Displacement and Relocation from Protected Areas: International Law Perspectives on Rights, Risks and Resistance

Doreen Lustig and Benedict Kingsbury

INTRODUCTION

MAHESH RANGARAJAN and Ghazala Shahabuddin connect the discouraging results and frequent injustices of current policy on conservation and displacement in India to a fundamental incoherence in the very framing of this policy. They attribute this incoherence in part to the stark irresolution of debates among policy professionals, intellectuals and activists about how to conceptualise the issues. They recognise also the importance of basic political structures to the substance of this policy. This is made clear at the end of their paper, where the gloom of their accounts of the recent and the distant past is alleviated by the hopeful conjecture that the broadening of participation within Indian democracy may soon propel the adoption and implementation of policies on these issues that are more holistic, comprehensive, rational, and just. We address here the issues they raise, from the standpoint of international law and institutions. In doing so, we will note broad parallels between the evolution of approaches in India as chronicled by Rangarajan and Shahabuddin, and the wider international law on displacement of people for development or conservation. But we add an important corollary to the conjecture on which they end. We observe that participation of the directly affected people tends to involve them becoming part of a balancing process. This balancing can result in the deontological dimension of rights being surrendered in a purely instrumentalist calculation. If the norms and institutions were not already primed to give them real weight, the interests of the holders

Doreen Lustig and Benedict Kingsbury, Institute for International Law and Justice, New York University School of Law, 40 Washington Square South, 314D, New York, NY 10012 USA.

Address for Correspondence
Benedict Kingsbury, Institute for International Law and Justice, New York University School of Law, 40 Washington Square South, 314D, New York, NY 10012 USA.
E-mail: kingsbur@juris.law.nyu.edu

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of these rights may be eclipsed by the holders of more powerful material or moral interests. We note the roles that strategies of disavowal and resistance have played in opening the spaces for constructive participatory engagement under current conditions of globalisation, and caution against sanguine assumptions that the time for such strategies has altogether passed.

I. Roles of Law in Policies Concerning Displacement

The research undertaken by Rangarajan and Shahabuddin, presented in this issue and other joint publications and in their separate works, attests to the value of examining the issue of people's displacement and rehabilitation from wildlife areas through a comprehensive analysis that combines biological and social concerns. Their studies of Sariska and others of the thirty-six Project Tiger reserves shed light on numerous issues that complicate simple dogmas about conservation, displacement and resettlement. The interaction between residents and reserves is largely unavoidable given India's population distribution, and the impact on reserve ecosystems of people living in nearby villages can be vastly greater than that of people living in the reserves. The win-win situation in which significant population-sustaining or revenue-generating bio-extractive use of reserves coexists with successful conservation is extraordinarily difficult to achieve and may result in problematic ecosystem changes over the longer term. Different kinds of households even in the same village can have dramatically different impacts on the ecosystem. Much deforestation and ecosystem damage results not from ordinary local residents but from nature-tourism, religious tourism (hundreds of thousands of visitors to religious sites each year in Sariska), commercial forestry and other extraction that is prohibited but tolerated (sometimes for reasons of long-standing social hierarchy and patronage, or simple corruption), irrigation schemes, mining, roads, and even ammunition dumps. Many groups living within reserves have long been viewed prejudicially by forest administrators, who are reluctant to regard them as having property or many other rights, and a history of bad relations and often deliberate closing of viable options for residents makes partnership or mutual trust a difficult aim to achieve. Many reserves have suffered from severe administrative mis-governance and chronic under-resourcing, pointing to a need to adopt and legalise policies that will produce the best results in situations of limited capacity and conflicting incentives. In sum, as Shahabuddin put it elsewhere:

> '*Only a diversity of approaches, firmly grounded in the realities of site-specific ecology, history and socio-economic change, can possibly alleviate the growing human–wildlife conflict in India and south Asia. It is clearly time to go into specifics, not continue to hover in the diffuse realm of generalities.*' (Shahabuddin 2003: 311).

