

Status of Internally Displaced Persons in Syrian Arab Republic and Responsibility to Protect: An Analytical Study

Gaurav Pandey¹, Abhimanyu Arya²

^{1,2}Manipal University Jaipur, IV- Semester B.A.LL.B. (HONS)

Abstract: Syrian Arab Republic has long been affected by a bloody civil war and has become a key battleground since 2011 when the domestic contest begun against the authoritarian regime led by President Bashar al-Assad. The crisis is labelled as one of the greatest human catastrophe resulting in millions of death and internally displaced. There are multiple international conventions for 'Refugees' and persons seeking Political Asylum but hardly any for Internally Displaced Persons (IDPs). This indicates lack of recognition to the predicaments of IDPs by the international community. As against the basic human rights and dignity, the IDPs are subject to heinous crimes. The United Nations High Commissioner for Refugees (UNHCR) confirms more than 6.2 million people as internally displaced [Syria Emergency UNHCR Official Website homepage (Mar. 27, 2019, 02:22 PM) <https://www.unhcr.org/syria-emergency.html>.] within the borders of the Syrian Arab Republic. Against this backdrop, this paper further attempts to explore the legal obstacles and challenges preventing refugees from living a dignified and respectable life. It further unravels the status of IDPs within the framework of Responsibility to Protect (R2P), contextualizing the plight of IDPs in Syria. By reviewing a number of convention reports and article, this paper recommends two solutions viz.-Ad hoc and permanent to address the IDP crisis in Syria.

Keywords: Internally Displaced Persons, Responsibility to Protect, Syrian Arab Republic Refugee, Political Asylum, Xenophobia

1. Introduction

The world today faces the greatest humanitarian catastrophe since the Second World War and since then United Nations has worked extensively to serve the purpose of promoting international peace and harmony and work towards the common goal of achieving a peaceful and humane world through various conventions. Most notable of which are the 1951 Refugee Convention and the 1967 protocol on the status of refugees but unfortunately the internally displaced persons are not covered under this convention and their efforts have been inefficient in tackling the crisis at hand. Article 13¹ of the Universal Declaration of Human Rights (UDHR) guarantees that every individual has the right to freedom of movement within the border of each state and Article 14² of the same provides for political asylums to political refugees. This means that it is both a moral as well as a legal obligation for nations to support and help out refugees and IDPs seeking help due to internal turmoil in their home country. A similar view with some provisos has also been enumerated in Article 12 of the African (Banjul) Charter on Human and Peoples' Rights 1981³.

The term 'refugee' has been defined in the statute of the erstwhile International Refugee Organization but the definition provided by them limits the scope of humanitarian aid and asserts that only those persons who have crossed an international border can be provided support by this

organisation but not the Internally Displaced Persons (IDPs). The authors of this paper therefore firmly believe that humanity must never be dependent on any unreasonable classification because even the IDPs face similar challenges as those faced by the refugees. This paper primarily focuses on the IDPs and the legal obstacles in providing humanitarian aid to such people. For the purpose of having a comprehensive understanding of the issues, this paper highlights the Syrian Crisis as it has now entered its 8th year since an armed rebellion had begun in the region in 2011 resulting in a large number of people being internally displaced. Apart from the affected country, other nations must also not forget their international obligations to help and support the IDPs in whichever way possible. This obligation can also be easily be interpreted from the Preamble of the United Nations Charter, the words "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small"⁴ signifies the same.

The most common reason for the increase in IDPs in recent years after natural disasters has been due to internal turmoil created by terrorism and civil wars. The United Nations High Commissioner for Refugees (UNHCR) is the principal international body which deals with helping the Internally Displaced Persons and Refugees.⁵ The work done by this body is highly commendable and it has in fact received a lot of help from strong economies and NGO's but this effort is still not sufficient to fully resolve and control the crisis situations and more indulgence in the matter is needed. On 11th February 1998, the Economic and Social Council of the

¹Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country.

² Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

⁴ UN Charter- Full Text (April 4th 2019 16:07) <https://www.un.org/en/sections/un-charter/un-charter-full-text/>.

⁵ Internally Displaced persons UNHCR Official Website (April, 01, 2019, 01:43 PM) <https://www.unhcr.org/internally-displaced-people.html>.

United Nations adopted UN Guiding Principles on Internal Displacement.⁶ This principle clearly defines IDP's as "Persons or group of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human made disasters and who have not crossed an internationally recognised state border".⁷ The above mentioned definition is simply a descriptive definition and it does not confer any legal rights to the people who fall under it like that in the case of 'refugees'. This definition clearly differentiates refugees from the IDP's. And was a landmark development with respect to internally displaced persons. Principle 14 of the UN Guiding Principles clearly shows that even the IDP's must be treated in a just manner as the problems faced by them is similar to that of the refugees. Although the authority of the UN Guiding Principles on Internal Displacement has been recognised globally, the main problem is that it is still not legally binding on nations. Certain regional organisations like the 'African Union' has however taken a positive step in codifying this document in the 'Kampala Convention'⁸.

In this background, the paper aims to address following research questions:

- 1) Can the international community intervene if the local government is unwilling and unable to provide substantial help?/ What measures can the international community take in case of failure of Assad Regime in protecting its citizens?
- 2) What are the possible permanent solutions in resolving the conflict? / What are the possible legal options to resolve the plight of Internally Displaced Persons in Syrian Arab Republic?

In order to answer these questions, this paper reviews various international conventions vis-à-vis IDPs, articles and reports by the UN and other organizations. The paper is divided into four parts. The first part discusses the domestic polity of the region in order to find out factors contributing to increasing numbers of IDPs and then examining efforts of the Assad Regime in tackling the crisis until now. After having a fair understanding of these points, the second part attempts to analyze the applicability of 'Responsibility to Protect' (R2P) as a normative framework in the current scenario. The Universal Declaration of Human Rights has already established that every individual must be given the basic 'human dignity' irrespective of their nationality, race, religion, gender, sexual orientation, etc, it therefore becomes mandatory for every nation to support its internally displaced persons. Thus, the third part explores the possible legal options vis-à-vis protecting IDPs from war crimes by the regime. The final recommends two strategies—ad hoc and permanent to address the predicaments of IDPs in Syria.

⁶ E/CN.4/1998/53/Add. 2.

⁷ Introduction, paragraph 2, UN Guiding Principles on Internal Displacement, 1998.

⁸ African Union Convention for the Protection of Internally Displaced Persons (April, 04,2019, 04:28 PM) <https://www.unhcr.org/about-us/background/4ae9bede9/african-union-convention-protection-assistance-internally-displaced-persons.html>.

2. Polity Review of Syrian Arab Republic in Dealing with the Domestic IDP Crisis

It all began in March 2011 in the southern city of Daraa where the local protesters had gathered in order to demand the release of 14 school children who were arrested and also allegedly tortured for writing a popular slogan on the wall "We want the downfall of the regime" the protesters did not directly demand Assad's resignation, but only advocated for democracy to be established and were completely peaceful in nature but this did not go well by the authorities and they intervened violently, resulting in the death of 4 people. Subsequent to this, the protest had spread across the nation and the government continued to protest disproportionately. By mid-May the Death toll had reached 1000 people and the Syrian Military Forces had besieged the protestors and justified their actions by calling them 'Terrorists'⁹. Since the beginning of the conflict in Syria, there has been unrest among people, as they are forced to flee their homes, which is one of the biggest problems as their lives are drastically affected. Moreover, they also lack basic needs like food, water, shelter, sanitation, etc. The Syrian Crisis is a very complex civil war, which includes various belligerents and this has in turn allowed the government to use banned lethal weapons in order to turn down any protest against their regime. The Organisation of Chemical Weapons in the year 2014 did an in-depth research on the same and compared the samples found from the attack in Damascus on Aug 21, 2013 with that of the Syrian

