

Rethinking the Guiding Principles: the case of the Kashmiri Pandits

by K C Saha

This paper critically examines the universal applicability of the Guiding Principles on Internal Displacement by considering the displacement of Hindus from the Kashmir valley in the course of the low-intensity armed conflict in the Indian state of Jammu and Kashmir (J&K).

The Kashmiri Pandits are minority Hindus in the Kashmir valley. In December 1989 they started leaving their homes in response to separatist and fundamentalist threats and attacks on their homes, businesses and temples.¹ Imposition of direct central government rule between 1990 and 1996 did not bring an end to terrorist violence. By 1996, approximately 250,000 Kashmiri Pandits had been displaced to Jammu, Delhi and elsewhere, where they still remain.

Considering the size of the terrorist groups and their level of external assistance, it is hard to see how this internal displacement could have been prevented. The argument that the Pandits should have remained in the valley and not succumbed to threats overlooks the fact that law and order had broken down, the authorities could offer little protection and fear was all pervasive. The

Pandits had no option but to move on their own to safe areas. Displacement was inevitable.

The Guiding Principles on Internal Displacement were presented to the UN Commission on Human Rights in 1998 by Francis Deng, the Special Representative of the UN Secretary-General for Internally Displaced Persons. They set out the rights of IDPs and the obligations of states to offer protection before internal displacement, during situations of displacement and during post-conflict return and reintegration.² The Guiding Principles, though not legally binding, are intended to serve as the basis for dialogue between governments and other humanitarian actors

The Indian government does not regard the Kashmiri Pandits as IDPs. In a petition to the National Human Rights Commission in 1995, the Pandits demanded that the authorities should extend facilities and rights (*non-refoulement*, humanitarian assistance, right to seek asylum, etc) by virtue of their internal displacement. The petition also demanded that the government implement the recommendations of the Representative of the UN Secretary-

General on IDPs and invite him to meet the IDPs from the Kashmir valley. The Commission felt that the Kashmiri Pandits did not fit into the typical definition of IDPs particularly in view of the benevolent attitude shown them by the government. In its response to the Commission the government argued that the word *migrant* is a more appropriate description of the status of the Kashmiri Pandits. While official policy is to create conditions for their safe return, the Kashmiri Pandits allege that both the central and J&K governments have not done enough to ameliorate their conditions in exile or to find a permanent solution to their problem. The Commission has expressed understanding of their position, called on both governments to provide more support for the Pandits and made suggestions of how they might do so.

Return of the migrants

While the Indian government has been trying since 1996 to prepare a plan for their return and while security in the Kashmir valley is undoubtedly better than it was in 1988-89, the Kashmiri Pandits have insisted that the security situation remains unconducive to return. Terrorist attacks continue and it is unlikely the government could provide security for any Pandits who returned to scattered rural communities. Their association, Panun Kashmir, has called on the government not to coerce the displaced to return to places where threats of terrorist violence remain high, to set up a tribunal to deal with illegal occupa-

tion of Pandit property, to provide compensation for the 37,000 houses damaged and 11,000 houses burnt, to provide jobs and cash relief and to reserve parliamentary seats for the Pandits. Their further demand for a separate state to be carved out from the present state of J&K would have enormous nation-wide implications for other ethnic conflicts in India. In current circumstances the government has no option except to maintain relief operations for a very long period of time.

At present the government provides monthly assistance of Rs1500 (US\$34) per family. Any attempt to force the displaced to return to the valley would not only be opposed by the Pandits but would also attract international criticism.

The Guiding Principles and the Kashmiri Pandits

The Guiding Principles define IDPs as “persons or group of persons who have been forced to flee or to leave their homes or places of habitual residence as a result of, or in order to avoid, in particular, 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”.

Though there is a close link between a refugee situation and an IDP situation, the extension of the refugee protection regime to encompass IDPs is not appro-

priate. They should form two distinct categories. The regime for the protection of IDPs should be complementary to the regime for the protection of refugees. Under the overall protection regime of human rights, the two regimes, one for refugees and the other for IDPs, could form a well-integrated protection regime.

Including disaster- or development-induced IDPs will lead to loss of coherence in the protection regime. The argument that natural disaster-induced displacement should be included as some governments discriminate against certain groups in the aftermath of disasters is too general and not substantiated by enough studies. The same is true of the argument that development-induced displacement be included. Disasters and development projects can be so varied in terms of causes, and number of persons affected that it would be difficult to apply these Principles in every type of situation. Moreover, there would be resistance from governments if these categories were included in the definition of IDPs. States may consider that their inclusion would give considerable scope to the international community to find pretexts to interfere in their domestic affairs.

