

Call For a Buddhism-Inspired Asian Regional Compact on Internal Displacement

Written by Christina A. Kilby

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Call For a Buddhism-Inspired Asian Regional Compact on Internal Displacement

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CHRISTINA A. KILBY, JAN 25 2024

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At the end of 2022, 108.4 million people globally were displaced from their homes (UNHCR “Figures At A Glance”). More than half of displaced people today are women and 40% of displaced people are children (“Figures At A Glance”). If all displaced people were gathered to form a single country, it would be the fifteenth most populous country in the world, larger than Germany, Thailand, the Democratic Republic of Congo, or Iran. The causes of displacement are varied: conflict, human rights violations, environmental degradation, natural disasters, and state development projects all contribute to the growing reality of displacement. Because effects from climate change exacerbate each of these causes, displacement is a humanitarian challenge that will be with us for the foreseeable future.

Former United Nations High Commissioner for Refugees Sadako Ogata famously stated, “There are no humanitarian solutions to humanitarian problems” (UNHCR, “Ogata Calls for Stronger Political Will”). In the face of humanitarian challenges like displacement, humanitarian protection and assistance merely provide a temporary response to preserve human life and dignity: only political and legal solutions can address the root causes of humanitarian problems and prevent them from recurring. In the spirit of seeking solutions to internal displacement, this article explores the possibility of an Asian regional legal instrument to better protect the displaced and prevent future displacement.

While displaced people might share very similar lived experiences, they are legally differentiated by their status as refugees or internally displaced people. A refugee is someone who crosses an international border due to a well-founded fear of persecution and who is unwilling or unable to gain the protection of their country of residence. Refugees are protected not only by international humanitarian law (IHL, also known as the “law of war” or the “law of armed conflict”) and international human rights law (IHRL), but also by legal instruments specific to their situation: the 1951 Refugee Convention and 1967 Additional Protocol (UNHCR: *Convention and Protocol*).

On the other hand, an internally displaced person (IDP) is someone who has fled their home yet remains within the borders of their country of nationality or residence. Among the 108.4 million displaced people, the majority – 71.1 million – are internally displaced people (UNHCR “Internally Displaced People”). While in theory IDPs are protected by domestic law in the countries where they live, as well as by IHL and IHRL, they are often displaced precisely because of situational factors such as conflict or persecution that make it unlikely for their governments to adequately protect and assist them. Taking into account the sensitive nature of national sovereignty and the challenges of international bodies intervening in domestic conflicts, internally displaced people are less robustly protected by international law than refugees are, and international organizations sometimes face difficulty gaining access to the IDPs most direly in need of assistance.

Recognizing the legal gaps in IDP protection, in 1992 the United Nations General Assembly and Commission on Human Rights charged Francis Deng with drafting a framework on the protection of internally displaced people (Ní Ghráinne 2022, 66). The *Guiding Principles on Internal Displacement* drew upon existing protections while also

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making important new interventions in IDP protection (for example, Principle 3 places the responsibility for upholding the Guidelines not only upon states, but also upon other authorities, such as non-state armed groups). Yet due to a variety of political constraints at the time, the *Guiding Principles* were drafted as a non-binding legal instrument, not as a treaty, and thus remain in the realm of “soft law” (Ní Ghráinne 2022, 68).

In this article, I propose a new legal contribution to the protection of internally displaced people: a Buddhism-inspired Asian Regional Compact on Internal Displacement. Buddhist identity and ethics profoundly shape political life in many Asian states today, from Sri Lanka to Myanmar and from Thailand to Bhutan. As the International Committee of the Red Cross Global Affairs Division’s ongoing engagement with religious circles has demonstrated, Buddhist tradition is a rich wellspring of humanitarian philosophy and ethical training (*Religion and Humanitarian Principles*); Buddhism also contributes enormously to the political will and grassroots networks critical to safeguarding humanitarian principles in south and southeast Asia, providing an ethical framework for arms-bearers to conduct themselves responsibly in accord with their own values and identities (Bartles-Smith et al 2024). Leveraging the impact of religion on the conduct of armed conflict is critical to enhancing IHL compliance and lessening the civilian sufferings of war (Bartles-Smith 2022). The same power of Buddhist ethics, values, and identity to promote and protect our shared humanity can enhance state and civil society responses to the challenge of displacement in Asia today.

