



ORIGINAL PAPER

The protection of IDPs under international law

Sarab Thamer Ahmed¹⁾

Abstract:

The world in recent days is faced with various kinds of situations and conflicts that affect lives of humans as well as their existence and lead to the displacement of people from their homes or their countries. International law (Isokaite, 2016) sets out the rights of every individual and the responsibility of states to ensure the protection of these rights that can be enjoyed by women, girls, men and boys on equal basis without any discrimination and regardless of age, religion, ethnic or racial background during all times including the times of internal displacement (Adeola, 2021a). Current statistics indicate that there are more people displaced within state borders than persons displaced outside states (Adeola 2021b) .

Keywords: *IDPs, rights, protection, homeless.*

¹⁾ Lecturer Phd, College of law, University of Thi-qar, Iraq, teacher international organizations. Email: sarabthamer@yahoo.com, law1e208@utq.edu.iq

Objectives:

This research sheds light on the legal framework concerning the rights and guarantees relevant to the protection of internal displaced persons, and gives guidance how this framework can be organized to strengthen this protection and support it.

I. The definition of Internal Displaced persons

Internal 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 effects of armed conflicts, situations of generalized violence, violations of human rights or natural or human made disasters and who have not crossed an internally recognized state border. The definition of persons displaced within their countries contained in the "Guiding Principles on Internal Displacement" issued by the United Nations in 1998 is the most widely used definition by the international community, and it stipulates that they" Persons or groups of persons who have been forced or compelled to flee or leave their homes or places of habitual residence, in particular as a result of armed conflict, situations of general violence, violations of human rights or natural or man-made disasters, or to avoid the effects of such situations, but who have not crossed The known international borders of the state (UNdoc 1998) .

According to this definition we can understand that the (IDPs) are obliged and forced to depart their homed and places of their habitual residence as a result of different reasons such as armed conflicts, disasters whether human made or natural disasters like the earthquakes and floods. Those people are looking for shelters within their country and without crossing the international frontiers. (Meng, 2001.) . This definition comes close to the content of the 2009 Kampala Convention on Internally Displaced Persons in its first article, which is the first agreement concerned with this subject concluded between the countries of the African Union, which stipulates; "Internally displaced persons' means persons or groups who have been forced to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid: the effects of armed conflict, generalized violence, human rights violations and man-made disasters, and who have not crossed borders. "internationally recognized state" (KAMPALA CONVENTION, 2009).

II. The difference between IDPs and Refugees

We have a couple different terms when talking about people displaced by the previous mentioned reasons, the refugee and the internally displaced person. The distinction between the two is important. Both of them are part of the civilian population who have fled home to survive. They both have the same needs and fears i.e. they need Oprotection support and assistance due to the violations or disasters, but Refugees have crossed an international border to find safety whereas the IDPs have found safety somewhere within the border of his country.

Refugee, status entitles individuals to certain rights and international protection, while the IDPs are still under jurisdiction of their government which must protect them and give them the same rights as their citizens.

When people do not cross an international border to find safety, may seem like a better situation, because they are able to find a temporary home within the country of origin, but in reality, it's much more difficult situation. A country at war, for example, has extremely limited resources to help the IDPs (John 2002) and those people are not

The protection of IDPs under international law

protected under the United Nations. In addition, those people may face social and financial difficulties, inadequate food, shelter, or health care facilities, lack of proper security in camps and various kinds of abuses of children and women as they are the overwhelming majority of internally displaced persons (Stephen, 2017).

Unlike those, the refugees, they come under the protection of UNHCR. that means they are able to access funding and resources of the UN.

In other words, it can be said that both the refugee and the displaced were forced to leave their original residence and their usual place of residence, and that the reasons that forced them to do so are almost the same reasons, which are sometimes related to natural disasters, armed conflicts, economic reasons, and even political conflicts. But on the other hand, the refugee has left the borders of his country of origin for another country, while the displaced person is still within the borders of his country and has not crossed those borders, and this is the dividing line between the displaced person and the refugee.

II. The rights of IDPs:

IDPs are protected by various bodies of law, principles and conventions:

II.I -International human rights law:

International human rights law is the set of conventional and customary rules that emphasize respect for human rights. It is also a branch of public international law whose rules aim to protect the rights inherent in the nature of individuals, groups, minorities and peoples, without which it is not possible to live as human beings (Ali Sadiq, 1998).

