

NATIONAL LAW SCHOOL OF INDIA UNIVERSITY

BANGALORE



PROJECT INDUCED DISPLACEMENT AND ROLE OF NHRC: A STUDY

Dissertation

for

PARTIAL FULFILMENT OF LL.M. COURSE IN HUMAN RIGHTS

Academic session: 2007-2009

Under the guidance of

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DECLARATION

This Dissertation titled “*Project Induced Displacement and Role of NHRC: A Study*” is submitted in partial fulfillment of LL.M course in Human rights stream at National Law School of India University, Bangalore.

I, hereby declare that the dissertation is the result of genuine research work carried out by me under the guidance of Prof. (Dr.) V. Vijayakumar, Professor of Law, NLSIU, and Bangalore. I also affirm that the work is original and every reference in the paper is duly acknowledged.

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DEDICATED

TO

My Beloved Parents

Late Shri Makhan Chandra (Roy) Hrangkhawl

&

Smt. Sarham Hrangkhawl.

ACKNOWLEDGEMENT

First and foremost I would like to thank Prof. (Dr.) V. Vijayakumar, former Registrar and Professor, NLSIU for visualizing the paper and allowing me to work on it. I thank him for guiding and shaping this paper with his critical questions, and attention not only to the ideas but also to the content, logic and general thrust of the arguments and suggestions without which the paper would not have been possible.

I am indebted to Honb'le Justice S. Rajendra Babu Former Chief Justice of India & Chairperson of National Human Rights Commission, who has allowed me to go ahead with my empirical studies in National Human Rights Commission and also by sharing his views by sparing his valuable time. I am also indebted to Mr. A.K Garg (Registrar Law), Shri Y.S.R Murthy Director (Research), Mr M.L Aneja, JR (Law) and Mr. O.P.Vyas (Dy.S.P) and all other authorities for their valuable contribution and aid in my primary data collection.

I also would like to thank my Family my husband, Mr. Lawrence Hrangkhawl (Dy.S.P), my daughter Angela Indira Hrangkhawl and my son Rimson Hrnagkhawl for their constant moral support by allowing me to stay in the NLSIU hostel for two years for pursuing my LL.M course. I would like to thank

my daughter Angela Indira Hrangkhawl who has fulfilled all the responsibilities as a mother, sister, daughter by taking care of her father and brother for this two years , without her contribution this course would have not been possible.

I also would like to thank Former Vice Chancellor, Dr A. Jayagovind who made me feel at home in NLSIU on admission day by saying “We are proud of having a student like you”.

I also would like to thank all the mothers in India specially those who congratulated me on the orientation day and wished me success.

I also thank my friend, Mr. Raju Loungani (MD Hotel Moonsoon, Shillong)who provided financial assistance to me for admission purposes and his constant moral support and I also thank my local guardian Assistant Professor of Economics, (NLSIU) Mr. T.S. Somashekhar who gave me constant guidance during my first semester.

I hereby also acknowledge the committed assistance of the library staff in NHRC as well as NLSIU in getting access to the books, reports, journals, and photo-copy of the study materials.

SUCHITRA HRANGKHAWL

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ACRONYMS

ACHPR:	African Commission on Human and People's Right
ADM:	Additional District Magistrate
BUPC:	Bhumi Uchhed Parishad Committee
Cr.P.C:	Criminal Procedure Code
D.G.P:	Director General of Police
D.I.G:	Deputy Inspector General
ECOSOC:	Economic and Social Council
EIA:	Environment Impact Assessment
ERC:	Emergency Relief Coordinator
ICRC:	International Committee of the Red Cross
IDCO:	Orissa Industrial Infrastructure Development Corporation
IDP:	Internally Displaced Persons
IG:	Inspector General
ILO:	International Labour Organization
IOM:	International Organization for Migration
LAA:	The Land Acquisition Act
MIDR:	Mining-Induced Displacement and Resettlement
MLA:	Member of Legislative Assembly
MOU:	Memorandum of Understanding
MUTP:	Mumbai Urban Transport Project
NAC:	National Advisory Council
NEFA:	North-East Frontier Agency
NGO:	Non-Government Organization

NHRC:	National Human Rights Commission
NIA:	Nedumbassery International Airport
NRRP:	National Relief and Rehabilitation Policy
NTPC:	National Thermal Power Corporation
OAU:	Organization of African Unity
OCHA:	Coordination of Humanitarian affairs
PAP:	Project Affected People
PS:	Police Station
R & D:	Rural Development
R& R:	Relief and Rehabilitation
SAIS:	School Advance International Studies
SDO:	Sub-Divisional Officer
SEZ:	Special Economic Zone
SP:	Superintendent of Police
TCS:	Tata Consultancy Services
TISS:	Tata Institution of Social Sciences
TMC:	Tata Memorial Center
UN:	United Nations
UNDP:	United Nations Development Programme
UNHCR:	United Nations High Commissioner for Refugees
UNICEF:	United Nations Children's Emergency Fund
WFP:	World Food Programme
WHO:	World Health Organization

CHAPTER-I

INTRODUCTION

Each year, millions of persons are forcibly displaced by development projects, whether dams, roads, reservoirs or oil, gas and mining projects. While such projects can bring enormous benefits to society, they also impose costs, which are often borne by its poorest

and most marginalized members. As Author W. Courtland Rabinson points out, “for millions of people around the world –development has cost them their homes, their livelihoods, their health, and even their very lives”, Impoverishment and disempowerment often become their lot, with particularly harsh consequences for women and children.

Although internally displaced persons are often defined as those uprooted by conflict, human rights violations and natural or man –made disasters, they also include those displaced by development projects. Indeed, Rabinson points out: “While victims of disaster –especially natural disaster –generally are the focus of sympathetic attention and international aid (as are many of those displaced by conflict), the same cannot be said for victims of development- induced displacement, although the consequences may comparably dire”.¹

¹ <http://www.brookings.edu/fp/projects/idp/articles/didreport.pdf>, accessed on 20/02/09

Displacement is generally characterized as the movement of people from one place to another owing to different reasons. Where the movement is self-induced, as it happens often in case of migration, it is termed as involuntary displacement, but where it is induced by some extraneous forces it is termed as involuntary displacement. For instance, in project induced displacements the specific government decisions are responsible for forced eviction. Development projects causing displacement are seen to fit into ideology and larger social good of the nation.

Secondly, in project induced displacement, forced eviction occurs rather as a byproduct of the decision of the government to undertake a project like construction of dams, highways, industrial estates, ports, forestry, natural resource management projects, and so on. In such cases, though the displacement is permanent, it is not primary objective by itself. But this may not be in other forms of human induced displacements such as ethnic cleansing. In case of war, ethnic strife etc and sometimes in nature induced displacement also people return to their original habitat once the trauma is over.

Finally, in project induced displacement the state generally attempts to justify its actions by taking recourse to sovereign power. Expressions like “public purpose” or “national interest” or “common good” are invoked to justify land acquisition and consequential displacement of people. Land is one of the biggest resources of any country. The Governments have to acquire land from the private individuals

for setting up various infrastructure and other public purpose projects as well as development activities.

Whereas the sovereign power of every state has the authority to appropriate land for the public purpose, every subject has the right to be heard before he is deprived of his property by the state. This is recognized as a legal right as per article 300A of the Constitution which provides as under:

“No person shall be deprived of his property save by authority of law”.

Whereas land and its management is under the State List, Acquisition and requisitioning of property falls under the Concurrent List. To deal with the issues related to land acquisition and determining the amount of compensation in lieu of land acquired by the government, the “Land Acquisition Act” was enacted on the first day of March, 1894. The Act has been amended in the year 1919, 1921, 1923, and 1933 before independence and in the year 1962, 1967 and 1984 after independence.

However, in other forms of displacement neither the sovereign power is invoked nor is it accepted as a valid excuse for eviction of people.

A few other terms like relocation, resettlement and rehabilitation are also used hand in hand with displacement. The term “relocation” generally implies finding a new habitat for the displaced and other project affected families. Semantically, the term “resettlement” does not imply anything other than translocation of the

displaced persons (henceforth DPs) or the project affected persons (henceforth PAPs) The term “rehabilitation” is generally used to encompass the restoration of asset and earning capacity, and reconstruction of the pattern of socio-economic life of PAPs, at least to the pre-move level the question of resettlement and rehabilitation is linked with displacement. In the absence of occurrence of displacement, the issues of resettlement and rehabilitation are inter-linked in any project decision.²

Post independent India had faced the formidable task of creating a nation out of a fragmented, multi-ethnic and economically backward society. The prerequisite for this was thought to be accumulation of a secular society besides preserving its plurality. The path of capitalist development has been followed for economic progress. Construction of big dams for irrigation to increase agriculture production and generate power for industry has been part of an overall strategy for development. The big dams are generally constructed at the upstream of a river usually an abode of tribal's. Consequently, these tribal's are forced to leave their native villages. More than one million tribal's have been affected by such irrigation projects. Sardar Sarovar Project on the river Narmada is one such big dam affecting a large number of tribal's.

² Anand Mohan Bhattari, *Project Induced Displacement And Rehabilitation : Law Policy and Practice*: PhD Dissertation, NLSIU 1999, p.1

Sensitivity to the plight of deprived classes of society saw Indian plans evolving around the capitalist mode with crucial public investment for developing social infrastructure. Using Mahalanobis model, the planning strategy concentrated on investment in the capital-goods industry to attain self-sufficiency in a short time. The approach seemed to have been *growing fast and the trickle down will bring distributive justice*. But growth was limited, and it hardly trickled down. After a bad monsoon and failing agriculture in the late 1960s, the need for a dynamic agriculture became apparent. The new strategy emphasized land-augmenting technological changes in technology change. These views emerged from the growing recognition that different sectors of the economy are interdependent, and understanding the determinants of growth in agricultural output is essential, if the sector has to play its role in economic development.

Foreign aid, which is initially, was supplementing domestic savings, assumed unmanageable proportions during the 1980s. And regulations for private investment and savings soon became all-pervasive, through fiscal, monetary and trade policies. Such restriction became counter-productive. First, the investment avenues shrunk due to bureaucratic delays, and incentives for being innovative reduced significantly. This resulted in technological stagnation in the economy. Second, since capital intensive technology –import became inevitable; R & D, based on domestic resource endowments could not take place. This resulted in a mismatch between demand for resources and supply. Lastly, the do's and don'ts

rooted a culture were the masses, for whose protection such policy interventions had been supposedly initiated.³

Project Induced displacement is not new phenomenon. It started with industrialization. World over, people were uprooted of their natural habitats, dwelling and surroundings making pace for projects. But the pace of displacement surged in this century mainly due to high dam projects and similar other displacing projects. The newly liberated states of post world War II Era adopted the same model of development pursued by developed perused by developed countries and thus looked upon projects of gigantic size as the only alternative left for them to catch up with developed countries. Therefore, construction large projects were linked with National pride, or a mission for nation building. In this zeal for development, the human and social aspects were either ignored or neglected. Several countries either handled the issue in a policy or legal vacuum or relied on absolute laws, which at best partially addressed the issue of acquisition and compensation. These laws were not linked with to displacement, or the resettlement and rehabilitation of the people who were uprooted from their habitat.

Of late, project induced displacement, mainly because of the magnitude and impact on human and social environment, has become one of the hotly debated issues of the world over. According to one estimate of the World Bank, every year

³ D.C.SAH Development Displacement and Rehabilitation Evidences from Sardar Sarovar Project, Man and Development: vol 22, issue 03,September 2000, p .104.

about four million people are displaced by approximately 300 large dams (above 15m high) that on an average enter construction phase annually. In addition, six million people are displaced by urban transportation projects etc. In many countries of Asia and Africa dams are still the major culprits for displacement of people⁴.

Displacement, the malignant side effect of prevalent development operations, is not merely a physical uprooting of people but a complex phenomenon that encompasses such diverse ramifications as simple deprivation of productive land following to loss of a knowledge base, to disarticulation and consequently a loss of dignity. As Upendra Baxi puts it 'It is not a onetime event but a series of happenings affecting human lives in myriad ways.' While the act occurs at one point of time, it sets off a process that will carry on till long after the actual displacement.

Further, expropriation is considered as justified by the virtuous object of 'greater common good.' Development induced displacement is seen in the light of the Guiding Principles on Internal Displacement, These Principles on Internal Displacement, premised on existing international humanitarian law and international human rights instruments serve as international standard to guide governments as well as international humanitarian and development agencies in providing assistance and protection to internally displaced persons.

⁴ *Supra* n 2 , p. 4

The declaration of a 'right to development' states that the right is an 'inalienable human right' that vests in individuals as well as communities on account of which they have a right to participate in, contribute to and enjoy development. The important thing here is that the declaration endows both the individual and group separately with the right; the problem however is who or what determines the scope of development in the given context, especially when so when the aforementioned right of one player is pitted against the same or the other, namely the right against displacement, of the affected party.⁵

Governance has occupied human mind since the time humanity commenced organizing itself. The Greeks evolved the principles of "rule by the people." The Romans practiced republicanism. India has opted in favour of "a sovereign, Socialist, Secular Democratic Republic" in its constitution. We seem to have combined the Greek and Roman concepts with the home –grown tradition of Panchayats. Democratic values have come to mean justice, equity, plurality, diversity, equilibrium between community and environment. The essential parameters of democracy mentioned by the UNDP as electoral legitimacy, accountability, constitutional safeguards and functional institutions have been accepted as pillars of the governing edifice. The entire edifice rests on the rule of law.⁶

⁵ Ahmad Ali Khan, *Development Induced Displacement: The Indian Perspective*, LL.M 2nd year, NLSIU, June 2007, p 8

⁶ Bhupender Singh, *Governance and Development: The Tribal Context: India Journal of Public Administration*, Vol. 1, Issue no 1, January –March 2004 p. 128.

Despite the intensity and scope of internal displacement, there is no adequate system of protection and assistance for the displaced people. “no special legal instruments covers the particular needs of the internally displaced, and no specific institution is mandated to address their needs .Whereas, the fundamental rights and human needs of IDPs for international protection and assistance appears to be greater. International responses to emergencies involving the displaced have been undertaken by the UNHCR and outside the UN system, most prominently, by the International Committee of the Red Cross. But in the absence of clear mandates, the International responses have been ad hoc and limited.”⁷

“Internally displaced” being within the four walls of the “Territorial Sovereign” could not look for international help which in international relations would amount to interference in the internal matters of a “Sovereign State”.

It was only on a request from the Commission of Human Rights, the then Secretary General of United Nations, Boutros- Ghali appointed Francis M.Deng as the special representative on internally displaced persons in 1992. It is at this time the working definition of IDPs was set out too, which calls the internally displaced as: Persons who have been forced to flee their homes suddenly or unexpectedly in large numbers as a result of armed conflict, internal strife,

⁷ Sumit Sen, Exiled at Home: The International Regime of Internal Displacement, Indian Journal of International Law, vol 38, issue 02, 1998,p 183.

systematic violations of human rights or natural or man-made disasters, and who are within the territory of their own country.

Further, the reluctance of the UNHCR to mantle the exclusive responsibility of internally displaced only perpetuated the piecemeal approach and duplicity of functions by various organizations. In 1977 Kofi Annan constituted a senior body called the Executive Committee on Human Affairs and terminated the Department of Humanitarian Affairs only to be integrated into the newly constituted, Office for the Coordination of Humanitarian Affairs. The reformed structure vested the responsibility for the working of the system on the Emergency Relief Coordinator with Sergio Vieira De Mello as its new designate who appointed to OCHA's staff a senior officer to work exclusively on Internal Displacement. It was this time around the special representative submitted his report for consideration that was adopted as the UN Guiding Principles on Internally Displaced in 2001.⁸

Despite all these efforts the problem of Internal Displacement could not be tamed by the world community. As a matter of fact, globally, the Internally Displaced Persons outnumber refugees in millions. At the end of 2005, UNHCR country offices reported 6.6 million internally displaced persons in 16 countries compared to 5.4 million IDPs in 13 countries one year earlier.

A step ahead is the definition stipulated by the London Declaration of International Law Principles on Internally Displaced Persons (2000), the

⁸ Amit Yadav, IDPs in India: Principles of Law and Justice, LLM.2ND Year, NLSIU, June 2000.,p.4 .

declaration first time expressly recognized the displacement caused by large scale development projects, and directly related the conditions of the IDPs to violations of fundamental human rights,⁹ while casting a duty upon both state and non-state actors (de facto authorities) those are in control of the affairs. A detailed analysis of these perceptions is attempted at a later point of time in this paper.

Unlike the overdue of internal concern for the problem, India as a nation had to deal with the crisis more often than not since independence (partition). The concern for the protection, resettlement and rehabilitation of the displaced is amply evidence in the social, political, cultural and sufficiency in the legal and judicial practices. The present paper provides with an opportunity to compare and contrast the international legal and judicial systems in India are equally responsible to keep the problem at bay and do the need full to address the situation; the paper attempts nothing but to testify this assertion.

In an effort to better understand the plight of those displaced by development projects and the relationship of kind of displacement to international human rights and humanitarian frame works for dealing with internally displaced persons, this thesis attempts to examine the nature and scope of development-induced displacement and to identify the international institutions and remedies that might prove effective in addressing this question. And it also tries to attempt to analyze how the involvement of NHRC in protecting IDPs can be more effective.

⁹ Art 1(2).

Reasons for selecting this topic

The researcher has practical experience of visiting displaced persons in Tripura three years back so from her personal experience she feels that the displaced persons are not taken much care as the refugees. Though there is no difference the sufferings between the two, thinking that they are in their own territory and the question of sovereignty comes in between. But the individual's rights should be taken much into consideration then the sovereignty of the states. The human rights of the displaced persons are violated by not reaching them the adequate compensation and rehabilitation and resettlement for what they lose. On the other hand they are discriminated by their own fellow countrymen they are treated like refugees. They are never accepted in the new environment where they are settled. They are deprived from basic necessities. Though cores of rupees are sanctioned for purpose of rehabilitation the process of rehabilitation is so poor that it never reaches to the affected people. This research may help the Displaced persons and displaced being a human rights issue National Human Rights Commission is the only Institution which can play a great role to direct the state governments to implement the existing laws available for protecting displaced persons and give more pressure to the international community to take seriously regarding the displaced persons judging the refugees.

Aims and objectives:

The objective of this paper is to explain the concept of displaced persons, project induced displacement, public purpose in India. The overall objective of the

research is an examination of the policy, law and practice on the issue of project induced displacement. Its major concern is to study the prevailing policy and legal regime and analyze the gaps between (a) Constitutional promise and legal response (b) The Constitutional response to the issue of displacement. The institutional response and impact of displacement will be examined by interviews with the authorities of National Human Rights Commission and some case studies which is taken up by the National Human Rights Commission. The purpose is also to examine whether prevailing regime is sensitive enough to respect the rights of the displaced and other project affected persons.

The study is intended to provide better understanding of the rights /entitlements of the PAPs under domestic and international legal regimes It will also help to understand a few other issues relating to PAPs, especially their right to participate in and direct the process of development evolve strategies, which will avoid or minimize the adverse effect of displacement which have hitherto remained unanswered. The study is also intended to evaluate the current existing laws national as well as international and analyze the role of NHRC protecting the displaced persons.

Scope and Limitation

The scope of this paper is limited to only to project induced displaced persons which will be analyzed according to the Indian context.

Hypothesis

1. The researcher proceeds with the hypothesis that the role of NHRC will help to bring the international attention of the displaced persons and place them in equal status with the refugees in protecting displaced persons.
2. Positive judicial intervention and interpretation substitutes the gaps in the legislative protection of project induced displacement.
3. International intervention is justified in case of failure of the states responsibility in protecting its citizens is considered as violation of their human rights.
- 4.

Research Question:

Having outlined above the purpose of the research, the purpose of the research question come to facilitate the study process and operationalise the purpose. The main research questions are addressed in the following form in the study:

1. What do you mean by internally displaced persons? What are the impacts of displacement?
2. Why do they need special attention?
3. What are the laws available protecting the internally displaced persons?
4. What is the legal protection available under the international regime?
5. What role does NHRC play in protecting IDPS?

Chapterization

The first chapter entitled “introduction of the topic” **The second chapter** entitled “*Concept of Internally Displaced Persons and Impact of Development Induced Displacement*”. In this chapter the researcher discusses the evaluation of the definition of internally displaced persons and impact due to displacement, concept of project induced displacement..

Third chapter entitled “*International protection of IDPs*”. This chapter comprehends the amount and extent of the crisis the nation states started exploring ways to provide sustained and comprehensive protection and assistance to the displaced people. Thus,

nation states mutually, has come to accept that protecting and assisting IDPs is a responsibility that rests first and for most with the national governments reiterating the sovereignty of municipal laws over the international treaty obligations. In this chapter entitled, “International Protection for IDPs” an effort is made to understand the international (legally binding) obligations on the nation states and to examine any gap there is.

