CONFLICT DRIVEN INTERNALLY DISPLACED PERSONS IN MANIPUR: LEGAL AND HUMAN SECURITY FRAMEWORK

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CERTIFICATE

This is to certify that the dissertation entitled "**Conflict Driven Internally Displaced Persons in Manipur: Legal and Human Security Framework**" submitted to **SIKKIM UNIVERSITY** in partial fulfilment of the requirements for the degree of **Master of Philosophy in International Relations/Politics,** embodies the results of *bona fide* research work carried out by **Mr. Kamble Sunil Bhagwan** under my guidance and supervision. No part of the dissertation has been submitted for any other degree, diploma, associate-ship, fellowship.

All the assistance and help received during the course of the investigation have been duly acknowledged by him.

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Introduction

Forceful displacement of people due to armed conflict, ethnic violence and environmental disasters constitute the largest vulnerable category of persons in the world. As per the report of the Norwegian Refugee Council, by the end of 2010 there were about 27.5 million internally displaced people due to armed conflict, generalized violence and violations of human rights(Norwegian Refugee Council 2011:13). There is no doubt on close linkages between conflict and displacement. The word 'conflict' is not new to the world. At the international level it is known as 'war', particularly war between states. In the present era distinction has been made between 'old war' and 'new war'. According to Mary Kaldor

> An 'old war' was a war between states. The war was fought by opposing uniformed armed forces, and the decisive encounters of the war were battles between those forces. Soldiers were clearly distinct from civilians. Where as a 'new war' is fought by combinations of state and non-state actors, and is usually fought not for reasons of state or ideology but for identity (2007:16).

However, all internal war or conflicts are not identity or ethnicity rooted, but there are other reasons as well, connected with economic policies, politics, and religion and to some extent ideology. Internal war or conflict as phenomena is common after the cold war what is most of the countries in the world are facing today. India is not an exception. In Bihar, Andhra Pradesh, Maharashtra, West Bengal, Jharkhand, Chhattisgarh, Manipur, Nagaland and Jammu and Kashmir states are is constantly engaging in conflict with insurgents, militants and Maoist. In case of Jammu and Kashmir fighting between Indian security forces and secessionist group is mostly linked with the political factor. In North-East India it is manifested as a combination of all factors- identity, underdevelopment, ideology, and politics. However, the conflict in North East India is different from the rest of India as the region[1] that constitutes 8.14 million tribals (Fernandes Walter 1999: 3579) are divided into many tribal communities which are different from one another. In protecting their identity and land which they are inhabiting, tribals formed separatist groups and conflicting at two levels-1) against the Indian state for demand of autonomy and 2) against rival tribal group. In both cases conflicts are about protection of identity

[1] The region here refers to the seven states constituting it as North-East.

and land which they have been inhabiting for centuries. North-Eastern state of Manipur is marked with these characteristics.

In Manipur, which this dissertation is addressing, these two dimensional conflict have devastating effects on the people of the state. These types of conflict or new war has created category of vulnerable people i. e. Internally Displaced Persons (IDPs). They are vulnerable as their displacement occurred due to insurgency and ethnic related conflcit and also due to the security forces on which their security is dependent. Paula Banerjee observed "once displacement leads to the multiple displacements" (cited in Weiss and Korn 2006: 91) and therefore undermines every element of human security. This raise the question of people's right to life with dignity.

In this context, the aim of this dissertation is to examine and assess the degree of the adequacy of the policy carried by Government of India with reference to the IDPs from the point of view of human security.

Definition of IDPs

In general, a person or group of persons who moved away from home or place of habitual residence due to violence, ethnic conflict, civil war, environmental impact, natural disaster etc. but remained within the territorial boundary of their state are termed as Internally Displaced Persons. However, there is no universally agreed definition for internally displaced peoples and who should be brought under the protection and assistance of the international community (Korn 2000:11). Prior to publication of The Guiding Principles on Internal Displacement (GPID) which drafted by Francis Deng, the Representative of UN's Secretary General, there existed a widely used working definition set out in the Analytical Report of the Secretary-General on Internally Displaced Persons submitted to Commission on Human Rights. The report defined Internally Displaced Persons as:

> those who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of Human rights or natural or man-made disasters, and who are within the territory of their own country (Commission on Human Rights 1992: 5).

The above working definition covers forced movement due to armed conflict, internal conflict, violation of human rights, natural or man-made disaster and displacement within national borders. However, the working definition is limited. The phrase 'suddenly and unexpectedly in large numbers' limits its scope. Limiting the internally displaced to those forced to flee their homes "suddenly and unexpectedly in large numbers" and excludes some of the most serious cases. For example, Bosnian Muslims did not flee their homes in Banja Luka and other areas; they were expelled (Weiss and Pasic 1998: 185). In Burma under the military junta, in Iraq under Saddam Hussein's rule, and in Ethiopia under the Mengistu dictatorship, hundreds of thousands were forcibly moved, at times with considerable advance notice (Weiss and Pasic 1998: 185). In Colombia, a country with a huge continuing problem of internal displacement, people often flee in small numbers in the hope of making themselves inconspicuous (Obregon and Stavropoulou 1998:401). Thus working definition would cover none of these (Korn 2000: 12).

The Representative of the Secretary-General on internally displaced persons, Francis Deng have sought to redefine this definition by taking into account of these shortcomings. In consultation with international lawyers and other experts, he developed a broader definition of the internally displaced as:

> Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence in particular as a result of, or in order to avoid the effects of, armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border (Guiding Principles on Internal Displacement 1998: 1).

Like the previous working definition the latest definition also pointed to the two defining elements of an IDP- first involuntary departure (forced movement) and second the individual remains within his/her country (Global Protection Cluster Working Group 2007 : 8). The first element distinguishes IDPs from individuals who left their homes out of choice and could have otherwise safely remained where they lived. The second element explains why IDPs are not refugees (Global Protection Cluster Working Group 2007: 8). It also mentioned that the main causes of the internal displacement that includes armed conflict, violence, violations of human rights and disasters (Global Protection Cluster Working Group 2007 : 8). The latest definition of IDPs is relatively more comprehensive than the previous one.

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However, this definition also has few limitations. The phrase "persons (...) to leave their homes or places of habitual residence in particular as a result "human-made disasters" indicates that displacement has taken place only after the disasters related to breaks in huge dams, hydro-power project, nuclear power plant etc. But it does not include the displacement during the construction phase of the projects. Another lacuna is regarding the internationally recognized state border. There is no problem to consider people as internally displaced if state border is clearly recognized internationally, but what about the people displaced in border area which is under dispute between two or more countries? How are person be called or what is their status? These questions are reflected in ambiguous terms as far as this definition is concerned.

At the regional level, Convention held at Kampala by African Union for the Protection and Assistance of Internally Displaced Persons in Africa, which is known as Kampala Convention of 2009, relied on the definition of IDPs given in the United Nations Guiding Principle on Internal Displacement (Kampala Convention 2009, Article 1 (k). However, going beyond the UN Guiding Principles, the Kampala Convention separately defines 'Internal Displacement' as 'the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders' (Article 1(l).

The International Conference on the Great Lakes Region, IDPs has been defined on two levels-firstly it adopted the same definition as in GPID, and secondly it emphasized on the development induced displacement (Protocol on the Protection and Assistance to Internally Displaced Persons, Article 1 (4), (5).

Attempt has also been made to define IDPs by various countries in their respective policies or legislations. Most of the countries have adopted the definition given under the GPID. For example Angola[2], Uganda[3], Sudan[4] has adopted the definition of IDPs given under the GPID and some countries have extended IDPs definition to include project

[2] Standard Operational Procedures for the Enforcement of the "norms on the Resettlement of Displaced Populations. 2002, Article 1.
[3] National Policy for the Internally Displaced Persons 2004. P. 10.
[4] National Policy on Internally Displaced Persons, section (d).

affected persons. The Government of Kenya has expanded IDPs defition by inserting displacement due to development project which is not included in Guiding Principle's definition. The Act enacted by the Kenyan Government, the Prevention, Protection and Assistance to the Internally Displaced Persons and Affected Communities Act, 2012 (No. 56 of 2012) define internally displaced person as "person or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, large scale development projects, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border" (Section 2 of Kenyan Act No. 56 of 2012).

In Nepal, National Policies on Internally Displaced Persons formulated in 2007, defined IDPs on the same level as GPID, and extended to displacement resulting from any kind of development activity that includes project, dam, industry or factory etc.

In Peru, its legislation, The Law Concerning Internal Displacement, defined IDPs as "persons or group of persons which have been forced or obliged to escape or to flee their homes or their places of permanent residence, in particular as the result of, or in order to avoid the effects of an armed conflict, of situations of generalized violence, of human rights violations and who have not crossed an internationally recognized state boundary" (Article 2). However, it excluded the displacement caused by natural or man-made disasters.

In Guatemala, instead of defining IDPs, the term "uprooted population" has been used. In Agreement between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemateca, the term "uprooted population" has been defined and "shall include all persons who have been uprooted for reasons connected with the armed conflict, whether they live within or outside Guatemala, and shall include, in particular, refugees, returnees and internally displaced persons, either dispersed or in groups, including popular resistance groups" (Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict 1994, Para. 1). It emphasized only on the

situation of armed conflict which caused violations of human rights and great suffering in the communities which were forced to abandon their homes and way of life.

Sri Lanka which has millions of internally displaced person due to armed conflict to address that issue the Government enacted the Resettlement Authority Act, 2007. This Act stated that "IDPs means 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" (Section 35). This definition is too narrow as it only emphasize on two reasons for displacement- armed conflict and situations of generalized violence.

Defining IDPs in India

In India, the term IDPs has neither been explicitly used nor has a single definition been provided to cover all the situations of displacements. However, the proposed Prevention of Communal and Targeted Violence (Access to Justice and Reparation) Bill 2011 attempted to define IDPs as "any person, whether or not he or she belongs to a group who has been forced or obliged to leave his or her home or place of ordinary residence as a result of or in order to avoid the effects of organized communal or targeted violence to any other location within India" (Sec. 3(g), PCTV bill 2011). This definition is limited as it only includes those displaced persons resulted from the communal violence. It does not include the persons displaced by counter-insurgency operations.

In 2003, the Ministry of Rural Development sought to address the issue of IDPs induced by project through the National Policy on Resettlement and Rehabilitation for Project Affected Families 2003. Here the term 'displaced family' has been used instead of term IDPs. It provides that "Displaced family means any tenure holder, tenant, government lessee or owner of other property, who on account of acquisition of his land including plot in the abadi or other property in the affected zone for the purpose of the project, has been displaced from such land" (Section 3 (1) (i) of National Policy 2003). This definition confined only to the project induced displacement. Again this definition of displaced family was again incorporated in section 3 (k) of the Land Acquisition, Rehabilitation and Resettlement Bill, 2011 (LARR Bill). Section 3 (k) of the LARR Bill

defines displaced family means any family, who on account of acquisition of land has to be relocated and resettled from the affected area to the resettlement areas. This definition is limited to displacement due to land acquisition. Thus in India various definitions of IDPs are given under laws addressing particular cause of displacement instead of having a single comprehensive definition.

Internally Displaced Persons and Refugees

The expression 'internally displaced persons' is of more recent usage. Until the late 1980s, there was no such standard term. Early references to internally displaced persons were made through the emergence of the expression 'displaced persons' (Phoung 2004:14).The term 'displaced persons' was used in 1972 by UN General Assembly to address the issue of displacement due to the conflict in Sudan (GA Res. 2958 (XXVII), 12 Dec. 1972).

Refugees and the internally displaced are categories of persons which share many similarities such that people in both the categories often find themselves in the same material conditions (Phoung 2004:13). The distinguishing line between them is the international border- displaced persons are refugees once they cross the state border, if not crossed they are considered as internally displaced. However, both IDPs and Refugee has not been treated on the same footing in international law (Tigerstrom 2007: 115). For historical, political and legal reasons, internally displaced persons have not been included in the refugee definition contained in 1951 Convention.[5] Luke Lee has proposed legal synthesis between internally displaced persons and refugee by questioning justifiability border crossing element as important criterion for international protection (Lee 1996:30). His direction is to delete border-crossing from the refugee definition. Further, he argued that the internally displaced should be treated as refugees because they are essentially the same and both lack effective protection of their respective governments (Lee 1996:30).

[5] Convention Relating to the Status of Refugees, 1951, Article 1.

This proposed legal synthesis has been strongly opposed by Catherine Phoung on the same ground i.e. Protection of national government, in her book International Protection of Internally Displaced Persons (2005) she argued that-

> However similar their plight may be, refugees and internally displaced persons cannot be given the same legal status, because they require protection that is different in nature. The protection given to refugees is a *surrogate* protection for persons who have lost the protection of their country and are outside of its borders. As a result, the international refugee protection regime imposes specific obligations on states to protect persecuted aliens. In the case of internally displaced persons, the protection required must remain a *complementary* protection which exists in parallel with national protection, unless national protection is not available" (Phoung 2005: 25).

Further, she feared that proposing legal synthesis between refugees and internally displaced persons would undermine the protection system which already exists for refugees (Phoung 2005: 25). Her argument is based on the observation made by the Francis Deng that "Internally displaced persons remain within the jurisdiction of their own state and responsibility to protect and assist them should not be shifted entirely to the international community" (Report of Francis Deng 1995).

Problem of IDPs

The Problems associated with the IDPs are not of recent origin. Internal displacement is not a new phenomenon. Internal displacement has always existed and often takes place prior to external displacement. Indeed, in situations of danger, people generally prefer to stay within their own community or at least within their own country, close to their homes, always envisaging a return to their habitual places (Phoung 2004: 3). Sometimes, people are not able to leave the country because they have limited means of transportation. Moreover, external displacement may not be an option, because when population movements spill over into neighboring countries, some countries close their borders, as Turkey did when Iraqi Kurds were fleeing the repression in Iraq in 1991 (Phoung 2004: 3). The problem of IDPs was not addressed at the international plane as it was hidden under the inter-state war which produced millions of refugees. However, the coerced displacement of people within the border of their countries as a result of armed conflict, internal strife and systematic violation of human rights has become a pervasive feature of the Post-Cold war era (Haokip 2007: 221). In the last two decades of 20th century and the beginning of twenty first century numbers of IDPs are exceeding the numbers of refugees. Thomas Weiss and David Korn has pointed out that the ratio of

refugees to internally displaced persons (IDPs)—that is, forced migrants who physically remain within their own countries—has seen a dramatic reversal (Weiss and Korn 2006: 1). The number of refugees at the beginning of the twenty-first century is fewer than 10 million and the number of IDPs is considerably higher (Weiss and Korn 2006: 1). As many as 27 million people have been displaced by wars in some 40 countries (12 to 13 million in Africa, 5 to 6 million in Asia, 3 million in Europe, and 2 to 3 million in the Americas) and a similar or even greater number were displaced by natural disasters and development projects (Weiss and Korn 2006: 1). When IDPs data were first gathered in 1982, there was one IDP for every ten refugees, at present the ratio is approximately 2.5:1 (Weiss and Korn 2006: 1).

The number of conflict IDPs is growing in many countries because of ethnic and communal tension developing around shortages, but their exact number is difficult to ascertain as many of them flee to their relatives' houses. One can only count those who go to the relief camps (Fernandes 2007: 44). According to Internal Displacement Monitoring Centre, in 2009 and during the first half of 2010, at least 650,000 people in India were displaced due to armed conflict and ethnic or communal violence (IDMC 2010: 1).

In central India, Maoists or naxalites are fighting with Indian security forces over land and protection of mineral resources in tribal forest area is ongoing. In 2009, the government launched "operation green hunt" against Naxalite, which led to new displacement of more than 100,000 tribal people from Chhattisgarh to Andhra Pradesh (IDMC 2010: 1). In addition, 8,000 people were displaced within West Bengal state, with many of them staying in makeshift camps (IDMC 2010: 1).

In north-eastern state of Assam, about 170,000 people who had been displaced by ethnic violence were living in camps with deplorable conditions (IDMC 2010: 1). In 2009 and 2010, the violence in Assam displaced more than 16,000 Dimasas and Zeme Nagas and 4,000 Nepali-speakers (IDMC 2010: 1). In Mizoram about 30,000 Brus displaced in 1997 and living in difficult conditions in camps in Tripura state, had not been able to return,

and new Mizo Bru violence in November 2009 displaced another 5,000 Brus (IDMC 2010: 1). The return of displaced Brus to Mizoram started in May 2010 and more than 1000 IDPs returned between 21 and 26 May 2010 (IDMC 2011: 23). Up to May 2011, more than 3,300 IDPs returned to Mizoram (IDMC 2011: 24). The return of IDPs is continuing as the return process stalled several times due to opposition by Mizo groups (IDMC 2011: 24).

In Manipur state, 1,500 to 2,500 people had to flee their homes in May 2009 due to counterinsurgency operations by security forces andiln May 2010, clashes between security forces and Naga protesters displaced 500 Nagas from Manipur state to Nagaland state (IDMC 2010: 1).

Since 1990, 250,000 Kashmiri Pandits were displaced from the Kashmir Valley due to militancy and these people are still living in displacement in Jammu, Delhi and elsewhere in India (IDMC 2010: 2). In addition, military border fencing separated 15,000 people from their land in Jammu And Kashmir State in 2009 (IDMC 2010: 2). In Orissa state, at least 10,000 people who had to flee their homes due to Hindu-Christian violence in 2007 and 2008 remained displaced, and in Gujarat state, 19,000 people who had been displaced by Hindu-Muslim violence in 2002 (IDMC 2010: 2).