This points to a problem with regard to the role of law. Legal norms must often speak in generalities. This is particularly true of international law, in which experience in diverse contexts around the world is abstracted into general norms, which are then applied or contested in very specific contexts, this in turn leading to further development or modification of existing norms. International norms on displacement of people are thus made not by formal legislation, but in an iterative process. Consideration of law—whether national or international—means examining not just the existing normative texts, but also the processes of concretisation and abstraction which tie these texts to specific contexts. The norms (in international law especially) are often very abstract, while the concretisation and abstraction depend on institutions.

Legal norms and institutions provide a language and a venue for framing and assessing the morality, the rationality, even the ideology of specific policy choices concerning conservation and displacement. Key actors on any issue—including social movements and governments—make strategic and tactical choices about whether to engage in advocacy within these institutions, or to craft paths of avoidance and resistance outside them. For civil society organisations in India, resistance outside institutions has often been a precursor to institutional or political reform, prompting these organisations then to engage in advocacy within public legal and deliberative institutions.

A prominent example of the framing of policy issues concerning forced displacement of people in legal terms, and the pursuit of advocacy within the Indian courts, has been the controversy over the Sardar Sarovar Dam Project (SSP) and related projects in the Narmada River area (Baviskar 1995: 197–228; Rajagopal 2005). After intense protest and the eventual termination of the World Bank's role in the project in the early 1990s, a crucial vindication of the government's policy choice to continue with the project was issued in 2000. A ruling of the Supreme Court of India allowed the construction of the SSP to proceed up to 90 meters, characterizing the SSP as necessary for the wider good. More recently the court has played a significant role in the governance decisions setting criteria, and ensuring (or not ensuring) their concrete application, for further raising the height of the main dam.

Deliberate non-consensual displacement of longstanding groups presents a difficult problem in the political theory of many societies. Social contract theories face the utter improbability that isolated groups could have agreed to join the national polity on terms under which they could be involuntarily displaced into the distressed conditions in which many oustees have found themselves. The safeguards against such majoritarianism include guarantees of rights that are subject to infringement only in special circumstances and limited ways. In some cases, the groups most likely to suffer displacement have special rights, precisely because they are vulnerable to this kind of majoritarianism. Honouring those rights may be important to the legitimacy of a state struggling to truly include groups whose consent to the state cannot be taken for granted. Yet development and conservation are also

among the proper and important objectives governments are put in place to serve.

The challenges in international political theory are much greater than this. For there may be no global social bargain under which proposed trade-offs between conservation and displacement can be evaluated, and disadvantaged interests compensated. This problem has been met largely by asserting in normative texts the human rights of those at risk of displacement, in a deontological rights model. But when it comes to addressing the issues in specific operational situations, some institutions with major practical involvements, particularly the World Bank, have adopted a risks model rather than a rights model.

In such pluralistic politico-legal systems as India, and certainly in international law, the law can be understood as encompassing a constant interplay (pulling apart, or mutual checking, or maybe even harmonisation) between multiple factors and voices. Different factors and voices receive different weight in different fora and under different sets of norms. This multiplicity co-exists, in ways that are not entirely coherent, but that can be inclusive, so that under optimal conditions no major interest or group is entirely excluded or voiceless (Kingsbury 1998). This interplay is not resolvable in its own terms, but even minor inflections on how it proceeds or which forum has the decision power, can shape practical outcomes and life experiences. This is why the framing and the conditions of debate are so important.

In India, this structure of fragmentation and interplay among normative programmes was exemplified by legislative and public debates in 2005–06 about two proposed laws that were closely connected. Following the shocking discovery that no tigers remained in the Sariska Tiger Reserve, the Wildlife (Protection) Amendment Act was eventually adopted in September 2006, establishing a National Tiger Conservation Authority and enhanced measures against crimes concerning wildlife. Pressure from leftist parties meant that Act did ultimately include some limited provisions protecting interests of tribal peoples. But the much more comprehensive Scheduled Tribes (Recognition of Forests) Bill, which would have made displacement in certain areas more difficult and expensive, met some environmentalist and landholder opposition and was delayed in the legislature (Rangarajan 2005).

