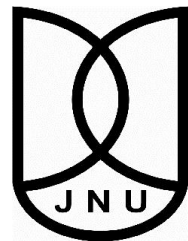


**INTERNATIONAL LAW AND INTERNALLY DISPLACED PERSONS: A
QUEST FOR EFFECTIVE PROTECTION**

*Thesis Submitted to Jawaharlal Nehru University
for award of the degree of*

DOCTOR OF PHILOSOPHY

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DECLARATION

I declare that the thesis entitled "INTERNATIONAL LAW AND INTERNALLY DISPLACED PERSONS: A QUEST FOR EFFECTIVE PROTECTION" submitted by me for the award of the degree of Doctor of Philosophy of Jawaharlal Nehru University is my own work. The thesis has not been submitted for any other degree of this University or any other University.

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We recommend that this thesis be placed before the examiners for evaluation.

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I Dedicate this Thesis to my Parents
and Teachers

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LIST OF ABBREVIATION

ACHPR	African Commission on Human and Peoples' Rights
ACHPR	African Court on Human and Peoples' Rights
AICHR	ASEAN Intergovernmental Commission on Human Rights
APF	Asia Pacific Forum
ASEAN	Association of Southeast Asian Nations
AU	African Union
CAT	Central Administrative Tribunal
CBO	Cross Border Operation
CCCM	Camp Coordination and Camp Management Cluster
CEDAW	The Convention on the Elimination of all Forms of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CHR	Commission on Human Rights
CoP	Conference of Parties
CRC	Convention on the Rights of Child
DHA	Department of Humanitarian Affair
DPKO	Department of Peace Keeping Operation
DRC	Democratic Republic of Congo
ECOSOC	Economic and Social Council
ERC	Emergency Relief Coordinator
EU	European Union
FAO	Food and Agriculture Organization
GLR	Great Lakes Region
GP-	Guiding Principles
HRR	Humanitarian Response Review
IA-IDD	Inter Agency- Internal Displacement Division
IASC	Inter Agency Standing Committee
IASFM	International Association for the Study of Forced Migration

IBRD	International Bank for Reconstruction and Development
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICGLR	International Conference on The Great Lake Region
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court Of Justice
ICRC	International Committee on Red Cross
IDA	International Development Association
IDMC	Internal Displacement Monitoring Center
IDPs	Internally Displaced Persons
IFC	International Finance Corporation
IFRC	International Red Cross and Red Crescent societies
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILA	International Law Association
ILC	International Law Commission
IMF	International Monetary Fund
IOM	International Organization for Migration
IOs	International Organization
IRAP	International Research and Advisory Panel
MIGA	Multilateral Investment Guarantee Agency
MRD	Ministry of Rural Development
MRGI	Minority Rights Group International
NATO	North Atlantic Treaty Organization
NGOs	Non-Governmental Organizations
NHRI	National Human Rights Institution
NRC	Norwegian Refugee Council
NRP	National Rehabilitation Policy
OUA	Organization of African Unity
OCHA	Office for the Coordination of Humanitarian Affairs

OHCHR	Office of the High Commissioner for Human Rights
PBC	Peace Building Commission
PCWG	Protection Cluster Working Group
QIP	Quick Impact Projects
R2P	Responsibility to Protect
RES	Resolution
RSG	Representative of Secretary General
SAARC	South Asian Association for Regional Cooperation
SC	Security Council
TWC	Third World Countries
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCHR	United Nations Commission for Human Rights
UNDP	United Nations Development Programme
UNG	United Nations General Assembly
UNHBITAT	United Nations Human Settlements Program
UNCR	United Nations High Commissioner for Refugees.
UNICEF	United Nations International Children's Emergency Fund
UNSC	United Nations Security Council.
UNSG	United Nations Secretary General
UPR	Universal Periodic Review
WB	World Bank
WBIP	World Bank Inspection Panel
WBIRP-	World Bank Involuntary Resettlement Policy
WCRWC	Women's Commission for Refugee Women and Children
WFP	World Food Program
WHO	World Health Organization

Chapter- I

Introduction

Chapter- I

Introduction

1.1. Background

In the world today there exist more than fifty million people internally displaced as a result of violent conflicts, developmental projects and other human rights violations.¹ This growing number of IDPs has pressurised the international community to formulate a global protection and assistance policies.² The ways and means taken up for the protection of Internally Displaced Persons (IDPs) is one of the most contentious innovations in the international response to humanitarian crises.³ The issue of internal displacement has remained a glaring humanitarian and human right challenge before the international community.⁴ On the one hand, IDPs they have often been let down by the national authorities and on the other hand, unlike refugees, they do not have a designated international institution to help them with their plight.⁵ The principle of sovereignty limits the ability of the international community to provide them adequate protection and assistance. This has led to an institutional gap in international law when it comes to the protection of IDPs.⁶

Since the issue was formally raised in the early 1990s, international arrangements to protect and assist IDPs have evolved significantly within the UN and regional systems. In 1998, the former United Nations Secretary General, Kofi Annan, stated that “internal displacement has emerged as one of the great human tragedies of our time.”⁷ It has created

¹ Internal Displacement Monitoring Center, (2016) *Global Report on Internal Displacement*, Accessed 8 May, 2017, URL:<http://www.internal-displacement.org/publications/2016/2016-global-report-on-internal-displacement-grid-2016>, p. 5

² Geissler, Nils. (1999), "The International Protection of Internally Displaced Persons", *International Journal of Refugee Law*, 11 (3) : p 451

³ Roberta. Cohen, (2004) "The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting", *Global Governance*, 10 (4): p. 459

⁴ Francis M. Deng, (2001), "The Global Challenge of International Displacement", *Washington University Journal of Law and Policy*, 15 (12) : pp. 141-142

⁵ Francis M Deng, (2007), "Divided Nations: The Paradox of National Responsibility," *Macalester International*, 19: p. 79,

⁶ Avery, Ainslie. (2008), "De Lege Ferenda: Sovereignty as Responsibility as a Framework for International Internally Displaced Persons law," *Oxford Monitor of Forced Migration*. 2 (2): pp. 27-31.

⁷ Roberta. Cohen and Francis M. Deng, (1998), *Masses in Flight: The Global Crisis of Internal Displacement*, Brookings Institution Press, p. 15

an unprecedented challenge for the international community because to promote and protect IDPs.

The opinion of scholars who have written on the objective of creation of internal displacement regime is divided. One group of scholars argues that in order to assist and protect IDPs, the international community should initiate the process of creating an internal displacement regime.⁸ In contrast, another school of thought argued that concerns over IDPs followed the “logic of containment” under which developed countries favoured IDPs ‘in country protection’ to avoid refugee flow and prevent their asylum obligation from being activated. Those set of scholars are puzzled as to why the international community reached such a sudden consensus in the 90s. They opine that the new wave of concern for the protection of IDPs was driven by the growing interest of asylum states to keep large number of “would be refugee’ at bay.⁹ Taking into consideration both the schools of thought, ‘the central argument of the present study is that the political and institutional interest of state and humanitarian agencies must be set aside and the rights of the displaced should be treated as paramount.’

1.2. Definition of ‘IDPs’

Very often the two concepts such as “internal displacement” and “internally displaced persons” used inter changeably in the protection and assistance of IDPs. The opinion is divided on meaning of “internal displacement” and “internally displaced persons.” For some, the term “internally displaced persons” refers only to people uprooted by conflicts, violence and persecution, that is, people who would be considered refugees if they crossed a border. Global statistics on IDPs generally reinforce this view as it takes into

⁸ David A. Korn, (1999), “*Exodus within Borders: An Introduction to the crisis of Internally Displacement*”, Washington: D C. Brooking Institution Press, p 35 also see Weiss, Thomas G. and Korn David, A. (2006), “*Internally Displacement Conceptualization and its Consequences* ”, New York: Routledge Taylor and Francis Group. pp,15-16

⁹B. S. Chimni, (2009), "The Birth of a Discipline: from Refugee to Forced Migration Studies," *Journal of Refugee Studies*, 22 (1): p. 11 also see, B. S. Chimni, (1998). The Geopolitics of Refugee Studies: A View from the South. *Journal of Refugee Studies*, 11(4): pp. 350-352 Barutciski, M. (1996) The Reinforcement of Non-Admission Policies and the Subversion of UNHCR: Displacement and Internal Assistance in Bosnia-Herzegovina (1992-94). *International Journal of Refugee Law*, 8(1- 2): p. 52

account only those displaced by conflict.¹⁰ Others, however, consider internal displacement to be a much broader concept and include the millions uprooted by natural disasters and development projects. Still others question whether it is useful to single out IDPs as a category.¹¹

When the issue of internal displacement emerged in the international agenda in the early 1990s, there existed no definition for “internally displaced persons”. But having a definition was essential for identifying the people concerned and their particular needs, as well as for compiling data and framing laws and policies designed to assist them. Developing a definition for this group of people was therefore a key task for the Representative of the United Nations Secretary-General on Internally Displaced Persons (RSG). Two major factors came to the fore when the special rapporteur began to define IDPs. Firstly, the involuntary nature of the movement, and secondly, the fact that such a movement takes place within national borders –a criterion which distinguished IDPs from refugees, who by definition outside of their country.

Establishing the internally displaced as a category of people who evoked international concern brought about a need to define those who would be included in this category. At that time, a working definition was put forth by the RSG, defined IDPs as:

‘Persons or groups who have been forced to flee their homes suddenly or unexpectedly in large numbers as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disaster, and who are within the territory of their own country.’¹²

This definition was criticized for numerous reasons. On the one hand, it was perceived as too narrow, mainly because of its temporal (‘suddenly and unexpectedly’) and numerical (‘in large numbers’) criteria. Restricting the definition to those who flee their homes ‘suddenly or unexpectedly’ ignored displacement which is not spontaneous but rather the

¹⁰IDMC (2012), “*Global Review of People Displaced by Conflict and Violence*”, Internal Displacement Monitoring Center, Norwegian Refugee Council, Accessed On 5 February 2016, URL: <http://www.internal-displacement.org/>, p 12

¹¹ Orchard, Phil. (2010), "Protection of Internally Displaced Persons: Soft Law as a Norm Generating Mechanism", *International Studies Review*, 36, p. 285

¹²UNCHR, Analytical Report of the Secretary-General on IDPs U.N. Doc E/CN.4/23 (1992)

result of an organized state policy implemented over the years or possibly even decades. Under the military junta in Burma, for example, hundreds of thousands were forcibly removed, at times with considerable advance notice. In Iraq, internal displacement is largely the result of 30 years of state policies that resulted in expulsion of groups of people from that country.¹³

The definition that required "the displaced to flee in large numbers" to be considered as internally displaced ignored that in reality many of them flee in smaller numbers, and sometimes even at an individual level. Furthermore, it was argued that the numerical criterion would give rise to an element of imprecision to the definition since determining what exactly a large number is would involve a subjective evaluation.¹⁴ The definition was also considered by some to be too broad in nature.¹⁵ The main criticism in this connection being the inclusion of natural or man-made disaster as a separate cause of displacement. It was contended that such cases of displacement hardly resulted in a state depriving its citizens of assistance and protection.¹⁶ The points mentioned above made it difficult to give IDPs a comprehensive working definition at the international level.

The definition which eventually emerged after six years of deliberation is contained in the introduction to the 1998 Guiding Principles on Internal Displacement (Guiding Principles):

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 the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.¹⁷

¹³Roberta Cohen 'Status of Internal Displacement in Iraq' *IRIN News*, Accessed 12 July 2016, URL: www.brook.edu/fp/projects/idp/20040521cohen.htm

¹⁴Comprehensive Study Prepared by the Representative of the Secretary-General on the Human Rights Issues Related to IDPs U.N. Doc E/CN.4/1993/35 Para. 35. Accessed 12 January 2016, URL: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G93/105/95/PDF/G9310595.pdf?OpenElement>.

¹⁵

¹⁶Lewis (1992) 'Dealing With the Problem of Internally Displaced Persons,' *Georgetown Immigration Law Journal*, 6: p. 694.

¹⁷ UN High Commissioner for Refugees (1998), Guiding Principles on Internal Displacement, 22 July 1998, Accessed 12 April 2016, URL: <http://www.refworld.org/docid/3c3da07f7.html>.

The Guiding Principles definition eliminated some of the defects which were identified in the working definition of IDPs. The temporal and numerical qualifications have been deleted from the definition. However, no change was made with respect to natural or man-made disaster as a cause of displacement. Although the Guiding Principles have gained worldwide recognition as a tool for addressing internal displacement, it would be bold to say that the definition therein has been fully accepted.¹⁸ The definition of IDPs contains three essential characteristics; it includes involuntary nature of movement of peoples, causes of internal displacement, and the territorial constraint.

In addition, the International Law Association (ILA) Declaration of international Principles on IDPs 2000, African Union Convention on the Assistance and Protection of IDPs and Great Lake Protocol on IDPs have also defined IDPs which is elaborated in following chapters.¹⁹

1.2.1. Involuntary Nature of Movement

The first essential characteristics of the definition is the involuntary nature of movement, which includes coerced movement of a person or persons away from their home or home region, and it often connotes forceful or violent coercion. If the movement is within their own country they are IDPs.²⁰ In addition, the definition makes it clear that someone who emigrates from one region to another to seek improvement in his/her living standards because of the living conditions or job opportunities in the region he/she was staying was inadequate, is an economic migrant and is not to be considered an IDP. The international law on IDPs does not apply to him/her.²¹

1.2.2. Causes of Internal Displacement

¹⁸ After the adoption of definition in the Guiding Principles on Internal Displacement, there are number of countries have enacted their domestic legislation on IDPs and also the regional convention on IDPs such as Great Lake Protocol on IDPs and Kampala Convention on IDPs have adopted the same definition in line with the Guiding principles in their legal instruments.

¹⁹International Law Association, (2000), "Declaration of International Law Principles on Internally Displaced Persons", Accessed 12 September, 2015, URL: <http://www.unhcr.org/refworld/docid/42808e5b4.html> , also see Nils Geissler, (1999) "The International Protection of Internally Displaced Persons" *International Journal of Refugee Law* 11, p. 451

²⁰Migrant or Refugee? There Is a Difference, With Legal Implications , Accessed on 12 December 2016, URL: https://www.nytimes.com/2015/08/28/world/migrants-refugees-europe-syria.html?_r=0

²¹Definition of Economic Migrant, Accessed on 4 February 2016, URL: https://en.oxforddictionaries.com/definition/economic_migrant.

The second element of the definition relates to the causes of displacement. The definition identifies five different categories. It includes conflict-related displacement, development-induced displacement, disaster-related displacement, displacement related to systematic human rights violations, and displacement related to other circumstances.

Conflict-related displacement includes displacement induced by international and/or internal armed conflict, civil war, foreign occupation or intervention, internal strife, communal or generalized violence and violent raids. People may either feel compelled to leave their homes in order to protect themselves from physical violence, or they may be actively and involuntarily displaced or evicted from their houses and lands by state forces or non-state armed groups.²²

Development-related displacement includes all instances of forced movement resulting from policies and projects implemented in the name of development. People may be forced to move to make way for development and infrastructure projects such as large dams, ports, railways, highways, airports, irrigation canals, large-scale industrial or energy projects, mining industries and other extractive industries, and housing projects. Similarly, displacement may be caused by land-acquisition measures linked to urban renewal or redevelopment. Development-induced displacement may also be carried out for environmental purposes, for example, in the context of climate change adaptation and mitigation projects, environmental conservation projects, and deforestation.²³

Thirdly, displacement can result from natural disasters, environmental changes and human-induced disasters. Natural disasters include tsunamis, earthquakes, floods, hurricanes, landslides and drought, environmental change and mismanagement involving deforestation, desertification, land degradation and global warming. Human-induced

²²Sarah Kenyon Lischer (2007) 'Causes and Consequences of Conflict-Induced Displacement' *Civil Wars*, 9 (2): p. 142, Accessed 9 January 2016, URL: <http://www.tandfonline.com/doi/abs/10.1080/13698240701207302>

²³ Sreya. S Maitra, (2009) "Development Induced Displacement: Issues of Compensation and Resettlement—Experiences from the Narmada Valley and Sardar Sarovar Project." *Japanese Journal of Political Science*, 10 (2): p. 191

disasters include nuclear and chemical accidents or sudden collapse of large buildings and constructions such as dams.²⁴

A fourth group of displacement causes are those related to systematic human rights violations committed by the state or non-state actors. Examples of such human rights violations are ethnic cleansing, war crimes, crimes against humanity, persecution, torture, discrimination and trafficking. In some cases, the perpetrators of these acts may have some particular intention to displace their victims, while in other cases, the displacement may be an unintended side-effect or by-product of some violent acts. Apart from the aforementioned causes, various other circumstances and state policies can also constitute direct or indirect causes of displacement.

1.2.3. Territorial Constraint: IDPs and Refugee Distinction

The third most essential requirement of the development of IDPs is that the displaced Persons have to remain within the boundaries of their own states. If the same persons cross the border, then they fit into the category of refugees. Unlike IDPs, international law provides sufficient legal and institutional protection to refugees; it includes the Convention on the Status of Refugees adopted in 1951 to guarantee the rights of refugees, and the institutional mechanism of the United National High Commissioner for Refugees (UNHCR) established for providing protection and humanitarian assistance to refugees. Unfortunately, IDPs lack legal as well as institutional mechanisms simply because the affected people fail to cross the border.²⁵

1.3. Sovereignty as Responsibility

As per the principles of sovereignty, the national authorities are primarily responsible for addressing the needs of their displaced citizens. However, the state often lacks the capacity, and sometimes the will, to provide these people protection and assistance. According to Francis Deng, the international community is called upon not only to

²⁴Elizabeth Ferris (2008) *Displacement, Natural Disasters, and Human Rights*, Accessed 4 July 2016, URL :<https://www.brookings.edu/on-the-record/displacement-natural-disasters-and-human-rights/>

²⁵ Richard Plender, (1994), "The Legal Basis of International Jurisdiction with Regard to the Internally Displacement", *International Journal of Refugees Law*, 6 (3) : p. 350 Also see Abuya, E O. (2003), 'Refugees and Internally Displaced Persons: Examining Overlapping Institutional Mandate of the ICRC and the UN High Commissioner for Refugees', *Singapore Journal International Law*, 7: pp. 236-237

supplement the efforts of local and national authorities, but also to pay due regard to the efforts of the displaced themselves to cope with, and respond to, their situation.²⁶ The principle of sovereignty is what constitutes the political barrier when it comes to the protection of IDPs. IDPs are an internal matter, and any attempt to create an international agency to address the IDP issue could be seen as meddling in the domestic affairs of states.²⁷ Hence the principle of sovereignty as responsibility is a very controversial provision in the area of internal displacement.

1.4. Impact of Internal Displacement

It is generally acknowledged that IDPs face more risks with regard to their physical safety than the rest of the population, and are generally perceived to be a high-risk group.²⁸ Displacement generally has a painful impact on the individuals concerned, and where it takes place in relatively large numbers, displacement may in addition have significant consequences (of socio-economic, environmental and cultural character) for the home as well as the host communities. Apart from the frequently occurring human rights violations following displacement, the psychological impact of displacement on the victims can be far-reaching. Displacement is inherently connected with the loss of home and belonging”. Moreover, “displacement is a disruptive and painful process creating a high risk of impoverishment”.²⁹ Landlessness, joblessness, homelessness, marginalization, food insecurity, increased morbidity, loss of access to common property

²⁶Avery, Ainslie. (2008), “De Lege Ferenda: Sovereignty as Responsibility as a Framework for International Internally Displaced Persons law,” *Oxford Monitor of Forced Migration*. 2 (2) : p 27., also see Brookings Institution (2005) “.Addressing Internal Displacement: A Framework for National Responsibility” Brookings Institution –University of Bern Project on Internal Displacement, Accessed on 12 September 2016, URL; <http://www.broekning.edu/proiect/IDP/20050401-nrframework.aspx>

²⁷Luopajarvi, Katja. (2003), "Is There an Obligation on State to Accept International Humanitarian Assistance to Internally Displacement under International Law", *International Journal of Refugees Law*, 15 (4) : p. 678

²⁸Buscher, Dale. And Makinson, Carolyn (2006) “Protection of IDP Women Children and Youth” Fmr/Brooking – Bern Special Issues, Accessed 10 December 2016 URL: <http://www.fmreview.org/en/FMRpdfs/BrookingsSpecial/09.pdf>, p. 15

²⁹

resources, and community disarticulation or social disintegration are the potential risks of displacement that lead to impoverishment.”³⁰

1.5. Addressing Displacement Crisis: Evolving IDPs Regime

Initially, the international community was reluctant to respond to the plight of the IDPs because internal displacement was seen as an ‘internal problem’, something that fell within the sovereignty of a state and therefore not the concern of neighboring states or of the global community.³¹ The situation however changed beginning 1990s with the changed international system and conception of “sovereignty as a responsibility.” The plight of the IDPs emerged in international consciousness³² in the post-Cold War period.

As many scholars claim, international response to the need for protection of IDPs will remain a dilemma as long as there is no legal status and institutional mandate. What makes the issues of protection of IDPs more ironic is the legal and institutional protection given to refugees who are an equally vulnerable group but whom the IDPs outnumber by more than ‘twice’ in number. Benefitting from the 1951 refugee convention, refugees are special categories having legal status and the UNCHR, has specialized institutional mandate for protecting and assisting refugees. Many writers commonly explain that IDPs are now more vulnerable, but hardly have any protection because of the international community’s “protection gaps”, that is “the legal and institutional gaps that had become evident in the international system”.³³ The international effort in responding to protection and assistance to IDPs by introducing normative frameworks was evolved in the early 1990s.

By 1990s, with the crisis of IDPs mounting with a steady rise in their numbers, the “international humanitarian organizations began to ask how to define IDPs, what rights they had, and what responsibilities the governments and the United Nations had toward

³⁰ Benedicta Daudu., (2010), “*Plight of Displaced Women and Children in Africa: Case Study of Darfur Crisis*” *NIALS Law and Development*, Accessed 10 November 2016, URL: <http://www.nials-nigeria.org/journals/Benedicta%20Daudu.pdf>. p. 2

³¹ Francis M. Deng, (2007), “Divided Nations: The Paradox of National Responsibility,” *Macalester International*, 19: pp. 79-82

³² Francis M. Deng, (1995), “Dealing with Displacement: A Challenge to the International Community,” *Global Governance*, 1 (1): pp. 45- 49.

³³ Deng, *Supra* note, 5 at p. 80

them”. Besides, the UN and other international humanitarian organizations, as well as NGOs played a role, especially through publishing statistical records of the issues of IDPs, and through calling the UN to appoint a special rapporteur who could address the IDPs human right dimensions. Particularly, NGOs, like “the Quaker UN Office, the Refugee Policy Group and the World Council of Churches developed a joint strategy to achieve the appointment of a UN rapporteur or expert to address the human rights dimension of the problem and to oversee the development of international standards”.³⁴

In these circumstances, in 1992, the UN began thinking of appointing a representative of the Secretary General on IDPs to act as a moving force for the development of the Guiding Principles. In the process, the UN Commission on Human Rights produced “an analytical report on internally displaced persons”.³⁵ The analytical report of the Commission “found ‘no clear statement’ of IDP rights in international law, and recommended that the Commission on Human Rights develop ‘one comprehensive universally applicable body of principles’ from the existing standards to assure effective human rights protection.”³⁶

The 1992 analytical report of the Commission further recommended or called for the designation of a focal point on internal displacement within the UN human rights system.³⁷ It was through this process that the “UN Secretary-General, at the request of the Commission on Human Rights, appointed Francis Deng as the Representative of the Secretary-General on internally displaced persons”.³⁸ It was Deng who finally brought out the 1998 UN Guiding Principles on Internal Displacement, the first international normative standards that are specifically designed for the protection and assistance of IDPs.³⁹

³⁴ David, *Supra* note 8 at p. 17

³⁵ UNCHR (1992) Analytical Report of Secretary General on Internally Displaced Persons, UN Doc. E/CN.4/1992/23 Para 17

³⁶ Francis Deng, (2001), "The Global Challenge of International Displacement", *Washington University Journal of Law and Policy*, 15(12): p. 141

³⁷ Catherine Phuong (2006), "The International Protection of Internally Displaced Persons" New York: Cambridge University Press. p. 20

³⁸ *Ibid*, at p.21

³⁹ Francis Deng (1999), “Guiding Principles on Internally Displacement”, *International Migration Review*, 33(2): p. 484

In addition, international organizations and NGOs have continued to provide protection and assistances to IDPs. The notable UN bodies are: the UN High Commissioner for Refugees (UNHCR); the Commission on Human Rights; the UN International Children's Emergency Fund (UNICEF), the Food and Agriculture Organization of the United Nations (FAO), the UN Office for Coordination of Humanitarian Affairs (OCHA), the United Nations Development Programme (UNDP), the World Food Programme (WFP), the World Health Organization (WHO) and other international humanitarian organizations like, International Committee of Red Cross (ICRC) and International Organizations for Migration (IOM) ⁴⁰ further other mechanisms of the Commission on Human Rights, peace keeping and peacemaking operations, and regional inter-governmental and non-governmental organizations all have played and continue to play important functions.⁴¹ There are also "scientific international institutions" currently working in the areas of forced displacement like the IDMC, the Norwegian Refugee Council (NRC)/Global IDPs project, and the Brooking Institution, which assist IDPs.⁴²

1.4. International Law and IDPs Protection

As has been seen the first international legal standard for the protection of IDPs is the UN Guiding Principles. The UN Guiding Principles on Internal Displacement has also been the first in recognizing "the right to be protected against arbitrary displacement" in explicit and formal ways.⁴³ Inspired by the Guiding Principles, other international⁴⁴ and regional normative frameworks have been adopted for similar purposes.⁴⁵ However, with

⁴⁰Martin, Susan. (2004), "Making the UN Work: Forced Migration and Institutional Reform" *Journal of Refugee Studies*, 17 (3) : p. 301

⁴¹ McNamara, Dennies. (2007), "Humanitarian Reform and New Institutional Response" Forced Migration Review Special Issues on Brooking and Bern Institution, Accessed 18 January 2016, URL: <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/BrookingsSpecial/06.pdf>, pp. 9-10

⁴²Laker Frederick (2013) *Rethinking Internal Displacement Geo-Political Games, Fragile States, & the Relief Industry*, Dissertation, The London School of Economics & Political Science, accessed 12 April 2016 URL: http://etheses.lse.ac.uk/798/1/Laker_Rethinking_Internal_Displacement.pdf, p. 17

⁴³*Supra* note, 17, at. principle 6

⁴⁴ In line with the Guiding Principles, the United Nation passed numerous General Assembly and Security Council resolution for the protection and assistance of IDPs.

⁴⁵Walter Kälin (2007), 'The Great Lakes Protocol on Internally Displaced Persons: Responses and Challenges,' Accessed 23 February 2016, URL: <https://www.brookings.edu/on-the-record/the-great-lakes-protocol-on-internally-displaced-persons-responses-and-challenges/>

respect to the “international law perspective”, the Guiding Principles is the main instrument in recognizing the human rights dimensions of IDPs.⁴⁶

The UN Guiding Principles on Internal Displacement is a non-binding instrument. It essentially derives norms from the existing international human rights and humanitarian law instruments with bearing on the rights of IDPs. However, it also attempts to fill gaps where the law is insufficient to protect the rights of IDPs. The Guiding Principles have influenced a number of nation states to adopt national laws and policies to protect the rights of IDPs. Currently, more than twenty-five countries have adopted laws for the protection of IDPs.⁴⁷

The other important international legal instruments dealing with the rights of IDPs are the Declaration of International Law Principles on Internally Displaced Persons, 2000 adopted by the International Law Association.⁴⁸ The UN Principles on Housing and Property Restitution for Refugee and Displaced Persons, 2005⁴⁹ and the UN Basic Principles and Guidelines for Development Based Eviction and Displacement, 2007.⁵⁰ These legal instruments bring a measure of hope in guaranteeing the rights of IDPs.

1.5. Regional Legal Framework: Africa and Asia

At the regional level, in Africa, a continent already facing high socio-economic inequality and deprivation, the forcible movement of its population is an additional major setback. In fact, one thing is certain that Africa, and in particular the Great Lakes Region, has not been hesitating in initiating concerted efforts to address the problems of internal

⁴⁶African Union, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (“Kampala Convention”), 22 October 2009, URL: <http://www.refworld.org/docid/4ae572d82.html>

⁴⁷Roberta Cohen,(2013) Lessons Learned from the Development of the Guiding Principles on Internal Displacement, Accessed 17 October 2016, URL: <https://www.brookings.edu/research/lessons-learned-from-the-development-of-the-guiding-principles-on-internal-displacement/>

⁴⁸ ILA Declaration, *Supra* note, at 19

⁴⁹ UN Sub-Commission on the Promotion and Protection of Human Rights (2005) ‘Principles on Housing and Property Restitution for Refugees and Displaced Persons,’ E/CN.4/Sub.2/2005/17, URL: <http://www.refworld.org/docid/41640c874.htm>

⁵⁰UN Guidelines on Development-based Evictions and Displacement (2007) Accessed 23 September 2016 URL: http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf

displacement. Various regional and sub-regional groups have taken steps to address the issues of internal displacement and its causes and consequences.⁵¹

In October 2009, at the special summit on Refugees, Returnees and IDPs, the African Union adopted the first ever binding legal framework providing for the protection of internally displaced persons in the African region. The convention has been described as a landmark legal contribution to the evolving protection framework for IDPs. It is a comprehensive legal document covering all phases of displacement from prevention, to protection, assistance and durable solutions. It also include all causes of internal displacement including armed conflict, generalized violence, violations of human rights, natural or man-made disasters and development projects.⁵²

In addition, the protocol that is part of the Great Lake Pact lays out concrete framework for achieving goals set out in the four priority areas identified in the pact.⁵³ These include economic development and regional integration, democracy and good governance, peace and security, as well as humanitarian and social issues. This last priority is of relevance to IDPs in the region and is addressed by protocols that mainly or generally deal with the human rights and experience of IDPs. The protocol includes the GLR Protocol on the Property Rights of Returning Populations,⁵⁴ and the Protocol on the Protection and Assistance of Internally Displaced Persons.⁵⁵

This legal framework is adopted and in accordance with the existing international human rights and humanitarian laws and also the Guiding Principles on internal displacement. These two protocols were adopted as a result of the countries in the Great Lake region

⁵¹ Kampala Convention, *Supra* note, 46

⁵² *Ibid*, at, Article 1

⁵³ International Conference on the Great Lakes Region (2006) “Pact on Security, Stability and Development in the Great Lakes Region”, Accessed 23 September 2016 URL: <https://www.lse.ac.uk/collections/law/projects/greatlakes/Pact%20on%20Security%20Stability%20&%20Development.pdf>,

⁵⁴ International Conference on the Great Lakes Region (2006) “Protocol on the Property Rights of Returning Persons, Accessed 20 September, 2016 URL: <https://www.lse.ac.uk/collections/law/projects/greatlakes/4.%20Humanitarian%20and%20Social%20Issues/4c.%20Protocols/Final%20protocol.PropertyRights%20-En%20r.pdf>

⁵⁵ International Conference on the Great Lakes Region (2006) “Protocol on the Protection and Assistance to Internally Displaced Persons,” Accessed 20 September 2016 URL: <http://www.refworld.org/docid/52384fe44.html>

recognising that the issues of displacement was crucial and required immediate response since it was directly linked to the issues of peace, security and development. One of the main aims of the Great Lake process was to create a lasting condition for security, stability, sustainable development and reconstruction in the region as a whole. The greatest achievement of the Great Lake process was that it helped in setting up a legal, institutional and structural system for addressing the needs of IDPs as well as provided them assistance and protection; it also helped in setting up the foundation for stability and development in the region.⁵⁶

Asia is the second largest region after Africa in terms of IDPs population. The cause for people in this region being internally displaced ranges from conflicts, developmental projects, natural disasters to human rights violations. Unlike the African region, which has developed a strong regional legal institutional mechanism for addressing the problems of IDPs, the Asian region has been found wanting in establishing both legal and institutional mechanisms.⁵⁷ In addition, the Asian region also does not have an effective human rights mechanism to address the problems of the victims of human rights violations. The main reason for Asia's backwardness in comparison with other regions is that Asian countries feel that the western model of human rights regime is a threat to their sovereignty. And in order to sustain their argument, these countries advocated the idea of 'Asian Values'.⁵⁸ The concept of 'Asian Value' is used to defend the Asian state sovereignty and challenge the western-originated idea of universality of human rights. In addition, the inadequate ratification of international human rights treaties also a hurdle in developing an Asian regional human rights mechanism.⁵⁹

⁵⁶ *Ibid*,

⁵⁷ Ben Saul, Jacqueline Mowbray and Irene Baghoomians, (2011) "The Last Frontier of Human Rights Protection: Interrogating Resistance to Regional Cooperation in the Asia-Pacific" *Australian International Law Journal*. 23 (18): p. 23

⁵⁸South Asian for Human Rights (2009) "Reassessing Internal Displacement in South Asia" Accessed 16 April 2016, URL: <http://www.southasianrights.org/wp-content/uploads/2009/10/IDP-52.pdf>, p. 5

⁵⁹Demystifying Human Rights Protection in Asia, (2015) Accessed 3 March 2016, URL: <https://www.fidh.org/IMG/pdf/asie669anglaisbassdef.pdf>, p. 29

To fill the vacuum, the Asian sub-regional groups such as SAARC and ASEAN are developing a human rights mechanism in their region.⁶⁰ This is an unprecedented step and aims at constituting a regional human rights mechanism in the future. In fact, before Africa adopted a regional convention on IDPs, the Great Lake Region adopted a protocol on IDPs and it played a major role in influencing the African region to adopt convention on IDPs. Hence, the African initiative can be a strong influence on the Asian region to adopt a similar model.

1.6. International Institutional Framework

Internal displacement usually occurs during some complex crisis and is followed by the total breakdown of the state authority as well as the willful displacement of people by the state authority itself. In such a situation, the state will either be unwilling or unable to provide protection to the affected people. In this situation IDPs require a multi-dimensional and humanitarian approach from organisations that work for human rights, as well as cooperation of various actors nationally and internationally. Unfortunately, there is no one particular institution that is responsible for addressing the needs of IDPs.⁶¹ A collaborative system within UN was initially set up to address the problems of internal displacement, but it was not well coordinated because there were no clearly defined responsibilities.⁶² In order to fill this gap and maintain coordination, the UN inter agency standing committee (IASC) comprehensively reformed the system and adopted the 'cluster approach'.⁶³

The 'cluster approach' ensures greater leadership and accountability in key sectors where gaps in humanitarian response have been identified. The main aim of the 'cluster

⁶⁰S Chiam, (2009) "Asia's Experience in the Quest for a Regional Human Rights Mechanism," *Victoria University Wellington Law Review*, 40 : p. 127

⁶¹Sheridan, L. M. (1999). Institutional Arrangements for the Coordination of Humanitarian Assistance in Complex Emergencies of Forced Migration, *Georgetown Immigration Law Journal*, 14 : p. 941

⁶²UN General Assembly Resolution on the "Protection of and assistance to internally displaced persons", also see "implementing the Collaborative Response to Situations of Internal Displacement, Guidance to UN Humanitarian Coordinators and/or Resident Coordinators and Country Teams, Inter-Agency Standing Committee" September 2004. Accessed 26 April 2016, URL <https://interagencystandingcommittee.org/focal-points/documents-public/implementing-collaborative-response-situations-internal-displacement>.

⁶³Morris, T. (2006) "UNHCR, IDPs and Clusters", *Forced Migration Review*, Accessed 18 April 2016 URL: <http://www.fmreview.org/es/node/3523.html> 25 : pp. 55-56

approach' is to ensure better partnership among humanitarian, human rights and development agencies. Under the 'cluster approach', the system operates at the global and country level and functions even during natural disasters and complex emergencies.⁶⁴ In addition, under this system, agencies will be held accountable for specific aspects of the global and country-specific humanitarian response.⁶⁵ Hence response by the agencies under the 'cluster approach' is no longer a choice, but an obligation. In this way the IASC has tried to fill the gap of accountability and responsibility left by international humanitarian organisations.

In addition to international humanitarian organisations, the role of international developmental agencies such as the World Bank is also very important when it comes to addressing the problems of IDPs. This is because as per recent statistics, the number of people uprooted from their homes on account of developmental projects is much higher than any other types of displacement⁶⁶, indeed World Bank loans for developmental projects in poor countries is one of the major causes for people being displaced.⁶⁷ One such example is the Narmada dam project in India, the construction of which led to thousands of people being displaced. To address the problems of these people, the World Bank Inspection Panel was set up.⁶⁸ The creation of the Panel is an unprecedented step because, for the first time an international institution was made directly accountable to the people for its acts of omission and commission. Though the inspection panel is the first step in developing an accountability regime of an international institution, the structural weakness of the inspection panel towards IDPs is a cause for concerns.⁶⁹

⁶⁴ *Ibid*, Morris, p.55

⁶⁵ *Ibid*, Morris, p. 56

⁶⁶Internal Displacement Monitoring Center, (2017) "Case Study Series Dam Displacement," Accessed 9 May 2016, URL: <http://reliefweb.int/sites/reliefweb.int/files/resources/20170411-idmc-china-dam-case-study.pdf>, p. 2

⁶⁷Daniel D. Bradlow, (2004). Private Complaints and International Organisations: A Comparative Study of the Independent Inspection Mechanisms in International Financial Institutions, *Georgetown Journal of International Law* 36, 403,

⁶⁸Susan Park (2010) "Designing Accountability, International Economic Organisations and the World Bank's Inspection Panel," *Australian Journal of International Affairs*, 64 (1) : pp. 13-15

⁶⁹Bissell, R. E., &Nanwani, S. (2009). "Multilateral Development Bank Accountability Mechanisms: Developments and Challenges." *Manchester Journal of International Economic Law*, 6 (1): pp. 5-7

7. Objective and Scope of the Study:

In the light of the aforementioned issues of internal displacement, in this study focuses on and analyses the different causes of internal displacement, impact of internal displacement and the issues of sovereignty and national responsibility. The creation of an internal displacement regime and its implication on IDPs are also highlighted. The present international legal framework on internal displacement and the evolving regional legal mechanism in the African and Asian regions, as well as the condition of IDPs in these regions have also been analysed. The international humanitarian and developmental organisational framework for providing assistance to IDPs and the importance of evolving accountability and responsibility mechanisms and their impact on IDPs have also been taken into consideration.

8. Research Questions:

- Why did the international community start showing concern for the plight of IDPs immediately after the end of cold war?
- Was there a necessity to create a separate category of internally displaced persons to address their problems?
- Why has a binding convention not been adopted on assistance and protection of IDPs?
- Do soft law normative developments in the area of internal displacement help address the problem of IDPs?
- What is the role of Kampala Convention in guaranteeing the rights of IDPs in the African region?
- Why does the Asian region not have a regional human rights mechanism?
- Why has the international community failed to establish a separate international institution for the protection of IDPs?

- Is the UN Inter-Agencies ‘Cluster Approach’ effective in providing humanitarian assistance to IDPs?
- Are international organisations responsible and accountable for the violation of human rights of IDPs?
- Is the World Bank Inspection Panel a model for other international agencies to enhance accountability and responsibility?

9. Hypotheses:

- The lack of binding international convention has made the goal of protection of IDPs ineffective.
- The Kampala Convention provides a model for the Asian region to address the problems of IDPs.
- International institutions lack accountability and responsibility towards the protection of IDPs.

10. Research Methodology:

The study will be conducted through analytical method, relying on both primary and secondary sources. The primary sources include international treaties, declarations, and guiding principles dealing with the problem of IDPs. Secondary sources include books, articles, reports and relevant website materials. In order to have an in-depth analysis of the problem, interview with displaced peoples and concerned authorities will also be considered.

11. Chapterisation:

To facilitate addressing the above issues, the study has been divided into the following chapters:

Chapter-II. History of Internal Displacement Regime

This chapter focuses on the historical evolution of the IDPs regime, and the sudden and rising interest of western countries in the protection and assistance of IDPs. It also highlights the link between the 'end of Cold War' and the period 'after the Cold War, the involvement of western countries in the creation of 'in country protection' mechanism and other steps taken to weaken the international refugee regime in order to prevent Third World refugees crossing their borders. This chapter also highlights the immediate transformation of the principles of state sovereignty into 'sovereignty as responsibility' for facilitating western intervention in Third World countries in the name of assisting IDPs. It also analyzes the UN involvement in the creation of IDPs regime since 1992, and the creation of legal and institutional measures for addressing the problems of IDPs.

Chapter III. International Legal Norms on Internal Displacement

This chapter deals with the evolution of legal protection for IDPs. The applicability of international human rights law, international humanitarian law, international criminal law and refugee law to the situations of internal displacement has also been considered. It analyses the international law exclusively created to address the problems of IDPs, including the UN Guiding Principles on Internal Displacement (1998) and the International Law Association's Declaration of International Law Principles on IDPs (2000), the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (The Pinheiro Principles), General Assembly and Security Council resolutions, and World Bank Guidelines on IDPs.

Chapter-IV. Internal Displacement in African Region: The Kampala Convention

This chapter discusses the African region and its problems arising out of internal displacement. The main focus of the chapter is Africa and that continent's sub regional organisations such as the Great Lake Regional initiative in developing the normative framework for the protection and assistance of IDPs in Africa and the Great Lake Region. The historical evolution of the African Union convention on the protection and assistance of IDPs, sources, and salient features of the convention have also been analysed. The

chapter has also highlighted the Great Lake Protocols on IDPs and its role in helping the African Union to create the African regional convention on IDPs.

Chapter V. Internal Displacement and South Asian Region: A Quest for Asian Regional Convention on IDPs

This chapter discusses the Asian region and its problems of internal displacement. It also highlights the different causes and consequences of internal displacement in the Asian region, focusing mainly on the Asian region in general and the South Asian region in particular in dealing with the problems of IDPs. The chapter has discussed the Asian regional response to the situation of internal displacement and the steps taken by the region in this regard. It also highlights the reason for Asian region dragging behind when it comes to creation of human rights mechanisms. The problems of internal displacement in the South Asian region and the different steps taken by the South Asian countries to address this problem have also been analysed in detail. Finally, this chapter also critically analyzes the need for regional convention on IDPs in the Asian region in line with the African Union convention on IDPs.

Chapter VI. Humanitarian Assistance and Protection of Internally Displaced Persons: Role of International Institutions:

This chapter deals with the evolvement of international institutional framework for providing humanitarian aid to IDPs. It includes the expanding the mandate of UNHCR, the role of ICRC and the involvement of other humanitarian institutions. It also analyzes the UN coordination mechanism and the reasons for its failure in providing effective humanitarian assistance to IDPs. In addition, it is important to know how many organisations dealing with forced displacements have been working for the protection and assistance of IDPs: this has been discussed in this chapter. Other initiatives such as the institutional application of the international protection cluster by the Inter Agency Standing Committee (IASC) have been highlighted. The distributions of functions and hierarchies within the clusters, and the responsible lead agencies for protection of IDPs have also been discussed.

Chapter VII. Framing Accountability and Responsibility of International Organisations: A Study of World Bank Inspection Panel

This chapter discusses the concepts of accountability and responsibility and the importance of building these mechanism in the existing international humanitarian and development agencies. It also discusses in detail the World Bank Inspection Panel, its historical evolution, function, procedure and most importantly, its role in protecting the interest of IDPs. The chapter also analyzes the present accountability mechanism in the international institutions that are responsible for ameliorating the condition of IDPs.

Chapter VIII. Conclusion

This chapter will summarize the major findings of the study and make recommendations for improving the normative and institutional regime on IDPs.

Chapter – II
**History of Evolution of Internal Displacement
Regime**

Chapter – II

History of Evolution of Internal Displacement Regime

1. Introduction

Internal displacement has emerged as one of the greatest human tragedies. The plight of the internally displaced and their need for the protection and assistance has created an monumental challenge for the international community. In order to address the problems faced by these people, international community has developed a comprehensive policy framework that can bring collectively the humanitarian, human rights and development component of the UN. It includes various actors such as government, international organizations and NGOs who formulates and apply a series of global protection initiative and national policies.

The main focus of the chapter is on why and how the international community has reached a new consensus in the 1990s. But the central argument of this chapter is to tell a story of alternative histories of the IDPs regime which was a product of the international politics of refugees.⁷⁰ This alternative history reveals how an urgent need for ‘in country protection’ became the core of the arguments at international organizations working for the betterment and problem of IDPs. It became as a striking tool to impede millions of people fleeing across the border from the Global South into the Global North. It also sanctioned the external involvement into the internal affairs of state on humanitarian grounds.⁷¹

The chapter is divided into four sections. Section 2 maps out the earliest history of the international refugee convention and the paradigm shift during the cold war period. Section 3 discusses the evolution of the internal displacement regime in two phases, first the normative development later and the institutional developments. This section highlights the structural changes in the international system that allowed IDPs regime to

⁷⁰ B. S. Chimni (1998). “The Geopolitics of Refugee Studies: A View from the South.” *Journal of Refugee Studies*, 11(4): pp. 370 - 74, also see, (2000). “Globalization, Humanitarianism and the Erosion of Refugee Protection,” *Journal of Refugee Studies*, 13(3): p. 243, also see, (2009), “The Birth of a 'Discipline': From Refugee to Forced Migration Studies.” *Journal of Refugee Studies*, 22(1): pp. 11- 12

⁷¹ M. Barutciski, (1996) “The Reinforcement of Non-Admission Policies and the Subversion of UNHCR: Displacement and Internal Assistance in Bosnia-Herzegovina (1992-94)”. *International Journal of Refugee Law*, 8(1 &2): pp. 49-50

reformulate itself by reconsidering the sovereignty which includes the expansion of the mandate of UNHCR to involve in, in country protection. This is mainly because after the cold war ended, the northern country did not fear the need to protect refugees given the large number of people from Global South they were searching asylum in Global North. In order to prevent these people from entering into these developed countries, there were a number of policies that were adopted by the Global North. One such policy was “in country protection”. Section 4 deals with the role of academic institution in knowledge production. Final section concludes the chapter.

2. The Politics International Refugee Regime and the Cold War Period

In order to understand the evolution of internal displacement regime one has to interrogate the evolution of international refugee regime as well. Refugee regime is important because whether the movement of people is involuntary or forced migration has become prominent factor in global politics in the context of developed and developing countries.⁷² Since the 1945, the international refugee regime has changed in line with the policies of northern countries.⁷³ Interestingly, the international refugee norms were designed for catering the needs of European refugees and later, it developed as a global framework for refugee protection.⁷⁴

The international refugee regime is based on several humanitarian and human rights laws to protect and assist refugees. The central pillar of the regime is 1951 United Nations Convention, focusing on the status of refugees and the most important institution is the UNHCR.⁷⁵ There are two important international issues which shaped the refugee regime: first, the most frightening issue was the displacement of millions of people after the end of the World War II. Aftermath of war, there were less possibilities for the Displaced Peoples to return back to their home and therefore, large scale resettlement was

⁷² Alexander Betts (2009) *Forced Migration and Global Politics*, United Kingdom, John Wiley & Sons, press, p. 15

⁷³ Chimni, (2009), *Supra* note, 70 at p. 13

⁷⁴Phuong, Catherine. (2006), "*The International Protection of Internally Displaced Persons*" New York: Cambridge University Press. pp. 20-22

⁷⁵ Kennedy, David. (1986). "International Refugee Protection," *Human Rights Quarterly*, 8(1) : pp. 1-5

initiated. Thus, a scope was paved for the permanent refugee regime.⁷⁶ Second, the issue of refugee crisis has haunted the world again during the Cold War period. West has started to offer asylum to those who spoke against communism and the refugee regime was used with the intent of destabilizing the communist governments.⁷⁷

By the 1980s large numbers of asylum seekers were migrating to Europe and North America due to the conflicts in different part of the world. The motivation for the protection of people displaced with in the border of their own country began intense when the large number refugees came into the global north in the 1990s. The northern countries approach towards refugees changed entirely because the end of cold war detached the ideological and geopolitical value of the refugees for the warring countries like USA and USSR.⁷⁸ During post-Cold War period, refugees and migrants were not accepted in Europe but the IDPs regime tried to establish them in their home countries by providing them holistic humanitarian conditions. It was done to control the flow of refugees in western countries.⁷⁹ The western countries have framed many policies to contain the flow of refugees.

In the beginning of 1980s, the internal flight or protection alternative came into force as a first barrier.⁸⁰ The ‘internal flight alternative’ which means that “a person fleeing an imminent risk of being persecuted, at the time of leaving his country of origin may be denied refugee status if, at that time, there existed an alternative to flight within the country of origin”.⁸¹ The agenda of protection of nationals was understood as an alternative to flight by making them stay in the country of their origin rather than giving

⁷⁶ B.S. Chimni (2004) “From Resettlement to Involuntary Repatriation: Towards A Critical History of Durable Solutions to Refugee Problems” *Refugee Survey Quarterly*, 23 (3): pp. 55-56

⁷⁷ Catherine Phuong (2006), *"The International Protection of Internally Displaced Persons"* New York: Cambridge University Press. p. 35

⁷⁸ Stephen Castles. (2003). The International Politics of Forced Migration, *Development*, 46(3): pp. 11-12

⁷⁹ Barutciski, M. *Supra* note, 71 at p. 48

⁸⁰ Hathaway, James C., and Michelle Foster, (2003) "Internal Protection/Relocation/Flight alternative as an aspect of Refugee Status Determination," Accessed 8 July 2016, URL: http://repository.law.umich.edu/book_chapters/39/

⁸¹ UN High Commissioner for Refugees (2003), Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, HCR/GIP/03/04, Accessed 12 April 2016, URL: <http://www.refworld.org/docid/3f2791a44.html>

them the international protection as outside the country⁸² This concept was utilized by Europe and North America where refugees were not allowed to enter because they were not able to provide the evidence which can refute the probability of an internal flight alternative.⁸³

In addition, *Non Entry Policies* were created to impede those people (refugees) who don't have sufficient documents to enter in Western Europe. 'Carrier sanction' was installed to check the documents of the refugees before they were allowed to enter. Most western countries have hardened the rules to restrict refugees as the worst alternatives that were adopted by the Western countries.⁸⁴ For instance, 'Temporary Protection' was provided to those who were fleeing the wars in former Yugoslavia because once the situation is normalized, they were sent back homes.⁸⁵

In addition, there are many other measures adopted by the western countries to prevent these people for entering their territories. It includes. Firstly, *Diversion policies*: designed to shift the responsibility for processing claims and providing protection in other countries.⁸⁶ Secondly, *Changes in National Legislation to restrict access to Refugee Status*: many countries brought the changes to their domestic legislation. For instances, in Germany law had laid down an absolute right to asylum for persecuted persons. But the government made amendment to this particular act eventually accepted as counter to asylum rights. This has created more restrictions for refugees and IDPs to seek protection in Germany, thus, entries of the refugees have reduced.⁸⁷ Thirdly, *European Cooperation on Asylum and Immigration Rules*, namely, 1990s Schengen convention,⁸⁸ and the Dublin Convention of 1990s were adopted for strengthen their domestic and regional laws for

⁸² Hathaway, James, *Supra* note, 69

⁸³, *Ibid*

⁸⁴Charles B. Keely, (2001) "The International Refugee Regime (s): The end of the Cold War matters." *International Migration Review*, 35 (1) : p. 303

⁸⁵ James C Hathaway (2001)."Temporary Protection of Refugees: Threat or Solution?" accessed 5 February 2016, URL: http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1088&context=book_chapters, pp. 41-43

⁸⁶B. S. Chimni (1999) "Marxism and International Law: A Contemporary Analysis." *Economic and Political Weekly*, 34 (6) : pp. 337-340

⁸⁷ Castles, Stephen, *Supra* note, 78 at p. 10

⁸⁸ European Union, Convention had implemented the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, by steady and purposeful removal of checks at their Common Borders ("Schengen Implementation Agreement"), 19 June 1990, URL : <http://www.refworld.org/docid/3ae6b38a20.html>

stopping the people from entering their border.⁸⁹ In addition, the 1997 Treaty of Amsterdam was committed to make common EU policies on immigration and asylum by 2004.⁹⁰ The Dublin convention had made the state fully responsible for analyzing applications for asylum. The ratification of the Schengen convention purposed to eliminate the border control along the frontiers of signatory states. It marked an attempt to increase vigilance of their external frontiers and law enforcement of policies. These measures, hence, resulted in reduced the refugees reaching to northern countries as well as weakening of refugee convention.