David Korn in his book *Exodus within Borders: An Introduction to the Crisis of Internal Displacement* (2000) has rightly pointed out the vulnerable situations and problems of the internally displaced. He observed that, "displacement often is thought of as a temporary problem, one that will disappear with the return or resettlement of the displaced, but some mass displacements have persisted for decades and have not been fully resolved even with the passage from one generation to another" (Korn 2000: 17). Return of internally displaced persons, in particular, induced by ethnic or communal conflict is a more complicated than is generally understood due its conflicting nature and therefore conditions of insecurity may last for years (Korn 2000: 17). Further, Korn rightly explained the consequence of prolonged displacement that leads to the widespread loss of skills, craftsmen lose or sell their tools and find no use for their skills in new areas

with limited markets (Korn 2000: 17). Farmers are slower to lose skills, but separation from the land affects every aspect of their and their families' existence (Korn 2000: 17). When the displaced do seek to return, they may find their land and their homes occupied by others or sometimes in the possession of a hostile ethnic group or under the control of a hostile country (Korn 2000: 17).

Moreover, Korn pointed at the environmental problems due to the displacement in rural and urban areas. When the displaced flee in large numbers to rural areas they inevitably wreak havoc to the environment, polluting streams and groundwater sources and stripping forests and grasslands for fuel (Korn 2000: 17). In Rwanda, internally displaced persons and returning refugees have done grievous damage to national parks and forests that once were an important source of foreign exchange earnings from tourism (Korn 2000: 17). When the internally displaced flee to urban centers, as they have in large numbers in Africa and Latin America, the result is overcrowding, sometimes the doubling or tripling of a city's population (Korn 2000: 18). Such displaced population finds shelter in shanty-towns on the outskirts of major cities, without access to sanitation, clean running water, and medical, educational, or other services and with few possibilities for employment (Korn 2000: 18).

Displacement in large number leads to the poverty. Even if displaced persons were not poor before fleeing or being driven from their homes, the internally displaced quickly become the poorest of the poor, subject to abuse and exploitation and to rates of malnutrition, disease, and mortality well beyond those of the still settled population (Korn 2000: 18). These are the severe consequences of the displacement of people, which undermines the every rights of human being and every element of human security.

IDPs: Human Security Issue

Displacement is itself a strong indicator of creating insecurities to human beings. Internally displaced persons essentially raise the questions of human security. The concept of 'human security', entered into the international arena in mid 1990s, more precisely with the publication of United Nations Development Programme's Human

Development Report 1994. The Report introduced new approach to security by equating individual security with State Security. Since then human security has become a catchphrase in the global debate on the changing meaning of security (Oberleitner 2005: 185). The concept of human security has begun visibly to influence, change, and challenge global politics, institutions, and governance (Oberleitner 2005: 185). Human security is a concept based on common values rather than national interest (Oberleitner 2005: 190). Bringing to the forefront the safety of individuals and communities, and their quality of life and their dignity, allows changes to happen that would otherwise have been shielded behind territorial sovereignty, political independence, and national interest. Thus human security as an analytical tool is helpful in seeking to provide protection and assistance to the internally displaced persons (Oberleitner 2005: 190). This concept has potential to challenge the legacy of use of force which causes displacement. The utility of the concept of Human security will be explored in the second chapter of this dissertation.
The issue of IDPs has been primarily addressed in terms of the human rights under various international legal instruments which will be discussed in next section. Human rights traditions started with Universal Declaration of Human Rights 1948, further several binding international instrument has been created to address specific human rights. Unfortunately, the violation of human rights goes unabated. Those who remain within the borders of their home state (the state of their nationality and/or habitual residence) should be able to rely on the protection of their government. However, they may not enjoy that protection, either because the government lacks the capacity to provide it or because that same government is responsible for creating or exacerbating their insecurity (Tigerstrom 2007: 120).

International legal instrument of Human rights are binding on state parties only after the ratification of the concerned treaty or convention. This ratification gap has been highlighted in the Compilation and Analysis of Legal Norms: Report of Representative of Secretary-General submitted to the UN Commission on Human Rights (E/CN.4/1996/52: Para 104). To address this ratification gap, it has been argued in second chapter of this dissertation in tune with monist theory regarding relationship between international law and municipal law that international norms should be binding on state to adopt in their domestic law irrespective of ratification.

Moreover, it cannot always rely on governments to protect their people and effective protection will require some kind of shared responsibility that underlies the idea of human security as a common concern. The issues of shared responsibility and aspects of human security led to call for international protection for IDPs (Tigerstrom 200:120). Principles of state sovereignty and non-intervention are obstacles to the international protection for IDPs, particularly for conflict driven IDPs (Tigerstrom 200:120). The principle, sovereignty as responsibility to protect, has been proposed by the International Commission on Intervention and State Sovereignty in 2001.

International Concern for IDPs: Legal Dimension

Although the expression 'internally displaced persons' is not mentioned in any international legal instrument, this does not mean that the internally displaced do not enjoy any legal protection under existing international law. There protection has been ensured in different international legal instruments such as International Human Rights Law, International Humanitarian Law and International Refugee Law. This section is more indebted to the writing of Catherine Phoung and Fracis Deng, Representative of Secretary-General's Report on Compilation and Analysis of Legal Norms.

Protection of IDPs under human rights law

International human rights law developed at a very fast rate in the second half of the twentieth century. A wide range of conventional and customary norms has emerged. The main human rights instruments which are referred in the Compilation and Analysis of Legal Norms are the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966 (ICCPR), the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (ICATCIDT), the Convention on the Prevention and Punishment of the Crime of Genocide 1948 (ICPPCG), the International Convention on the Elimination of All Forms of Racial Discrimination 1965 (ICEARD), the Convention on the Elimination of Discrimination Against Women 1979 (CEDAW), and the Convention on the Rights of the Child 1989 (CRC). Many organs, both international and regional, have been set up to implement human rights standards. Human rights law also applies to internally displaced persons

since it applies to all individuals without distinction and in almost all circumstances. When humanitarian law is not applicable, human rights law becomes the only source of legal protection and ensures that the human rights of internally displaced persons are respected.

In such situations which cannot be qualified as armed conflict (internal strife), humanitarian law cannot apply and some human rights can be restricted, sometimes even derogated from. For example, Article 4(1) of the ICCPR 1966 provides that, in times of public emergency, some of its provisions can be derogated. According to Article 4(3), states must nevertheless report to the UN any declaration of a state of emergency. However, the core human rights, such as the right to life, the prohibition of cruel, inhuman and degrading treatment or punishment, the prohibition of slavery and the prohibition of the retroactive application of penal law, are non derogable under any circumstances (ICCPR 1966, Article 4(3). This is of crucial importance to internally displaced persons.

Although forced displacement has never been a focus in the development of human rights instruments, these instruments contain provisions which are of particular relevance to internally displaced persons (Phoung 2004: 43). The Compilation mentioned above identifies their needs and the corresponding legal provisions which can be used to cover such needs. It appears from the Compilation that the needs identified are very similar, if not identical, to those of refugees. Nine areas are listed in the Compilation, namely equality and non-discrimination, life and personal security, personal liberty, subsistence needs, movement-related needs, the need for personal identification, documentation and registration, property-related needs, the need to maintain family and community values, and the need to build self-reliance (Phoung 2004: 43). The emphasis is put not only on protection needs, but also on assistance to the internally displaced. It was deemed necessary to analyse in depth the law in the relevant areas with a focus on internally displaced persons, because their protection needs are not as clearly covered by a specific international legal instrument. When individuals are on the move, it is more difficult to ensure that their human rights are protected. Refugees whose specific human rights are no

longer protected by their government are covered by a special regime of protection established by the 1951 Convention. In theory, there is a 'continuum of norms protecting the rights of the human person (Phoung 2005: 43).

The purpose of human rights instruments is to protect individuals from abuses from the state. States cannot treat their population as they wish with impunity. In analysing the legal provisions of human rights law which apply to internally displaced persons, one seeks to demonstrate that states have duties towards these populations, negative obligations such as not to displace them, not to inflict inhuman treatment upon them, etc., as well as positive obligations such as to provide sufficient food for them or health services for instance, but also to prevent *others* displacing them (Phoung 2005: 44). Reaffirming human rights protection for internally displaced persons thus amounts to reminding the state of the fact that internally displaced persons should still benefit from the same protection as anyone else in the country. Not only should the state treat the internally displaced like the rest of the civilian population, but it should also provide extra protection for these vulnerable populations (Phoung 2005: 44).

Protection of IDPs under humanitarian law

International humanitarian law (hereinafter humanitarian law) is that branch of international law that regulates the conduct of hostilities and seeks to protect the victims of armed conflicts (Compilation and Analysis of Legal Norms 1995: 8). Humanitarian Law contains rules regulating the means and methods of warfare. The main provisions of humanitarian law can be found in the four Geneva Conventions of 1949 their two additional Protocols of 1977[6]. Four Geneva Conventions of 1949 of which two convention deals with the amelioration of the condition of the wounded and sick in armed forces in the field, third convention are related to the treatment of prisoners of war and forth convention is related to protection of civilian persons in time of war. The Geneva Conventions are the world's most widely ratified multilateral treaties.

[6] Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 UNTS 3 (hereinafter Protocol I); Protocol Additional to the Geneva Conventions of 12 August1949 and Relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977, 1125 UNTS 609 (hereinafter Protocol II).

It is mainly the ICRC which promotes and monitors the application of humanitarian law. As armed conflicts constitutes the main cause of forced displacement, including internal displacement, humanitarian law inevitably plays a crucial role as a source of protection for the internally displaced (Lavoyer 2000: 50). Humanitarian law seeks to provide means of protection which are adapted to exceptional circumstances (Plattner 1993: 569). For the purpose of this study, only the provisions relating to the protection of civilians contained in the Fourth Geneva Convention relating to the Protection of Civilian Persons in Time of War[7] and the two Protocols of 1977 are taken into consideration. Internally displaced persons benefit from the same protection provided for all civilians in times of armed conflicts (Phoung 2005: 45).

The Compilation distinguishes between the norms applicable in inter-national armed conflicts and those applicable in non-international armed conflicts as different provisions apply in each situation (Compilation and Analysis of Legal Norms 1995: 12-14). Humanitarian law provides a more comprehensive protection during international armed conflicts to which the Fourth Geneva Convention and Protocol-I apply, whereas the law regulating non-international armed conflicts is less elaborate (Phoung 2005: 45). However, it is during internal conflicts that the highest numbers of internally displaced persons are often produced and the need for specific protection against the government or other warring parties arises (Phoung 2004: 45). Moreover, most conflicts around the world are now internal conflicts and the regulation of such conflicts has thus gained added importance. The only provisions of humanitarian law which are applicable during non-international armed conflicts are common Article to the Geneva Conventions 1949 and Protocol II 1977. The application of Protocol II is relatively high. Article 1 of Protocol II stipulates that the Protocol only applies to armed conflicts between the armed forces of a state party and 'dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operation'. Common Article 3 is especially important since it contains some fundamental principles which are of customary nature. The International Court of Justice has ruled that the guarantees laid

[7] 12 August 1949, 75 UNTS 287.

down in common Article 3, apply to non-international armed conflicts as customary law which enshrine 'elementary consideration of humanity' (*Nicaragua v. the United States of America*, I.C.J. Reports 1986). It provides that civilians shall be treated humanely and without discrimination.

Humanitarian law is especially useful because it contains provisions on issues of special relevance to the internally displaced such as humanitarian access and are meant to cover specific needs arising in armed conflicts (Compilation and Analysis of Legal Norms 1995: 89). Human rights provisions are usually worded in a general sense because they are meant to be universally applied (Phoung 2004: 46). The provisions concerning the protection of civilians during armed conflict provide protection during displacement and cover a wide range of issues (Phoung 2004: 46). However, some of these provisions cannot be applied to the internally displaced because they only provide protection to non-nationals in international armed conflicts (Phoung 2004: 46). Thus, International humanitarian law is less concerned with the way civilians are treated by their own state during international armed conflicts (Phoung 2004: 46). However, this is precisely the type of protection which the internally displaced may need during such conflicts (Phoung 2004: 46).

Finally, humanitarian law also contains some specific provisions prohibiting transfers of population. Article 17 of Protocol II which expressly prohibits such transfers is of special importance to the internally displaced. It reads:

> 1. The displacement of the 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. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.
>
> 2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict (Additional Protocoll II 1977 to Geneva Convention 1949).

Article 49 of the Fourth Geneva Convention which applies to international armed conflicts also prohibits population transfers from occupied territories. It is to be noted here that while humanitarian law focuses on forced relocation, it however does not address comprehensively the problem of forced displacement during armed conflict. This is because as Phoung argues human rights law, humanitarian law, on its own, does not provide a complete normative framework to cover all situations of internal displacement (Phoung 2005: 47).

Protection under Refugee Law

The fact that refugee law does not apply to internally displaced persons does not mean that this body of law is completely irrelevant to them (Phoung 2005: 47). As problems encountered by internally displaced persons are very similar to those of refugees, refugee law can serve as a point of comparison and 'might also inspire standard-setting for internally displaced persons' (Compilation and Analysis of Legal Norms 1995: 9). For example, the provision contained in the 1951 Convention on *non-refoulement* (Article 33) can serve as a reference for internally displaced persons. Like refugees, they should not be returned to places where their life or freedom would be threatened. Other principles such as safe and voluntary return could also be applied to internally displaced persons. Finally, the UNHCR guidelines on refugee women and children offer useful guidance for the standards of treatment of internally displaced women and children. Although refugee law can serve as a point of comparison, it must also be noted that the articulation of certain rights in the IDP context may raise tensions with refugee law. For instance, some states regularly return asylum seekers to their country of origin on the basis that they have an internal flight alternative and can seek safety elsewhere in their state (Hathaway and Forster 2003).

According to Fitzpatrick, refugee law may appear to condone the return of persons who will join the ranks of the internally displaced (Fizpatrick 2000: 12). What came out of the Compilation and Analysis of Legal Norms applicable to situations of internal displacement was a patchwork of various provisions drawn from several bodies of law, which demonstrates their considerable complementarity' (Lavoyer 1996: 26). These

provisions do not apply in all circumstances and some only apply to specific groups of persons. It is therefore difficult to determine in each case what applies when, and to whom. Despite the abundance of applicable norms, the protection is not complete.

Since the end of the Second World War, three bodies of law, international human rights law, international refugee law and international humanitarian law, have developed along separate paths, with distinct normative and institutional frameworks (Phoung 2005: 48). Fitzpatrick has argued that forced displacement is an important site of convergence of the three bodies of law since 'human rights violations associated with armed conflicts are, indeed *the*, major cause of forced displacement' (Fitzpatrick 2000: 3). Rather than convergence, relevant provisions of above three branches of law have been restated in the Guiding Principles on Internal Displacement. With concern to the above mentioned international legal norms a detailed discussion will be discussed in Chapter III on to what extent do National Laws are consistent with international law with respect to protection of internally displaced, particular Indian National laws.

Chapter 2

International Law and Human Security: An Overview

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Introduction

International law has its foundation in the seventeenth century and can trace its origin to the Dutch jurist Hugo Grotious, whose work, *De Jure Belli ac Pacis*[1], appeared in 1625, and became a foundation of later development of international law (Jenning and Watts 2008: 4). In international relations, the Treaty of Westphalia 1648 established two most important principles of international law i.e. principle of state sovereignty and non-intervention. Likewise, as body of international law, it got it place in the Charter of United Nations in 1945. On the basis of these two principles, security has been understood as national or state security and that the security of states is the primary subjects of international law (Oberleitner 2005: 189). The individual was not direct concern in international law. The individual is an 'object', not a 'subject' of international law (Cassidy 2004: 539).

In the 20th century, World War I and World War II millions of people were killed. In this period human security was highly hampered, and individual security with the violation of their rights compromised at international level. To overcome these problems, The United Nations Charter emphases for protection of human rights and established the principle to promote and encourage respect for human rights and fundamental freedoms for all (Art.1.3, UN Charter). Thus with the Charter, the tradition of emphasis on both individual and group started to get notice in international law-particularly the Universal Declaration of Human Rights 1948. Thereafter, various international instruments that deals with the issue of human rights was taken up. The next important are the Convention on Status of Refugee 1951, United Nations Covenant on Civil and Political Rights 1966, United Nations Covenant on Economic , Social and Cultural Rights 1966 and most recently the Guiding Principles on Internal Displacement 1999 which deals with the issue of displacement. In spite of these legal instruments dealing with human rights, Luini de Russo, Professor of Law in Howard University written in 1968 which has relevance even today. He wrote:

[1] The Law of War and Peace

> Even though the urgency of the issue of human rights and security had become relevant to the nations of the world and the standards of the fundamental freedoms of man had been defined, the individual found no improvement in his position vis-a-vis the State as to the implementation of those standards in practice. This would remain true so long as the member States did not assume a firm international obligation as to any of the rights defined in the Declaration (Luini de Russo 1968: 750-751).

Human rights are now closely link with the concept of Human Security which has recent origin in 1990s, particularly in the UNDP's Report of 1994. Oberleitner has analyzed the relationship between concept of Human Rights and Human security. Oberleitner rightly pointed out that the individual is the ultimate focus and bearer of both human rights and human security (Oberleitner 2002: 14). In other word both human rights and human security place the individual in the centre. Human rights have always been concerned with the security of the individual. However, Oberleitner (2002) came to the conclusion that human rights are part of human security, and thus concept of human security is a broader comprising fundamental rights as well as basic capabilities and absolute needs (Oberleitner 2002: 14-16). Walter Dorn has put the relationship between human rights and human security in two words "Human Security is the ability to enjoy the fruits of human rights in as safe environment" (Dorn 2003: 15).