A similar phenomenon is even more characteristic of international law, where the lack of a single centralised institutional authority leaves even more scope for a multiplicity of approaches to flourish, each buttressed by different constituencies and subject to slightly different patterns of contestation. With that understanding of international law in mind, we turn now to a short summary of key normative texts in the international law of displacement. We will integrate this with some consideration of the process of application in specific contexts, and the process of abstraction from these applications, with particular attention to Indian cases and participants.

II. Human Rights Norms and Displacement: Rights Models versus Risks Models

The international law relating to displacement is scattered across a fragmented set of international legal categories, each embodying some strands of a separate agenda and some efforts at comprehensive integration. The broad tensions in these materials between rights-based and risk-based approaches in framing the law are highlighted in section II. There is no hegemonic interpretation of legitimate social and environmental needs in this area, as Rangarajan and Shahabuddin demonstrate. Because of a lack of agreement on substantive values, or even on the more technical factual and policy issues which might inform substantive choices, a standard legal response is to shift the focus to procedure. We will note possible contributions, and hazards, of a procedure-oriented global administrative law approach to these issues in section III.

The fragmentation of the law enables different groups and political interests each to find some strands of legal material they can use in articulating their positions, but they are then met by opponents using counter-arguments from other strands of the legal material. Many of these strands are incomplete, and few are directly backed by strong institutions whose practice and interpretations help develop the law. Nevertheless, the fine-grained variations in ways in which this interplay takes place affect the degree of buy-in which different policies command, and can thus affect both legitimacy and outcomes in policy struggles. The interplay between these fragmented legal concepts and arguments provides a context to consider power, resistance and change (section IV).

1. Rights Models

As Rangarajan and Shahabuddin note, conservation-induced displacement has been comparable to development-induced displacement in tending disproportionately to target certain minority groups. Because they often live in isolated areas and have cultures and socio-economic livelihoods dependent on ecosystems not readily found elsewhere, and resettlement often results in very poor outcomes for them, such groups may be disrupted even more than others by displacement. Thus there is often both intentional discrimination and an unintended disparate impact, each potentially violating legal requirements of non-discrimination.

The severe problems of ‘involuntary resettlement’ in relation to indigenous peoples were recognised in 1957 in the International Labour Organisation (ILO) Convention 107, which continues in force for India, Pakistan and Bangladesh. The Indian Supreme Court in 2000 affirmed the applicability to India of ILO Convention 107 but reached the debatable conclusion in that case that the Sardar Sarovar Project met the Convention's requirements (Narmada Bachao Andolan *v*. Union of India 2000: 3786). The ILO Convention No. 169

of 1989, which has revised Convention No. 107 and replaced it for some 17 states (most importantly in Latin America, the parties do not so far include any Asian states), contains a comparable provision limiting the conditions under which indigenous peoples can be involuntarily removed from their lands and territories.

A draft United Nations Declaration on the Rights of Indigenous Peoples (hereinafter, the Draft Declaration) was adopted in June 2006 by the UN Human Rights Council, and then moved on for consideration by the UN General Assembly (United Nations 1994). The Draft Declaration would require that states prevent any form of population transfer which has the aim or effect of violating or undermining rights of indigenous peoples. Article 10 declares: 'Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.' Article 30 requires that states obtain the free and informed consent of the indigenous people prior to the approval of any project affecting their lands and other resources. This Declaration has only hortatory force, but even in draft form has exerted some influence.