In summary, the above restrictive measure adopted by the western countries resulting in violating the human rights of people. These restrictive measures are the main reason for the number of officially recognized refugee worldwide has fallen since 1995 and the number of IDPs increased. The refugee regime of the rich countries of the north has been fully transferred over the last twenty years.⁹¹ Their systems have shifted from a mechanism which was designed to entertain Cold War refugees from East Europe to those who have now permanently exiled in new camps and places calling them ‘homes’ to a non-entrée regime which is designed to exclude but control the asylum seekers from the south. Hence, creating global north monopoly over global southern displaced. In addition to the above-mentioned measures for preventing people from entering the developed countries, the most important measure taken by the western countries is that the creation of internal displacement regime. The following section will analyses and identifies the steps taken by the western countries to create IDPs norms.⁹²

3. Evolution of the Internal Displacement Regime

As scholar Roberta Cohen, opine that the conflict in the Global South led to sudden rise of internal displacement. But the question needs to be raised that why internal

⁸⁹ European Union, Convention was created to determine the State’s Responsibility for Examining Applications for Asylum lodged in one of the Member States of the European Communities (“Dublin Convention”), 15 June 1990, Official Journal C 254 , 19/08/1997 p. 0001 - 0012, accessed 5 February 2016, URL: <http://www.refworld.org/docid/3ae6b38714.html>,

⁹⁰ European Union (1997) “Treaty of Amsterdam Amending the Treaty on European Union, The Treaties Establishing the European Communities and Related Acts,” accessed 5 February 2016, URL: <http://www.refworld.org/docid/51c009ec4.html>, s

⁹¹ B S Chimni, *Supra* note 70, at p. 372

⁹² *Ibid*

displacement became an international regime in the 20th century and not concern of international community in other time.⁹³ In this context, Michael Barutciski, argued that there are two structural changes in the international system during the 1990s which brought the issue of internal displacement at the surface of global politics. Firstly, the involvement was commenced by a alliance of states such as the United States with the implied authority of Security Council to protect Kurds in northern Iraq in 1991. It had brought global consideration to the quandary of internally displaced.⁹⁴ The Kurdish protection in 1991 was also one of the historical event for UNHCR in its works of assistance and protection.⁹⁵ The UN resolution of 688 authorized the coalition forces which were led by NATO in Iraq to set up camps, thus, preventing the Kurdish population from migrating to Turkey as refugees.⁹⁶ Finally this led to the global recognition of internal displacement.⁹⁷ The second episode was the disbanding of Yugoslavia which resulted in violence and conflict in the 1990s. This incident led to ethnic cleansing, bombardment, refugee flow and forging military intervention. Since there was a predication of displacement, the then UN Secretary General Javier Perez Cuellar requested UNHCR ‘to support in transporting relief to destitute IDPs affected by conflict, but in reality UNHCR became politicized and ended up contributing to the ethnic cleansing.’⁹⁸

Apart from the above mentioned points the third development was the changing nature of sovereignty. It was created by Europe and America to open the developing countries’ sovereign space to themselves. The post-cold war era experienced the weakening and reformulation of the concept of sovereignty to provide humanitarian intervention in third

⁹³ Christopher Lee (2010) ‘Humanitarian Assistance as Containment: New Codes for A New Order’, Working Paper Series No. 72, accessed 5 April 2016, URL:<https://www.rsc.ox.ac.uk/publications/humanitarian-assistance-as-containment-new-codes-for-a-new-order>, p. 12

⁹⁴ Catherine Phuong (2006), *"The International Protection of Internally Displaced Persons"* New York: Cambridge University Press. p.32

⁹⁵ Barnett, Michael, (2001) "Humanitarianism with a Sovereign Face: UNHCR in the Global Undertow." *International Migration Review*, 35 (1) : pp. 244- 245

⁹⁶ UN Security Council, Security Council Resolution, S/RES/688 (1991), accessed 5 April 2016, URL: <http://www.refworld.org/docid/3b00f1598.html>

⁹⁷ Catherine, Phuong, *Supra* note 74 at p. 22

⁹⁸ Michael. Barutciski, (2002)"A Critical View on UNHCR's Mandate Dilemmas," *International Journal of Refugee Law*, 14 (2&3): p. 365. And also see, (1996) The Reinforcement of Non-Admission Policies and the Subversion of UNHCR: Displacement and Internal Assistance in Bosnia-Herzegovina (1992-94). *International Journal of Refugee Law*, 8(1 &2), p. 49

world.⁹⁹ The UN Secretary General Boutros Boutros Ghali in his 'Agenda for Peace' argued that

This erosion of the Westphalia system was very much needed for western countries to legitimize their intervention in the internal affairs of poor countries and all these incidents help in activities of 'in country protection' and reinforcement of 'non-admission policy' of western countries.¹⁰⁰

In summary, all the three measures which are mentioned above are the motives behind creating an internal displacement regime.

3.1. Normative Development

The IDPs norms can be divided into three broad categories such as legal protection, physical protection and academic discourse. The agenda for creation of an IDPs regime was to contain and deterrence of refugees from the Global South to the Global North.¹⁰¹ The aim of the inhibition is to wedge people from arriving at the western border.¹⁰² The West even had taken support from the NGOs, International Organizations, academic institutions, and legal scholars to substantiate its legal standing for preventing refugees in its countries. The focus was the gaps on the 1951 Refugee Convention in a legitimate manner. It was done by using multiple factors such as numbers, branding IDPs as a category, and the redefining of sovereignty.¹⁰³ In fact, these lacunas have motivated actors to transform the 1951 convention.¹⁰⁴ Even the refugee rules were debilitated by UNHCR itself through preventive safety.¹⁰⁵

⁹⁹ B. S. Chimni (2006) "Third World Approaches To International Law: A Manifesto." *International Community Law Review*, 8: pp. 8-10 also see, Michael N. Barnett, (2013) "Humanitarian Governance." *Annual Review of Political Science* 16 : pp.379-380

¹⁰⁰ Boutros-Ghali, Boutros. 1992. "Report of the UN Secretary-General: "Agenda for Peace" , Council on Foreign Relations, accessed 5 April 2016, URL: <http://www.cfr.org/peacekeeping/report-un-secretary-general-agenda-peace/p23439>

¹⁰¹ B.S. Chimni (1998) *Supra* note 70 at p. 375

¹⁰² Stephen Castles, *Supra* note 78 at p. 50

¹⁰³ Laker, Frederick, (2013) Rethinking internal displacement geo-political games, fragile states, & the relief industry, Dissertation, The London School of Economics and Political Science (LSE), URL: http://etheses.lse.ac.uk/798/1/Laker_Rethinking_Internal_Displacement.pdf, p.35

¹⁰⁴ B. S. Chimni, (2009) *Supra* note 70 at p. 372

¹⁰⁵ Michael, Barutciski, *Supra* note 71 at p. 48

In addition to the above mentioned steps, in the 1980s, brought other more mechanisms to slowly bring IDPs to the center stage in order to make the 1951 convention irrelevant.¹⁰⁶ As already mentioned, the unearthing of the IDPs problem coincident with the great scale of refugees to the global north had forced these countries to rigid barrier restrictions to prevent asylum seeker.¹⁰⁷ Finally, in 1989, the secretary general was requested by UNGA to assess the potentials, rules and experiences of all organizations which are dealing with refugees, displaced persons and returnees.¹⁰⁸

In this period Francis Deng and Roberta Cohen became the leading expert in this area and they claimed

Identifying these needs are not intended to confer on IDPs a privileged status but to ensure that in a given situation their unique concerns are addressed along with those of others. Moreover, identifying the internally displaced as a specific group is a good advocacy tool and one that can motivate the donor community and international organizations to integrate the issue into their programs.¹⁰⁹

Weiss and Korn argued that since the 1990s when Francis Deng's considered 'Sovereignty as Responsibility' to create amicable situation for UNHCR to assume responsibility for IDPs.¹¹⁰

1.3.1. The Use of Number

One of the popular reason for the evolution of IDPs as highlighted in the literature is that the existed of large number of IDPs. The western NGOs took this issue at the international level and demanded for the IDPs regime. The Resolution 1990/78 of UNGA has comprehended that innumerable people are leaving their ancestral places of residence

¹⁰⁶ Christopher Lee, *Supra* note 93

¹⁰⁷ Laker, Frederick, *Supra* note, 103 at p. 37

¹⁰⁸ UN General Assembly Resolution 1990/78, 37th Plenary Meeting, 27th July (1990)

¹⁰⁹ Geissler Nils, (1999) "The International Protection of Internally Displaced Persons" *International Journal of Refugee Law* 11: p. 451

¹¹⁰ Korn, David A. (1999), "*Exodus within Borders: An Introduction to the crisis of Internal Displacement*", Washington: D C. Brooking Institution Press. p. 10

with the hope to settle somewhere else has reached extraordinary magnitudes.¹¹¹ It means, there are more IDPs than refugees in total numbers in the world. In sum, there was more IDPs number than the refugees.¹¹² The role of UNHCR in protecting IDPs is identical to refugees also Highlighted.¹¹³ The same was followed by Analytical Report of the Secretary General on Internally Displaced Persons in 1992 which framed the IDPs norms and institutional structure on the basis that:

“IDPs typically have suffered from a series of human rights violation which add up to a characteristic and distinctive syndrome. The cumulative effect of these violations, together with the fact of having been forced to flee their home and the difficulties, risks and deprivations invariably associated with their new situation, make their needs qualitatively different from those of other persons.”¹¹⁴

The IDPs regime became influential in highlighting the entitlements, stating that the quantity of distressed IDPs has outnumbered the refugees. These arguments then resonated in the fact that, eventually refugees’ numbers were on decline and hence demanding the need for a new set of IDPs laws and conventions.¹¹⁵ This argument remains controversial as the same kind of statistics can be deduced from any social problems like diabetes.¹¹⁶ For example, as Professor Chimni, put it by “including the total number of all people affected by diabetes in any given country the result could very easily justify for the creation of an international legal and humanitarian regime to interfere and assuage the agony and grief of diabetes.”¹¹⁷ As Wiss maintained that when

¹¹¹ UN Economic and Social Council (1990), UN Economic And Social Council Resolution 1990/78: Refugees, Displaced Persons And Returnees., E/RES/1990/78, URL: <http://www.refworld.org/docid/3ae69eed24.html>

¹¹² Cohen, Roberta. and Deng, Francis M, *Supra* note

¹¹³ Loescher, Gil, (2001) "The UNHCR and World Politics: State Interests vs. Institutional Autonomy." *International Migration Review*, 35 (1) : pp. 33-56

¹¹⁴ E/CN.4/1992/23, 14th February (1992), p. 23.

¹¹⁵ Christopher Lee, *Supra* note, 93

¹¹⁶ Chimni, B.S. (2009), *Supra* note 70 at p. 10

¹¹⁷ *Ibid*

IDPs data for the first time was gathered in 1982, there was only 1 IDPs for every refugee; at present the ratio is approximately 2.5:1.¹¹⁸

However, such claims removed hurdles to IDPs regime. If a citizen of a state failed to cross the international border he or she does not qualify for the refugee status and thus be counted as IDPs. Therefore, due to several reasons like rejection of admission, physical and economic inequality led to increase number of IDPs and declined refugees' number lead to the justification for the formation of a IDPs regime.¹¹⁹ In reality, the IDPs has always been a concern, however, the development of a bureaucratic category which is meant for citizens has considered IDPs an important critical issue for the international community. As Chimni, opines the core reason for the creation of this category is that refugees are contaminated and this lead to the rise of IDPs number in the Global South.¹²⁰ Another fact that the sustaining of IDPs numbers against the declining refugees' number can be easily countered as many western nations after the 1990s started constructing barriers to restrict the asylums to refugees.

1.3.2. The Politics of Labels

With numbers are used as the imposition of labels, the normative lacuna was prudently established on the founded on the forte of a bureaucratic label because it had the agility for the creation of fresh protection structure by utilizing the existing norms.¹²¹ This was fully apparent in the Compilation and Analysis of Legal Norms acquiesced by the special representative in 1995.¹²² The report inspected the prevailing global legal ideals of the UN which were appropriate to the requirements of IDPs and whether or not they offered

¹¹⁸ Thomas G. Weiss (2010) Reinserting "Never" into "Never Again": *Political Innovations and the Responsibility to Protect*, in David Hollenbach 'Driven from Home Protecting the Rights of Forced Migrants', Georgetown University Press, p. 208

¹¹⁹ Castles, Stephen, *Supra* note 78 at p. 15

¹²⁰ Chimni, B.S. (2009), *Supra* note 70 at p. 11

¹²¹ Laker, Frederick, *Supra* note 103 at p. 30

¹²² UN Economic and Social Council (1996) 'Internally displaced persons Report of the Representative of the Secretary-General,' Mr. Francis M. Deng, Submitted Pursuant To Commission On Human Rights Resolution 1995/57, *Compilation and Analysis of Legal Norms*, accessed 5 April 2016, URL:<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G96/106/78/PDF/G9610678.pdf?OpenElement> p. 28.

protection.¹²³ Under the UN's mandate human rights, humanitarian and refugee laws all were scrutinized to ensemble the IDPs necessity. The representatives had concluded that the international laws existed for the protection of IDPs even though there was no mention of IDPs in the instruments.

The above analysis also pushes for examining IDPs as the specific category for the creation of new protection instruments. Indeed, it is important to question how the involvements of displacement were exceptional to other forms of people's griefs. According to Cohen, who attempted to address these queries, she argued that "identifying these needs are not intended to confer on IDPs a privilege status but to ensure that in a given situation their unique concerns are addressed along with those of others."¹²⁴ Although, this was opposing because if IDPs did not have a unique status, why their situations were considered by so many to be exceptional. In sum, ironically, earlier an artificial distinction was mounted to create containment and restriction of the refugees from entering into Global North from Global South. Later, a new myth was generated to create semblance, equilibrium and homogeneity between IDPs and refugees. Behind it the agenda was to structure a normative instrument to protect people inside their home countries. Thus, it was to holistically reject the idea and norm of refugee regime.¹²⁵

1.3.3. The Politics of Sovereignty

The legal basis of 'sovereignty' originated from the Westphalia Treaty where states were considered as equal, independent and sovereign. It is also cherished in the article 2(1) of the UN charter.¹²⁶ It was strengthened by the 'principle of non-intervention' in the domestic affairs of states. Therefore, the establishment of norms at global level which

¹²³ Francis M Deng (2001), "The Global Challenge of International Displacement", *Washington University Journal of Law and Policy*, 15 (12) : pp. 141-143

¹²⁴ Cohen, Roberta (2009), "Up Close and from the Tower: Two Views of Refugees and Internally Displaced Populations", *International Studies Review*, 11 (3): p. 585

¹²⁵ Michael Barutciski, *Supra* note, 71 at p.50

¹²⁶ UN Charter, Article 2(1) The Organization is based on the Principle of the Sovereign Equality of all its Members, UNTS XVI, URL: <http://www.refworld.org/docid/3ae6b3930.html>

promulgate the rights of the citizens, allowed the intervention in the domestic affairs of a nation if it fails to protect its own citizens.¹²⁷

The issue of sovereignty had become the biggest obstacle for the initiation of IDPs regime.¹²⁸ The politics of number and label, along with the barrier of sovereignty cautiously re-conceptualized and mobilized to fill the normative gap. Thus, it gained admittance to citizens who are stuck within their borders.¹²⁹ This was essential to neutralize the 1951 convention by eliminating its Essence.¹³⁰ It was also the issue of crossing an international border along with the protection that afterward essential to remove the legal midpoint of IDPs who are residing in their land. In fact, this could have been the most important effort to silence the critics of IDPs regime.¹³¹

To understand how the sovereignty fence was removed, it is essential to know the concept of the 'Responsibility to Protect' (R2P). According to the scope and intent of R2P, it was neither new nor revolutionary. It was an old concept, reframed to address the new issues, concerns and interests.¹³² Since 1990s, during the reformulation of R2P the renaming process observed a number of high profile debates and re-structure of sovereignty to fit the changing and unprecedented circumstances and many of them highlighted the international community fails to stop the human rights violations in Global South.¹³³

To reform the international system, Francis Deng's had framed *Sovereignty as Responsibility* by arguing that "the IDPs fall into a vacuum of the responsibility normally associated with sovereignty."¹³⁴ The international community is often requested to take

¹²⁷ Luopajarvi, Kajta. (2003) "Is There An Obligation On States To Accept International Humanitarian Assistance To Internally Displaced Persons Under International Law." *International Journal of Refugee Law*, 15 (4) : p. 678,

¹²⁸ Cohen Roberta (2010) "Reconciling R2P with IDP Protection", *Global Responsibility to Protect*, 2: p.15

¹²⁹ B. S. Chimni, *Supra* note, 70 at p. 17

¹³⁰ Stephen Castles, *Supra* note, 102 at p. 55

¹³¹ Barutciski, Michael, *Supra* note, 71 at p. 49

¹³² Michael Barnett, (2009) "Evolution without Progress? Humanitarianism in a World of Hurt," *International Organization* 63 (4) : pp. 621-623, also see, B. S. Chimni, (2012) "For Epistemological and Prudent Internationalism" *Harvard Human Rights Journal*, accessed 5 April 2016, URL: <http://harvardhrj.com/2012/11/for-epistemological-and-prudent-internationalism/>

¹³³ Amy Dowell, (2007) "The International Community And Intervention In Cases Of Genocide," *Journal of Politics and International Studies*, 1(1) : p. 2

¹³⁴ Avery, Ainslie, *Supra* note, 26 at p. 29

steps to meet the humanitarian challenged posed by the absence of national responsibility.¹³⁵ In addition, Deng argued that state has the primary responsibility and accountability to provide humanitarian assistance to IDPs and if states fail or unable to discharge its duties then the international community must steps in.¹³⁶ Subsequently, Kofi Annan¹³⁷ while addressing the General Assembly in 2003, stated that the “to find a balance between state sovereignty and the protection of human rights, international community must play the overarching role.. Finally there was the International Commission on Intervention and State Sovereignty in December 2001.¹³⁸ This commission recommended to change in terminology to the responsibility to protect would first incorporated a bottom up approach that evaluated the issues ‘from the point of view of those seeking or needing support, rather than those who may be considering intervention which protect communities from systematic violation of human rights.¹³⁹ Secondly, there is a need to bridge the gap between intervention and sovereignty by using international community as the cornerstone of international humanitarian protection system.it would be linking concept that ties the gulf between intervention and sovereignty with the global community submerging into accomplish the duty of unable and unwilling states.¹⁴⁰ Finally, there is the responsibility to reconstruct the theoretical, normative and working associations between support, interference and rebuilding.

Though ‘R2P’ which was created for the western interest, one school of thought opines that the R2P is a revolutionary idea for achieving global order. But it came under criticism and accusation that it only needed responsibility of developed west interfering in the internal affairs of the poor countries without giving any coherent solutions.¹⁴¹ Another school of thought argues that R2P held a far greater purpose which involved the re-designing of the global arena by changing sovereignty as a hard concept into a soft

¹³⁵ Francis M Deng (2007)“Divided Nations: The Paradox of National Responsibility,” *Macalester International*, 19: p. 79

¹³⁶ Francis M Deng, (2004) "International Response to Internal Displacement: A Revolution in Making", *Human Right Brief*, 11(3) : pp. 24-27

¹³⁷ Kofi Annan (1999) ‘Two Concepts of Sovereignty,’ accessed 5 April 2016, URL: <http://www.economist.com/node/324795>

¹³⁸ ICISS (2001) ‘The Responsibility To Protect’ Report of the International Commission on Intervention and State Sovereignty, accessed 5 April 2016, URL: <http://responsibilitytoprotect.org/ICISS%20Report.pdf>

¹³⁹ *Ibid*

¹⁴⁰ *Ibid*

¹⁴¹ Michael Barutciski, (2009) *Supra* note, 71 at p. 51

political approach. It could now fulfill the standards and program of IDPs laws for international intervention.¹⁴² It enabled the international actor to engage IDPs on the global platform in a normative framework; collaborating the entire previous attempts which are working for the protection of the displaced people.¹⁴³ Finally, the Guiding Principles on IDPs adopted as a soft law instrument which is created on the basis of the concept of sovereignty linked with the responsibility. It has now become an instrument to directly attack the principle of non-intervention into the internal affairs of another state during the failure of state's authority in the time of crisis.

1.3.4. The Evolution of the Legal Mechanisms

The Guiding Principles on Internal Displacement were created in 1998, as a result of compiling and examination of legal norms which were codified to create a set of international rules as a soft law for IDPs regime. The central idea was based on the concept of sovereignty as responsibility to guide states by bringing polices and legislations in tandem with human rights¹⁴⁴ However, they were not created or altered or manifested as a draft statement or obligatory device. They were simply brought in inconsistency with the international human rights and humanitarian laws.¹⁴⁵

3.2. Institutional Change

The Office of the United Nations High Commissioner (UNHCR) was established as subsidiary organization for the protection of refugees by the General Assembly.¹⁴⁶ According to its statute, the main agenda of the UNHCR is to provide international protection and enduring resolutions to the problem of refugees by supporting governments with the help of NGOs and other global establishments. Thus, it created a smooth process to enable the voluntary repatriation and integration of refugees within

¹⁴² Stephen Castles, *Supra* note, 102 at p. 56

¹⁴³ Christopher Lee, *Supra* note, 93

¹⁴⁴ Francis M Deng (1999), "Guiding Principles on Internally Displacement", *International Migration Review*, 33 (2) : pp. 484-488, also see, Guiding Principles, *Supra* note, 17

¹⁴⁵ Francis Deng, *Supra* note, 4 at p. 141

¹⁴⁶ United Nations High Commissioner for Refugees (1950) Statute of The Office of The United Nations High Commissioner For Refugees, General Assembly Resolution 428 (V) of 14 December 1950, accessed 5 April 2016, URL: <http://www.unhcr.org/3b66c39e1.pdf>

new national communities.”¹⁴⁷ Thus, the roles of UNHCR, states are counselled to defend all the persons within their state borders. Further, it clearly mentioned that the primary responsibility of state is to protect the refugees. Thus, the UNHCR plays a complementary role along with the state to provide holistic protection to the refugees. Therefore, the principal mandate of the UNHCR is further expended to provide in-country defense to refugees and IDPs.¹⁴⁸

3.2.1. UNHCR and Politics of Expanding Mandate to IDPs Protection

In the 1990s, the UNHCR was asked to shift its strategies so that it could work in those countries where refugee populations are generating. Thus, now this mandate positioned upon UNHCR ‘a responsibility to advocate’ on behalf of IDPs. It is able to do so by mobilizing support for IDPs, strengthening its capacity to respond to their problem and taking the lead to protect them in critical situations.¹⁴⁹ The timing of UNHCR’s paradigm shift made it clear that the UNHCR is no longer the organization for refugee protection because it is accommodating the interest of the powerful countries.¹⁵⁰ Barutciski argued that during 1980s, there was swift multiply of the number of refugees but UNHCR did not increase its budget accordingly. Although, the post-1990s development had dramatically surged the organization’s budget but at the same time other UN’s bodies were not able to increase their budgets. It showed the politicization of UNHCR by western countries.¹⁵¹ In addition, with the increasing focus on the IDPs, there was also a shift towards an operational role in countries of origin to decrease the possibility of massive refugee movements across border of western countries.¹⁵²

¹⁴⁷ Statute of UNHCR, *Supra* note, 81

¹⁴⁸ David Lanz, (2008) "Subversion or Reinvention? Dilemmas and Debates in the context of UNHCR are increasing Involvement with IDPs." *Journal of Refugee Studies*, 21(2): pp. 192-193

¹⁴⁹ Roberta Cohen, (2005) "UNHCR: Expanding its Role with IDPs." *Forced Migration Review Supplement*, : :9-11, accessed 5 April 2016, URL https://www.brookings.edu/wpcontent/uploads/2016/06/20050923_rc_idp_supplement.pdf

¹⁵⁰ Michael Barnett, (2001) "Humanitarianism with a Sovereign Face: UNHCR in the Global Undertow." *International Migration Review*, 35 (1) : pp. 265-267

¹⁵¹ Michael Barutciski, *Supra* note, 71 at p. 52

¹⁵² David Lanz, *Supra* note, 148 at p. 195

The shift in UNHCR's approach for the protection of IDPs along with to contain the refugees' flow was visible during the conflicts in Iraq, Bosnia and Somalia.¹⁵³ For instance, 'the concept of preventive protection' was emerged which undertook precise activities inside the country of origin for the protection of IDPs. It became an important instrument to curtail the flow of refugees to outside the countries of conflict. Thus, it validated the creation of safe heaven within the countries by shifting the focus of UNHCR activities from refugee protection to IDPs.¹⁵⁴

3.2.2. Humanitarian spending changes in the Post-Cold War era

In addition, the UNHCRs mandate was expanded to include IDPs. It was also instrumentalized in providing financial assistance to IDPs during the post-Cold War era, there was a decline in the spending on international development assistance while the spending on humanitarian assistance had increased.¹⁵⁵ For instance, to maintain its hegemony the United States had provided the largest aid under the label of humanitarian assistance from 1990 to 2008. During this time, the allocation of such aid was shifted with the changes in funding pattern according to the fluid geopolitical interests of the states.¹⁵⁶

3.2.3. The Evolution of Protection Mechanism

Cluster approach of UN which came out in 1997 as a result of UN reform programme by Secretary General. It emphasized the greater collaboration which required overcoming unsatisfactory institutional arrangement. It quoted precise position to the needs of the IDPs, so that humanitarian issues such as protection and assistance which are falling in gaps of existing mandate of agencies for IDPs are addressed.

¹⁵³ Michael Barnett, (2001) *Supra* note, 150 at p. 269

¹⁵⁴ *Ibid*

¹⁵⁵ J. N. Pieterse, (1998) 'Humanitarian Intervention and Beyond: Introduction'. In Pieterse, J. N. (ed.) *World Orders in the Making: Humanitarian intervention and beyond*. London: Macmillan Press, p. 7

¹⁵⁶ Randel, J. and German, T. (2002) 'Trends in the Financing of Humanitarian Assistance', In Macrae, J. (ed.) *The New Humanitarianisms: A Review of trends in Global Humanitarian Action*, London: Humanitarian Policy Group, Overseas Development Institute, p. 12

The evolution of the new institutional structure such as Senior Inter-Agency Network on Internal Displacement was endorsed by the General Assembly in 2000. It was planned to evaluate the operative reply of the UN in situation of displacement.¹⁵⁷ It was followed by the Internal Displacement Unit in January 2002 which was a small non-operational unit within the Office for the Coordination of Humanitarian Affairs (OCHA).¹⁵⁸ It was further restructured as the Inter Agency Internal Displacement Division in July 2004.¹⁵⁹

The final phase of Inter-Agency Standing Committee came into existence in in December 2005 when it transformed into a leading humanitarian model for all UN relief agencies. It became fully functioning in January 2006. The central pillar of it was the 'raising standard and ensuring greater predictability, accountability and partnership in all sectors. It also followed the more organized method to allow international actors to become a better companion for states' régimes as they have the primary responsibility for leading humanitarian response in their countries.¹⁶⁰ The framework of the cluster approach as follows:

First, *Protection Cluster*: it was to assist governments so that they could solidify their own mechanism to protect and response IDPs by strengthening partnerships and involving NGOs.¹⁶¹ Second: *Camp Co-ordination and Camp Management Cluster (CCCM)*: since there was no prevailing system of experts. The superseding objective of the cluster was to provide safe heaven to camp-based population. The CCCM Cluster worked to safeguard that IDP processes had satisfactory capacity and tools, standards and technical direction through exercise, the deployment of specialists to country teams and the delivery of technical guidance to field operations.¹⁶² *Third, Emergency Shelter Cluster*: it focused on efficiency and certainty of service provision by (i) increasing the number of competent specialists who are existing for rapid deployment. (ii) By emerging

¹⁵⁷ Catherine Phuong, (2006), *Supra* note, 77 at p. 40

¹⁵⁸ *Ibid*

¹⁵⁹ The "Collaborative Response" to Situations of Internal Displacement, Accessed 15 April 2016, URL:<http://idp-key-resources.org/documents/0000/d04383/000.pdf>

¹⁶⁰ Holmes, John, (2007) "Humanitarian Action: A Western-Dominated Enterprise in Need of Change." *Forced Migration Review* 29: pp. 4-5, Accessed 15 April 2016 URL: <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR29/4-5.pdf>

¹⁶¹ Vanessa Humphries (2013) "Proving Humanitarian Coordination: Common Challenges and Lessons Learned from the Cluster Approach," Accessed 15 April 2016, URL: <http://sites.tufts.edu/jha/archives/1976>

¹⁶² *Ibid*

an emergency shelter, strategy, guidelines and apparatuses for valuations, involvement and monitoring and (iii) By consolidation of stockpiles of accommodation and non-food items (NFIs).¹⁶³

Thus, the cluster approach was planned to permit refugee containment with the creation of new and effective coordination and accountability structure. Therefore, it is paramount that the ‘humanitarian system must work to fulfill protection gaps’. According to Roberta Cohen, who appreciated the idea of cluster approach, argues it “has the potential to bring predictability and clarity to an area which is regularly described as the biggest gap in the international response system to IDPs.¹⁶⁴ In contrast to this, Professor Goodwin Gill, questioned the UN Reform and the Cluster Approach for being very selective in detecting and attempting to provide the remedy to bridge the gaps.¹⁶⁵ Interestingly, by not providing a rigorous attempt to better reform refugee protection, and instead push for UN agencies that all at the time had no legal authority to ‘protect’ persons within their own country, raised alarm bell.¹⁶⁶

Second, the cluster approach, thus, followed the same agencies, same task, in the same settings, with the same mandate under a seemingly new framework, now within the border of states. Indeed, the hurried comparison shows that how the refugee dynamic was employed to steer the development of IDPs protection with identical terminology (Durable Solution, Return, Reintegration, Resettlement, and Camp Management). The use of these structures became a simple recreation of the ‘refugee camps mechanism’. It had redesigned and re-applied the earlier UNHCR concepts of the Quick Impact Projects (QIP) and the Cross-Border Operation (CBO). Further, the new structure has now directly translated for the IDPs protection.

¹⁶³ *Ibid*

¹⁶⁴ David Turton, (2011) "The Politics Of Internal Displacement And Options For Institutional Reform," Special Issue Engendering Migration And Displacement In Developing Countries: Focus China, Accessed 15 April 2016, URL: http://www.unive.it/media/allegato/dep/n17-2011/3_Turton.pdf

¹⁶⁵ Guy S Goodwin-Gill, (2006) "International Protection and Assistance for Refugees and the Displaced: Institutional Challenges and United Nations Reform." Refugee Studies Centre Workshop, ‘Refugee Protection in International Law: Contemporary Challenges’. Oxford. 24: p. 15, Accessed 15 April 2016, URL; <http://www.unhcr.org/47e8d2a82.pdf>

¹⁶⁶ Frederick Laker, *Supra* note, 103 at p. 42

Overall refugee mechanism thus became efficient for gaining access and control of citizen under a new legal category, otherwise under the 1949 Geneva Convention of the Law of War; certainly, they would have been under the monitoring of the ICRC has a mandate and decades of experience for protecting the citizens who are displaced during inter-state and intra-state conflicts. This posture of ICRC has even permitted the 1951 convention to make flight of citizens during violent conflict as the legal option because the agenda of ICRC was primarily to protect the citizens and treat the wounded and to bring the armed personals to follow the rules of war. Although, this strategy was not accepted on equal footings with the containment and restrictive policies and designs of the global north. It was claimed by North that the protection of IDPs within the home countries have actually reduced the need for flight to other countries. Thus, it had justified the ‘barrier restriction’ by accepting the so-called existence of the humanitarian actors in the ‘cluster approach’ which has provided normative protection. The outcome of the process was that it has completely blurred the legal norms, principles and roles of institutions.

4. Norm Stabilization: Creating an IDPs Convention

The most important phase in the construction of IDPs regime was the enactment of binding laws for the creation of IDPs convention. This section will examine the approach that was employed by actors to institutionalize the norms to stabilize and legitimize the IDPs regime. It includes the evolution of an academic discourse and adoption of the Kampala convention as a binding legislation on IDPs.

4.1. The Evolution of Academic Discourse

The norms’ stabilization is done by the intellectualization of the basic known idea, elevating them to new horizon which provides a new concrete meaning to the policy. This was considered a critical juncture in the formation of the IDPs regime which first enacted the intellectual discourse of refugee studies as a field of academic enquiry in the early 80s with the several efforts taken by it such as, groundwork of the Refugee Studies Center at Oxford University in 1982, the publication of the Journal of Refugee Studies in 1988, the Center for Refugee at York University in 1982, and the International Research

and Advisory Panel (IRAP) to enable information exchange on refugee policy and practice in 1989. The arrangement of refugee studies with government policy making had developed a knowledge-power' relationship. It provided legitimacy to the asylum barrier and 'non-entrée' regime in the Global North through a distinction of 'past' and 'present' refugees due to the new political conditions in the Global South.¹⁶⁷

From the mid-90s onwards, the refugee studies was transformed into the forced migration studies, it was given a lot of stimulus by several measures, such as, the formation of International Association for the Study of Forced Migration (IASFM), numerous universities had provided degrees in the forced migration studies along with the establishment of the forced migration review publication, as observed by Chimni, Those themes which were addressed by Forced Migration Studies are; the world of IDPs, the smuggling and trafficking of persons, armed humanitarian intervention, and the construction of a post conflict state. It observed that the idea of forced migration has been re-structured to majorly show the geo-political and vested-national interests of western countries.¹⁶⁸ Such scholarly constructions and growths paved the way for the IDPs regime to produce partnership with the Brookings' and Bearn in 1993. In addition, these organizations provided platforms to intellectuals to make policies, prescription, laws, regulations for UN and governments.¹⁶⁹ They would frequently reinforce UNHCRs involvement in the IDPs countries with the support from the UN machinery.¹⁷⁰

Apart from this, there are other valuable academic arrangements which are made to amalgamate the indication to protect the legitimacy of proposed standards by initiating healthy debates and narratives. It coherently provides the importance to IDPs regime, the most crucial was the Norwegian Refugee Council's Internal Displacement Monitoring Center which was established in 1998 and was tasked with quantifying and adopting global dislocation numbers and forms.

¹⁶⁷ B.S. Chimni (2009) *Supra* note, 70 at p. 373

¹⁶⁸ *Ibid*

¹⁶⁹ Laker Frederick, *Supra* note, 103 at p. 42 also see, David Korn *Supra* note, 8 at p.37

¹⁷⁰ Barnett, M. N., & Weiss, T. G, (2008) *Humanitarianism in Question: Politics, Power, Ethics* Ithaca, N.Y.: Cornell University Press, p. 128

However, this program became a indication of the politics of numbers and labels. The simple arrangement of IDPs around the world has made them distinct as a specific category which required the humanitarian assistance. Second, the partnership between the Brookings Institute and Institute for the Study of International Migration at University of Georgetown had initiated the research and consultation program by bringing multiple actors (governments, civil society, UN) at the same platform to identify when actually the displacement ends.¹⁷¹ Though, the inventiveness was not revolutionary but obviously followed the same academic debates and themes which were concerned with refugee return and resettlement. All of this initiative effectively responds to a pressing need that was accurately recognized by the scholars of intellectual standing for transferring the UNHCR into a new era of responsibility.

The focus on displaced persons of all types had invigorated a new system of power and regulator which legitimized western interference into the non-western world. Indeed, as Nadig put it that the “truth can help to produce knowledge, expert, and a discipline to legitimize hegemonic practices”.¹⁷² The quantity of IDPs has played a vital role in evolution to a new regime where the “refugee” category continuously shares norms with IDP category.

4.2. Shaping the Kampala Convention

The establishment of the academic discourse has legitimized the IDPs regime by translating the guiding principle into binding law through organizing four consecutive conferences and conventions. They signed a protocol on November 2006 which culminated into a pact on security, stabilization and development in the Great Lake Region in 2008. It had made a commitment which included its 11-member states into the guiding principles.¹⁷³ Thus, the outcome was to create the convention for the protection

¹⁷¹ Brookings Institution (2007) ‘When Displacement Ends’ A Framework for Durable Solutions, The Brookings Institution – University Of Bern Project On Internal Displacement, accessed 5 April 2016, URL:https://www.brookings.edu/wp-content/uploads/2016/06/2007_durablesolutions.pdf, p. 15

¹⁷² Nadig Aninia. (2003) "Forced Migration and Global Processes-Report of the Eighth Conference of the International Association for the Study of Forced Migration" *Journal of Refugee Studies*. 16 (4): p. 361

¹⁷³ Great Lake Pact, *Supra* note, 54

and assistance to IDPs in Africa which was known as the Kampala Convention in 2009.¹⁷⁴

For many advocates, the AU convention had widened the possibility of IDPs regime, thus, it was considered as an significant accomplishment for the AU. It represented the will and tenacity of African states and people to discourse and resolve the problems of internal displacement in Africa. Apart from the similarity which the convention has with other IDPs norms, the new convention had raised more pertinent questions regarding the IDPs regime such as why a state is now required to generate and ratify a new web of exterior rules for a precise group of citizens who were previously in theory under its protection. Secondly, how is the new pact going to attain what the nationwide laws have already failed or ignored to complete? Certainly, it was humorous to imagine a delicate state to abruptly follow to a new set of lawful principles when the state was powerless to fulfill its main duty to defend its populations. Further, as it has globally established order that the international institutions have now authorized to intervene to assist the displaced people with the effect of binding treaty. The outcome of it was that it had shifted all apprehensions and duty for the protection of IDPs within the state as a matter of international importance while imposing on the concerned state full responsibility to withhold the human rights, equality and freedom of the IDPs. The establishment of the new convention had made IDPs as hard legal norm and the ‘new’ academic discourse had dismantled the numerous issues such as development, human trafficking, humanitarian intervention. These issues were turned into a forced migration studies which is encountered by western states to weak and annihilate the significance and existence of the refugee regime.¹⁷⁵

5. Conclusion

The international community’s attempt to create an internal displacement regime was to provide protection and assistance to IDPs and also stop the refugee flow from the Global South to Global North is also an another objective . The steps taken to create IDPs regime includes the highlighting of the increasing number of IDPs, the categorization of IDPs as

¹⁷⁴ Kampala Convention, *Supra* note, at 46

¹⁷⁵ Frederick Laker, *Supra* note, 103 at p. 36

different from other vulnerable people, and reframing the concept of sovereignty. As a result the Guiding Principles on Internal Displacement were adopted. The mandate of the UNHCR was also expanded to include IDPs in its agenda. Though the creation of IDPs regime helps western countries to continue their dominance in the Third World Countries at the same time it helps fill the gaps in laws and institutions for the effective protection of IDPs.

Chapter-III

**International Legal Framework on Internal
Displacement**

Chapter-III

International Legal Framework on Internally Displaced Peoples

1. Introduction

At present there is no exclusive legal status for IDPs this creates loopholes in the international mechanism for protection and assistance to IDPs.¹⁷⁶ However, it does not subscribe to the fact that there is no international law for their protection, for instance, during violent conflict, they are provided protection by International Humanitarian Law (IHL) and during normal times, they are protected by international human rights law.¹⁷⁷ But the problem is that despite there are existing laws, IDPs still face humanitarian problems.¹⁷⁸

This chapter is divided into seven sections: Section 2 offers an overview of all the existing and evolving international law on IDPs. Section 3 analysis international human rights law, humanitarian laws, international refugee law and international criminal laws provisions which are applicable to IDPs. Section 4 critically analyzes the role of Guiding Principles of Internal Displacement in guaranteeing the rights of IDPs. Section 5 highlights the ILA Declaration of IDPs and other international legal instrument on IDPs. Section 6 section analyses the impact of evolving international law on IDPs. The last section will conclude the chapter.

2. International Legal Norms on IDPs

The inadequacy of IDPs protection is illustrated by the scarcity of legal provisions. By virtue of remaining inside an international frontier, IDPs are not allocated a legal status

¹⁷⁶ Marc Vincent (2000) "IDPs: Rights and Status," *Forced Migration Review*, 8: pp. 29-30

¹⁷⁷ Phil Orchard, (2010) "Protection of Internally Displaced Persons: Soft Law as a Norm-Generating Mechanism." *Review of International Studies* 36 (2): pp.281-285 also see Bugnion, Francois (2004) "Refugees, Internally Displaced Persons, and International Humanitarian Law," *Fordham International Law Journal*, 28 (5) : p.1397

¹⁷⁸ Rob Grace, (2015) 'With Internal Displacement on the Rise, International Law Leaves Protection Gap,' Harvard Humanitarian Initiatives, Humanitarian Academy at Harvard, Accessed 12 November 2016, URL: <http://atha.se/blog/internal-displacement-rise-international-law-leaves-protection-gap>.

and until recently, had no legal Instrument specifically for their protection.¹⁷⁹ As stated above, IDPs are protected by different international legal instruments; they include international human rights laws, IHLs, international refugee law and international criminal law, contained clauses that can give protection and assistance to IDPs. However, these international laws are applied on case to case basis. Therefore, it is necessary to see which international laws are applied in which situations.

2.1. International Human Rights Law

The International human rights' instruments consist of customary and treaty laws. They guarantee the rights and oblige the states to respect the human rights of all persons without discrimination of any kind.¹⁸⁰ These rights include: prohibition of discrimination based on ground of gender, ethnicity, linguistic, faith, party-political or other opinion, as well as national or social origin, poverty, place of birth or having been displaced. International human rights' regime is very much relevant to the situation of internal displacement because displacement in itself raises an extensive array of human rights matters.¹⁸¹ IDPs are like any other human being who benefit from protection, offered by international human rights' law without any distinction or discrimination. In circumstances that do not qualify as armed conflict, for instance, situations which are involving internal strife or unrest where IHL cannot be applied.¹⁸² Thus, the only form of legal protection that is left for IDPs is human rights law. In fact, human rights laws are capable of offering legal protection in all phases of internal displacement, such as, its causes, prevention of the condition for displacement, protection during displacement, and eventually the search of solution for the displacement.¹⁸³

¹⁷⁹ Before the Kampala convention come into force in 2012 in the form of regional treaty, there was no binding instrument are available for the protection of IDPs.

¹⁸⁰Brookings Institution (2006), "*Guide to International Human Right Mechanism's for Internally Displaced Persons and Their Advocate*" Brookings Institution –University of Bern Project on Internal Displacement, Accessed 12 September, 2016, URL:<http://www.brooking.edu/fp/project/idp/human-right-mechanism-for-IDPs.pdf>, p. 20

¹⁸¹ Walter Kälin (2008) "The Human Rights of Internally Displaced Persons," Accessed 18 October 2016, URL : <https://www.brookings.edu/on-the-record/the-human-rights-of-internally-displaced-persons-2/>

¹⁸² UN Commission on Human Rights (1992) "An Analytical Report of the Secretary General on Internally Displaced Persons", UN document E/CN.4/1992/23.

¹⁸³ Maria Stavropoulos (1993) "The Right Not to be Displaced" *American University Journal of International Law, & Policy*, 9 (3) : p. 699

The existing human rights regime is very appropriate for handling the situation of internal displacement because if one flees his or her home involuntarily; it is already in violation of certain rights under international human rights law such as freedom to choose one's own residence, right to security of persons etc.¹⁸⁴ In addition, the situation of internal displacement also puts people into the vulnerable situation. Thus, it leads to the violation of basic human rights law, such as health risk, lack of residence, breakdown of social structure, separation of families that exposes women and children to dangerous circumstances such as sexual violence, and forceful removal of them from their sources of income and livelihood. These issues have increased the vulnerability of IDPs. Therefore, it is required as form of protection under which human rights are better equipped to offer protection by imposing the obligation on state to protect and assist IDPs. In fact, under the human rights regime, IDPs were not taken into account as a specific category but the human rights instruments contain general provisions which are of particular relevance to IDPs.¹⁸⁵ The following section will highlight the important document on human rights and their relevance to the situation of IDPs. It includes Universal Declaration of Human Rights, international covenants and other relevant human rights instruments.

Universal Declaration of Human Rights (UDHR):¹⁸⁶ It is a detailed human right document which was created the eve of Second World War to address human rights violations that were committed by different nations.¹⁸⁷ According to articles 55 and 56 of UN Charter, the members of UN will endorse widespread admiration and adherence to human rights along with fundamental freedom for all. Thus, the UN Charter entered into force in 1945. It recommended that the economic and social council (ECOSOC) should

¹⁸⁴ M. O. A. Ashiru (2007-2010) 'Caught within their Borders : The Global Crisis Faced by The International Community Of Internally Displaced Person, *Nigerian Current Law Review*, p. 210, Accessed 23 August 2016 URL: <http://www.nials-nigeria.org/journals/NCLR.8.pdf>

¹⁸⁵ A. M. Abebe, (2011), "Special Rapporteurs as Law Makers: The Development and Evaluation of the Normative Framework for Protecting and Assisting Internally Displaced Persons," *International Journal of Human Right*, 15 (2) : pp. 286-290

¹⁸⁶ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), URL: <http://www.refworld.org/docid/3ae6b3712c.html>

¹⁸⁷ History of the Document: Universal Declaration Of Human Rights, Accessed 23 August 2016 URL: <http://www.un.org/en/sections/universal-declaration/history-document/index.html>

immediately establish a commission on human rights which should be tasked with preparing an international bill of human rights.

The Human Rights Commission deals with the embellishment of lawful instrument to recognize and describe human rights. It also maintains and outlines the procedure for implementation of human rights law. Thus, a Universal Declaration of Human Rights (UDHR) was adopted on 10th December, 1948. This document clarifies the duties of human rights commission, the UN and the international community at large. In addition, the declaration also laid down the protection norms that are reflected in the specific protection mechanism for IDPs.¹⁸⁸ In addition, the declaration also establishes the civic, political, economic, social and cultural rights which were given to common individuals including IDPs without any kind of discrimination and exploitation.¹⁸⁹

*International Covenant on Civil and Political Rights*¹⁹⁰ and its *Optional Protocol (ICCPR)*.¹⁹¹ The covenant on civil and political rights contains states legal obligation and correlating implementing measures. The article 12 of the covenant specifically deals with the freedom of movement. It provides the freedom and liberty for movement and choice to decide their residence within any territory of a nation.¹⁹² Furthermore, the article provides the rights to everyone, not to be arbitrarily deprived of the right to enter one's own country.¹⁹³ The above rights' provided by the covenant on civil and political rights can also be applied to IDPs. These rights provide protection to those people who are settled within the territory of a state.¹⁹⁴

¹⁸⁸ Brookings institution, *Supra* note, 180 at p. 26

¹⁸⁹ Handbook for the Protection of Internally Displaced Persons, Global Protection Cluster Working Group, Accessed 24 September 2016 URL: <http://www.unhcr.org/4c2355229.pdf>

¹⁹⁰ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, p. 171, Accessed 12 August 2016 URL : <http://www.refworld.org/docid/3ae6b3aa0.html>, The Covenant was adopted by the United Nations General Assembly Resolution 2200A (XXI) of 16 December 1966. It entered into force on 23 March 1976

¹⁹¹ UN General Assembly, Optional Protocol to the International Covenant on Civil and Political Rights, 19 December 1966, United Nations, Treaty Series, p. 180 Accessed 18 October 2016, URL: <http://www.refworld.org/docid/3ae6b3bf0.html>

¹⁹² ICCPR, *Supra* note, 190 at, Article 12

¹⁹³ *Ibid*, Article 12 (1)

¹⁹⁴ Cluster Handbook, *Supra* note, at 189

*International Covenant on Economic Social and Cultural Rights (ICESCR)*¹⁹⁵: the ICESCR contains the most explicit international legal provisions for establishing economic, social and cultural rights. The ICESCR and ICCPR are two binding law that originated from the UDHR. The ICESCR represents one of the widest provisions that applicable to the situation of internal displacement. It made the economic, social and cultural rights became very significant in the case of IDPs. Their most necessary survival needs include: food, water, emergency shelter, healthcare, education, and sanitation. These are basically core of the socio- economic rights. The provisions under the covenant are very important because it gives people within a state the freedom to choose political rights, economic, social and cultural development.¹⁹⁶ Since IDPs are usually found within the boundaries of their own state, they should be provided the above stated freedom and opportunity wherever they face displacement.¹⁹⁷ Some of the specific provisions of the covenant include article 11 (1) that identifies the rights of everybody to an satisfactory standard of living, including housing. This right has been at equal footing with the rights to live with dignity. In fact, this applies directly to the situation of IDPs who due to fear of persecution have to leave home.¹⁹⁸ In addition, the other rights which are contained in the covenant includes rights to work,¹⁹⁹ the right to protect the family,²⁰⁰ the rights to an satisfactory standard of living which includes suitable food, clothing, as well as continuous improvement of living standard.²⁰¹ Other relevant rights such as the maximum standard of physical and mental health which IDPs are usually suffering from due to the results of psychological traumas associated with forced movement.²⁰² The most important

¹⁹⁵ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, p. 3, URL: <http://www.refworld.org/docid/3ae6b36c0.html> , Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Entry into force 3 January 1976

¹⁹⁶ International Legal Framework, URL:<http://www.forcedmigration.org/research-resources/expert-guides/forced-migration-and-public-health/international-legal-framework>

¹⁹⁷ Phuong, *Supra* note, 37 at p. 40

¹⁹⁸ *Ibid*,

¹⁹⁹ ICESCR *Supra* note, 195 at, Article 6

²⁰⁰ *Ibid*, at Article 10

²⁰¹ *Ibid*, at Article 11

²⁰² *Ibid*, at Article 12

is the right to culture as mentioned in article 15 of the covenant, is for those who have lost social, cultural and traditional ties and values as a result of displacement.²⁰³

*Some alternative human rights instruments to IDPs are the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*²⁰⁴ Under this convention, torture is prohibited in all circumstances. It also mentions clearly that state is not allowed to send a person to another state where there is likelihood that he or she can be tortured. This principle forms the main basis of refugee and IDPs protection.²⁰⁵ But the circumstance of application is different. Other relevant human rights instruments are the International Convention on the Elimination of All forms of Racial Discrimination.²⁰⁶ This convention prevents discrimination on the basis of his or her race, color, descent, national origin, or ethnic origin which might deny their human and fundamental rights. This convention is relevant to the circumstances of IDPs because when actual displacement takes place, there is usually a form of discrimination advanced against certain communities.²⁰⁷

The Convention on The Elimination of All Forms of Discrimination against Women (CEDAW): It provides protection of all the rights of women. The convention protects women's rights in all spheres such as employment, education and property. The convention also ensures that they are protected against threat from physical safety, rape, and sexual exploitation. In fact, in the situations of internal displacement, women are among the most vulnerable population, thus, they require extra-legal care and protection.²⁰⁸ This convention like other human rights instruments also provides

²⁰³ *Ibid*, at, article 15

²⁰⁴ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, 1465

²⁰⁵ UN High Commissioner for Refugees (UNHCR), '*The Principle of Non-Refoulement as a Norm of Customary International Law*'. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93, 31 January 1994, URL: <http://www.refworld.org/docid/437b6db64.htm>

²⁰⁶ International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, 660: p. 195

²⁰⁷ Bríd Ní Ghráinne (2015) "Internally Displaced Persons" (IDPs)' URL: Accessed April 2016 <http://opil.ouplaw.com/view/10.1093/law/epil/9780199231690/law-9780199231690-e833>

²⁰⁸ Improving The Protection Of Internally Displaced Women: Progress And Challenges, Brookings –LSE project on internal displacement, Accessed 20 May 2016, URL: <https://www.brookings.edu/wp-content/uploads/2016/06/Improving-the-Protection-of-Internally-Displacement-Women-October-10-2014.pdf>

protection to all women. It includes the internally displaced women.²⁰⁹ Apart from the aforementioned provisions, the *Convention on the Rights of Child* provides for the protection of the rights and best interest of the children.²¹⁰ Like the previous convention, this convention addresses the problems of displaced children. This instrument requires the state to take reasonable measure to ensure protection, care, education, health, and psychological recovery of internally displaced children.²¹¹ In addition, another vulnerable group is the tribal and indigenous people who also require protection. Therefore, *Convention on Tribal and Indigenous People* provides equal right to tribal and other people. The convention specially addresses the issues of land, displacement and their relocation. The convention ensures that even the land is taken away, it should happen with the consent of the land holders. It also provides guarantee of protection against arbitrary displacement.²¹²

2.2. Protection under IHL

Humanitarian law is constituted by internationally accepted norms that are responsible for determining parameters within which warfare can be conducted by parties to the conflict. This is a set of international law that tries to offer protection to non-combatant and civilians from the effects of war. It also controls or limits certain method of warfare. The notion is that civilians should be distinguished from combatants by protecting them before and during the armed conflict.

Humanitarian laws provide for the protection and assistance to vulnerable population including IDPs during conflicts and civil strife. The two Geneva Convention of 1949 and their additional protocols of 1977 provide the protection and assistance to the victims of war. They also impede suffering of people by propagating and consolidating humanitarian law and humanitarian principles. IHLs that are relevant to the situation of IDPs during the armed conflict and circumstances of violence constitute the major cause

²⁰⁹ *Ibid*

²¹⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, 1465 p. 85

²¹¹ Dale Buscher and Carolyn Makinson (2009) "Protection of IDP Women, Children and Youth," FMR/Brookings-Bern Special Issue, Accessed 15 May 2016., URL: <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/BrookingsSpecial/09.pdf>

²¹² Geissler, Nils, *Supra* note, at p. 452

of internal displacement of civilian population. The Geneva Convention and their additional protocols spell out the principles that during armed conflict, those who are not directly participating in the aggression are entitled to the protection.

Under IHL, everyone who is not a combatant is categorized as a civilian. Particularly in the context of international armed conflict, combatants are well-defined in IHL as a member of the armed forces of a party to the conflict. They have a right to participate directly in hostilities. This means that other part of the population, including people who are non-combatants and are displaced should be distinguished from the combatant by both the parties to the conflict. In addition, IHL requires the exercise of 'precaution' to minimize civilian causality and prohibits the use of acts or menace of violence. The primary purpose of doing this is to curb the displacement of population from the threat of attack and abduction.

The law governing protection under the internal conflicts are less developed than the body of laws that are set up to deal with international conflict. This is because of the establishment of IHL that reflected the prevailing condition of that time. State and their representatives who played a part in settling up IHLs have a vested interest in limiting conflicts between each other than curbing internal disturbances. This can be seen in prevailing IHL protection that is reflected in the context of non-international armed conflict by article 3 of the Geneva Convention.²¹³

The Article 3 is mutual to all four conventions and is valid to armed conflicts of non-international nature. Thus, the circumstances that are leading to internal displacement will fall within this provision. This article prohibits the hostage taking and protects the individual self-respect of people who find themselves in conditions of armed conflict. It is not of international nature but occurs in the terrain of one of the constricting parties. In fact, the article does not specifically define as to what 'armed conflict of an international character' means, but it excludes international armed conflict from its application.

²¹³ International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287

Those who are not taking active part in the conflict including those who are affiliated with armed forces but laid down their weapons. “Those who placed *hors de combat* by sickness, bounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction found on race, color, religion, or faith, sex, birth, wealth, or any other similar circumstances.” Thus, in the context of above mentioned persons, acts such as murder, mutilation, cruel treatment and torture of hostages are not allowed. Further, no person will be given punishment by passing sentences and executions without establishing regular democratic courts which follow the principles of international humanitarian laws.²¹⁴

3.5. Protection under International Refugee Law

This is the branch of law that provides for the protection of refugees. ‘Refugees’ are people who are forced to leave their habitual countries of residence. They cross borders and go to another country to seek refuge as a result of fear of prosecution.²¹⁵ Over the years, the definition of a refugee has altered, but the defining content is the ‘crossing the border’ factor.²¹⁶ There are numerous references to refugee law by analogy in the process of protecting IDPs.²¹⁷ Nevertheless, the key differences between the systems of law that are meant to protect refugees and those created to protect IDPs. The main difference can be noted in the definition adopted by the organizations.²¹⁸ While IDPs are having much commonality with refugee, the critical and most important distinction that sets them apart is that the IDPs have not traversed globally recognized state border. Thus, they cannot formally claim the protection of international refugee law.²¹⁹ The UNHCR, despite these limitations, has undertaken the responsibility to protect IDPs.²²⁰ It is discretion of UNHCR that may undertake these activities in individual cases, thus, IDPs are not

²¹⁴ Article 3 to the Geneva Convention

²¹⁵ Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, 189: p. 137

²¹⁶ Rosenberg, Matthew (2004) Refugee Law and the Displacement Loophole, *Hertfordshire Law Journal*, 2(2): pp. 19-25

²¹⁷ Barutciski, Michael. (1998): "Tensions between the Refugee Concept and the IDP Debate" *Forced Migration Review* 3: pp. 11-14.

²¹⁸ See the Definition of Refugee in the 1951 UN Convention on the Status of Refugees and the Definition of IDPs in UN Guiding Principles of Internal Displacement.