Human security principally concerns the security of individuals and communities. Thus, human security is in contrast to the traditional discourse that emphasizes the security of the 'state', or that of a territory or government. Internally Displaced Persons represent one such issue of human security, whose security concern would be under the national legal system. Though rights of IDPs are protected under the various international laws particularly-International Human rights Law, Humanitarian Law, Convention of Refugee, these laws are however binding on member states only after the ratification. As such member states have not ratified all or some of legal instruments concerning protection of human rights. Furthermore, some norms or principles are not created through formal treaty, thus it is the discretion of states to comply with it or not. For example the Guiding Principles on Internal Displacement which is product of work by international experts, lawyers and NGOs is not a formal binding treaty. Thus to comply or not with the Guiding Principles on Internal Displacement is totally at the discretion of states. The fact is individual's security and protection of human rights rest with their state, which at this is also the offender

normally the offender, to enforce their rights. Whether individual enjoy the benefits of international protection, therefore, depend upon the 'good nature' of the state and its willingness to act for the aggrieved individual. Thus the principles or norms or rights (whether developed through formal treaty or not but adopted by United Nations) exclusively relating to the security of the individual or community should be obligatory on State as well as non-state actors irrespective of ratification or consent and should be held accountable to international law. This argument supported with Monist theories, particularly Hans Kelsen's theory about relationship between international law and domestic law.

Dualist and Monist Theories

Traditionally, international law or law of the nations is regarded as one that only deals with regulating the relations among states. However, in the present era Robert Jennings and Arthur Watts redefined International law as "the body of rules which are legally binding on states in their intercourse with each other (Jennings and Watts 2008: 4). To them international law are not rules that are primarily govern relations between states but international organizations and individuals be also considered as subjects of rights and duties of international law (Jennings and Watts 2008: 4).

There are two legal systems running. First the international legal system which primarily deals with relationship among states. Its objective is to promote international peace and security. Second the domestic or national legal systems that deals with the relationship between state and its citizens and its aim is to maintain law and order within the state. Though the international legal system and national legal system are different, but certainly they are related to each other. There are different approaches to explain relationship between international legal system and national legal system, but for the purpose of this dissertation Monist and Dualist will be taken into consideration.

Dualist Theories: Discretion for state to introduce international law in state law

According to dualist theory, international law and internal law of states are two separate legal systems. Being a separate system international law would not form part of internal law of a state. However, in certain instances rules of international law may

apply within a state by virtue of their adoption by internal law of the state. Application of such law will make such international law part of state or domestic law and not as international law. Such a view avoids any question of the supremacy of the one system of law over the other since they share no common field of application which each supreme in its own sphere (Jennings and Watts 2008: 53). In the present era this view is subject to criticism. Today international law and national law share a common field i.e. human security, human rights, environment pollution etc. are common fields of international law as well as in domestic law. Dualist theory proposes that rules of international law may apply within state by virtue of the their adoption through internal law, however, it does not impose any obligation or duty upon states to give effect to international law or norms as it assign supremacy to both international and state law. Thus, implications of dualist theory are differences among the states internal law as against international law. For example some countries (US, Europe etc.) see international law as law of the land whereas others do not or even do not adopt in states law.

Monist Theory: Beyond the Consent

Monist theory has contrary view to dualist explanation of the relationship between international law and internal (municipal or national or state) law. The first published work inspired by monist appeared in 1899 in Stuttgart and was written by Wilhelm Kauffman (Marian 2007: 3). This Theory sustains the unity of legal order and it is presented in more ways, developed by illustrious authors such as Hans Kelsen, G. Scelle, A. Verdross (Marian 2007: 4). According to the monistic doctrine, the two systems of law (international law and state law) are part of one single structure, as legal system of various states are derived by way of delegation from the international legal system. Since international law can thus be seen as essentially part of the same legal order as municipal law, and as superior to it, it can be regarded as incorporated in municipal law (Shearer 2007 : 65). Hence, giving rise to no difficulty of its application as international law within states. Thus the international law applies immediately without being admitted or transformed within the legal systems of the member states.

The Monist theory holds that international law and state law are both part of a universal body of legal rules binding all human beings collectively or singly (Shearer 2007 : 65). Thus, it implied that state or municipal laws must be in consonance with international law. Monist theorist, Hans Kelsen, holds the view that there is no need to introduce international law through the national legislation as it directly applies to the individual (Kelsen 1966: 551). Individual lies at roots of law no matter whether it is international law or state law. Though in theory international law directly applies to the individual, however practical reality cannot be ignored that in the contemporary international society, state is considered as principal actor having sovereignty over its territory and control over the internal legal system, therefore it is necessary to adopt or transform the international law in domestic law by the state. Monist theories impose obligation on state to give effect to the international law by way of adoption or transformation with same logic i.e. individual at roots of international law. Thus it upholds the uniformity in both legal systems.

Monist theories are helpful to promote and protect human rights of every individual as it does not require common consent of states which positivist/dualist theorists considered it strong basis for international law. In other word international law, particularly human rights and security of people is binding upon state irrespective of its consent thereto. Robert Jennings and Arthur Watts pointed:

> It impossible to accept the view that rules of international law cannot, without express municipal adoption, operate as part of municipal law, or the opposite view that they always so operate (2008).

In this sense, monist theory has the potential to address human security issues of the internally displaced persons.

Importance of individual to international law

International law is no longer concerned solely with the state. Many of its rules are directly concerned with regulating the position and activities of individuals; and many more directly affect them. Nevertheless, international law has been primarily a law between states, with states as the principal subjects of that law. Even though individual can enjoy certain rights and duties in conformity with, or according to, international law-such as the rights enjoyed while on foreign territory by Heads of State, diplomatic envoys and even private citizens-those individuals have not thereby

directly become subjects of international law (Jennings and Watts 2008: 846). In such cases, the relevant right in international law is vested to states. In international law state has right to require that all other states should grant rights to individuals when they are in their territories. Therefore, other states are under corresponding duty in international law to accord rights through provisions of national laws. Thus, to extend, the rights in question are rights derived from national law (Jennings and Watts 2008: 846-47).

States can confer upon individuals, whether their own subjects or aliens, international rights *strict sensu*, i.e. rights which individuals acquire without the intervention of municipal legislation and which they can enforce in their own name before international tribunals. Moreover, the quality of individuals (and private companies and other legal persons) as subjects of international law is apparent form the fact that, in certain spheres, they enter into direct legal relationships on an international plane with states and have, as such, rights and duties flowing directly from international law. It is no longer possible, as a matter of positive law, to regard states as the only subjects of international law, and there is an increasing disposition to treat individuals, within a limited sphere, as subjects of international law (Jennings and Watts 2008: 847-848).

Nationality: the link between individuals and International law

Nationality of individual plays important role to enjoy benefits under international law. Nationality is the link between individuals and international law where individuals are not directly subjects of international law. It is through the medium of their nationality that individuals can normally enjoy benefits from international law. This has consequences over the whole area of international law. Individuals that do not possess any nationality enjoy only limited protection, and in such case an individual's aggrieved against a state stands difficult as no national state is competent to take up their case. International law put obligations, as expressly laid down by various treaties and general obligation, in the Charter of United Nations on states to respect human rights and fundamental freedoms. Apart from these obligations under various treaties and United Nation Charter, in international law there is no restriction upon state which violates the human rights of stateless persons (Jennings and Watts 2008: 848). On the other hand, if individuals who possess nationality are wronged

abroad, it is, as a rule, their home state has right to ask for redress, and these individuals themselves have no such right. It is for this reason that nationality is very important in international law (Jennings and Watts 2008: 848).

Human Security

The concept of human security emerged as part of the holistic paradigm of human development cultivated at UNDP by former Pakistani Finance Minister Mahbub ul Haq, with strong support from economist Amartya Sen. UNDP's 1994 global Human Development Report (HDR) was the first major international document to articulate human security in conceptual terms with proposals for policy and action (Jolly and Basu Ray 2006: 4). Though this marked the most high-profile launching of the concept, Mahbub ul Haq and several others involved in 1994 had explored the topic at a North-South Roundtable called the 'Economics of Peace', held in Costa Rica in January 1990 (Jolly and Ray 2006: 4). The Roundtable produced a clear statement that the Post-cold war world needed a new concept of global security with the orientation of defence and foreign policy objectives changed from an almost exclusive concern with military security...to a broader concern for overall security of Individuals from social violence, economic distress and environmental degradation (Jolly and Ray 2006: 4). This would require attention to causes of individual insecurity and obstacles to realization of the full potential of individuals (Jolly and Ray 2006: 4). The report placed these challenges in the context of the post-cold war world along with an emphasis on reducing military spending and creating a peace dividend to ensure greater human development, and ease economic and environmental imbalances (Jolly and Ray 2006 : 4).

The 1994 global HDR argued that the concept of security has for too long been interpreted narrowly: as security of territory from external aggression, or as protection of national interests in foreign policy, or as global security from a nuclear holocaust. It has been related more to nation states than to people (UNDP 1994: 22). This narrow approach was categorically widened to include the safety of individuals and groups from such threats as hunger, disease and political instability, and protection from "sudden and hurtful disruptions in patterns of daily life" (UNDP 1994: 22). The report went on to further identify seven core elements that—when addressed together—reflect the basic needs of human security: economic security, food security, health

security, environmental security, personal security, community security and political security (UNDP 1994: 23-25). Henceforth, security issues of individual or people at international pole continue emphasized in various international commissions' report, particularly endowed with task of discussing and redefining the concept of human security.

In its December 2001 report on the responsibility to protect, the International Commission on Intervention and State Sovereignty (ICISS) primarily provided a legal framework for the right of humanitarian intervention (ICISS 2001: vii). The growing recognition worldwide of human security as "security of people – their physical safety, their economic and social well-being, respect for their dignity and worth as human beings, and the protection of their human rights and fundamental freedoms" (ICISS 2001: 31) was expressly welcomed by ICISS (Ketteman 2006: 43). In its deliberations, the Commission made extensive reference to human security, and underlining that the concept of security has become much broader since the UN Charter was signed in 1945 (Ketteman 2006: 43). The Commission stated that a shift had occurred in the security debate from territorial security, and security through armaments, to security through human development with access to food and employment, and to environmental security (ICISS 2001: 31).

Again in the report titled "Human Security Now" by the Commission on Human Security, an initiative of the Government of Japan, proposed a new individual-oriented international security framework (Ketteman 2006: 43). The concept of human security was understood as focusing on empowering individuals to deal with internationalized threats. Human security issues are considered to be especially relevant in relation to people in conflict and post-conflict situations, people on the move, people in economically difficult situations and/or faced with health care and education-related problems (Commission on Human Security 2003: 2-4). Thus human security has entered into the global debate shifting the focus from state security to the individual or people's security.

Human Security and International law

At the core of human security is the individuals' or peoples safety, their well being and protection of freedoms. Though the principal focus of international law is states,

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Human Security and International law

At the core of human security is the individuals' or peoples safety, their well being and protection of freedoms. Though the principal focus of international law is states,

states are merely conducting their relations with another state on behalf of its people. Therefore, there are some theorists who argue that individual is at root of international law rather than states for example Hans Kelsen. This view is dominant in the monist theories as discussed earlier in this chapter. Human security put individual at center as monists or naturalist put individuals at the center of legal system. International human rights law, international humanitarian law, international refugee law seems to be on basis of the naturalist or monist theories, whereas other principles of the international law such as non-intervention and sovereign equality seems to be based on the dualist or positivist side. This implies that international law can be helpful to address issue of human security and at same time it can be obstacle. This implication is clearly explained by Barbara von Tigerstrom in her book *Human Security and International law: Problems and Prospects,* that International law is seen as both a useful tool and an impediment to promoting human security (Tigerstrom 2007: 59). Further Tigerstrom clarified that the rule of law, enforcement of international law and legal accountability are valued as essential components of a human security approach (Tigerstrom 2007: 59). Here legal developments and initiatives have addressed most elements of the human security agenda, and international law is seen as playing important and positive role as a means of advancing human security. On the other hand, the discussions on human security sometimes reflect a perception that international law acts as a constraint on actions that are necessary to ensure human security (Tigerstrom 2007: 59). While in some respects human security is consistent with developments in international law, at other, it is also seen as representing a challenge to international law, requiring a 'paradigm shift' or revolutionary change in current legal structures ((Tigerstrom 2007: 59)).

Furthermore Tigerstrom has suggested a way of approaching the relationship between human security and international law that is to examine the use of law as an instrument to foster human security (Tigerstrom 2007: 60). Virtually all of the items on the human security agenda have been addressed by legal norms and institutions, as Oberleitner points out that the underling issues of human security are not new to international law and that some have been the subject of important recent developments (Oberleitner 2005: 186). For example, international agreements on arms, transnational organized crime, illicit drugs, and terrorism have sought to address these threats in the context of human security (Tigerstrom 2007: 60). A range of

binding and non-binding instruments have been developed to respond to important threats beyond physical violence, including infectious diseases, poverty, natural disasters, and environmental degradation. The protection of civilians in armed conflict is a central aim of humanitarian law, and the special vulnerability of children in armed conflict has been the subject of a recent Protocol[2] in 2000. The law is increasingly called upon to respond to the particular vulnerabilities to which women are subject, in conflict and other situations, as a result of their gender. One of the most important examples of the way law can be used as an instrument for ensuring human security is the establishment of international criminal tribunals especially the International Criminal Court. Similarly The UN Charter provides a legal structure for actions in pursuit of human security, including Security Council-authorized responses to threats to international peace and security, UN peace-keeping missions, and conflict prevention efforts. The human security agenda also includes means of ensuring human security, such as specific measures to be used and actors whose participation is critical. With regard to the latter, the role of non-state actors such as non-governmental organizations, civil society groups, etc. is important, given that various actors other than state governments, including corporations and armed groups, have significant impacts on human security (Tigerstrom 2007: 60- 61).

Though these examples shows international law can serve as in instrument for ensuring human security. Tigerstrom however cautioned that initiatives that appear to have human security objectives may have unintended negative effects, whether because they are simply ill conceived or because they trade off one type of security against another (Tigerstrom 2007: 61). For example the 'war on terrorism' would seem to be a prime example of both of these. Although the prevention of terrorism is a valid objective that would enhance human security, the strategies chosen have significantly increased other forms of insecurity for individuals in many countries, whether directly, by threatening their lives and physical and psychological security through detention or deportation, or indirectly, through the exacerbation of poverty and economic insecurity resulting from the diversion of resources (Tigerstrom 2007: 61).

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[2] Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts (opened for signature 25 May 2000, entered into force 12 February 2002) UNGA Res 54/263 (16 March 2001) UN Doc A/RES/54/263.

The Human-Centered Approach in International Law

Traditionally, as mentioned earlier in this chapter international law has been concerned primarily with regulating the relationships between states. At the same time, though, many assume the individual to be 'the ultimate beneficiary of the international legal system' (Higgins 1994: 95). In assumption that individual at the root of international law Tigerstrom raised the question what would it mean for international law to be or become (more) human-centered (Tigestrom 2007: 62). The human-centred focus inherent in the concept of human security demands explicit attention to the needs and interests of individuals, and gives analytical and moral priority to individuals' needs and interests over those of states (Tigestrom 2007: 62). It could also understand a people-centered world order as emphasizing the role and participation of individuals and (non-state) groups in the international arena (Tigestrom 2007: 62). This is relevant to human security, in the sense that participation may allow people to voice their concerns about the threats that most affect them, and to have a role in addressing those threats. However, in this context individual participation can contribution to human security, rather than as an end in itself. The core of the human-centered approach in human security is the normative priority of people's security, especially in relation to states' security (Tigerstrom 2007: 62).

Human security is fundamentally in conflict with the existing system of international law. Oberleitner has been described human security as a challenge to the existing international order and to international law (Oberleitner 2005: 187). Further, Oberleitner pointed out that human security is contrary to the national interest of states and as weakening foreign policy choices, because it would seem to open the way to justifying humanitarian intervention or to forcing states into undertaking actions abroad that are against their national interests (Oberleitner 2005: 187). Thus, it has invoked as a framework or impetus for rethinking key aspects of the international legal order, especially state sovereignty. The perceived tension between international law and human security arises from a view of the existing international legal system as according primary legal and moral status to the state, and giving priority to the protection of states' security, while the concept of human security asserts the priority of individuals' security (McRae 2001: 15). The constitutive norms of international society are said to protect the security of states, even those that threaten the security of

their people. The state-centered system seems to be based on the very assumptions that state aggregates, protects, and promotes the interest of its citizens (Bajpai 2000: 38). This assumption does not stand in concept of human security therefore states' security can be equated with the security of their inhabitants or citizens (Tigerstrom 2007: 63).

State sovereignty is one of the oldest concepts of modern international law, and the principle of sovereign equality, one of the fundamental principles of the UN Charter, has been described as the linchpin of the whole body of international legal standards, the fundamental premise on which all international relations rest (Tigerstrom 2007: 63). The legal concept of state sovereignty is closely connected to the traditional conception of security. National security is traditionally conceived of as being concerned with preserving the survival of the state as an autonomous entity against external threats. The value that the pursuit of national security aims to protect is essentially the sovereignty of the state, including control over its territory and political autonomy. The legal protection of state sovereignty in international law therefore functions to protect the security of the state, and its centrality in the international legal system tends to suggest that state security also has a privileged position. Other fundamental legal principles also protect national security as traditionally understood. For example, the prohibition on the threat or use of force as articulated in article 2(4) of the UN Charter specifically refers to the territorial integrity and political independence of states. The right of self-defence is also said to give practical effect to the doctrine of national security by allowing states to use force in response to an armed attack, even at the expense of individuals' security (Tigerstrom 2007: 64).