Whereas the evolving international law relating to indigenous peoples frames explicit rights of indigenous peoples in relation to land, use of resources, and limitation on displacement, the general international law of human rights has not addressed development-induced or conservation-induced displacement issues with such precision. This is not surprising. Indigenous groups have strong and durable identities, and have been able to form national and transnational coalitions to pursue their normative agendas, making them surprisingly difficult for opponents (including governments) to block. The indigenous category, although imprecise, is to some extent a self-limiting one—many governments are able to support new norms on indigenous issues because they do not expect this to be costly for them. By contrast, the general international law of human rights potentially affects all states engaged in development or conservation programmes. General international law norms require respect for freedom of movement and choice of residence, but these rights are subject to limitations. Treaties dealing with the right to housing do not absolutely prohibit 'forced evictions', but require the state to meet strict conditions for such measures. The same is true of property rights—the arbitrary deprivation of property is proscribed in some instruments, but international law on the whole protects property rights of foreigners (particularly foreign investors) more strongly than those of citizens. Property rights can be recognised under international law even when they do not formally exist under the applicable national law. Article 14 of ILO Convention 169 requires the states parties to accord some formal legal recognition to traditional rights of indigenous peoples to land, as does the UN Draft Declaration.

Efforts to construct an international legal category of Internally Displaced Persons (IDPs) have sought to establish for the *internally* displaced (people who have moved but remain in the same country) an equivalent of the international law applying to refugees who have fled their country and fear violent persecution if they return. The main textual result has been the United Nations *Guiding Principles on Internal Displacement* ('Guiding Principles'). As their framers expected, these Guiding Principles are not legally binding, receive very uneven implementation, and are supported only by rudimentary institutional mechanisms (Kalin 2000). The Guiding Principles focus on displacement caused by armed conflict and natural disasters (Cohen 2004). Conservation and development are not mentioned in the list of circumstances creating IDPs. However, Guiding Principle 6 reads:

> *'The prohibition of arbitrary displacement includes displacement: … In cases of large-scale development projects which are not justified by compelling and overriding public interests.'* (United Nations 1998).

It is not specified what constitute 'compelling and overriding public interests', nor what tests of proportionality and necessity would have to be met for them to override a right.

The framers sought to build support for the Guiding Principles by generally taking a *needs-based approach*, rather than a *rights-based approach*. The central exception is the right not to be arbitrarily displaced. The Guiding Principles also take an explicitly rights-based approach in asserting: '*all internally displaced persons have the right to an adequate standard of living.'* This imports a duty of the state authorities to provide access to essential food and potable water, basic shelter and housing, appropriate clothing and essential medical services and sanitation. This kind of approach draws sustenance from pioneering jurisprudence of the Indian courts, based on the guarantee of the right to life and personal liberty contained in Article 21 of the Indian Constitution. In a case concerning forced eviction of pavement-dwellers in Mumbai, the Supreme Court held that the constitutional right to life extends to core elements of a right to livelihood, and that forced eviction from such dwelling constitutes a deprivation of livelihood on which the courts can take action (Olga Tellis *v.* Bombay Municipal Corporation 1986). The right to adequate shelter has been interpreted by Indian courts as part of the Constitutional guarantee of the right to life. By contrast, the right to life clause in the International Covenant on Civil and Political Rights is usually interpreted by international tribunals in a more limited way, so that it does not necessarily extend to the right to a certain quality of life that may be impaired by a development or conservation project (Baxi 2001).

Although the deontological language of rights is the dominant one in the abstract international legal norms, legal institutions faced in specific cases with conflicts between arguments in favour of development or conservation

and arguments against forced displacement, have frequently adopted a 'balancing' approach rather than a rights-as-trumps approach. The Supreme Court of India's 2000 ruling concerning the Sardar Sarovar Dam illustrates this tendency:

> *'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'*. (Narmada Bachao Andolan *v.* Union of India 2000: 3787)

Rather than first establishing the boundaries and essence of the fundamental rights of the tribal people that were at stake (rights to property, housing, family and community life, livelihood, etc.), and then assessing the extent to which these rights could properly be infringed because of the conflicting public interests advanced by the SSP, these public interests were viewed as competing values within the scope of the rights in question. This is not merely a technical or methodological issue. It has deep consequences for human rights claims, as it potentially restricts their legal vindication. Whether the kind of balancing that Rangarajan and Shahabuddin advocate for conservation-induced displacement is the same as the kind undertaken by the Supreme Court in dealing with development-induced displacement is not clear to us. As Rangarajan and Shahabuddin emphasise in discussing past displacement of villagers from wildlife reserves, the actual experience of forcibly displaced communities has usually been bleak. The above-quoted passage in the Supreme Court's judgment is much more sanguine about the advantages of being resettled and the consequentialist case for balancing, than experience so far warrants.

