an appropriate implementation framework such as the IRR model need to be put to work in the CHT and Bangladesh as a whole to define some explicit, clear and working provisions for protection against internal displacement and suitable rehabilitation.

This is not simply a problem that is confined to the CHT, but internal displacement is rife throughout Bangladesh especially in the remoter areas, where minority communities are the targets for human rights abuse and discrimination. It is important to convince the Government of Bangladesh that 'socially responsible resettlement – that is, resettlement genuinely guided by an equity compass – can counteract lasting impoverishment and generate benefits for both the national and local economy' (Cernea 2001). It should also be highlighted that breakdowns in communication and information tend to result in active opposition movements against displacement inducing development programmes or rehabilitation/ resettlement plans. Thus, the active participation of affected people can actually benefit the state, especially a state with a weak institutional capacity for resettlement planning and implementation. The economy of Bangladesh could benefit, its problems with conflict and social cohesion could be addressed and its poor international reputation surrounding human rights abuse, violations and discrimination could be countered. Development cannot simply ignore the marginalised, displaced communities, and these populations must be encouraged to see the Guiding Principles as their tool to call the government to account.

[Compare And Contrast The Situation Of Conflict Related Idps And Tsunami Related Idps In Sri Lanka](#)

Dinusha Pathiraja

[Comparative Study on Causes and experiences on Displacement: Hill people and Bengali in Chittagong Hill Tracts](#)

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