²¹⁹ *Supra* note, 217 at p. 13

²²⁰ Erika Feller, (2006) "UNHCR's Role in IDP Protection: Opportunities and Challenges" *Forced Migration Review*, pp. 11-13

inevitably permitted to the international protection of refugee law. In fact, border crossing still remains a critical factor for IDPs under UNHCR guiding principles.²²¹

3.6. Protection under International Criminal Law

It should be noted that national authorities are first and foremost responsible towards the defilements of any international human rights and humanitarian law within their territory. In addition, they also have the responsibility to take measures to prosecute and take punitive measures against those who are responsible for displacement of IDPs, by bringing them before national court or tribunal. The Rome Statute of the International Criminal Court (ICC) describes a series of crimes which have borne global concerns and that is why the culprits can be examined and indicted by the court, only if the court has authority on any of the violations.²²² The court has jurisdiction over the following acts, which in turn have direct or indirect effect on internal displacement such as war crimes, these incorporate grave breach of the Geneva Convention²²³ and brazen violations of IHL. It is covering a wide range of acts such as willful murder, torment, and insensitive treatment, rape and sexual slavery, recruitment of children into armed forces, or armed group, or inducting children to take part in hostilities, launching the attack against civilians or civilian objects, and ordering the displacement of civilian unless there is a requirement for the security of civilians or the military imperatives.²²⁴ The court has jurisdiction over the crimes against humanity. This includes acts which are committed as part of a widespread or systematic attack directed against civilians during war. For instance, act of homicide, extinction, enslavement, exile or forcible transfer of population, arbitrary imprisonment or any other severe deprivation. Raping and sexual violence against women along with persecution, enforce disappearance and other inhuman acts that are deliberately prompting countless grief to body and mind have fallen

²²¹ Phuong, Catherine. (2005), "The Office of the United Nation High Commissioner for Refugees and Internally Displaced Persons" *Refugee Survey Quarterly*, 24 (3): pp. 71-80

²²² UN General Assembly, *Rome Statute of the International Criminal Court* (last amended 2010), 17 July 1998, Accessed 25 April 2016 URL: <http://www.refworld.org/docid/3ae6b3a84.html>

²²³ Geneva convention, *Supra* note, 213

²²⁴ *Ibid*

under this category.²²⁵ The last international criminal provision that is relevant to the protection of IDPs is related to the punishment for the crime of genocide. This involves any act committed with the intent to destroy a national ethnic, racial or religious group. This provision is important for IDPs as at times displacement is due to crimes of genocide or genocidal tendencies.²²⁶ In these situations, where the local and national governments fail to provide protection and punishment to the perpetrators for their violent crimes, international criminal law can be invoked through provision of the statute of the ICC.²²⁷ What needs to be understood is that the international criminal law is harmonizing to the national law. It means that the role of international court such as the ICC comes into picture when state level judicial system fails to provide justice and bring the culprits to book. Ad hoc tribunals have also been established by the international community to deal with cases involving the abuse of international human rights law and humanitarian law. There are several tribunals such as International Criminal Tribunal for the Former Yugoslavia,²²⁸ International Criminal Tribunal for Rwanda.²²⁹ In addition, there are several hybrid tribunal such as the Special Court for Sierra Leone.²³⁰ These tribunals have established their mandates and decisions on the existing rules of international criminal law. These tribunals deal with the wide spectrum of crimes such as genocide, crime against humanity, and war crimes. These are usually the main causes of mass population movement which result in the catastrophe of internal displacement. The *Guiding Principles on Internal Displacement* which is elaborated in the next section reflects these principles of international criminal law by specifically addressing situation of internal displacement.²³¹ For instance, the Principles 10 of the Guiding Principles include, provision for protection against murder, genocide, summary execution, enforced

²²⁵ Droege, Cordula. (2008) "Developments in the Legal Protection of IDPs" *Forced Migration Review* accessed 23 April 2016 URL: <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/GuidingPrinciples10/droege.pdf>, pp. 8-10

²²⁶ Handbook for the Protection of Internally Displaced Persons , Global Protection Working Group, Accessed 23 April 2016, URL <http://www.unhcr.org/4c2355229.pdf>

²²⁷ UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, accessed 12 December 2016, URL: <http://www.refworld.org/docid/3ae6b3a84.html>

²²⁸ Statute of the International Criminal Tribunal for the Former Yugoslavia (as amended on 17 May 2002), 25 May 1993, URL: <http://www.refworld.org/docid/3dda28414.html>

²²⁹ UN Security Council, Statute of the International Criminal Tribunal for Rwanda (as last amended on 13 October 2006), 8 November 1994, URL: <http://www.refworld.org/docid/3ae6b3952c.html>

²³⁰ Statute of the Special Court for Sierra Leone, 16 January 2002, URL: <http://www.refworld.org/docid/3dda29f94.html>

²³¹ Guiding Principles, *Supra* note, 17

disappearance, starvation as a method of combat, using human being as military shield, use of land mine and so forth.²³²

Although, the above mentioned international legal instruments provides provision for the safety and support of IDPs. There is situation where the international law fails to provide protection to IDPs. There are critical gaps which prevent the protection of IDPs as they are identified in the following sections.

2. 5. Gaps in the Legal Protection of IDPs

The gaps in the existing legal framework are categorized as normative gaps, applicability gaps and issues of sovereignty.

Normative Gaps: The normative gaps have no overt norms to address the specific needs of IDPs. For instance, the rights of civilians for not to be arbitrarily displaced. It is not specifically provided in any general human rights instruments. Its provision can only be inferred from several requirements.²³³ It can be contingent on the general provision which is contained in the human rights' treaties. It includes, the rights to freedom of movement²³⁴ and rights to select one's residence.²³⁵ However, the above right which is available in the ICCPR can be derogated and subject to some restrictions.²³⁶ In addition, there is no right of restitution of property because of the displacement or compensation to the IDPs. In fact, the human rights law on cruel and inhuman treatment has several rules but there is no clear provision to prohibit compulsory arrival of IDPs to the place of threat. In case of the prohibition of arbitrary detention, although this norm is clearly

²³² Ibid, Principles 10

²³³ Romola Adeola, (2016) "The Right not to be Arbitrarily Displaced under the United Nations Guiding Principles on Internal Displacement," *African Human Rights Law Journal*, 16 (1): pp. 83-85, also see Morel, M., Stavropoulou, M., & Durieux, J. F. (2012). 'The History and Status of the Right not to be Displaced' *Forced Migration Review*, 41: p. 5

²³⁴ Article 13 of the Universal Declaration of Human Rights

²³⁵ The right to adequate housing is a human right recognized in international human rights law as part of the right to an adequate standard of living in article 25 (1) of the Universal Declaration of Human Rights.

²³⁶ See article 12(3) of the ICCPR which reads 'the rights which are mentioned above should not be restricted except only those which are given by law, are essential to protect national security, rule of law, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant'.

existed, the preconditions for lawful detention of IDPs in camps are still unclear.²³⁷ Apart from the aforementioned gaps, the other grey areas include internal conflict, gender based violence, restriction on free movement, need for identification, documents and access to international humanitarian assistance.

Applicability Gaps: The statuses of economic, social and cultural rights in comparison with civil and political rights are not considered of much relevance. It is often argued that economic, social and cultural rights cannot be enforced in the same way as civil and political rights, however latter derives its legitimacy from former or vice-versa. None of these set of rights exists in vacuum. In fact, court also cannot adjudicate such rights because this would lead to judicial interference in the government's budget decisions.²³⁸ Moreover, even when it has been agreed that both sets of rights are valid, there has been often debates about the priority.²³⁹ This is very unfair in terms of protection and assistance for IDPs because the situation of internal displacement needs protection from both the sets of rights. Another gap in protection is due to the fact that even when the legal norms do exist (human rights and humanitarian law), they may be binding only on those countries that have ratified a particular relevant international instrument.²⁴⁰ It means that, not all countries ratify the international human rights instruments for protection of IDPs because they want to provide protection to a particular section on the basis of race, color, gender, ideology, region and ethnicity and ignores the comprehensive protection for IDPs. The protection to IDPs given by IHL is limited only because of the norms that are not applicable in all situations. It means, they apply only to a segment of population.²⁴¹ Norms of IHL are valid only during the armed conflict. In situation of the generalized violence which falls below the threshold and does not require article 3 of the

²³⁷ Chapter X, Monitoring and Protecting the Human Rights of Refugees and/or Internally Displaced Persons Living in Camps, Accessed 18 May 2016 URL: <http://www.ohchr.org/Documents/Publications/training7part10en.pdf>

²³⁸ Ruth Gavison, (2003). *On the Relationships between Civil and Political Rights, and Social and Economic Rights, The Globalization of Human Rights*, 23-55, also see Sofia Guerrero and Lucy Coronel (2012) 'Civil and Political Rights vs. Economic-Social-Cultural Rights', Accessed 14 Jun 2016 URL: <http://humanrightsfight.blogspot.in/2012/10/civil-and-political-rights-vs-economic.html>.

²³⁹ Ibid

²⁴⁰ Roberta Cohen (1998) 'The Development of International Strategies to Protect Internally Displaced Persons', Brookings, Accessed 23 July 2016, URL: <https://www.brookings.edu/research/the-development-of-international-strategies-to-protect-internally-displaced-persons/>

²⁴¹ Lavoyer, Jean-Philippe "Refugees and Internally Displaced Persons -International Humanitarian Law and the Role of the ICRC," *International Review of the Red Cross*, 35: p. 162

Geneva Convention.²⁴² In fact, in order to avoid the application of article 3 of IHL, governments often label internal armed conflict as a riot or internal disturbance. Another weak aspect is the lack of efficient implementing machinery. The Geneva Convention and additional protocols do not provide any compliant or enforcement mechanism.²⁴³ Even the international human rights law has a weak supervisory system. In fact, to monitor the compliance of rules of international human rights and humanitarian laws. It required countries consent for allowing organization to protect the IDPs. Although, it is well-established fact that most of the time countries refuse to follow the procedures under the guises of sovereignty and non-intervention. In summary, even if the laws are exist for the protection on IDPs their applicability to internal displacement remains uncertain.

The Concept of Sovereignty and Non-Intervention: One of the main reasons why UN has not been able to address the difficulties of IDPs is because of the issues of states' sovereignty and non-intervention. Therefore, any debate on internal displacement must start with the question of how to begin with how to theorize and address sovereignty. The reason is that, the internal displacement takes place within the state border and under the jurisdiction of state governments. Another concept which is closely related to the sovereignty is the principles of non-intervention. If a country has complete control over its internal affairs then being a sovereign country, no other organization or country has a right to intervene into the internal affairs of the state.²⁴⁴ In addition, article 3 of Protocol II of the Geneva Convention explicitly forbids interference into the domestic matters of its fellow states.²⁴⁵ According to the idea of state's sovereignty, the creation of an independent international instrument to regulate IDPs within their country may constitute an external intrusion in the domestic matters of a state. So, still there is no law exists at

²⁴² Karen Hulme, (2005). "Armed Conflict and the Displaced", *International Journal of Refugee Law*, 17(1) : pp. 95-98

²⁴³ Huma Haider (2013) 'International Legal Framework for Humanitarian Action Compliance with and Enforcement of IHL', Accessed 19 July 2016, URL: <http://www.gsdrc.org/topic-guides/international-legal-frameworks-for-humanitarian-action/challenges/compliance-with-and-enforcement-of-ihl/>

²⁴⁴ This principle is affirmed in Article 2(7) of the UN Charter, which states: 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter.', United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS,16

²⁴⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609

the international level to address this issue. Thus, international law faces grave holes in the legal safety of IDPs.²⁴⁶

3. UN Guiding Principles on Internal Displacement

The contemporary international legal framework with regard to IDPs is insufficient and lacks protection and assistance.²⁴⁷ This has been criticized by critics for a long period of time. Therefore, to resolve this gap, the UN has adopted the Guiding Principles on Internal Displacement (GPs).²⁴⁸ The GPs are founded on IHL, human rights law and refugee law by equivalence. It set forth the rights of IDPs and elucidate the responsibility of respective national authorities, the international community and non-state actors including civil society towards these IDPs.²⁴⁹ In addition, the GPs have identified various causes of displacement such as natural and man-made disaster, conflicts, developmental activities and violations of human rights. GPs covered diverse aspects of displacement: the pre-displacement phase, during displacement and finally the return or resettlement and reintegration phase.²⁵⁰

Although, it is no legally binding like any other treaty, the GPs are the first exclusive legal document on IDPs. In fact, the document is one of the first efforts to create discourse about what should be a meaningful definition of IDPs. It gives international and non-governmental organization an important tool to use in their advocacy work for IDPs.²⁵¹ Since its adoption, the GPs gained substantial acceptance in the forms of domestic legislation in many countries.²⁵²

²⁴⁶ Grace Rob (2015) 'With Internal Displacement on the Rise, International Law Leaves Protection Gap,' Accessed 17 May 2016, URL:<http://atha.se/blog/internal-displacement-rise-international-law-leaves-protection-gap>

²⁴⁷ "Compilation and Analysis of Legal Norms", UN Document E/CN.4/1996/52/Add.2,

²⁴⁸ UN Guiding Principles, *Supra* note, 17

²⁴⁹ Walter Kälin, (2008) 'Guiding Principles on Internal Displacement: The Way Ahead,' In Proceedings of the Annual Meeting, ASIL 102 : pp. 200-201, Accessed 21 August 2016 URL: <http://www.jstor.org/stable/25660289>

²⁵⁰ *Ibid*, at p. 205

²⁵¹ Roberta Cohen (2013). 'Lessons Learned from the Development of the Guiding Principles on Internal Displacement.' The Crisis Migration Project, Working Paper (October), Washington, DC: Georgetown University. Accessed 3 August 2016 URL:http://issuu.com/georgetownfs/docs/isim_working_paper_series_-_roberta, p.10

²⁵² *Ibid*

3.1. Origin and Development

In April 1998, the UN Commission on Human Rights and was unanimously adopted by the 53 members' commission. The document was called "Guiding Principles on Internal Displacement."²⁵³ Under the direction of the Representative of Secretary General, Francis Deng, the GP was created for the IDPs.²⁵⁴ The desire for a global norm for IDPs became indispensable in 1990s when a huge number of IDPs faced displacement due to the Cold War politics. IDPs were an easy target for human rights violations. It was becoming a huge threat for IDPs because the organizations which were available for relief works for the protection of IDPs had no clear regulations and procedure to follow it. Certainly, the UNHCR, the UN Children's fund and NGOs started to demand for a legal text which could be used to define IDPs and their rights.²⁵⁵ A group of NGOs, the Friends World Committee for Consultation, the Refugee Policy Group, the World Council for Churches commenced a collaborative movement in 1990 to They had mobilized the support both for the appointment of the RSG and for the development of international standard to protect the IDPs.²⁵⁶

In 1990, the process was initiated to create internal displacement regime.²⁵⁷ The United Nations Economic and Social Council officially suggested that the UN Secretary-General to pledge an internal valuation of the UN's capability to deliver satisfactory defense and support to the internally displaced. The UN Secretary General had appointed Francis M Deng, the first RSG, in 1992. After stepping in to the office, he started evaluating the applicability of international human rights, humanitarian and refugee law to the shield of IDPs.²⁵⁸ Deng presented the 'Compilation and Analysis of Legal Norms' to the UN Commission on Human Rights in 1996²⁵⁹ and a supplementary report in 1998.²⁶⁰ The

²⁵³ Roberta Cohen (1998) "The Guiding Principles on Internal Displacement: A New Instrument for International Organization and NGOs", *Forced Migration Review*, 2: pp. 31-33

²⁵⁴ Compilation and Analysis of Legal Norms, *supra* note at,

²⁵⁵ David A. Korn, (1999), "*Exodus within Borders: An Introduction to the crisis of Internally Displacement*, Washington: D C. Brooking Institution Press. p. 34

²⁵⁶ *Ibid*, at, p. 38

²⁵⁷ *Ibid*, at, p. 40

²⁵⁸ Thomas G. Weiss (2012) "International Efforts for IDPs after a Decade: What Next?" Accessed 14 July 2016 URL: https://www.brookings.edu/wp-content/uploads/2012/04/20021212_displacement_bgpaper.pdf

²⁵⁹ Compilation and Analysis of Legal Norm, 1996, *Supra* note at.

²⁶⁰ Roberta Cohen (2004) "The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting." *Global Governance*, 10(4): pp. 459-462

compilation and analysis report found that IDPs are not explicitly mentioned in the existing charter of the international laws and hence, there are significant areas in the present legal structure that fail to provide adequate protection.²⁶¹ This report did not recommend the precise form about the lasting framework for the international instrument. But concluded that IDPs conditions can be improved only if a re-statement of the norms is undertaken. Thus, it will be easy to clarify the gaps and grey areas.²⁶² According to Roberta Cohen, a member of the legal team that drafted the guiding principles, there were three main reasons to establish the Guiding Principles as opposite to a treaty. First, government had not provided support for a convention because the issue of IDPs was still very sensitive. The states also recognized that the treaty on IDPs would violate its sovereignty. Thus, the Commission on human rights is demanding the RSG to advance an appropriate framework that was founded on the gathering and examination. It generally avoided the term legal to modify the framework in the resolution.

Second, it had considered that time as an important factor because making a treaty is a lengthy process and a document was urgently required to ameliorate the situations of IDPs²⁶³ Third, there was already an international law which was related to IDPs. It required to bring together the numerous and dispersed provisions into the one exclusive instrument that specific need of the internally displaced.²⁶⁴ Finally the process of drafting new instrument took two years from, 1996 to 1998, to draft the Guiding Principles. Although, the actual drafting was done by a core team of lawyers under the direction of RSG Deng. He started the process with broad based and wide range of international legal and institutional organization along with non-state actors.²⁶⁵ Finally, the Guiding Principles were confirmed at a conference in Vienna held by the Austria government.²⁶⁶

²⁶¹ *Ibid*, at p. 65

²⁶² Compilation of Analysis of Legal Norms,

²⁶³ Roberta Cohen, *Supra* note, at 249

²⁶⁴ *Ibid*, at, p. 32

²⁶⁵ (2004), "International Response to Internal Displacement: A Revolution in Making", *Human Right Brief*, 11 (3) : p. 24

²⁶⁶ Orchard, Phil. (2010) "Protection of Internally Displaced Persons: Soft Law as a Norm-Generating Mechanism." *Review of International Studies*, 36 (2) : p.281

3.2 Objectives of the Guiding Principles

Clarification of Grey Areas: The Guiding Principles built upon the existing international law through soft law-making by identifying the gray areas. Here, IDP-protection is insufficient and articulated in a specific corollary of rights to ensure the implementation of the existing general international legal norms. The Compilation has stated that “the protection of IDPs would be strengthened by spelling out these specific guarantees”, and also recommended a “restatement of existing general legal norms in relation to discrimination”.²⁶⁷ The protection of life, gender-specific violence, detention, , forced recruitment, medical care, free movement, family related needs, the use of one’s own language, religion, work, education, association, political participation and the need for international assistance are considered while focusing on the grey areas.²⁶⁸

Addressing the Gaps: In certain situations international law failed to provide sufficient protection to IDPs as there existed no explicit norms to address their needs. A certain norm might exist in one body of law (for example in human rights law) but not in another body of law.²⁶⁹ Several cases were identified in the process that was resulting in the GPs, i.e safeguards against arbitrary detention, personal identification, documentation and registration, property-related needs, the restitution of property lost as a consequence of displacement or compensation for such loss, and finally relief workers and organizations protection. In these cases stated in the Compilation Report, “Only possible to articulate rights by analyzing from existing provisions of law which are applied only in in limited situations”. While the same compilation stressed the need to address these gaps in a future international instrument, the GPs undertook this role in its different Principles.²⁷⁰

²⁶⁷ Francis M Deng (1998) “Internally Displaced Persons: Compilation and Analysis Of Legal Norms” UN, p. 15

²⁶⁸ *Ibid*, at p, 18

²⁶⁹ Francis M. Deng (1999), “Guiding Principles on Internally Displacement”, *International Migration Review*, 33 (2) : p. 484

²⁷⁰ Roberta, Cohen (2004), "The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting", *Global Governance*, 10 (4): pp., 459-460.

3.3. Salient Feature of Guiding Principles

3.3.1. Definition

When in 1990s, the issues of internal displacement emerged at the international agenda, there was no clear definition to define who are IDPs. In order to identify IDPs, the necessities of definition arose. The task of defining IDPs was given to the representative of UNSG and his group. In 1992, Francis Deng and his group came out with a working definition on IDPs.

“Persons who have been forced to flee their home suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, and systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country.”²⁷¹

The working definition was largely criticized because, first, the cause for displacement is not always sudden or unexpected. The displacement takes place by the governments’ long term policies. Therefore, displacement cannot be all the sudden or unexpected.²⁷² Second, the displaced people could also leave in a large number or on an individual basis. Therefore, the numerical consideration was not an appropriate method for the identification of displaced people.²⁷³ The critique of the working definition led to the reformulation of the definition and was adopted in the GPs. The GPs states that,

“IDPs 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 the effects of armed conflict, situation of generalized violence, violation of human rights or natural or man-made disasters, and who have not crossed an international recognized state border”²⁷⁴.

²⁷¹ United Nations Commission on Human Rights (1992) “Analytical Report of Secretary General on Internally Displaced Persons” UN Doc. E/CN.4/1992/23, Para. 17

²⁷² Ashisu M O A (2010) “Caught Within their Borders: The Global Crisis faced by the International Community of Internally Displaced Persons” *Nigerian Current Law Review*, Accessed on 20 February 2016, URL: <http://www.nials-nigeria.org/journals/NCLR.8.pdf>, p. 212

²⁷³ *Ibid*, at P. 213,

²⁷⁴ Guiding Principles, *Supra* Note 9, Para. 2

The definition in the GPs for IDPs is inclusive. It includes all kinds of displacement. The inclusive definition is still problematic because it weakened the ability of government to address the problems of IDPs, thus, the neediest people get less importance. Therefore, the definition needs to exclude people who are displaced by natural disasters and give more importance to people who are displaced by armed conflict and development projects.²⁷⁵

3.3.2. Restating Human Rights and Humanitarian Law

The GPs restates most of the provisions of human rights and humanitarian law. These two-legal regime i.e. IHRL and IHL directly addressed the problems of IDPs. The human right and humanitarian principles are composed of “right to equality²⁷⁶, freedom²⁷⁷, prohibition of discrimination of any kind, such as race, color, sex, language, religion belief, political or other opinion, national ethical or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria,²⁷⁸ right to life,²⁷⁹ right to dignity”.²⁸⁰ Those people who are forcefully displaced are now protected against any kind of violations of their rights such as rape, torture, cruel, inhuman or degrading treatment.²⁸¹ Even these IDPs are provided rights so that they can get sufficient living along with food and potable water, basic shelter and housing, appropriate clothing, essential medical service and sanitation.²⁸²

3.3.3 Primary Responsibility of State

The IDPs are deprived from international refugee protection because they are settled within the state. According to the GPs, national authorities have main duty for the safety

²⁷⁵ B S Chimni (2013) “Internally Displaced Persons in International Law” Lecture delivered on 19 March 2013 at Center for International Legal Studies (International Relations), School of International Studies, Jawaharlal Nehru University: New Delhi.

²⁷⁶ Guiding principles *Supra* Note 9, Principles 1.1

²⁷⁷ *Ibid.*, at Principle,

²⁷⁸ *Ibid.*, at, Principle, 4.1

²⁷⁹ *Ibid.*, at, Principle, 10.1

²⁸⁰ *Ibid.*, at, Principle, 11

²⁸¹ *Ibid.*, at, Principle, 11.2(1)

²⁸² *Ibid.*, at, Principle, 18 .1

and humanitarian assistance for IDPs.²⁸³ If the state fails to perform its duty then the responsibilities shifts to international community.²⁸⁴

The state's responsibility for the protection of IDPs is controversial only when state fails to perform its duty and refuses to allow international humanitarian assistance. This issue raises many questions: First, is the state's consent is necessary for international humanitarian agencies to protect the IDPs? Second, can any international humanitarian agency provide humanitarian assistance to IDPs without consent of state?²⁸⁵ This matter is very controversial because international law still needs to clarify this issue.

3.3.4. Emphasis on protection of Women and Children

The women and children are most vulnerable among the IDPs. In fact, women and children constitute more than eighty percent of the total number of IDPs.²⁸⁶ The women are also target of sexual violence. Most of the time women are forced to trade their body for food and other needs. The children also face sexual violence and are recruited in armed forces.

In this regard, the GPs give special emphasis on protection of women and children. It includes protection of children against recruitment by armed groups,²⁸⁷ special attention for the health protection of women,²⁸⁸ and educational facilities for children.²⁸⁹

3.3.5. Prohibition of Arbitrary Displacement

The prohibition of arbitrary displacement is one of the important provisions of GP because it is not mentioned in the existing legal instruments such as human rights and humanitarian law. The GPs mentioned five kinds of arbitrary displacements, first, displacement by apartheid or ethnic cleansing. Second, displacement due to armed conflict. Third, there are certain big development projects which are not subscribed by

²⁸³ *Ibid*, at, Principle, 3.1

²⁸⁴ *Ibid*, at, Principle, 3.2

²⁸⁵ For the detail Discussion see, Fourth Chapter.

²⁸⁶ Dale Buscher and Carolyn Makinson (2009) "Protection of IDP Women Children and Youth" FMR/Brooking – Bern Special Issues, Accessed on 10 December 2012 URL: <http://www.fmreview.org/en/FMRpdfs/BrookingsSpecial/09.pdf>, p. 12

²⁸⁷ *Ibid*, at, Principle, 13.2

²⁸⁸ *Ibid*, at, Principle, 19.2

²⁸⁹ *Ibid*, at, Principle, 23 (1).(2)

compelling and over-riding public interest. Fourth, disaster. Fifth, collective punishment. In the following five forms of arbitrary displacement, the development induced displacement today causes highest number of displacement.

Today, particularly the tribal areas are facing the large scale development projects such as industrial projects, dams, roads, mines, which are displacing people from their home. The tribal people because of the development project lose their land, job, home that alienates them. The government authorities are responsible for rehabilitation of tribal who are displaced and neglected by the government. For example, Narmada valley project, Sardar Sarovar dam, Tehri projects and many other development projects have displaced thousands of people who are still waiting for compensation from the government.²⁹⁰ It can be argued that development is inevitable, but development should not be at the expense of people. The state should not only provide monetary compensation for the displaced people but also protect their dignified life in the society.

3.3.6. Measures to Minimize Displacement

The state cannot avoid displacement in all situations but must take necessary measures to minimize displacement such as by providing proper accommodation, safety, nutrition, health and hygiene. In case of armed conflict, state authorities should take control of law and order. Full information and reason must be provided for their displacement and compensation for their resettlement. In addition, the authorities must take free and informed consent from displaced people and give them opportunity in the management of relocation. The most unfortunate situation is that the state authorities are not willing to take free and informed consent from displaced people during acquisition of land. The state authority claims that national interest overrides local interest. The national interest versus local interest debate is very controversial because there is no instrument which defines what national interest is. Therefore, it is in the interest of IDPs that the concerned authorities must take the consent from local people before acquiring their property.

²⁹⁰ Nalin Singh Negi and Sujatha Ganguly (2007) "Development Project vs. Internally Displaced Population in India: a Literature based Appraisal" Working Paper Center on Migration, Citizenship, and Development, Accessed on 2 March 2016 URL: http://www.uni-bielefeld.de/tdrc/ag_comcad/downloads/workingpaper_103_negi_ganguly.pdf p. 8

3.3.7. Protection of Property Rights

Principle 21 and 29 of the GPs state the property rights of IDPs. It includes, property left behind by IDPs such as home and land which are to be protected from destruction, arbitrary and illegally occupation.²⁹¹ In addition, the GPs ensures that the competent authorities have duty and responsibility to provide durable solution for IDPs. It includes, providing compensation to IDPs if the state authority fails to provide property.²⁹²

3.3.8. Humanitarian Assistance for IDPs

There are some of the pertinent norms and rules of GPs which deal with humanitarian assistance such as principles of humanity. It includes humanitarian assistance in accordance with the principles of humanity, impartiality, and without discrimination. And humanitarian assistance should not be employed for political or militarily reasons.²⁹³ According to principle 25, the state governments are holding the major and primary responsibility to provide protection, assistance to IDPs. When states fail to provide assistance the international organizations which are working for humanitarian assistance come into the picture to fill the vacuum created by the retreat of states. The state without legitimate reason cannot refuse international assistance. The humanitarian assistance for IDPs is very controversial, when the state itself is violating human rights of IDPs. It also refuses to allow international humanitarian assistance for their protection. Today, the most of Third World Countries (TWC) are denying international humanitarian aid because they fear that it will disturb the internal affairs of the state. The reason is that today TWC are hosting large number of IDPs and these countries cannot offer humanitarian assistance for IDPs because of their weak financial position. On the other side, international humanitarian organizations cannot intervene without state consent because often the intention is not to protect IDPs. The problems can be solved with balanced approach which means that on the one hand, state should not treat activities of international humanitarian organization as unfriendly and on the other hand,

²⁹¹ Guiding Principles, *Supra* Note, 9

²⁹² *Ibid*, at, Principles, 29

²⁹³ *Ibid*, at, Principle, 24

humanitarian agencies need to strictly follow humanitarian principles of neutrality and impartiality.

3.3.9. Return, Resettlement and Reintegration of IDPs

The GPs imposed obligations on state to provide durable solution for IDPs. It includes, the state authorities create opportunity for voluntary, safe, and dignified return to their home. Once the displaced reached their own place, the concerned authorities' make efforts to restitution of property of displaced. In addition, GPs supports contribution of IDPs in preparation and organization of their arrival, reintegration, family unification, and information for IDPs concerning their place of return. The proper implementation of durable solution for IDPs is challenge for state authorities. In order to guide national authorities, Walter Kalin and Brookings institution has created a framework for the durable solution of IDPs.²⁹⁴ The effective implementations of these provisions have left to the states authorities. Unless the states shows interests in implanting these GPs with national legislation it is clear that there will be no protection to IDPs.

3.4. Impact of the Guiding Principles

The GPs is an international standard legal document and the influences of this document can be felt at national, regional and international levels. At the international level, UN Secretary-General Kofi Annan praised them, asked the Security Council to inspire states to perceive them and suggested that the General Assembly and Economic and Social Council inspire states to develop national laws and policies.²⁹⁵ In addition, UN resolutions have frequently hailed their distribution, elevation and submission worldwide. The Security Council commenced to cite the GPs in its resolutions.²⁹⁶ In 2005, the heads of state at the World Summit Outcome which documented the Principles as “an important

²⁹⁴IASC (2010) “Framework on Durable solutions for Internally Displaced Persons” The Brookings Institution-University of Bern Projects on Internal Displacement,” Accessed 3 March, 2016 URL: http://www.brookings.edu/~media/Research/Files/Reports/2010/4/durable%20solutions/04_durable_solutions.PDF, p.1

²⁹⁵ UN Resolutions recommending the states to accept the Guiding Principles as the basic international norm for the protection of IDPs and to promote the adoption of the principles through national Legislation.

²⁹⁶ UNGA Resolutions, A/RES/62/153, Para 10; A/RES/64/162, Para 10; and A/RES/66/165, Para 12; and Human Rights Council Resolutions: A/HRC/RES/6/32, Para. 5; A/HRC/RES/14/6, Para 9; and A/HRC/RES/20/L.14, Para 1

international framework for the protection of IDPs,”²⁹⁷ In addition, UN humanitarian agencies, development agencies and NGOs have used them extensively to monitor and assess IDPs’ needs.²⁹⁸ UNHCR directly incorporated the Principles into its protection and human rights activities for IDPs and reported that this generated a “concrete benefits to IDPs” in a number of countries.²⁹⁹ The IASC which is composed of the major international humanitarian, development and human rights agencies has developed several tools. These are based on the GPs to provide operational guidance to their staff, including a Manual on Field Practice in Internal Displacement, a Framework for Durable Solutions for IDPs and the IASC Handbook for the Protection of IDPs.³⁰⁰

At the regional level,³⁰¹ sub-regional organizations in Asia resisted acknowledging the Principles, in deference to Asian states’ concerns about their sovereignty.³⁰² The Principles also served as a facilitator for the development of binding law on internal displacement. Particularly in Africa, the Great Lake region has comprised the 11 states that accepted the protocol in 2006 which is considerate on its member states to accept the GPs as a regional framework and include their provisions into domestic law.³⁰³ In 2009, 53 African states have adopted the legally binding Kampala Convention, which came into force in December 2012. Its provisions, some of which are based on the GP, oblige states to take concrete measures on the ground to improve conditions for IDPs.³⁰⁴ One of the most effective provisions is the Principles that are translated into national law. After the GPs compelled the number of governments to adopt domestic law on IDPs, more than 25 countries have begun to develop laws and policies on IDPs which are based on the GPs.

²⁹⁷ UNGA Resolution A/RES/60/1, 2005, Para 132

²⁹⁸ Simon Bagshaw and Diane Paul (2004) “Protect Or Neglect? Toward a More Effective United Nations Approach to the Protection of Internally Displaced Persons : An Evaluation,” Accessed 23 July 2016, URL: https://www.brookings.edu/wp-content/uploads/2016/06/protection_survey.pdf

²⁹⁹ , K. Diagne and H. Entwisle, (2008) “UNHCR and the Guiding Principles,” *Forced Migration Review*, 10: pp. 33–35.

³⁰⁰ Inter-Agency Standing Committee 1999; UN Doc A/HRC/13/21/Add.4, 29 December 2009; Inter-Agency Standing Committee 2010; and A/HRC/16/43/Add.5, 31 January 2011

³⁰¹ “Lessons Learned, *Supra* note, 251 at, p.5

³⁰² Paula Banerjee, (2005) “*Internal Displacement in South Asia The Relevance of the UN's Guiding Principles*” SAGE Publications, p. 15

³⁰³ Kamungi, Prisca, and Jacqueline Klopp (2008) “The Challenges of Protecting the Internally Displaced through IC/GLR” *Journal of African Conflicts and Peace Studies*, Accessed 14 June 2016, URL: https://www.google.co.in/?gws_rd=ssl#q=The+challenges+of+protecting+the+internally+displaced+throug+h+IC/GLR%22+

³⁰⁴ African Convention, *Supra* note at, 46

4. ILA Declaration on IDPs.

The 1998 Guiding Principles on Internal Displacement and in 2000 ILA adopted the Declaration of Principles of International Law on IDPs.³⁰⁵ This declaration, like the GP has been applied to all different category of displacement of people such as conflicts, natural disasters, developmental projects displacement etc.³⁰⁶

4.1. Origin of the Declaration

The Sixty Ninth Conference was held in 2000 which adopted the declaration of international law principles on IDPs.³⁰⁷ This declaration was prepared by the international committee on IDPs, followed two earlier ILA proclamations which are relating to the forced movement of people.³⁰⁸ In 1986 in Seoul had adopted the principle on mass expulsion as principle of international humanitarian law. The declaration of principles of international law on compensation to refugees was, adopted in Cairo in 1992.³⁰⁹ The ILA declaration addresses the root cause of the IDPs problem while dealing with their lack of legal status. In addition, the declaration also complemented the GP which discussed in the previous section.³¹⁰

5.2. Salient Feature of ILA Declaration

The ILA Declaration mainly consists of eighteen articles. These rights generally protect the rights of IDPs and duty of states. This declaration is divided into four different sections as Definition, Rights of IDPs, Rights and obligation of States and the international community and final clauses.

5.2.1. Definition

³⁰⁵ International Law Association, (2000), "Declaration of International Law Principles on Internally Displaced Persons", Accessed 12 September, 2015, URL; <http://www.unhcr.org/refworld/docid/42808e5b4.html>

³⁰⁶ Luke T Lee, (2001) "The London Declaration of International Law Principles on Internally Displaced Persons" *The American Journal of International Law*, 95 (2): pp. 454-458

³⁰⁷ *Ibid*, at, p. 456

³⁰⁸ *Ibid*, at, p. 457

³⁰⁹ Luke T. Lee (1993) "The Cairo Declaration of Principles of International Law on Compensation to Refugees" *The American Journal of International Law*, 87 (1) : pp. 157-159

³¹⁰ Luke Lee, *Supra* note, at 309

Like the GPs, the definition of IDPs is also adopted by the ILA Declaration. “Internally displaced persons” are defined in article 1 of the declaration:

1. For the purpose of this Declaration, the term "internally displaced persons" refers to "persons or groups of persons who have been forced to flee or leave their homes or places of habitual residence as a result of armed conflicts, internal strife or systematic violations of human rights, and who have not crossed an internationally recognized State border."³¹¹

The only difference between GPs and the ILA declaration in defining IDPs is that Unlike the GPs, the ILA declaration did not contain sufferers of natural or human-made disasters as IDPs. Instead, Article 1(2) covers the definition of IDPs “also to persons internally displaced by whatever reasons, such as natural or man-made disasters or large-scale developmental project, when the accountable State or *de facto* authority fails, for reasons that disrupt fundamental human rights, to defend and support those victims”.

5.2.2. Rights of IDPs

Foremost among the rights of IDPs, they shall be provided safety and aided in accordance with all relevant law, it includes human rights, humanitarian and refugee laws.³¹² The declaration also states that the IDPs have right to demand and obtain humanitarian support and safety from national and *de facto* establishments, as well duly authorized international organization.³¹³ The scope of this provision also covers rights secured for aliens as refugees, and stateless persons whichever applicable,³¹⁴ as well as family reunification,³¹⁵ restitution or adequate compensation³¹⁶ and also including the freedom of movement. The other rights include, freedom from arbitrary displacement,³¹⁷ and refoulement,³¹⁸ as well as entitlement to voluntary repatriation as soon as the

³¹¹ ILA Declaration, *Supra* note, 305 at, Article 1

³¹² *Ibid*, at Art 2(1)

³¹³ *Ibid*, at, Art 3(2)

³¹⁴ *Ibid*, at, Art, 3(1)

³¹⁵ *Ibid*, at, Art,7

³¹⁶ *Ibid*, at, Art, 9

³¹⁷ *Ibid*, at, Art, 4(1)

³¹⁸ *Ibid*, at, Art, 17

circumstances conditioning rise to the displacement have ended.³¹⁹ The declaration also pressures IDPs rights to freedom from genocide and ‘ethnic cleansing’,³²⁰ etc.

5.2.3. Rights and Obligation of States and the International Community

The Declaration reaffirms the chief duty of national authority to defend and assist IDPs within their authority³²¹. It compels states, *de facto* establishments, and the international, and regional organizations concerned to deliberate any appeal for humanitarian help in good faith and to suggest or deliver such aid in agreement with the principles of humanity, impartiality and without discrimination.³²² The declaration further states that the acceptance of humanitarian support shall not be observed as acts of unfavorable act or interference in the internal affairs of states.³²³ The declaration also calls on all concerned parties and organizations to address the root causes of internal displacement³²⁴ and establish appropriate institutional arrangements to deal with them.³²⁵ Interestingly the declaration mention that if the state or *de facto* authority refuses to accept the humanitarian assistance for fear of adverse political or diplomatic implication, in such situation, the declaration in that case makes clear that humanitarian assistance shall not affect the status or diplomatic recognition of the states or authorities concerned.³²⁶

The Declaration also contains provisions regarding the establishment of safe areas.³²⁷ It also highlights the rights of IDPs to free and safe admittance to international assistance and protection,³²⁸ as well as the rights of relief personal working in the field to gain full protection against armed attack.³²⁹ In addition, the declaration has also forbidden armed groups from intrusive with the movement of vital sustenance respite which is obviously calculated for civilian consumption. The movement of relief operations may be subject to

³¹⁹ *Ibid*, at, Art, 5(1)

³²⁰ *Ibid*, at, Art, 4(3)

³²¹ *Ibid*, at, Art,10(1)

³²² *Ibid*, at, Art,13 (1) (2)

³²³ *Ibid*, at, Art, 13(2)

³²⁴ *Ibid*, at, Art,11(2)

³²⁵ *Ibid*, at, Art,12

³²⁶ *Ibid*, at, Art,13 (4) (5)

³²⁷ *Ibid*, at, Art, 14(3)

³²⁸ *Ibid*, at, Art, 14(1)

³²⁹ *Ibid*, at, Art, 14(2)

monitoring by the appropriate international agencies.³³⁰ The indispensable part of the United Nations Security Council (UNSC) in sustaining international peace and security which may be endangered by condition of internal displacement is also emphasized. Finally the declaration attaches great importance to the regional approach to IDPs problems which is quite evident in different provisions of the declaration.

Apart from the above mentioned legal instruments there are other international legal instruments which directly or indirectly address the plight of IDPs. The UN Pinheiro Principles³³¹ and UN Basic Principles and Guidelines on Development Based Evictions and Displacement.³³² These two international legal instruments address the most important problems faced by the IDPs. Which include the arbitrary displacement of people because of developmental activities. Secondly the housing and property rights of people displaced. The following section will analyses the role of UN principles in development projects based eviction thus providing protection to IDPs.

6.1. UN Pinheiro Principles

The major target of violent conflicts and war is the larger scale destruction of housing and property rights, of displaced, whose rights are systematically violated. The issues of housing and property restitution for IDPs have received considerable attention. The individual rights are violated when their property is destroyed and their houses are arbitrarily confiscated.³³³ The international community has considered post conflict housing and property restitution as a key component of peace building and a means of promoting restorative justice within society.³³⁴ The adoption of 'Pinheiro Principles' in

³³⁰ *Ibid*, at, Art, 15(2)

³³¹ UN Sub-Commission on the Promotion and Protection of Human Rights, Principles on Housing and Property Restitution for Refugees and Displaced Persons, 28 June 2005, E/CN.4/Sub.2/2005/17, Accessed 13 July 2016 URL: <http://www.refworld.org/docid/41640c874.html>

³³² "UN Basic Principles and Guidelines on Development-Based Evictions And Displacement," accessed on 1 August 2016 URL: http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf

³³³ Giulia Paglione (2008) "Individual Property Restitution: from Deng to Pinheiro—and the Challenges Ahead" *International Journal of Refugee Law*, 20 (3): pp. 391- 392, also see, Megan J. Ballard, (2010) "Post-Conflict Property Restitution: Flawed Legal and Theoretical Foundations." *Berkeley Journal of International Law*, 28 (2) : p. 462

³³⁴ . Williams C Rhodri (2004) "Post-Conflict Property Restitution and Refugee Return in Bosnia and Herzegovina: Implications for International Standard-Setting and Practice." *NYU Journal of International Law, & Policy*, 37 : p. 441

2005³³⁵ as one of the major international standard principle for resolving the property restitution rights. The Pinheiro Principle was endorsed by the UN Sub Commission on the Promotion and Protection of human rights in August 2005³³⁶ and these principles were supplemented in March 2007 by the ‘Handbook on Property Restitution for Refugee and Displaced Persons.’³³⁷

The Pinheiro Principles are unprecedented in the field of property restitution for a variety of reasons as: It has an operational approach of the principles and the document exclusive focus on property restitution. The definition it adopted for displacement does not make distinction between the internal and external removal of people, thus, the Pinheiro Principle is valid both to IDPs and Refugees alike. Another unique feature of the principles is about covering the ownership rights and also the ‘users’ rights which we do not find in other legal instruments.³³⁸

7. World Bank Guidelines on IDPs

The World Bank project in developing countries is also one of main reasons for large number of people’s displacement. Hence, the World Bank adopted a policy on involuntary resettlement in 1980 and which was further revised it in 1986, 1990, 2001, 2007 and lately in 2011. This policy provides substantive as well as procedural protection for those people who are displaced from their home by WB financed projects.

The main objectives of policy are: First to avoid involuntary resettlement by the state. The policy states that the national authorities must work in consultation with project affected people before initiating for involuntary resettlement of people. The project affected people must be provided with an opportunity to share the benefits of the

³³⁵ UN Sub-Commission on the Promotion and Protection of Human Rights, Principles on Housing and Property Restitution for Refugees and Displaced Persons, 28 June 2005, E/CN.4/Sub.2/2005/17, Accessed URL: <http://www.refworld.org/docid/41640c874.html>

³³⁶ *Ibid*, at, Para 2

³³⁷ Inter-Agency, “Handbook on Housing and Property Restitution for Refugees and Displaced Persons, Implementing the ‘Pinheiro Principles’” March 2007, Accessed 12 July 2016 URL: <http://www.refworld.org/docid/4693432c2.html>

³³⁸ Attansio, David L, and Nelson Camilo Sánchez (2012) "Return within the Bounds of the Pinheiro Principles: The Colombian Land Restitution Experience." *Washington University Global Studies Law Review*, 11(1): pp.1-3

projects.³³⁹ Secondly, the authorities who are responsible for the displacement must assist displaced people in restoration of their assets and living standards.³⁴⁰ The resettlement policy also states effective compensation and their eligibility for availing residential housing.³⁴¹

The WB resettlement policy has also given special attention to women, children, elder, landless, indigenous people in the resettlement process.³⁴² It states that preference should be given to land based resettlement for displaced persons.³⁴³ One of the important aspect of policy to provide timely information and the occasion to contribute in the planning, implementation and monitoring of resettlement.³⁴⁴ All these provisions will help in addressing the problems of IDPs.

8. The UN Security Council Resolutions on IDPs

The protection of IDPs is not only a matter of internal concern but is also a threat to international peace and security.³⁴⁵ A large numbers of people are displaced due to war, armed conflict and other reasons, hence United Nations Security Council (UNSC) role comes into picture. The UNSC resolution highlighted the problems of IDP showing the gravity of situation and therefore tries to fill the gaps of legal protection of IDPs through resolutions.³⁴⁶

Preventing Displacement and UNSC Resolutions: The UNSC has given due importance to the prevention of displacement in its resolutions. For example, the UNSC in its resolution (RES/1674) has condemned all sorts of acts as violation against civilians during violent conflict. It has also condemned forced displacement by state and hence demands international organizations and agencies necessary obligation to work during

³³⁹ *Ibid*, at, Para 2(a) (b)

³⁴⁰ *Ibid* at, Para 2(c)

³⁴¹ *Ibid* at, Para 6

³⁴² *Ibid*, at, Para 8

³⁴³ *Ibid*, at, Para 11

³⁴⁴ *Ibid*, at, Para 13 (a)

³⁴⁵ IMDC, *Supra* Note 1, p. 15

³⁴⁶ Sanjula Weerasinghe and Elizabeth Ferris (2011) "Security Council, Internal Displacement and Protection: Recommendation for Strengthening Action through Resolution," the Brookings Institution-London School of Economics Project on Internal Displacement. Accessed on 20 January 2015, URL: <http://www.brookings.edu/research/reports/2011/09/security-council-resolutions-ferris> p. 12

such crisis.³⁴⁷ Another resolution 1807 address the issue of Democratic Republic of Congo states that the acts involving the targeting of women or children in situation of armed conflict, including killing, sexual violence, abduction and forced displacement is violation of international law.³⁴⁸

Protection during Displacement and UNSC Resolution: IDPs during displacement are deprived from their basic rights, hence the primary responsibility of displaced persons belongs to the state. Negligence on part of state of IDPs leads to intervention by the international community. Therefore, UNSC resolutions gives more importance to protection of IDPs during displacement addressing violence against IDPs as part of general condemnation and recommends that states should obey the obligations under international law and humanitarian law³⁴⁹. It has called for the admiration of international law from parties to the armed conflict counting non-state armed group. Some resolutions of UNSC condemn violence and indiscriminate attack against civilian, therefore as requested by Secretary General that agencies should report on the protection on IDPs.³⁵⁰ It also talks about IDPs camps elaborately as preventing attacks on camps, preventing the recruitment of IDPs, including children in and around the camp, maintaining security and ensure the protection of IDPs by preventing serious violation of human rights. The resolution also mentioned about the demilitarization of camps, the maintenance of law and order including humanitarian assistance to IDPs.³⁵¹

Humanitarian Assistance and UN Security Council Resolutions: During displacement, states establishments have the primary obligation to provide defense and humanitarian aid to IDPs within their authority. When the state fails to extend its assistance, international community or civil society may provide assistance and protection to IDPs. But due to the issues of sovereignty many nations resist international community involvement. Guiding principle 3(1) states about the key obligation and accountability of government to deliver humanitarian assistance and Principle 25(1) specifically pertains to

³⁴⁷ UN Doc S/RES/1674, (2006), Protection of Civilian in Armed Conflict, Para 5

³⁴⁸ UN Doc S/RES/1807, (2008), Democratic Republic of Congo, Para 13 (e)

³⁴⁹ UN Doc S/RES/1296, (2000), protection of civilians in armed conflict, Para 3

³⁵⁰ *Ibid*, at, Para, 14

³⁵¹ UN Doc S/RES/1674 (2006), Protection of civilians in armed conflict, Para 5, 14

humanitarian assistance.³⁵² The UNSC has addressed the provision of humanitarian assistance to IDPs ensuring that humanitarian assistance is essential as per the accordance with relevant provisions of international law³⁵³. The UNSC resolution has also expressed the concern for the security and killing of humanitarian workers and the hindrance faced by them during their access to population in need.³⁵⁴

9. Conclusion

Internal displacement has emerged as a great human tragedy as it leaves millions of people homeless and vulnerable. This created a challenge for the international community to respond to the crisis. Since 1990s several efforts have been made to provide protection and assistance to IDPs. The steps include appointing the RSG on IDPs, adoption of GPs and so on. The GPs were adopted as a non-binding legal instrument. But they have received international recognition and have been incorporated into law at the regional and national levels. Today more than twenty five countries have adopted domestic legislation on IDPs by incorporating provisions from the GPs. Despite the wide recognition of GPs it remains a weak instrument because many states are unwilling to abide by them because of their non-binding nature. In addition to GPs, the ILA Declaration on IDPs, UN Guidelines on Development based eviction and UN Pinhero Principles are also having strong influence on the protection of IDPs. Now the most challenging part is for national authorities to be persuaded to implement these principles. In the long run a binding international convention on IDPs is much needed to guarantee the rights of IDPs.

³⁵² Fourth Geneva Convention, Article 30.

³⁵³ UN Doc S/RES/1509 (2003), Para 8

³⁵⁴ UN Doc S/RES/1769 (2007), Para 4

Chapter-IV

Internal Displacement in African Region: The Role of Kampala Convention on IDPs

Chapter-IV

Internal Displacement in African Region: The Role of Kampala Convention on IDPs

1. Introduction

Historically many African states have experienced forced displacement and many continue to do so. Over the past two decades, the numbers of IDPs continue to grow.³⁵⁵ In Africa, most of the populations displaced are IDPs, hence states are increasingly focusing towards the problem.³⁵⁶ In 1969, the Organization of African Unity (OAU), as it was then, took the lead in addressing the forced displacement issue at the continental level by adopting a convention leading the distinct feature of refugee difficulties in Africa.³⁵⁷ The OAU was the first regional organization to adopt a binding instrument to specifically address the problems of refugees.³⁵⁸ At a special summit in Kampala, the African Union successor to the OAU set a precedent in international law by adopting the convention for the protection and aid of IDPs in Africa.³⁵⁹ The Great Lake Region also adopted protocols on IDPs.³⁶⁰ Thus, the Kampala Convention was established on the Guiding Principles, international laws and policies of African State and provided a legal framework for developing a comprehensive solution and response to internal displacement.

The chapter is divided into different sections. Section 2 deals with the evolution of the Kampala Convention including its history and codification. Section 3 identifies the legal sources of the convention. Section 4 analyses the salient features of the Kampala

³⁵⁵ Jeff Crisp (2010) "Forced Displacement in Africa: Dimensions, Difficulties, and Policy Directions," *Refugee Survey Quarterly*, 29(3): pp. 1- 2.

³⁵⁶ "Global Report on Internal Displacement" (2016) Accessed 18 May 2016 URL: <http://reliefweb.int/sites/reliefweb.int/files/resources/2016-global-report-internal-displacement-IDMC.pdf>

³⁵⁷ Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45

³⁵⁸ González M Fernando (1995) "The African Approach to Refugees," *Human Rights Brief*, 2(2) : p.6

³⁵⁹ African Convention, *Supra* note, at,46

³⁶⁰ International Conference on the Great Lakes Region (2006) Protocol on the Protection and Assistance to Internally Displaced Persons, Accessed 12 Jun 2016, URL: <http://www.refworld.org/pdfid/52384fe44.pdf>

convention. Section 5 deals with the Great Lake Pact, its different Protocols. Final section concludes the chapter.

2. Background and Codification

The African Union (AU) had played a prominent role in establishing the Kampala convention. The AU was established in 2001 for fulfilling the needs of a regional organization that better suits the African continent.³⁶¹ In fact, the AU was established at the time when the cold war came to an end and regional organization was making a shift in the changing global world order.³⁶² The regional organization's main objective was twofold: one to protect the member states from external threat and secondly to protect the principles of non-intervention into the internal affairs of another state.³⁶³ Now the focus of regional organization shifted to inter regional threat. It also changed the emphasis to strengthening the inter states responsibility for addressing their problems.³⁶⁴ Hence it made AU's interference essentially to expand the normative framework for protecting and supporting exiled people in Africa. The movement led to the development of African convention on the IDPs.

The Convention remains significant for a number of reasons. It is the first instrument completely intended towards making entire region legally bound on matters related to preventing situations of mass displacement and to resolving the vulnerabilities and needs of those who have been displaced. Another important aspect of the Convention is in its formal recognition of the causes of displacement being triggered by situations other than armed conflict and situations of generalized violence. It recognizes a comprehensive list of factors and causes that forces people to flee their homes and communities. The Convention compels state parties to protect both natural and man-made disasters

³⁶¹ Cilliers, Peace. (2002) "Security and Democracy in Africa: A Summary of outcomes from the Horn of Africa" Accessed 24 Jun 2016 URL: <http://erepository.uonbi.ac.ke/handle/11295/96242>, also see Udombana, Nsongurua J. (2002) "The Institutional Structure of the African Union: A Legal Analysis." URL:<http://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1171&context=cwilj> p. 71

³⁶² The crisis includes those in Rwanda, Yugoslavia and Kosovo during the 1990's

³⁶³ Kuwali, Dan. (2009) "The end of Humanitarian Intervention: Evaluation of the African Union's Right of Intervention." *African Journal on Conflict Resolution*, 9 (1) : pp. 42-44

³⁶⁴ Solf, Ali. M.O, (2014) "Managing Intra-State Conflicts in Africa: the African Union as an Effective Security Actor," Doctoral Dissertation, University of Glasgow, p. 12

displaced peoples.³⁶⁵ Displacement triggered by development projects, including exploration and exploitation of natural resources, also features under convention.³⁶⁶ Lastly, the convention gives an important outcome for the regulatory framework for internal displacement by recognizing rights of IDPs and states' obligations towards them during all phases of displacement from prevention, to treatment of persons while they are displaced, and through their return, local integration, or resettlement.