The fourth chapter entitled “Displacement Scenario in India and National Protection of IDPs” India unlike any other country in the region grapples with several problem of internal displacement. Whereas, those displaced due to development activities (forced relocation is put 25 millions including those

affected by dams, mines, industrial establishments, and wild life sanctuaries and national parks. The researcher tries to understand the Legal Principles relating to displacement and applications to different contexts in India.

Fifth chapter entitled “The Judicial Response to Protection of IDPs ; a review” deals specifically with the contribution of the Indian Judicial system, particularly the Apex Court gives an account of the ground covered by this institution in the protection of displaced ¹⁰ , in this chapter a glimpse of the same is portrayed through a few relevant decisions from the Highest Court.

Sixth chapter entitled “ *the role of NHRC in protection of IDPs in India*” the researcher tries to bring a brief of the establishment the birth of National Human Rights Commission for the protection of human rights in India; the institution in its teenage, has entitled phenomenal appreciation from all corners in all matters related to human rights. Protection of Refugees including internally displaced person is just one of the trusted obligations that this institution has discharged with utmost sincerity and zeal.

Seventh chapter entitled conclusion and suggestion of the researcher. In this Chapter the researcher tries to draw her conclusion by bringing different points of different authors and as she thinks it matches with her thinking she tries to justify for her argument by bringing law point why should her point be accepted.

¹⁰ Initially due to partition and later on various other instances of displacement due to natural disasters, developmental activities or internal conflicts

Research Methodology

The researcher will use historical, descriptive, analytical and case study method and empirical study. The researcher has done her empirical study in NHRC by meeting the authorities and discussion with them and the discussion is reflected in the 5th chapter.

Sources:

The researcher has used primary sources from National Human Rights Commission as well as secondary data from books and articles from library and internet resources.

Mode

In this research, the Blue Book method of citation has been followed.¹¹ The Blue Book explains a uniform system of citation prescribed by a few American law journals like the Columbia Law Review, Harvard Law Review, The University of Pennsylvania Law Review and the Yale Law Journal. The National Law School of India University endorses this method of citation with suitable modifications keeping in mind the need researchers in this continent.

¹¹ The Blue Book: A Uniform System of Citation (15th ed. Cambridge, Harvard Law Review Association, 1991).

CHAPTER II

CONCEPT OF INTERNALLY DISPLACED PERSONS AND IMPACT OF DEVELOPMENT INDUCED DISPLACEMENT

Concept of Internally Displaced Persons

“Internally Displaced Persons”, has so far not been defined, although it means “movement of persons against their own will inside their own country”. The element of “Coercion” as well as the failure of the state to provide protection against displacement (or its active involvement in causing it) is present here as well.

The term “displaced persons” was used immediately after the Second World War to denote victims of population transfers in Eastern Europe, even at that early time causing definitional problems in its use *vis a vis* the term refugees. However in 1990 the term “internally displaced persons” was defined to mean “persons who have been forced to oblige to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflicts, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country.”¹²

¹² Maria Stavropoulou, Displacement and Human Rights: Reflections on UN Practice, Human Rights Quarterly, Vol. 20, issue 03, 1998, p. 515.

Defining Internally Displaced Persons

The Transposition of the refugee definition

As a preliminary remark, it must be noted that 'there is no firm agreement . . . on what should be included in the definition of internally displaced persons. This lack of consensus on the elements of a definition has been a source of confusion. When attempting to draw up a definition of internally displaced persons, the refugee definition obviously offers some guidance, but here a humanitarian approach rather than a legalistic one will be adopted. However, Melander's definition of internally displaced persons only refers to the 1951 refugee definition by using the 'well-founded fear of persecution' criterion. His initial approach is that there are two categories of refugees, i.e. human rights refugees and humanitarian law refugees. It has been argued that internally displaced persons are persons who would be refugees had they left their country. This has been the approach favoured by UNHCR. References to the 1969 OAU Convention definition or the 1984 Cartagena Declaration may be more appropriate as they both cover the situation mentioned above. These two definitions would probably 'more useful as a standard comparison'. So far, most of the definitions proposed emphasize the causes of displacement and this reflects the increased emphasis on the prevention of 'forced' population movements.

However, not all agree on what situations should be covered and the question of the inclusion of causes of internal displacement such as natural disasters or development projects has been a matter of controversy.

Attempts at a definition:

A first attempt at a definition was made by the UN Secretary –General Boutros-Ghali in his Analytical Report in 1992, which defined internally displaced persons as:

“Persons 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.”

Since then, in depth research has been undertaken in order to achieve a better understanding of the phenomenon of internal displacement. As a result, some elements of this definition have been partially modified or abandoned, because deeper knowledge of past and contemporary internal movements of populations have demonstrated that some elements of the Secretary-General’s 1992 definition are not always characteristics of displaced persons as fleeing ‘suddenly and unexpectedly in large numbers’. However, the two adverbs do not characterize all cases of internal displacement. The Definition should not be quantitative one and should not focus solely on situations which involve sudden mass displacement of populations in war-like conditions.

The part of the 1992 definition which reads ‘who are within the territory of their own country’ has also been modified to read ‘who have not crossed

internationally recognized state border'. Such modification by the Special Representative was made necessary by the problems raised by the dissolution of such states as the former Soviet Union and the former Yugoslavia at the beginning of the 1990's, i.e. at the time when Secretary-General's definition was devised.

The challenge here is to devise a definition which is neither too broad nor too narrow in order to obtain a text which can cover a large range of situations in which people are internally displaced and in need of internal protection, but which is also workable definition. Various definitions put the emphasis either on the causes or the types of situations, but it would seem to be more appropriate to focus both on the causes of displacement and the needs of the people rather than on a description of the situations (people fleeing suddenly and en masse) as in the 1992 definition.

The more recent definition offered in the Guiding Principles on Internal Displacement is now widely used. The Guiding Principles define the internally displaced as:

“Persons or groups of persons who have been forced to flee or obliged to flee or to leave their homes or places of habitual residence, in particular as 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.”¹³

It is clearly an improvement on the 1992 definition since it removes all the elements which had proved problematic. According to Cohen, it represents ‘the broadest definition in use at the international or regional level. It has been emphasized that this definition reflects ‘the descriptive and non-legal nature of the term “internally displaced persons”. It must also be noted that the list of causes of displacement is not exhaustive, as highlighted by the words ‘in particular’. In contrast to the 1992 Analytical Report, the Guiding Principles explicitly refer to development –induced displacement, Guiding Principles 6(2) (c).¹⁴

Scope of the displacement caused by development projects

Infrastructural development projects carried out by states, often with the assistance of the international community, frequently result in the displacement of peoples from homes that stand in the way of dams, highways, or other large-scale construction projects. New standards are emerging for states to address the displacement consequences of development¹⁵.

¹³ See para.2 of the *Introduction to the Guiding Principles*.

¹⁴ Cathrine Phoung, *International Protection of Internally Displaced Persons*, Cambridge University Press, 2004, p. 29.

¹⁵ [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/C753862FA2CF8B7CC1257115004752ED/\\$file/Protection%20from%20module%20handout%20development%20displacement.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/C753862FA2CF8B7CC1257115004752ED/$file/Protection%20from%20module%20handout%20development%20displacement.pdf), accessed on 10/03/09

While an estimated 25 million people are displaced worldwide by conflict, the number of people uprooted by development projects is thought to be much higher. In 1994, a study of all World Bank-assisted development projects from 1986-1993 that entailed population displacement found that just over half were in the transportation, water supply and urban infrastructure sectors. Extrapolating from World Bank data to derive estimates of global figures, the study concluded that, in the early 1990s, the construction of 300 high dams (above 15 metres) each year had displaced four million people. Urban and transportation infrastructure projects accounted for six million more displaced each year. Ongoing industrialization, electrification and urbanization processes are likely to increase, rather than reduce, the number of programmes causing involuntary population displacement. Causes or categories of development-induced displacement include the following: water supply (dams, reservoirs, irrigation); urban infrastructure; transportation (roads, highway, canals); energy (mining, power plants, oil exploration and extraction, pipelines); agriculture expansion; parks and forest reserves; and population redistribution schemes.

The human –agents of displacement have caused displacement of millions of people across the globe, India being no exception to the mad rush.

The following will show how people are displaced due to different development project taking place in India.

Mega Dams

Agriculture is the mainstay of the people in rural areas where 75% of the one billion population of India live. Where there is skewed distribution of land (20% owning 70% of the land), almost all are dependent on agriculture: either as main or subsidiary occupation. There are indications that irrigation systems were initiated as far back as 3000 BC. Over 20,000 reservoirs were built between 500 AD and 1500 AD in one state alone. The late 19th and early 20th centuries saw some large dams coming into being. Some were constructed by British and others in the Princely states.

Conclusions based on survey of 54 projects were that the dams displaced 33 million people. Another study of 140 dams, large and small estimated that they Large dams are defined as dams above the height of 15 meters; but if some other factors are present then dams 10-15 meters in height could be considered large. In India, there are over 2,342 dams which have a height of 15 metres and 1,949 dams 10-15 metres high, marking a total of 4, 291 dams (India 1994). There various estimates on the number of people displaced by construction of dams. The figures have varied from 21-40 million displaced 4.3 billion people. A World Bank review said that, on an average, each new dam displaces 13,000 people. These would mean that about 3,000 large dams in India displaced nearly 40 millions. A dam completed in 1947 (Bhakra Nangal) had displaced about 2,2000 families. Up

to 1998, only about 730 families had been rehabilitated. The liberal estimates are that about 20-25% have been rehabilitated.¹⁶

Mining

The problem of Mining- Induced Displacement and Resettlement poses major risks to social sustainability.. Mining displaced 2.55 million people in India between 1950 and 1990. MIDR is accompanied by what displacement call the resettlement effect, defined as the loss of physical and non- physical assets, including homes, communities, productive land, income-earning assets and sources, subsistence, resources, cultural sites, social, social structures, networks and ties, cultural identity and mutual help mechanisms. The effect introduces well – documented risks over and above the loss of land. The loss of land may address only 10-20% of the impoverishment risks known to be associated with involuntary displacement

Industrialization and Urbanization

The urbanization of the fringe areas of growing cities all around the country is causing displacement much larger in intensity than that caused by other industrial or infrastructural projects. The connivance of land mafia and politicians facilitates this unnoticed phenomenon which forces the owners, most of them farmers, to sell out ‘voluntarily’ or ‘surrender’ under threats. Governments also declare the

¹⁶ A.P. Barnabas, Development and Displacement: An Appraisal of Policy for Resettlement, the Indian Journal of Social Work, Volume 63, issue 1, January 2002, p. 68.

surrounding green areas as 'urbanisable lands' to be used by municipalities or housing and/or industrial development boards. The unchecked growth of metropolitan cities like Bangalore, Pune or Kanpur or for that matter any city in this country is sufficient illustration. The encroachment in the Vasi-Vihar region of Mumbai, A green hinterland was legalized overnight by declaring 10000 hectares of land therein as urbanizable..The Hyderabad Water Supply Project, which ousted 50,000 people, is among the largest urban displacements on record in the world. According to the 1996 Global Report on Human Settlements prepared by the United Nations Centre for Human Settlements (UNCHS), five of the top thirty –four recent examples of massive evictions worldwide were related to mega-events. "The report suggests that "beaufication" projects immediately prior to international events are one of the most justifications for slum clearance programs.¹⁷

Forest conservation:

Forest conservation, ironically has become one of the major causes that result in displacement particularly of tribal's and their further marginalization and suffering in social, economic and cultural terms. Forests and tribal's have an age old relation –both are interdependent for their survival and can be said as complementary to each other. But in the eyes the environmentalists sitting in an air-condition room, tribal's are the ones who are denigrating the forest in this country and the only way that forests can be saved is to oust the tribal's from the

¹⁷ U.N.Centre for Human Settlements, *An Urbanizing World Global Report on Human Settlements*, 1996, p.245

vicinity of the forest. And for those who does hath the power (the government) it is not difficult to notify any forest as protected or reserved forest restricting human activity inside such forests and warranting the removal of the aboriginals. Thereby causing displacement of those who depend totally on the forest for their lively hood.

Modern Mega-Infrastructures:

Airports, Nuclear Power Stations, Special Economic Zones, and other mega projects like National Quadrangle and proposed River Linking, are conceived and in fact built on the lands of poor farmers and tribal's who are politically weak and cannot safeguard their own interests. No airport in the country was built without displacing families e.g. the Nedumbassy International Airport, at Cochin, Kerala, built with an estimate Rs 230 corers was prepared in 1992, an area of 526.32 hectares of land was acquired for the project by displacing about 1200 families Further, the Mangalore airport modification project that acquired 175 acres of land displaced 207 families.

The companies then coercively evict the land owners only to make them laborers in the new industry. The acquisition of 25000 acres of land in Haryana, 35,000 acres in Bombay, and the recent 18,894.45 crore worth investment in SEZ for IT and IT enable services in Bangalore, by giant industrial houses are good illustration. The eviction of about 75000 people on the National Highway No.5 between Gundugolano in West Godavari district of Andhra Pradesh for widening

the road in an instant where the NHRC was approached to interfere, as there was no talk of compensation, alternative house sites, employment or any measures which had been assured under various laws and guidance.

The land acquisition by the West Bengal Government to facilitate the TATA Motors dream project for manufacturing small cars is going to affect five villages on whose farmland the TATA factory will be built viz. The 1000 acres of agricultural land being acquired in Singur is only a fraction of the overall plan of acquiring 43,028 acres or more in West Bengal Under pressure, because of a massive public outcry, the government agreed to raise the compensation amount to 52% of the market price of land, and to convince land owners to sell their land, announced special incentives to those who would do so on their own their own.¹⁸ The massacre in Nandigram just being another facet of this so called development which is discussed in sixth chapter.

It is incumbent upon the operators of the wheel of development to seek the participation of those displaced or to be displaced. It can be done directly or through their formal and informal leaders, representatives and even the Non-Governmental Organizations. We have already waited too long to challenge the development model that is biased to certain perceptions and class of society;

¹⁸ No matter what the government claims and the media propagates, records show that less than 27% of the 11,000-odd land owners have till date voluntarily given up by their land. Those who have acquiesced are either absentees or have done so out of fear or coercion. Meanwhile the Land and Land Revenue Department, invoking the colonial Land Acquisition Act of 1894(suitably amended in 1984), have taken over 997 acres required for the TATA factory. This land has been declared khas (vested) and is being sold to the West Bengal Industrial Infrastructure Development Corporation for handing over the newly-formed company, Tata Motors.

alternatives for power generation, irrigation .means of production, etc, that do not exert such an enormous toll on human suffering, are now available and which might well be followed to reduce forced displacement.¹⁹

The researcher agrees with the above author where he cited in his footnote 76. p, 45 with the following:

“Development –Induced displacement is the forcing of communities and individuals out of their homes, often also their homelands, for the ostensible purpose of social of social and human development, but which is actually nothing more than “economic growth” and the benefits accruing from such almost never if ever percolate down to the one’s that bear its costs. It is a sub-set of force migration.”

Impact of development projects

Despite the enormous diversity of project-specific situations, the empirical findings of many resettlement researchers reveal the presence of several basic regularities. Clear patterns emerge from his evidence. Comparing his empirical findings eight common processes and constructed a general risk pattern. The convergent and cumulative effect of these processes is the rapid onset of impoverishment [Cernea 1990, 1995b] before displacement actually begins, these processes are only impending social and economic risks. But if appropriate

¹⁹ Supra n 8 , p.39

counteraction is not initiated, these potential hazards convert into actual impoverishment disasters.

These risks threaten not only the people displaced, they are risks incurred by the local (regional) economy as well, to which they may inflict major loss and disruption. Depending on local conditions, the intensity of individual risk varies, But pattern identification makes it possible to predict that such risks are typical and are likely to emerge in future comparable displacement situations.

A concise each fundamental risk follows, illustrated by some empirical evidence;

Landlessness:

Expropriation of land removes the main foundation upon which people's productive systems, commercial activities and livelihoods are constructed. This is the principal form of de-capitalization and pauperization of displaced people, as they lose both natural and man-made capital. Unless the land basis of people's productive systems is reconstructed elsewhere, or replaced with steady income-generating employment, landlessness sets in and the affected families become impoverished. From India's Rengali project, Ota, 1996 reports that the percentage of landless families after relocation more than doubled- from 4.6 percent to 10.9 percent while Reddy, 1997 documents that in the coal mining displacements around Singrauli, the proportion of landless people skyrocketed from 20% before displacement to 72 percent after.

Joblessness:

The risk of losing wage employment is very high both in urban and rural displacements for those employed in enterprises, services or agriculture. Yet, creating new jobs is difficult and requires substantial investment. Unemployment or underemployment among re-settlers often endures long after physical relocation has been completed.

The previously employed may lose in three ways: In urban areas, workers lose jobs in industry and services. In rural areas, landless labourers lose access to work on land owned by others and also lose the use of assets under common property regimes. Self-employed small producers—craftsmen shopkeepers, and others—lose their small business. In the Madagascar Tana Plain project in 1993, for example, those displaced who operated private small enterprises—workshops, food-stalls, and artisan units—were not entitled to compensation and lost their customers. A survey carried out among tribal households in five villages at Talcher, Orissa found an increase in unemployment from 9 percent to 43.6 percent, accompanied by a large shift from primary to tertiary occupations. Reported reductions in levels of earnings were between 50 percent and 80 percent among tribes and scheduled castes. Joblessness among resettlers often surfaces after a time delay, rather than immediately, because in the short run resettlers may receive employment in project-related jobs. Such employment, however, is short lived and not sustainable..

Homelessness:

Loss of shelter needs to be only temporary for many resettlers; but for some homelessness or worsening in their housing standards remains a lingering condition. In a broader cultural sense, loss of families individual home and the loss of a group's cultural space tend to result in a eliminations and status-deprivation Resettlers often cannot incur the labor and financial costs of rebuilding a house quickly and compelled to move into 'temporary' shelters. These resemble the condition of refugee camps, set up overnight. The 'emergency housing centers' and 'temporary relocation camps' used by some projects as a 'temporary' backup e.g. the Upper Krishna dam and irrigation project in Karnataka, India often make homelessness chronic rather than temporary. In the Kukadi –Krishna Irrigation sub-projects in Maharashtra, India, 59 percent of the displaced families were found living in temporary/ semi-permanent houses 10-15 years after their relocation. Yet resettlers' risk of homelessness –related closely to joblessness, marginalization, and morbidity-can certainly be avoided by adequate project financing and timely preparation.

Marginalization:

Marginalization occurs when families lose economic power and spiral on a 'downward mobility' path. Middle-income farm households do not become small landlords; small shopkeepers and craftsmen downsize and slip below poverty thresholds. Many individuals cannot use their earlier acquired skills at the new location; human capital is lost or rendered inactive or obsolete. Economic

marginalization is often accompanied social and psychological marginalization expressed in a drop in social status, in resettlers' self-image, and they are often perceived by host communities as a socially degrading stigma. The facets of marginalization are multiple. The cultural status of displaces is belittled when they go to new relocation areas, where they are regarded as 'strangers' and denied opportunities and entitlements. Psychological marginalization and its consequences are typically overlooked in resettlement planning. Yet cultural and behavioral impairments, anxiety and decline in self-esteem have been widely reported from many years.

Food insecurity:

Forced uprooting increases the risk that people will fall into temporary or chronic undernourishment, defined as calorie- protein intake levels below the minimum necessary for normal growth and work. Food insecurity and undernourishment are both symptoms and results of inadequate resettlement. During physical relocation, sudden drops in food crop availability and incomes are predictable. Subsequently, as rebuilding regular food production capacity at the relocation site may take years, hunger or undernourishment tends to become a lingering long term effect. Green provides an extensive overview of the food related risks for both refugees and resettlers, notwithstanding significant differences between them. In turn Hakim documents these risks and consequences in her insightful analysis of the resettlements of Gujarat's vasava tribe, which was compelled to shift from food crops to cash crops. The adverse effects of the Mnantali Dam and water-regime

management in Senegal were described precisely with the concept “development-induced food insecurity”.