Human rights law entitles all human beings irrespective of their nationality, colour, sex, race, language, religion or other status, including on the grounds of being internally displaced such displacement may consist a violation of essential human rights in itself, and it also violates several other rights which are guaranteed by human rights law, such as the right to life, and the right not to be arbitrarily displaced, not to be subject to inhuman treatment, not to be deprived from education, employment and health care (Stephen 2017.)

The right to be protected against forcible return to a place where their safety would be at risk. Human rights law, obliges the states to respect and fulfill these obligations without discrimination even in times of internally displacement. The role of international human rights law in protecting displaced people is evident through the United Nations Guiding Principles of 1988, which aim to address the specific needs of internally displaced people around the world. They included a set of very important principles that guarantee displaced people, wherever they are, to live in dignity, through the principle of equality. (Principle 1/1) That the displaced person should enjoy the same rights and freedoms as other people within the same country. The principle of non-discrimination (Principle 2) is that there is no discrimination between the displaced in the dealings of the authorities and people with them, which is the principle that was confirmed in detail by Principle 4 that what is meant by non-discrimination for any reason, whether because of race, color, gender, language, religion, belief, political opinion, or legal status. Or social. In addition to the criminal protection provided by these principles, they have provided protection for special categories of displaced persons, the most important of which are children, women, and people with special needs.

II.2. The rights under IHL:

In times of armed conflicts, international humanitarian law comes into effect beside human rights law. When people are in a state involved in an armed conflict, they are protected by the rules of IHL, which aim to limit human suffering and to protect persons who do not or no longer participating in hostilities, and to restrict means and methods of warfare. These rules are applied in all situations of armed conflicts, both international and non-international armed conflicts. International humanitarian law provides fundamental guarantees to internally displaced persons. Therefore, humanitarian work in countries affected by armed conflicts and disasters is necessary to save lives during the crisis by meeting the basic needs of the affected population. Neutral humanitarian organizations such as the International Committee of the Red Cross have the right to provide their services once the concerned parties approve the relief plans. Parties to armed conflict and States must allow and facilitate the rapid and unhindered passage of humanitarian relief, subject to the right of these parties to be monitored.

IHL is important because internal displacement is often occurring in situations of armed conflicts, it establishes minimum standards of humane conduct that must be complied with in any situation of armed conflict. These standards aim to protect civilians, civilian populations and their means of survival.

IHL prohibits direct attacks against civilians, attacks shall be directed only against military objectives. Internally displaced persons are entitled to the same protection under IHL as any other civilians. IHL prohibits any party to a conflict from forcing civilians to leave their homes or places of their habitual residence unless their security or imperative military reasons so demand as a consequence of being displaced ,civilians ,often struggle to meet essential needs, they may face different threats such as settlement in un safe locations, lack of official documents, forced return to unsafe areas. IHL contains important provisions to prevent the displacement of civilians. It aims to ensure that, when displacement does take place, internally displaced persons are protected and provided with assistance at all stages of their displacement, such as satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated.

The most important rules for protecting internally displaced persons in international humanitarian law are those mechanisms and guarantees contained in the Geneva Conventions of the year 1949 especially Common Article 3 of them, which relates to conflicts , Despite the ambiguity of Common Article 3, the issue is extremely important for the protection of internally displaced persons because it enshrines customary international rules, which is important because once it becomes a basis for the rule of customary international law, states must, regardless of whether they ratify the agreement or not, and as a result, All states are obligated to respect the basic guarantees contained in Common Article 3 (Kissling, 2006) .

Non-international armed conflicts include the minimum rules that parties to a conflict must abide by in the event of the outbreak of internal armed conflicts. They also provide the opportunity for neutral humanitarian organizations such as the International Committee of the Red Cross to intervene and aid those affected by those conflicts.

On the other hand, the first paragraph of Article 49 of the Fourth Geneva Convention, which relates to the protection of civilians in times of war, includes the prohibition of forcing the civilian population to move from their places of residence to remote areas. It prohibits the individual or collective forcible transfer of protected

The protection of IDPs under international law

persons or their exile from occupied territories to places Others far from their homeland, even if this deportation or displacement took place to another place within the same country.