3. Legal Source of the Kampala Convention

The drafter of the Kampala convention had drawn its provisions from different legal sources. It contains first, the African regional human rights tools and choice of the AU. Second, the UN Charter, international human rights devices, comprises verdict of the General Assembly and Security Council of the UN. Third, international humanitarian law and fourth, is the UN Guiding Principles. The drafter of this convention recognizes some of the legal apparatus in the preface of the convention. These include:

- *The UN Guiding Principles on Internal Displacement:* The African Union convention recognizes the UN Guiding Principles (GP) as the parent legislation and this has reflected in its preamble and other provisions of the convention. The impact of the GP on Kampala convention can be seen in many different folds.³⁶⁷ The convention draws many principles and annotations from the UN-GP and allows the international experts in the field of internal displacement to draft the convention. It now includes the Professor Walter Kalin, the former RSG on IDPs and Professor Chaloka Beyani, the present RSG on IDPs.³⁶⁸
- *International Legal Instruments:* The Kampala convention relied on GP which is indirectly observed with the other international legal instruments. It includes,

³⁶⁵ Kampala Convention, *Supra* note, 46, Article 4

³⁶⁶ *Ibid*, at, Article 10

³⁶⁷ Mike Asplet and Megan Bradley (2012) "Strengthened Protection for Internally Displaced Persons in Africa: The Kampala Convention Comes Into Force," Accessed 12 July 2016 URL: <https://www.brookings.edu/articles/strengthened-protection-for-internally-displaced-persons-in-africa-the-kampala-convention-comes-into-force/>

³⁶⁸ Beyani Chaloka (2013) "The Kampala Convention: Entry Into Force" Accessed 20 July 2016 URL: <https://www.brookings.edu/on-the-record/the-kampala-convention-entry-into-force/>

International Human Rights Law, International Humanitarian Law, International Criminal Law and to a certain extent International Refugee Law.³⁶⁹ In addition, the preamble of the convention endorses some international legal instruments; these are the Universal Declaration of Human Rights, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 Four Geneva Convention and the 1977 Additional Protocols to the Geneva Convention, the 1951 UN Convention to the Status of Refugees and the 1967 Protocol relating to the Status of Refugee and the 1979 Convention on the Elimination of all forms of Discrimination Against Women.³⁷⁰ Apart from these, the preamble gives references to the other relevant United Nation and Africa Union human rights instruments and relevant Security Council resolutions indicating the influence of international law on the African Union convention on IDPs.³⁷¹

The convention apart from replying on above stated documents and ratifications has also focused on the current human rights issues like, implementation of socio economic rights, the character of non-state actors including multinational and private security companies, human rights effect of natural disaster and climate change, etc. The convention also touched upon aspects of the international criminal law, stating that it is the personal individual criminal responsibility to make the act as an arbitrary displacement which lead to genocide, war crime and crime against humanity. The convention also recognizes the growing role of international organization in providing assistance to IDPs such as UNHCR and ICRC.³⁷²

- *African Regional Legal Instruments*: Kampala convention provides due share to African regional human rights tools. The convention's preface overtly gives orientation to many devices such as African Charter on Human and People's Rights, the Protocol on the Rights of Women in Africa, and the African Charter on the Rights and welfare of Child. The preamble also indicates about the

³⁶⁹ Abebe, Allehone Mulugeta (2010) "The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, and Enforcement Challenges." *Refugee Survey Quarterly*, 29 (3) : pp. 28-30

³⁷⁰ *Ibid*, at, p. 2

³⁷¹ *Ibid*, at, p. 3

³⁷² Abebe, Allehone, *Supra* note, 369 at p. 29

Regional Refugee Laws such as the 1969 OAU Convention Governing the precise feature of Refugee issues in Africa and the 1994 Addis Ababa Document on Refugees and Forced Displaced in Africa.³⁷³ The convention also describes the references from other regional laws and regulations such as the constitutive acts and the protocols dealing with the establishment of peace and Security Council of the African Union with precise position to IDPs.³⁷⁴

- *The Great Lake Pact and its Protocol*: It is first African binding law relating to the internal displacement. These set of protocols are the important legal source which influenced the drafting of the convention.³⁷⁵ In fact, the drafter of Great Lake Pact was the same person for Kampala Convention, hence these protocols were taken seriously during drafting of the convention.³⁷⁶ Since the protocols were adopted there are 11 states are party to this treaty and this helped in the implementation of Kampala convention as well.³⁷⁷

4. Salient Feature of Kampala Convention

The Convention contains a Preamble along with 23 articles. It has two major sections: The major section incorporates the 14 articles which focus on the key issues dealt with IDPs. It comprises the legal and political foundation of the convention along with principles which have to guide the convention. In addition, it also has to list the other regional and international rules and laws as an inspiration for the evolution of the convention. In the beginning, Articles 1 and 2 define the convention and its objectives. Other articles such as 3, 4, 5, 9, and 11 deliver direction as the duties of States when citizens get displaced. For providing responsibilities and duties of the international organizations, Articles 6 and 8 have contained the reference for it. For responsibilities and duties of armed forces Article 7 has become the main instrument of IDPs law. The problem of displacement triggered by development projects is distinctly deliberated under

³⁷³ *Ibid*, at, p. 4

³⁷⁴ *Ibid*, at, p. 3

³⁷⁵ Chaloka Beyani (2006) “The Elaboration of a Legal Framework for the Protection of Internally Displaced Persons in Africa,” *Journal of African Law*, 50 (2) : p. 187

³⁷⁶ *Ibid*, at, p. 188

³⁷⁷ International Refugee Rights Initiatives (2014) Comparison of The Kampala Convention and The IDP Protocol of The Great Lakes Pacts, Accessed 14 August 2016 URL:<http://www.refugee-rights.org/Assets/PDFs/2014/Comparative%20Note%20on%20the%20Kampala%20Convention%20and%20IDP%20Protocol%20FINAL-EN.pdf>

Article 10. Under articles 12, 13 and 14 several issues such as compensation to victims of displacement, registration of IDPs, and monitoring mechanisms are covered. For examining procedural matters and scope of the application (Article 15), signature and ratification (Article 16), entry into force (Article 17), amendment (Article 18), denunciation (Article 19), saving clause (Article 20), reservation (Article 21), settlement of dispute (Article 22), and depository (Article 23).

4.1. Definition

Before the establishment of Kampala Convention, some major attempts were made to describe IDPs and also outlined legal framework for governing the IDPs. These are International Law Association Declaration on IDPs, Guiding Principles on Internal Displacement and the Great Lakes Protocol on IDPs. Generally, the meanings of IDPs in the Guiding Principles on Internal Displacement, the Great Lakes Pact and the Kampala Convention have no difference. Therefore, Article 1 (K) of the Kampala Convention defines IDPs as

“Internally Displaced Persons” means 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 the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”

4.2. Obligation of State Parties

As per the Kampala convention, the primary duty is to respect, protect and accomplish the rights of IDPs which emanates under the sphere of states obligation and this is very well stated under the conventional framework for the safety of IDPs in international law.³⁷⁸ It also imposes obligation on states for the protection of IDPs in all three diverse stages of displacement.³⁷⁹ The states have an obligation to prohibit and prevent arbitrary

³⁷⁸ Avery, Ainslie. (2012) "De Lege Ferenda": "Sovereignty as Responsibility" as a Framework for International Internally Displaced Persons Law. *Oxford Monitor of Forced Migration*, 2 (2) : pp. 27-31

³⁷⁹ Birganie, Addis Barega. (2010): "An African initiative for the Protection of the Rights of Internally Displaced People" *Human Rights Law Review*, 10(1) : pp. 185-190

displacement and ensure it as its obligation to respect and protect IDPs human rights.³⁸⁰ In addition, states require to safeguard separate criminal responsibility for the performance of triggering displacement.³⁸¹

The Kampala convention also executes an duty on the states to hold accountable to non-state actors for contributing to displacement.³⁸² As stated previously, the states have the main duty for the safety of IDPs, but in certain conditions state is unswervingly or circuitously tangled in causing displacement, so in this situation the displaced peoples do not get protection from their own state.³⁸³ In order to address this complex situation, the Kampala convention has assigned a special role to the African Union.³⁸⁴

4.3. The Role of African Union

The Kampala convention under the article 8 has outlined the obligation of the African Union to the protection of IDPs. As per this article, the African Union has to coordinate with the state for the protection of IDPs.³⁸⁵ In addition, African Union in extraordinary conditions such as when the state is incapable to grip the displacement catastrophe is to spread its support to the state so that it can successfully challenge the problems of displaced persons.³⁸⁶ In addition, when the state is reluctant to provide protection and assistance to IDPs, the African Union stands in the place of state or act as a auxiliary for the state to deliver humanitarian assistance to IDPs.³⁸⁷ In addition, the convention upholds the rights of the AU to interfere in a member state that is founded on the choice of assembly in serious conditions namely, war crime, genocide, and crime against humanity.³⁸⁸

³⁸⁰ Kampala Convention, *Supra* note, 46 at Article, 4 (4)

³⁸¹ *Ibid*, at, Article, 4(6)

³⁸² *Ibid*, at, Article, 3(1) (i)

³⁸³ Hussain, Monirul, (2008) “*Interrogating Development: State, Displacement and Popular Resistance in North East India*” Los Angeles, New Delhi, Singapore and London: Sage Publications India, p. 12

³⁸⁴ *Ibid*, at, Article 7 and 8

³⁸⁵ *Ibid*, at, Article 8

³⁸⁶ *Ibid*, at, Article 8(3)

³⁸⁷ *Ibid*, at, Article 8(4)

³⁸⁸ Kampala Convention, *Supra* note, 46, at Article 8(1)

4.4. The Obligation of Armed Group and Other Non-State Actors

One of the very important provisions as well as objective of the Kampala convention is to impose obligation and responsibility on the roles of armed groups, non-states actors and the relevant actors including non-governmental organizations. By keeping these groups under the rubric of convention, the AU is able to prevent IDPs and if it occurs by any chance it can provide defense and assistance to IDPs.³⁸⁹ Though, the convention highlighted the responsibility of different non state entity, special attention is devoted to the armed group.³⁹⁰ As many scholars opined that the main reason for convention's emphasis is on the obligation of armed group reflects that the nature of displacement in Africa is the domestic armed conflict situations.³⁹¹

The Kampala convention defines armed groups as “dissident armed forces or other organized armed groups that are distinct from the armed forces of the states.”³⁹² And the convention also defines non-states actors as “private actors who are not public officials of the states and whose act cannot be officially recognized by the states”.³⁹³ According to Article 7 of the convention, by abiding to the article, member of armed group are to be held criminally responsible for act that violates the rights of IDPs under international and national laws.³⁹⁴ The armed groups are also forbidden from the following acts.

- A) Carrying out arbitrary displacement.
- B) Hampering the provision of protection and assistance to internally displaced persons under any circumstances.
- C) Denying internally displaced persons the rights to live in satisfactory condition of dignity, security, sanitation, food, water, health, and shelter, and separating members of same family.
- D) Restricting the freedom of movement of internally displaced persons within and outside their area of residence.

³⁸⁹ *Ibid*, at, Article, 7(5)

³⁹⁰ *Ibid*, at, Article 5

³⁹¹ Ridderbos, Katinka. (2011) "The Kampala Convention and Obligations of Armed Groups" *Forced Migration Review*, Accessed 17 August 2016, URL: <http://www.fmreview.org/non-state/Ridderbos.html?contrast=low-contrast>, pp. 37-36

³⁹² *Ibid*, at, Article, 1(e)

³⁹³ *Ibid*, at, Article, 1(n)

³⁹⁴ *Ibid*, at, Article, 7(4)

- E) Recruiting children or requiring or permitting them to take part in hostility under any circumstances.
- F) Forcibly recruiting persons, kidnaping, abduction or hostage taking, engaging in sexual slavery and trafficking in persons especially of women and children:
- G) Impeding humanitarian assistance and passage of all relief consignments, equipment and personal to internally displaced persons:
- H) Attacking or otherwise harming humanitarian personnel and resources or other materials deployed for the assistance or benefit of IDPs and destroying, confiscating or diverting such materials: and
- I) Violating the civilian and humanitarian character of the places where IDPs are sheltered and infiltrating such violations.³⁹⁵

The armed groups are parties to the international armed conflict laws and they have to abide by its obligations, particularly, those provisions which are comprised in common article 3 of the four Geneva Conventions and additional protocol of 1977 Geneva Convention.³⁹⁶ In addition, the minimalist protection is defined in article 3 to be provided and guaranteed by each party to the conflict. It is also applicable in each case of armed conflict which is not of global character.³⁹⁷ In contrast, protocol II of the Geneva Convention needs high level of measures to prevent violent conflicts and characters of violent armed opposition groups. As per the article 1(2), the non-state actors who are parties to the conflict are (a) to be fallen under calculated and humanitarian command, and (b) must control the territory which is under their authority so that their military operations follow the protocols which are important for the protection of the IDPs.³⁹⁸ While comparing with humanitarian laws, the human rights law has established the more consolidated the authority over the armed group or other non-state actors. It is due to the fact that those non-state armed groups which violate the human rights cannot be held accountable under human rights law which are still in the nascent stage. Hence, there is no consensus among the international legal scholars on this issue.³⁹⁹ Apart from this paradox, the other provision of Kampala convention states that the members of the armed group shall be tried for their violations of the rights of IDPs under both

³⁹⁵ *Ibid*, at, Article, 7(5)

³⁹⁶ Stephane Ojeda (2010) "The Kampala Convention on Internally Displaced Persons: Some International Humanitarian Law Aspects." *Refugee Survey Quarterly*, 29 (3) : p. 60

³⁹⁷ *Ibid*, at, p. 62

³⁹⁸ *Ibid*, at, p. 63

³⁹⁹ Luopajarvi Kajta, *Supra* note, at 46

international and national laws.⁴⁰⁰ This provision imposes an obligation on the states to hold them accountable for their action which leads to the violation of the human rights of IDPs. In addition, the AU convention compels the member states to prevent armed groups from involving in arbitrary or illegal displacement which impede the protection and assistance,⁴⁰¹ disturbing safety, restricting freedom of movement,⁴⁰² recruiting children⁴⁰³ and pushing them into military forces, targeting them or otherwise violating their rights.⁴⁰⁴

4.5. Prohibition of Arbitrary Displacement

The convention outlines forms of displacement as arbitrary these cover:

- a) Displacement is based on policies of radical discrimination or other similar practices which are aimed at/or resulting in altering the ethnic, religious or racial composition of the population.
- b) Individual or mass displacement of civilian in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand, in accordance with international humanitarian laws:
- c) Displacement is intentionally used as a method of warfare or due to other violations of international humanitarian laws in situations of Armed conflict:
- d) Displacement is caused by generalized violence or violations of human rights:
- e) Displacement as a result of harmful practices:
- f) Forced evacuations in case of natural or human made disasters or other causes if the evacuations are not required by the safety and health of those affected;
- g) Displaced is used as a collective punishment.⁴⁰⁵

4.6. Development Induced Displacement:

Developmental projects are undoubtedly one of the main causes of displacement.⁴⁰⁶ At present, due to the rapid urbanization, the number of people who have been uprooted by the developmental projects is much higher than the other causes of displacement such as

⁴⁰⁰ Kampala Convention, *Supra* note, at Article 7(1)

⁴⁰¹ *Ibid*, Article,7(5) (b)

⁴⁰² *Ibid*, Article, 7(5) (d)

⁴⁰³ *Ibid*, at, Article, 7(5) (e)

⁴⁰⁴ *Ibid*, at, Article, 7 (5) (h)

⁴⁰⁵ *Ibid*, at, Article, 4(4)

⁴⁰⁶ Kampala Convention, *Supra* note, 46 at Article, 1(k)

the conflicts.⁴⁰⁷ Still, state is following a habit of overlooking the displacement of people which is caused by development projects.⁴⁰⁸ Moreover, the plight of development induced displaced people often receives less support from their government than the people displaced by conflict or natural disaster. Hence, in order to address the problems of development-induced people, the Kampala convention provides important measures. Article 10 entails displacement induced by development project that provides as follows:

1. States Parties, as much as possible, shall prevent displacement that is caused by projects and carried out by public or private actors;
2. States Parties shall ensure that as far as the stakeholders are concerned, they will explore feasible alternatives, with full information and consultation of persons that is likely to be displaced by projects;
3. States Parties shall carry out a socio-economic and environmental impact assessment of a proposed development project prior to undertake such a project.

The Kampala convention under its article 10 compels the state parties to entirely avoid development projects that may produce IDPs. In addition, state governments are also needed to avert displacement triggered by non-state actors.⁴⁰⁹ The convention also includes the provision which incorporates those projects run by private actors and they will be responsible if any kind of displacement occurs. Additionally, this article also prohibits any projects that may lead to displacement of people.⁴¹⁰ Nonetheless, even the provision of the convention gives spaces to abuse by states so that they can justify development induced IDPs. This is occurring, because as per the provision, the state governments are obligatory only as much as likely to avert development induced displacement.⁴¹¹

Apart from the above analysis, Article 10 of the Kampala convention brought out four important actions which states have to take to impede any kind of displacement. These include, firstly, the state authorities have to carry out socio-economic and environmental

⁴⁰⁷ Internal Displacement Monitoring Center (2017) Case Study Series - Dam Displacement, Accessed 12 August 2016, URL: <http://www.internal-displacement.org/publications/2017/idmc-case-study-series-dam-displacement>, pp. 1-2

⁴⁰⁸ Anthony Oliver-Smith, (2006) "Displacement, Resistance and the Critique of Development: From the Grass Roots to the Global" *Development-Induced Displacement: Problems, policies and people* 18, p. 141-179,

⁴⁰⁹ Kampala Convention, *Supra* note, 46 at. Article 10 (1)

⁴¹⁰ *Ibid*, at, Article 10 (2)

⁴¹¹ Abebe, Allehone Mulugeta, *Supra* note, 369 at, p. 29

assessment before people displaced by the projects.⁴¹² Secondly, consultation with all stakeholders, particularly, those people who are affected by the projects.⁴¹³ Thirdly, the project owner must have consent of those who are to be displaced.⁴¹⁴ Fourthly, before displacement, the concerned authorities must exhaust all other feasible alternatives.⁴¹⁵ So, it is clear from the article 10 that the drive of population is steered in agreement with international law. According to the process which is established by a constitution of several individual countries which does not establish arbitrary displacement.

The convention is also disappointed in some aspect, for example, article 10 of the Kampala Convention states that the provision requires socio-economic and environmental assessment that must be conducted before the displacement takes place but the weak point is that such assessment is very limited in the context of the cultural, historical, religious and even during the consideration of the human rights of inhabitations.⁴¹⁶

Consequently, the Kampala convention rather than using the socio-economic and environment assessment should have used the human rights impact assessment phrase. Even the article 10(2) of the convention obliges states and different stakeholders to focus on directing a practicality and applicability assessments of the project. It also wants compulsory negotiation with the people who are likely to be displaced and affected by the projects.. Thus, the convention has created strong procedure so that states first find out all important feasibility and applicability of the projects to prevent any development induced displacement. These obligations on the state parties are also extend to the private actors.⁴¹⁷

As far as private actors are concerned, the convention makes it mandatory for the actors to find out possible alternative means and options to avoid the displacement of the people.. When there is no alternative available then states will intervene to reduce the effect of projects on the affected people. When the displacement becomes indispensable

⁴¹² Kampala Convention, *Supra* note, 46 at, Article 10 (3)

⁴¹³ *Ibid*, at, Article, 10 (2)

⁴¹⁴ *Ibid*, at, Article, 10 (3)

⁴¹⁵ *Ibid*, at, Article, 10 (4)

⁴¹⁶ Abebe, *Supra* note, 369 at p. 31

⁴¹⁷ *Ibid*

then state would relocate the people in time bound manner with all basic amenities.. Furthermore, state parties need to consider alternative options for the projects and even provide compensation when there is no alternative available at all.

Another important feature of the article 10 of the Kampala convention is that this article does not mention the requirement of “compelling and overriding public interest” but the draft convention under the article 9 mentions the requirement of compelling and overriding public interest as it is found in the present act.⁴¹⁸ However, the convention is only focusing on the area of communities with special attachment and dependence on land. The Kampala convention makes use of the requirement of a compelling and overriding public interest. It is also including the interest of the people and communities that would be damaged by the project.⁴¹⁹ It is very ironical that , article 4(5) of the convention is not implementing all rules on all development induced displacement. In other words, the convention is not able to protect the IDPs rather it has weakened them while allowing the arbitrary development induced displacement. This is a major loophole of the Kampala convention.

4.7. The Provisions of Durable Solutions

Durable solutions are long term solutions to the people who are internally displaced.⁴²⁰ In fact, internal displacement fails to deal with the vacuum of serious and resilient actions for long term positive outcome. This is because IDPs are sometimes unable or unwilling to return to their home immediately after their forceful expulsion due to the fear of persecution again by the groups. Therefore, the AU leaders while framing this convention had realized that there is a need for durable solution for IDPs. However, if the state authorities provide effective durable solution to the IDPs then the necessity for a distinct

⁴¹⁸ African Union (2009) “Kampala Declaration on Refugees, Returnees and Internally Displaced Persons in Africa”, 23 October 2009, Ext/Assembly/AU/PA/Draft/Decl.(I) Rev.1, Accessed 5 August 2016, URL: <http://www.refworld.org/docid/4af0623d2.html>

⁴¹⁹ Article 4(5) of the Kampala Convention reads: “state parties shall take all appropriate measure, whenever possible, to restore the lands of communities with special dependency and attachment to such lands upon the communities return, reintegration and reinsertion.”

⁴²⁰ Brookings Institution (2010), “IASC Framework on Durable solutions for Internally Displaced Persons,” Brookings Institution –University of Bern Project on Internal Displacement, Accessed on 3 August, 2016 URL: <http://www.brookings.edu/research/reports/2010/04/durable-solutions>, p. 1 -2

regime of protection vanishes and this has become one of the purposes of the Kampala convention.⁴²¹

The provisions of durable solutions are contained in article 11 of the Kampala convention which enabled responsibility of state parties to IDPs for sustainable return, local integration or rearrangement. The article also covers the provision for the formation of “satisfactory condition for voluntary return, local integration or relocation on a sustainable basis under safety and dignity”⁴²². In addition, according to the next para of this article confirms that “the state parties shall enable IDPs to make a free and an informed choice on whether to return, integrate locally or relocate by consulting them on these and other options”. Thus, it is guaranteeing their contribution in discovery supportable solutions.⁴²³ Therefore, this facility settles that arrival has to be voluntarily and not forcefully done.⁴²⁴

In addition, the Principles on Housing and Property Restitution of Refugees and IDPs argues that all IDPs and refugees have the inherent rights of return to their homeland.⁴²⁵ Interestingly, there is only Dayton Peace Accord which is contracted by Bosnia and Herzegovina Croatia as a binding international instrument. This was used to put an end to the Bosnia conflict. It clearly states that the people who are exiled by the fight have the right to return their home of origin.⁴²⁶

Although, the exceptional idea of Kampala Convention is not only confirming the values of volunteer return but is has also revealed the types of such return. It contains that the territorial states should defend the exiled against violent return to or relocation in any place where their life, safety, liberty and health would be at-risk.⁴²⁷ In addition, convention enshrines the responsibility of AU member states to pursue permanent

⁴²¹ Kampala Convention, *Supra* note, 46 Article 11, also see Olivia Lwabukuna (2011) ‘Internal Displacement in Africa: African Solutions to African Problems? Challenges and Prospect’ *Journal of Internal Displacement*, 1(1) : pp. 141-142

⁴²² *Ibid*, at, Article 11 (1)

⁴²³ *Ibid*, at, Article 11 (2)

⁴²⁴ UN High Commissioner for Refugees (1997) “UNHCR Note on the Principle of Non-Refoulement,” Accessed 18 August 2016, URL: <http://www.refworld.org/docid/438c6d972.htm>

⁴²⁵ Pinheiro Principles, *Supra* note, at,

⁴²⁶ Dayton Peace Agreement (1995) “General Framework Agreement for Peace in Bosnia and Herzegovina,” Accessed 12 July 2016, URL: <http://www.refworld.org/docid/3de495c34.html>

⁴²⁷ Kampala Convention, *Supra* note, 46 at Article 11 (1)

solution by endorsing and generating favorable situation for voluntary return, local integration or relocation on a sustainable basis and safety and dignity.⁴²⁸ Furthermore, article 11 delivers for the essentially to collaborate with African Union and international organizations to offer protection and assistance for sustainable return, local integration or relocation and long term reconstruction.⁴²⁹ In short, according to the Kampala convention, durable solution to internal displacement is fixed with return that must be voluntary along with the circumstances of safety, dignity and prosperity. To confirm safe and stable atmosphere for IDPs it is very indispensable for their voluntary return because forceful arrival to their area could in fact endanger the safety and dignity of IDPs. In addition, there must a mechanism to reparation or reward also plays an indispensable part of the retrieval process for IDPs.⁴³⁰ In fact, as Walter Kalin, former special representative on IDPs observes that, “the successful return of IDPs to their home or place of habitual residence is based on three elements which are ensuring the safety of returnees, returning property to the displaced person and reconstructing of their houses and creating an economic, social and political environment that sustains their safe return”.⁴³¹

In addition, Article 11 of Kampala convention that relates to the land and property rights are concerned with the establishment of appropriate mechanism for simplified procedure which is necessary for resolving the dispute that is relating to the property of IDPs.⁴³² In relating to it, article 12 is entitled to the state to provide appropriate forms of reparation or compensation for internally displaced.⁴³³ But in some cases, states may interpret this provision negatively because the state concentrates on simply providing monetary compensation instead of providing property to the IDPs.⁴³⁴ In addition, guiding principle 29 also delivers safety of property rights, but its claim is not inadequate to those IDPs who choose to come back to their place of origin. To sum up, these provisions are noteworthy as far as property rights of IDPs are concerned in the habitual states.

⁴²⁸ *Ibid*, at Article 11 (1)

⁴²⁹ *Ibid*, at, Article 11 (3)

⁴³⁰ *Ibid*, at, Article 11 (5)

⁴³¹ Walter Kälin (2008) “Durable Solutions for Internally Displaced Persons: An Essential Dimension of Peace building,” Accessed 19 August 2016, URL:<https://www.brookings.edu/on-the-record/durable-solutions-for-internally-displaced-persons-an-essential-dimension-of-peacebuilding-2/>

⁴³² *Ibid*, at, Article 11 (4)

⁴³³ *Ibid*, at, Article 12 (1)

⁴³⁴ Abebe, *Supra* note, at,

4.8. Humanitarian Assistance and State Sovereignty

The obligation of state parties which relate to protection and assistance deal with the article 5 of the convention. The article describes the key responsibility and accountability of state parties for the safety of the human rights and humanitarian assistance to IDPs in their territory.⁴³⁵ Further, the Kampala Convention imposes an obligation on states governments to collaborate with each other in shielding and assisting IDPs. It also obliges them to respect the mandate of the AU, the United Nations, and other relevant international humanitarian organizations to provide protection and assistance whenever and wherever necessary in accordance with international law.⁴³⁶

The detailed provision regarding humanitarian assistance and humanitarian access can be originated in the rule of armed conflict.⁴³⁷ With regard to the international conflict, the international humanitarian law stipulates that states are bound to accept humanitarian assistance if the civilians are not supported by the states themselves. During the humanitarian crisis, states have to let the quick and unhindered passageway of all relieve consignment and apparatus focus to the confirmation under states supervision.⁴³⁸ The responsibility to receive an outside's aid develops more problematic with respect to the people of an occupied territory. Thus, according to the Protocol 1, that provides relief to the personal, it ought to be supported and assisted to the maximum extent possible although the participation in relief activity is still subject to the acceptance of the state which is facing a conflict from the territory occupied by others.⁴³⁹ The limitations on the people's activities and the relief personals is to be temporary established with the involvement of military's imperative.⁴⁴⁰

⁴³⁵ *Ibid*, at, Article 5 (1)

⁴³⁶ *Ibid*, at, Article 5 (3)

⁴³⁷ Stoffels, Ruth Abril. (2004) "Legal Regulation of Humanitarian Assistance in Armed Conflict: Achievements and Gaps." *International Review of the Red Cross*, 86 (855) : p. 515

⁴³⁸ Barber, Rebecca (2009) "Facilitating Humanitarian Assistance in International Humanitarian and Human Rights Law," *International Review of the Red Cross*, 91 (874) : pp. 380-382

⁴³⁹ International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 UNTS 3

⁴⁴⁰ *Ibid*, at, Protocol, 1

During the ‘internal armed conflict’, humanitarian actions are limited. In addition to article 3 of the Geneva Convention, confirming that “an impartial humanitarian body such as the ICRC may offer its services to the parties to the conflict.”⁴⁴¹ The only explicit provision in the internal armed conflict is found in additional protocol II, which delivers that relief act shall be assumed with the agreement of the state where civilian are grief under hardship.⁴⁴² In summary, both international and domestic armed conflicts one of the reason for people displacement and international humanitarian law lack in addressing the problems of IDPs.

Under the international human rights laws states are in no obligation to accept humanitarian assistance. Nonetheless, the responsibilities are forced on the states to guard the elementary requirements of the individuals and their admission to external relief by human rights treaties to keep the population out of danger.⁴⁴³ To compel a state to support the civilians in crisis, the International Covenant on Economic, Social and Cultural Rights is instrumentalized to oblige the state’s apparatus.⁴⁴⁴ This instrument needs state parties to stage individually with international collaboration and support to confirm the smooth practice of the rights contained therein.⁴⁴⁵

Despite the humanitarian laws’, there are obligation on the states. Till now, the states are mostly not interested to follow their outright duties to give safety and security to IDPs. However, in the time of natural calamities state have agreed to follow soft laws such as UN General Assembly Resolutions 43/131,⁴⁴⁶ and 46/182 which do not damage their

⁴⁴¹ Dungal Joakim (2004) ‘A Right to Humanitarian Assistance in Internal Armed Conflicts Respecting Sovereignty, Neutrality and Legitimacy: Practical Proposals to Practical Problems,’ *The Journal of Humanitarian Assistance*, Accessed 8 September, 2016 URL: <https://sites.tufts.edu/jha/archives/838>

⁴⁴² International Committee of the Red Cross (1977), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 609

⁴⁴³ Michel, Nicolas, and Maria Giovanna Pietropaolo (2013) "Humanitarian Assistance from the Standpoint of the Human Rights of the Disaster-Affected Individuals: Present and Future Perspectives" Accessed 10 September 2016, URL: <http://www.prix-henry-dunant.org/wp-content/uploads/2013Recherche.pdf>

⁴⁴⁴ ICESCR, *Supra* note

⁴⁴⁵ *Ibid*, also see, Jansen-Wilhelm, S. (2014). “A Duty to Accept Humanitarian Assistance under the ICESCR?” In A. Zwitter, C. Lamont, H. Heintze, & J. Herman (Eds.), *Humanitarian Action: Global, Regional and Domestic Legal Responses*. Cambridge: Cambridge University Press.

⁴⁴⁶ UN General Assembly (1990) “Humanitarian Assistance To Victims Of Natural Disasters And Similar Emergency Situations : Resolution / Adopted by the General Assembly” A/RES/45/100, Accessed 15 September 2016, URL: <http://www.refworld.org/docid/3b00efe94.html>, Para, 1

sovereignty.⁴⁴⁷ These resolutions confirm the key duty of the state to take care of the sufferers and knows that the abandonment of the victims during crisis without humanitarian assistance establish a threat to human life.⁴⁴⁸ Therefore, it can be firmly argued that it is the responsibility of the states to receive offer of humanitarian assistance for IDPs which is not satisfactorily established.⁴⁴⁹

In this background, the article 5 of the Kampala convention has mixed result because it outlines the mediation between the states to help each other while providing relief, providing safe passages for all relief consignments, respecting humanitarian values and protection and freedom of humanitarian actors, so that IDPs can be holistically protected. In addition, paragraph 6 of this article overtly offers that state shall pursue the aid of humanitarian organizations and pertinent actors respectively when they cannot deliver adequate assistance to themselves. On the other hand, these provisions are counter balanced by states' individual sovereignty rather than humanitarian need. In this respect, paragraph 6 directly drawn from common article 3 of the Geneva Convention that makes the provision for protection of IDPs dubious by state that humanitarian agency and other relevant actors "may offer their service". Additional, this orientation to humanitarian inventiveness is not attended through the vital calculation completed to the 1st additional protocol that states that proposal of relief 'shall be observed as meddling or as unfriendly act.'⁴⁵⁰

The final clause of article 5, instead, clearly, states that "nothing in this article shall prejudice the principles of sovereignty and territorial integrity of a state".⁴⁵¹ These principles, therefore, leave the ideas that the states' governments require to provide a sound discretion to take initiative about whether external actors are needed to support and aid IDPs. The role of Kampala Convention is very important because it appears to take into account this problem by affirming the state's primary responsibility to provide

⁴⁴⁷ UN General Assembly(1992) "Strengthening of The Coordination Of Humanitarian Emergency Assistance of The United Nations : Resolution / Adopted by the General Assembly" A/RES/46/182, Accessed 15 September 2016, URL: <http://www.refworld.org/docid/3b00f18620.html>, Para, 3

⁴⁴⁸ *Ibid*, at Para, 4

⁴⁴⁹ Katja Luopajarvi, *Supra* note, 399, p. 679

⁴⁵⁰ *Ibid*, at, p. 680

⁴⁵¹ Kampala Convention, *Supra* note, 46 at, Article 5 (12)

protection and assistance to IDPs within its territory without giving any kind of discretion to become hurdle during the humanitarian crisis. In addition, article 5.5 also asks the states to give extension of support to resident communities so that IDPs can be provided security and settlement. Thus, it is essentially State parties' attempt to admiration and uphold the civilian and humanitarian character of the host place where IDPs are settled and even they have to protect such place against penetration by armed group.

4.9. Regional and National Measures

The comprehensive understanding of the convention's objective is dependent upon how the formal and execution obstacle are effectively addressed. According to Article 2, it is to encourage and fortify national and regional measures to prevent, mitigate, prohibit and eliminate source of cause of internal displacement by providing hard-wearing solution.⁴⁵² To achieve above objectives, states are obligatory to establish and designate pivotal opinion and establishment mechanism, namely, the Conference of Parties (CoP)⁴⁵³ African Commission on Human and People's Rights,⁴⁵⁴ the African Peer Review Mechanism⁴⁵⁵ and the Special Reporter.⁴⁵⁶ It is important to understand that the role and mandate of other institutions are also important for states to take desired action. Hence, the effective applicability of the rules of convention, so far, rests on the state authorities.

4.10. Monitoring and Compliance Mechanism

The unique objective of the convention is to encourage and fortify regional monitoring mechanism such as the CoP so that the objective of the convention can be implemented successfully. It has become a platform for co-ordination and mutual existence for the states. The CoP is not a common phenomenon in Africa. Although, series of meetings were held in the region for the adoption of the convention. The high-level summit that adopted the convention had underlined the value of such forum as an instrument for creating awareness and dialogue. Although, efforts were made at different level to adopt CoP as an effective monitoring mechanism but how far this mechanism is effective is not

⁴⁵² *Ibid*, at, Article 2(a)

⁴⁵³ *Ibid*, at, Article 14 (1)

⁴⁵⁴ *Ibid*, at, Article 14 (4)

⁴⁵⁵ *Ibid*, at, Article 14 (5)

⁴⁵⁶ *Ibid*, at, Article 14 (6)

yet clear.⁴⁵⁷ One of the reasons is the there is a lack of requirement for the state to provide the report to CoP. In addition, there is no expert group that is ready to support the CoP to discharge its responsibility there is also skewed support about the role of CoP and its co-operation with regional human rights institution such as the ACHPR, the ACHPR, and Special Rapporteur. In summary, the articulations of the obligations are very feeble because states are obligatory only to designate national measure in their reporting. However, the role of ACHPR, the ACTHPR and the Committee of an Expert on Rights and Welfare of African Children in protecting IDPs within the outline of their establishing instrument are, important.⁴⁵⁸ In addition, the special rapporteur, since 2004, played important role in addressing the problem of IDPs in African region. The main activity of the special rapporteur is to visit the place of displacement and prepare a report on the situation of displacement.⁴⁵⁹ But the problem is that mandate holder is facing the resource crunch and the efficiency of the Special Rapporteur is also destabilized by a lack of formal organization between the AU secretariat and the commission. In recent year, regular discussion is being held to correct such gaps.

4.11. International Organizations and Humanitarian Agencies

Laws and institutions are equally important in addressing the human rights problems of IDPs and therefore, the Kampala convention delivers the detailed role of international humanitarian organizations in shielding and assisting IDPs. The AU convention's approach to international organization is different from other international legal instruments. This is because, unlike, the UN Guiding Principles which highlights the privileges of international humanitarian organizations to have access to IDPs, the AU convention obviously highlights the duties of these organizations rather than rights.⁴⁶⁰ Under the convention, the obligation are specified in clear terms that the international organizations and humanitarian agencies shall discharge their responsibility

⁴⁵⁷ Prisca Kamungi, (2010) "Beyond Good Intentions: Implementing the Kampala Convention." *Forced Migration Review* 34, Accessed 20 September 2016 URL: <http://www.fmreview.org/es/node/3125.html>, p. 54

⁴⁵⁸ Abebe, *Supra* note, at, 369 at p. 30

⁴⁵⁹ African Commission on Human and Peoples' Rights (2015) "Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons, Accessed 25 September 2016 URL: <http://www.achpr.org/mechanisms/refugees-and-internally-displaced-persons/>

⁴⁶⁰ Kampala Convention, *Supra* note, at Article 6(1)

in conformity with international and domestic laws of the country in which they function. It has to be, in the context of UN Guiding Principles.⁴⁶¹ The convention's provisions safeguard that these establishments must admire the rights of the IDPs and also follow to the values of impartiality, fairness and independence.⁴⁶²

The Kampala Convention also makes it compulsory for International agencies to be dependable with the other requirements which are expressed from the viewpoint of the duty of state.⁴⁶³ In this regard, the AU convention states that the chief tasks of providing guard and help to IDPs are to be on the state, but the state may seek assistance from other states and international humanitarian organizations.⁴⁶⁴ In nutshell, it necessitates that state parties shall admire the command of the AU and the UN in giving safety and assistance to IDPs.⁴⁶⁵ Although AU does not give any new mandate to such organizations but accepts their existing mandate. For instance, the existing mandate may include the mandate that is given to the ICRCs by Geneva Convention. In addition, the AU convention obligates the state to deliver a rapid, unhindered road to all relief consignment, equipment and personal subject except the technical arrangement which falls under state's permit.⁴⁶⁶

As per the convention, states are obligatory to assume national legislation and policies, but it is understandable that national legislation, policies and strategies will imitate only those certainties and challenges that the states face individually.⁴⁶⁷ These national legal improvements, however, should obey with states' duty under the convention and international law.⁴⁶⁸ In setting of this, a number of African countries have already accepted national legislation on IDPs such as Angola, Burundi, Liberia, Sierra Leone, and

⁴⁶¹ *Ibid*, at, Article 6(2)

⁴⁶² *Ibid*, at, Article 6(3)

⁴⁶³ *Ibid*, at, Article 5

⁴⁶⁴ *Ibid*, at, Article 5(5)

⁴⁶⁵ *Ibid*, at, Article 5(3)

⁴⁶⁶ *Ibid*, at, Article 5(7)

⁴⁶⁷ *Ibid*, at, Article, 2(b)

⁴⁶⁸ *Ibid*, at, Article, 2 (c)

Uganda. The other nations such as Sudan and Kenya are in the process of approving domestic legislation on IDPs.⁴⁶⁹

Thus, the convention played an significant part in not just giving requirements for protection and assistance to IDPs but it also plugs the hole of binding laws on IDPs. In fact, the Kampala convention, unlike the UNGP and ILA Declaration of IDPs, for the initial time presented a exclusive facility which has a superior influence on improving the situations of IDPs. In addition, the convention also offers operative model for the other region to approve their regional convention on IDPs. Hence, the actual operation or application of the Kampala convention be contingent on the determination of countries of African Union.

5) Great Lake Regional Protocols and Internal Displacement

The Great Lake Region in Africa has been torn apart by war for more than a decade and numerous countries in the region are tangled in a war which commanded to enormous population expulsion from their homes.⁴⁷⁰ The Democratic Republic of Congo (DRC), Sudan (Darfur) Kenya and many other countries in the region are compounded by the IDPs.⁴⁷¹ In fact, the 1994 genocide in Rwanda which has caused a million of people displacement is considered as a biggest population movement in the history of the region.⁴⁷² In addition, the developmental project and natural disaster are also compounding to the number of IDPs in the region. The Great Lake region has developed the hotbed of the world in terms of largest population of IDPs in the African continent.

To resolve the issues of IDPs in the Great Lake region concord agreements have been signed in Burundi, southern Sudan, and the DRC. These agreements have actually

⁴⁶⁹ Erin Mooney (2009) "Developing National Law, Policy and Strategies around the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa," Accessed 20 August 2016, URL: file:///C:/Users/balaji%20n/Downloads/Developing_national_law_policy_and.pdf

⁴⁷⁰ United Nations (2006) "Office of The Special Envoy of The Secretary-General for the Great Lakes Region, Displacement in the Great Lakes Region," Accessed 12 September 2016, URL: https://ungreatlakes.unmissions.org/sites/default/files/osseg_fact_sheet_on_displacement.pdf

⁴⁷¹ *Ibid*, at,

⁴⁷² Eriksson, John (1996) "The International Response to Conflict and Genocide: Lessons from the Rwanda experience." Synthesis Report, Copenhagen: Steering Committee for the Joint Evaluation of Emergency assistance to Rwanda," Accessed 16 September 2016, URL: [file:///C:/Users/balaji%20n/Downloads/0745%20\(2\).pdf](file:///C:/Users/balaji%20n/Downloads/0745%20(2).pdf)

improved the conditions of IDPs and played import role in resettlement of IDPs.⁴⁷³ Despite these efforts, there is no solution to the plight of IDPs because even if IDPs return their home they encounter many obstacles to their final reintegration. These obstacles are land, property dispute and lack of infrastructure etc.

To remove the hindrances faced by IDPs and response to the aforementioned challenges, the UN and AU organized the International Conference on the Great Lake Region (ICGLR). The aim of the conference was to convey all countries of the region organized to a negotiation process and decided on a plan to bring peace and prosperity to the region.⁴⁷⁴ The re-integration process was started in the 1990s with the coordination from the state, non-state actors and international community by formulating a plan to address the problems such as insecurity and economic instability. Thus, the region solution has become the benchmark for IDPs long lasting solutions. Finally, in December 2006, the Pact on Security, Stability, and Development in the Great Lake Region is called the Great Lake Pact was adopted.⁴⁷⁵ The pact was composed of ten protocols, four programs of actions and a set of implementing mechanism and institutions.⁴⁷⁶ In this, the two protocols specifically dealt with protection and assistance of IDPs, these two protocols are viz., the Protocol on the Protection and Assistance to IDPs⁴⁷⁷ and the Protocol on the Property Rights of Returning Population.⁴⁷⁸

⁴⁷³ Jesse Bernstein and Olivia Bueno, “The Great Lakes Process: New Opportunities for Protection” accessed 20 September 2016, URL: <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/humanitarianreform/bernstein-bueno.pdf>

⁴⁷⁴ Charlotte Heyl (2010) “The International Conference on the Great Lakes Region – An African CSCE?” Accessed 23 September 2016, URL; http://www.kas.de/wf/doc/kas_21242-544-2-30.pdf?101124162339

⁴⁷⁵ International Conference on the Great Lakes Region (2006) “Pact on Security, Stability and Development in the Great Lakes Region”, Accessed 23 September 2016 URL <https://www.lse.ac.uk/collections/law/projects/greatlakes/Pact%20on%20Security%20Stability%20&%20Development.pdf>, The ICGLR brought together 11 states includes Angola, Burundi, the Central African Republic, the Democratic Republic of Congo, Kenya, Rwanda, Sudan, Tanzania, Uganda, and Zambia.

⁴⁷⁶ *Ibid*,

⁴⁷⁷ International Conference on the Great Lakes Region (2006) “Protocol on the Protection and Assistance to Internally Displaced Persons,” 30 November 2006, Accessed 20 September URL: <http://www.refworld.org/docid/52384fe44.html>

⁴⁷⁸ International Conference on the Great Lakes Region (2006) “Protocol on the Property Rights of Returning Persons, Accessed 20 September, URL: <https://www.lse.ac.uk/collections/law/projects/greatlakes/4.%20Humanitarian%20and%20Social%20Issues/4c.%20Protocols/Final%20protocol.PropertyRights%20-En%20r.pdf>

The Protocol on the Protection and Assistance of Internally Displaced Persons became the world's first legally binding regional tool for IDPs. The key aim of the protocol is to create a regulatory structure for applying the guiding principles on internal displacement in the national legislation. It also assures the lawful safety of the physical and material requirements of IDPs and to strengthen disturbed state's promise to avert and eradicate the root cause of displacement. In addition, the protocol needs member states to follow the principles of international humanitarian law and human rights that are appropriate to the shield of IDPs as echoed in the guiding principles".

The Protocol on the Property Rights of Returning Persons addresses the obstacles, faced by those IDPs who are facing the problems in resettlement. The property protocol signifies a admirable energy to proclaim the property rights of displaced people. In fact, it is the first time that an sub regional instrument is created to resolve the property dispute of IDPs by administrative and traditional authorities. In addition, it created a mechanism for the establishment of a property registration scheme which recognizes both customary and statutory revenue system. However, despite the protocol's progressive provisions, there are some weak provisions in the protocol. Because it has deficiency in providing specific guidance on some contentious issues i.e. criteria to decide between compensation and restitution, regulation of relation between traditional system and statutory law.

The main objective of protocol is established in article 2 that contains the formation of the legal belief which administers the retrieval of property by displaced people. It also contracts with the formation of a legal foundation for determining an dispute connecting to property, including the documentation of both judicial and local traditional mechanism. Further, it is ensuring distinct shield for returning women, children, and community by attaching them to their land in Great Lake Region. Finally, the property protocol guarantees legal remedies for loss or destruction of property of the forcibly displaced.

In addition to the above mentioned two protocols, the Protocol on the Protection of Women and Children deals the problems of displaced women and children as they are the worst affected persons during the conflict and other such situations. The Protocol on the

Prevention and Suppression of Sexual Violence against Women and Children⁴⁷⁹ purposes to deliver a complete set of actions to address the difficulties of sexual violence in the region. This brands the protocol extremely pertinent to this large displaced population of women and children. Thus, in the absence of binding instrument on IDPs in the African region, the Great Lake Pact played an significant part in addressing human rights defilement in the region. In fact, the Great Lake Protocol on IDPs had enormously aided in making African Regional Convention on IDPs.

6. Kampala Convention and Great Lake Protocols on IDPs: Comparison

As mentioned earlier, there are two binding legal instruments in the African region to address the problems of IDPs viz., Kampala Convention and Great Lake Protocols. There is a close similarity between these two instruments in providing, protection and assistance to IDPs. Both these documents have a common rule that the main obligation and responsibility of the state for providing protection and assistance to IDPs remnants within their territory. The assessment of the content of the two legal summarizes in the below section.

Firstly, the definition of IDPs that is contained in both the documents have a similarity but they differ in one aspect, that is, the people who have been displaced by developmental projects. The protocol includes developmentally-induced displacement in the definition but the Kampala convention does not include this category of people in the definition but included in the other provision.

Secondly, in the preamble, the Kampala convention recognizes the Guiding Principles as one of the sources of the convention, but in the Great Lake Protocol gives guiding principles hold more prominence than the Kampala convention. This is because one of

⁴⁷⁹ International Conference on the Great Lakes Region, “Protocol on the Prevention and Suppression of Sexual Violence against Women and Children” URL;<http://www.peaceau.org/uploads/final-protocol.sexual-violence-en-rev-2.pdf>

the articles in the protocol is devoted to the domestication of the guiding principles in the procedures of national legislation.⁴⁸⁰

Thirdly, as far as the obligations and responsibilities for the shield of IDPs are concerned, the convention states that the state, non-state actors, international humanitarian organizations and the African Union have a responsibility obligation to respect, protect and assuring the rights of IDPs.⁴⁸¹ In contrast, the protocol reveals the responsibility of the member states for the guard of IDPs.⁴⁸² Fourthly, both the documents hold governments responsibility for permitting humanitarian assistance wherever it is a requirement.⁴⁸³

Fifthly, as far as the responsibility of the non-state actor (including armed group) is concerned, the convention provides obligation, responsibility. The role of armed forces, non-state actors and other relevant actors including civil society organizations, with respect to the prevention of internal displacement and to provide protection and assistance for IDPs.⁴⁸⁴ The protocol states that “member state shall safeguard and maintain the civilian and humanitarian character of the protection and location of IDPs in accordance with the international guidelines on the separation of the armed element from civilians”.⁴⁸⁵

Sixthly, according to the convention, the act of displacement amounts to genocide, a war crime or crime against humanity which are punishable by law. In contrast, the protocol does not explicitly mention these provisions but these are strongly implicit in the protocol

⁴⁸⁰ Great Lake Protocol on IDPs, Article 2(1) “The objective of this Protocol is to establish a legal framework in the Great Lakes Region for ensuring the adoption and implementation by Member States of the Guiding Principles on Internal Displacement.

⁴⁸¹ Kampala Convention, Preamble

⁴⁸² Great Lake Protocol on IDPs, Article 3 and 4.

⁴⁸³ Kampala Convention, Article 3(J) ‘state parties shall Ensure assistance to internally displaced persons by meeting their basic needs as well as allowing and facilitating rapid and unimpeded access by humanitarian organizations and personnel., Great Lake Protocol, Article 3(10) “Where Governments of Member States lack the capacity to protect and assist internally displaced persons, such Governments shall accept and respect the obligation of the organs of the international community to provide protection and assistance to internally displaced persons.”

⁴⁸⁴ Kampala Convention, *Supra* note, 46 at, Article 2 (e)

⁴⁸⁵ Great Lake Protocol, *Supra* note, 479 at, Article 3(h) (i)

since it builds on the provisions of guiding principles which criminalize them.⁴⁸⁶ Hence, the Kampala convention, as well as Great Lake Protocols played an unprecedented role in improving the condition of IDPs.

7. Conclusion

Internal displacement is an issue that the African continent has been facing for a long time. To curb its growth and to provide effective protection to IDPs, the African Union adopted the African Union Convention on IDPs known as Kampala Convention. The convention is path breaking as it fills protection gaps that exist in international law. The Kampala convention was also the first exclusive regional binding legislation on IDPs that govern all phases of displacement that comprehensively protects IDPs by granting them wide range of rights, and imposes obligations on state and non-state actors. The convention also introduces some new provisions such as the right to claim compensation for displacement. Another unique of the convention is that it introduces a compliance and monitoring mechanisms such as conference of state parties, peer review mechanism etc. In addition to the Kampala convention, the Great Lake Region also adopted protocols on IDPs.

From the above analysis it can be concluded that the African region has played a very important role in guaranteeing the rights of IDPs. The Kampala convention provides a model for the other regions in term of adopting a convention on IDPs. Though the African regional and sub-region initiative played important role in the improving the condition of IDPs there are loopholes such as a weak implementing mechanism making the convention and protocol feeble.

⁴⁸⁶ Guiding Principles, *Supra* notes, at, 9

Chapter V

Internal Displacement and South Asian Region: A Quest for Asian Regional Convention on IDPs

Chapter IV

Internal Displacement and South Asian Region: A Quest for Asian Regional Convention on IDPs

1. Introduction

The causes of displacement in Asia as in other region are multidimensional.⁴⁸⁷ The region has witnessed a large number of displaced people because of conflicts, human rights violations, natural hazard and also climate change.⁴⁸⁸ The major causes of displacement of people are armed conflicts and the developmental projects. The factors which are causing displacement have to be contextualized within the globalization and economic reform program in the Global South.⁴⁸⁹ In addition, millions of peoples are displaced every year in Asia as a consequence of projects which are linked to the urban development and natural resource extraction. The process of development has become very brutal for marginalized sections as governments are acquiring land forcefully from the poor and tribal peoples without even providing appropriate compensation.⁴⁹⁰ In addition, there are many governments in this region which do not allow international protection and aid agencies to get involved in the protection of IDPs due to the issues of sovereignty.⁴⁹¹ The problem of internal displacement in Asia is still one of the areas which the Asian region has failed to address.⁴⁹² In fact, Asia has a large number of IDPs in comparison to other regions. Still, there is no effective solution at the regional level.

⁴⁸⁷Asia Pacific Refugee Rights Network (2015) "Understanding and Addressing Root Causes of Displacement in the Asia-Pacific" Accessed 25 September 2016, URL:http://aprrn.info/wp-content/uploads/2015/12/Root-causes-Briefing-Paper_13122015_Final.pdf, pp. 1-2

⁴⁸⁸ Internal Displacement Monitoring Center (2013) "Internal Displacement in South and South-East Asia" Accessed 20 September 2016, URL:<http://www.internal-displacement.org/south-and-south-east-asia/summary/> p. 5

⁴⁸⁹Ruchira Ganguly-Scrase, Kuntala Lahiri-Dutt (2013) "Rethinking Displacement: Asia Pacific Perspectives" Routledge, p. 12

⁴⁹⁰ Anita Adhikari and Thomas Mong "Internal Displacement in Asian countries" Accessed 15 October 2016, URL:<file:///F:/PHD%20Chapters%20and%20Relavent%20Metirials/EAsia%20and%20Displacment/New%20folder/Internal%20Displacement%20in%20Asian%20countries.html>

⁴⁹¹ Roberta Cohen (2003) "Addressing Internal Displacement in Asia: A Role for Regional Organizations," Accessed 5 October 2017, URL: <https://www.brookings.edu/research/addressing-internal-displacement-in-asia-a-role-for-regional-organizations/>

⁴⁹² Hedman, Eva-Lotta E. (2009) "Refugees, IDPs, and Regional Security in the Asia-Pacific," Accessed 2 October 2016, URL:[http://eprints.lse.ac.uk/26550/1/Refugees_IDPS_and_regional_security_in_the_asia_pacific\(lsero\).pdf](http://eprints.lse.ac.uk/26550/1/Refugees_IDPS_and_regional_security_in_the_asia_pacific(lsero).pdf), pp. 34-35

The chapter is divided into different sections. Section 2 analyses the situation of internal displacement in the South Asian region. Section 3 highlights the existing human rights mechanism in the Asian region. Section 4 attempts to find out the possible solutions to address the problems of IDPs in the Asian region. The final section concludes the chapter

2. Internal Displacement and South Asian Region

The South Asian region is considered as one of the major conflict-prone regions, thus, citizens are forced to be internally displaced. Sri Lanka, Pakistan, Afghanistan, India, Bangladesh and Nepal are the worst affected countries with huge population where displacement has occurred. The reasons for displacement are armed conflicts, development projects and climate change which are the main contributing factors that are causing massive internal displacement in South Asia.⁴⁹³

Thus, after the critical situation of IDPs in the region, there is a need to establish a mechanism both at the national and regional stages to deliver a legal safety to IDPs. In the modern world, sovereign states are responsible for the care, protection and support to its citizens. Therefore, the challenge before the state is to adapt the GPs into national laws and policies.⁴⁹⁴ The following section will discuss in detail the situation of IDPs in different countries of the South Asian region. It includes the existing legal and institutional mechanism for IDPs in the region.