Government Chemical stockpile and found disturbing results. This investigation clearly revealed that it was the Syrian Government acting under the direct order of President Bashar Al- Assad who was behind this atrocious act. We can now conclusively say that the Syrian Government must be held responsible for creating the IDP crisis, thereby forcing millions to flee from their homes due to the terror created by none other than their own government.¹⁰

2.1 Responsibility to Protect (R2P)

The concept of Responsibility to Protect has been documented in the 137th point of the UNGA Resolution 60/1 adopted in the year 2005¹¹. In the 2005 World Summit all member nations had collectively endorsed this concept. It was initially coined as a preventive tool which would prevent four major concerns i.e. War Crimes, Genocide, Ethnic Cleansing and Crimes Against humanity. The responsibility to protect, as already mentioned in the resolution 60/1 of the UNGA basically means that it is the

⁹ Guide: Syria Crisis BBC (April, 12 2019, 02:54 PM) <https://www.bbc.com/news/world-middle-east-13855203>.

¹⁰ Anthony Deutsch for Reuters TESTS LINK SYRIAN GOVERNMENT STOCKPILE TO LARGEST SERIN ATTACK: SOURCES, (April 12, 02:22 PM) <https://in.reuters.com/article/syria-crisis-chemicalweapons-exclusive/exclusive-tests-link-syrian-government-stockpile-to-largest-sarin-attack-sources-idINKBN1FJ000>.

¹¹ UNGA/RES/60/1 2005 World Summit Outcome (April, 14, 2019, 05:27 PM) https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf.

responsibility of every member nation to protect its citizens from the above four mentioned concerns including their incitement and if that particular nations has either been proved incapable or is unwilling to do the same, the responsibility then shifts to the international community to protect them by exploring various humanitarian, diplomatic and other peaceful measures while adhering to the UN – Charter and other relevant international conventions and treaties. The 132nd point of the same document recognises the UN Guiding Principles on Internally Displaced Persons¹² as an important framework but merely recognition is not going to serve the purpose of actually helping the internally displaced. It is therefore recommended that a new framework shall be formulated which would comprehensively describe the rights of such persons just like in the case of Refugees. Principle of solidarity and burden-sharing shall be endorsed so that effective measures can be taken because every human being on this planet must be seen as a ‘global citizen’ and his national citizenship is therefore secondary. This means that every nation has a part to play while providing humanitarian help to those in need irrespective of the nation they belong to and for the same purpose a strategy was initiated by the United Nations Office for the Coordination of Humanitarian Affairs which provided a plan that would provide the internally displaced persons with the adequate humanitarian aid but the latest report released by this agency reveals that 96.2% of their requirements are still unmet¹³ and out of the 3.8% of the total aid provided under the Syrian refugee response and resilience plan (3RP) the United States of America along with the Federal Republic of Germany collectively make up a share of 62.7% of the total aid provided. This is a very sad state of affairs because many powerful economies have yet not contributed enough to this crisis at hand. It is high time for the international community to realize that this is no longer a regional problem as the local government of the region has already been established as a failed state since they cannot even control large portions of their territory as they continue to remain under the control of various rebel groups. As discussed above while analysing the domestic state of affairs in the region, the Syrian Government cannot be trusted to help these IDP’s as they are playing a pivotal role in creating instability in the region. President Bashar – Al Assad meanwhile, is confident that his government is capable in tackling the crisis at hand in an efficient manner but the ground reality shows otherwise. There are still millions who are homeless and without the care and protection of anyone. While these people have already faced the challenges of nature to stay alive without any organised supply of food and drinking water, and now to add to their hardships is the Islamic State as they still control large territories of Syria besides other rebel groups. This is exactly why it would be unfair to just blame the regime for creating instability in the region, but it must be noted that in June 2018, the United Nations Human Rights Council established a commission of inquiry to look into the condition and found out that the Syrian government has committed war crimes

and crimes against humanity.¹⁴ On the other side, the Syrian Government along with its allies Russia, Iran and China has accused the United States of America for creating instability in the region. According to them, the airstrikes conducted by the US-led Combined Joint Task Force against ISIS has turned out to be counter-productive and are also illegal in nature as it violates the Syrian sovereignty because the Syrian Government has given permission only to the Russian Federation to carry out such attacks. It has also been alleged that US by using its proxy, Saudi Arabia along with Qatar has been funding the rebel groups in the region and that their main intention in the region is to oust Bashar Al-Assad out of power and not combat terrorism.