Increased Morbidity and Mortality

Massive population displacement threatens to cause serious declines in health levels. Displacement –induced social stress and psychological trauma are sometimes accompanied by the outbreak of relocation-related illness, particularly parasitic and vector-borne diseases, such as malaria and schistosomiasis. Unsafe water supply and impoverish sewage systems increase vulnerability to epidemics and chronic diarrhea, dysentery, etc. The weakest segments of the demographic spectrum- infants, children and the elderly are affected most strongly. Empirical research shows that displaced people experience higher levels of exposure and vulnerability to illness and severe disease than they did prior to displacement. Overall, in the absence of preventive health measures, direct and secondary effects of dislocation include psychosomatic diseases, disease of poor hygiene, and parasitic and vector-borne diseases caused by unsafe and insufficient water supplies and unsanitary waste systems. In Sri Lanka, an outbreak of gastroenteritis occurred along the Victoria dam reservoir and in Mahaweli’s Systems C resettlement site the incidence of malaria rose 8.9 percent to 15.6 percent. In the Akosombo area in Ghana, the prevalence of schistosomiasis rose from 1.8 percent prior to 75 percent among adult lake-side dwellers and close to 100 percent among their children, within a few years after impoundment in the 1960s. The interaction between two processes included in the risk model-

decrease in health and loss of shelter –has been long established empirically. Research has documented that more vulnerable groups, such as aged, suffer increased morbidity and mortality rates as an effect of losing their prior homes. Exposure to the ‘social stress’ inherent in forced relocation was highlighted as having differential consequences on mental health across age, gender and marital and occupational status.

Loss of access to Common Property

For the poor people, particularly for the landless and asset less, loss of access to the common property assets that belonged to relocated communities (pastures, forested lands, water bodies, burial grounds, quarries, etc.) results in significant deterioration in income and livelihood levels. Typically, losses of common property assets are not compensated by governments. These losses are compoundable by loss of access to some public services, such as school, losses that can be grouped within this category of risks. Kibreab offers a documented conceptual analysis of the linkages between Common Property Resources, property and impoverishment risks. Given typical power structures and the vulnerability of the displaced, Kibreab demonstrates that the loss of CPRs has ravaging long-term consequences on their livelihoods and social standing. Loss of these resources leaves a big gap. For example, in semi-arid regions of India, between 91 and 100 percent of firewood, between 66 and 89 percent of domestic fuel, and between 69 and 80 percent of poor households’ grazing needs are supplied by lands held under a common property by any of the projects. In

Rengali dam area in India, prior to displacement all families had access to common grazing lands and burial grounds; after relocation, only 23.7 percent and 17.5 percent, respectively had such access. When displaced people's access to resources under common property regimes is not protected, they tend either to encroach on reserved forests or to increase the pressure on the common property resources of the host area's population. This becomes in itself a new cause of both social conflict and further environmental degradation.

Social Disarticulation

Forced displacement tears apart the existing social fabric. It disperses and fragments communities, dismantles patterns social organization and interpersonal ties; kinship groups become scattered as well. Life-sustaining informal networks of reciprocal help, local voluntary associations, and self-organized mutual service are disrupted. This is a net loss of valuable 'social capital', that compounds the loss of natural, physical, and human capital lost through social disarticulations typically unperceived and unperceived and uncompensated by the programmes causing it, and this real loss has long-term consequences. Dismantled social networks that once mobilized people to act around common interests and to meet their most pressing needs are difficult to rebuild. A detailed sociological study by Behura and Nayak, 1993 on a dam project in India found various manifestations of social destruction within the kinship system, such as the loosening of intimate bonds, growing alienation and anomie, the weakening of control on interpersonal behavior, and lower cohesion in family structures. Marriages were deferred

because dowries, feasts, and gifts became unaffordable. Resettlers' relationships with non-displaced kinsmen were eroded and interaction between individual families was reduced. As a result, participation in group activities decreased; post-harvest communal feasts and pilgrimages were discontinued; and common burial grounds became shapeless and disordered. A monograph on the Hirakud dam in India found that displaced households whose "economic status had been completely shattered as a result of displacement" did not become 'properly integrated' in host villages for many years after relocation. "The people may physically persist, but the community that was- in no more", because it is spatial, temporal, and cultural determinants are gone.

Historians of migration have also concluded convergently that the costs of population relocation generally go much beyond "simply the financial costs": among the "heaviest costs of all are the severing of personalities in familiar surroundings, to face new economic and social uncertainties in a strange land". Poverty becomes not just an absence of income and assets –such as land, shelter, food; the loss of reciprocity networks directly worsens the corollaries of poverty-powerlessness, dependency, and vulnerability.²⁰

Indigenous people and other minorities disproportionately affected

Studies on the social impact of development projects suggest that indigenous people and ethnic minorities are disproportionately affected. Coming from

²⁰ Michael. M. Cernea, Risks, safeguards and Reconstruction: A Model for Population Displacement and Resettlement, vol. 35, issue, 41 October 7, 2000, p. 3663

politically marginalized and disadvantaged strata of society, these groups often end up neglected and impoverished. In India, the Adivasi or tribal people, although only representing eight percent of the total population, make up 40-50 percent of the displaced. The livelihood of an estimated 35,000 indigenous Ibaloi people is threatened by the construction of the San Roque Dam in the Philippines. Mon, Karen and Tavoyans in Burma are probably among the worst off, displaced by large infrastructure projects and subject to forced labour and abuses by the military²¹

²¹ [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/C753862FA2CF8B7CC1257115004752ED/\\$file/Protection%20from%20module%20handout%20development%20displacement.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/C753862FA2CF8B7CC1257115004752ED/$file/Protection%20from%20module%20handout%20development%20displacement.pdf), accessed on 17/04/09

CHAPTER III

INTERNATIONAL PROTECTION OF IDPs

The weak legal framework for the protection and assistance of IDPs

The weak legal framework for the protection and assistance of IDPs there is no lack of knowledge about what to do to protect and assist IDPs, rather the problems are either a lack of will on the part of the state concerned to attempt to provide such protection and assistance or a lack of commitment on the part of the international community to support or replace the host state in these roles. In cases where a state's policies and actions are themselves the primary cause of the displacement of large numbers of people within its own borders, IDPs find themselves falling outside categories for which there are clearly defined lines of responsibility.

In 1998, the UN agreed Guiding Principles on Internal Displacement, which lay out the responsibilities of states before displacement – that is, to prevent displacement – during and after displacement. The Guiding Principles have been endorsed by the UN General Assembly, the African Commission on Human and People's Rights (ACHPR) and by the signatories to the 2006 Pact on Security, Stability and Development in the Great Lakes Region, which include Sudan, DRC and Uganda. The Guiding Principles, however, are non-binding and routinely ignored. As Bahame Tom Nyanduga, Special Rapporteur on Refugees, IDPs and Asylum Seekers in Africa for the ACHPR has stated, “the absence of a binding

international legal regime on internal displacement is a grave lacuna in international law”.

The existence of legal standards and obligations on states and the wider international community is no guarantee that adequate protection and assistance will be forthcoming, but for IDPs in a state unable to help or without any intention of helping, the prospects are much more grim. The primary cause of the weak legal framework for IDPs is that the rights of individuals have ultimately been subordinated to the principles of state sovereignty and non-intervention. That the ability to provide protection and assistance is “constrained by the politics of sovereignty” is acknowledged as “ludicrous” by the British Minister for International Development, in evidence to a Parliamentary Committee there is now a growing consensus that when a state fails to protect its civilians from harm, the international community has a responsibility – and perhaps even an obligation – to ensure protection²².

The ineffective organizational responses to the plight of IDPs

A designated UN agency – the High Commission for Refugees has the responsibility for monitoring and coordinating aid and support to refugees. No such agency exists for IDPs. Responsibility is shared among several agencies. An attempt at coordinating the input of the various UN agencies through an Internal Displacement Unit within the UN's Office for the Coordination of Humanitarian

²² <http://www.nationmaster.com/encyclopedia/Internally-displaced-person>, accessed on 15/01/09

Affairs served only to repeat what an independent evaluation identified as “the systemic failures of the UN in dealing with internal displacement.[Including] lack of accountability, lack of responsibility, lack of collegiality among agencies, and lack of commitment to the collaborative approach.

“[i]n the absence of a single organization responsible for the world’s estimated 25m IDPs, and given the difficulties of taking collective responsibility for them through a collaborative approach, what other options are available? If no single agency holds specific responsibility, it follows that no one has accountability either. Yet collective responsibility often leads to lack of accountability, confusion, duplication and inefficiency.” In response to these problems, the Inter-Agency Standing Committee, the primary OCHA mechanism for coordinating humanitarian relief among UN and non-UN agencies, proposed a new division of responsibilities with a view to better delivering protection and assistance.²³

Role of International Funding Organization

Large funding organizations like the World Bank which finance mega- projects mainly in the public sector, are not directly concerned with the issue of displacement, they are made accountable by social activities. For them, it is the World Bank which has been playing a key role in promoting the present model of development in third world countries. It therefore cannot distance itself from its major human problem. The role of the World Bank came under scrutiny in the

²³ UNHCR: Expanding its role with IDPs, Roberta Cohen, Forced Migration Review 23, May 2005.

context of its funding large dams like the Sardar Sarovar Project. The promotion by the World Bank of the western model of development within a capitalistic framework should be related to the policies and political economies of the

host countries, and is not under present focus. In response to continued protests by social activities, the World Bank has come out with its own R and R policy document. It not only stresses adequate R and R of the affected persons but also seeks their partnership. In fact, its scope is not understood by the concerned projects. Only a few social activities have demanded such a partnership of a PAPs in the form of sharing a small amount royalty per tone of extracted minerals, in the case of mining projects or offering the capital of shares of the projects to PAPs: A few positive aspects of the policy of the World Bank on R and R are; making R and R cost in-built cost of the total project costs; reducing the incidence of displacement to the extent possible; making an environmental (and social) impact assessment of the project; restoring common property resources; land compensation to reflect market cost; exploring 'land for land' if feasible; focusing on project affected persons ; those indirectly affected also to be rehabilitated; and implementing an effective R and R with the joint partnership of PAPs, NGOs and social development experts in the area. Though many of these components are incorporated by World Bank-funded projects like the NTPC and National Coal Fields, when it comes to execution of R and R programmes, the results are disappointing.

The issue of rehabilitation of relocated persons in case of urban infrastructure projects is more complicated. It has been observed in the “Institutional Strengthening Project’²⁴ for a good R and R under the Mumbai Urban Transportation Project II. It was found unconvincing the World Bank’s desire to create a competent private organization to deal with the issue of rehabilitation. This is mainly because many components of R and R have implications for the government’s key role in the process. So far, the World Bank has not made up its mind to fund this project.²⁵

Role of Social Scientists and NGOs

Scholars like Cernea and Kothari have discussed the importance of social research in the area of development and displacement. While emphasis of Kothari is more on examining the issue in the context of wider political economy of the country, Cernea stresses more on the role expected from social scientists “to do much more to equip governments and public organizations with adequate practical and policy advice”.

According to Cernea, “Involuntary population displacement and resettlement are frequent enough, big enough, complex and consequential enough, to merit the full mobilization of the social science conceptual and operational tools available to address it”. He identifies three –stage process to be taken up social scientists- in

²⁴ TCS and TISS 1997..

²⁵ R.N Sharma, Involuntary Displacement: A Few Encounters, Economic and Political Weekly, Vol.38, issue 09, March 1,2003, p911

research or serving government bodies as development planners. These are: to understand macro processes and local factors related to the development process; to formulate and recommend the basic principles and normative content of relevant policy; and to translate knowledge and principles into a vocabulary of procedures (or planning, reviewing, and supervising and other process components) usable by governments and other relevant organizations.

In contrast, Kothari feels the need for social scientists and NGOs to scrutinize the desirability and justifiability of the project development intervention itself. During the implementation phase, the need is felt to examine issues like human rights violations during appropriation of assets, disruption of nomadic routes crucial to survival of nomadic communities and alienating people from their basic assets of livelihood. Kothari also seeks the role of social scientists in post-resettlement monitoring and evaluation in order to assess the trauma of displacement. The role of NGO in pre-and post displacement periods deserves one or two observations. Leading NGOs concentrate more on questioning the legitimacy of the specific industrial or infrastructure project. This gives an edge to their ideological fervour. Once they take a stand against a project, they fight shy of entering into the task of implementing a good R and R – even if such opportunity is proposed by the project. The result is that there is an impressive record of NGOs campaigning against displacement in context of present model of development. However, no well-established NGOs come forward to associate with R and R. Due to this,

inexperienced local NGOs try to implement R and R, or the fate of PAPs is left to the project officials. The end result goes against the interest of PAPs.²⁶

International Protections of IDPs

. The protection of internally displaced persons raises several issues. First, it is not clear what protection for internally displaced persons involves: broad interpretations have been adopted and have included at least protection against displacement and protection for

those who are displaced. These two aspects were indentified in the Analytical Report on internally displaced persons which concluded with the need for new human rights standards. Secondly, protection of internally displaced persons is a sensitive issue for reasons explained earlier: it has been feared that strengthening protection for internally displaced persons, i.e. in-country protection, would serve as a pretext for denying the possibility of protection abroad, ie. asylum.

An overview of the law applicable to situations of internal displacement

One must first identify the needs of the internally displaced in order to determine how the law responds to these needs: effective legal protection requires the existence of legal norms and their application. A gap in protection has been identified with regard to internally displaced persons, and in order to bridge that gap, one must identify some norms of conduct and ensure their observance. Most

²⁶ *Supra* n 25, p 911

Internally Displaced Persons are found in situations of armed conflict, hence the importance of international humanitarian law which regulates the conduct of hostilities. Internal displacement also occurs in times of peace (e.g. natural disasters) or internal strife during which humanitarian law is not applicable, whereas human rights norms remain applicable in almost all situations.²⁷

Protection of internally displaced persons 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 to here are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention Against Discrimination Against Women, and the Convention Against the Rights of the Child. Many organs, both international and regional, have been set up to implement human rights standards. Human Rights law 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.

²⁷ *Supra* n 14. p 39.

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. 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. 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, finally, the need to self-reliance.

The emphasis is put not only on protection but also on assistance to the internally displaced. Refugees have similar needs, and the 1951 Convention covers most of these issues as far as they are concerned. It was deemed necessary to analyze in depth of 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.

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 analyzing the legal provisions of human rights law which apply to internally

displaced persons, one seeks to demonstrate that states have duties towards this population, negative obligations (not to displace them, not to inflict inhuman treatment upon them, etc). 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 any displaced like the rest of the civilian population, but it should also provide extra protection for these vulnerable populations.²⁸

Human rights Law and development-induced displacement

In 1986, the UN General Assembly adopted a Declaration on the Right to Development, which states that "every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized." The heart of the problem is that people displaced by development projects are generally seen as a necessary sacrifice on the road to development. The dominant perspective is thus that the positive aspects of development projects, the public interest, outweigh the negative ones, the displacement or sacrifice of a few.²⁹

²⁸ *supra* n. 14, p 44

²⁹ [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/C753862FA2CF8B7CC1257115004752ED/\\$file/Protection%20from%20module%20handout%20development%20displacement.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/C753862FA2CF8B7CC1257115004752ED/$file/Protection%20from%20module%20handout%20development%20displacement.pdf), accessed on 30/01/09

Protection and Assistance

The problem of protecting and assisting IDPs is not a new issue. In international law it is the responsibility of the government concerned to provide assistance and protection for the IDPs in their country. However, as many of the displaced are a result of civil conflict and violence or where the authority of the central state is in doubt, there is no local authority willing to provide assistance and protection. It has been estimated that some 5 million IDPs in 11 countries are "without any significant humanitarian assistance from their governments." Unlike the case of refugees, there is no international humanitarian institution which has the overall responsibility of protecting and assisting the refugees as well as the internally displaced. A number of organizations have stepped into the breach in specific circumstances. They are:

ICRC: Protection and Assistance

In 2000, the ICRC produced its first policy document reviewing (briefly its activities) undertaken on behalf of the internally displaced. The ICRC remains pragmatic in its approach. It acknowledges that there is a wide range of contexts in which internal displacement takes place and that it cannot adopt a single strategy. One main feature of the ICRC's interventions lies in the fact that it does not draw any distinction between assistance and protection. When dealing with internally displaced persons, the ICRC believes that it has several comparative advantages over UNHCR. The most important one is probably that it 'bases its work for internally displaced persons on binding treaties, unlike UNHCR, whose

work for them is essentially based on the Guiding Principles on Internal Displacement,” The ICRC also argues that it can intervene (more) quickly because it does not need the UN Secretary- General or General-Assembly’s Authorization to do so.” Encouraging the ICRC to assume primary responsibility for the internally displaced appears to be an attractive proposition. There is a clear legal basis for operations undertaken on their behalf. Secondly, the ICRC has extensive experience and expertise in field operations conducted in the midst of armed conflict. Thirdly, the ICRC is independent of states which cannot manipulate the organization into acting according to their desires to contain refugee flows. Finally, the ICRC does not have the same protection dilemmas as UNHCR in terms of the tension between focusing on refugees and internally displaced persons. All of these points suggest that the ICRC is the ideal candidate and should continue to assert a more active role with the internally displaced.³⁰

The World Food Programme

The World Food Programme concentrate on food distribution, rehabilitation, recovery and development programmes. Although priority was previously given to development assistance, emergency relief now accounts for 70% of the work of the agency. As the WFP is the single largest provider of food aid to the internally displaced, it plays a crucial role in relation to this group. In 1998, the WFP provided assistance to 19 million internally displaced persons who have become the largest category of beneficiaries in terms of numbers. The WFP has

³⁰ *Supra* n. 14, p.96.

conducted an extensive review of its activities of providing food aid to the internally displaced. On the basis of this review, the agency has attempted to define a 'WFP policy and strategy framework for situations of displacement and internally displaced persons.' The WFP intends to strengthen its advocacy of IDPs right, 'including entitlement and property rights, especially for women.'³¹

International Organization for Migration

Established in 1951, IOM with 118 member's states and a further 20 holding observers status and offices in over 100 countries is dedicated to promoting human and orderly migration for the benefit of all. Although it is often associated with UN agencies, the IOM is not part of the UN system: it is an intergovernmental organization, whose objective is the orderly migration of persons in need of migration assistance. Up to 1996, the IOM had become involved with internally displaced persons in more than a dozen countries. In its policy documents, the IOM emphasizes the fact that it is only organization with a specific mandate with regard to internally displaced persons. Its Constitution explicitly mentions activities in favour of displaced³²

World Health Organization

In addition to food, shelter and transportation needs, the internally displaced also have vital health needs, since displacement increases the risk of illness and death. Their access health care is often restricted or even excluded, by the parties to a

³¹ *Ibid* p. 96

³² *Ibid* p.97

conflict. The WHO thereafter plays a crucial role with regard to the internally displaced, but it has been slow in recognizing such a role. It was only the occasion of the IDP debate at the Humanitarian Affairs segment of ECOSOC in 2000 that agency explicitly formulated for the first time principles for action on behalf of the Internally Displaced. This gave the impression that the WHO compelled to engage with issue of internal displacement simply because every other aid agency was already involved in the debate. The WHO paper which was presented to ECOSOC restates that the agency's main role in emergency situations is to make rapid health assessments and provide guidelines and advice on how to respond to specific health needs. One of the limits of the WHO's action on behalf of the internally displaced persons is that its mandate is mainly 'to assist its primary constituent, the member state.' However Governments are often unable and /or unwilling to provide health care to the internally displaced. Further involvement with the internally displaced may lead the WHO to undertake more work with NGOs and UN aid agencies.³³

Dealing with vulnerable Groups: United Nations International Emergency Children's Fund

More than half of the internally displaced around the world are children. They are covered by UNICEF's mandate. UNICEF is a development agency, but has been increasingly involved work which represents a quarter of its overall activities. These activities include the provision of basic health care, nutrition, water and

³³ *Supra*.n 14, p 98

sanitation, but also basic education programmes. When internal displacement became an issue of international concern, UNICEF was rather reluctant to recognize its importance. Like the ICRC, UNICEF took the position that internally displaced persons should not constitute a special category of persons in need, because this would create discrimination against those not displaced. This position has since been modified, and UNICEF has now developed a number of policies and programmes for the internally displaced (for a description of these policies and programmes), as it used to be criticized for focusing on assistance activities and overlooking protection issues. UNICEF has reacted by shifting the emphasis from assistance to advocacy using the Convention on the Rights of the Child, e.g. direct intervention with the governments, regular reporting on situations of internal displacement, making representations to donors. More emphasis has also been put on protection activities which are defined as protecting children from physical and psycho-social violence, preserving their cultural identity and responding to their basic needs. More recently, UNICEF has been at the forefront of human rights issues by developing 'a right based approach to programming.'