2.1. Afghanistan

Displacement induced suffering is not a new phenomenon in Afghanistan. Afghans are forced to flee their home, community and land, as results of armed conflict, human rights violations and along with the frequent natural disaster. To resolve the problems of IDPs, the government of Afghanistan has finalized the National Policy on Internally Displaced

⁴⁹³ Wasantha Seneviratne (2009) "A Legal Regime for Internally Displaced Persons in South Asia: A Holistic Approach to Cater to the Special Needs of South Asian Region Displaced Persons" *Sri Lanka Journal of International Law*, 21 (2) : p. 10

⁴⁹⁴ Jeevan Thiagarajah (2012) "Internal Displacement and the National Approaches of Countries of South Asia," *South Asian Journal of Peace building*, 4 (1) : p. 3

Persons in 2013.⁴⁹⁵ Apart from the national policy, several basic elements of a framework for addressing the basic needs and vulnerabilities of IDPs can be found in constitutional provisions⁴⁹⁶ and other legal instruments in Afghanistan.

The Afghani Constitution obliges the state to respect international human rights standards and thus, establish a affluent and broadminded society based on social justice, human dignity, democracy, unity, equality between all peoples and tribe. The Constitution affirms freedom of movement, rights to health, employment, education, family life, and other fundamental rights. These provisions are applicable to all people including IDPs who belong to Afghanistan.

2.2. Bangladesh

The state of Bangladesh unlike other states, was born with large number of displaced people because during the War of Liberations in 1971, most of the people got dislocated. The other reason for rising IDPs in Bangladesh is the environmental crisis and ethnic conflict and large scale attack on the religious minorities. Despite of huge amount of displacement of people in the country there is only one document which protects the citizens that is the constitution of Bangladesh. The Constitution⁴⁹⁷ has the principles of fundamental rights in the country. Articles 26 and 27 of the Constitution outlines that no law of the state should be against the fundamental rights which are stated in the Article 26 to Article 43 of the Constitution.

According to Article 28, “no law or policy of the state should discriminate against its citizens on the basis of religion, caste, creed or gender.” This section is the fundamental rights of the constitution which also provides the “right to defend oneself in court as well as the rights to mobility, right to assemble, right to organize, right to freedom of thought and conscience, right to freedom of profession and occupation, right to practice one’s

⁴⁹⁵ National Policy on Internally Displaced Persons, Ministry of Refugees and Repatriation The Government of The Islamic Republic of Afghanistan, Accessed 11, October, 2016, URL: [http://morr.gov.af/Content/files/National%20IDP%20Policy%20-%20FINAL%20-%20English\(1\).pdf](http://morr.gov.af/Content/files/National%20IDP%20Policy%20-%20FINAL%20-%20English(1).pdf)

⁴⁹⁶The Constitution of the Islamic Republic of Afghanistan, URL: http://www.diplomatie.gouv.fr/en/IMG/pdf/The_Constitution_of_the_Islamic_Republic_of_Afghanistan.pdf

⁴⁹⁷ Constitution of the People’s Republic of Bangladesh, Accessed 11, October, 2016 URL: http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367

own religion, right to property, right to secure ones' household and self against arbitrary entry, search or arrest". Despite the constitutional protection, country lacks national legislation on IDPs. The above study clearly shows that the problems of internal displacement are increasing day by day in South Asian countries but there is no development in addressing their problems from the South Asian countries.

2.3. India

Displacement in India is primarily caused by armed conflict, ethnic violence and developmental projects. The communal violence in the North Eastern States is due to the influx of migrants from the neighboring area which has led to a ethnic conflict over the land. The conflict is also caused by infighting for political autonomy or secession. The result is that several political and armed insurgent groups have mushroomed against the governments and also against the opposite ethnic groups resulting in the bloodshed.⁴⁹⁸ For example, in Assam, resentment is against foreigners who are mostly immigrants from Bangladesh. It has led to the widespread displacement of Bengali Hindu and Muslim. In addition, the Karbi Anglong and North Cachar hill district are also the main sources of ethnic violence that has led to the displacement of people.

In central India, extremist groups have significantly increased their violent activities that have displaced hundreds of natives. Another major cause for displacement is developmental projects such as dams, roads construction etc.⁴⁹⁹ To remove the problems of these people, the Government of India has adopted measures such as National Rehabilitation Policy (NRP).⁵⁰⁰ The focus of this policy on those who got displaced due to development projects primarily in the Adivasi groups. However, the structural problem of the project is that it applied to only one category of people and left untouched the rights of IDPs. In addition, in 2013 the government enacted the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement

⁴⁹⁸ Internal Displacement Monitoring Center (2010), India, National and state authorities failing to protect IDPs, Accessed on 11, October, 2016 URL:<http://www.internal-displacement.org/south-and-south-east-asia/india/2010/india-national-and-state-authorities-failing-to-protect-idps>, p. 6

⁴⁹⁹ Subhas Sharma (2014) "Development For Whom And At Whose Cost: Displacement Due To Dams In India," *India Journal of Public Administration*, 60 (1) : p. 22

⁵⁰⁰ Ministry of Rural Development (Department of Land Resources) (2003), "National Policy on Resettlement and Rehabilitation for Project Affected Families" Accessed on 11, October, 2016 URL: http://www.brookings.edu/~media/Projects/idp/India_Policy-AffectedFamilies_2003.PDF

Act,⁵⁰¹ but this legislation also ignores the rights of the displaced persons. However, to address the problems of IDPs, a comprehensive domestic legislation is needed which can enable the recognition and protection of all kind of displacement in India.

2.4. Nepal

In Nepal, people have been displacing due to developmental projects, although, since 1996, armed conflict between the state forces and Maoists have become the prime cause of internal displacement in Nepal. The increasing armed conflict has contributed significantly to the widespread displacement of people. In order to provide people with effective humanitarian assistance, the Nepal government has adopted National Policy on Internally Displaced Persons in 2007.⁵⁰² The Policy was initially adopted in March 2006 but NGOs have raised objections and concerns which forced the governments to modify the policy in 2007. The policy mainly focused upon the strategies and policies that was formed on the basis for specific programs to provide protection, relief and rehabilitation to the IDPs.

Despite the proactive mechanism of the policy, it was rejected by international organizations. It was also rejected by critics who blamed the government for ignoring a number of GPs and recommendations. The Nepali government had failed to address the main weakness of previous policy on IDPs, i.e. the politicization of IDPs definition which excluded people who were displaced by state forces.⁵⁰³ There are other pertinent weaknesses such as the lack of an implementation project which could have provided fruitful procedures to the district level's governments and its representatives. The other major problem was the lack of state's financial resources. However, despite of several weaknesses, the Nepal government moved to adopt a national policy on IDPs, which showed a positive step in addressing the problem of displacement.

⁵⁰¹ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Amendment Bill, 2015 Accessed on 11, October, 2016, URL:<http://indiacode.nic.in/acts-in-pdf/302015.pdf>

⁵⁰² Nepal (2007) "National Policies on Internally Displaced Persons," Accessed 11, October, 2016, URL: http://www.brookings.edu/~media/Projects/idp/Nepal_Policy_2007.PDF

⁵⁰³ Ritendra Tamang (2009) "Internally Displaced Persons in Nepal: Neglected and Vulnerable" *Journal of Asian Social Science*, 5 (6) : p. 6

2.5. Pakistan

The large scale displacement of people is a recurring phenomenon in Pakistan. Presently, the militancy is the prime cause for large scale displacement along with natural and man-made disasters that also trigger the displacement. This problem is more aggravated when there is an absence of specific domestic legislations which recognize the exclusive rights of IDPs.⁵⁰⁴ Apart from the general provisions of constitutional protection, the governments have not shown any interest to adopt a new law or policy to address exclusively the concerns of IDPs. Although, in 2010, the government enacted The National Disaster Management Act in 2010.⁵⁰⁵ The act was specially designed to address the problems of disaster induced displacement of people. As required, the Pakistani government should enact the other legislations in order to address the problems of conflict and development induced displaced people.

2.6. Sri Lanka

Sri Lanka has witnessed a large-scale conflict induced displacement because of the fighting between the government and rebel forces. In 2004, tsunami also caused large displacement in the country. These both factors make Sri Lanka as one of the most displacement-prone country in South Asia. At present, a significant numbers of Sri Lankan are IDPs who are staying in camps for long period. Their human rights are largely ignored by concerned authorities.⁵⁰⁶

In 2004, National Framework for Relief, Rehabilitation and Reconciliation Policy,⁵⁰⁷ was created by the government to give need-based assessment, planning and delivery of assistance. It aimed to create National Coordinating Committee on Relief, Rehabilitation and Reconciliation which will keep the process moving forward. It is also now monitoring and evaluating the impact of the process. To help overcome obstacles for exercising human rights and benefits comfortably, the Sri Lankan government enacted

⁵⁰⁴ Constitution of the Islamic Republic of Pakistan, Articles 8-28,

⁵⁰⁵ National Disaster Management Act (NDMA) 2010, Accessed 11, October, 2016 URL :www.ndma.gov.in/images/guidelines/national-dm-policy2009.pdf

⁵⁰⁶ South Asians for Human Rights (2013) "Reassessing Internal Displacement in South Asia" Accessed 11, October, 2016 URL: <http://www.southasianrights.org/wp-content/uploads/2009/10/IDP-52.pdf> p. 14

⁵⁰⁷ Sri Lanka (2002) National Framework for Relief, Rehabilitation and Reconciliation Act, Accessed 11, October, 2016, URL: http://www.brookings.edu/~media/Projects/idp/Sri-Lanka_Framework_2002.PDF

Tsunami (Special Provisions) Act in 2005.⁵⁰⁸ Further to formulate a national policy, plan, implementation, monitoring and co-ordination, and the resettlement of the IDPs another act was enacted called “Resettlement Authority Act” in 2007. In comparison to other South Asian countries, Sri Lankan government has taken a strong step in developing legal and institutional mechanism to address the problem of IDPs.

3. Protection of Human Rights and Asian Regional Perspective

The problem of absence of legislation is not only found in South Asian region, even the Asian region also lacks regional law on IDPs. However, in the absence of regional framework on IDPs, the study will find possible solution to improve the condition of IDPs. With this objective, the following section will identify the reasons for lacking human rights regime at regional level. It will also assess the existing legal and institutional mechanism to address the problems of IDPs. In comparison with the other regions such as Africa, Europe and America, Asian-Pacific region still lacks regional human rights mechanisms.⁵⁰⁹ However, the Asian region has seen a gradual development of regional human rights protection mechanism. It includes the UN’s initiatives to set up a regional human rights mechanism by organizing conference and seminars in the Asian-Pacific region.⁵¹⁰ The important outcomes of these initiatives are, first, UN Commission on Human Rights in 1968 which requested the UNSG to organize regional seminar in those regions where no regional human rights mechanism were established earlier.⁵¹¹

Second, during the UN Colombo conference in 1982 the participants felt that the political aim is a condition for creating an inter-governmental collaboration to thrive human rights. It also suggested periodic regional and sub-regional meetings which should be held on human rights issues.⁵¹² Third, the UN Center for Human Rights organized

⁵⁰⁸ Tsunami (Special Provisions) Act, 2005, Accessed 11, October, 2016, URL: http://www.brookings.edu/~media/projects/idp/srilanka_2005_tsunamiprovisions

⁵⁰⁹ Carole J. Petersen, (2011) “Bridging the Gap: The Role of Regional and National Human Rights Institutions in the Asia Pacific.” *Asian-Pacific Law and Policy Journal*, 13(1) : p. 174

⁵¹⁰ Sou. Chiam, (2009) "Asia's Experience In The Quest For A Regional Human Rights Mechanism" *Victoria University Wellington Law Review*, 40 (1) : p. 127

⁵¹¹ UN General Assembly, Regional Arrangements for the Promotion and Protection of Human Rights., 16 December 1977, A/RES/32/127, Accessed 7 October 2016, URL: <http://www.refworld.org/docid/3b00f13940.html>

⁵¹² Daniel. Oakman, (2010) ‘Facing Asia: A History of the Colombo Plan,’ ANU Press, URL <http://www.jstor.org/stable/j.ctt24hckg>.

seminar in Manila 1989 which for the first time covered both Asia and Pacific regions. This conference also raised important question on regional human rights mechanism by focusing on several issues such as the advantage and disadvantage of building regional human rights system, what happens when the state refuses to abide by the decision of regional mechanisms, what limitation do declaration of state emergency or national security expansion to impose on regional arrangement and the consequences of conflict between national and regional laws.⁵¹³

Fourth, UN workshop in Indonesia in 1993 where the session tried to identify the obstacle and to create a sub-regional instrument for human rights' information dissemination. It is also creating an 'Asian Forum' to expend regional intertwining of ideas to flourish human rights.⁵¹⁴ Fifth, in 1993, the first global conference on human rights was held in Vienna and its outcome was, Vienna Declaration and Program of Action. Both the mechanisms were adopted to strengthen or establishment of regional arrangement for the promotion and protection of human rights.⁵¹⁵ Sixth, the Amman conference has suggested the establishment of Asia Pacific forum of National Human Rights Institution (APF) to support all independent national institutions in the region.⁵¹⁶ Seventh, Doha conference in 2004 highlighted steps which were taken by the Arab league, ASEAN and SAARC to reinforce regional or sub regional activities for the protection and promotion of human rights.⁵¹⁷

Though, the UN has taken several initiatives for the establishment and strengthening of human rights mechanism in the Asia pacific region. Still, there is no progress in establishing regional human rights mechanisms. In fact, there are many conferences which are identified as obstacles in establishing human rights institutions. These obstacles are mainly in the vastness and diversity of the Asian region, the inadequate

⁵¹³ UN General Assembly, Regional Arrangements For The Promotion And Protection Of Human Rights : resolution / adopted by the General Assembly, 18 December 1990, A/RES/45/167, Accessed 10 October 2016 URL: <http://www.refworld.org/docid/3b00efe550.html>

⁵¹⁴ UN Commission on Human Rights, Regional arrangements for the promotion and protection of human rights in the Asian and Pacific region., 4 March 1994, E/CN.4/RES/1994/48, Accessed 12 October 2016 URL: <http://www.refworld.org/docid/3b00f0c328.html>

⁵¹⁵ UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23, Accessed 10 October 2016, URL: <http://www.refworld.org/docid/3ae6b39ec.html>

⁵¹⁶ Sou Chiam, *Supra* note, 509 at, p. 130

⁵¹⁷ *Ibid*, at, p. 135

ratification of human rights treaties, the debate on the Asian values and most importantly the state sovereignty that is non-interference in the domestic activities of a state. The following section will analyses how the above-mentioned obstacles are hindering the progress of establishing human rights' mechanism in the Asian region.

3.1. The 'Asian Value' Debate

The concept of 'Asian Value' is used to defend the Asian states' sovereignty and challenging the Western originated ideas of Universality of Human Rights by opposing international human rights system. This debate has got into limelight in the 1993 World Conference on Human Rights (Vienna conference), where officials from the Asian and Western countries had entered into a tug of words on the issues of universality and interdependence of civil, political rights and economic, social and cultural rights.⁵¹⁸ Though, the Asian value debates arose in 1990, the origin of resistance to the Western ideology can be seen in the 1955 Bandung Conference of non-aligned state. It played an important role in strengthening the Third World identity.⁵¹⁹

Asian values assert that the international human rights' norms are Western origin and do not fit in the Asian culture and society.⁵²⁰ In addition, it also holds the opinion that the global human rights regimes are largely embedded in the Western culture and its principles such as individualism, liberal democracy and free trade regime puts the Third World countries in a disadvantageous position that ultimately will help in promoting and protecting Western countries' interest and ideals.⁵²¹ In contrast to the above argument, the supporter of 'universality of human rights' argues that human rights standards which are defined in various UN conventions have universal character. Since human rights are derived from the dignity and are inherited in the human race, they apply to all people regardless of their culture and tradition.⁵²² In addition, critics of Asian value concept

⁵¹⁸Vienna Declaration, *Supra* note, 115

⁵¹⁹ Lumumba K Tukumbi (2015)"Rethinking the Bandung Conference in an Era of 'Unipolar Liberal Globalization and Movements toward a 'Multipolar Politics'" *Journal of the Global South*, 2 (1): p. 9.

⁵²⁰ Ben Golder (2014) "Beyond Redemption? Problematizing the Critique of Human Rights in Contemporary International Legal Thought" *London Review of International Law*, 2 (1): pp. 80 -82

⁵²¹ *Ibid*, at, p. 84

⁵²² Tew, Yvonne. (2012) "Beyond Asian Values: Rethinking Rights, Accessed 12 October 2016, URL: <https://www.repository.cam.ac.uk/handle/1810/245115>

argues that the Asian countries are in the name of values and culture defending their poor human rights' records and are also lacking human rights mechanism in the region.

3.2. State Sovereignty

The concept of sovereignty is another reason for ineffective implementation of international human rights' norms. Asian countries are of the view that the defense of human rights falls under duty of state and uphold the principles of non-interference in the internal affairs of state.⁵²³ The Bangkok Declaration on human rights states that the Asian countries will continue to stress the importance of state autonomy and non-intervention in domestic affairs.⁵²⁴ The reason for Asian countries to strongly uphold the "principles of non-intervention" into the domestic affairs of state is the historical exploitation by West of the Asian countries. After the de-colonization process, the intervention is not stopped because the western countries in the name of protection of human rights are still intervening into the internal affairs of states that results into the destability of the government in the developing countries.⁵²⁵

For instance, the ongoing conflict in the West Asia and North Africa countries is the best example to show how the western countries will get benefit out of human rights crisis in the developing countries. In fact, there many countries in the Asian region which will not allow international institutions or the monitoring agencies to investigate the cases of human rights violations because of fear of politicization by international humanitarian organizations.⁵²⁶ For instance, the Sri Lanka government did not allow international human rights agencies to conduct probe on human rights violations.⁵²⁷ These kind of

⁵²³ Pisanò, Attilio, (2014) "Human Rights and Sovereignty in the ASEAN Path Towards a Human Rights Declaration" *Human Rights Review*, 15 (4): pp. 390-391

⁵²⁴ Joanne Bauer (1996) Dialogue on Human Rights Human Rights Dialogue 1.4 Accessed 11 October 2016, URL: https://www.carnegiecouncil.org/publications/archive/dialogue/1_04/articles/518

⁵²⁵ Sridhar Dabiru Patnaik (2013) "International Law and Responsibility to Protect: South Asian Perspective" Accessed 5 October 2016, URL: http://global-studies.doshisha.ac.jp/attach/page/GLOBAL_STUDIES-PAGE-EN-73/80565/file/OS2013_10.pdf, pp. 173-174

⁵²⁶ Cedric Ryngaert (2013) "Humanitarian Assistance and the Conundrum of Consent: A Legal Perspective." *Amsterdam Law Forum* 5 (2): P. 6-7, also see, Jonathan Whittall (2015) "Is Humanitarian Action Independent from Political Interest?" *International Journal on Human Rights*, 12 (21) : pp. 1-4

⁵²⁷ Human Rights Watch (2008) "Besieged, Displaced, and Detained The Plight of Civilians in Sri Lanka's Vanni Region," Accessed 10 October 2016, URL: <https://www.hrw.org/report/2008/12/23/besieged-displaced-and-detained/plight-civilians-sri-lankas-vanni-region>

incidents will hamper the progress of Asian regional human rights regime. Although, the Asian countries consider international human rights regime as a threat to their sovereignty, in recent years, there has been a tremendous improvement in active participation by governments in the implementing UN human rights system.

3.3. Inadequate Ratification of International Human Rights Treaty

It is requisite for any country in the Asian region to ratify the international human rights treaties to build regional human rights mechanism in the region. Unfortunately, the Asian countries are lagging behind in ratifying international human rights treaty.⁵²⁸ Many countries in this region have not yet ratified key human rights treaties such as international covenant on economic, social and cultural rights, international Covenant on civil and political rights, the convention on the elimination of all forms of discrimination against women, convention against torture and other cruel, inhuman and degrading treatment or punishment etc.

The Asian countries over the years have transformed their position for ratifying international human rights treaties. For instance, China became party to four core human rights treaty these are CERD, CEDAW, CAT and CRC.⁵²⁹ In addition, many countries in this region are also in the process of ratifying the human rights treaties.⁵³⁰ To conclude these are three main issues creating hurdle in building human rights regime in the Asian region. The following section will identifies the existing human rights mechanism in the Asian region.

4. Existing Human Rights mechanism in Asia and Its Sub Regions

As mentioned earlier, no human rights mechanism existed at the regional level in Asia but the sub-regions such as ASEAN and SAARC have adopted different human rights

⁵²⁸ Asian Forum for Human Rights and Development (2006) Asian Governments Must Ratify Treaties, Remove Reservations, Report And Remedy Rights Violations, Accessed 17 October 2017, URL: <https://www.forum-asia.org/?p=6950>

⁵²⁹ Human Rights Watch (2013) 'China: Ratify Key International Human Rights Treaty Credibility of Rights Council Campaign at Issue', Accessed 12 October 2016 URL: <https://www.hrw.org/news/2013/10/08/china-ratify-key-international-human-rights-treaty>

⁵³⁰ Demystifying Human Rights Protection in Asia (2015) Background Paper, Accessed 21 October 2016 URL; <https://www.fidh.org/IMG/pdf/asie669anglaisbassdef.pdf> , pp. 7-10

standards to protect the human rights of people in their respective regions. The growing interest of Asian state to adopt regional declaration, policies and ratification of the international human rights standard is an unprecedented step in protecting the human rights of the people in the region. The establishment of human rights' device in the region positively will aid in refining the condition of IDPs. The following section will identify the human rights' instruments which are adopted by the Asian sub regional groups such as ASEAN AND SAARC.

4.1. ASEAN Region Human Rights Mechanism

The ASEAN as a sub-regional group leads to a campaign to build human rights mechanism in the region. It includes: ASEAN human rights declaration, ASEAN Declaration against Trafficking in Persons, Particularly Women and Children, ASEAN Declaration on the Protection and Promotion of the Rights of Migrants Workers, ASEAN Commission on the Promotion and Protection of Rights of Women and Children, ASEAN Inter-Governmental Commission on Human Rights etc.

4.1.1. ASEAN Human Rights Declaration

The adoption of the ASEAN Human Rights Declaration is a significant milestone for ASEAN.⁵³¹ The general principles of this declaration made it clear that the each provision of this declaration contributes to the promotion and protection of human rights of IDPs.⁵³² The main principles of this declaration are: first, all individual are entitled to the rights and freedom provided in the declaration without any discrimination based on race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status.⁵³³

Second, persons rights are recognized by the law.⁵³⁴ Third, every person is equal before the law.⁵³⁵ Fourth, they all have equal protection of law without discrimination.⁵³⁶ Fifth,

⁵³¹ Association of Southeast Asian Nations (2012), ASEAN Human Rights Declaration, 18 October 2016, URL: <http://www.refworld.org/docid/50c9fea82.html>

⁵³² *Ibid*, at, Preamble, Para 2

⁵³³ *Ibid*, at, General Principles, 2

⁵³⁴ *Ibid*, at, General Principles, 3

⁵³⁵ *Ibid*, at, General Principles, 3

⁵³⁶ *Ibid*, at, General Principles, 3

the rights of women, children, elder, persons with disability, migrants' workers, and vulnerable and marginalized group are inalienable, integral and indivisible part of human rights and fundamental freedom.⁵³⁷ These provisions are to be independently interpreted to promote and protect the rights of IDPs.

4.1.2. ASEAN Declaration against Trafficking in Persons, Particularly Women and Children⁵³⁸

This declaration is also one of the significant aspect in authorizing the rights of women and children in ASEAN region. The declaration mainly recognizes the seriousness of the issues, the regional nature of the problems and regional commitment to deal with them. The declaration mandates the member states to adhere to their domestic legislations while adopting the provisions of this declaration. However, in terms of implementation of this declaration, ASEAN still has to take a strong step because of its newly founded mechanisms. The main provisions of this declaration are included:

First, it requires a comprehensive regional approach for IDPs particularly women and children.⁵³⁹ Second, it must strengthen legislative, law enforcement and judicial replies to safeguard preventive act against the persons who are tangled in individual or syndicated activities of human trafficking.⁵⁴⁰ Third, states to safeguard their respective passports, official travel documents, identity and other official travel documents from fraud.⁵⁴¹ Fourth, take continuous exchange of views, information sharing on relevant migratory flows, trends and pattern, consolidation of border controls and monitoring mechanisms, and the representation of appropriate and essential regulations.⁵⁴² Finally, to take actions

⁵³⁷ *Ibid*, at, General Principles, 4

⁵³⁸ Association of SouthEast Asian Nations (2004) 'ASEAN Declaration Against Trafficking in Persons Particularly Women and Children,' Accessed 12 October 2016 URL: <http://hrlibrary.umn.edu/research/Philippines/ASEAN%20Declaration%20Against%20Trafficking%20in%20Persons%20Particularly%20Women%20and%20Children.pdf>

⁵³⁹ *Ibid*, at, Preamble, Para, 3

⁵⁴⁰ *Ibid*, at, Preamble, Para, 4

⁵⁴¹ *Ibid*, at, General Principles, 2

⁵⁴² *Ibid*, at, General Principles, 2

to reinforce regional and international cooperation to avert and combat trafficking in persons.⁵⁴³

All the above mentioned provisions will help in addressing the problems of internally displaced women and children in the Asia and particularly in the South East Asian region.

4.1.3. ASEAN Declaration on the Protection and Promotion of the Rights of Migrants Workers

The issue of labor migration has also been a major concern in South East Asia. In 2007, with the inspiration of the Philippines states, ASEAN adopted the “ASEAN Declaration on the Protection and Promotion of the Rights of Migrant’s Workers”.⁵⁴⁴ The declaration mainly framed in the context of rights-based approach to migrations.⁵⁴⁵ In addition, the treatment of migrants workers in accordance with the laws, regulations and policies of their respective ASEAN member countries as stipulated under preamble of this declaration.⁵⁴⁶ The weakness of this declaration is that it does not provides security and protection for irregular migrants workers in the ASEAN region and therefore, this declaration fails to provide a common approach to labor migration, low and semi-skilled labor migrants which are most vulnerable and are forced to migrate out of necessity. Though, the declaration does not contain the provisions which are relevant to the IDPs, indirectly, it helps in addressing the plights of IDPs because of the awareness of the human rights’ instruments in the region.

⁵⁴³ *Ibid*, at, General Principles, 8

⁵⁴⁴ Association of South East Asian Nations (2007) ‘*ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers*’, Accessed 14 October 2016, URL: <http://www.ilo.org/dyn/migpractice/docs/117/Declaration.pdf>

⁵⁴⁵ Different Streams, Different Needs and Different Impacts: Managing International Labor Migration in ASEAN (2012) ‘*Enhancing the Protection and Promotion of Migrant Workers’ Rights in ASEAN*’, Accessed 12 October 2016, URL : <http://dirp4.pids.gov.ph/ris/pn/pidspn1207.pdf>

⁵⁴⁶ Joseph Wah ‘Is Asean Closer To Legal Protection Of The Rights Of Migrant Workers? Accessed 20 October 2016, URL: <http://aseanpeople.org/is-asean-closer-to-legal-protection-of-the-rights-of-migrant-workers/>

4.1.4. ASEAN Commission on the Promotion and Protection of Rights of Women and Children (ACWC)⁵⁴⁷

The establishment of the ACWC in April 2010 was started by the adoption of the “Hanoi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children”, adopted by ASEAN leaders in October 2010.⁵⁴⁸ By affirming different ASEAN declarations on children, this commission aims to strengthen ASEAN’S commitment to ensure that women and children must benefit fully from ASEAN human rights institutions.⁵⁴⁹ The 2010 Hanoi Declaration, which focuses on the welfare and well-being of children, has few provisions that promote cooperation in promoting and protecting the rights of women and children, especially, those who are living under disadvantage and vulnerable conditions including those who are in disaster and conflict affected areas. However, the declaration is one of the major initiatives of ASEAN regions’ efforts to guarantee human rights’ and internally displacement of women and children who are also the entitled these rights.

4.1.5. ASEAN Inter Governmental Commission on Human Rights (AICHR)⁵⁵⁰

The founding of the ASEAN Intergovernmental Commission on Human Rights in 2009 represented a major step towards the protection and promotion of human rights. The key purpose of AICHR is to assist ASEAN in confirming the purposes and principles of the ASEAN Charter which is relating to the protection and promotion of human rights and fundamental freedom.⁵⁵¹

⁵⁴⁷ Association of Southeast Asian Nations, (2010) ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, Accessed 20 October 2016, URL: <http://www.refworld.org/docid/4ec3e2822.html>

⁵⁴⁸ Association of Southeast Asian Nations, (2010) HA NOI Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children Adopted by Heads of States at the 17th ASEAN Summit in Ha Noi, Vietnam, 18 October 2016 URL: <https://cil.nus.edu.sg/rp/pdf/2010%20Ha%20Noi%20Dec%20on%20the%20Enhancement%20of%20Welfare%20and%20Development%20of%20ASEAN%20Women%20and%20Children-pdf.pdf>

⁵⁴⁹ Human Rights Resource Centre Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study, 18 October, 2016, URL: http://www.eastwestcenter.org/sites/default/files/filemanager/Research_Program/Politics_Governance_and_Security/AIJI/Women%20and%20Children_BASELINE%20STUDY%20VOL%201.pdf

⁵⁵⁰ Association of Southeast Asian Nations (2009) ‘ASEAN Intergovernmental Commission on Human Rights’, 18 October, 2016, URL: <http://www.refworld.org/docid/4a6d87f22.html>

⁵⁵¹ *Ibid*, at, Principles 1.3

The AICHR as ASEAN charter based body has mandated to promote and protect human rights of all ASEAN people.⁵⁵² In addition, the AICHR, apart from dealing with human rights, it will also have an duty to promote and protect the human rights of all groups within the ASEAN region.⁵⁵³ It includes, IDPs and other such categories. Although, the AICHR is considered as an important body of ASEAN, criticisms have been made against this commission, which includes that the body does not have an explicit mandate to perform as a protection mechanism. The scholars are of the view that the critics evaluation against the commission is only based on a factual basis and if the representative of AICHR is preferred, the mandate of commission can be modified.⁵⁵⁴ For example, the AICHR could encourage ASEAN members to consider acceding and ratifying international human rights instruments. The AICHR could also pursue to get information from member countries on the protection and promotion of human rights.⁵⁵⁵ In addition, the AICHR could also conduct thematic studies relating to human rights in ASEAN.⁵⁵⁶ The above mentioned human rights mechanisms in the ASEAN region and their activity in the protection of human rights of people has a tremendous impact on improving the condition of IDPs in the South East Asian region.

4.2. SAARC Sub Regional Human Rights Mechanism

Apart from the ASEAN, SAARC is the other sub-group in the region, established in 1985 with a great hope of promoting sub-regional cooperation among the south Asian countries.⁵⁵⁷ The countries of South Asia face enormous challenges such as poverty, under development, and conflict within and among themselves. In addition, the whole region has been grappling with the human rights violations. Unfortunately, the governments in the region lack effective initiatives and political commitments to address the problems of human rights violations in general and the problems of IDPs in particular.

⁵⁵² *Ibid*, at, Principles 2.1

⁵⁵³ *Ibid*, at, Principles 4.1

⁵⁵⁴ Asplund, André (2014) "ASEAN Intergovernmental Commission on Human Rights: Civil Society Organizations' Limited Influence on ASEAN." *Journal of Asian Public Policy* 7 (2) : pp. 191-192

⁵⁵⁵ *Ibid*, at, Principles, 4

⁵⁵⁶ *Ibid*, at, Principles, 4.12

⁵⁵⁷ Iqbal, Muhammad Jamshed, (2006) "SAARC: Origin, Growth, Potential and Achievements." *Pakistan Journal of History and Culture* 27 (2) : p. 127

In these circumstances, many questions need to be considered, such as, has SAARC achieved anything since its existence? and why the SAARC region unlike the other regions is most backward in terms of human rights mechanism?.⁵⁵⁸ No doubt, SAARC had adopted many regional instruments such as social charter, convention on trafficking and also convention on child. However, despite of these human rights instruments, the situation in the region has not improved.⁵⁵⁹ In addition, South Asia region is also facing problems of internal displacement which needs to be addressed.⁵⁶⁰ The following section analyses the existing human rights instruments in SAARC region and its impact on IDPs.

4.2.1. SAARC Social Charter

The SAARC's 'Social Charter' is an ambitious document which was adopted to give a regional dimension to already existing national plan of action for the social sector in member countries.⁵⁶¹ The 'Social Charter' is hailed as one of the most important document for the safety of human rights. This text was finally signed in the 12th summit in Islamabad in 2004. The main objectives of this charter are poverty eradication, empowerment of women, human resources development, promotion of health and nutrition and protection of children.⁵⁶² The preamble of the social charter reaffirms that the "principle goal of SAARC is to promote the welfare of people of South Asia, improve their quality of life, accelerate economic growth, social progress and cultural development, and to provide all individuals the opportunity to live with dignity and to realize their full potential".⁵⁶³ In addition, the Social Charter makes a broad commitment to uphold human rights in South Asia by stating that one of its main aims is to endorse worldwide respect for the adherence, safety of human rights and fundamental freedom for

⁵⁵⁸ Asian Forum for Human Rights and Development (2013) "SAARC and Human Rights: Looking Back and Ways Forward" Accessed 12 October 2016, URL: http://www.forum-asia.org/uploads/books/SAARC_PR_body_final.pdf

⁵⁵⁹ Basnet Gyan (2013) "A New Identity for SAARC: Establishing a Regional Human Rights Mechanism, South Asian for Human Rights" Accessed 15 October 2016, URL: <http://www.southasianrights.org/?p=5435>

⁵⁶⁰ Banerjee, Paula. (2006) "IDP Protection at the National Level in South Asia," *Forced Migration Review, Special Issue: Putting IDPs on the Map: Achievements and challenges-in commemoration of the work of Roberta Cohen*, pp. 18-20. Accessed 15 October 2016, URL: <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/BrookingsSpecial/11.pdf>

⁵⁶¹ South Asian Association for Regional Cooperation, (2004) 'Social Charter' URL: <http://www.jus.uio.no/english/services/library/treaties/02/2-03/saarc-social-charter.xml>

⁵⁶² SAARC Social Charter, Supra note, Article 2

⁵⁶³ *Ibid*, at, Preamble

all, particularly, the rights to development, the actual exercise of rights and the emancipation of responsibility in a balanced manner.⁵⁶⁴

Apart from the above-mentioned provisions, the charter also addresses specifically the plight of the homeless in South Asia.⁵⁶⁵ In addition, Article 4 of the charter contains the provisions of health and requires state parties' to coordinate for effectively addressing the health problems in South Asia.⁵⁶⁶ The charter also states that the need for a concerted efforts to exchange scholars in the region as a way of promoting mutual understanding and knowledge sharing. The charter also has given more weightage to the empowerment of women and children.⁵⁶⁷ Hence, the charter is considered as one of the important document on human rights in the SAARC region. In addition, the charter recognized the people of diverse culture, beliefs, and tradition and also supporting their economic and social development with respect to their identity, tradition, forms of social organization and cultural values. Hence, the SAARC social charter can be seen as a potential foundation tool for South Asian regional human rights' initiative in the future. However, the real progress depends on the political will of the heads of member government.

4.2.2. SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution.

In January 2002, the SAARC members met at Kathmandu, where they adopted the convention on preventing and combating trafficking in women and children for prostitution.⁵⁶⁸ The convention is acclaimed as significant step forward for combating and moving SAARC towards a greater role in human rights. In fact, it was the first treaty in Asia to address human trafficking and also first regional treaty of its kind.⁵⁶⁹

⁵⁶⁴ *Ibid*, at, Article 2(12)

⁵⁶⁵ *Ibid*, at, Article 3.5

⁵⁶⁶ *Ibid*, at, Article 4

⁵⁶⁷ *Ibid*, at, Article 6 and 7

⁵⁶⁸ South Asian Association for Regional Cooperation (2002) 'SAARC Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution', Accessed 20 October 2016 URL: <http://www.jus.uio.no/english/services/library/treaties/02/2-04/saarc-traff-women-children.xml>

⁵⁶⁹ United Nations Children's Fund (2009) South Asia in Action: Preventing and Responding to Child Trafficking Analysis of Anti-Trafficking Initiatives in the Region. Accessed 22 October 2016 URL: https://www.unicef-irc.org/publications/pdf/ii_ct_southasia_analysis.pdf

The convention has established trafficking of women and children for prostitution as a violation of basic human rights.⁵⁷⁰ After a preamble, article 1 of this convention began with set of definitions in which Child is defined as “a person who has not attained the age of 18 years.”⁵⁷¹ “Prostitution” is defined as the “sexual exploitation or abuse of persons for commercial purpose”⁵⁷² “traffickers” is referred to a “person, agency or institutions which are engaged in any form of trafficking.”⁵⁷³ The convention also defines Article 1.3 which states that “trafficking means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other consideration with or without the consent of person who is subjected to trafficking.”

The main critics of SAARC’s convention on trafficking are the definition on “trafficking.” This is because by defining trafficking victims as only women and children for prostitution, the convention confuses trafficking with prostitution and is, thus, unable to extend itself to the myriad other forms of trafficking that occur in the south Asian region. In addition, the convention’s definition also criticizes for the lack of gender inclusiveness by ignoring the trafficking of men. Though, the convention was criticized, the several provisions of the convention are still considered as progressive. This is because during the situations of displacement, women and children are the most who suffer and effective implementation of this convention certainly helps to address the problems of displaced women and children.

4.2.3. The SAARC Convention on Regional Arrangement for the Promotion of Child Welfare in South Asia

The Convention on Regional Arrangement for the Promotion of Child Welfare in South Asia along with the convention on trafficking was adopted by the heads of states of the then seven SAARC members at the eleventh SAARC summit in Kathmandu on the 5th January 2002.⁵⁷⁴ The main purpose of the convention is to facilitate and help in

⁵⁷⁰ SAARC Convention, *Supra* note, at 567

⁵⁷¹ *Ibid*, at, Article, 1 (1)

⁵⁷² *Ibid*, at, Article, 1 (2)

⁵⁷³ *Ibid*, at, Article, 1 (3)

⁵⁷⁴ SAARC (2002) “SAARC Convention on Regional Arrangement for The Promotion of Child Welfare in South Asia” Accessed 12 October 2016, URL:http://saarc-sec.org/digital_library/detail_menu/saarc-convention-on-regional-arrangements-for-the-promotion-of-child-welfare-in-south-asia

development and protection of the South Asian children with understanding of the rights, duties and responsibilities. It is also to establish a suitable regional arrangement to promote the member states in enabling, fulfilling and protecting the rights of the child and also taking into account the varying essential of child.⁵⁷⁵

The SAARC convention on child welfare is essentially a regional affirmation of commitment of the member states under the United Nations Convention on the Rights of the Child.⁵⁷⁶ The goal of this convention is to add regional dimension to their multilateral obligations under the treaty to set up an “appropriate regional arrangement” for better implementation of these obligations. The SAARC convention like the UN Convention on Child, requires its signatories to pursue a national program of action to implement the conditions of the convention. Its regional arrangements include, facilitating “human resources development through planned annual schedule of SAARC with an advanced training program on child rights, by promoting greater awareness on nutrition, mass education and adequate training.”⁵⁷⁷ The SAARC Convention on Child has prominent role in the Asian region in general and South Asian region in specific in embark upon the problems of children during displacement. In fact, the South Asian region has one of the worst records of human rights violations of children. Nevertheless, the SAARC Convention is in the right direction to address the human rights’ violations of children.

Apart from the above human rights instruments, the “Charter of Democracy” was approved by the SAARC Standing Committee in February 2011.⁵⁷⁸ This document proposes that the member states should pledge themselves to foster democracy and good governance. In addition, the charter also argues a member state to focus on institutional mechanism to oversee the principles of the charter of democracy.

In addition, in order to tackle the problem of food shortage in the South Asian nations, the “Agreement on establishing the SAARC Food Bank was signed in Delhi on April

⁵⁷⁵ *Ibid.*, at, Article, 4 (3)

⁵⁷⁶ *Ibid.*, at, Article, Preamble

⁵⁷⁷ *Ibid.*, at, Article, 5(b)

⁵⁷⁸ SAARC (2011) “SAARC Charter of Democracy” Accessed 12 October 2016, URL:<http://www.internationaldemocracywatch.org/index.php/saarc-treaties-and-protocols/437-saarc-charter-of-democracy>

2007.⁵⁷⁹ The agreement essentially has two objectives, firstly, to act as a regional food security reserves for the SAARC member countries during normal times, food shortages and emergency. Second, to provide regional support to national food security efforts, foster inter country partnership, regional integration and tackle regional food shortages through collective action. In addition, action plan on climate change to combat the impact of climate change on the south Asian region was adopted in July, 2008.⁵⁸⁰ All these human rights instruments certainly will fill the legal and institutional gaps in protection of IDPs in the region.

5. Developing Effective Regime for IDPs in Asian Region

As stated earlier, unlike the other region such as Africa, the Asian region is very weak in terms of having regional laws for addressing the problems of IDPs. Asian region and especially the south Asian region has seen enormous increase in the number of displacement due to developmental projects, conflict and other human rights violations. Thus, it has required an urgent need for regional as well as domestic legislation on IDPs.

The internal displacement issues need to be addressed not only by the international community but also at the national and regional levels. The problems of IDPs, unlike the refugee, need to be addressed by their own countries. Unfortunately, in many instance, where one of the key perpetrator responsible for their displacement is the state and it is also simultaneously, responsible for their care and support. In these situations, there is a necessity to have legal framework or the policy instruments at the regional level to address the problems of IDPs. Since the Asian region lacking legal instruments on IDPs, the present study examine the relevance of international and other regional human rights mechanisms to protect the Asian IDPs.

The following section will analyse the existing international and regional law on IDPs and their relevance to the Asian region for improving the condition of IDPs.

⁵⁷⁹ SAARC (2007) "Agreement on Establishing the SAARC Food Bank," Accessed 12 October 2016, URL: <http://www.ifrc.org/Docs/idrl/N646EN.pdf>

⁵⁸⁰ SAARC (2007) "SAARC Action Plan on Climate Change" Accessed 12 October 2016, URL: <https://www.scribd.com/document/239263132/SAARC-Action-Plan-on-Climate-Change>

5.1. Relevance of International Human Rights Regime

The international human rights system plays an indispensable role in the protection of human rights. The most important role of the regime is to exert pressure on the national authorities to adopt human rights mechanism in their domestic jurisdiction.⁵⁸¹ In fact, recently, the space of international law has enlarged many folds due to the acceptance of several international treaties and snowballing number of customary international law. The number of bodies which are in charge of human rights have also increased. Thus, these developments have a very positive impact on the region like Asia where there are no regional human rights mechanisms exist.⁵⁸²

The UN bodies and its mechanisms' influence on the Asian state can be seen in the following way:

- First, a UN body frequently adopts resolutions that concerns Asian states. The Security Council Resolutions are lawfully obligatory and can lead to approval, in fact, the Security Council in its resolutions has recommended for effective protection of IDPs.⁵⁸³ In addition, the judgments are passed by the ICJ which are obligatory on states that have acknowledged its authority which also trace upon the human rights law. The determinations which are accepted by the General Assembly or by the Human Rights Council however not legally binding. Nevertheless, they are important because no state likes to be condemned by the international community for their non-serious attitudes toward international human rights regime.⁵⁸⁴
- Second, if we look at the means through which resolutions on Asian countries are constructed, it shows that the control of UN is prominent. Lately, even Burma has authorized visits of the UN Special Rapporteur in the country. It also, simultaneously, unlocked discourse with the international community.

⁵⁸¹ Donnelly, Jack, (1986) "International Human Rights: A Regime Analysis." *International Organization*, 40 (3) : p. 599

⁵⁸² Risse, Thomas, and Kathryn Sikkink (1999) "The Socialization of International Human Rights Norms into Domestic Practices: Introduction." *Cambridge Studies in International Relations*, 66: pp. 15-18

⁵⁸³ Brookings Security Council Resolutions, *Supra* note

⁵⁸⁴ Donnelly, Jack, *Supra* note, at 580 p. 602

- Third, the OHCHR has comprehensive activity and interaction with the national authorities has authenticated human rights to provide the examination of countries' conditions normal. The physical and thematic categorizations of the OHCHR negotiate with governments and civil society organizations. The reports, communications, letters and other documents which are published by OHCHR, as well as the public pronouncements and visits of the High Commissioner, all donate to employ continuous compression on states. The guidelines that are established by OHCHR, including those regarding NHRIs, have a straight impact on the legality and reliability of institutions. These institutions are recognized by states.
- Fourth, interactions between OHCHR staff and civil society representatives are indispensable for documenting conditions and give supportive effect to reduce the risk of reprisals for the IDPs. Finally, the bodies which are accountable for monitoring the application of treaties (treaty bodies) have an cumulative influence on Asian states.⁵⁸⁵

Currently, there are ten such bodies. Those states that ratify or accede to a treaty bound to follow it and report on the implementation measures. The states also appear before the competent bodies to submit the report and answer the questions asked by the bodies. Treaty body members extant their conclusions and recommendations in the form of a 'concluding observations'.⁵⁸⁶ The treaty body mechanism deliberated in detail in the chapter 6.

Fifth, HRC special measures include autonomous experts in charge of specific countries and have a rising effect on the exercise of human rights in Asia. Subsequently, needs for special procedural visits are snowballing. Finally, the Universal Periodic Review (UPR) device was recognized by the Human Rights Council which applies to all states. The state sovereignty now no longer delivers protection from inspection. States are answerable for the way they endorse and guard human rights.

⁵⁸⁵ Heyns, Christof H., and Frans Viljoen, eds (2002) *The Impact of the United Nations Human Rights Treaties on the Domestic Level*. Martinus Nijhoff Publishers, p. 20

⁵⁸⁶ Ibid, at, p 22

From the above analysis it can be determined that the Asian region's speedy attention in imbedding international human rights regime plays a very imperative role in protection and promotion of human rights in the Asian region. The IDPs also get advantage out of this expansion.

5.2. Relevance of Guiding Principles on IDPs

Apart from the international human right regime, the wide acceptance of GPs at the international, regional and national level plays an important role in the Asian region as well. At the international level, the UN General Assembly and Security Council resolutions have mentioned the GPs.⁵⁸⁷ In addition, the international organizations such as UNHCR⁵⁸⁸ and ICRC⁵⁸⁹ used the GPs in their work. In 2005, the world summit recognized the guiding principles as important international legal document on IDPs.⁵⁹⁰

In addition, at the regional level, the Principles aided as a substance for the expansion of obligatory law on internal displacement. In Africa, the 11 states in the Great Lakes Region had accepted a Protocol in 2006. It obliged its member states to accept the Guiding Principles as a regional framework and integrate their requirements into domestic law.⁵⁹¹ In 2009, 53 African states adopted the legally binding Kampala Convention, which came into force in December 2012.⁵⁹² Its provisions, some of which are based on the Guiding Principles, oblige states to take concrete measures on the ground to improve conditions for IDPs. In addition to the above, the Principles are interpreted into national law. Since the late 1990s, a small but increasing number of governments to date, more than 20 countries have commenced to develop strategies and laws which are founded on the Principles and are straightly merged the Principles into their national laws.⁵⁹³

⁵⁸⁷ *Ibid*

⁵⁸⁸ Diagne, Khassim, and Hannah Entwisle, (2008) "UNHCR and the Guiding Principles," *Forced Migration Review*, 31(1) : pp. 33-34

⁵⁸⁹ ICRC (2006) "ICRC Position On Internally Displaced Persons," Accessed 23 October 2016, URL: https://www.icrc.org/eng/assets/files/other/2006_idps_en_icrcexternalposition.pdf

⁵⁹⁰ Roberta Cohen, *supra* note, at 587

⁵⁹¹ Great Lake Protocol, *Supra* note, 7 at p. 16

⁵⁹² African Union Convention, *Supra* note, 53

⁵⁹³ Roberta Cohen, *Supra* note, 3 at p. 458

Unfortunately, though the GPs have been internationally accepted an effective framework for the IDPs, the Asian region failed to utilize its provision. The Asian region rejected the GPs because of the issues of the sovereignty and non-intervention into the internal affairs of the Asian countries.⁵⁹⁴ Today, Asian countries are hosting highest number of IDPs in the world and lacking legal framework on IDPs, causing enormous injustice to the plight of IDPs. Hence, the Asian region like the Kampala Convention and Great Lake Protocol must adopt regional convention on IDP in line with the GPs.

5.3. Relevance of Kampala Convention :

The Kampala convention fulfills the needs of regional legal mechanism of IDPs. The successes of this convention made the other regions to adopt their own conventions on IDPs. Some of the provisions of the Kampala convention directly address the problem of IDPs in the Asian region. For instance, the Convention advances the normative framework on internal displacement in significant ways by addressing the role of armed groups, who are in many instances major drivers of internal displacement.⁵⁹⁵ The Convention articulates the responsibilities of these groups without conferring legitimacy on them. In addition, its provisions on armed groups, makes important normative progress by addressing the responsibilities of the broader category of non-state actors. It may be involved in causing and responding to displacement, such as, corporations and other agents are involved in the development or business projects that force people from their homes.⁵⁹⁶ A further innovative dimension of the Kampala Convention is its strong focus on partnership between AU Member States, the AU Commission, international organizations, and civil society in support of improved protection and assistance for

⁵⁹⁴ Roberta Cohen (2004) "Statement Before the Asia Society on Internal Displacement in Burma" Accessed 23 October 2016, URL:<https://www.brookings.edu/on-the-record/statement-before-the-asia-society-on-internal-displacement-in-burma/>

⁵⁹⁵ Katinka Ridderbos (2011) "The Kampala Convention and obligations of armed groups," *Forced Migration Review* 37: p. 36. Accessed 5 October 2016, URL: <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/non-state/36-37.pdf>,

⁵⁹⁶ Megan Bradley and Mike Asplet (2012) 'Strengthened Protection for Internally Displaced Persons in Africa: The Kampala Convention Comes Into Force' Accessed 9 October 2016, URL: <https://www.brookings.edu/articles/strengthened-protection-for-internally-displaced-persons-in-africa-the-kampala-convention-comes-into-force/>,

IDPs.⁵⁹⁷ The focus on partnership was reflected in the negotiation process itself, with many of these actors that are contributing to consultations. Other innovative dimensions of the Convention include the incorporation of detailed provisions on durable solutions to displacement,⁵⁹⁸ and states' responsibility to provide effective remedies to those who are affected by the displacement.⁵⁹⁹

Importantly, in the Kampala Convention, internal displacement is framed as an issue with critical humanitarian and development implications. The Convention makes a valuable contribution in clearly discussing the expectations of international organizations, and States' obligation to facilitate the work of international organizations. The Convention, essentially, stresses states' responsibility to enable durable solutions to displacement. This must include: upholding the right of return (where it is IDPs' preference) and an obligation that is too easily overlooked.⁶⁰⁰ The Convention has sparked the interest of actors in a range of issues in the regions by highlighting different aspects of the Kampala Convention process that may be relevant for other regions considering standard-setting activities on internal displacement. It is important to learn lessons from both the Kampala Convention and Great Lakes Protocols.

In addition, the Kampala Convention exemplifies the value of regional standards by taking a broad approach that tackles different stages and causes of displacement. This facilitates the engagement of states with a wide range of domestic circumstances. It also underscores the importance of planning for internal displacement even in stable states that do not currently face conflict. In considering all the issues which are discussed above, it can be concluded that the Kampala convention provides an effective model for the Asian region to address the problems of IDPs. Apart from international and regional legal instruments influence on Asian region, the effective utilization of existing

⁵⁹⁷ Chaloka Beyani (2006) "Recent Developments, The Elaboration of a Legal Framework for the Protection of Internally Displaced Persons in Africa," *Journal of African Law*, 50 (2) : pp. 187-188

⁵⁹⁸ IMDC (2015) 'Durable Solutions: Principles And Process' Accessed 9 October 2016, URL: <http://www.internal-displacement.org/assets/publications/2015/20150910-durable-solutions-training-package/2.Principles/2.-IDMC-DS-Module-Basic-concepts-process-and-principles-Handout.pdf>

⁵⁹⁹ Andrew Solomon (2010) "African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, Introductory Note by," *International Legal Materials*, 49 (1): p 83

⁶⁰⁰ Durable Solutions, Ibid

institutions such as national human rights institutions for the protection of IDPs is also viable option.

5.4. National Human Rights Institutions in Asia

The National Human Rights Institutions (NHRI) are recognized by the national government to promote and protect human rights within their nationwide jurisdictions. There are many countries within the Asia-Pacific region which established NHRI. Though, the establishment of human rights commissions is a step in the right direction for developing human rights regimes, the critics of governmental interference in these human rights institutions have compelled to frame an international regulation.⁶⁰¹

The NHRIs have a range of responsibilities and the most important responsibility includes the receiving complaints of human rights violations that breach national laws.⁶⁰² In addition, the NHRIs also conduct programs of community awareness, understanding of human rights, review national laws to ensure that they are consistent with international human rights standards. The NHRI plays a very important role in promoting and protecting human rights at the national level. The institution's effective functioning also fulfills the gap in human rights regime especially in Asia. As NHRI as a domestic human rights body will understand the ground reality as well as effectively preventing human rights violations in their respective countries. Apart from the initiatives which are mentioned above there are other regional initiatives that are also playing important role in creating Asian regional human rights mechanisms. In fact, the human rights NGOs have also played an important role in the expedition for human rights instrument to defend human rights in Asia. Hence, the actual utilization of NHRI to address the problems of IDPs is required immediately.