2. Risks Models

The management of the World Bank regard it as an operational entity, supporting specific projects and programmes in borrowing countries, and not as a norm-making agency building general international law. It thus makes operational policies, not human rights norms. Its policies, and the ways in which it applies them in specific cases and draws on these cases to reformulate the policies, are of particular importance because, with the scale of its influence on projects and on laws in developing countries, the World Bank has a special role in formulating a transnational epistemic culture on policies of displacement and relocation. The World Bank's current internal policy on 'involuntary resettlement' (Operational Policy 4.12) covers 'direct economic and social impacts that both result from Bank-assisted investment projects and are

caused by it' (World Bank 2001). This policy does not prohibit Bank involvement in forced displacement and resettlement, although it requires that less drastic options be explored first. Resettlement should meet the minimum condition that it improves the condition of the displaced communities, or at least that it restore them to a situation no worse than that they were in before. The borrower of World Bank funds (e.g. the Government of India) is required to prepare a resettlement plan or policy framework. Under the World Bank's policy on Indigenous Peoples, as revised in 2005, the Bank is supposed to promote 'Free, prior, and informed consultation with affected communities about the proposed project throughout the project cycle' (World Bank 2005). The Bank seeks to verify that the 'borrower has gained the broad support from representatives of major sections of the community required under the policy'. The Operational Policy describes in great detail the scope, content and essence of requirements where a project will have effects on indigenous peoples. The World Bank has in some cases insisted that national governments protect property interests of indigenous groups in project areas even when these groups otherwise lack formal property rights in the national legal system.

World Bank practice on displacement embodies a risks model as an alternative to the rights model prevalent in human rights institutions. A specific application of the risks model to the kinds of losses people suffer in displacement is provided by World Bank sociologist Michael Cernea. This identifies three broad categories of loss: landlessness (expropriation of land removes the main foundation upon which people's productive systems, commercial activities, and livelihoods are constructed); joblessness; and homelessness (the loss of a family's home and the loss of a group's cultural space and loss of access to common property such as pastures, forest lands, water bodies, burial grounds, etc, resulting in significant deterioration in income and livelihood levels). This risks model would treat human rights violations as 'risks'. The focus on risks may attenuate the focus on the *rights* of displaced persons. It is often asserted that a rights-based approach gives greater importance to human dignity, and is better at capturing the more intangible damage done by displacement, such as changes in socio-cultural identity, geographical space, worldviews, etc.

III. An Ambivalent 'Solution': Administrative Law and Procedural Justice

Neither the rights model favoured in human rights law, nor the risks model favoured in the World Bank for operational purposes, has proven very effective in safeguarding the rights and interests of persons threatened with conservation-induced or development-induced displacement. Rights models tend to degrade into subjective balancing formulae at the point of application, producing erratic outcomes that may protect neither people nor conservation areas, while risks models with their instrumentalist calculations may better

reflect operational considerations but tend to degrade the deontological importance of human dignity.

The difficulties for institutions in turning these models into good outcomes reflect the limited reach of the institutions and many other weaknesses, but they are heightened by lack of agreement about the substantive issues involved. A characteristic legal 'solution' is to focus instead on *procedures* through which policies are determined and implemented, rather than on normative language and substantive values.

Displacement of people under a process or decision or implementing measure not complying with core procedural guarantees may violate rights under national or international law (Kingsbury et al 2005; Krisch and Kingsbury 2006). These procedural guarantees include ex ante requirements of opportunities of full participation, access to information, notice, fair hearings, reasoned decisions with opportunities to seek review, and fairness in rule-making and decision-making processes. They also include basic norms such as non-discrimination, non-arbitrariness, and independence of decision-makers. *Ex post*, they require mechanisms of accountability, and effective remedies. Procedural approaches drawing on administrative law principles can act as an instrument of resistance and change. However, the conditions under which such change is possible are subject to much debate. Uma Kothari has pointed out that: '[T]he process of participation is also not as transparent as it may seem. The very act of inclusion, of being drawn in as a participant, can perform the exercise of power and control over an individual…'. Furthermore, 'those who have the greatest reason to challenge and confront power relations and structures are brought/bought into the development process in ways which disempower them insofar as they are able to challenge prevailing hierarchies and inequalities, reinforcing an inclusionary control and conformity.'(Kothari 2005: 441) Observing that most procedural rules are 'designedly biased to benefit those who can afford to use them', B.S. Chimni has argued that Global Administrative Law has moral value only where it does not embrace a complete separation between substantive and procedural/administrative rules (Chimni 2005).