A number of initiatives have been undertaken by UNICEF to raise awareness of IDP issues within the agency and to define its own IDP policy. UNICEF has now become one of the most active agencies in the field of internal displacement. In the late 1990s, UNICEF may have decided to take the lead in this area to fill a gap left by UNHCR. The agency considers that, in contrast with UNHCR, involment

with these populations is an integral part of its mandate, and such involvement is also perceived as less controversial than for UNHCR. In addition, UNICEF is engaged in both emergency and development work, which could contribute to ensuring a continuum between these two phases. However, it clearly does not have the mandate to assume overall responsibility for all internally displaced person, but only for internally displaced women and children.³⁴

UNHCR

The **UNHCR** was mandated by General Assembly Resolution 428 (V) of 14 December 1950 to "lead and coordinate international action for the worldwide protection of refugees and the resolution of refugee problems....guided by the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol "The UNHCR has traditionally argued that it does not have a "general competence for IDPs" even though at least since 1972 it had relief and rehabilitation programs for those displaced within a country. However, in cases where there is a specific request by the UN Secretary General and with the consent of the State concerned it has been willing to respond by assisting IDPs in a given instance. In 2005 it was helping some 5.6 million IDPs (out of over 25 million), but only about 1.1 million in Africa. In 2005, the UNHCR signed an agreement with other humanitarian agencies. "Under this agreement, UNHCR will assume the lead responsibility for protection, emergency shelter and camp management for internally displaced people." Collaborative Approach the current

³⁴ *Supra.* n.14 ,p .99

system which is often referred to as the collaborative approach, shares the responsibility for protecting and assisting IDPs among the UN agencies, i.e. UNHCRF, WFP, UNDP, Office of the High Commissioner for Human Rights, the inter-governmental organization IOM, the ICRC and International NGOs. Coordination is the responsibility of the UN Emergency Relief Coordinator and the Humanitarian Coordinator in the country concerned. They are assisted by the Inter-Agency Displacement Division which was created in 2004 and is housed in the UN Office for the Coordination of Humanitarian Affairs.³⁵

Nations Office for the Coordination of Humanitarian Affairs

In 1990s the UNHCR seem prepared to increase its involvement on behalf of the IDPs, significantly, subject to certain criteria. The UN High Commissioner for Refugees, Sadako Ogota, indicated that her agency did not have the capacity to assume worldwide responsibility. The only option consisted of a collaborative approach among the different agencies, coordinated by a central mechanism. This option was preferred by the international community, also because it acted as a corrective measure to the observation, made by then Secretary General, that the protection and assistance to IDPs is humanitarian issue that has been left to “fall in the gaps of existing mandates of agencies”. Thus, the Secretary –General’s UN Reform programme assigned the Emergency Relief Coordinator to head the UN Office of the Coordination of Humanitarian Affairs and with the responsibility of ensuring protection and assistance for the IDPs. The OCHA seeks strengthen the

³⁵ http://en.wikipedia.org/wiki/Internally_displaced_person, accessed on 4/04/09

coordination of the disaster and humanitarian relief efforts of the international community, in particular the UN system, especially, through establishment of an exclusive unit for IDP coordination within OCHA, headed by a senior official and supported by staff seconded by key UN agencies and NGOs. The major three roles of the office are developing humanitarian policy, acting as an advocate for humanitarian concerns, and coordinating the humanitarian response to both complex emergencies (conflicts) and natural disasters.

OCHA created an Internal Displacement Unit in 2002 and has made progress in ensuring that the needs of IDPs are addressed. It conducts workshops and training sessions to promote awareness of IDP issues and support them in the field. The IDP policy of the government of Indonesia is a result of the sincere efforts by OCHA in this regard³⁶.

International Law

Unlike the case of refugees, there is no international treaty which applies specifically to IDPs. Recognizing the gap, the UN Secretary-General, Boutros-Ghali appointed Francis Deng in 1992 as his representative for internally displaced persons. Besides acting as an advocate for IDPs, Deng set out in 1994, at the request of the UN General Assembly to examine and bring together existing international laws which relating to the protection of IDPs. The result of this work

³⁶ Supra n 8 p. 56, see also *supra* n. 14, P 103

was the document, *Guiding Principles on Internal Displacement*. The Guiding Principles lay out the responsibilities of states before displacement – that is, to prevent displacement – during and after displacement. Principles.

The UN Guiding Principles on Internally Displaced

Though the existing law provided for substantial coverage for the internally displaced, there remain significant areas in which it fails to provide an adequate basis for their protection and assistance. Thus the UN Commission on Human Rights and General Assembly requested the special representative (Francis M. Deng) to prepare a normative framework for the IDPs, which finally was prepared and submitted to the Commission in 1998. Deng believed that “the Guiding Principles should provide valuable practical guidance to governments, other competent authorities, intergovernmental organizations and NGOs in their work with internally displaced persons”.

The Principles defined, “Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State-border.”

It also, *inter-alia*, provided for the following broad guidelines:

The principles are in support with and consistent with international human rights and humanitarian law; The Principles are universally applicable; Principles 5 to 9 offer for the persons from involuntary displacement; Consultation with the affected parties ; Protection of the Rights of the Indigenous peoples and other special populations; Family Rights Economic Rights and Social Rights; Civil Political and other similar rights; Principles 24-27 lay down the responsibilities of national authorities and International organizations in providing humanitarian assistance to IDPs; Principles 28-30 call, resettlement and reintegration as durable solution for IDPs.

The Principles have strengthened and complemented the protection of displaced persons by interpreting and spelling out what existing norms mean for IDPs. By using the most IDP relevant provisions of both human rights and humanitarian law certain protection needs have been better met the Principles than if we were to use the isolated instruments separately.³⁷

The London Declaration:

A concerted effort of eight years by the International Committee on Internally Displaced Persons culminated in the preparation and finalization of the Draft Declaration of International Law Principles on Internally Displaced Persons. The Declaration was adopted by the International Law Association at its 69th Conference held in London. The Declaration with eighteen articles enumerates

³⁷ *Supra* n 8, P 51.

the rights and obligations of the nation states, *de facto* authorities, national and international organizations concerning IDPs.

Unlike the UN Guiding Principles which provides for the treatment and needs of the IDPs, the Declaration focuses on the status of the IDPs under International Law in context with other similarly situated persons. Besides it also provide for establishing safe area for IDPs, institutional arrangement for their protection and defines essential role of the UN Security Council in situations of internal displacements amounting to a threat to international peace and security. And keeping in mind the blurring theoretical and practical distinction between refugees and IDPs, the declaration assigned the IDPs a unique status of '*de facto refugees*', justifying a special protection regime for them.

The Declaration for the first time expressly recognized the displacement caused by large scale development projects, and directly related the conditions of the IDPs to violations of fundamental human rights, while casting a duty upon both state and non-state actors '*de facto authorities*' those are in control of the affairs.³⁸

³⁸ *Supra*.8, p 53

CHAPTER-IV

DISPLACEMENT SCENARIO IN INDIA AND NATIONAL PROTECTION OF IDPS

Links to information on development-induced displacement in India

While the focus of the Global IDP Project is on conflict-induced displacement, development and urban infrastructure projects are the main reasons for involuntary displacement in India. The tribal population has been disproportionately affected: An estimated two per cent of the total Indian population has been displaced by development projects. Of these, 40 percent are tribals although they constitute only 8 percent of the total population. During the last fifty years, some 3,300 big dams have been constructed in India and another 1,000 are under construction. Many of them have led to large-scale forced eviction of vulnerable groups. The situation of the *adivasis* or tribal people is of special concern as they are reported to constitute between 40 and 50% of the displaced population.

There are no official statistics on the numbers of people displaced by large projects since independence. In 1994, the Government mentioned the figure of 15.5 million internally displaced and acknowledged that some 11.5 million were still awaiting rehabilitation. According to Human Rights Watch, Indigenous peoples, known as Scheduled Tribes or Adivasis, suffer from high rates of displacement. They make up 8 percent of the total population but constitute 55 percent of displaced people. This has had a serious effect on the overall

development of these communities, particularly tribal children. The government continues to use the 1894 Land Acquisition Act to displace indigenous peoples from their lands without sufficient compensation. The resettlement and rehabilitation of the large number of persons displaced by development projects has been far from successful. A major obstacle has been the government's reluctance to adopt a clear "land-for-land" policy. Instead, insufficient cash compensation or poorly designed non-land based projects has left many destitute. At the same time, local social networks and traditional support systems have been destroyed, leaving many development-displaced with no option but to head for the slums of the majorities.

One of the most controversial development projects in India is the Narmada Valley Development Project. It envisages building 3,200 dams that will reconstitute the Narmada and her 419 tributaries into a series of step-reservoirs – an immense staircase of amenable water. Of these, 30 will be major dams, 135 medium and the rest small. The first dam on the Narmada River, the Barge Dam which was completed in 1990, reportedly displaced 114,000 people from 162 villages and today irrigates only 5% of the land it was said to benefit. Most of the evicted got no compensation for lost land and livelihood. The construction of the Sardar Sarovar Reservoir has been the most contested so far. In what was seen as a major victory for the anti-dam activists, the World Bank withdrew from the Narmada project in 1993 and the construction of the Sardar Sarovar Dam was stopped shortly

afterwards. However, an October 2000 ruling by the Indian Supreme Court authorizes renewed construction of the Sardar Sarovar Dam.³⁹

The Resettlement and Rehabilitation Policies

In the 1980s, India witnessed a growing unrest against the dominant approach to development. The State, on its part, is also seen adopting some fire fighting measures in the form of specific policies and state laws, the present decade has witnessed a slight change in the perception of the government on the issue of project induced displacement. This has resulted in formulation of a few sectoral and state policies as well as draft national policies on resettlement and rehabilitation (henceforth RR) of the project affected people. Most of drafts have convergence at several fronts. Therefore a quick visit of the latest Draft on Resettlement Policy of the Ministry of Rural Development is made here. The Recent Draft of Rural Development addresses most of the criticisms made of the earlier drafts. The Draft National Policy enunciates the following principles.

- A) Displacement should be minimized.
- B) It recognizes that displacement results in “state-induced improvement” and that “no development project can be justified if a section of society is pauperized by it.
- C) Informed consent of those to be affected by it should be mandatory.

³⁹ [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/017EF48C508340A1802570B8005A7175?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/017EF48C508340A1802570B8005A7175?OpenDocument), accessed on 01/01/09

- D) The definition of the DPs/ PAPs goes beyond the landowners to include those who depend for sustenance on land owned by other or on the common property resources (CPR) and also persons whose economy is dependent on the community and people who face dislocation.
- E) The welfare of DPs/PAPs is a precondition of the project and should be prior to dislocation. They should be the first beneficiaries of jobs and other projects benefits.
- F) Land for land is recommended as compensation to all the DPS/PAPs and is mandatory for tribals.

The Policy which merits a mention here is its gender consciousness and its proper understanding of the vulnerability of the tribals and other disadvantaged sections. In the case of women, the policy attempts to give them a proper representation in the planning and implementation RR and in getting of benefits. It treats them on equal footing with men in recognizing their status as an individual and as a member of the family. In case of tribals apart from mandatory requirement of agricultural land, other interests, like the use of CPR and forests resources, protection of their language, culture and rituals are also taken into consideration in the policy. They are provided with minimum benefits in the form of homestead, grants, training and employment so that a life above the poverty line becomes possible. For instance, the policy discourages multiple displacements. It provides that in case of second displacement occurring within a period of 20 years, such families will be entitled for double benefits prescribed under each of the items of

RR package. Similarly, by assuring the land to be allotted to the PAPs to be free from all encumbrances, the policy attempts to give whiff of relief to the PAPs. Comparatively the latest draft National Policy brought by the Ministry of Rural Development appears to be progressive than the earlier drafts. It has incorporated most the suggestions made in the alternative draft prepared by the Indian NGOs⁴⁰.

National Resettlement and Rehabilitation Policy

The Rehabilitation Policy first came up in 1993, when the Rural Development Ministry came up with a draft proposal; ironically, stating in its objects the need for a policy on account of the new economic policy which was expected to fuel the demand for more and hence displacement. In 1994 the draft was revised still denied the displaced rehabilitation as matter of right. In 2004, after nearly two decades of dallying the government finally came up with The National Policy on Rehabilitation and Resettlement of Project Affected. The draft policy incited criticism mainly on the following points; first and foremost being that it was pushed secretly and once again circumvented the issues raised in the draft prepared by civil society groups in 1995; was still riddled with a cash component; the approach was welfare based as opposed to rights based and was bereft of any provisions for tackling second generation problems. Finally in March, 2006, the National Advisory Committee of the government on the proposed policy put up the Draft National Development, Displacement and Rehabilitation Policy, December 2005, on its website. The 2006 draft, which has now been introduced

⁴⁰ *Supra* n 2, p.215.

by the Ministry of Rural Development, however, appears to have discarded the salient features of the draft prepared by the NAC in 2006. NAC draft seems to have been put aside and a new government draft has substituted it, making a mockery of the consultative process.

The policy proposed by the NAC had put the government and industry in quite a bind; it had suggested implementation with a retrospective of the last ten years. It had also demanded that the cost of rehabilitation be integrated into the proposed development project before assessing its economic viability. If the actual costs were to be borne by the project proponents then they would be compelled to apply their minds before making a demand for land. The representatives of industry had gone on record to oppose the cost implications of proposed policy⁴¹

Land Acquisition Act, 1894

The Land acquisition Act 1894 is the primary legislation that provides for a acquisition of land. S.3 (f) defines public purpose to include carrying out any educational, housing, health or slum clearance scheme, the provision of any premises or building for locating a public office, the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities and so on. It includes provisions for compensation (s.11) and provides for recourse to legal remedies (s.18). 'The Land Acquisition Act has been criticized "for considering land only as a commodity generating income.

⁴¹ *Supra.* 5, p.56.

However, when a family is settled on a piece of land not only does it arm its livelihood but also has a whole social network⁴²

The Draft Land Acquisition Bill 1998

This Bill, for the first time, attempts to link land acquisition with resettlement and rehabilitation. The Bill also tries to introduce transparency and accountability by requiring the Collector to conduct a public hearing on the suitability of the proposed site for acquisition and other objections. He is even empowered to recommend the government against acquisition, keeping in mind public disagreement. For instance, for the first time the procedure for the determination of market value is laid down. While computing compensation the draft also takes into consideration the loss of livelihood, profession or business. Another noteworthy feature of the draft is the incorporation of principle of constructive or regulatory taking. Despite some good efforts, the proposed draft amendment appears to be inadequate as the Land Acquisition Act still contains major shortcomings. For instance, the problem created by the definition of “public purpose” has not been sorted out. Moreover the provision, which empowers the government to acquire land for companies, has been left untouched. The Draft also does not embrace the policies underlined in the Draft National Policy on Resettlement. Therefore, it is submitted that whatever has appeared in the form of

⁴² NHRC's Recommendations on Relief and Rehabilitation of Displaced Persons, NHRC, 2008, Published October, 2008, Faridkot House, Copernicus Marg, New Delhi 110001.p.37

the Draft Bill, is still short of the expectation of the PAPs, civil society and critiques of the Act⁴³

Land Acquisition (Amendment) Bill, 2007

The Bill seeks to amend Land Acquisition Act, 1894. Important aspects of the Bill include a wider definition of “public purpose,” provision of social impact assessment where the acquisition involves displacement of certain number of families, creation of the Land Acquisition Compensation Disputes Settlements Authorities for acquisitions by the Central and State governments and so on. The Bill was introduced in the Lok Sabha on 6th December 2007 and has since been referred to the Standing Committee on Rural Development by the Speaker⁴⁴.

The Rehabilitation and Resettlement Bill, 2007

This Bill sets forth provisions for “rehabilitation and resettlement of persons affected by acquisition of land under the Land Acquisition Act, 1894” or due to any other legislation by the Central or State governments or in voluntary displacement due to any other reason. (s.2). Though the term “involuntary displacement due to any other reason” may have wide scope, it is not clear that this Bill will apply to the different kinds of displacement discussed in section 2 above. The Bill provides for social impact assessment of projects (s.4) which is to be conducted simultaneously with any environmental assessment, the appointment of Administrator for Rehabilitation and Resettlement with respect to

⁴³ *Supra* n. 2, p.220.

⁴⁴ *Ssupr* n 42, p. 38

large project involving involuntary displacement of large number of people (s.9), appointment of an ombudsman for disposal of grievances arising out of matters covered by the Act and so on. The Bill also was introduced in the Lok Sabha on 6th December 2007 and has since been referred to the Standing Committee on Rural Development by the Speaker of Lok Sabha.⁴⁵

The Land Acquisition (Amendment) Bill, 2007 and “The Rehabilitation and Resettlement Bill, 2007” was introduced in Lok Sabha on 6 December and was referred to the Standing Committee on Rural Development on 7th December, 2007 by Hon’ble Speaker for examination and report to the Parliament as per rule 331E(1)(B) of the Rules and Conduct of Business, Lok Sabha.

1. Land is one of the biggest resources of any country. The Government has to acquire land from the private individuals for setting up various infrastructure and other public purpose projects as well as development activities. Whereas the sovereign power of every State has the Authority to appropriate land for the public purpose, every subject has the right to be heard before he is deprived of his property by the State. This is recognized as a legal right as per Article 300A of the Constitution which provides as under:

“No person shall be deprived of his property save by authority of law”

2. The provisions made under “The land acquisition Act, 1894” have been found to be inadequate in addressing certain issues related to the exercise

⁴⁵ Ibid P.38

of the statutory powers of the State for involuntary acquisition of private land and property as acknowledged in the Statement of Objects and Reasons of the aforesaid Bill.

3. The National Policy on Rehabilitation and Resettlement for project affected families was formulated in 2003 which came into force w.e.f. February 2004. The experience of implementation of this policy indicated that there are many issues addressed by the policy which needs to be reviewed. As such the National Policy on Rehabilitation and Resettlement for project affected families 2003 was notified in the Official Gazette and came into force w.e.f. 31st October, 2007.
4. The Rehabilitation and Resettlement Bill has been formulated on the line of Rehabilitation and Resettlement Policy, 2007 for giving statutory backing to the provisions of the policy as indicated in the Statement of objects.
5. The Rehabilitation and Resettlement Bill, 2007 provides for the basic minimum requirements that all projects leading to involuntary displacement must address. The Bill contains a saving clause to enable the State Governments, Public Sector Undertakings or agencies, or other requiring bodies to continue to provide or put in place greater benefit levels than those prescribed under the Bill”

Kalyan Singh Committee Report on the Issues common in 'The Land Acquisition Amendment Bill, 2007 and 'The Rehabilitation and Resettlement Bill, 2007' 15 October 2008

1. The Committee strongly recommends that the common Clauses contained in both the Bills should be studied in detail and it should be ensured that wherever the issues have been duplicated, the language is the same so as to avoid contradictions and legal complications.
2. The Committee also recommends that the nature of involuntary displacement that the Government intends to cover for the purpose of providing Rehabilitation and Resettlement benefits through this legislation should be clearly indicated in the legislation itself.
3. The Committee further recommends that clause 3(b)(iii) of the proposed 'The Rehabilitation and Resettlement Bill, 2007' the aforesaid period of five years should be reduced to three years to make the provisions proposed in the 'The Rehabilitation and Resettlement Bill, 2007' in line with the Rehabilitation and Resettlement Policy being implemented.
4. The Committee find that whereas minor sons have been included in the definition of family, minor daughters has been excluded. The Committee strongly recommends that minor daughters should also be included in the definition of family to address the gender concerns.
5. The Committee feels that the word 'relative' is very vague.

6. Committee also desire that widowed/ divorced/abandoned/separated sisters/sister-in-law, daughter/daughter in- law and the physically handicapped family members need to be covered by the definition of family.

7. The Committee strongly recommend that the language of the Clause 3 (b) (iii) as part of the affected family and clauses 3 (d) and 3 (n) which separately define agricultural and non-agricultural labourers clauses should be re-examined thoroughly and brought in consonance so as to avoid any confusion and misinterpretation.

8. The Committee further feels that the use of the word 'engaged in any trade, business, occupation or vocation' is rather a broader term and includes working agricultural or non-agricultural labourers.

9. Clause 4(2) of the Bill provides certain common facilities/infrastructure that the appropriate Government shall take into consideration while undertaking a Social Impact Assessment Study. In this regard, the Committee would recommend that anganwadis, children parks and school hostels should be included in the list of items given in the aforesaid Clause. The Committee feels that discontinuation of the education of children of the affected families can be avoided if the period of rehabilitation is planned in such a way that it falls within the long vacations like summer/winter vacations.

10. The Committee recommends that the Secretary of the Department of the appropriate Government concerned with the welfare of Women and Child should also be added along with the Scheduled Castes and Scheduled Tribes in Clause

5(b) of the legislation, so that the interests of women and children are protected in a more effective way.⁴⁶

National Rehabilitation and Resettlement Policy, 2007

In order to solve the issues arising out of policies of economic Liberalization / deregulation, the National Policy on Rehabilitation and Resettlement, 2003 has been reviewed and revised. The revised National Rehabilitation and Resettlement Policy, 2007 has come into force from 2007. The new policy is applicable to all affected persons and families whose land, property or livelihood are adversely affected by land acquisition or by involuntary displacement of permanent nature due to any other reason. These could be tenants, landless, the agricultural and non-agricultural laborers, artisans, and others dependent on the land.