In addition to the aforementioned legal measures for improving the condition of IDPs, there are other possible solutions for better protection of the IDPs:

⁶⁰¹ UN Human Rights Council, Activities of the Global Alliance of National Human Rights Institutions in accrediting national institutions in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), 15 July 2016, A/HRC/33/34, Accessed 12 October 2016, URL: <http://www.refworld.org/docid/57f3a8e04.html>

⁶⁰² National Human Rights Institutions and Internally Displaced Persons, Accessed 16 October, 2016 URL: <https://www.brookings.edu/events/national-human-rights-institutions-a>

First, political will of governments is very important to deal with the internal displacement situation. This is because since internal displacement is the subject of state and national government, hence they have the primary responsibility and international role always come secondary so the government should not ignore the suffering of uprooted people.⁶⁰³

Secondly, the role of regional organization is very important, in the African region as stated earlier. There is a strong regional human rights mechanism that exists so as to deal with the situation of human rights violation and African region. ⁶⁰⁴ In comparison with the Africa, Asian region has very weak human right regime so in this situation the Asian regional organization such as ASEAN and SAARC must assume greater responsibility providing protection to IDPs.⁶⁰⁵

Thirdly, addressing displacement is a humanitarian as well as development issue should be considered as equally important. This is because humanitarian assistance must be delivered while other is more sustainable solution that needs to be explored, that allow communities to be self-reliant. In addition, the response to displacement should not only involve humanitarian agencies but also consider developmental approach such as provide land or property to the displaced, providing documents and so on.⁶⁰⁶

Fourthly, in order to find solution to the problems of IDPs the states must advance effective regional cooperation. This would include addressing root causes in country of origin, providing more opportunity for local integration and the strategic use of resettlement and also state must involve partnership with civil society to achieve this.⁶⁰⁷

Finally addressing the problems of IDPs is responsibility of all stakeholders involved in identifying and addressing the root causes or responding to displacement and must not be

⁶⁰³ Asia Pacific Refugee (2015) Rights Network 'Understanding and addressing root causes of displacement in the Asia-Pacific' URL: http://aprrn.info/wp-content/uploads/2015/12/Root-causes-Briefing-Paper_13122015_Final.pdf

⁶⁰⁴ Susan Kneebone, (2016) "Comparative Regional Protection Frameworks For Refugees: Norms And Norm Entrepreneurs." 153-172, Accessed 8 October 2016, URL: <http://www.tandfonline.com/doi/abs/10.1080/13642987.2016.1141499>

⁶⁰⁵ Simon Chesterman (2017) "Asia's Ambivalence about International Law and Institutions: Past, Present and Futures." *European Journal of International Law*, 27 (4): p.945

⁶⁰⁶ Cohen, Roberta. (2004) "Some reflections on national and international responsibility in situations of internal displacement," *Forced Migration in the South Asian Region: Displacement, Human Rights & Conflict Resolution*, New Delhi: Jadavpur University and Manak. 2006a. also see. *Developing an International System for Internally Displaced Persons*, *International Studies Perspectives* 7: pp. 87- 86

⁶⁰⁷ *Ibid*, at p. 88

sidelined as a state or local community responsibility, so the regional co-operational or regional mechanism is very much essential to bring real change in the life of displaced people.⁶⁰⁸

6. Conclusion

In comparison to the African region, the Asian region despite having almost an equal number of IDPs has no protection mechanism. In fact the Asian region hesitates to implement the international legal instrument on IDPs in the region due to sensitivity towards the issues of sovereignty. In the absence of a protection mechanism IDPs have to rely on international human rights instruments to which most of the Asian countries are parties.

The growing interest of the Asian countries in the international human rights regime and the evolving human rights mechanism in the ASEAN and SAARC brings the hope of improving the condition of IDPs in the Asian region. for the lack of separate legal protection is the key obstacle for IDPs to access their fundamental human rights. Therefore States should develop their national laws and policies so as to address their problems. Further states must advance their regional cooperation. This would include addressing the root causes in countries of origin, providing more opportunities for local integration and the strategic use of resettlement. States must in partnership with civil society try to give effective protection to IDPs.

⁶⁰⁸ Elizabeth Ferris, Ibid

Chapter VI

Humanitarian Assistance and Protection of Internally Displaced Persons: Role of International Institutions

Chapter VI

Humanitarian Assistance and Protection of Internally Displaced Persons: Role of International Institutions

1. Introduction

Internal displacement occurs during violent and complex crises.⁶⁰⁹ Such emergencies require multidimensional responses including humanitarian, human rights, socio-economic development, protection, assistance and cooperation from various actors nationally and internationally.⁶¹⁰ There is no one particular institution that is responsible for addressing the problems and needs of IDPs. Additionally, the scale and dynamics of such extremity are usually beyond the capacity of one single agency.

It was realized that such stalemates in the internal displacement, require action by multiple organizations even beyond the United Nations systems, counting human rights, humanitarian, and development agencies, as well as national authorities. Indeed there is an urgent need for joint collaboration and coordination among these organizations.⁶¹¹ Organizational collaboration requires teamwork that has had to be based on various mandates, expertise and operational capacities involving range of actors to guarantee a inclusive response. Although a collaborative system within UN was initially set up to address the crisis it was not well coordinated due to lack of clearly defined responsibilities.⁶¹² To bridge the gaps and maintain coordination, the Inter Agency Standing Committee (IASC) broadly reformed the structure and adopted a cluster led approach.⁶¹³

⁶⁰⁹ Global Protection Cluster (2010), *Handbook for the Protection of Internally Displaced Persons*, Accessed 25 October 2016, URL: <http://www.refworld.org/docid/4790cbc02.html>

⁶¹⁰ UN High Commissioner for Refugees (2000), *Forced Migration and the Evolving Humanitarian Regime*, 5 July, Working Paper No.20, Accessed 25 October 2016, URL: <http://www.refworld.org/docid/4ff5860e2.html>

⁶¹¹ Sheridan, Laura ME. (1999) "Institutional Arrangements for the Coordination of Humanitarian Assistance in Complex Emergencies of Forced Migration," *Georgetown Immigration Law Journal*, 14 (4) : p. 941

⁶¹² Charny, Joel R. (2005) "*New Approach Needed to Internal Displacement.*" supplement, Accessed 2 November, 2016 URL: <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR24/IDP%20Supplement/08.pdf>.

⁶¹³ McNamara, Dennis. (2006) "Humanitarian Reform and New Institutional Responses" *Forced Migration Review*, pp. 9-10 Accessed 2 November, 2016, URL: <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/BrookingsSpecial/06.pdf>

The cluster led approach ensures better guidance and responsibility in main segments where gaps in humanitarian response have been recognized.⁶¹⁴ It is aimed at ensuring partnerships among humanitarian agencies, human rights and development agencies. Both systems operate at global and country-levels and are applied to crises in natural disasters and complex emergencies.⁶¹⁵ Under this approach, agencies will be held accountable for specific aspects of the humanitarian response at the national and global levels.⁶¹⁶ Response by agencies is no longer a choice, but rather an obligation. Hence the Humanitarian Coordinator in the field had a specific agency to organize the relevant relief during crisis.⁶¹⁷ It is hoped that such an approach will not only improve predictability, timeliness, and effectiveness but will also strengthen collaborative approaches which already exist with enhanced accountability. In addition, the international NGOs, civil society organizations and the character of national human rights institutions are very much vital.

The chapter is containing five sections. Section 2 deals the role of UN and other humanitarian organizations in providing assistance to IDPs. Section 3 analyses the effectiveness of UN Collaborative Approach in providing protection to IDPs. Section 4 identifies the role and responsibility of different humanitarian organization towards IDPs under UN Cluster Approach. Final section concludes the chapter.

2. UN and other International Agencies

As the number of the IDPs have increased at the global level, there is a gap in the existing system for providing protection and assistance. The international community has started showing interest by taking responsibility of IDPs, whenever the concerned governments are incapable or unwilling to convey their tasks.⁶¹⁸ Since no single international organization existed for IDPs, an initiative was made involving a wide

⁶¹⁴ Tim Morris, (2006) "UNHCR, IDPs and Clusters" *Forced Migration Review* 25 : pp. 54-55 Accessed 2 November, 2016, URL: <http://www.fmreview.org/es/node/3523.html>

⁶¹⁵ *Ibid*, at, p. 55

⁶¹⁶ *Ibid*, at, p. 54

⁶¹⁷ *Ibid*, at, p.55

⁶¹⁸ Roberta Cohen and Jacques Cuenod, (1995) "*Improving Institutional Arrangements for the Internally Displaced: Internally Displaced Persons.*" Brookings Institution: Refugee Policy Group, Accessed 2 November, 2016, URL: <https://www.brookings.edu/research/improving-institutional-arrangements-for-the-internally-displaced/>

spectrum of organizations that took accountability for giving support and protection to the internally displaced within the restrictions of their mandates.⁶¹⁹The process started when the United Nations General Assembly (UNGA) with the General Secretary's recommendation assigned the United Nations Resident Coordinators the task of coordinating assistance to IDPs in the crisis field.⁶²⁰

The post of the Emergency Relief Coordinator (ERC) was responsible for improving the UN's response to emergency situations including IDPs.⁶²¹The ERC who is also the United Nations Under-Secretary for Humanitarian Affairs is accountable for the organization of inter-agency humanitarian act throughout multifaceted crises and natural disasters. Other duties related to the above functions included advocating for protection and assistance, assembling political and economic funding as well as updating the Security Council and appealing with governments, humanitarian agencies, and other relevant actors.⁶²²The Inter Agency Standing Committee (IASC) was established in 1992 a year after the creation of the post of ERC with the aim of supporting his work.⁶²³ The IASC's chaired by ERC whose purpose was to provide a forum that brought together the major United Nations and non-United Nations humanitarian, human rights and development partners, NGO cluster groups and the Red Cross or Red Crescent Federations. Its main role was to formulate policies, advocate and ensure coordinated and effective humanitarian responses to complex emergencies and natural disasters.⁶²⁴

The existing cross cutting areas where clusters are set up depend upon capacities needed to respond to the internally displaced. These clusters widely differ depending on the needs of the IDP's involved i.e., if food is predominantly needed, which immediately requires the attention of the World Food Programme (WFP), In other circumstances women and children might be in dire need for support, hence, UNICEF's attention comes

⁶¹⁹ *Ibid*, at, p. 8

⁶²⁰ Francis M Deng, (1994) "Internally Displaced Persons: Report of the Representative of the UN Secretary-General, Mr. Francis Deng. Commission on Human Rights, January 1994." *International Journal of Refugee Law*, 6(2) : pp. 291-292

⁶²¹ Catherine Phuong (2005), "The Office of the United Nation High Commissioner for Refugees and Internally Displaced Persons" *Refugee Survey Quarterly*, 24 (3) : p. 71

⁶²² IASC Handbook for the Protection of IDPs

⁶²³ *Ibid*

⁶²⁴ Brookings Institution Refugee Policy Group on Internal Displacement

into the picture. During the humanitarian crisis situations the UNHCR will be encouraged to provide support.⁶²⁵ IDPs' born out of conflict get protection by UNHCR. Civilians other than IDPs affected by conflicts and disasters are protected by UNHCR or OHCHR or UNICEF. During conflict situation camp's coordination and management fall under UNHCR and during disaster under The International Organization of Migration (IOM). The UNDP addresses the early recovery as by the cluster-led approach. Technical areas such as emergency shelter are addressed by UNHCR and International Federation of Red Cross and Red Crescent Societies (IFRC) contingent upon whether the displacement is taking place due to conflict or disaster. Other technical areas such as health, water and sanitation, nutrition, education and agriculture are covered under WHO, UNICEF, Save the children and FAO respectively. Common services such as logistics and emergency telecommunications fall under WFP and UNHCR. Food and refugee sectors are covered by WFP and UNHCR respectively.

2.1. UN Representative of the Secretary General on IDPs

The international community has taken significant steps in constructing a framework for the protection of IDPs. The first development in this regard was the creation of the post of Representative of the Secretary General (RSG) on IDPs attended by Francis M Deng (1992-2004), Walter Kälin (2004-2010). Chaloka Beyani, a professor at the London School of Economics, is currently the Special Rapporteur on the Human Rights of IDPs, appointed in November 2010.

The Special Rapporteur's responsibilities contain: propagating respect for human rights of IDPs; having negotiation with governments, non-governmental organizations, and other actors; consolidating the global approach to internal displacement; and mainstreaming the human rights of IDPs in the UN system. In addition, the RSG's duties have encompassed monitoring internal displacement globally, tasking country missions, creating dialogues with governments, collaborating with inter-governmental, regional and non-governmental organizations and creating endorsements to progress international and regional institutional arrangements. He is also responsible for assessing international

⁶²⁵ T Morris, *Supra* note, 614 at, p. 55

legal protection, as well as publishing reports on which governments, the Commission, General Assembly and international organizations are expected to act.⁶²⁶ The RSG basically focuses on advocacy for IDPs, setting global protection standards, and creating endorsements to prove that how to make the existing instruments applicability more effective. These responsibilities are mostly to enable means of measuring the degree to which protection, assistance and development requirements of IDPs are recognized worldwide. Additionally, during such missions the conversations that take place are later reflected in the RSG's reports and this serves to rise national and international consciousness about those issues which need urgent attention⁶²⁷ Lastly, the findings provided to the office of the RSG with advocacy tools and a platform to solicit support from IASC helps in implementing the recommendations.⁶²⁸

2.2. UN High Commissioner for Refugees (UNHCR)

The UNHCR was established for providing humanitarian assistance and protection to the refugees who were compellingly banished due to the Second World War. Though, the agency's earlier mandate was to address the problems of refugees as its main mandate, over the period of time, the mandate of UNHCR was extended to the situations of the IDPs as well. In this context, to understand role of UNHCR in assisting and protecting IDPs one has to look back into the history of agency's evolution as well as paradigm shift in its work towards the protection of IDPs.

2.2.1. Origin and Mandate

In the first session of the UNGA, the problems of refugees were considered as one of the top priority of the new organization. The steps were taken in the UN, led to the creation of UNHCR in 1951 as a subsidiary organ of the UNGA under the article 22 of the UN

⁶²⁶ Abebe, A. M. (2011), "Special Rapporteurs as Law Makers: The Development and Evaluation of the Normative Framework for Protecting and Assisting Internally Displaced Persons," *International Journal of Human Right*, 15 (2) : pp. 290-291

⁶²⁷ Catherine Phuong, *Supra* note, at p. 18

⁶²⁸ Abebe, A. M, *Supra* note, 369 at, p.32

Charter.⁶²⁹ The key purpose of the UNHCR is to give global protection and promote lasting resolution to the difficulties of refugees⁶³⁰.

The UNHCR has a mandate, as per the article 6 of the statute, states that “the UNHCR mandate covers persons who qualify for refugee status under the definition of the 1951 Convention”.⁶³¹ Many scholars’ consider that the mandate of the UNHCR is very narrow and limited only to statutory obligations having limited scope for expansion.⁶³² In contrast to the above provision, article 9 provides for the expansion of the mandate with two condition, i.e. first, the endorsement of the UNGA and second, the accessibility of endowment for assistance and protection to the refugees.⁶³³

Although, the UNHCR had an explicit mandate for the refugees but there are situations where some refugees like people have remained outside the mandate. There exists a gap between the definitional criteria for the refugees and the real crisis situation faced by the people who do not fit to the category of refugees.⁶³⁴ To address this problem the UNGA introduced the “Good Office” concept to allow UNHCR to intervene on behalf of persons who do not fall under exactly statutory competence.⁶³⁵

In addition, the General Assembly Resolution, 2958 (XXVII) of 1972, by which UNHCR was commended for its well-organized function in the management of relief and relocation process of refugees and other displaced peoples in Sudan.⁶³⁶ The concept of “Good Office” allowed the UNHCR to overcome statutory restriction and to act on the humanitarian needs. Thus, it was able to include other people such as returnees, stateless

⁶²⁹ The Article 22 of the UN Charter provides that The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

⁶³⁰ UNHCR, Charter 1

⁶³¹ Amy Slaughter (2011) “UNHCR and The Protection Mandate” Accessed 10 October 2016, URL: <http://www.worldpoliticsreview.com/articles/7809/unhcr-and-the-protection-mandate>

⁶³² Phuong, *Supra* note, 37 at p. 15

⁶³³ UNHCR Charter, Article 9

⁶³⁴ The internally displaced persons also called as internal refugees also face the same situation like the refugee but the only difference between them is the border, refugees who cross the border can apply for the refugees status and internally displaced persons remain within the boundary of their own states so 1951 Refugee Convention definition disqualifies these internal refugees under the mandate of the UNHCR. Also see, David Lanza (2008) “Subversion on Reinvention? Dilemmas and Debates in the context of UNHCRs Increasing Involvement with IDPs” *Journal of Refugee Law*, 21 (2) : P. 192

⁶³⁵ *Ibid*, at, p. 195

⁶³⁶ UN General Assembly, (1972) “Assistance to Sudanese Refugees Returning from Abroad” A/RES/2958, Accessed 12 November 2016, URL: <http://www.refworld.org/docid/3b00f1b634.html>

persons, and IDPs. By expanding the mandate of the UNHCR, it was able to address the problems of the people who are under ‘statutory restriction.’ Therefore, now the agency will also cover not only refugees who fall under the 1951 Convention but also IDPs, returnees and stateless persons are also included in mandate.⁶³⁷

2.2.2. UNHCRs Involvement with ‘Internal Displacement’

The UNHCR’s engagement with IDPs dated back to 1970s. The role of the UNHCR has gradually changed according to the incessant varying character of humanitarian crises. The agency became more prominent in the 1990s after involving itself with humanitarian activities in countries such as Somalia, Iraq, Balkans as well as Liberia, and other states in Africa.⁶³⁸ The UNHCR was seemed to be well equipped to deal with IDPs because of its protection expertise and its operational experience which was regarded as the best means by which the international system could guarantee a supplementary reliable and answerable response to the needs of people in conflict zones.⁶³⁹

There is a major similarity between groups of IDPs and refugees especially with regard to the causes and significances of their displacement and humanitarian needs.⁶⁴⁰ This operational and needs-based similarity is recognized by the UNHCR Statute article 9, which is the legal basis for the UNHCR’s activities with IDPs. The article provides that the High Commissioner under UNGA, while working with refugees may also engage in other activities, inside the restrictions of the resources placed at (his or her) disposal.⁶⁴¹

A sequence of General Assembly Resolutions has recognized UNHCR’s specific humanitarian know-how and invigorated its participation in circumstances of internal displacement. An additional important contributing factor was UN General Assembly

⁶³⁷ “UNHCR’s Mandate For Refugees, Stateless Persons and IDPs” Accessed 5 November 2016, URL: <https://emergency.unhcr.org/entry/55601/unhcrs-mandate-for-refugees-stateless-persons-and-idps>

⁶³⁸ Catherine Phuong, (2006), *"The International Protection of Internally Displaced Persons"* New York: Cambridge University Press, p. 12

⁶³⁹ Catherine Phuong (2005), "The Office of the United Nation High Commissioner for Refugees and Internally Displaced Persons" *Refugee Survey Quarterly*, 24 (3) : pp. 75-77

⁶⁴⁰ Abuya, E O. (2003), “Refugees and Internally Displaced Persons: Examining Overlapping Institutional Mandate of the ICRC and the UN High Commissioner for Refugees”, *Singapore Journal International Law*, 7: pp. 246-248

⁶⁴¹ Onder Bakircioglu, (2008), “The Evolving Role of the UNHCR: Should the Conventional Role of the UNHCR be expanded?” *Ankara Law Review*, 5 (1) : pp. 101-102

resolution 48/116 (1993)⁶⁴² became an important criteria to guide UNHCR's decisions on IDPs along with article 9 of the UNHCR Statute that delivers the lawful base to UNHCR's act on behalf of the IDPs.⁶⁴³

It should be noted that according to the criteria adopted in 1993 at the General Assembly, regarding UNHCR's involvement with IDPs. It was specified that consideration must be made for the agency to assume primary international responsibility for IDPs only when it has overt link with the refugee functions. This precisely tangled those situations where refugees were mixed with IDPs or where there was a noteworthy danger involved that IDPs would ultimately become a refugee problem.⁶⁴⁴ In addition to advocating issues and mobilizing support for IDPs, the UNHCR provides protection and assistance. UN Secretary General and other competent principal organs of the United Nations authorized UNHCR's work. Since IDPs movement effects internal affairs of a state, the consent of a particular state must be obtained. There are other parties involved in the conflict they might have to be taken into consideration.⁶⁴⁵ For effective operation, therein addition, there has to be clear set of degrees of responsibility and accountability. Availability of resources to carry out such operations is indispensable.

The nature of UNHCRs involvement varies depending on the phase of the displacement. Its intervention depends upon the degree to which displacement is linked to refugees problems; also the complementarity of the mandate and expertise of other UN agencies contemplating in an area Political and operational environment such as security issues dictate or restrict UNHCR activities. Therefore, it is required to recognize the importance of co-operation and collaboration among UN agencies as well as the Emergency Relief coordinator (ERC) and other relevant government and nongovernmental organizations (NGOs) to work effectively for IDPs and other refugee problems.

⁶⁴² UN General Assembly, Office of the United Nations High Commissioner for Refugees, 24 March 1994, A/RES/48/116, Accessed 8 November 2016, URL: : <http://www.refworld.org/docid/3b00f2151c.html>

⁶⁴³ *Ibid*, UNHCR Charter, Article 9

⁶⁴⁴ Such situations include circumstances where IDPs are present or are returning in same areas as refugees, or areas in which refugees are expected to return, also see, Ahlbrandt S (2004) *The Protection Gap in the International Protection of Internally Displaced Persons: The case of Rwanda* 2nd ed. Working Paper 04/01, Graduate Institute of International Studies, Geneva

⁶⁴⁵ IASC, Handbook

The UNHCR has tried to achieve this objective through international presence, monitoring as well as interventions and other assistance attempts. Particularly, in the case of Africa, UNHCR has been involved with IDPs in post-conflict reintegration operations for returnees. It is also involved in protection of mixed populations of returnees comprised of other forced population. Despite of UNHCR's good works, it also faced hardship, critique or even hesitation on the part of the agency itself.

2.2.3. Critique of UNHCR

There have been debates about UNHCR's sole responsibility for IDPs on the question of effect of its policies and actions on asylum regime. Critics of UNHCRs state that a broadened the mandate of the agency needs to be included 'in-country protection' that contradicts with the agency's original mandate.⁶⁴⁶ In addition, scholars opine that the UNHCR increased interest in 'in-country protection' because of the attempt by asylum states to curb refugee influxes.⁶⁴⁷ In addition, the UNHCR is also criticized for being an agent who expands the interests of West, nevertheless, today UNHCRs is a leading organization that provides assistance to IDPs.

2.3. International Committee of the Red Cross (ICRC)

It was established in 1863 to support and provide safety to the victims of violent conflicts. It initially focused on wounded soldiers but over the period of time, it has extended its activities to cover all victims of armed conflict. Interestingly, unlike the other humanitarian organization the works of ICRC move in two directions: first, the operational nature, i.e. to help the victims of armed conflict and other situations of violence. Second, the ICRC activities also involve promoting and developing

⁶⁴⁶ Michal Barutciski, (2002), "A Critical View on UNHCR's Mandate Dilemma," *International Journal of Refugee Law*, 14 (2): p. 367 Also see, B. S. Chimni (2009), "The Birth of a Discipline: from Refugee to Forced Migration Studies," *Journal of Refugee Studies*, 22 (1) : pp. 11-13

⁶⁴⁷ B. S. Chimni (1998) "The Geopolitics of Refugee Studies: A view from the South" *Journal of Refugee Studies* 11(4): pp. 350-374. Also see, Michael. Barnett (2001) "Humanitarianism with a Sovereign Face: UNHCR in the Global Undertow." *International Migration Review*, 35 (1) : p. 247

international humanitarian law.⁶⁴⁸ In fact, this dual nature of ICRC distinguishes it from international humanitarian organization.

2.3.1. Principles and Mandate of ICRC

The work of ICRC also guided by seven fundamental principles. These principles are humanity, impartiality, neutrality, independence, voluntary service; unity and universality are enshrined under the ICRC statute. Moreover, among the seven principles the first three which set out below are those most commonly cited by the ICRC and specifically mentioned in its mission statement.⁶⁴⁹ These are, first, *Humanity*: this principle is the most important among the other humanitarian principles because it is founded on the principle of respect for the human being which has become the main brainchild of ICRC work. Second, *Impartiality*: it rejects any form of discrimination and call for equal treatment for people in distress. In fact, with this principle, ICRC provides aids by prioritizing the degree of urgency. Third, *neutrality*: enables the ICRC to keep everyone's trust by not taking side in hostilities or disagreements of a political, racial, religious or ideological nature. The ICRC is consequently autonomous of national and international politics, interest groups and any other entity that may have some connection with a situation of violence.

Though the mandate of the ICRC does not impose obligation on it to give humanitarian assistance and protection to IDPs. Thus, the ICRC's humanitarian response is guided by the degree of vulnerability and the essential needs of all people affected by armed conflict including IDPs.⁶⁵⁰ Therefore, the aim to protect and assist IDPs naturally finds at the core of the ICRC's directive and functions. The ICRC's concerns towards the IDPs arise out of the fact that the armed conflict is one of the major cause for displacement and this leads to the violations of the international humanitarian law.⁶⁵¹ Hence, in these

⁶⁴⁸ International Committee of the Red Cross 'The ICRC Its Mission and Work,' Accessed 12 November 2016, URL: https://www.icrc.org/eng/assets/files/other/icrc_002_0963.pdf

⁶⁴⁹ Hantos, Janos. (1990) "The Fundamental Principles are vital to the unity of the International Red Cross and Red Crescent Movement." *International Review of the Red Cross*, 30 (275) : pp. 86-88

⁶⁵⁰ Max Furrer (2005) "The Mandate of The International Committee of The Red Cross for the Protection of Internally Displaced Persons" *Refugee Survey Quarterly*, 24 (3) : pp. 85-86

⁶⁵¹ Yves Sandoz (1998) "The International Committee of the Red Cross as Guardian of International Humanitarian Law." Accessed 16 November 2016, URL: <https://www.icrc.org/eng/resources/documents/misc/about-the-icrc-311298.htm>

circumstances, it is inevitable for the ICRC to intervene into the situation of internal displacement to provide humanitarian aid.

2.3.2. ICRC's Position on IDPs

The ICRC holds the view that the 'IDPs' are those who do not take active part in the hostilities and 'civilian' are those placed in an extreme vulnerable situation.⁶⁵² Further the ICRC realizes that that the civilians who are the victims of armed conflict including IDPs must get protection and assistance.⁶⁵³ Unlike the other international organization, the ICRC follows the principles of impartialities in its all kinds of humanitarian activities, thus, it avoids categorizations of the victims of armed conflict and instead prefers them in terms of their vulnerability and specific needs.⁶⁵⁴

Red Cross movement maintains that the key duty is to give protection and assistance to IDPs is with the state governments. ICRC mandate encourages and supports the state governments to find a comprehensive and appropriate solution to the problems of internal displacement.⁶⁵⁵ This includes the effective utilization of the existing international and domestic legal provisions.⁶⁵⁶

2.3.3. ICRCs Protection and Assistance to IDPs

There are two different phases through which ICRCs provide humanitarian assistance and protection to IDPs: First phase, starts immediately after the people displaced because of the conflict or other similar situations which violates the international humanitarian law. During this stage, the IDPs are in most vulnerable situation and in desperate need of assistance and protection. Thus, ICRC addresses the needs of IDPs as well as prevents the violations of international humanitarian law.⁶⁵⁷

⁶⁵² International Committee of the Red Cross, (2006), 'ICRC Position on Internally Displaced Persons', Accessed 10 November 2016, URL: <http://www.refworld.org/docid/46e943710.html>, pp. 2-3

⁶⁵³ Max Furrer, *Supra* note, at 650, p. 87

⁶⁵⁴ ICRC Position on Internally Displaced Persons, *Supra* note, at, 652 at p. 4

⁶⁵⁵ Lavoyer, Jean-Philippe. (1995)"Refugees and Internally Displaced Persons—International Humanitarian Law and The Role of the ICRC," *International Review of the Red Cross*, 35 (305) : p. 170

⁶⁵⁶ Aeschlimann, Alain.(2005) "*Protection of IDPs: an ICRC View.*" Accessed 10 November 2016 URL: <https://www.icrc.org/eng/resources/documents/article/other/protection-article-011005.htm>

⁶⁵⁷ Jakob Kellenberger, (2009) "The ICRC's Response to Internal Displacement: Strengths, Challenges and Constraints." *International Review of the Red Cross*, 91 (875) : pp. 480 - 482

Second phase, begins when the IDPs are displaced from their home and cannot come back to the places of their origin because they might face the threat to their life.. In this circumstances, the ICRC as per the fundamental principles, handovers the responsibility of welfare of IDPs to state authorities. In fact, most of the situations the ICRC compelled to work for IDPs due to the unwillingness of some states to protect their population based on the grounds of religion, ethnicity, race, gender, sect and ideology.⁶⁵⁸ In the second phase of displacement, there are some specific issues affecting IDPs. It includes, the IDPs remained the target of armed conflict and it lead to further worsening of their condition. The lack of identity documents further aggravates their situation as their access to health care, education and employment is severed. In this context, women, children and elderly people are the most vulnerable section.⁶⁵⁹

2.4. UN Treaty Body Mechanism

The Human Right Bodies are committees of independent experts that examine application of international human rights treaty.⁶⁶⁰ These treaty bodies seek reports from countries regarding their implementation of the treaty provision. In addition, these treaty bodies assess and give comments regarding the compliance of treaty provisions.⁶⁶¹ A state when it becomes party to a human right treaty, it has to implement the provision of a treaty but also to submit report in accordance with the compliance of treaty obligation.

There are several treaty bodies: First, Human Right Committee (HRC) which displays the execution of the International Covenant on Civil and Political Rights (ICCPR).⁶⁶² Second, the Committee on Economic Social and Cultural Rights (CESCR) that assesses the obedience with the International Covenant on Economic Social and Cultural Rights

⁶⁵⁸International Committee of Red Cross (2008) "ICRC Protection policy Institutional Policy" Accessed 20 November 2016, URL: <https://www.icrc.org/eng/assets/files/other/irrc-871-icrc-protection-policy.pdf>

⁶⁵⁹ Kellenberger, Jakob, *Supra* note, at 57 p. 483

⁶⁶⁰ OHCHR 'Monitoring the Core International Human Rights Treaties' Accessed 25 November 2016, URL: <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>

⁶⁶¹ The International Service for Human Rights 'Simple Guide to the UN Treaty Bodies,' Chapter I, What are the treaty bodies? Accessed 25 November 2016 URL: http://www.faithbasednetworkonwestpapua.org/userfiles/files/ishr_simple_guide_to_the_un_treaty_bodies%5B1%5D.pdf.

⁶⁶² *Ibid*,

(ICESR).⁶⁶³ Third, the Committee on the Elimination of Racial Discrimination which inspects the acquiescence of the International Convention on the Elimination of all forms of Discrimination.⁶⁶⁴ Fourth, the Committee on the Elimination of Discrimination against Women which scrutinizes agreement with the Convention on the Elimination of all forms of Racial Discrimination against Women and receives distinct grievances from state parties.⁶⁶⁵ Fifth, the Committee against Torture which leads the implementation of the Convention against Torture and other Cruel Inhuman or Degrading Treatment receives message linking to state parties.⁶⁶⁶ Sixth, the Committee on the Right of Child which checks the compliance with the Convention on the Right of Child.⁶⁶⁷ Seventh, Committee on the Migrant's Workers which supervises the operation of the International Convention on the Protection Right of all Migrant Workers and members of their family.⁶⁶⁸ Eight, Committee on the Right of Person with Disability receives distinct obedient against state parties to the Optional Protocol to the convention.⁶⁶⁹ Ninth, the Committee on Enforced Disappearance measures application of the International Convention for the Protection of all people from Enforced Disappearance, reflects individual grievances from state parties.⁶⁷⁰

The treaty bodies are one of the prime mechanisms for protection of IDPs. Firstly, it often receives complaints from an individual whose right has been violated. The IDPs who are suffering from human rights violation by the state can submit their complaint to independent committee of experts, established by each treaty. The expert committees after examining the complaint, recommend that the state should comply with the treaty provision in case of human rights violation.⁶⁷¹ Secondly, the committee makes comments to make concluding observations, thus, treaty bodies strengthen the right of IDPs. For example, the Human Rights Committee describes that “the state parties should recognize

⁶⁶³ *Ibid*,

⁶⁶⁴ *Ibid*,

⁶⁶⁵ *Ibid*

⁶⁶⁶ *Ibid*

⁶⁶⁷ *Ibid*

⁶⁶⁸ *Ibid*

⁶⁶⁹ *Ibid*

⁶⁷⁰ *Ibid*

⁶⁷¹ Human Rights Implementation Centre, (2009) ‘Follow-Up and Implementation of Decisions by Human Rights Treaty Bodies’, Accessed 25 November 2016 URL: <http://www.bris.ac.uk/media-library/sites/law/migrated/documents/implementationtreaty.pdf> pp. 1-4

the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing and to continues improvement of living condition.” These provisions have close relevance to the displaced people as they are often deprived of basic essentials such as food, house, and other related problems.⁶⁷²

The Committee on Economic, Social, and Cultural Rights also reveals the importance of educational right of IDPs.⁶⁷³ The Committee on Right of Child shows the need of educational right for displaced children. In addition, the committee also endorses the state to place displaced children in school.⁶⁷⁴ The Committee on the Elimination of Racial Discrimination provides the obligation of state parties to perceive the principles of ‘non refoulement’ so that the IDPs must not be compellingly returned to their own place.⁶⁷⁵ In addition, the committee also throws light on the property rights of IDPs, contribution in public matter, and obtains reintegration support from state. In nutshell, the ‘treaty bodies’ mechanism makes important contribution for the protection and assistance for IDPs.

6.2.4. Office of the Coordination of Humanitarian Affairs (OCHA)

The OCHA was created in 1997 to replace the Department of Humanitarian Affairs. The OCHA is led by an Under Secretary General for Humanitarian Affairs who is also the UN Emergency Relief Coordinator (ERC).⁶⁷⁶ The head of OCHA has the duty for organizing humanitarian agencies that are suggested by the leader of the inter-agency standing committee so that major humanitarian bodies can be brought together. The Under-Secretary General who is also the Secretary General’s principle adviser on humanitarian issues, she suggested a very indispensable involvement between the humanitarian community and the inter-governmental organ of the UN.

⁶⁷² Navi Pillay (2014) The International Human Rights Treaty System: Impact at the Domestic and International Levels, *Human Rights Brief*, 21 (1) : p. 32

⁶⁷³ Krommendijk, Jasper. (2015) "The Domestic Effectiveness Of International Human Rights Monitoring In Established Democracies' The Case Of The UN Human Rights Treaty Bodies" *The Review Of International Organizations*, 10(4): pp. 490-491

⁶⁷⁴ Navi Pillay, *Supra* note, 672 p. 33

⁶⁷⁵ *Ibid*, at, p 34

⁶⁷⁶ UNHCR (2000), ‘Forced Migration and the Evolving Humanitarian Regime,’ Working Paper No.20, Accessed 15 December 2016, URL: <http://www.refworld.org/docid/4ff5860e2.html>

An important function of OCHA is to bridge the gaps among the existing humanitarian organizations and their institutional mandates. For instance, the ERC is responsible for organizing the protection of IDPs while OCHA is encouraging the operative submission of the guiding principles on internal displacement, instantaneously, the issues of IDPs is standing item on the agenda of the IASC working group.⁶⁷⁷

2.5. Office of the High Commissioner of Human Rights (OHCHR)

The main activities of OHCHR are to provide advisory service and technical assistance to countries for strengthening their national institutions for the protection of human rights. The OHCHR is unique as it brings the attention of all sectors of UN activities on the internal displacement onto single platform.⁶⁷⁸ In addition, it gives managerial backing to the mandate of the special representative on IDPs and subsequently, has to guarantee that all human rights organs pay consideration to IDPs issues.⁶⁷⁹ Apart from the above functions, OHCHR while managing human rights' field operation can directly intervene in the concerned country to provide the protection to IDPs.⁶⁸⁰ The office also provides advisory and technical service in the specific project targeted at IDPs.

2.6. United Nations Children's Fund (UNICEF)

The UNICEF is a development agency and its mandate imposes obligation on the agency to provide basic health care, nutrition, water and sanitation to children all over the world. The role of agency is to protect the interest of children who are internally displaced⁶⁸¹ It is proven fact that the most vulnerable section of IDPs are children and they are the majority in numbers in any conflict-ridden country, for example, recently, it is very much visible in countries like Iraq and Syria where millions of children died because they were directly exposed to violent conflict. Therefore, UNICEF's role becomes indispensable in addressing the internally displaced children. Although, unlike the other organizations,

⁶⁷⁷ *Ibid*,

⁶⁷⁸ Susan Martin (2004) "Making the UN work: Forced Migration and Institutional Reform." *Journal of Refugee Studies*, 17(3) : pp. 301-305

⁶⁷⁹ *Ibid*, at p. 307

⁶⁸⁰ *Ibid*, at p. 308

⁶⁸¹ Catherine Phuong, (2001) "Improving the United Nations Response to Crises of Internal Displacement," *International Journal of Refugee Law*, 13(4) : p. 491

initially UNICEF was reluctant to address the issue of IDPs.⁶⁸² Blatantly, the UNICEF also took the ICRC's position that IDPs should not constitute a special category of person in need. The agency views that by creating a separate category of IDPs would amount to discrimination against those who are not displaced. However, this position of UNICEF is now modified and the agency has developed a number of comprehensive policies and programs for IDPs.⁶⁸³

The UNICEF's protection activity contains appropriate operation of the convention on the rights of child, straight involvement with the government, steady reporting on the state of affairs of internal displacement.⁶⁸⁴ In addition, the UNICEF also involved in protecting the children from physical, psychological and social violence. For doing this, UNICEF has taken a number of initiatives such as field visits to number of countries on behalf of IDPs.⁶⁸⁵ The UNICEF has even assisted in enlisting of the on field practice in internal displacement condition by fetching in both the emergency and development work for the effective protection of IDPs.⁶⁸⁶ Thus, after expanding its activities and functions, now the UNICEF has become one of the most active agencies in the field of internal displacement.

2.7. United Nation Development Program (UNDP)

UNDP has an significant role in the actions of development and resettlement of IDPs.⁶⁸⁷The UNDP's sustainable development role becomes more effective and necessary wherever the target-ability of IDPs fades. Particularly, by with the initiative of collaborative actions to make several intervention to assure that the development functions and events are widely coordinated with relief; guarding the development of the communities that are displaced; launching the rehabilitation activities in the displaced

⁶⁸² *Ibid*, at, p. 493

⁶⁸³ *Ibid*, at, p. 494

⁶⁸⁴ *Ibid*, at, p. 495

⁶⁸⁵ Mahalingam, Subajini, Geeta Narayan, and Esther van der Velde, (2002) "The Rights of Internally Displaced Children: Selected Field Practices from UNICEF's Experience." *Refuge: Canada's Journal on Refugees*, 20 (2) : p. 34

⁶⁸⁶ IASC Handbook,

⁶⁸⁷ UNDP (2015) 'Guidance Note : A Development Approach to Migration and Displacement,' Accessed 12November2016,URL:file:///C:/Users/balaji%20n/Downloads/Final%20Guidance%20Note%20Migration%20and%20Displacement%2016%20January%202016.pdf

communities to enable their sustainable reintegration and; by giving indigenous capacity building mechanisms to backing and allow them to take an vigorous role in the reintegration and resettlement.⁶⁸⁸

In addition, UNDP as a development agency, focuses upon the reintegration programs and it links them with the relief programs which are lacking in the other international humanitarian organizations.⁶⁸⁹ In addition, the UNDP activities also hinges on the concerns of governance, development, human rights consciousness to discourse the origin of displacement situation.

2.9. World Food Program (WFP)

The activities of WFP concentrate on the food distribution and rehabilitation for the vulnerable people. In fact, it is one of the largest organization that gives food to the marginalized people and the ones displaced.⁶⁹⁰ It plays a prominent role in assisting the IDPs. In addition, it also examines a detailed analysis of its programs of food aid to IDPs which ultimately consolidates the WFP policy and strategy framework.⁶⁹¹

The WFP is now playing a crucial role in alleviation of hunger of vulnerable people at world level. Though, the agency is effectively providing food to the distressed people, during certain situations agency fails to protect the interest of people. It was criticized for not focusing on the protection aspect of its program.⁶⁹² To address this criticism, a number of protection initiatives were undertaken and the most important initiative was the monitoring of the food distribution and its channels.

2.10. World Health Organization (WHO)

The World Health Organization provides unique and pertinent support to state authorities to reinforce health services as well as to improve the health care for the general

⁶⁸⁸ UNDP, *Supra* note, 687

⁶⁸⁹ *Ibid*,

⁶⁹⁰ Catherine Phuong, (2006) *Supra* note, 27 at, p. 120 also see, Machrine Birungi (2016) 9,000 IDPs get Food Aid From WFP', URL: <https://unmiss.unmissions.org/9000-idps-get-food-aid-wfp>

⁶⁹¹ World food program (2003) Review of WFP Assistance to Internally Displaced Persons in the Democratic Republic of the Congo, URL: <https://www.wfp.org/content/review-wfp-assistance-internally-displaced-persons-democratic-republic-congo>

⁶⁹² Catherine Phuong, *Supra* note 27 at p. 56

population along with IDPs as well. The Constitution of WHO mandates also to provide or assist health services and facilities to special groups.⁶⁹³ Normally, it does not give access to health care directly rather it functions with the support of local and global health care agencies.⁶⁹⁴ Since it has the strong organizational base, WHO can involve itself with provision of assistance at various phases such as the emergency phase, where it participates in the assessment of the health condition of country or region. It also identifies the health needs of IDPs and bring them to the consideration of national authorities, other UN agencies and the donor community. It can also give technical assessment and expertise that can provide as a foundation for the shield of IDPs either to the national authorities or the international community.⁶⁹⁵ WHO also nurtures and enables the participation of national authorities in the delivery of health care to IDPs.⁶⁹⁶ Lastly, when the integration phase approaches, WHO along with other actors such as UN agencies and state institutions and NGOs to safeguard those IDPs are reintegrated. It also ensures that they are provided with the equal structure of health aids as any other sections of the populations gains in a country.⁶⁹⁷

2.11. International Organization for Migration (IOM)

In comparison to other international organizations, the role of IOM is very distinct in the area of humanitarian organization as it is not a part of UN but it is often involved in humanitarian assistance to IDPs. It is an intergovernmental organization with the objective of providing humanitarian assistance to migrant's population.⁶⁹⁸

⁶⁹³ W. Courtland Robinson, (2010) Chapter 6 “*The Right to Health and Basic Service*” in Walter Kalin, Rhodri C. Williams, Khalid Koser, and Andrew Solomon, “Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges” Studies in Transitional Legal Policy, *The American Society of International Law*, Accessed 2 December 2016 URL: https://www.brookings.edu/wp-content/uploads/2016/06/0119_internal_displacement_Ch6.pdf pp. 207-210

⁶⁹⁴ World Health Organization (2017) ‘*WHO and Health Authorities expand health services for IDPs in Hasansham Camp*’. Accessed 3 January 2017, URL: <http://reliefweb.int/report/iraq/who-and-health-authorities-expand-health-services-idps-hasansham-camp>

⁶⁹⁵ Susan Martin, *Supra* note, 678 at p. 302

⁶⁹⁶ WHO, *Supra* note at, 694

⁶⁹⁷ *Ibid*

⁶⁹⁸ International Organization for Migration (2002) ‘Migrants’ Rights IOM Policy And Activities’ Mc/Inf/259, Eighty-Fourth Session, Accessed 5 January 2017, URL: https://governingbodies.iom.int/system/files/jahia/webdav/shared/shared/mainsite/about_iom/en/council/84/Mcinf259.pdf

The IOM is the only organization that has the internal displacement provision in its mandate. In addition, its constitution explicitly mentions functions in favor of displaced persons. As a mandatory obligation, the IOM actively provides humanitarian aid to the IDPs where in it ⁶⁹⁹ organisation also provides provisional accommodation for internally displaced as well as transport for those who want to return home. It has played an vital role in the arrival and rehabilitation phases and now it is cooperating with the UNHCR in supplementing the people who wish to return to the place of residence.⁷⁰⁰ In addition, it also provides technical, personals and monetary help to the countries by enhancing their strength while responding to the crisis of internal displacement in time bound manner.

2.12. National Human Rights Institutions

The role of NHRI is very important for the protection of IDPs because it makes an important contribution for the promotion and protection of human rights. These are recognized by the states which are led by prominent people including retired judges and respected human rights activist who have worked for the upliftment of the rights of the marginalized sections.⁷⁰¹ The situations of internal displacement in developing countries are getting adverse every day.⁷⁰² In fact, the role of NHRC in protection of IDPs was acknowledged and supported in the UN resolutions.⁷⁰³ There are certain important steps taken by the NHRC to promote and protect human rights of IDPs: first, NHRCs monitors IDPs condition to guarantee that they enjoy the same rights as other citizens in their country.⁷⁰⁴ Secondly, it conducts intense investigations into reports of grave violations of

⁶⁹⁹ Richrrd Peerruchoud (1992) 'Persons falling under the Mandate of the International Organization for Migration and to Whom the Organization may Provide Migration Service, *International Journal of Refugee Law*, 4 (2) : pp. 206-209

⁷⁰⁰ UNHCR (1997) 'Memorandum of Understanding between the United Nations High Commissioner for Refugees and the International Organization for Migration,' Accessed 5 December 2017, URL: <http://www.unhcr.org/refworld/docid/3ae6b31a70.html>

⁷⁰¹ M. Gomez, (2002) National Human Rights Commissions and Internally Displaced Persons, Illustrated by the Sri Lankan Experience, The Brookings – SAIS Project on Internal Displacement, Accessed 5 December 2017, URL: http://www.brookings.edu/fp/projects/idp/articles/gomez_20020701.htm p. 2

⁷⁰² Asia Pacific Forum of National Human Rights Institutions, (2005) 'Regional Workshop on National Human Rights Institutions and Internally Displaced Persons, Colombo, Sri Lanka, Papers and Concluding Statement', Accessed 5 December 2017, URL: <http://www.asiapacificforum.net/training/workshops/idp/concluding/index.htm>

⁷⁰³ UN Commission on Human Rights, (2005) 'Resolution 2005/46 on Internally Displaced Persons,' E/CN.4/RES/2005/46, Accessed 5 December 2017, URL: <http://www.refworld.org/docid/429c525d4.html>

⁷⁰⁴ M. Gomez, Supra note

IDPs human rights and confirms an active response by concerned authorities.⁷⁰⁵ Thirdly, commission advises the governments on the rights of IDPs and works with national legislative bodies for the development of national law on internal displacement. The aim of commission is to frame policies and make plans to effectively address the problems of internal displacement.⁷⁰⁶ Fourthly, NHRIs prepare detailed reports on implementation of national legislation and its obedience with international treaty obligations.⁷⁰⁷ Fifthly, is to check the follow up mechanism of early warning of displacement to safeguard that active stands taken by the authorities to defend peoples against arbitrary displacement. The choices hence taken by authorities are to defend population that is applied in harmony with the assurance of the guiding principles on internal displacement.⁷⁰⁸ Sixthly, to advance robust association with IDPs as well as local NGOs and representative of civil society who are supporting for the defense of IDPs rights.⁷⁰⁹ Lastly, to investigate the return and resettlement of IDPs as to guarantee that it is required voluntarily with the qualified safety measures.⁷¹⁰

2.13. International and Domestic NGOs

The humanitarian NGOs not only provide aid to the IDPs but also provide relief work as implementing partners on behalf of various UN agencies.⁷¹¹ There are various NGOs and International Organizations involved in the protection and assistance of IDPs such as, the Norwegian Refugee Council (NRC) that functions through its Internal Displacement Monitoring Centre (IDMC), the Danish Refugee Council (DRC), the Citizenship Rights in Africa Initiative (CRAI), Minority Rights Group International (MRGI), Centre for Housing Rights, Women's Commission for Refugee Women and Children (WCRWC) as well as organizations such as CARE and IRIN.⁷¹²

⁷⁰⁵ *Ibid*,

⁷⁰⁶ *Ibid*,

⁷⁰⁷ *Ibid*,

⁷⁰⁸ *Ibid*,

⁷⁰⁹ *Ibid*,

⁷¹⁰ *Ibid*,

⁷¹¹ Muriisa, Roberts. (2003) "Coping with the Challenges of Growth and Development in the New Millenium: The role of Non-Governmental Organizations and HIV/AIDS prevention in Uganda." The International Society for Third Sector Research (ISTR) Sixth International Conference, Accessed 12 December 2016 URL: <https://lup.lub.lu.se/student-papers/search/publication/1525031>

⁷¹² *Ibid*

It should be noted that NGOs protection to IDPs and vulnerable section of conflict-laden society is based on their mandates and expertise. They can be used as an instrumental measure in the implementation of the collaborative approach for protecting IDPs.⁷¹³ Generally, NGOs are more suitable for collecting and providing information on protection and assistance to IDPs because they are located at the local levels.⁷¹⁴ They are even capable of operating in those areas where the government or other international organizations are unable to penetrate due to absence of access to the location, lack of finding confidence in the locals and even the IDPs.⁷¹⁵ Thus, their response capacity is far better than other international organizations and national government agencies because they are already located in areas of crisis even before the crisis occurs. To provide quick delivery of services to the IDPs they mostly employ local people who are aware of the local the language, culture, and way of life of the people in the particular area.⁷¹⁶

Therefore, NGOs have become the voices of IDPs who have lost their place of residence. NGOs are the most important factor for negotiating and making sure that IDPs are consulted as before the integration programme is initiated by the concerned authorities to regain IDPs voices. NGOs are more capable of providing data and information on IDPs which might not be easily available to other organizations.⁷¹⁷ They are best informed about the conditions of IDPs because they have first-hand access to the effected group. They also have a unique way of accessing quantitative and qualitative data before and after displacement, hence, they are able to provide detailed information. They can facilitate access to IDPs on behalf of international organizations as well as national human rights organizations (NHRIs).⁷¹⁸ The visits, consultations and external relations

⁷¹³ Inter-Agency Standing Committee (1999) 'Protection Of Internally Displaced Persons Inter-Agency Standing Committee Policy Paper' New York, Accessed 12 December 2016, URL:http://www.globalprotectioncluster.org/_assets/files/tools_and_guidance/protection_of_idps/FINALI_D_PPpolicy-EN.pdf

⁷¹⁴ Susan F. Martin and Elizabeth Moller (2003) 'NGOs and Practical Protection in Humanitarian Crises' Accessed 12 December 2016, URL: <http://odihpn.org/magazine/ngos-and-practical-protection-in-humanitarian-crisis/>

⁷¹⁵ Elizabeth Ferris (2008) 'The Role of Civil Society in Ending Displacement and Peace Building' 12 December 2016, URL:<https://www.brookings.edu/on-the-record/the-role-of-civil-society-in-ending-displacement-and-peacebuilding/>

⁷¹⁶ Ibid,

⁷¹⁷ IASC, *Supra* note at 713

⁷¹⁸ It should be noted that at times physical access is possible, but most IDPs communities have suffered grave human rights injustices and violations, mostly at the hands of governments and people in positions of

between IDPs and NHRIs or international organizations have proved beneficial in providing the long term solutions such as reintegration and development of the IDPs.⁷¹⁹ Lastly, NGOs are also capable of providing quasi-judicial mechanisms for IDPs. During displacement, it is generally difficult for populations to access protection from judicial systems such as police, courts, and even sometimes from the NHRIs. Thus, NGOs provide the necessary external support that is needed under the critical circumstances of IDPs.

3. UN Collaborative Approach

The institutional response to internal displacement prior to 2005, mainly characterized as ‘Collaborative Approach.’ It includes a wide variety of UN and non-UN organizations that are employed in a supportive manner to meet the needs of IDPs. Under the collaborative approach, all agencies come together to share the responsibility of protection and assistance to IDPs. These agencies are the UNHCR, the UNICEF, the WFP, the WHO, the UNDP, the OHCHR, the IOM and NGOs.⁷²⁰ In 1997, the UN had allocated complete responsibility for organizing the protection and assistance of internally displaced to the ERC.⁷²¹ This was followed by cumulative and regular focus on internal displacement in the UN’s Inter-Agency Standing Committee (IASC).⁷²² In 1999, the IASC approved a policy solely for the defense of IDPs that placed the procedure for applying the cooperative response both at headquarters and in the fields.⁷²³ In addition, the IASC recognized a Senior Network on Internal Displacement which suggested formation of a distinct inter-agency unit, stimulating with providing mechanical advice

authority. The access referred to here is psychological and social access, which might require trust and can easily be gained by NGOs who the displaced regard as neutral.

⁷¹⁹ IASC Durable Solution, *Supra* note, 713

⁷²⁰ Inter-Agency Standing Committee (2004) ‘Internally Displaced Persons: Implementing the Collaborative Response to Situations of Internal Displacement’ Inter-Agency Standing Committee Working Group 58th Meeting UNICEF New York, Accessed 20 December 2016, URL: https://interagencystandingcommittee.org/system/files/legacy_files/IASC-PolicyPackage.pdf

⁷²¹ The Senior UN Humanitarian Officer

⁷²² IASC, *Supra* note, at 713

⁷²³ *Ibid*

and support both at global and country level in order to improve the implementation of the collaborative mechanism.⁷²⁴

In 2002, the UN OCHA recognized Internal Displacement Unit and it was renamed in 2004 as the Internal Displacement Division (IDD). The IDD did a survey on efficiency of the cooperative approach in meeting the needs of IDPs.⁷²⁵ The survey had found significant problem in the implementation of the collaborative approach. It highlighted many problems such as absence of responsibility among both humanitarian and resident coordinator and nonappearance of a foreseeable leadership in crucial sector or area of response. The collaborative approaches also suffer from the agency's continuous 'pick and choose area' of participation and HCs are regularly incapable to classify the dependable actors in key sectors. From the above studies, it can be inferred that the collaborative approach is ad-hoc and faces resource crunch.⁷²⁶

In addition, in 2005, a UNHCR evaluation and policy analysis unit's report was published. It made it clear that the agency had been 'uncertain' 'inconsistent' and 'unpredictable' in its strategy to IDPs.⁷²⁷ Subsequently, the Secretary General also came out with its own report titled "Strengthening of the Coordination of Emergency Humanitarian Assistance of the UN" which identified certain areas where the IDPs are lacking protection and assistance.⁷²⁸ These areas were shelter, camp management and protection. Further, the report highlighted that the humanitarian system is essential to bridge the protection gaps.⁷²⁹ The effectiveness of the collaborative approach depends on how potential the leadership is and the existence of actors with the essential know-how dimensions and possessions to meet the dissimilar needs of the displaced. In addition, it

⁷²⁴ Inter-Agency Standing Committee, (2004) 'Implementing the Collaborative Response to Situations of Internal Displacement Guidance for UN Humanitarian and/or Resident Coordinators and Country Teams' Accessed 20 December 2016, URL: https://www.unicef.org/emerg/files/IASC_policy_package.pdf

⁷²⁵ *Ibid*,

⁷²⁶ Jens-Hagen Eschenbächer (2005) 'Internal Displacement: The future of the Collaborative Response System' Accessed 25 December 2016 URL: <http://odihpn.org/magazine/internal-displacement-the-future-of-the-collaborative-response-system/>

⁷²⁷ *Ibid*

⁷²⁸ Ferris, Elizabeth. (2014) "*Ten Years after Humanitarian Reform: How Have IDPs Fared?*." Brookings-LSE: Project on Internal Displacement, Accessed 25 December 2016 URL: <https://www.brookings.edu/wp-content/uploads/2016/06/Introduction-to-final-report-IDP-Study-FINAL.pdf>

⁷²⁹ *Ibid*

requires effective communication, transparency in decision making, clear responsibility, accountability and adequate resources to meet the needs of IDPs.