If it is considered necessary to have a protection regime for disaster - or development-induced displacement, its form and content should be separate. Once the definition of IDPs is modified and confined solely to human rights abuse-



induced displacements, the Guiding Principles will become more precise. Some of the other Principles, particularly 6-9, could be dispensed with.

Principle 5 deals with the obligation of the national and international authorities to prevent displacement of persons. While the principle rightly recognizes the role of states, the role of the international community is not clear. In situations such as J&K where a government is unable to fully meet the challenge of preventing displacement due to factors beyond its control (external support to terrorist groups), the role of the international community needs to be specified. The least one might expect is condemnation of terrorist acts and identification of those abetting them. Any international intervention has to respect the principle of sovereignty and non-intervention in the internal affairs of another country. Principle 5 needs to be elaborated.

Principle 14 asserts that “every IDP has the right to liberty of movement and freedom to choose his or her residence...”. Clause 1 (a) of Principle 15 which speaks about the right of the IDPs to seek safety in another part of the country should be transposed to clause 14 as the opening clause since the right to freedom of movement and freedom to choose the place of residence flows from it. IDPs may face hostility in their new place of residence from the local population particularly when their number is large and their period of stay is uncertain. In order to ensure that IDPs effectively enjoy these rights, state intervention is crucial. Governments may notify the new places of stay of IDPs so as to bring them under state control and if need be requisition such places for a temporary period. Such a measure would give IDPs a better sense of security. States may not be inclined to settle IDPs permanently in their new place of residence as it may have serious political ramifications. Therefore, permanent resettlement of IDPs is much more difficult than resettlement of refugees.

Principle 15 asserts that “IDPs have the right (a) to seek safety in another part of the country, (b) to leave their country, (c) to seek asylum in another country and (d) the right to be protected against forcible return or resettlement in any place where their life, safety, liberty or health would be at risk”.

Clauses (b) and (c) should become a separate principle. *Non-refoulement* has become part of customary human rights and international law and applies equally to refugees as to IDPs. One of the main demands of the Kashmiri Pandits has been that the government should not coerce them into returning to their original places against their will. IDPs will always fear that governments may force them to return and leave them unable to get protection from any other agency. An objective assessment as to whether conditions are conducive for return of the IDPs has to be undertaken with the IDPs themselves.

Principle 18 talks of the right of IDPs to have an adequate standard of living in terms of food, shelter, clothing, sanitation and medical services. It needs to be reworded by saying that the state should make necessary arrangements for relief and shelter. Use of expressions like “adequate standard of living” should be avoided.

Principle 23 deals with the right of IDPs, particularly children and women, to education. The issue of continuance of education of children is a key problem faced by all IDPs. While some Kashmiri Pandit students have received preferential admission to educational institutions, in general their educational needs have not been fully met. There is need for specific commitment and government action to meet the needs of IDP students.

Principle 25 is about humanitarian assistance. The section stating that “international humanitarian organizations have the right to offer their services and all authorities shall grant to persons engaged in the provision of such assistance unimpeded access to IDPs” needs to be reworded. Instead of asserting that international organizations have the *right* to offer assistance, it should be stated that the state *may* seek such assistance from the international organizations. Provision of unimpeded access to persons engaged in providing assistance should be left to the discretion of states.

Principle 29 relates to restitution of property. Payment of compensation for lost and destroyed property is a key concern of all IDPs which States must

address. The principle envisages that compensation be paid only after the return of IDPs. However, in situations such as those faced by Kashmiri Pandits where no return has been possible for a decade, non-payment of compensation leads to severe hardship.

Principle 30 urges “all authorities [to] grant ... unimpeded access to IDPs to assist in their return or resettlement and reintegration.” States may object to providing unimpeded access. A government would be interested in involving an international organization in return, resettlement and reintegration where a reasonable solution has been found for the IDPs. States would be reluctant, however, to permit involvement of such organizations in politically sensitive situations.

Conclusion

It is hard to predict when the Guiding Principles will acquire a binding character through adoption and ratification by governments. It is only when governments can be put under pressure by IDP demands articulated on the basis of the Guiding Principles that the Principles will become a framework for all concerned and adequately serve their intended purpose. Then the Guiding Principles will not only help IDPs make demands on their national governments but will also make states aware of their responsibilities. It is this hope which is at the heart of the demands of the Kashmiri Pandits to be regarded as IDPs and be accorded the rights associated with IDP status.

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The views expressed in this article are the author's personal views and should not be construed as the views of the Government of India.

1 A suggestion that the then governor of J&K prompted and assisted the departure of the Kashmiri Pandits is officially denied.

2 For text of UN Guiding Principles on Internal Displacement, see *Internally Displaced People - A Global Survey*, Norwegian Refugee Council, p205-213 or go to www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html