Thus International law seems designed to protect the security of states and to reflect the assignment of moral value to states. However, the fact that international legal framework provides protection for the security of states does not in itself make international law incompatible with human security. For human security, protecting the security of the state is necessary but not sufficient, ideally complementary but sometimes detrimental (Tigerstrom 2007: 64). As a result, the degree of incompatibility is determined by the extent to which the law allows state security to be protected at the expense of individuals' security. Much, then, depends on the

interpretation of such fundamental principles as sovereignty and the prohibition on the use of force (Tigerstrom 2007: 64).

Such interpretation of sovereignty has put forth by Secretary-General Kofi Annan has described the shift from territorial sovereignty to individual sovereignty in the following terms:

> State sovereignty, in its most basic sense, is being redefined—not least by the force of globalisation and international co-operation. States are now widely understood to be instruments at the service of their peoples, and not vice versa. At the same time, individual sovereignty—by which I mean the fundamental freedom of each individual, enshrined in the charter of the UN and subsequent international treaties—has been enhanced by a renewed and spreading consciousness of individual rights. When we read the Charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse individuals (Annan 1999).

Furthermore, concept of human security challenge 'use of force' irrespective of its legacy because 'use of force' to protect the people may create insecurities of others people who may be strange to armed conflict. For example the insurgency and counter-insurgency operation creates insecure environment for the internally displaced person which issue this dissertation's concern. So the concept of human security will suggest very cautious approach or total ban on 'use of force' by any international organizations, states and non-state actors for their cause. Thus human security has inherent normative consideration.

Human security and Norm Creation

The Ottawa convention banning landmines, the statute of the International Criminal Court, and the protocol to the Convention on the Rights of the Child (on child soldiers) are human security treaties. In this sense, human security concerns are already shaping international legal documents. Moreover, the processes leading to the adoption of these documents prove the new trend of civil society actors, states, and intergovernmental organizations working together (Oberleitner 2005: 95). When human security starts penetrating the field of international norm making in a more persistent way, the documents resulting from these processes will possibly better reflect the balance between the concepts of state sovereignty and concern for the individual. Other examples being cited for such lawmaking processes are the Convention against Transnational Organized Crime and its protocols dealing with trafficking in firearms, smuggling in aliens, and trafficking in persons, and authors

have tried to trace the influence of the human security debate on the adoption of these documents. Human security also allows, or facilitates, the drafting of documents that see the broader picture and bring together separate areas of international law. Such is the case with Security Council Resolution 1325 (2000), on women in armed conflict, which links a gender perspective on human security with issues such as human rights and humanitarian law, international criminal law, refugee law, concern for the spread of HIV/AIDS, and UN peacekeeping activities in a holistic framework. (Oberleitner 2005: 195-196). For protection of human security issues of internally displaced persons norms has been created under title "Guiding Principles on Internal Displacement" in report by Representative of Secretary General of United Nations in 1999, and is adopted by the General Assembly. This report has appealed to states apply these guidelines in addressing the issue of the Internally Displaced Persons. Third chapter will look into the states practices giving weightage to the Guiding Principles in their legal system, special emphasis will be on the India's policy.

Chapter 3

Application of Guiding Principles on Internal Displacement and India's Domestic Law

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Introduction

The Guiding Principles on Internal Displacement (GPID) has its genesis in the year 1998, which is a set of non-binding legal norms that deals with the internally displaced persons. Francis Deng pointed out in the introductory note to the Guiding Principles on Internal Displacement, that "although the Principles do not constitute a 'binding instrument' they 'reflect and are consistent with international human rights and humanitarian law and analogous refugee law" (OCHA 2000), which are binding on the signatory states. It was expected that the governments would give considerable weightage to the Guiding Principles in formulating laws or policies that deals with the issue of IDPs. In echoing this, this chapter analyze as to what extend Guiding Principles on Internal Displacement has been incorporated into India's Domestic Laws.

Development of Guiding Principles on Internal Displacement

It is interesting to see how the Guiding Principles on Internal Displacement came into existence as a set of norms to address the issue of IDPs. This section has mostly relied upon the texts of Thomas Weiss and David Korn as they illustration how Fancis Deng, Roberta Cohen and their team worked formally as well as informally.

In order to provide a legal framework as a basis for action on behalf of the displaced, in 1998 the Representative of the United Nations Secretary-General on Internally Displaced Persons, Francis M. Deng, presented the Guiding Principles on Internal Displacement to the UN Commission on Human Rights. The principles were developed under the direction of the representative, by a team of international legal experts in collaboration with international organizations, regional bodies, and NGOs (OCHA 1999).

In the year 1992, as a response to the growing international concern with the large number of internally displaced persons throughout the world in need for assistance and protection, Boutros Boutros-Ghali, the UN Secretary-General, at the request of

the Commission on Human Rights, appointed Francis Deng as the Representative of the Secretary-General on Internally Displaced Persons (CHR res. 1992/73). By the year 1998, the mandate of the Representative had been renewed thrice (CHR res. 1993/95, 1995/57 and 1998/50.). During this time the mandate focused on three main areas of work: first, visits to countries affected by internal displacement; second. promoting an institutional framework at both the international and regional levels; and, third developing a legal or normative framework (Weiss and Korn 2006). However, the present analysis is concerned with the development of a normative framework. The framework in the form of GPID is an innovative approach to human rights standard setting (Bagshwa 1999: 4). An approach which sought to consolidate the relevant provisions of international law and address the gaps and grey areas therein, not through the traditional state-oriented process of drafting a treaty or declaration on internally displaced persons but through a restatement of existing norms by non-state and intergovernmental actors in the form of the Guiding Principles (Bagshwa 1999: 4).

Right from the beginning, development of a set of international legal standards was one of the main goals of NGOs, international experts and lawyers who sought action by the United Nations to assist and protect the internally displaced. Even if not in the form of what lawyers would call "hard" law binding upon state signatories, such a framework was expected to provide at least a "soft" form of guidance to the agencies engaged in helping and protecting war victims and to put constraints of all sorts on their oppressors (Weiss and Korn 2006: 55). Also it was expected that such soft form of guidance would help creating a moral obligation on the states.

To develop the legal framework the Secretary General of the United Nations in his Analytical Report on Internally Displaced Persons observed that "there is no clear statement of human rights of internally displaced persons" (Commission on Human Rights 1992: 26). Further, the report suggested that "one comprehensive, universally applicable body of principles" be "fashioned from existing standards" (Commission on Human Rights 1992: 26). However, states were wary as most of these that submitted comments on the analytical report and on Deng's 1993 report to the United Nation's Commission on Human Rights (CHR) did not even allude to the issue of legal standards (Weiss and Korn 2006: 55). For Example, India, Sri Lanka, and

Mexico emphasized the primacy of the principle of noninterference and nonintervention in the internal affairs of states (UN Commission on Human Rights 1992: 25).

Moreover, while formulating an international legal framework to govern the situation of IDPs before, during and after displacements, states were not the only parties dragging their feet but also prominent international non-governmental organizations i.e. International Committee of the Red Cross (ICRC) and International Organisation for Migration (IOM) opposed to creating a special category and new legal standard (Weiss and Korn 2006: 56). Initially the ICRC opposed a special mandate for IDPs with the fear that Geneva Convention 1949 on protection of civilians in armed conflict and Additional Protocols of 1977 on protection of displaced population due to non-international conflict, would be undermined. In ICRC's view, states had only to ratify and respect the 1977 Additional Protocols for the protection and assistance to IDPs. However, the ICRC conceded that a 'code of conduct' could be useful "provided that there is a consensus among governments in favour of it and that it does not weaken existing law" (ICRC 1996).The International Organisation for Migration also initially opposed creating a special category for the internally displaced, arguing that it helped to resettle all the migrants equally, whether internally or externally displaced, and required nothing additional (Weiss and Korn 2006: 56).

Since the ICRC and IOM are prominent INGOs in the field of protection and assistance to victims of armed conflict and migration, Deng felt that garnering their support would be pivotal in framing legal standards for IDPs. Therefore, on each of his visits to Geneva, he made it a point of meeting with senior officials of both the organizations. With that endeavour Deng could successfully convince the ICRC and IOM that subsequently changed their initial views (Weiss and Korn 2006: 56). Thereafter both organisations actively participated in elaborating standards for the internally displaced.

After the discussions with NGOs and Legal Experts in 1993, Deng submitted the report titled " "Comprehensive Study on the Human Rights Issues relating to Internally Displaced Persons" to the Commission on Human Rights, in which he recommended that "it would be useful to prepare a compilation of the existing

international standards which are most relevant to the protection of the rights of internally displaced persons...such a compilation would be of great value to governments and international bodies"(CHR 1993: 87). The CHR acknowledged the recommendation of Deng noting that "to develop general guiding principles to govern the treatment of internally displaced persons as a task requiring further attention and study" (CHR res. 1993/95: 1).

For the compilation of existing international standards relevant to the protection of the rights of internally displaced persons, Francis Deng and Roberta Cohen sat down with Christian Strohal, the Austrian delegate, and his staff members—Bert Theuermann, Richard Kuehnel, and Martin Oelz—to work out a language to move the mandate forward. While the 1993 draft spoke of a "compilation of existing legal rules and norms" (Weiss and Korn 2006: 57). The sensitivity to potential infringements on sovereignty was such that in the resolution adopted by consensus the word "legal" had to be eliminated in order to mobilize the consensus (Weiss and Korn 2006: 57).

Austria did not limit its role to shepherding the 1993 resolution through the commission. In the summer of that year, the Foreign Ministry assigned a member of its staff to search through international human rights law for rules and norms that might apply specifically to IDPs. When that initial effort was completed, it turned the job over to the Ludwig Boltzmann Institute of Human Rights in Vienna which produced its final document *A Compilation of International Legal Norms Applicable to Internally Displaced Persons* (UN-Doc. E/CN.4/1995/CRP).

Deng welcomed the Austrian initiative, but he also wanted other contributions. In Washington, he turned over the task of organizing the American side to Roberta Cohen. She was a member of the board of the Washington-based International Human Rights Law Group. Robert Cohen won the support of the group, headed by Gay McDougall, and enlisted Robert Goldman, a fellow board member and a professor at the American University's Washington College of Law. Goldman was an expert in international humanitarian and human rights law and had long been involved in the promotion of human rights law in Latin America (Weiss and Korn 2006: 57). Cohen also won the backing of the professional staff of the American Society of International law (ASIL), headed by Lawrence Hargrove and later by Charlotte Ku.

Both the International Human Rights Law Group and the ASIL organized sessions with legal experts to identify issues and debate alternatives(Weiss and Korn 2006: 57).

The sessions resulted in two different approaches, first, the Austrian approach led by Nowak and second- the US approach led by Robert Goldman. Under Nowak's direction, Otto Linher, a member of the Boltzmann Institute, produced a 75-page document, *A Compilation of International Legal Norms Applicable to Internally Displaced Persons* (UN-Doc. E/CN.4/1995/CRP). This study pointed out the existing rules and norms applicable to the situation of internally displaced persons. The Austrian study was rights-based- a straightforward look at what treaty and other hard international human rights and humanitarian Law had to offer.

The U. S. study took a different stance that goes beyond the right based approach. In their view displaced persons had special needs, and so it is necessary to look at what the law offered to meet those. The 190-page U.S. study was prepared under the joint auspices of the American Society of International Law (ASIL) and the International Human Rights Law Group and written by Goldman, together with Janelle Diller and Cecile Meijer, and entitled *Internally Displaced Persons and International Law: A Legal Analysis Based on the Needs of Internally Displaced Persons* (UN-Doc. E/CN.4/1995/CRP). According to this legal analysis, special needs are personal safety and liberty, subsistence, movement-related, personal identification, documentation and registration, property related, maintenance of community and cultural values, self-reliance, special protection and assistance for vulnerable groups, and international protection and assistance (Report of Francis Deng 1996: 14-59).

The two studies were presented at a "Legal Roundtable" hosted in Vienna by the Austrian government in October 1994. The meeting was the first in a long series, and it initiated a practice of inclusiveness that would be a key element in the ultimate success of the undertaking. Deng and Cohen understood that no text, no matter how learned or esteemed its authors are, would ever be accepted without wide international debate and input (Weiss and Korn 2006: 58). In looking back, Roberta Cohen observed: "Deng and I recognized that principles developed in a closed room by a team of lawyers would never see the light of day unless there was international

understanding and support for those principles" (Cohen 2004: 456).To strengthen this case, a meeting in October 1994 was scheduled and 22 experts, including the chief legal officers of UNHCR, ICRC, and IOM, as well as international legal scholars from the United States, Austria, Switzerland, Africa, Sweden, and Finland were invited.

The Vienna meeting brought to the fore the differences between the two approaches, first led by Manfred Nowak of the Boltzman Institute and second led by Robert Goldman. Goldman considered the approach of Boltzman Institute too restrictive to right base while Boltzman questioned the methodological soundness of the needs approach (Weiss and Korn 2006: 59).

Deng realized that to get widespread support, American (led by Goldman) and Austrian (led by Manfred Nowak) would have to be merged, but it was clear that neither Goldman nor Nowak would be able to do that job to the satisfaction of the other (Weiss and Korn 2006: 59). Personal relations were strained, and the gap between their approaches threatened deadlock (Weiss and Korn 2006: 59). To break it, Deng turned to Walter Kalin, a professor of constitutional and international law at the University of Bern and a former UN rapporteur (Weiss and Korn 2006: 59). Kalin observed that the differences reflected not politics or judgments but two different academic cultures in which U.S. lawyers see custom everywhere whereas their European counterparts are more positivists who seek super solid precedents (Weiss and Korn 2006: 59). Kalin chaired a meeting of the American and Austrian legal teams in Geneva in May 1995 and proceeded during the summer of that year to attempt the merger the two approaches. Accepting the needs-based approach, he took the U.S. text as the basis for merged compilation, but he then filled in the treaty and other "hard law" from the Austrian text as well as reinforced it with "soft law" provisions cited in the American text (Weiss and Korn 2006: 59).

Kalin's work saved the day. His text was reviewed and approved at a meeting in Washington in September 1995. However, text prepared by Kalin, did not address 'right not to be arbitrally displaced' and 'right to remain at home'(Weiss and Korn 2006: 59). One can see that the text was finalized in December 1995. The text document was of over 100 pages, excluding the lengthy footnotes. Deng presented it

to the commission at its spring 1996 session under the heading "Internally Displaced Persons: Compilation and Analysis of Legal Norms" (E/CN.4/1996/52/Add.2). Its basic finding was that while existing law covered many aspects of relevance to IDPs, there were areas in which the law failed to provide sufficient protection. The compilation identified 17 areas in which the law was imprecise and eight areas with clear gaps. It concluded with the recommendation that an international instrument be drafted to restate the general principles of protection in a more specific form and to address both the areas of inexplicit articulation as well as actual holes in the law (Weiss and Korn 2006: 60).

The next step was to draft a document stating guiding principles on internal displacement, but to prepare such draft first Deng wanted an unambiguous endorsement from the Commission on Human Rights (Weiss and Korn 2006: 60). In 1996 resolution, the Commission on Human Rights cleared the way for Deng and the team of lawyers to move forward. However, the team faced double problem-first, to reduce 100 pages of text to some two dozen principles, and second to rally a consensus around a final document. In April the American team produced the first draft consisting of 27 principles. With presentation of the final document to the Commission's 1998 session as the goal, the Brookings project on internal displacement (Austrian group or team) convened a series of meetings. The core working group of Goldman, Kälin, and Nowak met in Geneva together with Jean François Durieux of UNHCR and Toni Pfanner of ICRC. Then Brooking's Project on Internal displacement(PID) pulled together a larger group of 22 members who included, in addition to the core working group, representatives from Department of Humanitarian Affairs (DHA), the Centre for Human Rights, the World Health Organization (WHO), IOM, the International Commission of Jurists, and the Quaker UN Office in Geneva. This pattern of alternate meetings of the core working group to draft and make revisions and the larger forum to seek comments and rally broad support from international and regional organizations, NGOs, and independent experts continued throughout 1997 (Weiss and Korn 2006: 62).

The process of drafting Guiding principles came to end in an "Expert Consultation on the Guiding Principles on Internal Displacement" hosted by the Austrian government in Vienna in January 1998. That meeting brought together 50 participants from UN

together with the Organization of African Unity (OAU), the Inter-American Institute of Human Rights, the Organization for Security and Co-operation in Europe (OSCE), NGOs, and scholars in the field of international human rights, humanitarian, and refugee law from Europe, the Americas, and Africa. Finally the document Guiding Principles on Internal Displacement came into existence comprising 30 principles.

Guiding Principles on Internal Displacement

As noted above, the Guiding Principles on Internal Displacement (from now on referred as Guiding Principles) includes 30 principles and further they are divided into five sections. Section I is regarding the General Principles i.e. right equality, who should observe the principles-all authorities, groups and persons, application of principles without any discrimination and special attention to children and women. Section II contains the principles regarding protection from displacement. Section III is regarding principles relating to the protection during displacement. Principles for humanitarian assistance are covered in section IV. And last Section V relates to return, resettlement and reintegration.

Legal Nature of Guiding Principles

The purpose of the document is neither to modify nor to replace existing law, as is clearly stated in Principle 2, Para 2:

> These principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law or rights granted to persons under domestic law (GPID 1998).

Further, Francis Deng in his 9 April 1996 address to the 52nd session of the United Nation Commission on Human Rights declared the purpose of Guiding Principles that "it would help create at least a moral and political climate for improved protection and assistance for the internally displaced" (Cohen and Deng 1998:12). The Guiding Principles can thus be viewed as a part of soft law. However, they contain numerous rules that form part of treaty law and that are therefore legally binding (Lavoyer 1998:6).