Buddhist Contributions to the Protection of Internally Displaced People

The Buddha himself was displaced, according to traditional scriptural narratives about the Buddha’s past life as the Prince Vessantara (or Sudana, in Chinese versions). Vessantara’s only fault was that he was too generous beyond the borders of his own kingdom, rather than being a good nationalist who prioritized his people’s abundance against others’ sustenance, and his people finally rose up against him and banished him to the wilderness. He experienced many of the same challenges that displaced people today face: his family lost their personal property and suffered from food insecurity; they had difficulty obtaining shelter as they traveled through the cold mountains; and they were exploited by traffickers who abducted Vessantara’s wife Madi, beat their children, and forced the children into slavery (Kilby 2022b). This ancient tale sounds painfully contemporary.

Vessantara’s story reminds Buddhist audiences that fleeing one’s home is a non-violent response to a violent situation: displaced people deserve protection and restoration, not persecution. Furthermore, the sufferings that Vessantara and his family experienced as displaced people manifested in part because of their marginalization from state protection. In the story, they are banished beyond the borders of the kingdom into a kind of lawless state of nature, where the forest provides fruit and shelter for the family in the absence of the provisions of security and sustenance they should have been receiving from a functioning state. Vessantara, Madi, and their children found themselves in legal limbo and vulnerable to predation, just as so many displaced people today do.

A long-standing principle of Buddhist political ethics (shared with Buddhism’s mother religion Hinduism and sister religion Jainism) is the gift of fearlessness, or *abhayadāna*: the provision of life-saving clemency to the vulnerable and moderation in the application of state justice. Granting protection to refugees, mercy to animals destined for the slaughterhouse, lenient punishment to criminals, and security to the population at large are all meritorious state functions that alleviate fear among the powerless (Kilby 2019). According to the *Laws of Manu* 4.232, giving fearlessness is what karmically bestows sovereignty upon a political leader (Hibbets 1999, 442). I also argue that the gift of fearlessness generates respect among allies and neighboring states: by taking responsibility for those under one’s power, a state does not displace people in the first place, which enhances domestic and regional security. A righteous state is a good neighbor.

While primarily associated with kingship, the gift of fearlessness is also discussed as a foundational ethic for the political subject or lay person to exercise, no matter how wide or narrow their sphere of power. Buddhist scriptural sources equate the gift of fearlessness with the five ethical precepts that are foundational to Buddhist identity (not to take life, not to take what is not given, not to engage in sexual misconduct, not to engage in wrong speech, and not to consume intoxicants) (Kilby 2022a “*Abhayadāna as Foundational to Buddhist Identity and Practice*”). This ethic resonates with a whole-of-society approach to addressing displacement and relieving the sufferings of those

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affected.

The empire of King Aśoka of the Mauryan dynasty (268-232 B.C.E.) is often lauded as an example of dharmic governance in line with the principles of *abhayadāna*. After his bloody conquest of Kalinga, in which tens of thousands of people were killed, Aśoka began to fear the karmic consequences of his actions and turned to Buddhism as a path of non-violence. He is credited with having abolished the death penalty, established hospitals for humans as well as animals, constructed wells and rest houses for travelers, and promoted religious tolerance (as an expression of the virtue of impartiality or non-discrimination, *upekṣā* in Sanskrit). Aśoka's legacy of righteous and generous governance provides a historical precedent for how Buddhist-majority societies today could approach the sufferings of displacement and the role of a righteous state in granting life-saving protection.

The Buddhist teachings on interdependence further bolster an ethic of shared responsibility for the challenge of displacement. According to Buddhist tradition, each of us lacks an essentially independent self; we – as individuals and as societies – are mutually constituted, arising and constantly changing in dependence upon others. Just as we are the manifestation of many intersecting causes and conditions, displacement occurs because of intersecting causes and conditions from many sources. Solutions to displacement therefore reach into many aspects of governance and depend upon many members of society, including the monastic community.