4. UN Cluster Approach

As stated above, the collaborative approach failed in delivering the essential needs of IDPs. The cluster approach is a result of a step taken to reform UN humanitarianism by filling the gap left by the collaborative mechanism. The initial process of reforming the humanitarian approach began in 2004. In this year, the then UN Emergency Relief Coordinator appointed an independent Humanitarian Response Review (HRR) to assess the UN humanitarian system. The review was intended to measure the humanitarian response capacity of the UN, NGOs, Red Cross/ Red Crescent Movement and other key humanitarian actor including the IOM, and discovery the hole to make endorsements to resolve the issues.⁷³⁰ The HRR realized that in important areas it became complex to arrange sufficient logistics and supports and expertise during the crisis. Thus, the HRR has recognized nine major cluster areas as a model for camp coordination and management, emergency shelter, telecommunication, health, logistic, nutrition, protection, early recover, water and sanitation.⁷³¹

The review identified the major gap in several area of humanitarian work as well as the lack of coordination between different humanitarian organizations.⁷³² In response to the review, the ERC in partnership with the IASC initiated reform of humanitarian system in 2005.⁷³³ The IASC adopted considerable improvement of the humanitarian response system. The reform was not restricted to IDPs, but it was used to address problems in relation to more satisfactory, opportune and elastic humanitarian financing particularly, through a revitalized Central Emergency Response Fund.⁷³⁴ In fact, the main objective behind adopting a cluster-led approach is to create a coordinating and more effective

⁷³⁰ Anne Willem Bijleveld (2006) "Towards more Predictable Humanitarian Responses – Inter-Agency Cluster Approach to IDPs," *Refugee Survey Quarterly*, 25 (4) : pp. 29 -31

⁷³¹ Tim Morris (2006) "UNHCR, IDPs and clusters" *Forced Migration Review*, 25 : pp. 54-55

⁷³² Anne Willem Bijleveld, *Supra* note, 730 at p 30

⁷³³ *Ibid*,

⁷³⁴ McNamara, Dennis (2006) "Humanitarian Reform and New Institutional Responses" *Forced Migration Review* 9-10, Accessed 27 December 2016, URL: <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/BrookingsSpecial/06.pdf>

response system. In addition, it is also required to reinforce humanitarian leadership by cultivating the humanitarian coordination system.⁷³⁵ Although, these reforms were not directly intended for the IDPs but will play a major act in meeting the issues of IDPs during the critical time of war. The cluster-approach designates a “cluster lead,” as an organization that leads the coordinator for a specific area of response for IDPs, which is responsible for organizing coordination at global and country level.⁷³⁶ In addition, the cluster approach also focuses on strengthening global preparedness, developing global guidance and acts as a provider of last resort.⁷³⁷ In the cluster approach, leading agencies were chosen for each sectors and its activities⁷³⁸ that includes logistics, nutrition, emergency response, shelter, camp, coordination and management, health, emergency, telecommunication, early warning system, education, water and hygiene.⁷³⁹

The IASC agreed to designate a lead agency for each of the cluster where dangerous hole had been recognized while dealing with the difficulties of internally displaced. This includes, the designation of UNHCR as cluster lead for protection, emergency shelter and camp management, and coordination, particularly, in situation of complex emergency. The UNDP also plays critical role for early recovery of the IDPs. The IOM is responsible for dealing with disaster situation, camp coordination and camp management and IFRC works for emergency and shelter.⁷⁴⁰ In addition, protection in disaster setting and protection response would be decided through discussion among the three UN protections which are instructed to UNHCR, OHCHR, and UNICEF agencies on case to case basis and one of them taking the lead in protection. Thus, the cluster is basically about altering a “may respond” into a “must respond” attitude.⁷⁴¹ It is about achieving more strategic response and improved utilization and prioritization of available resources by clarifying

⁷³⁵ Vanessa Humphries (2013) *Improving Humanitarian Coordination: Common Challenges and Lessons Learned from the Cluster Approach, The Journal of Humanitarian Assistance*, Accessed 27 December 2016, URL: <http://sites.tufts.edu/jha/archives/1976>

⁷³⁶ McNamara, Dennis, *Supra* note, 734 at p. 10

⁷³⁷ *Ibid*, at, p 9

⁷³⁸ *Ibid*,

⁷³⁹ *Ibid*,

⁷⁴⁰ Boon, Logan (2012) "The Cluster Approach: Working towards Best Practices in Humanitarian Response." Issue-Specific Briefing Paper, Humanitarian Aid in Complex Emergencies, University of Denver, accessed 12 November 2016, URL: http://www.du.edu/korbel/crric/media/documents/logan_boon.pdf

⁷⁴¹ Boon, Logan, *Supra* note, 746 at p 7

the division of labor among organization. It is better to define the agencies' role and responsibility within the different sectors along with the strong humanitarian coordination with a "first part of call and provide last resort."⁷⁴²

Thus, the adoption of cluster approach is a major step for active humanitarian protection system. Although, as far as the IDPs are concerned the cluster approach may not establish a radical reform.⁷⁴³ For example, the establishment of a new UN agency is very much obligatory with a specific mandate for the protection and assistance to IDPs. Nevertheless, the cluster approach fostering a more predictable, accountable, and timely, ultimately more effective international response to the needs of the internally displaced should not be undervalued.

5. Conclusion

Like legal instruments the institutions are also important in addressing the problems of IDPs. At present there is no separate international institution established for the protection of IDPs. In the absence of a separate institution, there are different UN agencies that deal with IDP crisis. The collaborative response system was set up to address the problems of providing protection to IDPs, but due to lack of coordination among them the institutional system is ridden with inconsistent coordination, unaccountability and lack of specific institutional responsibility. To bridge these gaps in humanitarian response, an additional response mechanism, in the form of cluster based approach has been introduced. Under this system, sectorial responsibilities are assigned to specific agencies. The approach is aimed at ensuring a more predictable, effective and accountable inter-agency response for the protection of IDPs in key sectors where gaps have been identified. The approach also singles out protection as a key humanitarian activity. There are numerous challenges this system still face that makes IDP protection problematic. The effective functionality of the cluster based approach depends on interdependence and complementarity of all the agencies involved. This requires close cooperation, communication and accountability. If one of the relevant agencies fails to function, the negative effect is spread throughout the whole system and some agencies

⁷⁴² *Ibid.*

⁷⁴³ Vanessa Humphries, *Supra* note, 735 at p . 10

will be forced to perform additional duties. It may be concluded that the institutional mechanisms created for the protection of IDPs such as Collaborative and Cluster Approach have failed in providing effective humanitarian assistance to IDPs. To address the gaps the international community has to create a separate institution for IDPs.

ANNEXURE 1

International Institutions	Role in Protection and Assistance of IDPs
<p>United Nations Human Rights Council (UNHRC)</p>	<p>The UNHRC is main organization for addressing the issues and problems of IDPs. The council since 1991 made several references with relates to the issues of internal displacement through passing resolutions.</p> <p>In 1992 the HRC passed a resolution and appointed Representative of Secretary General on IDPs.</p>
<p>UN Special Rapporteur on the Human Rights of Internally Displaced Persons</p>	<p>The RSG is the only international human rights mechanism specifically focused on internal displacement. Special rapporteur is human rights expert, he visits countries, engage in dialogue with governments, sponsors regional and national seminars encourage for development of national law and policies on internal displacement support the work of civil society and national human rights institution. He encourages the UN system to develop policy and programs response to the rights of IDPs.</p>
<p>U N Human Rights Treaty Bodies Mechanisms</p>	<p>The committees concluding observations on states reports, comments and recommendation has greater relevance for addressing the problems of IDPs.</p>
<p>UN Emergency Relief Coordinator [ERC]</p>	<p>He is responsible for coordination of inter-agency humanitarian action in condition of natural disaster and other problematic emergencies. It comprises assembling political and financial provision, update before Security Council, engage with governments, humanitarian agencies and relevant other actors.</p>
<p>Inter-Agency Standing Committee [IASC]</p>	<p>Is the main inter agency forum for organizing and decision making on matters of humanitarian action. This committee will coordinate the various UN humanitarian, human rights and</p>

	development agencies, international organization of migration, ICRC, international NGOs and special rapporteur on IDPs.
UN Humanitarian Coordinator [HR]	He is responsible for safeguarding the organization of humanitarian action. It includes protection and assistance to IDPs in circumstances of disasters at country level. He is appointed by ERC in consultation with IASC.
The UN Office of the Coordination of Humanitarian Affairs [OCHA]	The main function of this office includes support the ERCs mandate through coordination, advocacy, resources mobilization and policy development at the global and field level.
The Office of the High Commissioner for Human Rights [OHCHR]	The main activity of this office in relation to internal displacement includes. First, support the mandate of special rapporteur on IDPs. Second, field presence in situation of emergency it includes directly intervenes in to country to provide protection to IDPs. Third, advisory assistance to countries to strengthen their law and institution to improve the protection of human rights of IDPs.
United Nations High Commissioner for Refugees[UNHCR]	The UNHCR's original mandate provides protection of refugees and it will not cover the IDPs. But because of the agencies experience in protecting and assisting IDPs the additional responsibility has given to this agency. Since 2005 the agency under 'Cluster Approach' took lead in coordination and camp management of IDPs.
United Nations Children's Fund [UNICEF]	The UNICEF is one of the active agencies in addressing the problems displaced women and children's. The mandate of this agency is not include IDPs are special category in their assistance and protection activity.
	UNDP is development agencies focus on reintegration programme. It only does so when the crisis is over and people have

<p>United Nation Development Program [UNDP]</p>	<p>return to their places. It includes the issues of governance, development, human rights awareness etc.</p>
<p>World Food Program [WFP]</p>	<p>The activity of this agency includes food distribution, rehabilitation, recovery and development program. The agency is single largest food aid provider to IDPs.</p>
<p>World Bank Inspection Panel [WBIP]</p>	<p>The panel authorizes to receive complaint of violation of the world banks internal rules. If any individual suffered harm or displaced from a governmental development projects which has received financial assistance from the world bank file request for investigation of project on the basis of the world bank has fails to follow its own rules.</p>
<p>International Committee of the Red Cross[ICRC]</p>	<p>The ICRC's overall objective is to provide protection and assistance to people who are in difficult position because of armed conflict whether they displaced or not. The protection activities of ICRC are, prevent displacement that would result in violation of humanitarian law, promote voluntary return to place of safe and adequate living condition and ICRC also act as an intermediary in resolving humanitarian issues. In addition, organization is also distributes food, water, and other essential items. Apart from the above it also supports the UN and other agency for the effective humanitarian assistance to IDPs.</p>
<p>International Organization for Migration [IOM]</p>	<p>IOM is inter-governmental organization and not part of UN system. The agencies main objective is to provide assistance to migrant people. In addition, the agency also provides assistance to IDPs. It includes temporary shelter, transportation facility for returnee and reintegration of IDPs.</p>
	<p>They make important contribution to international and national response to</p>

<p>International and Domestic Non-Governmental Organization</p>	<p>internal displacement. It includes investigating, documenting and reporting on violation of human rights of IDPs, participate in data collection and registration of IDPs, provide essential service such as health, education, shelter, water, sanitation, legal services and provide information to IDPs on their rights and service available to them.</p>
<p>International and National Courts and Tribunals</p>	<p>Act of displacement is crime under the jurisdiction of International Criminal Court. The persons who are displaced because of human rights violations such as crime against humanity and war crimes file suit before ICC. The decisions of courts in many countries and the award of the International Criminal Tribunals for Rwanda and the former Yugoslavia have relevance in protecting the rights of IDPs.</p>
<p>National Human Rights Commissions [NHRCs]</p>	<p>The NHRCs paly important role with regard to IDPs. It includes monitoring and reporting on the government's implementation of national legislation and compliance with international treaty obligation, conduct inquiry into violation of IDPs human rights, receiving complaint from IDPs about their violation of human rights, they involve with national governments on the development of national law and policy's for IDPs.</p>
<p>Department of Peacekeeping Operations [DPKO]</p>	<p>The main functions includes improving security condition in which humanitarian assistance is provided, assisting in safe, voluntary and sustainable return of IDPs, support for economic reconstruction and development and strengthening rule of law etc. The role of military humanitarian operation is controversy because scholars argued that it leads to politicize humanitarian response.</p>

Cluster Assistance and Area of Responsibility

Camp Coordination and Management	UNHCR [Conflict situation] IOM [Disaster Situation]
Emergency shelter	UNHCR [Conflict] IFRC[Disaster Situation]
Early Recovery	UNDP
Health	WHO
Water, Sanitation and Hygiene	UNICEF
Nutrition	UNICEF
Education	UNICEF / Save the Children [NGO]
Logistics	WFP

Emergency telecommunication	OCHA/ UNICEF/WFP
Food	WFP

Cluster Protection and Area of Responsibility

Rule of Law and Justice	UNDP/OCHCR
Prevention of Gender Based Violence	UNICEF/ UNFPA
Protection of Children	UNICEF
Land, Housing and Property Right	UNHABITAT

Chapter VII
Accountability and Responsibility of International Organizations: A
Study of World Bank Inspection Panel

Chapter VII

Accountability and Responsibility of International Organizations: A Study of World Bank Inspection Panel

1. Introduction

International Organisations (IOs) have a larger impact on human rights of people. IOs often face criticism for their lack of accountability and responsibility towards the people.⁷⁴⁴ They undertake a lot of different activities along with providing financial assistance to poor countries for development projects. These development projects are often harmful because they are ill-planned or mishandled thus causing serious harm to the enjoyment of human rights of people.⁷⁴⁵

Under international law, the responsibilities of IOs are well stated in various decisions of International Court of Justice (ICJ).⁷⁴⁶ The IOs have human rights obligation under customary international law principles.⁷⁴⁷ These principles require adaptation of accountability mechanisms to implement international legal standards.⁷⁴⁸ Though there is a well-established international law for IOs to be responsible for their human rights violations but there is no established mechanism to make them responsibility.⁷⁴⁹ In 1990s, at the initiative of civil society organizations, accountability mechanisms were created in various IOs and the first among them was World Bank (WB) Inspection Panel.⁷⁵⁰ This panel was created in 1994 as the first accountability mechanism for international financial institutions which allows grievances from project affected people. According to Sophie Zacharia, though the panel is considered as an important step in creating accountability

⁷⁴⁴ Mark T Buntaine (2015) "Accountability in Global Governance: Civil Society Claims for Environmental Performance at the World Bank," *International Studies Quarterly*, 59 (1) : p. 93

⁷⁴⁵ Benoit Mayer (2013) "Development is no Excuse for Human Rights Abuse: Framing the Responsibility of International Development Agencies" *Trade Law and Development*, 5 (2): pp. 290- 292

⁷⁴⁶ Reparation for Injuries Suffered in Service Of United Nation, Advisory Opinion, 1949 I.C.J. 174, 179

⁷⁴⁷ Benoit Mayer, *Supra* note, at 745, p. 295

⁷⁴⁸ World Bank, (2011), World Bank Operational Policy 4.12 on Involuntary Resettlement, Accessed on 8 December 2015, Accessed 5 January 2017, URL: http://www.displacement.net/OP412_901.pdf,

⁷⁴⁹ Mayer Benoit, *Supra* note, 784 at p. 298

⁷⁵⁰ Jonathan A. Fox, (2000) "The World Bank Inspection Panel: Lessons from the First Five Years." *Global Governance*, 6(3): pp. 280-283

regime, the panel's limited mandate and no power to grant relief raises the queries whether the inspection panel truly increases the accountability of the WB.⁷⁵¹

Chapter is divided in to six sections. Section 2 explores the applicability of international human rights law to the international financial institution. Section 3 seeks to explore the meaning of accountability and responsibility, international legal positions and various other reasons for creating strong accountability and responsibility mechanisms. Section 4 analyses the structure and functions of inspection panel and discussion on the success and failures of the panel in the protection of project affected peoples. Final section concludes the chapter.

6.2. Human Rights Obligations and International Organizations (IOs)

In the era of globalization, the activities of IOs have grown enormously impacting lives of people. In such circumstance it is worth asking whether the IOs are bound by the international human rights Treaties or not? This question arises mainly because the IOs are not parties to most of human rights treaties and this lead to the irrelevance of human rights obligation on them.⁷⁵²

The WB is one of the specialized agencies of UN and many a time they have faced criticism for their human rights violations. This complex issue raises the further questions as to what are the legal instruments available under international laws to hold IOs liable for violation of human rights. In response to this question, many scholars have held the view that the IOs even though they are not party to international human rights instruments have had an obligation to protect human rights under various international legal regimes.⁷⁵³ It includes first, the UN charter based human rights obligation. The IO as a subject of international law has to follow the principles of UN Charter, many

⁷⁵¹ Sophie Zacharia (2012) "World Bank vs. World Bank: Assessing the successes and failures of the Inspection Panel in the protection of project-affected communities.", Accessed 5 January 2017, URL: http://ils.univie.ac.at/fileadmin/user_upload/legal_studies/student_paper/Sophie_Zacharia_World_Bank_vs_World_Bank_20120709.pdf,

⁷⁵² Siobhan McInerney Lankford (2010) "*International Financial Institutions and Human Rights: Select Perspective of Legal Obligation*" in Daniel D Bradlow and David B Hunter, *International Financial Institutions and International Law*, Kluwer Law International, The Netherlands, pp. 239-241

⁷⁵³ B. S. Chimni (2010) "*International Financial Institution and International Law: A Third World Perspective*" in Daniel D Bradlow and David B Hunter, *International Financial Institutions and International Law*, Kluwer Law International, The Netherlands, p. 43

provisions of UN Charter impose legal obligation on the member state and IO to protect human rights of people.⁷⁵⁴ Secondly, the decision of ICJ in the ‘WHO’ case stated that the IOs are subjects of international law and they have an obligation to abide by the principles of customary international law.⁷⁵⁵ But the lacking mechanism of accountability and responsibility of IOs for violating human rights of people is the weakness of present international institutional regime.⁷⁵⁶

6. 3. Accountability and Responsibility of IOs

The humanitarian and developmental activities of IOs must couple with accountable and responsible for human rights violations. As Beniot Mayor, puts it ‘development is no excuse for human rights abuse’⁷⁵⁷ which is also applicable to different international agencies who are involved in aiding poor countries for the developmental activities. In this respect, the United Nations General Assembly (UNGA) adopted the Article on Responsibility of State for International Wrongful Act prepared by the International Law Commission (ILC).⁷⁵⁸ The ILC also took the task to drafting the responsibility of IOs for their International Wrongful Act.⁷⁵⁹ The International Law Associations is also working on the Accountability of IOs through its Committee on the Accountability of IO.⁷⁶⁰

Though the different IOs are moving towards creating accountability mechanisms, the problems of people who are affected by the activity of IO will remain. This is because the existing accountability mechanism calls for the efficient functioning of internal mechanism and assessing the effectiveness of internal policies. For instance WB will assess the use of funds for the developmental projects in developing countries and the evaluation of their result is through their accountability mechanism. This accountability

⁷⁵⁴ *Ibid*, at, p 44

⁷⁵⁵ *Ibid*, at, p 45

⁷⁵⁶ Jonathan A. Fox, *Supra* note 750, p. 284

⁷⁵⁷ Benoit Mayer, *Supra* note, at 745 p. 294

⁷⁵⁸ UN General Assembly, (2001) ‘Responsibility of States for Internationally Wrongful Acts : Resolution / Adopted by the General Assembly, A/RES/62/61, Accessed 12 January 2017, URL: <http://www.refworld.org/docid/478f60c52.html>

⁷⁵⁹ Boon Kristen (2011) ‘ILC Adopts Articles on the Responsibility of International Organizations’, Accessed 12 January 2017, URL:<http://opiniojuris.org/2011/06/13/ilc-adopts-articles-on-the-responsibility-of-international-organizations/>

⁷⁶⁰ International Law Association on Accountability of International Organization

mechanism fails to repair the injuries caused due to the activities of the bank. The following section will deal with the evolving accountability mechanisms of IO and different avenues available for the individual to hold them responsible for human rights violations.

3. 1. The Notion of Accountability

Accountability is an important element of the legitimacy of an institution.⁷⁶¹ The notion of ‘accountability’ has varying meaning across a wide spectrum of activities of IOs. The IOs such as the WB, the IMF and the regional development banks⁷⁶² provides loan to developing countries and this has led to demand for their accountability in their actions and decision-making procedures.

Demands for accountability are based on the adverse effects of IO’s operations on communities and ecosystems but has also to improve the transparency of IO decision-making. It is strongly argued that the WB lacks accountability because the people who are affected by the World Bank project do not have any mechanism where they can seek compensation for the loss they have suffered.

The accountability contains two different models. In defining, what is meant by the term ‘accountability’, scholars hold the view that accountability is the means to be held responsible for a state of affairs: the way a department is run, a budget is spent and a transnational system is governed.⁷⁶³ In relation to the WB, Fox⁷⁶⁴ states that

⁷⁶¹ Accountability at the World Bank: The Inspection Panel at 15 Years (2009) at p.94 Accessed 12 January 2017 URL:<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/3807931254158345788/InspectionPanel2009.pdf> and see, Alison K. (2008) “The World Bank’s Inspection Panel: Promoting True Accountability through Arbitration,” *Cornell International Law Journal*, 41(3) : p. 577

⁷⁶² The regional MDBs are the Inter-American Development Bank set up by the Agreement Establishing the Inter-American Development Bank, Accessed 12 January 2017, URL: <http://www.idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=555080>. The Asian Development Bank set up by the Agreement Establishing the Asian Development Bank, Accessed 12 January 2017, URL: <http://www.adb.org/Documents/Reports/Charter/charter.pdf>. The African Development Bank set up by the Agreement Establishing the African Development Bank, Accessed 12 January 2017, URL: http://www.afdb.org/pls/portal/docs/PAGE/ADB_ADMIN_PG/DOCUMENTS/

⁷⁶³ J Caporoso (2003) “*Democracy, Accountability, and Rights in Supranational Governance*,” in M. Kahler and D.A Lake (eds), *Governance in a Global Economy: Political Authority in Transition*, Princeton and Oxford, Princeton University Press, at, p.366

⁷⁶⁴ Jonathan Fox, (2003) “*Introduction: Framing the Inspection Panel*,” in D. Clark, J. Fox and K. Treacle (eds), *Demanding Accountability: Civil Society Claims and the World Bank Inspection Panel*, Lanham,

accountability “refers to the process of holding actors responsible for their actions.” Another type of accountability is top-down accountability, where managers hold staff accountable for their performance which is internal accountability where member states are held accountable to their agencies.

Internal accountability applies in those situations where an agent is held to answer for performance that involves some delegation of authority to act. Internal accountability of IOs can be explained in terms of the principal-agent theory whereby IOs are accountable to their principals (member states) who created them and continue to fund IOs in order to undertake the tasks that the states are unable or are unwilling to do carry out. In this way, IOs are traditionally accountable to their member states via their organizational structure.⁷⁶⁵ For the WB accountability model, this includes a Board of Governors who are made up of member state’s finance ministers meeting annually to discuss the overall direction of the organizations.

On the other hand, external accountability refers to making IOs more accountable to persons affected by their operations. The relationship between IOs and the affected communities is triggered by the establishment of an accountability mechanism at the WB. With the profound impacts of globalization and the inter-related nature of the many functions of IOs it has meant that, in undertaking their agendas, they have had often adversely impacts on people within borrower countries.⁷⁶⁶ The external accountability is based on direct participation between the IOs and citizens more akin to state-individual relations rather than the indirect accountability of IOs to states, and states in turn to their citizens.

Boulder, Rowman and Littlefield at P. XII. Accessed 9 January 2017, URL: <https://jonathanfoxucsc.files.wordpress.com/2011/11/demandingaccountability.pdf>

⁷⁶⁵ Kenneth Anderson (2011) Conceptualizing Accountability in International Law and Institutions, Accessed 9 January 2017, URL: <http://opiniojuris.org/2011/02/25/conceptualizing-accountability-in-international-law-and-institutions/>

⁷⁶⁶ Susan Park (2010) "Designing Accountability, International Economic Organizations and the World Bank's Inspection Panel" *Australian Journal of International Affairs*, 64(1): pp. 16-19

It is a general principle, that those who exercise power must be accountable and this rule is not an exception to IOs.⁷⁶⁷ In the last two decades, the international financial institution particularly the WB and other regional banks have adopted the accountability mechanisms in the form of internal standards.⁷⁶⁸ It includes, the operational policies on involuntary resettlement and indigenous people, in the form of internal accountability mechanism⁷⁶⁹ and the WB Inspection Panel and Compliance Review Mechanism. These were created by the different organizations for their external accountability.⁷⁷⁰ The following section will briefly discuss about the different accountability mechanisms of WB.

3.2. Accountability Mechanism

3.2.1. Operational Policies

The operational policies can be seen in the backdrop of civil societies demand for accountability mechanism in the multilateral development banks. Making compliance with demands of civil societies and international human rights obligation; internal accountability mechanisms have been adopted as operational policy for different development banks.⁷⁷¹ Though the process of creating these operational policies evolved in early 80s, in 1990s, the WB has adopted the first operational directive policy on involuntary resettlement and there after different banks adopted these policies.⁷⁷²

⁷⁶⁷ Daniel D. Bradlow, (2005) "Private Complaint and International Organization: A Comparative Study of The Independent Inspection Mechanism in International Financial Institution" *Georgetown Journal of International Law*, 36 : p. 405

⁷⁶⁸ Eisuke Suzuki and Suresh Nanwani (2005) "Responsibility of International Organization: The Accountability Mechanism of Multilateral Development Bank" *Michigan Journal of International Law*, 27 (177) : p. 182

⁷⁶⁹ Daniel Bradlow, and Andria Naude Fourie, (2011) "The Evolution of Operational Policies and Procedures at International Financial Institutions: Normative Significance and Enforcement Potential." Accessed 9 January 2017, URL: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1858897

⁷⁷⁰ Boisson de Chazournes, Laurence. (2005) "The World Bank Inspection Panel: About Public Participation and Dispute Settlement." p. 187 Accessed 9 January 2017, URL: <http://archive-ouverte.unige.ch/unige:13072>

⁷⁷¹ Jalia Kangave (2012) "Investigating the Failure of Resettlement and Rehabilitation in Development Projects: A Critical Analysis of the World Bank's Policy on Involuntary Resettlement Using Lessons from Uganda's Bujagali Hydroelectric Project," *University of British Columbia Law Review*, 45 : p. 329

⁷⁷² Bradlow, Daniel, and Andria Naude Fourie, *Supra* note, 767 at, p 407

The World Bank's adoption of these policies began in the form of "operational statement" and "ad hoc circular" and later it converted into a formalized set of "operational policies, bank procedure and good practice guidelines." The important aspect of this evolution is that it involved the process of clarifying the binding nature of these operational policies. For instance, the operational policy directives of WB contain both the binding and non-binding nature.

The operational policies contain the subject of high level and business procedures contain the details of those subject and policies which are considered as binding on the bank management and staff. The most important development is that the bank involves civil societies in adopting and made further amendment to the existing policies.⁷⁷³ Other multilateral banks such as Asian Development Bank adopted the policy on involuntary resettlement in 1995⁷⁷⁴ and Africa Development Bank adopted operational polices on the lines of WB.⁷⁷⁵ These accountability mechanisms certainly help the victims of the developmental projects.

3.2.2. Compliance and Review Mechanism

The Creation of Compliance and Review Mechanism was another milestone in the process of creating accountability mechanism of IOs. Until 1993, the multilateral development banks were accountable only to the member states for their lending and development activities. The creation of these mechanisms now provides an opportunity to the people who are adversely affected by bank projects to file claims through these accountability mechanisms.

The first review mechanism was established by the WB in 1993 called 'World Bank Inspection Panel.'⁷⁷⁶ The other similar mechanism was created at Inter-American Development Bank's in 1995 was called as "Independent Investigation Mechanism." The Asian Development Bank created an 'inspection function' in 2003. The International

⁷⁷³ Ebrahim, Alnoor, and Steven Herz, (2007) "Accountability in Complex Organizations: World Bank Responses to Civil Society." Accessed 9 January 2017, URL: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=963135

⁷⁷⁴ *Ibid*

⁷⁷⁵ *Ibid*,

⁷⁷⁶ The inspection panel detail analysis available in the fourth section of this chapter.

Finance Corporation and The Multilateral Investment Guarantee Agency created “The Compliance Advisor/Ombudsman,” this office would handle the cases related to private sector operations.⁷⁷⁷ The European Bank for Reconstruction and Development had established “Independent Recourse Mechanism” and the bank replaced Independent Recourse Mechanism to “Project Complaint Mechanism” The African Development Bank established an “Independent Review Mechanism” in 2004. Apart from these above mentioned, the national financial institutions also created accountability mechanism. It includes, banks- Japan Bank for International Corporation, Export Development Canada and Overseas Private Investment.⁷⁷⁸

Over a period of time, these mechanisms have transformed from just fact finder mission to a problem solving unit. These accountability mechanisms also made provisions related to user friendly and now are easily acceptable to the people.⁷⁷⁹ These mechanisms are also now ensuring that the claimant participation in accountability procedure. As an achievement these mechanisms are now becoming a model for other international humanitarian organization to establish their accountability mechanism. In fact allowing the civil society’s participation in the process of creating these accountability mechanisms is an important development in terms of building truly peoples’ accountability mechanisms.⁷⁸⁰ This brings hope in the life of project affected people, but the criticisms such as limited autonomy and the lack of equality between claimant and administration and lack of mechanism to provide effective remedies make these accountability mechanisms, just as a symbolic mechanism.

These failures of the accountability mechanisms to provide remedial measures, now acknowledges need for responsibility mechanisms. As Mayer puts it, the greatest achievement of these accountability mechanisms is to bring awareness about the

⁷⁷⁷ Benjamin M. Saper (2011) "The International Finance Corporation's Compliance Advisor/Ombudsman (CAO): An Examination of Accountability and Effectiveness from a Global Administrative Law Perspective." *NYU Journal of International Law and Politics*, 44: p. 1279.

⁷⁷⁸ Daniel D Bradlow, , *Supra* note, 769 at p. 189

⁷⁷⁹ Richard E Bissell, and Suresh Nanwani, (2009) "Multilateral Development Bank Accountability Mechanisms: Developments and Challenges." *Manchester Journal of International Economic Law*, 6 (2) : p.

⁷⁸⁰ David Hunter (2003)"Using the World Bank Inspection Panel to defend the interests of Project-Affected people," *Chicago Journal of International Law*, 4: p. 201

necessity of responsibility of multilateral development agencies for human rights violations of their funded projects.⁷⁸¹ The civil societies think that the multilateral development organizations are needs to financially responsible for the people who are affected by their policies. Unfortunately the responsibilities of IOs are still in the evolving stage and the present accountability mechanisms of different banks fail to responsible for their conducts.⁷⁸² The following section will analyze the evolutions of responsibility of mechanisms of IOs in international law and the possible avenues that are available for IO to be held responsible for their wrongful conduct.

4. Responsibility of IOs

The responsibility mechanisms of the IOs are different from the accountability regime. The demand for responsibility arises mainly because of two reasons. First, IOs enjoy immunity from the national jurisdiction and this bars the individual from approaching them to their courts for remedies.⁷⁸³ Secondly, at the international level, individual claims should be endorsed and be represented by the state of that particular individual's nationality and the states endorsing individual claim does not happen all the time. Hence, In both the circumstances the affected individual is neither possible to access the domestic court nor the international judicial body.⁷⁸⁴

The existing accountability mechanism of different IOs allows the request from the project affected people, but unfortunately there is no guaranty that the problem will be resolved according to the claimant wishes. As the existing accountability mechanisms in the different financial institutions are the tool of internal governance and focuses only on their accountability's according to their wishes. In fact, these mechanisms do not have a mandate to provide remedies for damages caused during the projects.⁷⁸⁵ In order to fill these gaps, the civil society organizations are demanding for the 'responsibility'

⁷⁸¹ Mayer Benoît, *Supra* note, 745 at p. 297

⁷⁸² Eisuke Suzuki and Suresh Nanwani, *Supra* note, 768 at p. 184

⁷⁸³ José Maria Beneyto (2013) "Accountability of International Institutions For Human Rights Violations" Accessed 10 January 2017, URL: <http://www.assembly.coe.int/CommitteeDocs/2013/ajdoc172013.pdf>

⁷⁸⁴ *Ibid*,

⁷⁸⁵ Eisuke Suzuki and Suresh Nanwani (2005) "Responsibility of International Organizations: the Accountability Mechanisms of Multilateral Development Banks." *Michigan Journal of International Law* 27 (177) : p. 182

mechanism within the framework of IOs. The responsibility of IOs imposes legal obligations on accountability mechanism to provide monetary compensation to project affected people.

4.1. Legal Justification

The responsibility of IOs for human rights violations is clearly stated in international law. It includes the ILC Articles on Responsibility of IOs.⁷⁸⁶, IOs constituent treaties, internal laws, and headquarters agreements that creates obligation on IOs for their wrongful conduct.⁷⁸⁷ To these legal instruments, the IOs are also bound by the principles of customary international law which creates obligation on IOs.⁷⁸⁸ The Committee on Accountability of IOs of the International Law Association also helps project affected people in identifying the legal obligation of IOs for their human rights violations.⁷⁸⁹

The need for creating responsibility mechanism of the IOs, mentioned in the various legal instruments. It includes the decision of the ICJ. The 1949 advisory opinion of the *Reparation for Injuries Suffered in the Service of the United Nation* case,⁷⁹⁰ ICJ recognizes that the legal personality of the IOs and their duty and responsibility for their wrongful conduct. Later in the advisory opinion of *WHO* case, the ICJ reinstated that the IOs are the subjects of international law and therefore bond to the obligation arises under the international law. Likewise in a advisory opinion of ICJ, in the *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, it states that the United Nations is responsible, if their agent has caused damaged to others in their official work.

From above stated cases, it is very clear that the laws clearly outline the responsibility of IOs for their wrongful conduct, unfortunately IOs still fail to accept their responsibility for their activities which harms the individuals and their human rights.

⁷⁸⁶ International Law Commission, (2007) 'Report of the International Law Commission, 59th session, A/62/10, URL: <http://www.refworld.org/docid/4a716c6a2.html>

⁷⁸⁷ Suzuki, Eisuke, and Suresh Nanwani, *Supra* note, at 768, p. 186

⁷⁸⁸ Benoît Mayer, *Supra* note, 745 at, p. 291

⁷⁸⁹ Eisuke Suzuki, and Suresh Nanwani, *Supra* note, 768 at p. 188

⁷⁹⁰ *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949 I.C.J. pp.174- 178

Chimni holds the views that, the framing of responsibility of IOs is a complex issue and views that the global social movement role in this regard is very crucial. For instance,⁷⁹¹ the WB created an inspection panel in 1993 as its first accountability mechanism just because of the struggle of third world social movements.⁷⁹² Since the inspection panel is filling the gap of accountability function, the civil society movements are now further demanding for the transformation of accountability mechanism to responsibility mechanism. Thus it extends the power of these mechanisms to hold IOs responsible for their conducts.

The following section will discuss in details the evolution, power, procedure and success and failures of WB inspection panel.

5. WB Inspection Panel

The WB inspection panel was established in 1993 by the WB Board of Directors as a first independent accountability mechanism. The panel provides the platform for the people whose rights are violated by developmental projects sanctioned by the WB.⁷⁹³ This initiation is new approach in the history of international organisations where the people are allowed as participants in the highest decision making body and goes against their principle of 'top down approach' to 'bottom up approach.' The panel is also unique in terms of highlighting the failure of WB to comply with its own policies;⁷⁹⁴ therefore through this the panel, it will promote the global administrative law principles such as independence, transparency and accountability.⁷⁹⁵

5.1. Historical Background

The inspection panel was neither created by any UN nor by a western country controlling the activities of WB. The credit for creating the first international accountability

⁷⁹¹ B.S. Chimni, *Supra* note, 753 at p. 44

⁷⁹² Smita Narula (2008) "The story of Narmada Bachao Andolan: Human Rights in the Global Economy and the Struggle against the World Bank." Accessed 15 January 2017, URL: http://lsr.nellco.org/cgi/viewcontent.cgi?article=1106&context=nyu_plltwp

⁷⁹³ David Hunter, *Supra* note, 780 at, p. 203

⁷⁹⁴ Daniel Bradlow and Andria Naude Fourie, *Supra* note, 778 at, p 190

⁷⁹⁵ Nico Krisch, and Kingsbury Benedict (2006) "Introduction: Global Governance and Global Administrative Law in the International Legal Order." *European Journal of International Law*, 17 (1): pp. 1-3.

mechanism goes to the people of third world or the activist of Narmada Andolan.⁷⁹⁶ Prior to the establishment of inspection panel, the WB financed a large number of projects in the developing countries. Though the projects were sanctioned for the development activity, it often caused displacement of a large number of people. The projects created devastating effect on local people and environment.⁷⁹⁷

One such project was Sardar Sarovar Dam on the Narmada River in India.⁷⁹⁸ The Narmada River mainly covers three north Indian states namely, Gujarat, Madhya Pradesh and Maharashtra. In 1978 the Government of India requested the WB for assistance to build dam along the Narmada River which is called the “Narmada Project.”⁷⁹⁹ The Narmada project includes the creation of thirty large dams, 135 medium dams and three thousand small dams, due to these dams 2, 00,000 people will be displaced and thus causing devastating effects on the environment of the region.⁸⁰⁰ The Sardar Sarover Dam is in the state of Gujarat. It is the most controversial dam in India now. In 1985, the WB agreed to finance the Sardar Sarovar Dam despite the fact that the dam alone will displace more than ten thousands of people and will cause environmental damage.⁸⁰¹

The bank’s involvement in this project has to be seen in the backdrop of its policies on displacement of indigenous people. In 1980,⁸⁰² bank adopted its first resettlement policy on addressing the problems of indigenous people. Under the bank’s policies on involuntary resettlement, bank must finalize the resettlement plan prior to the loan approval.⁸⁰³ Unfortunately, the bank approved this project without analyzing the plan for resettlement of the affected people and the future ecological consequences.

⁷⁹⁶ Balakrishnan Rajgopal (2000) “From Resistance to Renewal: The Third World Social Movement, and The Expansion of International Institution,” *Harvard International Law Journal*, 41(2) : p. 529

⁷⁹⁷ Carrasco, Enrique R and Alison K Guernsey, *Supra* note, 763 at, p 368

⁷⁹⁸ Narmada: A History of Controversy, Accessed 15 January 2017 URL: http://news.bbc.co.uk/2/hi/south_asia/1026355.stm

⁷⁹⁹ Smith Narula, *Supra* note, 792

⁸⁰⁰ *Ibid*,

⁸⁰¹ *Ibid*,

⁸⁰² Dana Clark (2002) ‘An Overview of Revisions to the World Bank Resettlement Policy’ Accessed 15 January 2017, URL: <http://www.mcrg.ac.in/dana.htm>

⁸⁰³ *Ibid*,

Given the enormous human and environmental loss, the project faced the protest from the countries. The protest was supported by displaced people, social activists, students, national and international civil society organizations etc. This protest movement was labeled as the Narmada Bachao Andolan Movement and this was led by one of India's most popular social activist Medha Patkar.⁸⁰⁴ This movement saw the support from international NGOs, such as the environmental defense fund led by Lori Udall and other numerous civil society groups⁸⁰⁵

In response to the growing protest against the project, the WB withdrew its support and in 1991 appointed a committee to examine consequences of Sardar Sarovar project which was known as 'Morse Commission.'⁸⁰⁶ The Morse Commission's function was to evaluate the role of WB in Sardar Sarovar Dam and project on the Narmada River in India. The Morse Commission following its investigation published a report highlighting the bank's failure in the compliance of its own social and environment policy during the execution of the project.⁸⁰⁷ In addition, the another internal review of the WB project, it revealed that WB was simply increasing its loans to projects without sufficiently taking into consideration the social and environment effects and the name of this report is "Wapenhans Report"⁸⁰⁸ These two reports strengthen demand of civil society organizations to bring the reforms in the WB governance system. The need for creation of accountability mechanism in the bank was further strengthened by the 1992 United Nation Conference on Environment and Development in Rio de Janeiro. Finally in 1993, the WB established the inspection panel to investigate the claims that the WB has not adhered to its environment and social policies.⁸⁰⁹ The panel finally gave a platform to all marginalize communities adversely affected by bank's financed projects.

⁸⁰⁴ Aram Ziai The World Bank Inspection Panel and Civil Society Protest: Glocalization of Accountability? The case of the Kwabenya landfill project in Ghana, DPS Working Paper Series No.2, Accessed 15 January 2017, URL: http://www.unikassel.de/fb05/fileadmin/datas/fb05/FG_Politikwissenschaften/Entwicklungspolitik/Aktuelles/DPS_Working_Papers_No2_2015.pdf

⁸⁰⁵ "Human Rights Watch" is an international NGOs, author of this report felt that this report will help to Narmada movement, see, Defending The Earth Abuses of Human Rights and the Environment, Accessed 9 January 2017, URL: <https://www.hrw.org/legacy/reports/pdfs/g/general/general2926.pdf>

⁸⁰⁶ Smith Narula, *Supra* note, 792

⁸⁰⁷ *Ibid*,

⁸⁰⁸ *Ibid*,

⁸⁰⁹ *Ibid*,

5.2. Structure of Inspection Panel

5.2.1. Composition of Inspection Panel

The WBIP consists of three member and these members are of different nationalities of member countries of WB.⁸¹⁰ The President of WB after consulting the Executive Director nominates the panel's member and these members are then appointed by the Executive Director.⁸¹¹ Each member of the panel has three year term and in order to maintain independence of the panel the member can only serve one term.⁸¹² In addition, The Resolution also sets out various selection criterias for the appointment of Inspection Panel members, which include the “ability to deal thoroughly and fairly” with Requests, personal “integrity” and “independence” from Bank management, prior experiences with the developmental issues and the living conditions in developing countries and also the desirably of knowledge and experience with Bank's operations.⁸¹³

5.2.2. Mandate and Jurisdictions of the Inspection Panel

The inspection panel's power and scope are given in the 1993 bank resolution.⁸¹⁴ As per the 1993 resolution, any group of two or more persons affected by a WB's finance project can submit a letter to the inspection panel for the request of investigation of the projects. The panel allows the request from a community of persons such as an organization, association, society or other groups of individuals who are located “in the territory of the borrower” but not from a signal individual. A local representative of affected persons or in exceptional circumstances if local representative is not available, then an organization from another country can also file a request form. The panel also provides that the request for inspection may also be initiated by the Executive Director of the WB, in case of “serious alleged violations.” After receiving the request for inspection along with the approval of Executive Director for Inspection,⁸¹⁵ panel will also review the WB's

⁸¹⁰International Bank for Reconstruction and Development, Resolution No, 93-10 and International Development Association, Resolution No 93-6

⁸¹¹ *Ibid*, at, Resolution, Para (2)

⁸¹² *Ibid*, at, Resolution, Para (3)

⁸¹³ *Ibid*, at, Resolution, Para (4)

⁸¹⁴ *Ibid*, at, IBRD, IDA resolution, 1993

⁸¹⁵ *Ibid*, at, Resolution, Para, 12

compliance policies during the design and implementation stages of project, with their own Operational Policies & Procedures. The resolution will also grant power to inspection panel to seek the advice from bank's legal department on the matters related to the banks rights and obligations in dealing with the investigation of borrow request.⁸¹⁶

The limitation of the panel includes, first, the panel does not have the authority to adopt its own finding, it can only recommend it to the board and then the board has the authority to take the final decision. Secondly, the panel also cannot recommend for remedial measure to the requester, this power is vested only with the management of bank. Thirdly, the inspection panel is also precluded from investigating any of the actions of borrower,⁸¹⁷ procurement matters⁸¹⁸, project that have been closed,⁸¹⁹ and the request which was already been addressed in a previous request.⁸²⁰

5.2.3 Inspection Panel Procedures

Panel process starts once the Panel has received the Request, the process can be divided into three stages: registration,⁸²¹ eligibility and investigation.⁸²² In the The registration stage the Panel makes the Bank and the public aware that a requestor has filed a complaint and it completes a swift review to ensure that the group has a standing and that the Panel has jurisdiction over the claim.⁸²³ Panel's Operating procedures do not specify a time period within which this registration review must take place, but it requires that the Panel should "promptly register the Request or ask for additional information, or find the Request outside the Panel's mandate." The Inspection Panel views this first step as an administrative one, and its primary purpose is to prevent "the complaints that are outside

⁸¹⁶ *Ibid.*, at, Resolution, Para, 15

⁸¹⁷ *Ibid.*, at, Resolution, Para, 14 (a)

⁸¹⁸ *Ibid.*, at, Resolution, Para, 14 (b)

⁸¹⁹ *Ibid.*, at, Resolution, Para, 14 (c)

⁸²⁰ *Ibid.*, at, Resolution, Para, 14 (d)

⁸²¹ The registration stage is not a mandatory step. The Panel does not register requests that are obviously outside of its mandate, are anonymous, or are manifestly frivolous. See, Panel Resolution and Mandate, Accessed 6 January 2017, URL: <http://ewebapps.worldbank.org/apps/ip/Pages/Panel-Mandate.aspx>

⁸²² 'Accountability at The World Bank Inspection Panel at 10 Years,' Accessed 9 January 2017, URL: http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/TenYear8_07.pdf

⁸²³ World Bank, Inspection Panel, Operating Procedures, *Supra* note, at III

of its mandate,⁸²⁴ or that are anonymous, or that are manifestly frivolous.”⁸²⁵ The question of whether or not the Inspection Panel can register the Request is fairly clear.

Once a claim has been registered, the eligibility phase begins, and the Panel forwards it’s the complaint to the President of the WB. During this period, the Panel is required to determine whether the Request meets the technical eligibility criteria as established by the Panel Resolution. It is and updated by the Clarification to the Panel Resolution as adopted in 1999.

The eligibility phase focused entirely on whether the Request qualifies for a full-scale investigation. And it is not designed to lead to a report as to whether the WB has complied with its policies and procedures.⁸²⁶ The eligibility phase progresses according to a time-bound process. As a representative of the Bank’s management, the President must respond to the Panel’s inquiry within twenty-one business days⁸²⁷ providing for the evidences that the Bank “has complied or intends to comply with the Bank’s relevant policies and procedures”⁸²⁸

The Inspection Panel notes that the initial WB Management Response to a Request is crucial as it provides both the Inspection Panel and the Requesters with an explanation as to how Management views its own actions and policies, and what shortcomings it might itself detect in relation to the claims of the Requesters.⁸²⁹ When the Inspection Panel receives the Management’s response, it takes has another twenty-one business days to evaluate whether Management has actually remedied or intends to remedy the problem.⁸³⁰ According to the 1999 Clarification, the Panel may “independently agree or disagree totally or partially, with Management’s position and will proceed accordingly.”⁸³¹ In deciding whether to recommend an investigation as, the Inspection Panel must determine that all eligibility criterias are met. If it is found that the WB has

⁸²⁴ *Ibid*,

⁸²⁵ Inspection Panel, 10 Years, *Supra* note, 823

⁸²⁶ The Inspection Panel at 15, *Supra* note

⁸²⁷ World Bank, Inspection Panel, Operating Procedures, *Supra* note, 810 at IV.27

⁸²⁸ *Ibid*

⁸²⁹ The Inspection Panel at 10 years, *Supra* note 822 at p.27

⁸³⁰ World Bank, Inspection Panel, Operating Procedures, *Supra* note 810 at IV.29

⁸³¹ *Ibid*, Paragraph 3 of the 1999 Clarification

followed its own policies and procedures will weigh in favor of recommending no further action. The panel may choose to recommend an investigation, if it feels that view between Management and the Requester as regard to WB's compliance policies; it can act if they are in mutual disagreement, causing alleged harm and can't be reconciled. Where views between Management and the Requester with regard to the World Bank's compliance with its policies and the source of the alleged harm cannot be easily reconciled, however, the Panel may choose to recommend an investigation.⁸³² Additionally, it is expected that if Management admits that it has failed to follow WB policies, in its response to the claim, it should propose a "remedial actions and a timetable for implementing them."⁸³³ The decision whether to recommend an investigation is not just based on the requests and Management's responses. However, the Panel also has the power to conduct a preliminary study which may entail a visit to the project site if it believes it necessary to examine on the ground for the eligibility of the Request.⁸³⁴ The visit ensures idea behind such a visit is to ensure that the Inspection Panel makes "an informed recommendation about an investigation so as to the Board;"⁸³⁵ although this preliminary evaluation is not required sometimes.⁸³⁶

After reviewing the claimant's Request, the Response of Management, or any additional information from the third parties and any of its preliminary findings; the Inspection Panel will make a recommendation to the Board indicating "whether the matter will be investigated" in more detail, which is then referred to as the 'Eligibility Report'.⁸³⁷ Under this Resolution, only the Board has the power to officially authorize the Panel to proceed with an investigation.⁸³⁸ Following the 1999 Clarifications clause, the Board agreed to authorize investigations on a no-objection basis except for in limited circumstances.⁸³⁹ Following the approval by the Board of the Panel's investigation request, the Panel

⁸³² Inspection Panel, Report and Recommendation on Request for Inspection, Pakistan, National Drainage Program Project 24, available at <http://siteresourcesworldbank.org/EXTINSPECTIONPANEL/Resources/EligibilityReport.pdf> (

⁸³³ Inspection Panel, 10 Years, supra note, 822 at V.33(c)

⁸³⁴ Ibid. at III.B.36

⁸³⁵ Inspection Panel, 10 Years, Supra note 822 at 10, Box 1.3.

⁸³⁶ 1999 Clarifications, at para.11

⁸³⁷ The Inspection Panel at 15 Years *Supra* note 822 at p.30.

⁸³⁸ World Bank, Inspection Panel, Operating Procedures, supra note 810 at V.C.37

⁸³⁹ 1999 Clarifications, at Para.9

begins the investigation phase. This which is the main part of the process thus forming the central segment of the Inspection Panel's entire work on a Request.⁸⁴⁰ By its nature, content and methodology, the Inspection Panel's work during this phase can be best described as a systematic research and comprehensive analysis. There are no specific time elements that are included in the operating procedures.⁸⁴¹ In the investigation phase, the Inspection Panel focuses on the fact-finding mission and verification. It conducts country-visits to the project site, interviews with affected people or their representatives and conversations with government officials and the authorities in charge of the projects.⁸⁴² Throughout this time, the Inspection Panel also interviews the Management and Bank Staff. It should be noted that any such conversations are meant to remain confidential in nature. The and the 1999 Clarifications clause/ Resolution "stresses the need for the Panel to keep the profile of its in-country activities low and to make it clear that the Panel is now investigating the Bank and not the borrower."⁸⁴³

Once the field investigation and data gathering are completed, the Panel process enters into its third phase of writing the final report. During this period the Inspection Panel submits its findings to the Bank's Management and the Board.⁸⁴⁴ Its main emphasis is on the collective analysis and synthesis of findings during the research.⁸⁴⁵ The Panel makes sure that the final report explicitly addresses every issue raised in the Request for Inspection.⁸⁴⁶ However, the Panel is not limited to those issues only and it may lead the Panel additionally to look at issues not previously raised in the Request, but holds relevance or the point of address in the Request.⁸⁴⁷

The Panel is not entitled to propose the remedial measures as it "does not have the power to issue an injunction, stop a project, or award financial compensation for the harm so

⁸⁴⁰ The Inspection Panel at 10 years, *Supra* note 822 at p.30

⁸⁴¹ *Ibid*, at VII.42 (a)–(b)

⁸⁴² *Ibid*, 66, at VII

⁸⁴³ 1999 Clarifications, *Supra* note, 810 at para.12

⁸⁴⁴ *Ibid*

⁸⁴⁵ The Inspection Panel at 10 years, *Supra* note 822 at p.40

⁸⁴⁶ *Ibid*

⁸⁴⁷ *Ibid*

suffered.”⁸⁴⁸ The Bank Management reviews the findings of the Inspection Panel and submits a response to the Board within six weeks.⁸⁴⁹ Management has the authority to make remedial recommendations in its Report.⁸⁵⁰ Under the Panel’s procedures, the Management’s response must include recommendations in response to the findings of the Panel, and it is generally included as a so-called ‘Compliance Plan’ also known as an Action Plan.⁸⁵¹

Action Plan describes the measures that the Management intends to adopt to address the problems of non-compliance of the project so expressed in the Report of the Inspection Panel.⁸⁵² It ensures the effectiveness of the panel as it forms the operational basis for the Bank to address and remedy the findings of non-compliance and the harm that may be caused to the affected people.⁸⁵³ The Board also reviews the Panel’s findings in conjunction with Management’s recommendations. Furthermore, Requesters have no opportunity to formally offer recommendations to the Board after the Panel has conducted its investigation.⁸⁵⁴ While the Board is empowered “to ask the Panel to check whether Management has made appropriate consultations about remedial measures with affected people.” Independent research illustrates that, in the Panel’s first decade, “a significant number of findings of non-compliance went unanswered in the action plans.”⁸⁵⁵

The Board then contacts the initial Requester within two weeks of considering the Panel’s report and the Management’s responses, thus informing him or her of the investigations results and “the actions so decided by the Executive Directors, if any.”