It is noted in the introductory section that the Guiding Principles are intended primarily to provide guidance for the Representative of Secretary-General to carry out States, armed opposition groups, and intergovernmental and non-governmental

organizations to carry the mandate. Principle 2 Para 1 explicitly provided that "guiding principle shall be observed by all authorities, groups and persons irrespective of their legal status" (GPID). In above principle, the phrase "all authorities, groups and persons irrespective of their legal status" give impression that the Guiding Principles are intended first and foremost for governments and armed opposition groups, which are also bound by international humanitarian laws (Lavoyer 1998:6). The primary duty and responsibility has been imposed on the National authorities to provide protection and humanitarian assistance to internally displaced persons (Principle 3, Para 1). Again primary duty and responsibilities of national authorities has been reiterated in Principle 25, Para 1 of the GPID.

Apart from providing guidance to the above mentioned entities, The Guiding Principles has restated the rights of internally displaced persons and their needs as under.

Principles on the Rights of IDPs

Principle 1 states that the internally displaced persons have the same rights and freedoms under international and domestic law as do other person in their country. Right to request and to receive protection and humanitarian assistance from the National authorities mention under the Principle 3, Para 2 is an innovative step as the right to request and to receive protection and humanitarian assistance is not mentioned in any other international legal documents. Another right stated in Principle 6, made explicit the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence, arising out of the exigencies associated with IDPs. This has possibilities for preventing the arbitrary displacement, and to address the vulnerability of the displaced.

Right to life has been restated in Principle 10 of Guiding Principles on Internal Displacement that also finds expression under International Human Rights Law and International Humanitarian Law. Principle 11 provides for the right to dignity and physical, mental and moral integrity. Right to security of person which is most important in the framework of human security has been declared in Principle 12. From human security point of view, right to seek safety , right to leave country, right to seek asylum and right to be protected against forcible return to or resettlement in

any place where their life, safety, liberty and health would be at risk, are particularly stated in Principle 15. These rights which were only available to refugees under Refugee Convention 1951 but the Guiding Principles on Internal Displacement made these rights available to internally displaced persons as well. Right to know the whereabouts of missing relatives, right to respect family life, right to an adequate standard of living, right to recognize as a person before law and right to necessary documents, right to property and right to education are stated respectively in principles 16, 17, 18, 20, 21, and 23.

Principles on Needs of IDPs

The guiding Principles provides for special needs, which shall be addressed while dealing with the Internally Displaced Persons. Principle 4 Para 2 stated that certain vulnerable categories of persons-such as children, expectant mothers, mother with young children, persons with disability and elderly persons shall be provided protection and assistance required by their condition and for medical care by taking cognizance of their special needs (GPID).

Further, Principle 19 specifically mentions that wounded and sick IDPs shall receive as early as possible, medical care and attention they require. Para 2 of Principle 19 call for special attention to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counseling for victims of sexual abuses.

Principle 18 provides to ensure safe access to essential food and potable water, basic shelter and housing, clothing and essential services and sanitation. These are very basic needs for every human being from which the displaced persons are deprived of.

Guiding Principles on Assistance and Protection

One entire section of the Guiding Principles (Principles 24-27) is based on the rules of Humanitarian Law providing for relief to be delivered to the civilian population in an impartial manner. The document further reaffirms that, offers of services made by humanitarian organization shall not be regarded as interference in a State's internal affairs nor arbitrarily refused (Principle 25, Para 2).

The Guiding Principles also contain provisions aimed at affording better protection to internally displaced persons. Principle 27, for example, stipulates that, "International Humanitarian organizations...when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard."

Principles on the Return of IDPs

An entire section of the Guiding Principles (Principles 28-30) is devoted to the return, resettlement, and reintegration of IDPs. The document takes up the principle of voluntary repatriation, as stipulated in refugee law. It also reaffirms the principle that internally displaced persons have the right to return in safety and with dignity, and that it is the duty of the competent authorities to assist them (Principle 28).

Furthermore, the authorities must help the displaced to recover the property and possessions they left behind or, when such recovery is not possible, to obtain appropriate compensation or another form of just reparation (Principles 29, Para 2).

Principle 15 reaffirms what is tantamount to the principle of non-refoulement (Lavoyer 1998). It specifically protects internally displaced persons against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

Thus the document "Guiding Principles on Internal Displacement" covers the Problem of Internal displacement. It deals with the various stages and issues involved, i.e. protection from displacement, protection during displacement and protection after displacement. However, Guiding Principles does not mention about the employment of IDPs which they had to lose due to their displacement, for example-employment in government service, in private enterprises etc. Moreover, voluntary displacement in search of job is not covered in the GPID.

Application of Guiding Principles on Internal Displacement

The Guiding Principles as a soft law instrument providing a set of applicable guidelines, however, are firmly grounded in hard law i. e. rules of human rights and international humanitarian law. The Guiding Principles are neither a discretionary instrument nor legally binding, but an authoritative restatement of applicable rules of

public international law (Schrepfer 2012: 670). As seen earlier in this chapter, Guiding Principles did not result from traditional inter-state negotiations, and therefore some governments (Egypt, India, Sri Lanka are few) view the Guiding principles with suspicion. Nevertheless this does not deter the promotion of the Guiding Principles. From the beginning Francis Deng and the recent Representative of the UN Secretary-General, Walter Kalin, strongly promoted the Guiding Principles at the International, Regional and National levels, and were catalysts for their recognition and further development.

In 2005, the UN Secretary-General in his report, 'In Larger Freedom', urged UN member states to accept the GPID 1998 as 'the basic international norm for protection' of IDPs (UN doc A/59/2005: Para 210). The recognition of the Guiding Principles as 'an important international framework for the protection of internally displaced persons'(World Summit Outcome Document, UN doc A/60/L.1: Para 132) by the World Summit of States was an international breakthrough that was subsequently reaffirmed by the General Assembly recognizing that 'the protection of internally displaced persons has been strengthened by identifying, reaffirming and consolidating specific standards for their protection, in particular through the Guiding Principles on Internal Displacement' (UNGA res. 64/162, 2009: Para 10). Reaffirmation of the importance of Guiding Principles by United Nation General Assembly prompted its application at regional and national level.

Application of Guiding Principles at the Regional and national Level

At the regional level, Africa was the clear trailblazer with adoption of the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons of 2006 or the Great Lakes Protocol. The Great Lakes Protocol's objectives were to establish a regional framework to ensure the adoption and implementation of the Guiding Principles in the region and to provide a legal basis for domesticating the Guiding Principles into national legislation (Art 2(1) and (3), and art 6, Great Lakes Protocol)[1]. In 2009, at Kampala, African Union adopted the Convention for the Protection and Assistance of Internally Displaced Persons in Africa or Kampala

[1] For details on the Great Lakes Protocol see International Conference on Great Lakes Region 2006, Protocal on Protection and Assistance to Internally Displaced Persons, available at www.brookings.edu/fp/projects/idp/greatlakes_idpprotocal.pdf.

Convention. The Kampala Convention recognizes the Guiding Principles in the preamble and sets forth provisions in the spirit of the Guiding Principles.

In Europe, the Parliamentary Assembly of the Council of Europe recognized the Guiding Principles in 2003 as a standard for governments and other responsible authorities and intergovernmental and non-governmental organizations and urged them to promote, disseminate, observe and incorporate them into domestic laws(Council of Europe 2003: Paras 11-12 and 14-15).The Council's Committee of Ministers subsequently attributed international recognition and authority to the Guiding Principles and further stressed its commitment to the spirit and letter of the principles and recommended their domestic adoption and implementation by European member states (Council of Europe 2009: Para 6.4).

In the continent of America, the Organization of American States recognized importance of the Guiding Principles and urged member states to use them and consider their domestic implementation (AG/RES 2508(XXXIX-0/09, 2009: Paras 1-2).

India and Internal Displaced Persons: the Legal Framework

In the Asia there is no initiative or regional convention regarding the promotion of Guiding Principles on Internal Displacement. At the national level, a growing number of countries around the world have enacted national laws, policies, strategies, or other instruments on internal displacement. Some of these instruments predate the Guiding Principles (National instruments in Azerbaijan, Colombia and Georgia pre-date the Guiding Principles). However, in Colombia and Georgia, processes to complement or revise existing legislation have taken into account the guidance provided by the Guiding Principles. India, Nepal, Shi Lanka etc. in the Asia has started to adopt the Guiding Principles on Internal Displacement into their legislations or policy on protection of internally displaced persons. But a majority of these legislations and in particular the newer national instruments have used the Guiding Principles as their basis and fully or partially reflect these (Schrepfer 2012: 671). Their use as a point of reference for developing national instruments on the protection of IDPs has consistently been the intention of the Representative of the Secretary General (CHR

1998: 24). In 2008, Walter Kälin issued a Manual for Law and Policymakers to reinforce and further support this trend at the national level (Schrepfer 2012: 671).

The above section has made cursory glance on application of Guiding Principles at Regional and national level. The next section analyzes the application of Guiding Principles in India's Domestic law and policies for protection and assistance to internally displaced persons within its territory. As noted in chapter-1, IDPs are vulnerable category of persons that renders them in a position, in which elements of human security are often distorted and difficult to realize.

Internally displaced persons in India possess rights mentioned in Guiding Principles on Internal Displacement as citizens under the Constitution of India. However, rights have to be effected through legislation or policy. In India though the issue of human security has been a central theme in national policy framework for the last few years, but when one investigate displacement as an area of concern for human security, no exclusive national policy on IDPs could be cited or explored. Rights of IDPs in India are addressed only as piecemeal policies and ad hoc initiative at project and state levels (Lama 2000: 25).

National Policy on Resettlement and Rehabilitation for Project Affected Families 2003

The policy that is somewhat related to the issue of IDPs was first initiated in 2003 to address the issue of internally displaced persons by development projects. The Ministry of Rural Development introduced National Policy on Resettlement and Rehabilitation for Project Affected Families in 2003(subsequently referred to as National Policy in this chapter). From the title it is evident that the phrase 'Affected Families' has been used instead of 'internally displaced persons'. This indicates that in drafting this National Policy, the directives of the Guiding Principles on Internal Displacement has been received with caution. The National Policy is related to the declaration of 'affected zone' by development projects. It states that, if due to acquisition of land for a project is likely to displace 500 families or more in plains and 250 families or more in hilly areas such zone shall be declared as 'affected zone'(National Policy, Para 5.1). Nevertheless, it gives an impression that if due to a project less than 500 families in plains and less than 250 families in hilly likely to

displace, such zone would not come under the category of 'Affected Zone', and families displaced there would not be protected and provided with assistance. That would be an arbitrary displacement and stands in contrast to the Principle 6 of Guiding Principles, which provides for prohibition of arbitrary displacement (GPID 1998).

The Land Acquisition, Resettlement, and Rehabilitation Bill, 2011

In recent years, India has witnessed a grave and controversial pattern of land acquisitions that has raised issues related to the rights of internally displaced persons (IDPs). Land use has been a critical factor in India's development process and has led to tensions for over three decades. In the process of development, the land problem has been exacerbated by the displacement of entire communities from their land and by the acquisition of land belonging to small farmers at nominal prices (Singh 2012: 509). To provide just and fair compensation and provisions for rehabilitation and resettlement of persons whose land has already been acquired or to be acquired, the Ministry of Rural Development has proposed the Land Acquisition, Resettlement and Rehabilitation Bill 2011 (herein after-LARR Bill 2011). The compensation for acquisition of land will be determined as per market value of the land including all assets attached to the land (section 27 of Bill). This provision is consistent with Principle 29, Para 2 of the Guiding Principles which states that "...competent authorities shall provide...appropriate compensation". Further, section 30 of LARR Bill, 2011 provides for the Rehabilitation and Resettlement Awards which includes rehabilitation and resettlement amount payable to the family, land allotment to the displaced families, subsistence and transportation allowance, payment for Cattle Shed and Petty shops, mandatory employment to be provided to the affected families, fishing rights, etc. that makes Rehabilitation and Resettlement Award, a comprehensive document.

Specifically, Section 31 of LARR Bill 2011 is important as it states that every displaced family shall be resettled in a resettlement area. The 'displaced family' is defined as 'any family, who on account of acquisition of land relocated' (Section 3 k of LARR Bill 2011). It means resettlement shall only be provided to those whose property has been acquired. Again LARR Bill 2011emphasized on 'affected family

due to the result of land acquisition' (Section 3 (zc). Moreover the LARR Bill 2011 defines the term 'public purpose' as follows:

Section 3 (*za*) "public purpose" includes-

i. the provision of land for strategic purposes relating to naval, military, air force, and armed forces of the Union or any work vital to national security or defence of India or State police, safety of the people; or

ii. the provision of land for railways, highways, ports, power and irrigation purposes for use by Government and public sector companies or corporations; or

iii. the provision of land for project affect people;

iv. the provision of land for planned development or the improvement of villages sites or any site in the urban area or provision of land for residential purposes of for the weaker sections in rural and urban areas or the provision of land for government administered educational, agricultural, health and research schemes or institutions;

v. The provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by government, any local authority or a corporation owned or controlled by the state;

vi. The provision of land in the public interest for-

A) Use by the appropriate government for purposes other than those covered under sub-clauses (i), (ii), (iii), (iv) and (V); where the benefits largely accrue to the general public; or

B) Public private partnership projects for the production of public goods or the provision of public services;

vii The provision of land in the public interest for private companies for the production of goods for public or provision of public services. (LARR Bill 2011).

Thus, as per above definition of term 'public purpose' means use of land or acquisition of land for defence, transportation, port, power, irrigation, land for project affected people, land for development of village sites, land for residential purposes for weaker section, land for residential purposes for people affected by natural calamities or to persons displaced or affected due to implementation of scheme of government, land for public interest and land for private companies. In case of displacement, sub-clause (iii) and (v) of Section 3 (za) are important as it provides provision of land for those people affected by project, natural calamities and to persons displaced due to implementation of government schemes (LARR Bill 2011). Thus term 'public purpose' is limited in case of resettlement of displaced persons as it includes only provisions of land for people affected by project, natural calamities/disaster and government schemes, leaving behind displacement caused by armed conflict and ethnic strife. In other words, LARR Bill 2011 does not provide provision of land for people affected by armed conflict or internal war and ethnic strife. However, the LARR Bill is pending in the Indian parliament. Thus above matter should be considered before in LARR Bill 2011 before becoming the Law.

The Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill 2011

Another bill titled the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill 2011(PCTV Bill 2011), is expected to address the problems of IDPs but limited within the framework of Bill. This is the only Bill in which the term 'internally displaced persons' has been used (Section 3 (g) of PCTV Bill). It states that internally displaced persons are only those who displaced as result or in order to avoid the effects of communal violence. However, rights of internally displaced persons has specifically stated in the Bill. Section 87 of PCTV Bill 2011, provides that persons who has suffered physical, mental, psychological or monetary harm or harm to his or her property as a result of communal violence, shall have the right to remedy and reparation including compensation, restitution and rehabilitation.

To avail the rights to internally displaced persons under the PCTV Bill 2011, specific duties have been imposed on the central government as well as state governments. The duty to provide remedy and reparation has been put on the concerned state governments under Section 88 of PCTV Bill. Section 89 of Bill imposes the duty on state governments to ensure the right to safety of persons and property of internally

displaced persons. Section 89 of the Bill is consistent with Guiding Principles 15 and 21 which deals with right to safety and protection of property respectively.

The Principles 28, 29 of the Guiding Principles on Internal Displacement imposes primary duty and responsibility on competent authority for return; restitution and rehabilitation of internally displace persons. To give effect to Principles 28 and 29, PCTV Bill 2011 made this provision under Section 96:

> Restitution and rehabilitation- The State Government shall ensure reparations to internally displaced persons, whether or not such persons are residing in a relief camp or to any person entitled under section 87 by adopting measures for restitution and implementing comprehensive rehabilitation plans. Provided that the process of rehabilitation shall ensure full participation of such persons. Provided further that the rehabilitation of such persons be declared by them to be entirely voluntary. Provided further that the rehabilitation as provided in this section, to be made in consultation with the National Authority shall be established in this Bill.

Further Section 97 specifically impose the obligation on the Central Government to establish conditions and provides means to enable internally displaced persons to return to their place of ordinary residence or livelihood in safety and with dignity, protected against any threat, intimidation or attack to their life, liberty or property, and such return shall be entirely voluntary. The concerned public authorities shall ensure the full participation of all persons residing in the relief camp in the planning and management of return and resettlement. Thus Section 97 of the proposed bill has been drafted in conformity with the directives provided by Principle 12, 14 26, and 28 of the Guiding Principles on Internal Displacement.

Thus in India, instead of single comprehensive policy, rights of IDPs is being addressed through various laws, which might lead to conflict or inconsistency between them. For example, proposed The Land Acquisition, Rehabilitation and Resettlement Bill, 2011(LARR Bill) has made provisions for the land acquisitions for the resettlement of project affected people (Section, 3(za). But there is no provisions of land acquisition for the resettlement of IDPs induced by Communal violence or armed conflict neither in LARR Bill nor the Prevention of Communal and Targeted Violence Bill, 2011 (PCTVB).

Indian law entirely silent on internally displaced persons induced intra-state armed conflict between Indian security forces and armed insurgent groups. Both LARR Bill 2011 and PCTV Bill 2011 have made no provisions about resettlement or

compensation for property lost in counter-insurgency operations. No specific provisions have made for responsibility of states to protect the IDPs induced by insurgency and counter-insurgency operation in this regard.

Though some provisions of LARR Bill 2011 are consistent with Guiding Principles on Internal Displacement, it can be said that the Bill has not been drafted in the letter and spirit of the Guiding Principles.

It can be said that PCTV Bill 2011 has adopted relevant Guiding Principles to address the issue of the internally displaced persons, though limited only for one cause i.e. IDPs induced by communal violence. Furthermore, both LARR Bill 2011 and PCTV Bill 2011 have not made any provisions regarding International Humanitarian Assistance on which an entire section has been provided in Guiding Principles. Thus the Guiding Principles on Internal Displacement adopted limited in the India's Domestic Laws.