One of the objectives of the policy is to minimize displacement of people and to promote non-displacing or least-displacing alternatives. It also recommends that only the minimum necessary area of land commensurate with the purpose of the project should be taken, and the use of agricultural land for non-agricultural should be kept in minimum; multi-crop land should be avoided and irrigated land use should be kept to the minimum for such purposes. Projects may preferably be setup on wastelands or un-irrigated lands. The compensation awarded shall take into account the market value of the property being acquired, including the location-wise minimum price per unit area fixed (or to be fixed) by the respective

⁴⁶ [http://164.100.132/committeereports/Rural%20 Development/REP-RURAL-39E-F.pdf](http://164.100.132/committeereports/Rural%20Development/REP-RURAL-39E-F.pdf), see also <http://164.100.132/committeereports/Rural%20 Development/REP-RURAL-40E-PUB.pdf>, accessed on 10/04/09.

State Government or UT Administration. For the displaced, the policy provides for houses for even the landless, 20% of compensation in the form of shares in the proposed project – which can go up to 50%. There is a provision of life-time monthly pension too for vulnerable sections.⁴⁷

Constitution of India:

The year 1945 marked a watershed in the history of human civilization. The United Nations came into existence in that year, incorporating the vision of a new world. The basic values of new world were supplied by the human rights philosophy when the Universal Declaration of Human Rights was adopted in 1948. Into that committee of nations, India entered and took its place. Emerging from the thralldom of foreign rule, it drafted a constitution build also around a core of human rights, Fundamental Rights in Part III and Directive Principles of State Policy in Part IV, thus proclaiming itself a modern state. In doing so, it also reaffirmed an Ancient culture, whose wisdom and vision had as it central principle, the full development of the human personality.

Our National Constitution while enacting a code of forty Articles embracing human rights philosophy provides for the traditional pillars of modern democratic state. All of them, The Parliament & the state legislatures, the Central and the Governments, the Supreme Court and state judiciaries are obliged in their functioning to apply implements and advance human rights values. And yet the

⁴⁷ *Supra* n. 42, P.38.

experience of fifty five years since independence has shown that the classical model is not enough for carrying the nation thought to the perfection of human rights ethos. There are significant areas in our national's life where the writ of our present constitutional institution is unable to reach or is of insufficient effect or fails by reason of the inherent limitations of their basic nature. It is pointed out that do all the violations of human rights which take place, only a fraction of those cases find themselves in these courts. In many instances alleged violation of human rights remain investigated, in other while the investigation take place the grievance remains underdressed.⁴⁸

The Forty-Forth Amendment of the Constitution in 1978 transformed the right to property from the category of Fundamental Rights by repealing Art.300A instead. Art. 300A merely says; "No person shall be deprived of his property save by authority of law". Though Art 300A is not a Fundamental Right, nevertheless, it does not make much of difference except that a writ petition is not maintainable under Art 32 in the Supreme Court to vindicate the right under Art 300A. A person challenging violation of Art 300A must go to a High Court under Art 226 with his writ petition. The constitutional right to property under Art 300A is not a basic feature or structure of the Constitution.⁴⁹ It is only a constitutional right. Art 31(1) laid down that no person shall be deprived of his property without the authority of law. Art 31(1) has been reappears as new Art 300A saying that no

⁴⁸ J.S.R Pathak, *National Commission on Human Rights – A Constitutional Institution*", vol 20 issue 1, Indian Bar Review 1993.p 108.

⁴⁹ *Jhulubhai Nanbhai Khachar vs state of Gujrat*, A.I.R. 1995 SC 142: 1995 supp(1)SCC 596 ; *S.B Narayanacharya Public trust vs State of Gujrat*, A.I.R 2001 Guj 208.

person shall be deprived of his property save by authority of law. Thus, a law will be necessary to deprive a person of his property. To ensure that a person is not deprived from his property without the authority of law, it does not matter whether it is Fundamental right or Constitutional Guarantee, for in either case a law is needed to deprive a person of his property.

In all democratic countries, one basic principle is recognized, viz., that the Government cannot interfere with property rights of an individual without the authority of a valid law. The most dramatic reiteration of this principle can be seen in the U.S.A. in *Youngstone Steel and Tube Co. v. Sawyer*⁵⁰, where the U.S Supreme Court held the seizure of steel mills by a presidential decree unconstitutional as there was no law to support it.

Art 300A ensures that a person cannot be deprived of his property merely by an executive fiat. Art. 300A. An executive order depriving a person of his property, without being backed by law, is not constitutionally valid, *State of Mysore v. K.C.Adiga*.⁵¹ Art 300A thus constitutes a protection against the executive organ of the state. Explaining the import of Art 300A, the Supreme Court has observed in *Bishamber Dayal Chandra Mohan v State of Uttar Pradesh*,⁵² that the state cannot deprive a person of his property by recourse to executive power. A person

⁵⁰ 343 US 579 (1952).

⁵¹ A.I.R 1976 SC 853; (1976) 2 SCC 495; *Elizabeth Samuel Aaron v. State of Kerala*, A.I.R 1991 Ker 162.

⁵² A.I.R. 1982 SC 33,48; (1982)1 SCC 39

can be deprived of his property only by authority of law and not by mere executive fiat or order”.⁵³

On the other hand, Art 21 lay's down that “no person shall be deprived of his life or personal liberty except according to ‘procedure established by law’”.

Scope of Art 21: Art 21 which had lain dormant for nearly three decades was brought to life by the now famous Supreme Court Decision in *Menaka Gandhi*. Since then, Art 21 has been on its way to emerge as the Indian version of the American concept of due process. It has become the source of many substantive rights and procedural safeguards to the people. Art 21 assures every person right to life and personal liberty. The term “life” has been given a very expansive meaning. The expression “life” in Art 21 has been interpreted by the Supreme Court rather liberally and broadly. The Court has often quoted the following observation of *Field, J. in Munn v Illions*,⁵⁴ an American case: “By the term ‘life’ as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg....”

Bhagawati, J., has observed in *Francis Coralie*⁵⁵: “We think that the right to life includes the right to live with human dignity and all that goes along with it,

⁵³ Prof. M.P Jain, *Indian Constitutional Law*, Fifth edn. ,reprint 2007, Wadhwa Nagpur, p. 1300.

⁵⁴ 94 U.S. 113 (1877),

⁵⁵ A.I.R 1981 SC 746, 753: (1981) 1 SCC 608.

namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings”. Thus, the inhibition against deprivation of ‘life’ would extend to all those faculties by which life is enjoyed.

In *P. Rathinam v. Union of India*⁵⁶, the Supreme Court has defined ‘life’ as follows:

“The right to live with human dignity and the same does not connote continued drudgery. It takes within its fold some of the fine graces of civilization which makes life worth living and that the expanded concept of life would mean the tradition, culture and heritage of the person concerned.”

In *Francis Coralie*⁵⁷, “the Supreme Court has held that the expression ‘life’ in Art 21 does not connote merely physical or animal existence but embraces something more. “ We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessity of life such adequate nutrition, clothing and shelter over their head”.

In *Shantisar Builders v. Nrayanan Khimalal Totame*⁵⁸, the Supreme Court has observed: “The right to life under Art 21 would include the right to food, clothing,

⁵⁶ (1994) 3 SCC 394: A.I.R.1994 SC 1844.

⁵⁷ A.I.R. 1981 SC 746 at 753: (1981) 1 SCC 608.

⁵⁸ (1990) 1 SCC 520: A.I.R. 1990 SC 630.

decent environment and reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal, it is the bare protection of the body, and for human being, it has to be suitable accommodation which allows him to grow in all aspects-physical, mental and intellectual.”⁵⁹

The Constitution of India is vibrant document that acknowledges every possible human rights of an individual. Most of the rights are available to every person irrespective of his being a citizen of this country. However, in certain context citizen’s rights are placed on a higher place. Thus, an internally displaced person, by virtue of remaining within the territory of India, has both de facto and de jure claim for an priori protection of the rights under the Constitution, especially those under part III and part IV, available to citizen.

The Constitution under Article 39(b) and (c) provides for a more broad provision where in the State is referred to as a community of people, whose ownership and control over material resources are to be so distributed as to sub serve common good and not to their detriment. However, the law which has been consistently invoked for land acquisition is a pre-constitutional law dated as late 1894, which was amended in 1984 to allow acquisition not only for the public purpose but for establishing company and private corporations. With compensation as the only

⁵⁹ Supra.n 53, p.1088.

remedy for the persons affected by such acquisitions, having celebrated a century of its existence, this law of colonial vintage facilitates the State to acquire land for “any public purpose” or “for company”. The inclusive definition of “public purpose” under the Act refers to acquisition for:

1. Planned development of town and country-side.
2. State Companies;
3. Residential purposes of poor and landless;
4. Carrying out any educational, housing, health or slum clearance schemes of state;
5. Planned development by the state and its disposal to secure further development and any other scheme of development by the state.

Only three states in India have enacted statutes, post independence, for resettlement, a step ahead from ‘mere compensation’, of the project affected people. Maharashtra, Madhya Pradesh followed. The Karnataka Government passed its law in 1987, but obtained the Presidential assent seven years hence, in 1994.⁶⁰

Internally Displaced Persons in India’s North-East

Internally displaced persons (henceforth IDPs) and refugees remain the most marginalized and excluded of all social groups. The IDPs status is very similar, to

⁶⁰ Supra.8, p .79

that of refugees except to become a refugee one must cross an international border whereas an IDP does not usually cross the border of her country. Technically, an IDP is a citizen but empirically she/he is a refugee in his own country. Both the groups lack a voice of their own, and many a times they remain invisible. By and large they remain outside the public “consciousness” or “imagination”, experiencing a high degree of alienation, marginalization and exclusion from the larger society. Hence, they deserve attention from the state and the civil society.

North-East India is very distinct civilization, geographical, socio-economic, cultural and political entity in India. As a result of distorted environmental, socio-economic and political transformation, the entire region has experienced massive number internal displacement of its population. Perhaps this region has generated the highest number of IDPs in India. The citizen-IDP ratio in north-east India is indeed very high. It is of course, very difficult, to ascertain the exact number of IDPs in the region. However, we must point out explicitly that we find all three categories of IDPs i.e, environment, conflict and development-induced, in all the seven states of north-east India. The people of these states have suffered immensely from the degraded environment, brutality of state –sponsored development and fear of violence caused by political conflicts for space and identity.

Estimate of IDPs

It is difficult to ascertain the exact number of IDPs in the north-east because even the states do not maintain any proper data on them. Of course for the state it is difficult to acknowledge the existence of IDPs because it bespeaks of “state-failure”. The state is not at all transparent in this regard.

In the absence of a proper database, it is difficult to ascertain the number of development –induced IDPs in north-east India. However, we can have a broad idea about the enormity of the problem from the following facts. The Dumbur hydro-electric project in Tripura ejected 40,000 people occupying prime agricultural land displacing about 2, 00,000 tribal people. The Pagladia dam project in Assam if implemented, will displace about 1,50,000 people from their land. Besides, the Kaptai hydroelectric project in East Pakistan, now Bangladesh displaced a large number of tribal Chakmas. It too had a severe spillover effect in the north-east. About 40,000 of the Kaptai project affected people were shifted to erstwhile north-east frontier agency (NEFA), now Arunachal Pradesh. Till today, Chakmas now numbering about 80,000 have remained stateless in India, and still await the ever elusive Indian citizenship. The government of India is now proposing to construct 145 dams of different varieties including mega dams in north-east India. This region is ecologically fragile and vulnerable to high intensity earthquakes. Hence, the people are questioning the very wisdom of such mega dam projects. The Naga, Kuki and Hmar people who are going to be affected by the ongoing Tipaimukh hydroelectric project have vehemently

opposed the construction of the dam on their sacred land /site. Similarly, the project of Lakhimpur and Dhemaji districts of upper Assam are opposed to the construction of Lower Subansiri hydroelectric project being constructed at site near Assam-Arunachal Pradesh border. This area was affected by a severe earthquake in 1950. The potential IDP of the Pagladiaya dam project are resisting the construction of the dam. Dam has become a major source of displacement and threat for the future of entire north-east India. If we combine all the categories of development –induced displacement together with the affected people as a result of urbanization, it is likely to be massive three million plus IDPs in north-east. Significantly, most of the development –induced IDPs, like in the rest of India are tribal people.

Neglect of IDPs

Within the IDP communities, it is the children and women who suffer most. Throughout north-east, conditions of the displaced are pathetic and no intergovernmental or international organizations are present. The displaced lived in a most degrading way in public buildings and makeshift shelters. They have lost their most precious possessions, i.e. the land, home and livelihood. If we look at the IDP issue from the impoverishment risk model developed by Michael M. Cernia, we find that all the IDPs of the north-east suffer from landlessness, joblessness, homelessness, marginalization, food insecurity; increased mobility, and mortality, loss of access to common property rights social disarticulation and disintegration.

We must point out that in post-colonial north-east one cannot look into the problem of internal displacement of population only through the category of displacement alone. In many situations, one person may experience the same kind of displacement more than once. Similarly, one may become the victim of environmentally-induced displacement repeatedly. And again the same person may experience conflict-induced in his /her new place of residence or livelihood. The issue of north eastern IDPs deserves the special attention and care of the larger society and the Indian society and the Indian state. It would be of crucial importance to alter the environmental, developmental and political conditions and processes that generate IDPs in north-east India. Besides, in the absence of clear-cut IDP regime in India, one can look to the “UN Guiding Principles on Internal Displacement” in order to address the human/ democratic rights of internally displaced persons in the north-east and in India⁶¹.

As it's seen from the above discussion a great number of people are displaced but till today there is no single case has reached to the National Human Rights Commission. The researcher's discussion with the authorities of National Human Rights Commission also have revealed that until and unless no complain comes to them they cannot take any action for the displaced persons. Since researcher herself belongs to the North-East India and she is acquainted with the political,

⁶¹ Monirul Husain, *In ternally Displaced Persons in India's North-East*, Economic and Political Weeklyvol 41, issue (1-20) Feb 4, 2006 p. 391.

economic social condition of North-East, it's really difficult to survive for any public spirited persons for their genuine work as they may be targeted by the politically motivated people. So, the researcher feels that if the National Human Rights Commission itself stretches its helping hand towards the Displaced Persons, it may reduce the misery of the displaced persons in this particular region as most of the people are still illiterate and ignorant of their rights due to which huge land acquisition is taking place for misusing the term public purposes without adequate compensation or proper Rehabilitation and Resettlement of the displaced persons. i.e like military camp, North Eastern Electrical Power Corporation etc.

CHAPTER-V

JUDICIAL DECISIONS RELATED TO DISPLACEMENT

In the absence of any express legislative provisions for the protection of displaced persons, the state has been dealing with the situation in a piece meal fashion. When the stipulations for resettlement and rehabilitation are overlooked by the state, it is the judiciary that assumes the role of the state in affording relief to the affected.

In *Bongalgaon Refinery and Petrochemical limited v. Sammiuddin Ahmed*⁶² the court acknowledged the fact of a central government's policy decision, in the interest of rehabilitation by giving employment to persons who were displaced. It stated that at least one person from the displaced family should be given a job in a public sector undertaking.

Samatha v. State of A.P.,⁶³ the Court observed that the tribal's "predominantly live in forest areas and intractable terrains, 95 percent of them are below poverty line and depend on agriculture based activities and some of them turn out as migrant construction workers on account of their displacement from hearth and home for the so called exploitation of minerals and construction of projects". The court observed that, "as part of ongoing industrial advancement, large industries and projects are being set up or constructed in scheduled areas displacing the

⁶² (2001) 9 SCC 557.

⁶³ A.I.R.1997 SC 3297.

tribals and rendering them landless labourers. When their lands are acquired for public purposes the government should give them alternative lands for rehabilitation and loans for reclamation. The machinery must be speedy and the officials must have compassion and a sense of dedication to ameliorate the economic status of the tribals and assimilate them into the national main stream”.

In *B.D. Sharma v. Union of India*⁶⁴ the court held that in case of submission the resettlement and rehabilitation should ideally be completed at least six months prior to the date of actual submergence.

*Narmada Bachao Andolon v. Union of India*⁶⁵ the court “entertained this petition with a view satisfy itself there is proper implementation of relief and rehabilitation (of displaced) measures at least to the extent they have been ordered by the Tribunal’s Award”. It observed that “The displacement of the tribals and other persons would not per se result in the violation of their fundamental or other rights. The effect is to see that on their rehabilitation at new locations they are better off than what they were at the rehabilitation sites they will have more and better amenities than which they enjoyed in their tribal hamlets. The gradual assimilation in the main stream of the society will lead to betterment and progress”.

⁶⁴ (1992(Supp) 3 SCC 93.

⁶⁵ A .I.R. 2000 SC 3751.

The court further held that, “the R & R plans are required to be specially drafted and implemented to mitigate the problems whatsoever relating to all, whether rich or poor, land owner or encroacher, farmer or tenant, employee or employer, tribal or non tribal. A properly drafted R & R plan would result in the improvement of the living standards of the displaced after displacement. It directs that, “[a]s the Relief and Rehabilitation Sub-group has cleared the construction up to 90 meters; the same can be undertaken immediately. Further rising of the height will be only pari pasu with the implementation of relief and rehabilitation and on and on the clearance by the Relief and Rehabilitation Sub-group. The Relief and Rehabilitation Sub-Group will give clearance of further construction after consulting the three Grievances Redressal Authorities.” It also ordered that, “the Narmada Control Authority will within four weeks from today draw up an Action Plan in relation to further construction and relief and rehabilitation work to be undertaken. Such an Action Plan will fix a time frame so as to ensure relief and rehabilitation pari pasu with the increase in the height of the dam.”

Further, in 2005 in another petition by the same petitioners the court has observed that there is “a direct nexus with raising of the height vis-à-vis implementation of relief and rehabilitation progress must proceed ‘equably’ or ‘ratably’ which would mean that relief and rehabilitation measures must be undertaken as and when the height of the dam is further raised *Narmada Bachao Andolon V. Union of India*⁶⁶,

⁶⁶ A.I.R. 2005 SC 2994.

In "*N.D. Jayal v. Union of India* besides acknowledging the policy guidelines⁶⁷ under the National R & R Policy of 1997, it held that the "[m]istake in resettlement and rehabilitation of people ousted by other similar projects committed in the past have to be avoided. The construction of a dam can not be allowed to proceed and be [sic] completed leaving the oustees high and dry."

In *Karan Jalsasay Yojna Assargrastb Sabkar Ane Sangarsb Samiti v. State of Gujrat and Ors*⁶⁸ .The Court, allowing the acquisition of land by the state of Gujarat held it cannot overlook the human requirements and the displacement of large number of tribals and other persons belonging to weaker sections on account of acquisition of land, and appointed a social activist to monitor the acquisition the acquisition process and held that such person shall be provided either alternative land of equal quality but not exceeding three acres in area and if that is not possible, then alternative employment where he would be assured a minimum wage. If such person is deprived of land that he used for his dwelling, "the State Government will, simultaneously with taking possession of such land, provide alternative dwelling to the person who is dispossessed, so that the person dispossessed should not be without roof over his head even for a single day."

⁶⁷ The public purpose based on which people are displaced or otherwise deprived of their livelihood should be defined. Prior informed consent to be affected by it should be mandatory after the project is explained to them and if they see that is according to the public purpose thus define properly.

⁶⁸ A.I.R 1987 SC 532.

In *T.N Godavarman Thirumulpad v. Union of India*⁶⁹ observed that “[c]onstruction, of dams and reservoirs, mining and industrial development and expansion of agriculture should be constituent with the needs of for conservation of trees and forests. Projects which involve such diversion should at [sic] least provide in their investment budget, funds for regeneration/ compensatory afforestation”.

Further, “[b]eneficiaries who are allowed mining and quarrying in forest land and in land covered by trees should be required to repair and re-vegetate the area in accordance with established forestry practice. No mining lease should be granted to any party, private or public, without a proper mine management plan from the environmental angle and enforced by adequate machinery.”

Last but not the least, the Court held that, “[h]aving regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest management, including the forest development corporations should be associate the tribal people closely in the protection, regeneration and development of forest as well as to provide gainful employment to people living in and around the forest”.

This judgment provides for prevention of the situation of displacement that is caused due to herein above mentioned activities within forest. The judgment is an illustration of ‘preventive, rather preemptory remedy’ besides it also upholds the tribals ‘right to forest’.

⁶⁹ A.I.R 2005 SC 4256.