Debates in the World Commission on Dams (2000) illustrate the struggle over the relations between procedures and substance. Its recommendations concentrate heavily on procedural matters, such as the need for a transparent process of decision making with equal status to all the stakeholders and a commitment to full and equal consideration of all interests in the planning process. This procedure-oriented approach towards the core human rights at stake was challenged in Medha Patkar's dissenting comments:

> '*An inclusive, transparent process of decision making….does not go far enough. Even with rights recognized, risks assessed and stakeholders identified, existing iniquitous power relations would easily allow developers to dominate and distort such processes … understanding this takes us*

> *beyond a faith in negotiations to emphasize certain priorities and primacies'*. (World Commission on Dams 2000: 349–350)

The Commission saw better procedures as a way to mitigate many recurrent problems, including the repeated failure of large dams to reach intended targets of irrigation, power generation, or water supply (see also Hemadri et al. 1999). The Commission's commitment to procedural reform was predicated on its underlying substantive view, that dams can offer a 'significant advancement of human development on a basis that is economically viable, socially equitable, and environmentally sustainable' (World Commission on Dams 2000: xxxi.). As Upendra Baxi puts it, the Commission's Report 'is animated by the belief that large dams are, and remain, a necessary evil, and that [the] task is to lessen that evil through programmatic politics of the possible' (Baxi 2001: 1509).

Whether the juridification of the political process implied by the procedure-oriented global administrative law approach is desirable is a hotly contested issue. It is possible that participatory and procedural requirements will help open up the deliberative space and shape outcomes in the ways Rangarajan and Shahabuddin hope, but this is likely to differ depending on precise politico-institutional circumstances, including the presence of flourishing social movements, and an open institutional culture in which the various critiques are heard and seriously considered.

IV. Rights, Risks, and Resistance

Although in epistemic terms most human rights organisations, and much of the United Nations system, are committed to rights-based approaches to the core limitations on deliberate displacement of people, whether the rights model actually produces better results than the risks model when applied in the practice of international and local institutions is not apparent. The limited commitment to a clear human rights approach to displacement is indicated by the UN institutional structure. There is no unified UN institution to deal with this issue, whereas there are UN institutions focused on development (UNDP), environment (UNEP), and refugees (UNHCR). Displacement is instead dealt with under a diffuse 'collaborative approach' (Deng 2004). The institutions involved in this issue are mainly focused on humanitarian aspects of displacement. The website of the Internal Displacement Monitoring Center includes a map of internal displacement worldwide that shows the staggering scope of the misery of c*onflict-induced* internal displacement. That this database does not include persons displaced by natural disasters, nor persons displaced by development or conservation projects, is understandable in institutional terms but is also a reflection of the marginalisation of these issues in general international law. A Foucauldian account of space and power might suggest that this organisation of sources is related to a particular or-

ganisation of the international space (Foucault 1982). *Displacement* in its essence suggests a peculiar relation with space—a person whose existence is defined through disappearance, through eviction. As an entity of non-space, powerlessness is manifested in absence. The World Bank passes through this looking glass by using the terminology not of internal displacement but of *resettlement*, a framing which can easily minimise what displacement actually means, all the more so in cases where resettlement has turned out not to result in real 'settlement' at all. The centrality of resettlement as *the* focal point of the issue is evident also in human rights advocacy which focuses on R&R policies, namely the resettlement and rehabilitation of the displaced. The Indian euphuism of PAP (Project Affected People) has at least the merits of being inclusive and truthfully non-predictive as to outcomes. But it too is indicative of tendencies of human rights to meld into the bureaucratic discourses of development or conservation.