With above mentioned various legal initiatives taken by government of India to protect and assist internally displaced person next chapter will analyse conflict driven internally displaced person, particularly in Manipur, from the point of view of legal and human security framework.

Chapter 4

Conflict Driven Internally Displaced Persons in Manipur: Legal and Human Security Framework

Chapter 4

Conflict Driven Internally Displaced Persons in Manipur: Legal and Human Security Framework

Introduction

Manipur is one of the north-eastern states of India bounded by Nagaland on the north, Assam on the west and Mizoram on the south and along the east it shares about 398 km. long international border with Myanmar. Geographically, Manipur is a small state. It covers total area of 22,327 Sq.km. of which valley constitute a small area of only 1843 Sq. km. and the hills the remaining 20,484 sq. km. Furthermore, Manipur is divided into nine districts. Five of it is hill-districts. The remaining four are valley districts. The five hill districts of Manipur are i) Tamenglong; ii) Churachandpur; iii) Senapati; iv) Chandel and v) Ukhrul. The four walley districts of Manipur are i) Imphal East; ii) Imphal West; iii) Bishnupur; and iv) Thoubal.

Apart from Manipur's geographical location, it is known by as many as twenty-two nomenclatures in the past (Haokip 2007: 223). Manipur is the homeland of the Meiteis in the valley, the Nagas as well as the Kuki-Chin in the hills. There are 29 listed Scheduled Tribes in Manipur. They are broadly categorized into two Groups. First Naga group and Second Kuki. Some of the prominent groups among the Nagas are the Thangkhuls, Maos, Kabuis, Ngameis, Marings, Anals, Koms, Chirus and Chothes. The major groups among the Kukis are Thadous, Paites, Gangtes, Vaipheis, Hmars, Khongsais and Sitlous. The Nagas form the major groups in three districts namely, Ukhrul, Senapati and Tamenglong, and on district namely, Churchandpur is overwhelmingly dominated by the Kuki group. The fifth district, Chandel, is inhabited evenly by both the Kukis and the Nagas (Bimola Devi 2008: 204). The valley is populated mainly by the Meiteis, Muslims and few tribals. The Meitei Muslims or Meitei Pangals settled in Manipur since the seventeenth century. They adopted Meitei language as their mother tongue and now form an integral part of society in Manipur. Many Indian communities who migrated to Manipur at the end of the nineteenth century were the Biharis and the Bengalis. However, during the colonial period, came the Marwaris, Nepalis, and after independence, the Punjabis, Tamils and others to work as laborers and for business activities. Thus, Manipur with its pluralistic social

fabric represents a picture of multi-racial, multi-religious and multi-lingual base of civilization and culture (Haokip 2001: 223).

Manipur, literally meaning the land of jewel, is a paradise on earth. However, this jewel land hampered with frequent violence in the form of ethnic strife, insurgency and counter-insurgency operations by India security forces which resulted in insecurity and large displacement of people.

Formation of Manipur State: A Brief History

Manipur was a Princely state with sovereignty upto 1891. However the Anglo-Manipur war of 1891 subjected the office of the king conditional to the recognition by the British government. It was made obligatory for the king to obey all the orders of the British Government (Sanajaoba 1993: 309). Thus, Manipur lost its independence in 1891 and sovereignty of the monarchy was limited to certain matters such as religion. The Maharaja exercised a great deal of power in religious matters. He was the head of the Brahma Sabha, a congregation of the Manipuri Brahmins. Along with this Sabha, the Maharaja collected unlawful levy from the common people and oppressed the poor and the downtrodden (Singh 2009: 4). Any religious rites, marriage ceremony, death ceremony, festivals and even laying foundation stone for any construction could not be performed without them. They had to be referred for any socio-religious aspect of life. As such they had exerted a strong influence over the common people and misused position for earning money and exploiting the poor people (Sing 2009: 4). This resulted into the political awakening among the Meiteis against the monarchy. At times, people also sided with the monarchy to protest against the anti-people policies of the British (Singh 2009: 4).

The emergence of political awareness and political consciousness in Manipur may be traced back in the beginning of 1930s. The formation of voluntary organization/bodies having social oriented objectives indicated the growth of social and political awakening of educated persons in Manipur. Mention may be made of Manipur Seva Committee, Praja Mandal under the leadership of Hijam Irawat (Devi 2010: 1). The establishment of Nikhil Hindu Manipuri Mahasabha on 30th May, 1934 under the presidentship of Maharaja Bodhachandra shows the adjustment between the traditional political element and the emerging trend of democratic trends, the Maharaja representing the tradition and Hijam Irawat, the Vice President representing

the new emerging trend of democratic elements (Devi 2010: 1). The year 1938 in which the Nikhil Hindu Manipuri Mahasabha had become a political party by deleting the word 'Hindu' under the presidentship of Hijam Irawat symbolized the completeness of the emerging force of political consciousness, sowing the seed for the movement of constitutional reforms in Manipur (Devi 2010). Some of the political resolutions passed in the Chinga session, 1938 were that (a) a full responsible government should be established in Manipur, (b) adult franchise should be the basis of elections, (c) the administration of the hill and the valley should be amalgamated etc. (Devi 2010). The women's movement 'Nupi Lan', 1939 had added another political element in raising the growing political consciousness of the people of Manipur. The next hectic political activities took place in the year 1946 as envisaged by the joint meeting of Manipur Praja Mandal and Nikhil Manipuri Mahasabha on 5th April, 1946, which led to the formation of Manipur Praja Sangha by Manipur Praja Mandal and Manipur Praja Sammelini with R.K. Bhubonsana as President and H. Irawat as Secretary in September, 1946 (Devi 2010: 1).

The formation of Manipur State Congress on 4th October, 1946 in Aryan theatre in a meeting convened by Nikhil Manipuri Mahasabha had resulted in the emergence of two rival political groups namely the Manipur State Congress on the one hand and the Manipur Praja Sammelini and the Manipur Krishak Sabha on the other. Before the formation of Manipur State Congress, the Nikhil Manipuri Mahasabha, the Manipur Praja Sammelini and the Manipur Krishak Sabha with delegates from the hills already had demanded the formation of a commission which will initiate the drafting of a constitution for introducing a democratic responsible government in Manipur (Devi 2010: 2). Maharaja Bodhachandra had accepted the proposal in September, 1946. The Political Agent and the President of the Durbar were not in favour of the introduction of democratic principle in Manipur. Nevertheless the Maharaja constituted a constitution making committee consisting of 17 members, six from the valley, six from the hills, and five officials (Devi 2010: 2). The committee framed the Manipur State Constitution Act, 1947. The Manipur Constitution Act of 1947 established a first democratic form of government 1948, with the Maharaja as the Executive Head and an elected legislature (Devi 2010: 2). However, democratic set up not live long. In the year 1949, the King was made to sign the Treaty of Accession or Merger Agreement which merged this princely state with India and legislative assembly of Manipur,

formed under the Manipur State Constitution Act 1947, dissolved and the state was made a Chief Commissioner's Province. In 1956, Manipur was made into a Union Territory and in 1972 given full statehood status.

Conflict Driven Internally Displaced Persons in Manipur

Conflict is the major cause for the displacement of people in the Manipur. The conflict in the Manipur is very complex as it involves varied of actors such government security forces, various militants groups on line of ethnicity and overlapping territorial claims of ethnic group. For the convenience conflict can be categorized in two-first conflict between militants or insurgent groups and the government security forces and second conflict between different ethnic groups for territorial claims.

Armed Conflict between Insurgent and Security Forces in Manipur

The conflict in Manipur as mentioned above is two dimensional. First, armed conflict between insurgent groups and government security forces, of which genesis can be found in the coerced merger of Manipur in 1949. Amerjeet Singh rightly points out that the grievances against the merger along with the delay in conferring statehood alienated the Manipuris, laid the foundation for the emergence of a separatist movement (Singh 2008: 2). Manipur is one of the most violence-affected states in the country. Insurgent groups' aims and objectives vary from demands for various forms of autonomy to separation from the Indian Union. Most of the valley-based militant groups seek to restore Manipur's pre-merger status that is independent or sovereign Manipur. The hill-based groups, particularly Naga militant groups, want either to carve out an exclusive homeland or integrate hill districts Senapati, Ukhrul, Tamenlong and Chandel of Manipur into the neighbouring state of Nagaland (*Singh* 2008: 2). Whereas another hill based Kuki militant groups claims for 'Kuki Land' comprsing Churchandpur, Chandel, Tamenlong and Ukhrul. Territorial claims made by Naga and Kuki overlap each other which led to ethnic conflict during 1990s. Nagas and Kuki fight against each other over territorial claim, at same time both groups also fights against Indian state for autonomy or exclusive homeland. Other groups want to safeguard the interests of the community which they claim to represent (Singh 2008: 2).

Table 4.1-Terrorists/Insurgent Groups in Manipur

Proscribed Terrorist/Insurgenct Groups	Active Terrorist/Insurgency Groups	Inactive Terrorist/Insurgent Groups
1. Kangleipak Communist Party (KCP) 2. KangleiYawolKannaLup (KYKL) 3. Manipur Peoples' Liberation Front (MPLF) 4. People's Liberation Army (PLA)	1. Hmar People's Convention-Democracy (HPC-D) 2. Kuki Liberation Army (KLA) 3. Kuki National Army (KNA) 4. Kuki National Front (KNF) 5. Kuki Revolutiona ry Army (KRA) 6. National Socialist Council of Nagaland--Issak-Muivah (NSCN-IM) 7. People's United Liberation Front (PULF) 8. United Kuki Liberation Front (UKLF) 9. Zomi Revolutiona ry Army (ZRA)	1. Chin Kuki Revolutionary Front (CKRF) 2. Hmar People's Convention (HPC) 3. Hmar Revolutionary Front (HRF) 4. Indigenous People's Revolutionary Alliance (IRPA) 5. IripakKanbaLup (IKL) 6. Islamic Revolutionary Front (IRF) 7. Islamic National Front (INF) 8. KangleipakKanbaKanglup (KKK) 9. Kangleipak Liberation Organisation (KLO) 10. Kom Rem People's Convention (KRPC) 11. KukiDefence Force (KDF) 12. Kuki Independent Army (KIA) 13. Kuki International Force (KIF) 14. Kuki Liberation Front (KLF) 15. Kuki National Organisation (KNO) 16. Kuki National Volunteers (KNV) 17. Kuki Revolutionary Front (KRF) 18. Kuki Security Force (KSF) 19. Manipur Liberation Tiger Army (MLTA) 20. North East Minority Front (NEMF) 21. People's Republican Army (PRA) 22. Revolutionary Joint Committee (RJC) 23. United Islamic Liberation Army (UILA) 24. United Islamic Revolutionary Army (UIRA) 25. Zomi Revolutionary Volunteers (ZRV)

Source: South Asia Terrorist Portal
http://www.satp.org/satporgtp/countries/india/states/manipur/terrorist_outfits/index.html

The alleged forced merger of the Kingdom of Manipur in 1949 with the Indian Union was a matter of great resentment among the people of the State (B. G. Verghese, 1997). Such dissent is said to have been further boosted by the delay in the conferring of full-fledged statehood on Manipur in 1972 (Das 2008: 562; Singh A 2008: 2). First dissent was from the Heijam Irawat who was an active leader in support for democratic form of government of 1947 and independence of Manipur. Heijam Irawat continued his dissent and sorted out for armed struggle with formation of Manipur Red Guard Army to fight for and independent Socialist Republic of Manipur against domain of India (Seram Rojesh 2008: 4). During 1949, the Red Guards were active and carried out a few ambushes and killing a police personnel (Seram Rojesh 2008: 4). However, Red Guard Army became silent after the death of Heijam Irawat in 1951. Thereafter Manipur did not witnessed insurgency up to 1964. However, the insurgency problems in Manipur again came to existence with the formation of United National Liberation Front (UNLF) in 1964. It is the first outfit to have been founded in the valley areas of Manipur. The outfits aim at establishing an independent socialist Manipur. Manipur People's Army is the armed wing of the UNLF. Thereafter, several other outfits or insurgent groups formed like the People's Liberation Army (PLA) 1978, People's Revolutionary Party of Kangleipak (PREPAK) 1977, and the Kangleipak Communist Party (KCP) 1980, have emerged in the valley areas of the State, demanding independence for Manipur from the 'domination' of India (Das 2008: 562).

On the other hand, the hill areas of the state, comprising of five districts has been affected by different brands of militancy. Kuki tribals initiated their own brand of insurgency in the early 1990s against what they termed as the oppression by the Naga outfits such as the National Socialist Council of Nagaland-Isak-Muivah (NSCN-IM) (Das 2008: 562). Following the ethnic clashes between the Nagas and Kukis in the early 1990s, a number of Kuki armed groups were established (Singh 2010: 20). Similarly, Islamist outfits in the form of People's United Liberation Front (PULF) have also been founded to protect the interest of the 'Pangals'-Manipuri Muslims (Das 2008: 562). Today, Manipur is one of the worst insurgency-hit State in northeast India. Table 4.1 shows that number of total insurgent groups are 38 of which Proscribed insurgent groups constitute 4, an active insurgent group constitutes 9 and inactive groups constitute 25.

Thus, insurgency became a challenge to the Manipur state as well as Central government of India. To remove the insurgency, along with Manipur police force huge army has been deployed in Manipur. Today there are more than 60,000 military and security personnel and more than 300 security checkpoints in Manipur state (Hayes 2012: 10). Security forces or army has taking actions under various military operations such Operation Green Hunt, Operation Summer Strom etc. to counter insurgency. Data in table 4.2 show that during 1992 to 2012, 2291 civilians, 954 Indian security forces and 12,165 has been killed in the insurgency related killings. The insurgency and counter-insurgency operations by the government security forces took the lives of 15,410 persons including civilians, militants and security forces.

Table 4.2 Insurgency related Fatalities/Killings in Manipur: 1992-2012

Year	Incidents	Civilians	Security forces	Militants	Total
1992	unspecified	84	30	51	165
1993		266	91	66	423
1994		189	98	63	350
1995		183	64	74	321
1996		117	65	93	275
1997	425	233	111	151	495
1998	255	87	62	95	244
1999	281	89	64	78	231
2000	245	93	51	102	246
2001	97	70	25	161	256
2002	268	60	54	125	239
2003	243	50	27	128	205
2004	478	88	36	134	258
2005	554	158	50	202	410
2006	498	96	28	187	311
2007	584	130	39	1443	1612
2008	740	137	16	2112	2265
2009	659	81	19	1896	1996
2010	367	33	6	1626	1665
2011	298	26	10	1677	1713
2012	518	21	8	1701	1730
Total		2291	954	12,165	15410

Source data from 2002-2012: Annual Reports, Union Ministry of Home Affairs, Government of India
Note: Since 2007 onwards, MHA started giving out combined figure of arrested/killed/surrenderd Militants
Source of data from 1992-2001: SATP/Insurgency Related killing 1992-2013/Security Force Personnel Killed by Various Militants Groups in Manipur from 1992-2000/Terrorist killed in Manipur from 1992-2000/Civilians killed by various Terrorist Groups from 1992-2000/Overview of Incidents in Manipur 1997-2001(up to 15.5.2001)

IDPs Induced by Counter-Insurgency Operations

Insurgency and counter-insurgency also caused displacement of large number of people. Displacement caused by security forces is not a new phenomenon in Manipur.

The colonial forces, for example, burnt 126 Kuki villages in 1917-1919 (Haokip 2007: 227). In the post-independence period, Indian security forces also destroyed and burnt many villages belonging to both the Kukis and Nagas. The burning of Tonglhang Kuki village in June 2001 on the pretext that one valley based militant took shelter in the village is the latest one. The village consisting of about 50 households deserted the village (Haokip 2001: 227).

The major episode of displacement was reported during November and December 2006, when more than 2,000 Kukis from 25 villages were reported fleeing their homes in the Chandel district of south-east Manipur. The cause of displacement was a massive offensive launched by the Indian army to flush out UNLF militants who had set up camps nearby villages in Chandel district (IDMC 2007 : 6).

As recent as April 2009, 2,500 villagers were displaced from the area surrounding Loktak Lake in Bishnupur district of Manipur state due to the paramilitary Assam Rifles and the police launched Operation Summer Storm against insurgents (The Telegraph (India), 20 April 2009). After the villagers had left, members of the security forces moved into their houses. The villagers took shelter in camps in Ithai Khunou, Nognmaikhong, Laphupat Tera, Moirang and Ethai. After protests by the displaced, the Bishnupur district administration provided them with food and other basic necessities (The Telegraph (India), 20 April 2009). The Operation Summer Storm was concluded on 20 April 2009 (E Pao-Net 20 April 2009).

Table 4.3 Counter insurgency induced Displacement

Year	Counter-Insurgency Operations	Villages Destroyed	Displaced Persons	Displaced Ethnic Community
1917	Colonial Forces	126		Kukis
2001	Indian Security forces	1		Kukis
2006	Offensive launched by Indian Army	NA	2000	Kukis
2009	Operation Summer Strom	NA	2500	Unspecified
2010	Security Forces	NA	500	Nagas
Total		127	5000	

Source: T. T. Haokip (2001), "Ethnic Conflicts and Internal Displacement in Manipur" in Thomas Joshua (ed), *Dimension of Internally Displaced Persons in North East India.*/ IDMC, India: Large Numbers of IDPs are Unassisted and In Need of Proteciton 2007/ *Telgraph* (India), 20 April 2009 and 7 June 2010/E Pao-Net 20 April 2009.