*Nrendra Bahadur Singh v. State of U.P.*⁷⁰ The instant case was an appeal leave challenging the judgment of the division bench of the Allahabad High Court on the interpretation of the official notification of land acquisition for the rehabilitation of the refugees under the U.P Land Acquisition.⁷¹ Whereas, the Act provided for the acquisition of land for refugees, however the official notification issued by the governor provided for the rehabilitation of displaced persons. The contention of the appellant was that the acquisition was ultra virus the Act. The Court upheld the judgment of the Division Bench of the High Court and in effect accepted the fact that “refugee” and “displaced person” is one and the same for all practical purposes. The Court observed, “What is needed is substantial compliance with the law. The impugned notification in our opinion clearly satisfies that requirement”.

The Court further observed that the case was a sad tale of delays in a matter which on sheer humanitarian grounds needed to be attended to with the expedition, and wished that the matter would be attended to with the necessary promptitude after the judgment

*Hoshnak Singh v. Union of India*⁷² and *Amar Singh v. Custodian Evaquee Property, Punjab*,⁷³ Allowing the claims for compensation in these cases, the court laid down the following seven principles for the protection of the interest of

⁷⁰ A.I.R.1977 SC 660.

⁷¹ Rehabilitation of Refugees Act, (26 of 1948)

⁷² A.I.R. 1979 SC 1328

⁷³ A.I.R 1957 SC 599

the displaced person, to whom land is allotted on temporary basis by the state under the Administration of Evacuee Property Act, 1950.

1. “ The allottee is entitled to right of use and occupation of property remains vested in the Custodian;
2. The benefit of such right will ensure to his heirs and successors;
3. His enjoyment of property is on the basis of paying land revenue thereupon and ceases for the time being. Additional rent may be fixed thereupon by the Custodian. If and when he does so, the allottee is bound to pay the same;
4. He is entitled to quit and undisturbed enjoyment of the property during that period;
5. He is entitled to make improvement on the land with the assent of the Custodian and is entitled to compensation in the manner provided in the Punjab Territory Act;
6. He is entitled to exchange the whole or any part for other evacuee land with the consent of the Custodian;
7. He is entitled to lease the land for a period not exceeding three years without the permission of the Custodian and for longer period with his consent. But he is not entitled to transfer his rights by way of sale, gift, will, mortgage or other private contract,”

In *Animal and Environment Legal Defense Fund v. Union of India*⁷⁴ the Apex Court harmonized the community interest of the tribal's who were displaced due to formation of the Pench National Park and the Totladah reservoir therein. The Court upheld the traditional rights⁷⁵ of the tribal's besides issuing detailed guidelines and "directions for properly implementing the license conditions."

In *M.C Mehta v. Union of India*⁷⁶ the Court keeping in mind the legal requirement of public hearings in case of projects involving large displacement or having severe environmental ramifications, observed that environment and development should go together harmoniously, however, in case of doubt, protection of environment would have precedence over the economic interest.

The decision of the Court in *Bandhua Mukti Morcha v. Union of India*⁷⁷ is worth referring to make a case for the protection of displaced persons. In *Collector of 24 Paraganas v. Lalit Mohan Mallick*⁷⁸ the Court held that... "putting up of a hospital and in particular one for crippled children is one of the important facets of the concept of "rehabilitation of displaced persons." The petitioner in *Ambika*

⁷⁴ A.I.R.1997 SC 1071.

⁷⁵ Forest Department, in connection with the issuing of a final notification for the establishment of Pench National Park has stated that displaced persons from 4 villages namely, Palaspani, Umarighat, Chhndiwani and Chhedia have traditional fishing rights in Pench river. After displacement these persons have not been rehabilitated systematically. No agricultural land has been made available to them, no work has been made available to them and they do not have means of livelihood except catching fish which is their traditional occupation. If they are not given permission a serious problem of feeding and supporting their families will arise. He has therefore, recommended recognition of traditional rights of 332 families of 4 villages.

⁷⁶ A.I.R 2004 SC 4016.

⁷⁷ A.I.R 1984 SC 802.

⁷⁸ A.I.R 1986 SC 622.

*Prasad v. State of Bihar*⁷⁹ was running a small business in a place which was acquired after which he was not been able to rehabilitate himself. Supreme Court directed that a job to be provided with a view of rehabilitating petitioner. In case job is no more available petitioner may be provided with financial assistance.

In the light of above observations, it could, unequivocally, mentioned that the Apex Court in all its sincerity anticipated, what the framers of UN Guiding principles took a decade to realize and deliver, and have clearly illustrated what is later incorporated in the national policy document. But here, as a researcher she would like to express her views though the Apex Court has succeeded to protect the rights of the displaced persons but however Court has failed to appreciate the role of civil servants who are only and exclusively responsible for the implementation of the provisions of the law. The courts could have fixed a clear responsibility and accountability of the public servants involved in any crisis situation involving IDPs. It is the duty of the court to pronounce punishment and lay down law for the guilt who has failed to perform their duty to protect the rights of the displaced on time and since its mandate of the Constitution as provided in article 141 that the law declared by the Supreme Court shall be binding on all the courts within the territory of India.⁸⁰

⁷⁹ A.I.R 1989 SC 1687.

⁸⁰ *Suganthi Suresh Kumar v Jagadeshan*, 2002 2 SCC.

Institution undertakes, it has, under Sec 12 of the Act, power to intervene and investigate into Human Rights violations perpetrated by public servant, including *suo motu* enquiry against any human rights violation. The commission has a various occasions issued number of directions to uphold principles of law and justice and above all human rights; in doing so it has taken extensive recourse to the Apex Court for its further directions in appropriate cases.

The Commission, invoking its powers under the Act has taken initiative for the protection of displaced persons at different occasions of such crisis. It also reviewed the provisions of the National Policy on Resettlement and Rehabilitation sent to it by the Ministry of Rural Development. The Commission has noted that it was desirable to incorporate the rehabilitation and resettlement package in the LAA itself as an ILO Convention, to which India is also a party, provides for the protection of tribal rights. Further, this will ensure systematic rehabilitation and resettlement of the displaced people, avoid litigation and reduce cost overruns of the projects. It opined that, unlike the common practice, R&R facilities should be provided before the actual land acquisitions take place. Even absence of specific law did not deter the Commission providing relief and help to the affected people going beyond the existing governmental machinery.

The Commission has intervened and expressed its concern in the matters of human rights violations as a result of displacement caused due to mega projects including dams, while it submitted a series of recommendations to the Central and

CHAPTER VI

THE ROLE OF NHRC IN PROTECTION OF IDPs IN INDIA: AN ANALYSIS

In this chapter the researcher would like to discuss regarding the steps taken by NHRC. Some of them are taken from the Annual Report published by the NHRC and some is discussed by the direct discussion with the Authorities of NHRC. The researcher during her empirical study has got the opportunity to interact with the NHRC Chair Person Justice Rajendra Babu, Registrar A.K.Garg , Mr M.L Aneja, JR(Law)_and Director Y.S.R Murthy. On the direction of Mr. Chair Person and Mr M.L Aneja, JR (Law) handed over to me three latest cases regarding the project-induced displacement which NHRC is handling. The researcher has discussed regarding the cases and the brief discussion with the authorities also is highlighted in this chapter.

In pursuance of the General Assembly resolution in 1966, the Vienna Declaration and the Programme of Action adopted by the Conference on Human rights on June 25, 1993, the government of India, finally, established National Human Rights Commission, under the Protection of Human Rights Act, 1993 to redress human rights grievances and violations in the country. Herein the role played by the NHRC is to be analyzed in the context of the fact that India is not accepting the Guiding Principles on Internal Displacement, 1998. The significance of Act lies in the fact that it asserts the global outlook to “human rights” principles. Besides other broad powers and functions that the Appex Human Rights

Institution undertakes, it has, under Sec 12 of the Act, power to intervene and investigate into Human Rights violations perpetrated by public servant, including *suo motu* enquiry against any human rights violation. The commission has a various occasions issued number of directions to uphold principles of law and justice and above all human rights; in doing so it has taken extensive recourse to the Apex Court for its further directions in appropriate cases.

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The Commission has intervened and expressed its concern in the matters of human rights violations as a result of displacement caused due to mega projects including dams, while it submitted a series of recommendations to the Central and

State Governments to ameliorate the conditions of the affected people. It was for the Commission's concern over the development-induced displacement and its insistence on a comprehensive National R&R Policy that compelled the government to adopt the existing Policy of 2004.

During the year 2004 the Brookings-SAIS project on the Internally Displaced and the Asia Pacific Forum under their project for IDPs assessed NHRC as an institution, in a country affected by internal displacement, with a purpose to discuss the NHRC's activities with regard to IDPs and develop recommendations for the Commission's consideration on means to enhance its role in this area.

The team offered the following recommendations on the existing efforts:

- To enhance NHRC's capacity on the issue of IDPs
- To promote greater understanding and dialogue on IDP ISSUES
- Promotion of effective and comprehensive Law and Policy

The Commission considered the recommendations and proposed number of steps to address Annual Reports published by the Commission, since 1996-97, carries a section on IDPs which shows that the Commission has been actively following the relief and rehabilitation of those displaced in the country. The reports bring out the role that the NHRC played in different situations of IDP crisis thereon.

In its annual report 1996-97 NHRC expressed its concern over the fate of those displaced as a result of mega-projects and recommended that a

comprehensive examination be undertaken of prevailing rehabilitation policies; examine existing laws rules and practices in the light of international instruments to which India is a party. As a result the Government of India initiated steps, with active participation of the Commission, to draft national policy (which now is reality) for resettlement and rehabilitation, adopting a more holistic approach, rather than a mere cash compensation. The Commission has appointed a Special Rapporteur to help it promote and protect the Human Rights of those displaced in large numbers by mega-projects or who face such a prospect because of reasons that originate in State policy or acts of governance.⁸¹

Rehabilitation of People Displaced by Mega-Projects

According to National Human Rights Annual Reports 1999-2000, a number of complaints were received by the Commission alleging inadequacies or indifference in the rehabilitation of communities, more particularly the members of disadvantaged groups, when they have been displaced or otherwise adversely affected by mega-development projects. The Commission is of the view that it is essential to balance development with greater and equity, the national interest with the interest with the interests and dignity of those who are required to yield their lands, and sometimes, the very basis of their individual and communal personality for the interest of the nation. The Commission accordingly called for a comprehensive examination of the prevailing rehabilitation policies. It urged, in

⁸¹ . *Supra n. 9*, p. 107.

particular, that the State and Central Governments examine and appropriately amend their laws, regulations and practices in order to ensure that when it comes to the acquisition of the land for the purpose of national economic development, the provisions of the Constitution as expanded over the years by the Supreme Court, and as contained in international instruments to which India is a party, notably the ILO Convention 107, are respected. In pursuance of the Commission's recommendation to formulate a comprehensive national policy on rehabilitation and resettlement, the Central Government has formulated a draft policy, upon which the Commission has itself commented. This is, at present, being considered by group of ministers for finalization by the Government.

Kabini Reservoir Project, Karnataka

The Commission had initiated action in respect of 108 affected tribal families awaiting rehabilitation in this project. The Commission's Special Rapporteur undertook a visit to the settlements of the affected tribals and held discussions with the State Governments Officials. Based on that, the Commission directed the verification of the particulars of the persons who had been displaced but had not been compensated for the loss of the land. The Commission also directed the State Government to check details on whether the land released for rehabilitation was actually used for that purpose. The Commission commented on the slow progress of the implementation of the recommendations and urged the State Government to expedite the compliance.

Bandipur National Park- Project Tiger

The Commission had, after examining the matter, pointed out that the procedure laid down in the Wild Life Preservation Act, 1972, in regard to the rights of the affected people and their rehabilitation was not followed. It directed the State government to undertake the statutory exercise for determining the rights of the people, considering both the fact of ownership of land and the continued denial of means of livelihood of those affected. It recommended to the State Government that it consider using some 300 acres of land of land at Ainpura, which had been inspected by the Special Rapporteur, for the purpose of rehabilitation and resettlement. The Commission also observed that undue delay had occurred in implementation of the Commission's recommendations.

Rehabilitation of People Displaced by the Sea Bird Project, Karwar, Karnataka

On perusing complaint received by the Commission concerning the unsatisfactory arrangements made for the rehabilitation and resettlement of persons displaced by the Sea Bird Project in Karwar; the DG(1) was requested by the Commission to pay a visit to the site and submit a report. Accordingly, he visited the areas as well as the three Rehabilitation centers established for them, heard grievances, received delegations and held discussions with the concerned officers on the implementation of the rehabilitation programme. Most of the displaced families complained that they had been evacuated from the area without proper rehabilitation and resettlement measures having been taken, that they were denied

appropriate alternative means of livelihood and that the compensation awarded for their lands and homes has also been inadequate. The rehabilitation/resettlement plans had not taken into consideration the natural growth of the affected families over the past twelve years. The Commission considered the detailed report, along with the recommendations on the subject presented by the DG (1) and gave comprehensive directions to the Government of Karnataka and Ministry of Defense, Government of India, in regard to the steps that had to be taken to redress the grievances of the complaints and to correct the deficiencies in the rehabilitation measures being undertaken. The Commission monitored this matter closely in order to ensure that the rights of the affected people were protected; and subsequently received a report from the authorities concerned, stating that they had complied with its recommendations.⁸²

*Rehabilitation and Settlement of tribal's: Karnataka Case No*⁸³ The Commission received a complaint from Shri G. Mohan of Swami Vivekanda Youth Movement, Karnataka in respect of the rehabilitation and resettlement of the tribals of H.D Kote Taluk District, Mysore, Karnataka who were affected by the construction of the Kabini Reservoir in early 1970s and the formation of Bandini Project Tiger National Park in 1973-74. The Commission on 10-01.03, deliberated upon the issue of earmarking suitable land for rehabilitation of the displaced 154 tribal families and directed the State government of Karnataka to

⁸² NHRC Annual Report-1999-2000, National Human Rights Commission, Faridkot House, Copernicus Marg, New Delhi 110001, p. 53.

⁸³ Case No: 505/10/97-98(FC)

send a formal proposal for diversion of forest land for rehabilitation purpose to the Union Ministry of Forests & Environment for its approval. The Commission also found it appropriate that, in order to facilitate a speedy and proper rehabilitation of the displaced tribal families, the process of rehabilitation be monitored by a Committee.

In response, the State Government accorded necessary sanction for diversion of 200 hectares of forest land in favour of Revenue Department for rehabilitation of 154 tribal families displaced by the formation of Bandipur National Park and construction of the Kabini Reservoir in Mysore District. It also constituted a Committee with Shri Chaman Lal, Special Rapporteur, NHRC as a Member to monitor the rehabilitation of the displaced tribal families as well as to consider the facilities to be extended to the tribal families for their rehabilitation like housing, medical aid, etc. and ensure that their rehabilitation process is completed expeditiously.

Upon consideration of the report, the Commission expressed hope that the Committee would like expeditious steps for proper rehabilitation of the displaced tribal families. It requested the state government to keep the Commission informed of the various steps being taken in that direction and submit a progress report. As the requisite progress report was not received, the Commission directed the Chairman of the Committee viz. Dy. Commissioner Mysore to expedite the

rehabilitation process and submit a status report to the Commission. The report however is still awaited.⁸⁴

Discussion with the Authorities of NHRC

As researcher has mentioned earlier regarding her discussion with the NHRC authorities she is briefing her discussion bellow:

Discussion with NHRC Chair Person

On 4/02/09 discussion with Chair Person Justice S. Rajendrababu of NHRC revealed that NHRC has done a lot for the Project induced displaced persons. Under sec 12 the NHRC can use sou-moto power and he said that Nandigram issue is the appropriate example of such kind which the NHRC has used sou-moto power. He specially referred sec 12(d).⁸⁵ He said that as a matter of policy NHRC cannot function only when Government fails to function then NHRC can function and there must be human rights violation like depriving them from right to food , shelter, land, forest etc. On the query of the researcher he said that the development would be more meaningful if there is sustainable development. Share of the profit should be given to the people who are displaced or employment opportunity should be given to the displaced persons. Displaced persons sentiments should be taken care of.

⁸⁴ NHRC Annual Report 2004-2005, National Human Rights Commission, Faridkot house, Copernicus Marg, New Delhi-1100011.p.51

⁸⁵ Review the safe gourds provided by or under the Constitution or any law for the time being in force for the protection human rights and recommend measures for their effective implementation.

My query regarding what NHRC has done so far? Mr. Chair Person said that whenever human rights violation has taken place and they receive the complain and sometime with suo-moto power they have intervened the state with their effective involvement and they have taken up the cases. He further named the cases which NHRC is handling now and he directed Registrar to handover the cases to researcher and accordingly the researcher took appointment with registrar.

Discussion with Registrar NHRC Mr. A.KGarg (Registrar Law)

On 6/02/09 the researcher had discussion with registrar and first of all he made acquainted with all the cases which NHRC is dealing right now. These are as follows: Reliance Power Project in Dadri, Nandi Gram issue and the third one is Steel Project of Tata Gopal Gang (Orissa), which is discussed details bellow. He said that Special Rapporteur was appointed by NHRC to investigate the matter and report. On the query of the researcher he further said that in 90% Government is bound to abide by the direction of the NHRC. And he further added that the function proceeds in this way first former force, second by annual report it's taken to the parliamentary Committee and thirdly when the State does not comply with direction of NHRC they approach to the Court to take action. After our discussion is over the Registrar asked researcher to collect all the three cases from Mr M.L Aneja, JR (Law) who is handling all the cases. So accordingly the researcher took appointment.

Discussion with Mr M.L Aneja, JR (Law)

On 08/02/09 the researcher had discussion with Asst. Registrar. On the query of the researcher he said that for more effectiveness of the NHRC lift let should be published in the regional language so that people will come to know regarding their rights and how can they approach to NHRC. As the researcher is acquainted that lots of Project is coming up in North East India and why NHRC is not doing anything he said that until and unless complain comes to NHRC, NHRC cannot take any action.

Discussion with Dy.S.P. O.P Vyas

On 25th February 2009 discussion with Mr. O.P. Vyas along with D.I.G P.K.Thakur and K.H.C Rao revealed that he had a personal experience of investigation Nagarnar area of Chattishgarh District Bastur, displaced persons in 2001. From his personal practical experience he said that proper rehabilitation is not taking place.

Regarding the query of researcher about the effectiveness of the NHRC he said that there should be more awareness among the people. He expressed that monetary compensation is bad for the displaced persons as he feels that the displaced people do not know how to utilize the money in proper way it affects them in long run. Hence land for land should be the perfect compensation for the displaced people .He also said that job opportunities should be created by providing small scale industries. According to him no fertile land should be taken

for development purpose. He further said that ramification should be provided to the displaced people. At least 10% or 5% of profit should be given to the project affect people. Policies should not be taken by the Bureaucrats alone the views of NHRC also should be taken into consideration and a core Committee should be appointed

while implementing the policies. While rehabilitating the displaced special need for the children and women should be taken care of. Moreover he also mentioned that with proper infrastructure like schools, and health care facilities should be provided.

Last but not the least he further stated that campaigning should be conducted by NHRC so that people will be aware of their rights who are displaced due to development project. On the other way he also feels that the mindset of the Government should be changed. Government should not treat people as subject but they should be treated like human being.

Recent Cases Dealt by NHRC Relating to Internally Displaced Persons

Case No⁸⁶

Brief fact of the Case

1. On the 28th August, 1995 a Memorandum of Understanding was signed between the Government of Orissa and the Tata Iron and Steel Company

⁸⁶ 317/18/2000-2001-FC ,National Human Rights Commission, Law Division/ F.C. Branch

Limited for the avowed purpose of establishing and operating a steel plant in Gopalpur, District Ganjam and Orissa.

2. The proposed steel plant at Gopalpur was to have an initial capacity of approximately 2.5 million tonnes per annum with a provision for expansion to an ultimate capacity of approximately 10 million tonnes per annum.
3. As per the MOU, Tata Steel had the liberty to form a new Company in which they will have a major stake for the purpose of establishing and operating the steel plant. In their part the State Government reserved the right to participate in the new Company through one or more of its undertakings as a joint venture partner.
4. The said MOU “reaffirmed the commitment of Tata Steel to establish an integrated steel plant and the commitment of the State Government of Orissa for providing land and other infrastructure facilities”.
5. In the said MOU the Government of Orissa agreed to handover the land required for the Tata Steel plant and the township and allied facilities⁸⁷ to Tata Steel through Orissa Industrial Infrastructure Development Corporation (IDCO) on payment of the cost of land, other incidental expenses and the cost of rehabilitation to be agreed mutually between the Government, IDCO and Tata Steel. In addition the State Government promised to make available, land required for power transmission lines, roads from National Highways, railway link from SER’s main line, water

⁸⁷ Approximately 6000 acres

and other services pipeline, corridors from mines etc. Other facilities promised by the State Government include as follows:

- (i) Granting of prospective license/ mining lease to Tata Steel in Mankanacha and Baliapahar Group of iron ores.
- (ii) Assisting Tata Steel in obtaining all clearances including environment clearance and the approval of Central Government under Forest (Conservation) Act, 1980 for opening up the iron ore mines, laying roads, constructing townships, etc.
- (iii) Permitting Tata Steel to build a dam across river Rushikalya and lay pipelines from the dam to the plant/township site for supply of water. In the event of any delay in construction of the dam/pipeline, Government of Orissa further agreed to supply water from 'alternative sources'.
- (iv) Arranging supply of power to the Steel plant through the Orissa State Electricity Board. Besides, the State Government promised to help Tata Steel in installing a captive power plant for supply of power to the steel plant and allied activities. The State Government also agreed to assist Tata Steel in getting necessary linkages to obtain steam coal from Talchar/ IB Valley/Mahanadi Coalfield Ltd for power generation in the said plant.
- (v) Government of Orissa 'intended' to convert the minor port at Gopalpur to an all weather port and promised to make all efforts

needed to be made to ensure that the port facility is ready by the time the steel plant commences commercial production.