One account of modern Indian political theory pivots on the tension between Nehru's modernising vision of the Indian state as an active transformer of society, and Gandhi's more minimalist vision of the state, in which society continued to dominate (Kaviraj 2005). It may be that development-induced displacement has had currency because it transforms the image of the threat (displacement) into a promise (development). Development is a 'project', a state-based policy that in its process and form is hard for people to challenge, being so similar to other forms of administration. Perhaps conservation-induced displacement increasingly has the same appeal. Moreover, under this kind of political theory, displacement on grounds of development (or conservation) is special and thus separated (privatised) from the existential displacement of modern time (immigrants, emigrants, migrants).

It may well be hazardous to try to reduce the basic socio-cultural and ecological contestations that are involved in this issue of displacement to the languages of law and the practices of legal institutions. The complex social, cultural and ecological role of the forest is easily lost in legal abstractions (Kothari 1995). 'Even if uncorrupted by its association with power and force, the normative language of rights discourse may simply fail to express the desires and hopes of those who seek to curtail official violence. Moreover, legal experience can never express individual experience…'(Minow 1986: 1908).

If balancing is ineluctable, human rights advocates may try to mobilise to win on the balancing ground, 'proceed cautiously, experimentally, guided by local knowledge rather than grand design' (White 1990: 57). They may try to change the controlling institution, and strive to challenge the *balance of force* as it is embedded in current power relations in the field. A third option is to challenge the setting altogether and take up a position outside it. This strategy was exemplified by the choice of some Narmada protest groups of the 'anti-dam' space. The 'anti-dam' approach could be read as a metaphor for the officially soundless voice of the people in the valley; with no language available to translate their interests into bureaucratically cognisable terms, some NGOs

chose direct resistance over engagement. However, following the opening of more political and legal space and discourse practices, many anti-dam advocates reengaged in the discussion. The remaining anti-dam advocates have been subjected to broad criticism. Some critics claim that displacement, while unfortunate, cannot be seen in isolation and needs to be analysed through the consequences of the projects on the human rights of the displaced and the benefits flowing from such projects (Shome 2006). Milder versions of this critique simply stress the relative progress already made in the rights of the displaced; the problem rests, following his view, mainly in the discrepancy between law in the books and law in action and in the problematic practices of public authorities (Mander 2005).

It may be asked whether the strategy of resistance, triggering change, followed by eventual reengagement, is the future pattern on conservation-induced displacement in Indian and international law. To what extent should it—and, for international law, can it–be embedded in a *democratic* setting, one in which *the process of translation* is bound to democratic constraints of accountability, transparency and participation and informed review? Meaningful participation by all citizens in the governmental decisions that affect their lives is widely regarded as a goal of democratic reform and of procedural justice. In the case of the World Bank, several principles and mechanisms analogous to domestic administrative law systems have been promulgated, transparency, participation and review among them. 'This trend is reflected, for instance, in the inspection panel, set up by the World Bank to ensure its compliance with internal policies' (Krisch and Kingsbury 2006: 4). As noted earlier, this democratic vision of global administrative justice often does not align with the conditions in which these procedural rituals are actually played out (White 1990; Goldman 2005).

The move of NGOs in the Narmada valley from resistance to institutionalised participation is a move towards further juridification of the political space in the valley. Does the move of NGOs from resistance to institutionalised petitions and briefs signal a narrowing down of the political space? Viewing this struggle through the Global Administrative Law paradigm supports the claim that it provides NGOs with the essential 'tool-kit' to become the watchdogs of international institutions. Simultaneously it brings to the fore the price of the institutionalisation of the struggle. Analysis of the experiences reported by Rangarajan and Shahabuddin may help illuminate the difficult interplay among rights, risks, and resistance. This work is essential as the construction of coherent policy and national and international law in this area becomes imperative under the influences of globalisation and national transformation.

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