2.2 Legal Options

The above mentioned points clearly indicate that the Syrian Government is most likely involved in creating instability and if such is the case, and then there are some obvious questions which are required to be answered because actions must have consequences. If we leave these offenses unchecked, not only will this be bad for the current conflict, but it would also leave a very bad precedent. The institution which acts as a last resort remedy is the International Criminal Court. We must therefore carefully try to answer the following question-

- 1) Can proceedings be initiated against the Syrian Government for committing ‘War Crimes’ against its own population? In other words, does the International Criminal Court have the required jurisdiction to take up this matter?

Article 5 (1) (a)¹⁵ of the Rome Statute does include ‘War Crimes’ as one of the crimes which fall within the Jurisdiction of the International Criminal Court, but unfortunately, the ICC still has very limited Jurisdiction over such matters because Syria does not fulfil the required preconditions required to exercise such jurisdiction which is mentioned in Article 12(1) of the Rome Statute¹⁶ & since

¹⁴ UN Commission of enquiry on Syria: UNHRC Official Website (April, 12 2019, 04:39 PM) <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23226&LangID=E>.

¹⁵ Article 5: Crimes within the jurisdiction of the Court. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

¹⁶ Article 12: Preconditions to the exercise of jurisdiction: 1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5. 2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the

¹² Supra note 8 on page 03

¹³ Response Plan 2019 for Syrian Arab Republic, (April, 11, 2019,08:00 PM) <https://fts.unocha.org/appeals/724/summary>.

Syria is not a member of the Rome Statute, which is the governing treaty of the International Court of Justice, the ICC has no direct jurisdiction over this matter. This is the greatest legal hurdle which is preventing the international community to hold Syria accountable for its atrocities. There is another way the ICC may expand its jurisdiction, this can be done by way of referral from the United Nations Security Council but it is a well established fact now, that Russia is actually an ally of the Syrian Arab Republic and is most likely going to veto any resolution against its ally. The only other option left is obviously if Syria by itself declares itself to be a party in the case. The ruling that came on September 6th 2018¹⁷ however shows some optimism. Herein the pre-trial Chamber – I of the International Criminal Court decided that the courts are having jurisdiction of crimes where any one element or part of the alleged crime took place in the territory of any state which is a party to the Rome Statute. In the Case of Myanmar and Bangladesh, it has been alleged that Myanmar has been forcefully deporting its citizens to other nations such as Bangladesh and Myanmar the prime facie jurisdiction says that since Myanmar is not a party to the Rome Statute, it shall not come under the purview of the International Criminal Court but the court held that since one of the elements of the crime on deportation (i.e. The crossing of border) took place on the territory of Bangladesh which is a party to the Rome statute, the case shall be tried. This contention was accepted based on Article 199(1)¹⁸ and the famous principle of international jurisprudence, *la compétence de la compétence* or *Kompetenz-Kompetenz* which basically means that every international tribunal has the power to determine its own jurisdiction. The precedent of this ruling can actually turn out to be quite helpful in the case of Syria as well because Jordan, which is a party to the Rome Statute is taking in a huge number of refugees who are forced to leave their homes in Syria but there are certainly a lot of difference in both the cases, unlike the case of Myanmar, there are no conclusive reports that show the Syrian government is involved in forceful deportation directly, but at the same time it can be argued that there are signs of indirect means of deportation as this is the only viable option left for the people, if we consider the number of air-strikes and other attacks taking place in the region. With so many legal obstacles, it is time for nations to reanalyse the Rome Statute and make the required amendments as it has been highly ineffective while persecuting war criminals, people who are now committing ‘war crimes’ with both immunity and impunity. The official website of the International Criminal