- (vi) Government of Orissa also agreed to assist Tata Steel in convincing the local population regarding the desirability of a steel plant in Gopalpur.

The area proposed to be acquired for establishing the steel plant and the township stretch over ten villages/hamlet close to the Coromondal Coast. The land was very fertile. In addition to agricultural lands, there were large stretches of Government as well as private land in the area where 'Kewara' Plants were grown. The flowers of these plants are used for preparation of perfumes (Attar). Many landless villagers were engaged in collecting these flowers for Government contractors as also private landlords, and earning between Rs. 8 to Rs.10/- per flower collected by them. The landlords also were making an additional income out of the sale of Kewara flowers from their land. The local residents were therefore, loath to the idea of alienation of their land and there were large scale protests against the proposed acquisition. Between 28.12.95 and 18.6.98 several cases involving assault on public officials and the police by the angry villagers were reported. The worst incident took place on 18.6.98 when at Sindhigaon the mob assaulted the police, killing the Reserve Inspector of the district. Many of these cases are still under trial.

The Commission received a complaint dated 19.8.2000 from Shri T.K Reddy, Advisor, Gopalpur Tata Steel Project Prapditanka Kalyana Samiti, Railway Station Road Berhampur, Ganjam Orrissa alleging that on the basis of MOU executed in 1995 thousands of acres of land were acquired for Tata Steel Project in Orrissa and people including agricultural labourers lost their livelihood with no compensation or alternative source of livelihood. However, even after five years, compensation has not been paid in respect of the lands acquired. Prayer was made for intervention of the Commission for a practical solution to the on-going problems and to streamline the development process.

The Commission on 25.2.2008 considered a report dated 24.7.2006 submitted by the Joint Secretary, Deptt. of Steel and Mines, Govt. of Orrissa and requested Shri Damodar Sarangi, Special Rapporteur of the Commission to study the situation on the ground and submit a detailed report within eight weeks.

In response, Shri Damodar Sarangi, Special Rapporteur had, vide his letter dated 21.4.08 submitted a detailed report. In the report the Special Rapporteur has concluded as under:

“The rehabilitation of the villagers displaced for the proposed steel plant remains incomplete and unsatisfactory to this date. The permission accorded by the State Govt. to Tata Steel for utilizing the land for development of the Multi-product Special Economic Zone without making

them in anyway accountable for providing rehabilitation of the displaced persons, appears to be improper and unjust.

The displaced persons are in no way responsible for the failure of TISCO to set up the steel plants. They left the land they had cultivated for ages and the homes they were living in for generations with the hope that with the coming of the plant their economic conditions will improve. Their hopes have been belied. It is not their concern whether it was the failure of the State Government or the Tatas that led the abandonment of the plant and their consequent misery. Many of them, particularly the landless labourers and the marginal farmers have been destitute in the process. The financial compensation they got at the time of acquisition of land has long been spent. Their condition is likely to worsen if the State Government does not take immediate measures for their proper rehabilitation as was promised at the time of the acquisition of their land.

Recommendations of the Report

As per the provisions made in the Orissa Resettlement and Rehabilitation Policy 2006, families displaced for Industrial project shall be eligible for employment by the management of the concerned industrial project. It is also provided in the said policy that for that for the purpose of employment, each original family will nominate one member of such family. The policy also provides for one time cash assistance in lieu of employment in the following scale.

- (a) Displaced persons losing all land including Homestead land.....Rs 5 lacs.
- (b) Displaced family losing more than 2/3rd of Agricultural land and homestead land.....Rs.3 lacs.
- (c) Displaced families losing more than 1/3rd of Agricultural land and homestead landRs.2lacs.
- (d) Displaced families losing only home stead land but not agricultural land and families losing all Agricultural land but no harvested landRs 1 lacs.

The above recommendations of the report, if accepted may help them in coping with the situation to some extent. It is recommended that a fresh livelihood survey should be immediately undertaken by the State Government and job or cash assistance in lieu thereof provided to the unemployed in the above scale. Landless laborers living in encroached land should also be covered under Clause (d) above.

The Commission, on consideration of the above report, on 16.6.08, inter-alia, observed and directed as under:-

“Let a copy of the report of Shri Sarangi be transmitted to the State Government of Orissa, Chief Secretary, Govt. of Orissa shall submit his comments on the report. He will also inform whether action has

been taken in accordance with the assurance given by him to Shri Sarangi. Response within four weeks”.

The Commission had, on consideration of the request of the State Govt. of Orissa for extension of time, granted extension of time by two months, vide its proceeding dated 17.9.08. Accordingly, a letter dated 17.10.08, was sent to Joint Secretary Dept of Steel and Mines, Govt. of Orissa to submit the requisite report by 5.12.08, but the same is still awaited.

The matter is submitted before the Commission for consideration and further directions.

But unfortunately, The Tata's did not work till today for establishment of the steel plant except for a boundary wall to enclose the land handed over to them.

Case No⁸⁸

Brief facts of the case

The land of seven villages in Ghaziabad district measuring about 2500 acres was acquired by the State or Reliance Power Project in Dadri. The affected villagers were a meager compensation of Rs 150/- per sq.yard for their lands though the prevailing price was somewhere around Rs.500/-per sq. yard. It is alleged that when the villagers on realizing the unfair deal meted out to them indulged in protest. The Chief Minister, UP assured them that they would get compensation

⁸⁸ 13218/24/2006-2007-FC, National Human Rights Commission, Law Division/FC/Branch

@ Rs. 300 per. Sq. yard. However the promise was not fulfilled. The villagers resorted to peaceful protest. While they were sitting in dharna, the policemen approached them on 6th July, 2006, with a request to disperse which was declined by the villagers. On 7th July, 2006 and early morning of 8th July, 2006, the police resorted to unprovoked lathi-charge, firing and pelting of stones. As a result thereof, several villagers sustained injuries. The petitioners have, therefore, requested NHRC to take up an in-depth investigation into the aforesaid incident and also to take steps to protect the civil rights of the villagers besides their right to life and livelihood.

Justice Shri Rajendra Sachar (Retd), Former President PUCL along with and some others referred the issue of development induced displacement. They pointed out that as a result of acquisition of land of farmers in the seven villages of District Ghaziabad, the poor farmers and farm labourers had been displaced from their land and habitat and when they protested, the police had committed atrocities on them. The petitioners requested the Commission to take up the case of the farmers with the State Govt. for adequate compensation or for any rehabilitation. The Commission vide proceedings dated 20/9/06 directed Chief Secretary, Govt. of UP to inform Commission whether any plan had been formulated for compensating and rehabilitating the persons affected by the acquisition of land for Reliance Power Project Dadri.

In response, Secretary, Government of U.P. vide communication dated 17/1/2007, Shri H.R. Kishore, Secretary of UP submitted a report stating that the National Rehabilitation and Resettlement Policy, 2003 had been accepted by the State Government and appropriate notification for appointment of Administrator and Commissioner had been issued. It was also reported that a survey was being conducted in five villages for identification of farmers affected by the acquisition of land for setting up a Thermal Power Plant. The survey in the remaining two villages could not undertake because of resistance by local people. An amount of Rs 1, 56, 19,000/- had been approved for the purpose of rehabilitation. 60% of the said amount was to be paid by the State Government and the required amount of Rs. 93, 71,400/-had been sanctioned.

The Commission on 13/10/2008 while considering the matter on served and inter-alia directed as under:-

“The report dated 17th January, 2007 which has been forwarded by the State Government lacks material information. It does not provide details of the schemes, if any, formulated for the rehabilitation of the affected people. In any case, the land was acquired for setting up a Thermal Power Plant. It is a common knowledge that the Power Plant has not come up, so far.

The National Rehabilitation and Resettlement Policy, 2007 has been formulated by Government of India which was published in the Gazette on 31st October, 2007 which was a sequel to a National policy on Resettlement and Rehabilitation on

Project Affected Families which was formulated in 2003 and which came into effect in February, 2004. It is not clear from the report made whether this policy that had been formulated by the Government of India has been followed or not. In Addition to that, the policy of the Government is that if land acquired under this Act remains unutilized for a period of five years from the date of taking over the possession, the same shall be returned to the appropriate Government by reversion. Whether any steps have been taken in this direction is not clear from the report made. On these aspects clarification be sought from the Government and the same shall be submitted within six weeks”

No response has been so far been received in the Commission from the State Government despite issue of letter dated 12/11/2008, calling for a report by 19/12/2008.

The matter is submitted before the Commission for consideration and directions.

Case no ⁸⁹

Brief Facts of the case:

1. A proposal for setting up a mega chemical hub and a multi-product Special Economic Zone over about 10,000 acres of land in Nandigram Police Station and adjoining areas was under consideration of the State Government. Though no final decision has been taken about the location of the project not even preliminary land identification has been made,

⁸⁹ 725/25/12/07-08-FC-(Linked file 872/25/2006-2007)

several political organizations got agitated over this issue and organized a number of meetings during November and December, 2006 with the object of opposing the proposed land acquisition for the project. However, an informal notice for public information regarding the likely location of this project was circulated by the Holdia Development Authority on December 28, 2006 to all the blocks and gram panchayat offices concerned. This notice was by way information only, as Holdia Development Authority functionaries perhaps felt that this was necessary since widespread rumours were being circulated regarding the location of the project and the quantum of land proposed to be acquired. However, after this notice reached to various block offices, there was a massive public resentment among those people who feared that their lands would be required for this project.

2. A number of political organizations and parties formed an organization initially known as Jana Unnyana Gana Adhikar Sangram Samiti, which ultimately came to be known as Bhumi Uchched Protirod Committee, Nandigram to resist the land acquisition for this project. Feelings ran so high about the proposed project that, 3.1.07 at about 10-30 hours an angry mob attacked the Kalicharanpur Gram Panchayat office under Nandigram-I Panchayat Samiti and started brick batting and ransacking the Gran Panchayat Office.

11. At last due all this reasons the State Government, a formal notice has been issued on March 19, 2007 stating that Government will not acquire any land for industry in Nandigram, the police camp at Sonachura has now been moved to Bhangaberia and the police camp at Adhikaripara has been shifted to Tekhali. The situation in the entire area continues to be extremely tense.

Suo-moto case No. ⁹⁰

The Commission has come across a distressing newspaper report published in the "Asian Age" dated 15/3/07 titled "Bloodshed at CPM SEZ-11 die in police firing. Toll may rise". The news paper report indicates that the decision of the West Bengal Government to send in a huge contingent of police to Nandigram led to blood bath, in which a large number of local people were killed and injured on 14/3/07. According to the report, in the morning of 14/3/07, 5000 strong police force encircled Nandigram from two points Bhangaberia and Tekhali. Prior to their advance to the villages the police reportedly cautioned villagers against offering any resistance to their entry. The report also mentions that, according to Trinamul Congress President, the number of dead may rise as high as 50. The IG, Law and Order also claimed that 14 policemen had been injured.

A related news paper report published in The Indian Express also mentioned that the 11 persons killed and over 25 injured were political workers, spearheading a

⁹⁰ 872/25/2006-07

campaign to oppose acquisition of farm land for industries, attacked police and were fired upon. The report also mentions that the West Bengal Government had expressed a view that the use of force in Nandigram could have been avoided.

The Commission feels that if the contents of the reports are true, they raise a serious matter of violation of human rights of the citizens. The Commission in its cognizance⁹¹ directed to send the news paper report to the Chief Secretary and DGP, Government of West Bengal calling for a factual report within two weeks. The report should also indicate as to whether, any ex-gratia relief has been provided to the next kin of the deceased.

Complainant : Suo-moto, Case No⁹², An email has been received from Asian Human Rights Commission with the request that NHRC send its fact finding team to enquire about the Nandigram episode. Cognizance of the unfortunate incidence has already taken by the Commission on 15.3.07. The Chief Secretary and DGP West Benagal have been directed to submit report within two weeks. The matter of sending fact finding team will be considered at the appropriate stage. This complaint is tagged with Case No.⁹³ of Police, West Bengal Kolkata on 16 March 2007. A notice has been sent to The Chief Secretary of West Bengal and Director General Police, West Bengal Kolkata on 16 March 2007.

⁹¹ Justice Y. Bhaskar Rao Member

⁹² 872/25/06-07.

⁹³ 872/25/06-071

Case No.,⁹⁴The Commission deputed a Fact- Finding Team to inquire into the circumstances which led to the unfortunate incidents of loot and arson in Nandigram in the year 2007. On the complaint of Sanjay Parikh the investigation team of the Commission visited Nandigram in very difficult circumstances and when the situation was very tense. Communication with the local people was also difficult being still under the trauma of riots and violence. The team after overcoming these difficulties set out on their task and has done commendable job.

The entire episode can be divided into three phases:-

First Phase

3rd January, 2007 to 14th March, 2007

During this phase, the state police started losing control over law and order situation in the area of Nandigram. The people lost trust in the police and they feared that the police would help the state agencies to take forcible possession of their land. The villagers were instigated by different political parties to fight against the Government policy. Under the Umbrella of BUPC, the people laid a siege over a large area covering 5 gram panchayats in Nandigram Block-1 and did not allow the police and some other state agencies to enter the area as they seemed to have lost trust in either of them. On 14th March, 2007 the police force tried to enter the area and when it was resisted by the local people it opened fire resulting the death of 14 persons and injuries to several others.

⁹⁴ 725/25/12/07-08-FC-(Linked file 872/25/2006-2007

Second Phase

15th march to November, 2007

This was a period of comparative lull. As matter of fact it may be described as the period of calm before the storm. During this period the local administration issued a notification on 19th March, 2007 declaring that the State Government will not acquire any land in Nandigram for industries. Still the agitation by BUPC continued. Not only the blockade of the area covering 5 gram panchayats in Nandigram Block-1 continued but BUPC was able to extend its influence to other areas in Nandigram Block-2. This period was also utilized by CPI (M) supporters for stock piling of arms and ammunition and mobilization of man power including anti-social elements across the canal in the area of PS Khejuri. The State police remained a mute spectator throughout.

Third Phase

On 6th November, 2007, the CPI (M) supporters overran the blockade and tried to “recapture” Nandigram. The police outpost at Tekhali was withdrawn late at night on 6th November, 2007 and thus the attack by CPI (M) supporters was facilitated. The investigation team of the Commission has reported that the location of the Tekhali outpost was of strategic importance as it was the dividing line between the CPI(M) dominated area and the BUPC controlled area. The investigation team has reported that the approach of the police was totally partisan during this period.

On consideration of the report submitted by the Fact-Finding Team, the Commission found that the State Government of West Bengal had failed to discharge its primary obligation to prevent the attack by CPI(M) Cadres on 6th November 2007 and, therefore, it should bear the responsibility for the loss of life and property following the attack. It is suggested that the next kin of the dead in these incidence and also the injured persons should be compensated in the same manner as directed by the High Court of Calcutta for the victims of the State Government proposes to make for damaged houses appears to be quite inadequate. The Commission considers recommending enhanced compensation for fully and partially damaged houses.

The Commission considers it necessary to appoint a Committee to suggest compensation regarding damage that occurred and to ensure that the monetary relief does not fall in wrong hands and it reaches the genuine persons. Accordingly, The National Human Rights Commission, vide order dated 8th February 2008 in Csa No. 725/25/12/07-08 along with linked file No. 872/25/2006-2007 about the incidents from March to November 2007 in Nandigram area in West Bengal, appointed a Committee comprising Shri A.K.Jain, Secretary General, Shri D. Sarangi, Special Rapporteur and Shri A.K.Garg, Registrar “ to suggest compensation regarding damage that occurred and to ensure that the monetary relief does not fall in wrong hands and it reaches the genuine persons”.

Findings of the Committee

The Committee noted that all the affected persons had not got the opportunity to file claim. Therefore, Committee proposed that a fresh notice may be published in two local Bengali newspapers to invite applications/representations.

The above mentioned proposals of the Committee were approved by the Commission in its sitting on 9th April, 2008. The Committee visited West Bengal on 3rd and 4th April 2008. The Committee held preliminary discussions on 3rd April 2008 with District Magistrate, East Midnapore, SP East Midnapore, ADM Holdia, BDO Nandigram I and II Blocks and other officials. Another round of discussions took place on 4th April 2008. During the discussions it emerged that there were mainly 5 gram panchayats which would have been involved under the proposed acquisition of land. These are Vekutia, Kendemari, Jalpai, Sonachora, Gokulnagar in Nandigram I Block and Amdabad in Nandigram II Block. It was informed that except one unidentified case, ex-gratia to the N.O.Ks of the persons who were killed in the firing incident on 14th March 2007 has been paid as per directions of Calcutta High Court at the rate of Rs. 5 lakhs. As regards payment of ex-gratia to the injured, the district administration is awaiting instructions from the State Government. On a query, the District Magistrate informed that for payment of ex-gratia to the deceased and injured after 14th March, no instructions have been received from the State Government.

It was also informed by the District Magistrate and the BDOs that as per Government direction Rs. 10,000/- is being paid for a fully damaged house, Rs.

5,000/- for a partially damaged house and Rs. 1,000/- for loss of utensils of a family. So far Rs. 32.26 lakhs has been disbursed in Nandigram Block I and Rs. 44.58 lakhs in Nandigram Block II.

As regards the reports of missing persons it was informed that there were 5 such reports from 14th March to 10 November 2007 of which one related 14th March. Regarding complaints of rape and molestation it was informed that 2 such complaints were made on 16th March but the same related to the incident on 14th March. SP Midnapore handed over photocopies of some Thana records related to such cases that in each case he would send a one page summary along with a compilation indicating nature of the case.

Interaction with the affected people it revealed that there was discrimination in distribution of ex-gratia. It was alleged that those who belonged to the BUPC/TMC and whose houses have been damaged have not been paid ex-gratia whereas supporters of CPI (M) have been paid.

As regards the quantum of compensation the District Magistrate informed that they were not distinguishing between kutchha and pucca houses.

In the afternoon of 4th April, the Committee met Chief Secretary, West Bengal at 5 pm. The Chief Secretary was informed that there was lack of transparency in the publication of list of damaged.

From the above observation the Committee recommends the following:

- (i) Instructions may be issued to the State Government to publish in complete list of persons whose houses were damaged in the incidents from 14th March to November 2007 related to SEZ issue with details address.
- (ii) List of applications received so far in this regard and status thereof may also be published.
- (iii) The lists mentioned above may be published in at least two local Bengali papers having wide circulation in the area.
- (iv) A date may be indicated in the publication by which time anyone who likes to make an application or submits a representation can do so.
- (v) The lists may also be displayed on the notice boards in Gram Panchayat and Block offices and copies may be given to the district level representatives of all recognized political parties in the State.
- (vi) All fresh applications or representations must be duly enquired into and decision taken subject to confirmation by the NHRC.
- (vii) The Committee considers that for damaged houses/shops, following accounts of ex-gratia is reasonable
 - (a) Pucca houses- Rs. 20,000/- for fully damaged and 10,000/- for partially damaged.

- (b) Kucha houses- Rs 12,000/- for fully damaged and 6,000/- partially damaged.
- (c) Shops at the same rate as Kucha houses.
- (viii) On the lines of ex-gratia to the N.O.K of the persons who died in incidents of 14th March 2007, payment may also be made to the N.O.K. of those who died in other incidents related to the issue.
- (ix) State Government should immediately take a decision about payment of ex-gratia amount to injured persons and inform the Commission.
- (x) The information sought in the letter of Secretary General dated 8th February may be furnished immediately.

Accordingly, the recommendations of the Commission were conveyed to the state government and in addition to the recommendations suggested by the Committee the following recommendations was also made to the State Government:-

- (xi) "SP, East Midnapur shall ensure that appropriate action is taken on all the complaints received at the police stations in the District. If the allegations made in the complaint disclose a cognizable offence, the provisions of Section 154 Cr.P.C should be complied with, and,
- (xii) All persons who have been arrested in connection with police cases regarding incidents of clashes and riots should be provided legal aid, if required".