Again in April 2010, tensions rose when the leader of a Naga armed group was prevented by the Manipur government from entering the state. During Naga protests

in the town of Mao in Senapati district, security forces shot and killed two students and injured more than 80 people. About 500 Nagas from Mao, mostly women and children, fled to Nagaland state. They returned to their homes in Manipur in June (The Telegraph (India) 7 June 2010).

Ethnic Conflict and Displacement

The Second dimension of the conflict in Manipur is ethnic strife. As mentioned earlier Manipur is the home of many ethnic communities, particularly Naga, Kuki, Paites etc. in the Hills and Meiteis, Pangals (Muslims) etc. in the valley. The relations between hill and valley people were harmonious. In this regard Bodhichand has made observation that "the natural dichotomy between the hills and the plains of Manipur and the corresponding differences in life styles have been there from times immemorial but did not translate into ethnic conflict in the past due to the sagacity of Meitei kings who ruled the kingdom and the inclusive nature of the Meitei society" (Bodhichand 2012). However, the factors conducive to harmonious coexistence began to erode, first, when the Meiteis adopted Vaishnavite Hindu religion in the 18th century, when they consequently became inward looking and lost much of their inclusive outlook (Bodhichand 2012). Next, after British conquest in 1891, animist tribes gradually converted to Christianity when proselytizing Christian missionaries followed the British rule into the Manipur hills where they exercised exclusive administrative authority (Bodhichand 2012). Thus, the geographical dichotomy was reinforced by the cultural and administrative dichotomy between the tribes in the hills and the Meiteis in the valley during the British colonial rule (Bodhichand 2012). Furthermore after postcolonial period, the coerced merger of Manipur into the Indian dominion and continuation of British policies by Indian government in ignoring development and integrative measures create more mistrust between the hills and the valley.

Today Manipur is not only suffering from armed movements of underground organizations but also from a complex ethnic crisis. The state of armed conflict in Manipur is getting more complex than ever before due to the sharp divergence between the different groups. The conflict is not merely between the state and the various non-state armed groups, but also between these armed groups that are polarized along ethnic lines (Singh 2010: 16). This has given rise to assertion of group

identity; inter group competition for resources, political instability, insecurity and under development. Ethnic conflicts and tensions have become a common experience from 1990 in Manipur. Bimola Devi has observed that there was no major conflict between the various ethnic groups during the reign of the Kings, the British period 1891-1947 or the post-independence period 1947-91. But from 1992, ethnic conflict took ugly turn (Devi 2008: 205) and since then Manipur has seen four major ethnic feuds:

- 1990s: Kuki-Naga conflict
- 1993: Meitei-Pangal conflict
- 1997: Kuki-Paite conflict
- 2001: NSCN(IM) ceasefire extension troubles
- 2006: Hmar displacement because of underground clashes and harassment

Kuki-Naga conflict

The first in the fray was the Kuki-Naga clash which started in 1992 and continued unabated till the year-end of 1998. It should be remembered that not all the tribes in the Kuki-Chin Group were involved in the clash. The conflict was succinctly between the Thadou-Kukis and 'Nagas"[1] of Manipur (Singh 2008: 13). There was no conflict between Kuki and Nagas up to 1990. The seeds of conflict between these two groups can be trace in the demand for grater Nagaland by National Socialist Council (I-M).

At the end of the colonial period the Kukis formed the Kuki National Assembly (KNA), in October, 1946, to press forward the cause of the Kukis and demand for a homeland for themselves (Singh 2009: 11). With the merger of Manipur into the Indian Union in 1949, this demand was subsided. However, with the Nagas and other tribal groups in the region getting their homelands, the young generations of the Kukis became restive (Singh 2009: 11). The sense of desperateness has increased manifold with the NSCN gaining ground in the hills of Manipur since 1980 and the Naga demand for unification started becoming louder. With the ascendancy of the NSCN (I-M) at the driver's seat since 1988, Kukis realized a serious threat to their livelihood. The failure of both KNA to address the livelihood threats faced by the community has led to the birth of a plethora of Kuki underground organization

[1] Sub tribes of Nagas are Maring, Moyon, Lamkang, Tarao, PoumaiThangal, Maram, Zeliangrong and Tangkhul, Anal and Mao.

leading to the transformation of the Kuki movement for homeland into a militant movement (Singh 2009: 11).

The demand for a Kuki homeland called 'Zale'n-gam: land of freedom' was spearheaded with the formation of underground government called Kuki National Organisation (KNO) and its armed wing Kuki National Army (KNA) in 1988 under the leadership ofThangkholun, a Manipuri Kuki. The main objective of KNO is to carve out a homeland for the Kukis, i.e., 'Kukiland', one in India and the other in Myanmar (Haokip 2008: 376-377). Similarly, Nehlun Kipgen, a Manipuri Kuki, formed the Kuki National Front (KNF) in 1988 with the objective of carving out an autonomous 'Kukiland' under the Constitution of India (Kipgen 2006). However, the territorial claims of the Kukis overlap the territorial claims of the Nagas in Manipur. The Nagas see the Kukis as a barrier on the way to their long cherished goal for unification (Singh 2009: 12). The territorial claims of the Kukis include the districts of Churachandpur, Chandel and some portions of Tamenglong, Senapati and Ukhrul, whereas the Nagas claim the districts of Tamenglong, Senapati, Ukhrul and Chandel (Singh 2009: 12). Thus, the Kukis and Nagas have overlapping and conflicting territorial interests over all the hill districts of Manipur, except Churachandpur. This conflicting territorial claim has turned into inter-tribal warfare in 1992 with the United Naga Council serving a quit notice to the Kukis settled in Naga areas (Phanjoubam 2007: 28).

Manipur has witnessed substantial internal displacement and ethnic relocation in the wake of the Naga-Kuki conflict in the 1990s that led to 800 deaths and 5724 houses displaced (see Table 4.4). 534 Kukis were killed during the eight-year-old conflict while 266 Nagas were killed during the same period. 3110 houses of the Kukis displaced and 2614 hoses belonging to Nagas has been displaced. Thus conflict between Nagas and Kukis caused the largest displacement. The relations between Nagas and Kukis turned into violent conflict and divide between the two groups of tribal population have become water-tight (Phanjoubam 2007: 28). Aftermath of Kuki-Naga feud there were huge population shifts. Many villages were uprooted while new ones came up in different districts. Many of them joined in the urban area basically in Imphal to eke out a living, often not in legally permitted way (Phanjoubam 2007: 28).

Table 4.4 Displacement due to Conflict between Naga and Kuki 1992-1999

Year	Killed		Total	Injured		Total	Displaced Houses		Total
	Kuki	Naga		Kuki	Naga		Kuki	Naga	
1992	11	02	13	22	26	48	Nil	11	11
1993	261	60	421	68	72	140	2144	1365	3509
1994	95	67	162	49	28	77	262	425	687
1995	65	44	109	39	43	82	404	653	1057
1996	32	21	53	18	15	33	61	127	188
1997	54	38	92	47	24	71	212	33	245
1998	16	25	41	11	13	24	27	Nil	27
1999	Nil	09	9	03	02	5	Nil	Nil	Nil
Total	534	266	800	257	223	480	3110	2614	5724

Source: Manipur Police
Reproduced from Manirul Hussain and Pradeep Phanjoubam. A Status Report on Internal Displacement in Assam and Manipur, 2007.

Meitei-Pangal (Muslims) conflict

The conflict broke out between the Meiteis and Pagals in 1993. The exact cause of the conflict is unknown. But the most widely held view is that the riot was triggered by a tussle arising out the supply of arms by some Muslims to armed group (Singh 2010: 20). This view can be substantiated with cause of conflict as described by a kwon author T.T. Haokip that:

> The People's Republican Army (PRA) had an agreement with one Md. Adonbi for arms purchase. The failure on the part of Md. Adonbi to deliver the arms as per agreement has compelled the three PRA men to walk away with Yamaha. When Adonbi started shouting that Yamaha has been snatched away, people in large groups gathered and beaten up the three RPF men The Following day the RPF men started spreading rumours that Muslims have seriously beaten up the Meiteis This was how the conflict started (T.T. Haokip 2001: 234)..

In this conflict 204 persons lost their lives which includes 199 persons of Pagal Muslims and 5 Meitei (Phanjoubam 2007: 32). Meitei-Pangal conflict led to the displacement of more than 1,000 persons, destruction of 9 villages and burning of 196 houses (see Table 4.5). All of these villages have since been resurrected and returned to their original inhabitants (Phanjoubam 2007: 32).

Table 4.5 Victims of Meitei-Pagal Muslim Conflict in 1993

Name of Village	Number of Houses Burnt	Total Populaiton
Samusahangshantipur	53	310
Kiyamgei	07	47
Thamnapokpi	38	238
Kambongbut	11	71
PurumPangaltabi	60	325
LamphelKhuningthek	18	105
ThangjamKhunou	06	36
Sugnu	1	04
Kanglatongbi	2	10
Total	196	1144

Source: Reproduced from Haokip (2001), "Ethnic Conflicts and Internal Displacement in Manipur" in Thomas Joshua (ed), *Dimension of Internally Displaced Persons in North East India.*

Kuki-Paite Conflict

The Conflict between Kuki and Paite is result of large scale displacement of the Kukis from the conflict-ridden areas and subsequent settlement in Churchandpur district of which is the safe homeland of the Kukis (Gyanedra Singh 2009). T. T. Haokip pointed out that the conflict between Kuki and Paite is family feud and not ethnic conflict as reported in the media (Haokip 2001: 227). Further Haokip elaborated that there is no particular history of conflict between the two communities. Though they divided themselves into the most diverse ways, yet the fact is that the Chin-Kuki-Mizoare one-historically and culturally is undeniable (Haokip 2001: 227). Pradeep Phanjoubam also pointed out that the Kukis and Paintes are kin tribes and also they were all known collectively by a generic nomenclature of Khongsais by the valley dwelling Meiteis (Phanjoubam 2007: 32).

The reasons for conflict between Kuki and Paites are diverse. According to Paite misunderstanding over issue of nomenclature was the cause of the conflict (the Zomi Students Federation 1997). T. T. Haokip traced the reason for conflict between Kuki and Paite is the apprehensions of the Paites that the displaced Kukis as result of the Kuki-Naga conflict would dominate and subjugate them in various ways (Haokip 2001: 227).The Kuki on the other hand, states that during the height of Kuki-Naga conflict, the Paites instead of supporting them due to perceived threat of losing their

identity to the Kukis maintain closer relation with the Nagas (Phanjoubam 2007: 32). The Kuki also charged Paites for giving shelter to the Naga militants with the alleged intention to wipe out all the Kukis form Churchandpur district, the territory traditionally shared by the Kukis and the Paites (Phanjoubam 2007:32).

The immediate cause of the Kuki-Zomi(Paite) conflict was the June 24, 1997 Saikul incident in which 11 Zomi innocent villagers were lined up and killed by the Kuki National Front, a Kuki insurgent group (Sinlung 2009). Following this, violence erupted in the entire district in which 162 persons of different community killed, 93 persons injured and 3521 hoses burnt (see Table 4.5). The majority moved to areas surrounding the district capital of Churachandpur and Mizoram, where they were housed in makeshift refugee centers in schools, hospitals, and other buildings (Sinlung 2009).

Table 4.6 Kuki-Paite Ethnic Clashes in 1997

Sr. No.	Name of Tribe	Killed	Injured	Houses Burnt
1	Kuki	42	19	1565
2	Paite	1	54	1342
3	Vaiphei	9	3	493
4	Zou	7	3	35
5	Simte	9	10	84
6	Mizo	1	Nil	Nil
7	Chin(Close to Paite)	2	Nil	Nil
8	Kom	Nil	Nil	2
9	Hmar	Nil	Nil	Nil
10	Meitei	Nil	2	Nil
11	Non-Local	1	Nil	Nil
	Total	162	93	3521

Source: Manipur Police
Reproduced from Manirul Hussain and Pradeep Phanjoubam "A Status Report on Internal Displacement in Assam and Manipur 2007"

Interestingly however, it was the Accord Between Zomi and Kukithat ended the feud on October 1, 1998, which spoke eloquently of the causes of the feud between the kin tribes, speaking virtually the same language, following virtually the same customs, and celebrating virtually the same festivals (Phanjoubam 2007: 33). As per the above Accord of 1st Octomber, 1998 conflicting parties i.e. Zomi and Kuki agreed that the nomenclatures of both Kuki and Zomi shall be mutually respected. It is also agreed

that any land, building, houses and quarters wrongfully and illegally occupied during the period of clashes shall return and restore to the rightful owner and no Kuki and Zomi militant shall indulge in any forcible collection of taxes from members of the other communities, be they government officials, contractors, or businessmen.

Ceasefire Extension in 2001 and Displacement

In 2001 June 14, the Government of India (GOI) and the Naga militant group NSCN (IM)reached an understanding whereby the ceasefire agreement between the two parties had agreed upon in 1997 would be extended "without territorial limits" (Clause 1 of Ceasefire Agreement, 14 June 2001). This implied the ceasefire between the NSCN (IM) and the GOI would come into effect in Manipur territory. A huge agitation erupted in the Manipur, particularly in the Imphal valley which heightened to extend to burn down the Manipur State Legislative Assembly on 18 June, 2001. The Agitators' contended that the agreement implied an acknowledgement of Greater Nagaland and thus the disintegration of the historical state of Manipur. In the agitation 18 people lost their lives when security personnel in charge of the VIPs fired at the crowd (Phanjoubam 2007: 34). The Government of India withdrew the clause of the ceasefire extension that said "without territorial limits" (The Hindu, 27 July 2001) and then agitation cooled gradually after that.

The agitation mainly by Meitei in Imphal valley against the ceasefire extension feared the Naga residents in Imphal. Due to the fear of attack on Nagas by non-Naga, particularly Meiteis, Nagas fled to the hills although not a single Naga resident or their properties were harmed during the agitation. The number of people who fled contrasts greatly between what Naga NGOs projected (close to 40,000) and the government's figure which put it at about 3000 during the heat of the agitation. The government also claims that all but a few have returned.

Displacement by Underground Clashes between Meitei militant Group and Hmar Peoples Convention

Meitei militants have been using the remote Tipaimukh subdivision as a stronghold for a long time, but especially after they were flushed out of the SajikTampak area of Chandel district, close to the Myanmar border (Phanjoubam 2007 : 34). They were then allies of the Hmar militant group Hmar People's Convention or HPC. But

towards the middle of 1995 they fell out and as did many other Kuki militant groups at the time, entered into aclandestine accord with the Army (Phanjoubam 2007: 34). The Army crackdown began on the Meitei insurgent groups thereafter and the bitterness between these militants and the HPC grew. Harassment of Hmar villagers which were considered sympathetic to the HPC by the former intensified until it overflowed on January 16, 2006, when a group of 18 militants, six belonging to the United National Liberation Front or UNLF and 12 to the Kangleipak Communist Party (KCP) arrived in the dead of the night at Lungthulien, and after calling out and beating up brutally more than 400 villagers (Phanjoubam 2007: 34).

As a result of this conflict, more than 800 Hmar villagers fled their villages and took shelter in neighbouring Mizoram in makeshift refugee camps (Phanjoubam 2007: 34). As on October 24, 2006, it is reported that 700 of the Hmar villagers have since returned to their homes from the Sakawrdai refugee camp in neighboring Mizoram (SIPHRO, 2 August 2006)[2].

To sum up, in insurgency and Counter-Insurgency operations about 15,410 persons killed including insurgents/militants, security forces and civilians from 1992 to 2012. Security forces before and post independence of India has destroyed 127 villages belonging to various ethnic groups and about 5000 persons displaced (see table in chapter 4). Ethnic conflict of Naga-Kuki, Kuki-Paitei, Meitei-Pangal (Muslims) and Meitei-Hmar in Manipur which started in the 1990s took the lives of 984 person, destroyed houses about 9441 and 4944 persons displaced belonging to different communities.

Human Security and Legal Framework

Conflict driven IDPs is primarily a human security issue from two aspects, that is, security from fear and security from want. Conflict, whether it is between two nations, armed conflict between state and non-state actors or between two ethnic groups is itself a strong indicator of insecurity for the civilian caught between such conflicts. Though the armed groups fight for their desired aim or goal-insurgents, such as fights for independence or statehood, within or outside the framework of the constitution, state fight against insurgents to remove them, particular ethnic group fight for their

[2] SIPHRO stands for Sinlung Indegeneous Peoples Human Rights Organisation.

identity and community interest, all these fighting group care little about the security of common peoples. For example insurgent often visits villages and force villagers to harbour them for a night or more (Singh 2011: 199). Then villagers need to take care of them, sheltering them in the village. Villagers are also forced to provide hospitality to them. Sometimes both insurgent burn houses of villagers if they are not supportive of them or give support to other militant group or state security forces. Above all their presence in the villages has created lot of tensions and fear among the villagers (Singh 2011: 199). This visit of insurgent to the villager invites additional fear of the State security forces by the villagers. State security forces pull villagers from their houses any time especially in night on suspicion that militants are hiding there. Villagers remain only option to relocate from their place to another place. For example in 2006, 2000 villagers fled from villages as Indian army launched offensive to flush out UNLF militants (see Table 4.3). Such situation creates constant insecurity to civilians both from state security forces and insurgents.

Moreover, during the ethnic conflict, particularly in ethnic cleansing, insecurity to people of conflicting community is on high. For example during Naga-Kuki conflict 800 persons killed, 480 persons got injury, and 5724 houses displaced (See above Table 4.4). Such large number of killings and displacement of houses erodes ethnic relations and raise extensive hate and animosity towards each other. Once persons displaced they have to face immediately for shelter, food, medical etc. which element comes under the human security. Thus the displacement of persons due to conflict are insecure up to their rehabilitation and settlement.