Court itself says that it sought to fight impunity and their object is not to replace national courts but to act as a court of last resort. If the necessary changes are not made in the statute then the courts will have to rely on ‘judicial activism’ in order to hold the war criminals guilty and this would further create arbitrariness of jurisdiction. This arbitrariness is dangerous for the international community as it goes against the principle of national justice and can also come in conflict with nation’s national sovereignty in few cases, the jurisdiction matters shall therefore be made crisp and clear so as to remove any other interpretations.

3. Recommendations

The answer to the first question that was raised in the introduction, relating to whether or not the international community can intervene has been adequately answered under the heading of ‘Responsibility to protect’ of this paper. It can therefore be concluded that it is the fundamental duty of the international community to protect the human dignity of every individual provide assistance whenever necessary. As far as Syria in concerned, we must come up with a twofold strategy, this paper has primarily focused on the 2nd part in detail.

1) Ad- Hoc Strategy

The Ad-Hoc strategy would include a systematic process of providing humanitarian aid to the internally displaced persons, starting from the most affected governorates of Syria such as Aleppo to other regions. It is suggested that the UN- Guiding principles on Internally Displaced Persons shall be revisited and it must also provide the IDP’s with similar legal rights as those given to the Refugees. It is also suggested that is the principle of R2P (Responsibility to protect) shall be applied and stable and strong economies of the world must work on a comprehensive plan to provide humanitarian assistance through the UNHCR.

2) Permanent Strategy

The permanent strategy shall include all measures to stabilize the region. Unless there is peace and stability in the region, no matter how much humanitarian aid we provide, it will all be in vain as the number of IDP’s will continue to rise progressively like it has until now. Stabilizing Syria is going to be the most important and also the most difficult task because of the number of belligerents in the region. There are multiple sides fighting for different causes. With the lack of central control, an authoritarian government running the nation and other stakeholders providing support to rebel groups, peace and stability seems farfetched. It therefore becomes necessary for nations like United States, Russian Federation and the Syrian Arab Republic to recognize the ISIS as a common enemy and work together. It was believed that the new US administration would have a softer stance on Assad’s government but the in the year 2017, the US Tomahawk missile strike on the Syrian Airbase show that they are not ready to accept Assad’s government as the legitimate government of the region. The practical reality is that without the efforts of Syrian Arab Republic’s armed forces with support from the Russian Federation, the situation would have been much worse because it once seemed that the ISIS could actually overpower the entire establishment. The Syrian Army is

Court in accordance with paragraph 3:(a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;(b) The State of which the person accused of the crime is a national.3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

¹⁷ Press release by ICC [ICC-CPI-20180906-PR1403] (April 14, 2019 04:00 PM) <https://www.icc-cpi.int/Pages/item.aspx?name=pr1403>.

¹⁸ Settlement of disputes1.Any dispute concerning the judicial functions of the Court shall be settled by the decision of the Court.

obviously going to have an upper hand in battles as they are well acquainted with the terrain and locations. As far as the legitimacy of the Assad government is concerned, we shall let the people of Syria decide the fate of the region. Once there is relative peace and stability in the region, it is recommended that a United Nations Administrator shall be appointed to conduct a plebiscite throughout the nation. This way the international community is reaching a peaceful solution while still respecting the state's sovereignty.

Some open ended questions for the readers -

- Can the data regarding the status of IDP's provided by the local government be trusted?
- What would be the consequence of Assad's resignation? Would it bring stability or lead to more extremism?
- The practical reality shows that we do need the Syrian Government to stabilize the region and for that purpose we must accept them as the legitimate government but would this not be unjust for the victims of the war crimes committed by them?