The following are the action taken by The State Government vide its
Communication dated 6th May 2008

(i) The complete list of persons whose houses were damaged in the incident of 14 .03.07 related to SEZ issue in Nandigram area containing the address, nature of construction, extent of damage and ex-gratia paid has been published.

(ii) List of application received so far on the above incident and status thereof has been published.

(iii) The process for publication of the list mentioned at Sl (i)&(ii) in two Bengali news papers has been initiated and the same will be published shortly.

(v)The lists as above have been displayed on the Notice Board in the Gram Panchayat and Block Offices and the copies thereof have been given to the representatives of B.U.P.C.

(x) The information sought for by the Secretary General vide his letter D.O.No. 725-A/25/12/07-08 dated 21.02.08 on the Commissions' order dated 08.02.08, has already been furnished to him vide this Department's No. 717-HS/HRC/COMP-19/08 dated 23.05.08

Vide proceeding dated 21/07/08, the Commission considered the aforesaid communication dated 6th May and directed its Secretary General to write a D.O. letter to Chief Secretary, Government of West Bengal explaining the reasons why the recommendation were made and upon calling him to comply with the same.

No response has been received to the D.O. letter dated 19/8/08 addressed by Secretary General, NHRC to the Chief Secretary, Government of West Bengal and subsequent reminder dated 26/11/08 issued in pursuance of the Commission direction dated 29/10/08 and calling for response by 8/1/09.

Accordingly, the matter is placed before the Full Commission for Further consideration.

The three cases discussed above shows the involvement of NHRC in the matter of project induced displacement. And it also has shows that the there is a big gap between the promised R & R Policy and the implementation of Land Acquisition policy. Without proper rehabilitation the people are displaced from their land and without adequate compensation their land are taken away for the public purpose. The Government as well as the authorities forget that the displaced persons are also part of the public and their rehabilitation and welfare is much more important than any other. But due to involvement of NHRC there is at least a check on the state and NHRC has contributed a lot to protect the rights of the displaced persons.

Recommendations of NHRC on development induced displacement

Besides the above steps taken by NHRC and the cases dealt by the Commission, Commission also has given wonderful recommendation on development induced displacement at the National Conference on Relief and Rehabilitation of

organized by the National Human Rights Commission Displaced Persons on 24-25th March 2008 in New Delhi.⁹⁵

As we have seen from the above discussion NHRC has really taken initiative to protect human rights of the IDPs. But still since India is a vast country it is difficult sitting in Delhi to protect the rights of the minorities and vulnerable group whose human rights is violated by the states and they are ignorant of their rights and they do not know how to exercise the existing rights. According to the researcher the states are always politically motivated so NHRC should establish its branch in each state so that the state will be accountable and the same time it will be a check for the state and it will be easier for the people to approach to the Commission. The researcher has practical experience of meeting people, coming to the Commission from different parts of the country with their complain. If an institution is existing for protecting the human rights of the needy but if the people who are unable to access it has got no point. NHRC have a pivotal role to play in documenting, monitoring and pressuring the government to ensure the realization of the rights of IDP's. Yet, the institution has often not been autonomous and independent watch dog, which is a basic prerequisite for monitoring and exposing human rights violations. Though it had struggled hard but found it difficult in holding the government to the national and international agreements ratified.

⁹⁵ Annexure I

CHAPTER-VII

CONCLUSION

The government of India seems to be in the midst of a policy splurge. In late February 2004 it promulgated the National Rehabilitation Policy for project Displaced Persons Draft tribal and environment policies are being circulated. The rehabilitation policy that has been in preparation for two decades and has gone through at least four drafts, each of them an improvement over the previous one. The government wants to present this as a shining example of its concern for the displaced people but in reality it meant for big business that wants more land than in the past but does not want to spend on rehabilitating the persons displaced by land acquisition (DPs) and others whom the projects deprives of lands or other livelihood without moving them away physically from their habited (PAP). The Principle even the ministries that prepared the drafts had accepted is that the lifestyle of the DPs and PAPs should be better after the project than before it because they pay the price of development. It is based on Article 21 of the Constitution that protects every citizen's right to life. The Apex court has interpreted it as life with dignity. But the benefits suggested in the policy can at best keep the victim's poor at worst push them below the poverty line.⁹⁶

Development has been defined in the 1986 Declaration of the UN General Assembly on the Right to Development as the right of "every human person and all peoples to participate in, contribute to, and enjoy economic, social, cultural

⁹⁶ Walter Fernandes , Rehabilitation for the Displaced, Economic and Political Weekly, vol. 39, issue(1-12) March, 20, 2004.

and political development in which all human rights and fundamental freedoms can be fully realized". Human Rights and fundamental freedoms with economic growth, Income, equity and human resource development. The politicization and preservation of democratic institutions need to be prevented through the sheer weight of public opinion and institutions⁹⁷.

In the case of India's development caused by large projects has actually resulted in a transfer of resources from the weaker sections of society to more privileged ones. Mega dams, in particular, creates victims of development-mainly tribal's who never share the gains of development. Due to development projects, they are forced to move out of areas where they have lived generations. Apart from depriving them of their lands and livelihood, displacement, other traumatic psychological, socio-cultural consequences, tribal's also has been victimized on the basis of their political rights. The situation is further compounded by inadequate rehabilitation measures⁹⁸

The growing pace of development under 'liberalization' has increased the intensity of such displacement to the extent that communities living their traditional settings are getting displaced with the loss of their traditional sources of livelihood. Once displaced, the PAPs are pushed into an open- market situation

⁹⁷ Bhupender Singh, Governance and Development: The Tribal Context, Indian Journal of Public Administration Vol. No. 1, issue 1, January-March 2004, p 129

⁹⁸ Biswaranian Mohanty, Displacement and rehabilitation of Tribal's, Economic and Political Weekly, vol 40, Issue 41, p.1318.

as individuals competing for their survival in a hostile new environment. A majority of them prove to be losers in this new race of development.

This situation is added to by the induced urbanization of the fringe areas of growing cities all around the country. The depletion of lands due to induced urbanization is much higher than the displacement caused by industrial/infrastructural projects. There is a need for objective studies to assess its dimensions, and it invites the attention of policy –makers, NGOs and social scientists for a sustainable urban policy in the country. In the absence of such policy, the nexus between builders, mafia and politicians are bound to cause immense damage to ecology and traditional sources of sustenance.

NGOs and academics consider the large-scale displacement of people within this process of ‘development’ which, for them is anti-people and non sustainable. Several agitations by NGOs against mega-projects should be seen within this perspective. The NGOs, therefore, challenge the ‘sovereignty’ of the government to acquire people’s assets (the lands) in the name of ‘public interest’.

Displacement results in high social cost which is not even comprehended. Community -based sustenance is disturbed, common property resources are eroded, marginalized sections of population (mainly women, SCs/STs and aged) suffer most, and community networks are broken. Cash compensation for loss assets leads to conflict of interest within the family members of PAPs. Planned

settlement resettlements overlook the caste /religious bonds while planning for new dwellings.

‘Unending aspirations of PAPs for regular jobs in the project’ emerge as the single most important factor affecting the whole R &R process. The effects of displacement are not uniform across the affected population. Those with better skills and large owned lands, in fact, gain from the project. The ‘left out’ are too vulnerable to present their cases for a better deal. The indirectly affected –landless labourers, artisans and village servants –are hardly protected under any R and R. Thus, the R and R of PAPs remain as elusive as ever. For this reason, it is not surprising that leading NGOs fight shy of taking up the work of R and R.

Recently, the role of international funding organizations particularly the World Bank, has come under severe criticism due to its ‘facilitating’ such ‘anti-people’ development. In response, the World Bank puts pressure on the concerned governments not only for a comprehensive R and R policy but also partners in the process of development.

The issue of displacement has invited lot of attention from social scientists and NGOs, not only in portraying the sufferings of affected people but also debating the very rationale of setting up a mega-project. Development experts find a new role in planning (and implementing) a good R and R for the PAPs. Sensitizing project officials to achieve such a goal is another relevant area open before the

researchers and NGOs. The later, so far, are confined to campaigning against the projects, with the result that rehabilitating the PAPs remains a big challenge⁹⁹.

Every state is acquiring land in order to encourage private investment but fails to face the issues of people's impoverishment, food security and the right to a life with dignity. Private profit seems to have become the sole criterion. Economic growth is required but not by impoverishing people. That is what is happening because most DP/PAP who lack the skills required for industrial jobs and other benefits are impoverished to the benefit of another class. But in order to encourage private profit the state uses force to evict families that have on that land for generations. It is time one questioned this approach and found a development paradigm whose benefits reach those who pay the price.¹⁰⁰

It is clear from those above discussions that the Commission has sought to ensure that authorities respect, protect and promote human rights of the displaced people. The Commission believes that such a rights-based approach alone can enhance the quality of the services delivered by authorities. As we have seen before, the range of rights can be thematic or substantive rights such as the right to livelihood and right to shelter, but it can also include procedural rights that cut across the whole spectrum of displacement. Right to equality (Art 14 of Indian Constitution) is a right that should inform the entire spectrum of relief and rehabilitation. And

⁹⁹ R.N.Sharma, *Involuntary Displacement: A Few Encounters*, Economic and Political Weekly, vol.34, issue, 09, March 1,2003 p 912.

¹⁰⁰ Singur and the Displacement Scenario, Walter Fernandes, Economic and Political weekly, vol.42, issue 03, January 20, 2007 p 2005.

under the Indian Constitution State is bound by its obligation under Article 256 to Direct the States to protect its citizen. And NHRC really has contributed by directing the states to protect internally displaced persons. But since NHRC is not an autonomous body states are still reluctant for fulfilling its obligations regarding internally displaced persons.

According to the definition, the displaced persons have not crossed the boundary of their territory so they cannot come under the protection of UNHCR. So they remain under the state protection but they remain like an alien in their own country because they are never accepted by the people of other territories where they go and settle they are looked down upon by those who are residing that area from before. And due to lack of enforcement mechanism the relief and rehabilitation process does not take place properly. So there is need a check if the international community acts like as watch dog the condition of the IDPs may be better off. NHRC can pressurize India to ratify UNHCR and specific unit should be created to look after the IDPs. If not so in the definition of refugees IDPs should be included so that they will be entitled equal protection as the refugees are entitled .The UN guidelines on internal displacement were adopted in 1998 but till date India did not adopt. India should adopt the UN Guiding principles. The basic principles, norms etc. on which implemented policies and plans are decided, should also be part of legislation.

Last but not the least researcher would like to express her views until and unless there is proper implementation of the existing laws the displaced persons are not going to be adequately rehabilitated. And it is a high time for the international community to create a separate unit only for IDPs. Because even if the displaced persons remain in their own country they are not less than refugees as soon as they are displaced they lose their dignity of life so its violation of article 21 of the Indian Constitution.

And the researcher also agrees with Former Chief Justice S. Rajendrababu as he said that development should be sustainable development. And researcher also agrees with Mr M.L Aneja, JR(Law) as he said that NHRC should publish list of all regional languages so that people can be acquainted with their rights. And researcher also agrees when Dy.S.P O.P.Vyas expressed his views that the fertile land should not be taken for development purpose. And even though it is taken the Government should create proper infrastructure for the rehabilitation of the people who are going to be displaced. The researcher also would like to raise some issues as government takes the land for public purpose. Who are the public? Whether the displaced people cease to be public or the only the middle or upper middle class people come under definition public? And don't they also need to be developed? If so why are they not taken care of? The researcher is not against development but the problem is that all the existing laws and R&R policies are not implemented properly and there is nowhere mentioned about the punishment of the failure of the fulfillment of those existing laws and policies. Here according

to the researcher 166 IPC should be applied to the guilty public servant and Sec 197 Cr.P.C should not be bar and it should be repealed as it needs prior sanction it is unconstitutional. It violates the directive under article 14 of the Indian Constitution. According to the mandate of this article which is an aspect of which is an aspect of the Rule of Law as propounded by Dicey, “no man is above the law and every person, whatever is his rank or conditions, is subject to the jurisdiction of ordinary courts.”

The place of the ‘protection’ and ‘encouragement’ of human rights are considered to be uncontested tasks of the UN. Although human rights protection essentially belongs to the domestic jurisdiction of states, the question relating to standard setting, advisory services and the comprehensive information about the situation of human right is within the jurisdiction of United Nations. A third category of ‘concurrent jurisdiction’ is referenced to the *Barcelona Traction case* which advocated that respect for human rights is a legal obligation *erga omnes*.¹⁰¹ So if the state fails protecting its citizens, it is the duty of the International agencies to protect the human rights of the people by applying International Human rights law and since India is a party of ICCPR, India is bound by obligation under article 51 of the Constitution. The case, *Challa Ramakonda Reddy v State of Andhra Pradesh*¹⁰², dealt with the liability of the State where it deprives a citizen of his right to life guaranteed by Article 21. It was held:

¹⁰¹ Sumit sen, Exiled at home: The International Regime of Internal Displacement, Indian Journal of International law vol 38, issue 02, 1998. p187.

¹⁰² A.I.R 1989 AP 235:(1989) 2 Andh LT 1

“In our opinion, the right to life and liberty guaranteed by Article 21 is so fundamental and basic that no compromise is possible with this right. It is ‘non-negotiable’....The State has no right to take any action which will deprive a citizen of the enjoyment of this basic right except in accordance with a law which is reasonable, fair and just.”

The question also dealt with the question whether the plea of sovereign immunity is available in such a case the court think not. “Article 21 does not recognize any exception, and no such exception can be read into it by reference to clause (1) of Article 300. Where a citizen has been deprived of his life, or liberty, otherwise than in accordance with the procedure prescribed by law, it is no answer to say that the said deprivation was brought about while the officials of the State were acting in discharge of the sovereign functions of the State.” In *Nilabati behra v State of Orissa*¹⁰³, it is held that the award of compensation in a proceeding under Article 32 by the Supreme Court or under Article 226 by the High Court is a remedy available in public law based on strict liability for contravention of fundamental rights. It is held that the defense of sovereign immunity does not apply does not apply in such a case even though it may be available as a defense in private law in action based on tort. It is held further that award of damages by the Supreme Court or the High Court in a writ proceeding is distinct from and in addition to the remedy in private law for damages. It is one mode of enforcing the fundamental rights by this Court or High Court. Reliance is placed upon Article

¹⁰³ (1993) 2 SCC 746.

9(5) of the International Covenant on Civil and Political Rights, 1966 which says, “Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”

Suggestions:

1. A designated UN agency –like the High Commissioner for Displace persons should be given responsibility for monitoring and coordinating aid and support.
2. Adequate compensation should be provided to the project affected people.
3. Adequate and reasonable notice for all affected persons prior the scheduled date of eviction;
4. Sharing of development profit at least if not 10% it should be 5% to the affected person.
5. Awareness campaigning should be conducted by NHRC regarding the existing facilities available to the displaced persons.
6. NHRC should publish books in different regional languages about the rights of the displaced persons.
7. Fertile land should not be taken for development Project except subject to certain condition.
8. Instead of Monetary Compensation as far as possible land should be provided to the displaced persons.
9. Policies should not be handled by Bureaucrats alone; views of NHRC should also be taken into consideration.

10. While implementing policies Core Committee should be should be formed.
11. Needs of children and women be addressed meaningfully.
12. Some equity should be provided whose land is taken.
13. Proper infrastructure like school, medical care centre etc should be provided to project affected people.
14. The mindset of Government Department should be changed regarding the treatment of the people. Government should not treat the people as subject; they should be treated as human being.
15. Development should be sustainable.

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ANNEXTURE-I

The following Recommendations on development induced displacement have emerged at the National Conference on Relief and Rehabilitation of Displaced Persons organized by the National Human Rights Commission on 24-25 March 2008 in New Delhi.

1. The basic principles in the National Relief and Rehabilitation Policy [NRRP] must be incorporated in the Rehabilitation and Resettlement Recommendations 8 NHRC's Recommendations on Relief and Rehabilitation of Displaced Persons Bill, 2007 (R&R Bill).¹
2. There should be a mechanism to ensure equitable sharing of project benefits with the displaced people. This may be in terms of providing direct or indirect employment or reservation of a quota of shares etc.
3. The conditional availability of certain resettlement provisions in the Relief and Resettlement Bill are a matter of concern.²
4. The Bill should be in line with other existing legislations such as those related to lands of tribal peoples or forest lands.

¹ For instance, the five year residence limit (Sections 3(n), 3(d), 3(iii), 21(2)(vi) 35(2) of R&R Bill) is higher than the one in the NRRP, which only specifies three year residence (see Sections 6.4(vi), 3(o), 7.3, 3.1(d), 3.1(b)(iii) of NRRP).

² S.36(1) reads "Each affected family owning agricultural land in the affected area and whose entire land has been acquired or lost, [...] shall be allotted, [...] agricultural land or cultivable wasteland[...] if Government land is available in the resettlement area.". S.41(i) provides, "In case of a project involving land acquisition on behalf of a requiring body—(i) the requiring body shall give preference to the affected families in providing employment in the project, at least one person per family, subject to the availability of vacancies and suitability of the affected person for the employment;[...]" S. 49(4) says, "Each affected family of Scheduled Tribe followed by Scheduled Caste categories shall be given preference in allotment of land-for-land, if Government land is available in the resettlement area."

5. Time limit should be defined for various stages in the process for acquisition of the land. Besides, where land has been acquired and has not been used for the intended purpose or any other public purpose, then instead of auctioning the land, option should be given to the original owner to take it back on laid down terms.³
6. There shall be no arbitrary displacement of individuals from their home or place of habitual residence by state authorities..
7. The concept of “eminent domain” should be in line with constitutional obligations and the proposed amendments to the land acquisition act and the relief and resettlement bill should provide for more scope for consultation/participation of affected people both in the acquisition as well as relief and rehabilitation process.⁴
8. Under the Rehabilitation and Resettlement Bill, 2007, a multiplicity of authorities are sought to be created. In several cases, modalities relating to their operation are “as may be prescribed” by the Government. It is imperative to define their roles so that they are complementary and there is synergy in their functions.⁵
9. The guiding principle in cases of development related displacement should be minimal displacement.
10. Where agricultural land is sought to be acquired, it should be mandatory that area of wasteland equal to double the area acquired will have to be acquired and reclaimed for public purpose or at least funds for the same should be deposited in

³ Section 22 of the Land Acquisition Bill (LA Bill))

⁴ According to Section 6(2) of the R&R Bill, “The public hearing undertaken in the project affected area for the environmental impact assessment shall also cover issues relating to social impact assessment.

⁵ Sections 9, 11,12,13,14,16 and 19 of the R&R Bill envisage creation of various administrative authorities.

a special fund to be created for the purpose of rehabilitation of displaced persons or in the Central Relief and Rehabilitation fund.

11. People who are displaced due to development projects include not only property owners but also others such as tenants, farm labourers or others whose livelihood may be dependent on the land even though they may not have legal title to it. Therefore protection of their rights must be ensured.⁶
12. It shall be mandatory for all local bodies to formulate land use plans and building rules so as to minimize and regulate conversion of agricultural lands for other uses. No non-agricultural activity should normally be allowed in areas marked for agriculture unless there are overriding and compelling reasons in public interest.
13. Social impact assessment and understanding local aspirations are best captured through continuous dialogue with local people who are affected and NGOs. Where there is multiple displacements, it is necessary to compensate the displaced people appropriately e.g. by enhancing the solatium amount provided for in the bill or otherwise.
14. Norms of social impact assessment should be laid down and at least three alternatives should be examined in the same or different areas⁷

⁶⁶ Reading Section 3(b)(ii), 3(c) and Section 20(i) of R&R Bill it appears agricultural or non-agricultural labourer, landless person, rural artisan, small trader or self-employed person will be covered under this Act only in cases where there is likely to be involuntary displacement of four hundred or more families en masse in plain areas, or two hundred or more families en masse in tribal or hilly areas, DDP blocks or areas mentioned in the Fifth Schedule or Sixth Schedule to the Constitution. An explicit provision to this effect should be provided in the R&R Bill to guarantee the rights of this category of people. LA Bill also should reflect the interest of people who do not have legal title to the land.

1. ⁷ Section 4 of the R & R Bill should be appropriately amended to reflect this.

15. Where there is multiple displacements, it is necessary to compensate the displaced people appropriately e.g. by enhancing the solatium amount provided for the Bill or other wise.
 16. Regarding service of notice under LAA Act, Section 45(3) provides “When such person cannot be found, the service may be made on any adult male member of his family residing with him, and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells. The reference “adult male member” is in violation of gender equality and autonomy of women. The term “adult male member” may be replaced with “adult member”.
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