It should not be neglected to mention here the provisions contained in the First Additional Protocol of 1977, which protects the civilian population from the consequences of hostilities. Article 51 of it included the protection of civilians from the dangers resulting from military operations, starvation of civilians as a method of fighting, or disabling indispensable objects. For the survival of the civilian population, which may force them to move from their places of residence.

It is often the violation of the rules of IHL that cause civilians to flee their homes and become displaced, so all the states, regardless of whether or not they are parties to a conflict, have the duty to prosecute and punish in their own courts those responsible for serious violations of IHL, such as war crimes and or grave breaches of the law regardless of the place of the crime or the nationality of the person.

Without greater respect for IHL and more efforts to protect the civilian population during armed conflicts, global displacement figures will continue to grow.

II.3. The rights under the UN Guiding principles on internal displacement:

The need for international standards for the protection and assistance IDPs became obvious in the 1990, when the number of the forcibly uprooted people within the border of their country as a result of human rights violations, armed conflicts and disasters, began to rise. These (30) principles outline the protection available to IDPs. They bring together the rights of IDPs and the responsibilities of national authorities as well as non-state actors towards them the basis in international law for each principle is summarized in (Walter, 2000).

The guiding principles are the mile stone in the process establishing a legal framework for the protection of IDPs, it has its importance, because it reflects the existing standards of international law.

The UN general Assembly has recognized these principles as an important international framework for IDPs, protection and encouraged all relevant actors to consider them as a guide in situation of internal displacement.

II.4 / The content of the Guiding principles:

The 30 guiding principles are structured around the phases of displacement. these principles provide a definition of an IDPs.

They address protection against displacement protection during displacement, the framework for humanitarian assistance, and protection during return resettlement and re integration. They cover the rights relating to the physical security and integrity, economic, social and cultural protection needs such as the access to education, the basic needs of life like the rights to food, water, health and shelter.

These principles state that (IDPs) are entitled to enjoy rights and freedoms without any discrimination, regardless of their age, sex, religion, racial or social background. These principles fill some important gaps in (IDPs) protection because it prohibits the arbitrary displacement (Adeola, 2016) and reaffirm that national authorities have the primary responsibility to ensure that (IDPs) essential needs are met. These principles emphasis the importance of safe return as well as the need to assist the (IDPs) to recover their property and possessions.

Conclusion

The idea of protection in international law is a broad idea that does not stop at one group of society. Rather, the goal of protection is to achieve security and safety and preserve the dignity of the individual, whether he is a man or a woman, old or young, and that protection is not limited to times of war between countries, Rather, the United Nations is working to achieve this protection even during periods of internal displacement, regardless of the causes of displacement, whether civil wars, internal strife, or natural disasters. This is the reason behind determining the responsibility of states and governments to ensure that protection by all possible means and means until protection was transformed from an initiative It is a duty upon states. And if it is possible to temporarily suspend human rights during armed conflicts due to the circumstances of war, then international humanitarian law applies in international and non-international armed conflicts, which means that this law can provide the necessary protection for internally displaced persons, It has become clear that the protection of displaced persons in international humanitarian law is a limited protection that can be limited to the sources of international humanitarian law itself, embodied in the four Geneva Conventions of 1949 and the two Additional Protocols of 1977, as this law protects the displaced as civilians when they do not participate in hostilities. and the parties to the conflict must not Attacking civilians who are not combatants and not involved in the fighting, but that international humanitarian law places restrictive conditions on the parties to the conflict to ensure the right of return for those internally displaced to their homes and homes as soon as the reasons for displacement are gone.

Another instrument of protection is the UNs' guiding principles on internal displacement which bring together the rights of IDPs and the responsibilities of national authorities and non – state actors towards them. This instrument can be used by the governments, international agencies, NGOs and IDPs themselves to promote and protect the rights of any internally displaced people. Finding from this research prove that internally displaced persons go through numerous challenges, form shortage of food supply, lack of security, abuses in the camps, poor sanitation and health care, this sever conditions implies that if measure is not taken to address the situation it could lead to serious social and health problems.