Legal framework has initiated at international level, regional level as well as national level. The Guiding Principles on Internal Displacement 1998 provides legal framework to all states facing the problem of internal displacement. Guiding Principles has adopted by various countries to address the issue of IDPs. The adoption of Guiding Principles in domestic law of state is voluntary. Though the Guiding Principles resulted through informal process of norm creation, its voluntary adoption in domestic law of state will be helpful to reduce causes of displacement and suffering of displaced persons. Through voluntary adoption of Guiding Principles, the state shows its primary intention to protect and assist IDPs. Likewise, the Government of India has initiated legal framework to protect and assists internally displaced persons.

However, such initiation needs to be discussed and debated of which is the primary focus of this dissertation

The concept of human security, as discussed in chapter two, can provide some legal understanding in addressing the suffering and insecurity of internally displaced persons. The elements of human security (economic security, food security, health security, environmental security, personal security, community security and political security should be addressed through law. In case of IDPs, food security, economic security, health security, personal security, and community security should be primary focus of the law. Because displaced people, particularly due to conflict, primarily looses these elements, this more pertinent in the country like India when National Laws legitimize use of force by military or paramilitary security forces with immunity on their act. In India some Laws are used to legitimize the use of force for example the Armed Forces (Special Power) Act 1958 which authorize security forces to use force, even causing death, on suspicion of unlawful act in disturbed area (Section 4 (a). It also provides that security forces can arrest any person and search any premises or houses without warrant (Section 4 (c) and (d) of AFSPA). Conferring special power to the Security forces to cause death on mere suspicion of unlawful act leads to killing of many civilian people as it difficult find out a person or group of persons are insurgent or not. AFSPA 1958 does not provide how security of common people be insured.

Chapter 5

Conclusion

Chapter 5

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Introduction

IDPs as a subject of law both that of international and domestic law has been one of the most discussed issues in the last few years. The interest in this subject has largely been attributed to the increasing relevance of human security in the discourse of social sciences disciplines. However, unlike refugees who are legally protected by various conventions and protocols, IDPs lacks such legal framework. While regional legal frameworks exist in addressing IDPs, yet The Guiding Principles on Internal Displacement is the only principles (which are not legally bound) that address the problems of IDPs at a global level. The Principles does which lacks legal sanction put all obligations on the states to protect and assists IDPs. In other words, international legal instruments (like the Guiding Principles on Internal Displacement) give primacy to states sovereignty to protect and respect the rights of IDPs.

Sovereignty as responsibility

Roberta Cohen and Francis Deng in their edited volume *The Forsaken People: Case Studies on Internally Displaced Persons* called for the promotion of the concept of sovereignty as responsibility (1998: 6). Under this concept, Cohen and Deng argued that "a state can claim the prerogatives of sovereignty only so long as it carries out its internationally recognized responsibilities to provide protection and life supporting assistance to its citizens. Failure to recognize responsibilities to protect would cause to forfeit traditional rights of sovereignty and legitimize the involvement of the international community" (Cohen and Deng 1998: 6). The emphasis on sovereignty as responsibility leads to the notion of forfeiture of sovereignty. Sovereignty is therefore conditional upon whether the state lives up to its responsibilities or 'fails to uphold the social contract's promise of decent treatment' (Helton 2000: 72). Previously emphasis was put on effective control of territory by the sovereign (Island of Palmas case, Report of International Arbitral Awards, Montevideo Convention on Rights and Duties of State 1933), it is now the *nature* of that control which is prioritized (Phoung 2005: 217). Authority is now understood to be exercised on behalf and for the benefit

of the people, and one of the *raisons d' etre* of the state is to protect them. Control over territory which is the essence of sovereignty should imply responsibility in the exercise of that control and responsibility for the welfare of the citizens, including the internally displaced (Phoung 2005: 217). The attempt to re-conceive sovereignty and responsibility by Phoung is aimed at getting states to fulfil their duties towards their population ((Phoung 2005: 217). It is only by living up to their responsibilities that states can protect themselves from external interference and strengthen their sovereignty (Deng 1995: 268). If they fail to do so, they will be more likely to draw international attention to themselves. This discourse of promoting sovereignty as responsibility serves to remind states of their responsibilities rather than criticize them, but also warns them of the potential consequences of not fulfilling their duties (Phoung 2005: 218). This warning of consequence (international intervention or forfeit of sovereignty) may help to protect the internally displaced persons.

However, Phoung rightly pointed out that to assert that a state can forfeit its sovereignty represents a bold proposal as it is difficult to justify international intervention on a state refuses or cannot live up to its obligations (Phoung 2005: 18). The emphasis on sovereignty as responsibility may not contribute to identifying criteria for intervention, but it may help us to make strategies to improve protection and assistance to the internally displaced ((Phoung 2005: 218). These strategies should focus on how to help states meet their sovereign responsibilities towards the internally displaced (UNOCHA 2003: 51). One way to help states meet their sovereign responsibility is to provide international humanitarian assistance to internally displaced persons not in the nature of humanitarian intervention but with respect of state sovereignty (Principle 25 of GPID).

Responsibility to Protect (R2P)

The discussion on sovereignty as responsibility has been taken a step further by the International Commission on Intervention and State Sovereignty (ICISS). The discussion on sovereignty started to have international consensus on humanitarian intervention after the experience of the 1990s, when intervention had proven intensely controversial, "both when it has happened – as in Somalia, Bosnia and Kosovo – and when it has failed to happen, as in Rwanda" (ICISS 2001: vii). On this situation UN

Secretary-General Kofi Annan raised a question in General Assembly in September 2000:

> ...if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica- to gross and systematic violations of human rights that affect every precept of our common humanity?

As a response to the above question, at the initiative of the Canadian government, establishment of twelve-members[1] international commission was announced in General Assembly in 2000. The commission was asked "to wrestle with the whole range of questions – legal, moral, operational and political – rolled up in debate on humanitarian intervention, to consult with the widest possible range of opinion around the world, and to bring back a report that would help the Secretary-General and everyone else find some new common ground" (ICISS 2001: vii) The Commission produced its report in December 2001. The focus of the report is on responsibility to protect.

The doctrine R2P states that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe-from mass murder (genocide, ethnic cleansing etc.), rape, from starvation-but when they are unwilling or unable to do so, that responsibility must be borne by the border community of states (ICISS 2001: viii). In particular, report states two basic principles in the context of R2P:

1. State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.
2. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect. (ICISS 2001: xi)

Erin Mooney(2008) has rightly pointed out that ICISS re-framed the language and tone of humanitarian intervention debate by no longer speaking of a right of outsiders to intervene but a responsibility-in the first instance, of the state concerned-to protect its own population (Mooney 2008: 12). However, the second principle states that the

[1] Gareth Evans (Co-Chair), Mohamed Sahnoun (Co-Chair), Gisele Cote-Harper, Lee Hamilton, Michael Ignatieff, Vladimir Lukin, Klaus Naumann, Cyril Ramaphosa, Fidel Ramos, Cornelio Sommaruga, Eduardo Stein and Ramesh Thakur.

principle of non-intervention will no longer be upheld if the concerned state is unable or unwilling to perform responsibility to protect its citizens.

Further the report has mentioned three specific responsibilities under The Responsibility to Protect:

1. The responsibility to prevent: to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk.
2. The responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention.
3. The responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert (ICISS 2001: xi).

These are the broad measures prescribed at three phases, that is, before, during and after internal conflict, for the protection of risk population which is similar to those in the Guiding Principles on Internal Displacement.

Further, Heads of state who assembled at the 2005 World Summit unanimously endorsed the concept of R2P, agreeing to its relevance to address genocide, war crimes, ethnic cleansing and crimes against humanity, and specified that: (1) each individual state has the responsibility to protect its population from these crimes; and (2) the international community, acting through the UN, has the responsibility to do so when national authorities are manifestly failing to protect their populations from these crimes, if necessary by taking collective action, including the use of military force (UNGA res. A/60/1(2005): 31). UN Security Council Resolution 1674 (2006) subsequently reaffirmed this commitment and the concept of R2P.

The Relevance of Responsibility to Protect (R2) to IDPs

Situations of genocide, war crimes, crimes against humanity and ethnic cleansing force people into displacement. These causal factors clearly link R2P to the IDPs. The, relevance of R2P to IDPs can be traced to international approaches to IDPs

protection. In particular, the concept of sovereignty as responsibility, which is at the core of R2P, can be seen in the earliest days of IDP advocacy (Mooney 2008: 12). The principal architect of R2P recently credited Roberta Cohen, working on IDPs with Refugee Policy Group in 1991, as the first to spell out that "sovereignty carries with it a responsibility on the part of governments to protect their citizens" (Evans 2008: 36). Then after appointment of Representative of Secretary-General, Francis Deng continued in asserting in his first report that

> No Government can legitimately invoke sovereignty for the deliberate purpose of starving its population to death or otherwise denying them access to protection and resources vital to their survival and well-being. ... if a Government is incapable of providing protection and assistance then the international community should act, either on the invitation of the host country or with international consensus, to fill the vacuum. (UN Doc. E/CN.4/1993/35 (1993): 37-38).

The phrase 'sovereignty as responsibility' coined in 1996 by Deng. Deng used the phrase sovereignty as responsibility to particular advantage in opening channels for constructive dialogue with governments on what fundamentally is an internal, and therefore politically highly sensitive, matter (Mooney 2008: 12). The reason for this is that sovereignty as responsibility gives a sense of responsibility to state much more than a diplomatic nuance and tactic (Mooney 2008: 12). And for IDPs and other people still within their own country, the R2P ultimately entails securing access to effective national protection.

R2P and Guiding Principles on Internal Displacement

The concept of sovereignty as responsibility at the core of R2P also informed and underpins the Principles (Mooney 2008: 12). As a general principle, R2P mandates that "national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction" (Principle 3 of GPID). The Principles then proceed to spell out what this responsibility requires in all phases of displacement: from prevention to protecting populations against atrocities and abuse of rights, to ensuring durable solutions – a comprehensive approach which calls to mind and could help guide implementation of R2P's three-fold responsibility to prevent, to react and to rebuild as it mentioned above (Mooney 2008: 12).

At the same time the Principles make it clear that protecting IDPs is the responsibility not only of authorities in-country but also of the international community, especially when national authorities are unable or unwilling to fulfill their role (Principle 25 of GPID). The Principles reaffirms that "all authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law" (Principle 5 GPID). It is and obligation upon states to accept international assistance if they are unable or unwilling to provide the assistance that IDPs require (Principle 25 (2) of GPID). Further, international humanitarian organizations and other appropriate actors providing assistance are to "give due regard to the protection needs and human rights of IDPs and take appropriate measures in this regard" (Principle 27 of GPID).

As mentioned earlier Genocide, ethnic cleansing and acts constituting war crimes and crimes against humanity – the four trigger scenarios for R2P – are all expressly prohibited in the Principles, based on obligations under international law (Mooney 2008: 12). However, unlike R2P as endorsed by the World Summit, the protection prescribed by the Principles is by no means limited to these same circumstances (Mooney 2008: 12). The Principles unequivocally recognize that people become IDPs due to a range of causes including armed conflict, generalized violence, violations of human rights, natural or human-made disasters, and large-scale development projects (GIDP 1998: 1). With R2P, there is no consensus even among the chief architects of R2P as to whether it can be applied in the case of overwhelming natural or environmental catastrophes, where the state concerned is either unwilling or unable to cope, or call for assistance, and there is or might be significant loss of life (ICISS 2001:33) Moreover, the Principles define protection in terms not only of physical safety but also of the broad range of civil, political, economic, social and cultural rights (Mooney 2008: 12).

The Guiding Principles and R2P are different as to their purposes. The purpose of Guiding Principles is to provide a normative framework for the protection of IDPs and to provide guidance on the rights of IDPs, the responsibilities of states and other authorities towards them (Mooney 2001: 12). The General Assembly recognized the Guiding Principles in 2005 World Summit Outcome as the authoritative statement on the rights of IDPs (Res A/60/L.1 2005: 30). Further, the Principles have been

incorporated into national laws and policies in numerous countries as discussed in chapter III. In addition to clarifying the relevant legal norms, the Principles also specify some of the concrete actions that realization of these norms requires, such as, issuing replacement personal documentation for IDPs (Principle 20), incorporating women's views and concerns into the design and delivery of assistance(Principle 18), making education and training facilities available in IDP camps (Principle 23), and helping IDPs recover or receive compensation for lost or damage of property (Principle 29).

The R2P was developed for a different purpose i.e. to break through a political impasse, specifically on the basic questions of principle and process as to when, how and under whose authority international intervention should occur (Mooney 2008: 13).

Though R2P and Guiding Principles have different purposes, both emphasizes on primary duty or responsibility on the concerned states for the protection of their citizens. Further, Guiding Principles provide for the international humanitarian assistance from international organizations and NGOs not as interference in internal affairs.

Ratification of International Treaty or Convention: an Obstacle

There are two legal systems in the society of states; the first is the international legal systems and other is the domestic or states' legal system as mentioned in chapter II of this dissertation. Dominant view is that the international law imposes rights and duties upon states and further individuals have to derive such rights and duties through their state. The rights of individual under international law are realized through the adoption of international law into domestic laws as per dualist theory. On the other hand monist holds that international law and state law are both part of a universal body of legal rules binding all human beings. Therefore, there is no need to introduce international law in domestic law as it directly applies to the individuals. But the practical reality about international society of states cannot be overlooked. However, if international law is result of treaty or convention it requires ratification by members states, it is only after ratification that such treaty or convention impose obligation on states to made effective international law into their domestic law. In case of

international law dealing with human rights, human security and benefits to individuals, the time has come to make states (whether are parties to treaty/convention or not) obliged to adopt international law in their domestic law without ratification.

In India, large numbers of people are displaced due to development project, natural disasters, armed conflict, communal violence, and ethnic strife. In North India Jammu and Kashmir, in central- Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Andhra Pradesh, Maharashtra, in East India- part of West Bengal and Orissa some part of in North East- Assam, Nagaland and Manipur People are displaced due to armed conflict between insurgent and Indian security forces. Apart from armed conflict displacement also occurred due to ethnic or religious related conflict in various part of India. The Northeast has been the scene of repeated ethnically motivated conflicts in which the fight for a perceived homeland has sometimes resulted in ethnic cleansing.

Internally displaced persons whether due to armed conflict, ethnic strife, development project, natural or man-made disaster are generally deprived from the legality of human security. The situation of IDPs became much worst when there are no laws or policy to address their cause. This is more in the case of India. However, it can be said that even in absence of particular legislation(s), IDPs have basic constitutional rights. For example, Article 21 constitutes the right to life which the state is legally bound to protect it citizen. However, as mentioned earlier, the presence of multiple legislations on issues of displacement and the absence of a one particular law on IDPs, their rights remain uncertain, so is their claim remain uncertain too.

It is to be noted that it is in this legal ambiguities that in India, the rights of IDPs have largely been either ignored or addressed in an ad hoc manner. Even when addressing this issue (See Chapter 3), Indian laws lacks in consonance with international legal norms.

In international law, the aspects of human security can be said reflected in terms of human rights. The concept of human rights and human security seems to be similar in terms of their focus on individual. However, the concept of human security is more powerful than national security. In human security approach, the welfare of human

being in all dimensions is the ultimate object whereas in national security approach military and strategic interests are main object.

The Guiding Principles on Internal Displacement 1998 which emerged as international norms provides useful guidance to states in dealing with issue of internally displacement. Principles particularly call for states to take into considerations the guidelines for framing legislation or policy for internally displaced persons. In other words appeal has made to states which are facing the problem of internal displacement that the Guiding Principles should be adopted in their domestic law.

In the context of India's policy on internal displacement, the central government has started looking into issue of internal displacement. Legislations or policies directed towards IDPS are fragmented and lack coherence of a single legislation. Displacement is addressed separately on separate issues. For example displacement that arises out of project and communal or ethnic conflict are dealt separately. Hence, such legislation or policy lacks pragmatism.

Thus in India, instead of single comprehensive policy, rights of IDPs is being addressed through various laws, which might lead to conflict or inconsistency between them. For example, proposed The Land Acquisition, Rehabilitation and Resettlement Bill, 2011(LARR Bill) has made provisions for the land acquisitions for the resettlement of project affected people (Section, 3(za) there is no provisions of land acquisition for the resettlement of IDPs induced by communal violence or armed conflict neither in LARR Bill nor in the Prevention of Communal and Targeted Violence Bill, 2011 (PCTV Bill).

Indian law entirely silent on internally displaced persons induced intra-state armed conflict that is conflict Indian security forces and armed insurgent groups. Both LARR Bill 2011 and PCTV Bill 2011 have made no provisions about resettlement or compensation for property lost in counter-insurgency operations. No specific provisions have made for responsibility of states to protect the IDPs induced by insurgency and counter-insurgency operation in this regard. Thus LARR Bill 2011 and PCTV Bill 2011 are consistent to extend of certain principles with the Guiding

Principles on Internal Displacement but it does not reflect that legislation on IDPs has drafted with spirit and letter of Guiding Principles.

While this dissertation largely dealt with the subject of conflict driven IDPs in Manipur, however, the same is true in the case of other conflict areas in India. Militancy and insurgency movements in Kashmir, North East India, Maoist movement in central and eastern India, communal violence of Gujarat 2002, Sikh riot of 1984 and many other development projects are examples of people being displaced and without any rights. Despite the experience of communal violence and riot soon after independence which left millions of people displace, yet India's law on IDPs are weak and incoherent. The absence of a one comprehensive law on IDPs can also be understood from the existence of other parallel law like AFSPA which itself legalise states excesses on in citizens during counter insurgency and counter militancy operation, which is also one of the factors that contributed to large scale displacement of people in India.

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