Buddhist monastics have long provided a fruitful model for ethically balancing the lived experience of displacement with human security needs of both the displaced and their hosts. Monastics are known as “those who have gone forth from home to homelessness,” yet the Buddha nonetheless made provisions for his monks' and nuns' shelter, personal dignity, and belonging. I have argued elsewhere (Kilby 2023) that the Buddhist monastic codes of discipline model habits of legal reasoning that account for the human need for shelter, security, and home, while also taking seriously the responsibility not to displace others and to compromise with host communities in situations of displacement. The monastic codes also attend to indirect causes of harm toward others as well as reverberating consequences of harm, offering a far-reaching ethic of responsibility toward others' welfare that extends beyond a “crisis” event to its root causes and systemic solutions.

Given this legacy of Buddhist monastic discipline, it may not be surprising that a Buddhist monk, the Venerable Thich Nhat Hanh, hired a ship to save thousands of refugees at risk in the South China Sea in the 1970s, or that Buddhist monastics have taken a leading role in hosting internally displaced people in Myanmar in recent years. Still, we also cannot forget that some Buddhist monastics have also supported state violence against non-Buddhist groups and contributed directly to their displacement.

Buddhist civil society organizations---from the transnational Tzu Chi to Sri Lanka's Sarvodaya Shramadana Movement, and many more---have long been working to address the humanitarian consequences of conflict and displacement, as well as its causes (xenophobia, community violence, and discrimination). Yet there remains an outstanding need for a regional compact to fill the legal gaps in IDP protection. Fortunately, a strong model already exists for such a regional compact: the *Kampala Convention*.

A Buddhism-Inspired *Kampala Convention*

Adopted in 2009, the *Kampala Convention (African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa)* “is the first regional treaty of its kind applicable for the protection and assistance of internally displaced persons as well as providing for the attainment of durable solutions for them” (Beyani 2020, 1). The *Convention* is a binding treaty that focuses both on protection and prevention through assigning responsibility to states as well as to “armed groups, non-state actors and other relevant actors, including civil society organizations” (p 8) and “multinational companies and private military or security companies” (p 10). Among its other strengths, the *Convention* explicitly secures the rights of internally displaced people to avail themselves of the protections of international refugee law, including the right to seek asylum, so that the protections delineated for IDPs are treated as overlapping with adjacent bodies of law rather than as exclusionary to them (Article XX “Saving Clause”).

As with all legal instruments, political will is critical to realizing the aims of the *Kampala Convention*. While the

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Convention appeals to “the inherent African custom and tradition of hospitality by local host communities for persons in distress and support for such communities” (p. 4), there is little that grounds the rights and responsibilities delineated in the *Convention* in a shared value system beyond that of (largely western) secular civil society.

Appealing to Buddhism-inspired humanitarian ethics could significantly bolster political will for and voluntary compliance with a similar regional convention for Asia, where millions of internally displaced people are currently facing protracted situations of displacement. By drawing upon Buddhist ethical and philosophical tradition while adopting the legal model of the *Kampala Convention*, an Asian regional compact on internal displacement could:

- Commit to the prevention of displacement and the protection of IDPs as an expression of the gift of fearlessness and its traditional ties to state sovereignty;
- Impose obligations to prevent displacement and protect IDPs not only upon states, but also upon non-state armed groups, civil society actors (including religious groups), private companies, and international organizations, in recognition of the interdependent nature of human society;
- Protect the rights of the monastic community to offer assistance to internally displaced people and to maintain the civilian character of monastic property where IDPs might be sheltered;
- Ensure the rights of IDPs to identity documentation and to equal protection regardless of their gender, religion, ethnicity, political opinion, citizenship, or status of statelessness, in accordance with the principle of impartiality found both in Buddhist ethics and in the operating principles of international humanitarian organizations;
- Address the root causes and conditions that lead to displacement by requiring measures to safeguard against the effects of conflict, environmental degradation, climate change, state development projects, and natural disasters.

With mindful language and accountability measures in place, it is possible to appeal to the humanitarian norms rooted in religious identity without exacerbating religious nationalism or discrimination against religious minorities. Ironically, it is often deep commitment to a particular religious path that leads the practitioner more generously into the world of pluralism, tolerance, and recognition of our shared humanity.

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