References:

- Adeola, R. (2016). the right not to be arbitrarily displaced under the United Nations Guiding Principles on Internal Displacement. *African Human Rights Law Journal*, 16(1), 83-98. <https://dx.doi.org/10.17159/1996-2096/2016/v16n1a4>
- Adeola, R. (2021a). The Internally Displacement Person in International Law, *International Journal of Refugee Law*. Retrieved from: <https://www.e-elgar.com/shop/gbp/the-internally-displaced-person-in-international-law-9781788975445.html>
- Adeola, R. (2021b). The Kampala Convention and the Protection of Persons Internally Displaced by Harmful Practices in Africa. *Journal of African Law*, 65(S1), 101-114. doi:10.1017/S0021855321000073
- Ali Sadiq Abu Haif. (1998) Al Maaref Printing and Publishing Establishment
Article 1 of KAMPALA CONVENTION To protect and assist internally displaced people 2009.
- Article 49 of the Fourth Geneva Convention 1949, And Art 17 Of Additional Protocol Ii

The protection of IDPs under international law

- Article 50, 51, 130 And 147 of the Four Geneva Convention 1949 Respectively, See Also Articles 11, 85 of the First Additional Protocol 1977.
- Convention relating to the status of Refugees (1950). Article (1) of The Relating to The Status of Refugees, Modified by the 1967 Protocol
- Erin Wilson, Refugee or IDPs – What's the difference. Retrieved from: <https://preemptivelove.org/blog/refugee-idp-whats-the-difference/#:~:text=The%20distinction%20between%20the%20two%20is%20important%20is%20important%20is%20important&text=So%20refugees%20and%20IDPs%20have,somewhere%20within%20their%20own%20country.>
- Fawcett, J., Tanner, V. (2002). The Internally Displaced People of Iraq. See Also: Displaced People in Iraq, Rebuilding Normalcy to Return Home. Retrieved from: <https://www.brookings.edu/wp-content/uploads/2016/06/iraqreport.pdf>.
- Henckaerts, J., Doswald-Beck, L., Alvermann, C., Dörmann, K., & Rolle, B. (2005). *Customary International Humanitarian Law*. Cambridge: Cambridge University Press. doi:10.1017/CBO9780511804700
- Howard, R.E. (1986). Human Rights in Commonwealth Africa, Ottawa, Rowman & Littlefield.
<https://www.icrc.org/en/doc/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>
- International Committee of the Red Cross (1998). Guiding Principles on Internal Displacement. *International Review of The Red Cross*, no. 324. Retrieved from: <https://www.icrc.org/en/doc/resources/documents/article/other/57jvgl.htm>
- International Committee of the Red Cross (2022). Internally Displaced Persons and IHL Factsheet, ICRC. Retrieved from: <https://www.icrc.org/en/document/internally-displaced-persons-and-international-humanitarian-law-factsheet>.
- Isokaite, I. (2016). Public International Law, Law Faculty of Vilnius University, Institute of Law Department. Retrieved from: <https://slideplayer.com/slide/10401556/>
- Kissling, A. (2006). The internally displaced in International law-do they require enhanced Protection? Master Thesis, Faculty of law-school for Advanced Legal Studies, University of Cape Town.
- Oto, S (2017). Challenging of Internally Displaced Persons and Peace Building. DOI: 10.13140/RG.2.2.36155.92960
- UN Commission on Human Rights, *Report of the Representative of the Secretary-General on internally displaced persons, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 2001/54*, 16 January 2002, E/CN.4/2002/95, available at: <https://www.refworld.org/docid/3d6ce3c87>
- UN Commission on Human Rights, *Resolution 1998/50 on Internally Displaced Persons*, 17 April 1998, E/CN.4/RES/1998/50, available at: <https://www.refworld.org/docid/3dda51b94.html>.
- UN doc.E/CN.4/1998/53/add.2 of 11february 1998.
- UN High Commissioner For Refugees (2015), Ukraine, Factsheet. Retrieved from: <https://reliefweb.int/report/ukraine/ukraine-factsheet-july-2015>
- UN. General Assembly Resolution 2003, 581/177.
- Walter, K. (2000). Guiding Principles on Internal Displacement. Annotations, American Society Of International Law. Retrieved from: https://www.brookings.edu/wp-content/uploads/2016/06/spring_guiding_principles.pdf.

Article Info

Received: May 31 2023

Accepted: November 20 2023

How to cite this article:

Thamer Ahmed, S. (2023). The protection of IDPs under international law. *Revista de Științe Politice. Revue des Sciences Politiques*, no. 80, pp. 121 – 128 .