⁸⁴⁸ Kay Treakle, et al. Lessons Learned, in *Demanding Accountability Civil Society Claims and the World Bank Inspection Panel* at 258

⁸⁴⁹ Inspection Panel Resolution, *Supra* note 810 at para.23

⁸⁵⁰ Inspection Panel, 10 Years On *Supra* note 822, at 14–15

⁸⁵¹ Mariarita Circi, ’ (2006) ‘The World Bank Inspection Panel: Is it Really Effective? 6 *Global Administrative Law and Global Governance* 9(6) : p. 9

⁸⁵² The Inspection Panel at 10 years, *supra* note 7 at p.41

⁸⁵³ *Ibid*, 7 at p.41

⁸⁵⁴ *Ibid*, 7 at p.41

⁸⁵⁵ However, the sample size was too small to allow generalizations, but the study by Bridgeman noted large discrepancies between findings of non-compliance and Management’s proposed actions. Bridgeman concluded that, “the Bank may be wary of correcting its own policy violations when doing so would necessitate imposing requirements on borrowers over which the Bank has actual or perceived lack of leverage. “Inspection Panel, 10 Years on, *Supra* note 822 at 15

⁸⁵⁶The Board of Executive Directors in the 1999 Clarifications Resolution have explicitly asked Management to always consult with Requesters and other affected parties in developing an Action Plan, to be agreed upon by the Borrower, in response to the Panel's findings.⁸⁵⁷ This requirement of consultation, during the preparation of the Action Plan creates both the mandate and the platform for an important, and hopefully, constructive dialogue between Management and Requesters when it comes to the preparation of the Action Plan.⁸⁵⁸

However, this possibility of a constructive dialogue is somewhat hampered by the fact that the Panel's Resolution does not allow for the disclosure of its Investigation Report at this stage.⁸⁵⁹ This prevents the Requesters from knowing its contents, which limits their ability to engage meaningfully with Management in the preparation of remedial steps.⁸⁶⁰

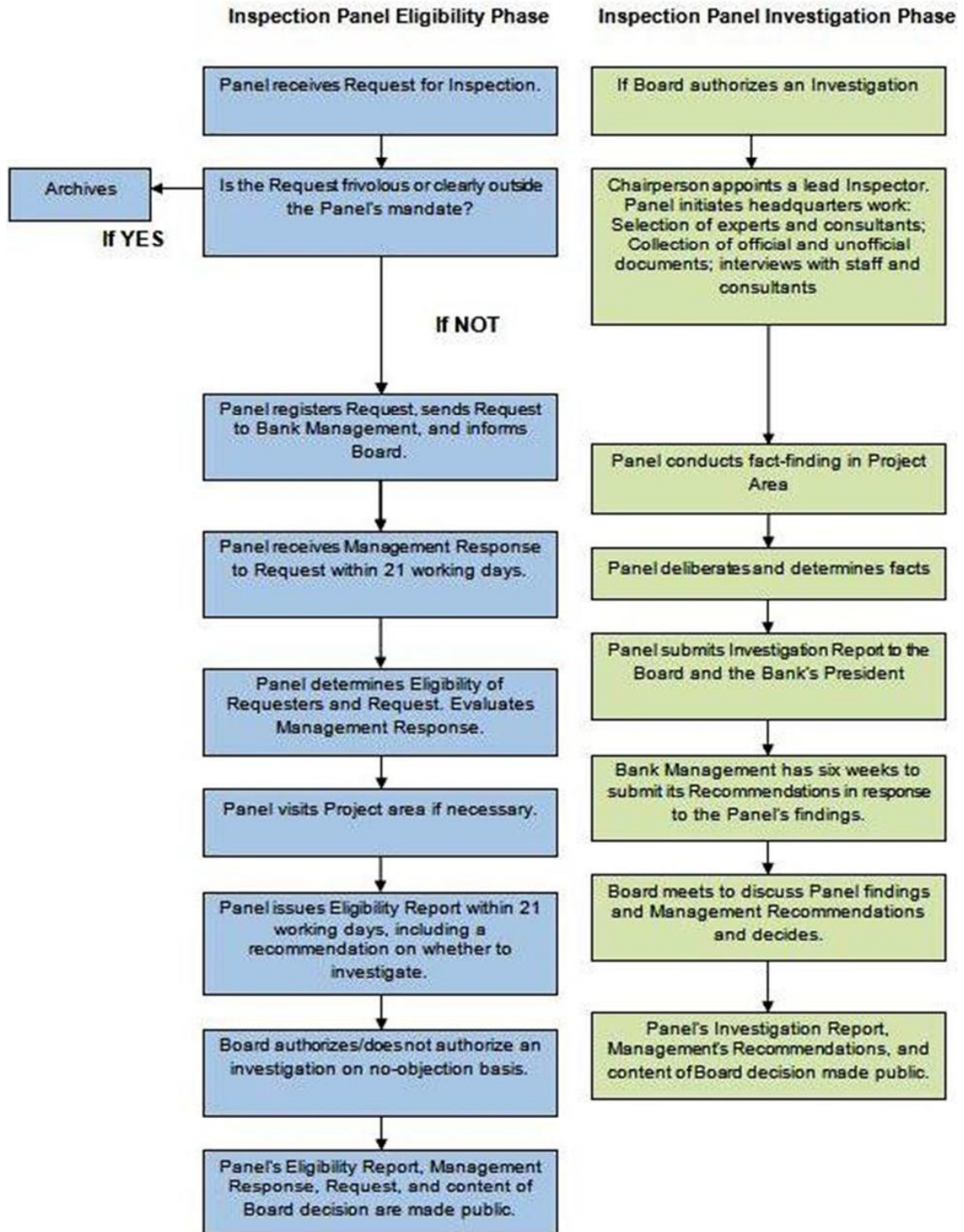
⁸⁵⁶ World Bank, Inspection Panel, Operating Procedures, *Supra* note 66, at X.55

⁸⁵⁷ The Inspection Panel at 15 Years, *Supra* note, 822 at p.41.

⁸⁵⁸ *Ibid.*

⁸⁵⁹ *Ibid.*

⁸⁶⁰ *Ibid.*



5.3. Inspection Panel and Its Impact on Displaced People

The creation of an inspection panel is considered as major step in recognizing the marginalized people's voice in WB. The panel has also recognized the rights of an individual who do not have any role in the creation of an international institution. Scholar Ellen Hey opines that the establishment of inspection panel on the one hand, shows the failure of state system where it fails to control the IO from violating the human rights and on the other hand given importance to the rights of participation to individual and civil society organization in the functioning of international institution.⁸⁶¹ Bradlow is of the view that the creation of inspection panels not only is a model for other international and regional financial institution but is also shown as a way for the establishment of accountability in the international humanitarian organization such as UNHCR, UNDP, and WHO etc.⁸⁶²The following section will also highlight some of the important contribution of the inspection panel in improving the condition of developmental induced displaced people.

Rights of Individual Recognized: The Inspection Panel without doubt played an important role in safeguarding the interest of individuals affected by the WB projects.⁸⁶³ It is the first accountability mechanism where the individual hold WB accountable for their human rights violations.⁸⁶⁴ The activities of the Inspection Panel have brought a measure of hope in the communities at the gross root level. Due to the inspection panel displaced people living conditions has improved, with all these positive outcomes it can be conclude that the panel has played an important role in ensuring justice for individuals affected by the WB projects.

Influencing other International and Regional Banks: In the era of globalization, international financial and humanitarian organizations activities have a larger impact on the day to day activities of people. WB and its finance method being adopted to fund the

⁸⁶¹ Ellen Hey (1997) "The World Bank Inspection Panel: Towards the Recognition of a New Legally Relevant Relationship in International Law" *Hofstra Law and Policy Symposium*, 2 (6): p. 73

⁸⁶² Bradlow, *Supra* note, 778, p. 190

⁸⁶³ Suzuki, *Supra* note, 785 at p. 184

⁸⁶⁴ Bradlow Daniel D and Schlemmer-Schulte Sabine (1994) "The World Bank's New Inspection Panel: A Constructive Step in Transformation of the International Legal Order," Accessed 9 January 2017, URL: http://www.zaerv.de/54_1994/54_1994_2_a_392_415.pdf , p. 392-393

developing countries for developmental projects. There are several other IOs that are also involved in assisting people who are in distress. The inspection panel now became the model for the other similar organisation who fund for the projects in developing countries.⁸⁶⁵

Setting of Precedent: Though the Inspection Panel works as a quasi-judicial body, the decision of the panel will set important precedent for every new case. The panel has also set an important precedent with in the bank, such as applying social and environmental standards to infrastructure projects. The panel's decision will also influence the banks rules and regulations that have an impact on banks' lending activities.⁸⁶⁶

Promoting Participation, Transparency and Accountability: The most important objective of Inspection Panel is to provide an opportunity to the victims of WB developmental projects. It includes the claimants' involvement during panel visit to the project area and its interaction with claimant during investigation of a particular project. The panel will allow the claimant and management to comment upon the panel's draft investigation report. The responses of both the claimant and management will be published on the panel's website when the board final decisions are made. In this way the panel, on the one hand is giving voices to marginalized people in the IOs⁸⁶⁷ and on the other hand it is positively contributing to the evolving Global Administrative Law principles such as Participation, Transparency, Accountability and Independence.⁸⁶⁸

5.4. Limitation of Inspection Panel

Despite the success of Inspection Panel and improvement it is making in increasing its use of panel processes, many criticisms can be leveled against the panel. The panel has failed to fulfill the need for an effective accountability mechanism; it also has a limited

⁸⁶⁵ Alexandro Eugenio Pereira, Rodrigo Rossi Horochovski, Mariana Mattos de Almeida Cruz and Noeli Rodrigues (2017) Accountability in International Organizations: the case of World Bank Inspection Panel (1993-2015) *A Journal of the Brazilian Political Science Association*, 11 (1): p. 10

⁸⁶⁶ Andria Naude Fourie (2009) 'The World Bank Inspection Panel and Quasi-Judicial Oversight in Search of The 'Judicial Spirit in Public International Law' Accessed 9 January 2017 URL: https://www.researchgate.net/publication/308889647_The_World_Bank_Inspection_Panel_and_QuasiJudicial_Oversight_In_Search_of_the_'Judicial_Spirit'_in_Public_International_Law p.5

⁸⁶⁷ David Hunter, *Supra* note, 780 at p. 204

⁸⁶⁸ *Ibid*

ability to grant relief to the victims and also lacking independence in furnishing reports and procedures. Following points will summarize the most emphasized weaknesses of Inspection Panel.

Threat to Civil Society Activists: According to Professor Suzuki the lack of mechanism to provide protection to civil society activist who bring claims to Inspection Panel is a biggest failure of WB system.⁸⁶⁹ As the people are unwilling to file a claim due to their threat to life. Recently, the international NGO 'Human Rights Watch' published a report which mainly highlighted the attack on the people who approached the Inspection Panel to file their request.⁸⁷⁰ This report also criticizes the WB for its failure to address the problem.

Inability to Grant Relief: Another criticism is that the lack of power to grant relief to the project affected people. According to Professor Brodlow, the Panel has inability to Grant Relief which is the biggest limitation of the Panel's mandate. The panel also has a very limited authority to recommend to bank for grant of relief. In fact, the scholars have highlighted this as the weakness of the panel.⁸⁷¹ Since the panel is unable to provide the relief, the affected communities have to look in for the bank management for compensation. Another ambiguity is that the management will not provide any compensation on the basis of panel's finding, thus making the panel almost inept.⁸⁷²

Inspection Panel's Lack of Independence: The panel should be independent in performing its role. Though the panel maintains the independence from the bank management in appointment of panel members, but same independence is not exhibited in its other activities. The panel is a subordinate body of bank and it is difficult for the panel to independently work from the bank ideology. Secondly, the bank's ability to interfere in the day to day affairs of panel. It also reflects panel lack of ability to prevent such interference which is also compromising its status as independent body. Thirdly, the

⁸⁶⁹ Suzuki, *Supra* note, 768 at p. 189

⁸⁷⁰ Human Rights Watch (2015) 'At Your Own Risk Reprisals against Critics of World Bank Group Projects,' Accessed 16 January 2017, URL: https://www.hrw.org/sites/default/files/reports/worldBank0615_4Up.pdf

⁸⁷¹ Sophie Zacharia, *Supra* note , at 751

⁸⁷² Suzuki, *Supra* note, 768 at p. 192

lack of independence of the panel makes it a unfair body working in favor of the bank's interests, thus undermining the interest of the project affected people.

Limited Right of Inclusion of Requester in the Panel Process: The panel is also criticized for its exclusion of requester in the panel formation process. In fact, there have been few instances, where the panel has involved the requester in the investigation stage but majority of ceased panel has excluded the claimant to participate in different stages of panel process.⁸⁷³ In addition, the panel has also failed to give people the right to participate in the outcome of an investigation. Bradlow opines that the claimant should be informed about all communication between the panel and the bank staff, and borrower should be given opportunity to respond.⁸⁷⁴

Limitation on the Panel Mandate: The Inspection Panel investigates only those cases in which the WB has violated its own safeguard policies.⁸⁷⁵ The mandate of panel which supports this view unsurprisingly excludes people affected by projects, where the bank's policies have not been violated directly. There are many instances where the project has caused the harm to the people without violating the bank's policies. This situation excludes the bank from its responsibility for human rights violation.⁸⁷⁶ The panel also has a limited mandate in referring to the human rights norms in their activities. Therefore, unless the WB reforms and revises its mandate, the victims of banks activities will remain marginalized.

6. Making Inspection Panel work for Displaced: A Way Forward

The establishment of Inspection Panel is a positive step not only in terms of first accountability mechanism but also in recognizing the rights of displaced people in international law and organization. As scholar Alexander puts.⁸⁷⁷ Apart from providing a

⁸⁷³ Enrique Carrasco and Alison K. Guernsey, *Supra* note, 763 at p. 368

⁸⁷⁴ Daniel D. Bradlow (1994) "International Organizations and Private Complaints: The Case of the World Bank" *Virginia Journal of International Law* 34 : p. 553

⁸⁷⁵ Daniel Bradlow and Andria Naude Fourie, *Supra* note

⁸⁷⁶ Dana Clark, Jonathan Fox and Kay Treackle, (2003) 'Demanding Accountability: Civil-Society Claims and the World Bank Inspection Panel,' Accessed 16 January 2017 URL: <https://jonathanfoxucsc.files.wordpress.com/2011/11/demandingaccountability.pdf>

⁸⁷⁷ Alexander Orakhelashvili (2005) "The World Bank Inspection Panel in Context: Institutional Aspect of the Accountability of International Organization" *International Organization Law Review*, 2 (1) : p. 62-64

platform for the project affected people, inspection panel is also an attractive model for the other international and regional organization to create accountability mechanism in their jurisdictions.⁸⁷⁸ In contrast to the above view, the panel also has certain limitations which include its limited power of panel and other institutional and jurisdictional shortcomings to undermine its model for other IOs.

Though the Inspection Panel has certain positive and negative impact, nevertheless, it cannot undermine its role in international legal order. The need for the hour is to reform the existing structure which can be done by expanding its jurisdiction of panel or through the bank reforms. There are several other scholars who have given their suggestions for making Inspection Panel a truthful and accountable mechanism where the poor people can get compensation for the harm they have suffered.

The following section will identifies the necessary measures which are needed for progressive development of the Inspection Panel.

a) The Inspection Panel should have a separate legal document which exclusively deals with its powers and functions. The existing resolutions and their amendments and the other different documents adopted by the Executive Directors on panel leads confusion in the mind of people. In fact, majority of the project affected displaced people are illiterate and does not have much familiarity with the day to day activities of the bank. This will lead to negative impression on the panel. Therefore, it would be a very useful for the displaced people if the WB adopts the ‘Statute’ of the Inspection Panel which mainly deals the power, procedure of panel, independence of panel from the WB management.⁸⁷⁹

b) The Inspection Panel is often criticized for its lack of power to provide remedial measures to displaced people. Scholar Orakhelashvili opinionated that the panel’s power to decide the compensation or remedial measures for the affected people will be very crucial in terms of safeguarding the checks and balances between the panel and other bodies.⁸⁸⁰ Inspection Panel’s power should also include the review the bank’s compliance

⁸⁷⁸ *Ibid*, at, p. 65

⁸⁷⁹ *Ibid*, at, p.66

⁸⁸⁰ Alexander Orakhelashvili, *Supra* note, 877 at p. 63

with their own policy and procedure and with the applicable rule of international law thus making it more effective in compliance for the displaced and affected people.⁸⁸¹ However, the enlargement of panel power is very crucial not only for development of panel as a true accountability mechanism but also it is an essential method for the further expansion of the developmental activities of the WB.

c) Scholar Suzuki opines that the accountability mechanisms should have a ‘problem solving unit’ whose task⁸⁸² will be to report directly to the boards of directors for providing remedies to project affected people. The advantage of this unit to providing remedial measure to claimant before the investigating process starts. In many instances what happens is that the accountability mechanisms will follow their institutional procedure such as investigation and other compliance mechanism but ignores the urgent needs of the common people who affected by the social and environmental policy violation. In order to address this issue Inspection Panel should develop an effective remedial unit within its institutional structure.

d) At present the Inspection Panel only accepts complaint from a group of people and organizations but not from the individual person. There are many scholars’ who hold the opinion that accountability mechanisms should facilitate lowering the threshold by allowing complaints from the individual those who are affected by the WB projects.⁸⁸³ Inspection Panels also doesn’t allow the complaints which are not meeting the criteria of ‘adversely affected’ or ‘material harms’ in their complaint.⁸⁸⁴ It leads the marginalized people to stay away from the panel process and it will set a wrong precedent about the panel. In order to address this problem the Inspection Panel should lower the threshold level by facilitating the citizen’s access to the Panel making it global and international in true nature.

⁸⁸¹ Steven Herz and Anne Perrault (2009) “Bringing Human Rights Claims to the World Bank Inspection Panel” Accessed 16 January 2017, URL: <http://www.bankinformationcenter.org/en/Document.101841.pdf>

⁸⁸² Richard Bissell and Suresh Nanwani (2009) “Multilateral Development Bank Accountability Mechanism: Development and Challenges, *Manchester Journal of International Economic Law*, 6 (1) : p.5

⁸⁸³ *Ibid*, at, 66

⁸⁸⁴ Inspection Panel Resolutions, *Supra* Note, 180

7. Conclusion

This chapter provides a thorough examination of how accountability and responsibility has emerged as a key issue for international economic institutions as a result of pressure from civil society activists. As a result of the establishment of the Inspection Panel as the first accountability mechanism for the WB, it has received praise from the legal scholars and practitioners alike. As an important development in citizen-based accountability, the WB set an example for other international financial institutions. The effectiveness of any accountability mechanism requires that people place their trust in its operation, especially the marginalized communities who submit complaints. Unfortunately the Inspection Panel suffering from the lack of independence, impartiality and insufficient power to grant compensation to the victims of projected people make the Inspection Panel a toothless mechanism. Hence, in order to address the problems of displaced people the World Bank has to create a more responsible mechanism, which means the Bank must be made financially responsible for its human rights violations of peoples.

Chapter VIII

Conclusion

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The study was undertaken with the understanding that the existing international protection initiatives on Internally Displaced Persons (IDPs), both legal and institutional, are weak, inadequate and uncoordinated. The piece-meal effort to protect IDPs has failed to ensure effective protection to them.

The international community's initiative to deal with the problems of IDPs began with the creation of a legal framework on IDPs at the international level, which has been instrumental in addressing the situation of internal displacement. The existing legal framework mainly stems from the UN Guiding Principles on Internal Displacement. These principles are a restatement of international human rights law, humanitarian law and to a certain extent refugee law are applicable to IDPs. The Guiding Principles are comprehensive covering all phases, aspects and causes of internal displacement. The main drawback is that these principles are non-binding and hence not enforceable. Their enforceability depends on the willingness of states to adopt them in the form of a binding domestic legal framework. A few countries have done so, but a majority of countries facing the problems of internal displacement have yet to do so. The main problem in developing international law on IDPs is the issue of sovereignty. It is the national authorities that are primarily responsible for addressing the needs of their displaced citizens. However, the state often lacks the capacity, and sometimes the will, to provide these people protection and assistance. The principle of sovereignty constitutes the political barrier when it comes to the protection of IDPs by the international community. IDPs are an internal matter, and any attempt to create an international measure to address the IDPs issue is seen as meddling in the domestic affairs of states. To put it differently the principles of sovereignty and non-intervention into the domestic affairs of states create a hurdle in the international community providing effective protection to IDPs.

Apart from setting up an effective legal framework on IDPs at the international level, there is also a need for international humanitarian and developmental agencies to

effectively address the problems of IDPs. As we know, there is no specific institutional set up to facilitate the implementation of Guiding Principles. The services of international humanitarian and developmental organisations are being developed in addressing their problems. The existing ad hoc mechanisms are however uncoordinated and ineffective. The collaborative response system within UN was set up to address the lack of coordination by bringing together all institutions that deal with humanitarian crises including internal displacement. Such an approach has been effective to an extent in the sense that systems such as the Inter Agency Standing Committee, the office of the Emergency Relief Coordinator and the Inter Agency Internal Displacement Division were set up. They have played a significant role in increasing the awareness about protection and assistance issues faced by IDPs. Yet the system has been weakened with the absence of consistent coordination, and lack of specific institutional responsibility, giving rise to humanitarian gaps in protection of IDPs.

To bridge these gaps an additional response mechanism in the form of a Cluster-Based approach was introduced in 2005. Under this system, specific agencies have been assigned sectoral responsibility. This approach is aimed at ensuring more predictable, effective and accountable inter-agency response for the protection of IDPs in key sectors where gaps have been identified. This approach also singles out protection as a key humanitarian activity. The global protection cluster working group is the main forum set up to coordinate protection activities across all sectoral humanitarian activities and agencies.

This system also faces numerous challenges which make the comprehensive protection of IDPs problematic. Although the Cluster Approach has been adopted widely in humanitarian assistance operations, it operationalizes a form of accountability not to beneficiaries, but rather upward to cluster leads, Humanitarian Coordinators, and to the Emergency Relief Coordinator, who are held accountable to states. Hence, the reforms introduced to increase accountability in 2005, are not ensuring a more effective needs-based response to assist IDPs, but rather promoting the alignment of aid with donor objectives.

The effective functionality of the Cluster Approach depends on interdependence and complementarity of all the agencies involved. This requires close cooperation, communication and accountability. If one of the relevant agencies fails to function, the effect will be distributed throughout the whole system and some agencies will be forced to perform additional duties. In addition, the clusters have also in some cases failed to integrate local partners effectively, leaving them to operate in isolation and fragmentation in certain countries, thus minimizing their effectiveness.

The UNHCR remains the largest individual humanitarian actor dealing with displaced populations, including IDPs. Although its original mandate was limited to refugees, it was later expanded to provide assistance and protection to IDPs also. The UNHCR is not only the largest individual agency for IDPs, but also leads other organizations in assisting IDPs. The study found that despite the agency's leading role in protection of IDPs, it was criticized by scholars for promoting the non-admission policies of the western states. To address these problems, the UNHCR needs to be made responsible for its acts or omissions which lead to the violation of human rights of IDPs. The ICRC considers an IDP to be first and foremost a civilian, who is protected by international humanitarian law. Apart from the UN and non UN organizations, the priorities and emphasis on the humanitarian reform process must include its IDP dimension to the humanitarian NGO community. Some NGOs, such as Oxfam have even formally recognized the leadership of UN lead initiatives to formally take over the responsibility for the key elements on IDP protection and assistance in humanitarian response.

Apart from international humanitarian organizations, international developmental agencies such as the World Bank have to play a constructive role in protection and assistance of displaced people. They must take responsibility to ensure that their activities do not undermine the rights of affected communities, which include the people displaced due to developmental projects funded by them. In this regards, accountability has emerged as a key issue for international economic institutions as a result of pressure from transnational activists. The creation of the first external accountability mechanism within the World Bank regarding improving the bank's performance and policy compliance as a result of the influence of Civil Society Organisations (CSOs).

The failure to respect the rights of local people would lead to impoverishment, ineffective development and social and environmental injustice. In so far as the World Bank is concerned effective remedy must exist in situations where World Bank-financed projects clearly violate the rights of IDPs, as expressed in the bank's social and environmental policy framework. It is true to say that the Inspection Panel has received praise from legal scholars and practitioners alike as an important development in citizen-based accountability for the World Bank.

The study found that although legal scholars, practitioner and other international organizations found the Inspection Panel to be an attractive mechanism, there are certain institutional shortcomings that undermine its attractiveness as a model for other international organizations. These include the Panel's limited mandate, lack of ability to grant relief, and in general lacks independence from the Bank, making this institution ineffective in providing relief to the development-induced displaced peoples.

At the regional level, the Africa Union has taken adequate initiatives to set up protection instruments for IDPs. Internal displacement is an issue that the African continent has been facing for a long time. The African Union has therefore adopted the Kampala Convention, which is a path breaking instruments that fills the protection gaps in present international law. The main contribution of the Kampala Convention is that it is the first-ever binding regional instrument governing all phases of displacement that comprehensively protects IDPs by granting them wide ranging rights, and imposing obligations on states and non-state actors. The Kampala Convention also adopted a definition of IDPs that is neither too narrow nor too liberal, and which provides conceptual clarity to the term 'IDPs'. In addition to this, the Convention also introduced some new provisions such as the right to claim compensation for displacement, as well as rules that regulate the conduct of armed groups and private companies. It also details their responsibility in relation to internal displacement. Another unique contribution of the Convention is the introduction of compliance monitoring and follow up mechanisms such as conference of state parties, peer review mechanisms, etc. It also empowers the African Court of Justice and Human Rights and the African Commission on Human and

Peoples Rights to promote compliance of the state parties and adjudicate cases related to the Kampala Convention.

However, some of the provisions of the Kampala Convention are disappointing. For instance, Article 10 of the Convention deals with the obligations of the state in preventing development-induced displacement and states that displacement caused by projects carried out by public and private actors should be prevented as much as possible. However, this provision actually weakens the Guiding Principles standard of ‘compelling and overriding public interest,’ according to which the state should not displace people unless there is a strong, compelling and overriding public interest. In addition, Article 14 of the Kampala Convention creates a mechanism for monitoring compliance, the Conference of States monitor compliance. But it neither clearly defines the mandate of the Conference of States nor provides for an independent agency for the coordination of the protection and assistance of IDPs. Taking these weaknesses into consideration it can be said that the success of the regional legal framework can only be guaranteed if these provisions are modified and the feeble coordination mechanisms strengthened.

At the sub-regional level, there have been progressive sub- regional initiatives to address the internal displacement situations. A significant initiative has been the Great Lake Pact, 2006. It was the outcome of sub-regional cooperation and development efforts in the Great Lake Region. The Great Lake Pact includes several protocols that deal with the issues such as displacement, property rights and problems of sexual violence. These Great Lake protocols, to a large extent, restate the Guiding Principles as an international source of protection for the displaced. In addition to these instruments, there are also some correlating institutions that have been set up to aid their implementation. However, IDPs in these regions still face problems.

Like the African region, the Asian region is also vulnerable to internal displacement. The root cause of displacement in Asia is multidimensional; countries in this region have different historical and geographical conditions, different stages of economic development and different levels of government stability. The causes of displacement include conflicts, human rights violations, natural hazards as well as climate change.

Despite the Asian region facing the problem of IDPs there is no regional legal and institutional mechanism for their protection.

In order to address the problems of IDPs in the Asian region, there is the need for a regional convention on IDPs in line with the Kampala Convention. The advantage of having a regional mechanism include: Firstly, since states are likely to contribute to the formulation of a regional instrument they are to understand and internalize their responsibility towards IDPs. Secondly, states are more likely to trust a regional enforcement mechanism than an international institution. Thirdly, regional norms and institutions are more likely to take into account local social, historical and cultural factors. Hence, the Asian region needs to adopt a convention on IDPs in line with the African Union Convention.

It is to be noted that the improvement of human rights cannot be realized without the cooperation of civil society. The integration of non-state actors might be critical in overcoming problems of internal displacement. The sub-regional forums should be integrated in order to build a comprehensive understanding of the problems. In this regard the role of national human rights institutions should also be strengthened by consolidating partnership with NGOs who can take part in significant activities that include reporting, investigation, education and publication of human rights materials.

The first step towards this could be adopting a human rights instrument at the regional level. Any responsible state should recognize human rights concerns as crucial component of good governance. The regional mechanism should be able to restrict or suspend rights and privileges of the member states in the case of non-compliance to the agreed human rights principles. This measure can ensure that the improvement of the domestic human rights situation goes hand in hand with the participation in regional cooperation for social and economic development. The regional instruments could facilitate the integration of several sub-regions under the unified regional human rights mechanism. But to maximize the effectiveness of the regional arrangements, it is imperative to support the ongoing development of both the national human rights institutions and the ratification of international human rights instruments. Establishment

of a regional human rights mechanism could be a breakthrough in reducing human rights violations of IDPs.

Presently, at the national level more than twenty countries have adopted the law and policies on internal displacement and many countries are in the process of adopting domestic legislation on IDPs. Since, States are primarily responsible for the protection of IDPs, it is very much necessary to have a law on IDPs. As far as India is concerned, the Right to Fair Compensation and Transparency, Rehabilitation and Resettlement Act was adopted in 2013. But there is a lacuna in the act in that it addresses the problems of development induced displacement alone and ignores the plight of other displaced people. In fact countries should have comprehensive legal and institutional mechanism to effectively address the problems of IDPs.

Recommendations: Towards an Effective Protection Regime for IDPs

The burden of the thesis has been to argue that the international regime for the protection of IDPs is inadequate. In this backdrop the following recommendation may be considered for the effective protection of IDPs.

1. The study proposes that there is a need to seriously consider the possibility of adopting an international convention on IDPs to provide effective protection. The process of drafting such a convention would reopen the debate about the protection of IDPs help to frame a more adequate legal framework. The adoption of such a Convention would contribute to the protection of IDPs in the states that ratify it.
2. It also must be understood that the Cluster system is not inclusive to the roles of INGOs. In addition, the operation of the different existing international humanitarian actors was found to be in accordance with their separate mandate with limited cooperation, than working commonly for the urgent needs of the IDPs. Hence, creating a comprehensive common strategic framework for the protection of IDPs is indispensable.
3. The study recommends the reform of the World Bank Inspection Panel. A separate unit should be created that would be responsible for remedying the social and environmental policy violations identified by the panel. The displaced and aggrieved communities should also be adequately compensated. In addition, it is recommended that the World Bank should broaden the mandate of the panel and give the powers necessary to carry out

the above mentioned functions. At present, a request can be brought before the World Bank only by a person or people affected by a project that is being financed by the Bank and not by external NGOs acting on their behalf. But in today's world, there exists a very strong notion of public interest which comes to the fore particularly when issues concerning environmental protection or the common heritage of mankind come up. This is especially true in cases where there is no specific party is particularly affected by a project, but where the implementation of the project would lead to general environmental harm. In such circumstances there is no clarity as to whether national or international NGOs have the rights to protect public interest, especially in the international organizational framework. Here if the Panel mandate is broadened the Panel could work much more effectively.

4. At the regional level biggest challenge before the Kampala Convention is the implementation of its provision in the domestic legislation of states. The one possible solution for its speedy implantation is for civil society organizations to disseminate the message of the Convention within countries and among IDPs so that the displaced can achieve protection and assistance that it offers. In addition to these, other actions to be taken to push for speedy ratification and implementation might include coordination with national monitoring mechanisms to identify the service delivery gaps and make states understand how the provisions of the Convention can mitigate these gaps.
5. In order to address the problems of IDPs in the Asian region, there is need for regional convention on IDPs in line with the Kampala Convention. In addition, regional organizations such as ASEAN and SAARC must assume greater responsibility in working towards peace, security and stability, especially when impacts are of a regional nature. The lack of protection and legal gaps are a key obstacle for IDPs to access their fundamental human rights. States should develop national laws and also explore ratification of international human rights treaties. Apart from the above humanitarian aid must be delivered while other more sustainable solutions are explored, that allow communities to be self-reliant and promote resilience. Responses to displacement should not only involve humanitarian actors but also consider development approaches that are rights based.

6. In order to find solutions, the states must advance effective regional cooperation. This would include addressing the root causes in countries of origin, providing more opportunities for local integration and the strategic use of resettlement. To achieve this in the Asia Pacific, the states must cooperate with the civil society. They often have better access to the communities; understand cultural sensitivities, and their work is less likely to be dismissed. Local and national groups are also often the key actors in facilitating peace building, as well as resolving and preventing conflicts. These groups must be provided with increased resources to carry out their crucial work and their voices must be strengthened. This is the responsibility of all stakeholders involved in identifying and addressing root causes, or responding to displacement, and must not just be sidelined as a responsibility of the state or the local community.
7. It is in the best interests of the displaced that a clear institutional separation is kept between refugees and IDPs. This is because the origin and evolution of the present IDPs regime were not for addressing the problems of the people but to promote a geopolitical interest in which the old framework of the 1951 convention had limited the interest of the powerful. However, there was an urgent need for the western countries to manage and contain refugee flows and in order to achieve this they advocated the principles of 'In Country Protection,' 'Rights to remain' which ultimately lead to the evolution of IDPs regime. No doubt, the IDPs regime came to be useful in legitimizing and preserving the system of intervention, control and instrumental for the neo colonial projects. And also the IDPs regime provided the new normative framework for the promotion of wider geo political interests of the states in the global north.
8. At the national level countries should adopt domestic legislation on IDPs and also strengthen the institutional mechanisms such as the National Human Rights Commission and local civil society organizations.

In a nutshell, though the existing international legal, institutional as well as humanitarian response for IDPs protection and assistance is significantly growing, the system is yet *ad hoc* with weak and unpredictable institutional arrangements. At the regional level the African Union has taken the lead in adopting a binding convention on IDPs, but the weak implementation mechanisms make the Kampala convention ineffective. The Asian region has yet to adopt its own regional convention on IDPs. The countries facing the problems

of internal displacement also need to adopt their domestic legislation on IDPs. In sum, the international, regional and national communities need to revisit their legal and institutional arrangements to come up with better responses to ensure effective protection and assistance to IDPs.

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Annexure - II

The UN Guiding Principles on Internal Displacement, 1998

Introduction - Scope and Purpose

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.
2. For the purposes of these Principles, internally 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 the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.
3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to;
 - (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
 - (b) States when faced with the phenomenon of internal displacement;
 - (c) All other authorities, groups and persons in their relations with internally displaced persons; and
 - (d) Intergovernmental and non-governmental organizations when addressing internal displacement.
4. These Guiding Principles should be disseminated and applied as widely as possible.

Section I. General Principles

Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.
2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.
2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction[^]
2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, color, sex, language, religion or belief, political or other opinion, national, ethnic or social Origin, legal or social status, age, disability, property, birth, or on any Other similar criteria.
2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

Section II. Principles Relating to Protection from Displacement

Principle 5

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.
2. The prohibition of arbitrary displacement includes displacement;

- (a) When it is based on policies of apartheid, 'ethnic cleansing' or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
 - (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
 - (d) In- cases of disasters, unless the safety and health of those affected requires their evacuation; and
 - (e) When it is used as a collective punishment.
3. Displacement shall last no longer than required by the circumstances.

Principle 7

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.
2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent that proper accommodation is provided to the displaced persons that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.
3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:
 - (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
 - (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
 - (c) The free and informed of those to be displaced shall be sought;
 - (d) The authorities concerned shall endeavor to involve those affected, particularly women, in the planning and management of their relocation;
 - (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
 - (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

Principle 8

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

Section III. Principles Relating to Protection during Displacement

Principle 10

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

- (a) Genocide;
- (b) Murder;
- (c) Summary or arbitrary executions; and
- (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

- (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
- (b) Starvation as a method of combat;
- (c) Their use to shield military objectives from attack or to shield, favour or impede military operations;
- (d) Attacks against their camps or settlements; and
- (e) The use of anti-personnel landmines.

Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.

2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:

- (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
- (b) Slavery Or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labor of children; and
- (c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

Principle 12

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.
3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
4. In no case shall internally displaced persons be taken hostage.

Principle 13

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.
2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence!
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

Principle 15

Internally displaced persons have:

- (a) The right to seek safety in another part of the country
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and

(d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

Principle 16

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavor to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.
3. The authorities concerned shall endeavor to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.
4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

Principle 17

1. Every human being has the right to respect of his or her family life.
2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.
3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.
4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

Principle 18

1. All internally displaced persons have the right an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authority's shall provide internally displaced persons with and ensure safe access to:
 - (a) Essential food and potable water;
 - (b) Basic shelter and housing;
 - (c) Appropriate clothing and

(d) Essential medical services and sanitation.

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Principle 19

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.

2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counseling for victims of sexual and other abuses.

3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons,

Principle 20

1. Every human being has the right to recognition everywhere as a person before the law.

2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.

3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

Principle 21

1. No one shall be arbitrarily deprived, of property and possessions.

2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:

(a) Pillage;

(b) Direct or indiscriminate attacks or other acts of violence;

(c) Being used to shield military operations or objectives;

(d) Being made the object of reprisal; and

(e) Being destroyed or appropriated as a form of collective punishment.

3. Property and possessions left behind by internally displaced persons[^] should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

- (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
- (b) The right to seek freely opportunities for employment and to participate in economic activities;
- (c) The right to associate freely and participate equally in community affairs;
- (d) The right to vote and to participate in government and public affairs, including the right to have access to the means necessary to exercise this right; and
- (e) The right to communicate in a language they understand.

Principle 23

- 1. Every human being has the right to education.
- 2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.
- 3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programs.
- 4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

Section IV. Principles Relating to Humanitarian Assistance

Principle 24

- 1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.
- 2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

Principle 25

- 1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.

2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or interference in a State's internal affairs and shall be considered in good faith. Consent, thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.

3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant person's engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

Principle 26

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

Principle 27

1. International humanitarian organizations and other appropriate actors, when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.

2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

Section V. Principles Relating to Return, Resettlement and Reintegration

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed Of upon their displacement, When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form Of just reparation.

Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

Annexure - III

International Law Association, Declaration of International Law Principles on Internally Displaced Persons, 2000.

PREAMBLE

THE INTERNATIONAL LAW ASSOCIATION,

CONCERNED that, despite the end of the Cold War, there are still some 11.5 million refugees worldwide, joined by some 20-25 million internally displaced persons, who have been forced to leave or flee their homes for essentially the same reasons;

NOTING that, in contrast to refugees, who are protected and assisted by many global and regional legal instruments and who may thus enjoy comparative safety in the countries of asylum or resettlement, as well as the protection and assistance by many international organizations, both governmental and nongovernmental, internally displaced persons lack such safety, protection and assistance;

RECOGNIZING the need to ensure greater protection of and assistance to internally displaced persons under international law, including human rights, refugee and humanitarian law;

STRESSING the right of any person to freedom of movement, including the right not to be arbitrarily displaced from that person's home or place of habitual residence;

EMPHASIZING that nothing in the present Declaration shall affect other international agreements in force between States parties to them, and that in situations not covered by such agreements, internally displaced persons are nevertheless protected by the general principles of international law, by the humanitarian practices of international organizations accepted by States, by the principle of humanity, by the rules of basic human rights, and by rights granted under domestic laws;

TAKING, INTO ACCOUNTS Guiding Principles on Internal Displacement developed by the Representative of the Secretary-General, Mr. Francis M. Deng (UN Doc. E/CN.4/1.9-98/53/Add. 2, Annex);

URGING all States, *de facto* authorities, the United Nations and other international organizations, both governmental (including regional) and nongovernmental, to systematically review their existing roles vis-a-vis refugees to that the rights and interests of internally displaced persons are properly safeguarded and integrated therein;

DECLARES the following principles of international law as applicable to the legal status of internally displaced persons:

Section

I

Definitions

Article 1

1. For the purpose of this Declaration, the term "internally displaced persons" refers to "persons or groups of persons who have been forced to flee or leave their homes or places of habitual residence as a result of armed conflicts, internal strife or systematic violations of human rights, and who have not crossed an internationally recognized State border."
2. This Declaration applies also to persons internally displaced by whatever causes, such as natural or man-made disasters or large-scale developmental projects, whenever the responsible State or *de facto* authority fails, for reasons that violate fundamental human rights, to protect and assist those victims.
3. By "*de facto* authorities" are meant any non-State entities in effective control of part(s) of a State's territory which are parties to an armed conflict and/or internal strife or have generated or hosted internally displaced persons.

Section

II

Rights of Internally Displaced Persons

Article 2

1. Internally Displaced persons shall be protected and assisted in accordance with all generally accepted and, where appropriate, regionally agreed upon, human rights, refugee and humanitarian law.*
2. Notwithstanding that preferential treatment shall be accorded to certain internally displaced persons, such as expectant mothers, mothers with young children, unaccompanied minors, persons with disabilities and elderly persons, no discrimination may be made on the basis of race, color, sex, gender, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or any other similar criteria.

Article 3

1. Internally displaced persons are entitled to all the rights conferred by international human rights law including, whenever applicable, those rights secured for aliens as refugees and stateless persons.
2. Internally displaced persons have the right to seek and to receive, freely and in security, all humanitarian assistance and protection from national and *de facto* authorities, as well as duly authorized international organizations.

Article 4

1. Freedom of movement, including the right not to be arbitrarily displaced, shall be respected to the fullest extent possible in accordance with international law.
2. No one shall be compelled to leave his or her home or place of habitual residence due to persecution or discrimination based on race, color, sex, gender, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or any other similar criteria, or subject to such persecution or discrimination subsequent to displacement.
3. Measures aimed at deliberate alteration of the demographic composition of a given region (e.g., "ethnic cleansing") or at genocide are strictly prohibited.

Article 5

1. All internally displaced persons have the right to return to their homes or places of habitual residence freely and in security and dignity, as soon as the conditions giving rise to their displacement have ceased.
2. Internally displaced persons shall not be detained or placed in an area which exposes them to the dangers of armed conflict and/or internal strife.

Article 6

Identity papers shall be issued by appropriate authorities to enable internally displaced persons to fully enjoy all rights provided for under this Declaration.

Article 7

All internally displaced persons, especially children separated from their parents or other family members, are entitled to the right to family reunification.

Article 8

In the case of a Federal, non-unitary or divided State, internally displaced persons are entitled to the same treatment as is accorded to local permanent residents, particularly in respect to education, public health, housing, public relief, rationing, access to the courts, employment and social security.

Article 9

Internally displaced persons shall be entitled to restitution or adequate compensation for property losses or damages and for physical and mental suffering resulting from their forced displacement.

Section III

Rights and Obligations of States and the International Community

Article 10

1. National authorities, whether *de jure* or *de facto*, have the primary responsibility to protect and assist internally displaced persons within their jurisdiction.
2. In the implementation of this Declaration, States and the international community shall respect the territorial sovereignty of all States and the principle of noninterference in their internal affairs, in accordance with the Charter of the United Nations and the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States.
3. Humanitarian assistance and/or protection properly provided to internally displaced persons by States, *de facto* authorities or the international community shall not be deemed interference in the internal affairs of the country of displacement.

Article 11

1. States and *de facto* authorities shall promote and respect the rights and interests of internally displaced persons as set forth in this Declaration and in other applicable instruments. Such rights and interests shall be observed by all persons, groups and authorities, irrespective of and without affecting their legal status.
2. They shall also take joint and separate action in cooperation with the United Nations and other international organizations, both governmental (including regional) and nongovernmental, in addressing the root causes of internal displacement with a view to adopting preventive measures and obtaining durable solutions.

Article 12

States, *de facto* authorities, the United Nations and other international organizations, both governmental (including regional) and nongovernmental, shall all cooperate with one another to establish and maintain appropriate institutional arrangements to implement the provisions of this Declaration.

Article 13

1. States, *de facto* authorities and international organizations, both governmental (including regional) and nongovernmental, may offer or be requested to provide humanitarian assistance to alleviate the suffering of internally displaced persons. Such assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.
2. Requests for assistance shall be considered by the States, *de facto* authorities and international organizations concerned in the spirit of international cooperation and burden sharing and in good faith, taking into account their resources and the needs of internally

displaced persons. Neither the offers or requests nor their acceptances shall be regarded as unfriendly acts.

3. The assistance offered or requested may include, in particular, the provision of essential subsistence needs, such as food and potable water, clothing, housing or other forms of shelter, physical and mental health care, and sanitation.

4. Whenever humanitarian assistance and/or protection is offered, requested, provided or accepted, it shall be done so regardless of the status of governmental entities or authorities concerned.

5. The request for, or offer, provision, or acceptance of, humanitarian assistance and or protection shall not imply diplomatic recognition of or by the States or authorities concerned.

Article 14

1. States and *de facto* authorities shall adopt all necessary measures to ensure that internally displaced persons have free and safe access to international assistance and, wherever appropriate, to protection by duly authorized organizations. Such assistance shall not be diverted for military, political, or other purposes.

2. Personnel of generally recognized relief organizations involved in transporting, safeguarding and distributing relief materials or performing other services shall be given full protection from armed attack in accordance with the principles of humanitarian law and those contained in the Convention on the Safety of United Nations and Associated Personnel, as well as free and safe access to internally displaced persons needing assistance and protection, in conformity with paragraph 1 of the present article.

3. Safe areas may be established where appropriate.

Article 15

1. States and *de facto* authorities shall never use starvation or other forms of deprivation as a weapon against internally displaced persons during armed conflicts, whether international or non-international.

2. All armed forces are prohibited from interfering with the movement of essential subsistence needs-on land, by air or sea-clearly designated for civilian consumption. Appropriate international agencies may be authorized to monitor such movement.

Article 16

If the Security Council decides that the nature and scope of a situation of internal displacement constitute a threat to international peace and security and, in accordance with the Charter of the United Nations, orders that appropriate measures be taken, States, *de facto* authorities and international organizations, both governmental (including

regional) and nongovernmental, shall provide protection and assistance to internally displaced persons, as well as address the root causes that gave rise to the situation,

Section IV

Final Clauses

Article 17

Nothing in the present Declaration may be construed as limiting the right of any persons to seek asylum abroad or to be protected against forcible return to their place of habitual residence where their lives or freedoms would be threatened on account of their race, color, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or any other similar criteria.

Article 18

1. Nothing in the present Declaration shall affect international agreements in force between States parties to them,
2. Nothing in the present Declaration shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the principles contained herein.
3. Any international agreement dealing with the topics covered by the present Declaration shall be interpreted in accordance with the purpose and spirit of this Declaration.

Annexure - IV

AFRICAN UNION CONVENTION FOR THE PROTECTION AND ASSISTANCE OF INTERNALLY DISPLACED PERSONS IN AFRICA

(KAMPALA CONVENTION)

Preamble

We, the Heads of State and Government of the Member States of the African Union;

CONSCIOUS of the gravity of the situation of internally displaced persons as a source of continuing instability and tension for African states;

ALSO CONSCIOUS of the suffering and specific vulnerability of internally displaced persons;

REITERATING the inherent African custom and tradition of hospitality by local host communities for persons in distress and support for such communities;

COMMITTED to sharing our common vision of providing durable solutions to situations of internally displaced persons by- establishing an- appropriate legal framework for their protection and assistance;

DETERMINED to adopt measures aimed at preventing and putting an end to the phenomenon of internal displacement by eradicating the root causes, especially persistent and recurrent conflicts as well as addressing displacement caused by natural disasters, which have a devastating impact on human life, peace, stability, security, and development;

CONSIDERING the 2000 Constitutive Act of the African Union and the 1945 Charter of the United Nations;

REAFFIRMING the principle of the respect of the sovereign equality of States Parties, their territorial integrity and political independence as stipulated in the Constitutive Act of the African Union and the United Nations Charter;

RECALLING the 1948 Universal Declaration of Human Rights, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 Four Geneva Conventions and the 1977 Additional Protocols to the Geneva Conventions, the 1951 United Nations Convention Relating 'to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1981 African Charter on Human and Peoples' Rights and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the 1990 African Charter on the Rights and Welfare of the Child, the 1994 Addis Ababa Document on Refugees and Forced

Population Displacement in Africa, and other relevant United Nations and African Union human rights instruments, and relevant Security Council Resolutions;

MINDFUL that Member States of the African Union have adopted democratic practices and adhere to the principles of non-discrimination, equality and equal protection of the law under the 1981 African Charter on Human and Peoples' Rights, as well as under other regional and international human rights law instruments;

RECOGNISING the inherent rights of internally displaced persons as provided for and protected in international human rights and humanitarian law and as set out in the 1998 United Nations Guiding Principles on Internal Displacement, which are recognized as an important international framework for the protection of internally displaced persons;

AFFIRMING our primary responsibility and commitment to respect, protect and fulfill the rights to which internally displaced persons are entitled, without discrimination of any kind;

NOTING the specific roles of international Organizations and agencies within the framework of the United Nations inter-agency collaborative approach to internally displaced persons, especially the protection expertise of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the invitation extended .to it by the Executive Council of the African Union in Decision EX/CL413 (XIII) of July 2008 at Sharm El Sheikh, Egypt, to continue and reinforce its role in the protection of and assistance to internally displaced persons, within the United Nations coordination mechanism; and noting also the mandate of the International Committee of the Red Cross to protect and assist persons affected by armed conflict and other situations of violence, as well as the work of civil society organizations, in conformity with the laws of the country in which they exercise such roles and mandates;

RECALLING the- lack of a binding African and international legal and institutional framework specifically, for the prevention of internal displacement and the protection of and assistance to internally displaced persons;

REAFFIRMING the historical commitment of the AU Member States to "the protection of and assistance to refugees and displaced persons and, in particular, the implementation of Executive Council Decision EX/CL/127 of July 2004 in Addis Ababa to collaborate with relevant cooperating partners and other stakeholders to ensure that internally displaced persons are provided with an appropriate legal framework to ensure their adequate protection and assistance as well as with durable solutions;

CONVINCED that the present Convention for the Protection and Assistance of Internally Displaced Persons presents such a legal framework;

HAVE AGREED AS FOLLOWS:

Article 1

Definitions

For the purpose of the present Convention:

- a. "African Charter" means the African Charter on Human and Peoples' Rights;
- b. "African Commission" means the African Commission on Human and Peoples' Rights;
- c. "African Court of Justice and Human Rights" means the African Court of Justice and Human Rights;
- d. Arbitrary displacement means arbitrary displacement as referred to in Article 4 (4) (a) to (h);
- e. "Armed Groups" means dissident armed forces or other organized armed groups that are distinct from the armed forces of the state;
- f. "AU" means the African Union;
- g. "AU Commission" means the Secretariat of the African Union, which is the depository of the regional instruments;
- h. "Child" means every human being below the age of 18 years;
- i. "Constitutive Act" means the Constitutive Act of the African Union;
- j. "Harmful Practices" means all behavior, attitudes and/or practices which negatively affect the fundamental rights of persons, such as but not limited to their right to life, health, dignity, education, mental and physical integrity and education;
- k. "Internally Displaced Persons" means 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 the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border;
- l. "Internal displacement" means the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders;
- m. "Member State" means a Member State of the African Union;
- n. "Non-state actors" means private actors who are not public officials of the State, including other armed groups not referred to in article 1(d) above, and whose acts cannot be officially attributed to the State;
- o. "OAU" means the Organization of African Unity;
- p. "Women" mean persons of the female gender, including girls;

- q. "Sphere standards" mean standards for monitoring and evaluating the effectiveness and impact of humanitarian assistance; and
- r. "States Parties" means African States which have ratified or acceded to this Convention.

Article 2

Objectives

The objectives of this Convention are to:

- a. Promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions;
- b. Establish a legal framework for preventing internal displacement, and protecting and assisting internally displaced persons in Africa;
- c. Establish a legal framework for solidarity, cooperation, promotion of durable solutions and mutual support between the States Parties in order to combat displacement and address-its consequences;
- d. Provide for the obligations and responsibilities of States Parties, with respect to the prevention of internal displacement and protection of, and assistance, to internally displaced persons;
- e. Provide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors, including civil society organizations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons;

Article 3

General Obligations Relating to States Parties

1. States Parties undertake to respect and ensure respect for the present Convention. In particular, States Parties shall:
 - a. Refrain from, prohibit and prevent arbitrary displacement of populations;
 - b. Prevent political, social, cultural and economic exclusion and marginalization, that are likely to cause displacement of populations or persons by virtue of their social identity, religion or political opinion;
 - c. Respect and ensure respect for the principles of humanity and human dignity of internally displaced persons;

- d. Respect and ensure respect and protection of the human rights of internally displaced persons, including humane treatment, non-discrimination, equality and equal protection of law;
- e. Respect and ensure respect for international humanitarian law regarding the protection of internally displaced persons,;
- f. Respect and ensure respect for the humanitarian and civilian character of the protection of and assistance to internally displaced persons, including ensuring that such persons do not engage in subversive activities;
- g. Ensure individual responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international criminal law;
- h. Ensure the accountability of non-State actors concerned, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts;
- i. Ensure the accountability of non-State actors involved in the exploration and exploitation of economic and natural resources leading to displacement;
- j. Ensure assistance to internally displaced persons by meeting their basic needs as well as allowing and facilitating rapid and unimpeded access by humanitarian organizations and personnel;
- k. Promote self-reliance and sustainable livelihoods amongst internally displaced persons, provided that such measures shall not be used as a basis for neglecting the protection of and assistance to internally displaced persons, without prejudice to other means of assistance;

2. States Parties shall:

- a. Incorporate their obligations under this Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, internally displaced persons in conformity with their obligations under international law;
- b. Designate an authority or body, where needed, responsible for coordinating activities aimed at protecting and assisting internally displaced persons and assign responsibilities to appropriate organs for protection and assistance, and for cooperating with relevant international organizations or agencies, and civil society organizations, where no such authority or body exists;
- c. Adopt other measures as appropriate, including strategies and policies on internal displacement at national and local levels, taking into account the needs of host communities;
- d. Provide, to the extent possible, the necessary funds for protection and assistance without prejudice to receiving international support;

e. Endeavour to incorporate the relevant principles contained in this Convention into peace negotiations and agreements for the purpose of finding sustainable solutions to the problem of internal displacement.

Article 4

Obligations of States Parties relating to Protection from Internal Displacement

1. States Parties shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, so as to prevent and avoid conditions that might lead to the arbitrary displacement of persons;
2. States Parties shall devise early warning systems, in the context of the continental early warning system, in areas of potential displacement, establish and implement disaster risk reduction strategies, emergency and disaster preparedness and management measures and, where necessary, provide immediate protection and assistance to internally displaced persons;
3. States Parties may seek the cooperation of international organizations or humanitarian agencies, civil society organizations and other relevant actors;
4. All persons have a right to be protected against arbitrary displacement. The prohibited categories of arbitrary displacement include but are not limited to:
 - a. Displacement based on policies of racial discrimination or other similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the population;
 - b. Individual or mass displacement of civilians in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand, in accordance with international humanitarian law;
 - c. Displacement intentionally used as a method of warfare or due to other violations of international humanitarian law in situations of armed conflict;
 - d. Displacement caused by generalized violence or violations of human rights;
 - e. Displacement as 3.result of harmful practices;
 - f. Forced evacuations in cases of natural or human made disasters or other causes if the evacuations are not required by the safety and health of those affected;
 - g. Displacement used as a collective punishment;
 - h. Displacement caused by any act, event, factor, or phenomenon of comparable gravity to all of the above and which is not justified under international law, including human rights and international humanitarian law.

5. States Parties shall endeavor to protect communities with special attachment to, and dependency, on land due to their particular culture and spiritual values from being displaced from such lands, except for compelling and overriding public interests;
6. States Parties shall declare as offences punishable by law acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity.

Article 5

Obligations of States Parties relating to Protection and Assistance

1. States Parties shall bear the primary duty and responsibility for providing protection of and humanitarian assistance to internally displaced persons within their territory or jurisdiction without discrimination of any kind.
2. States Parties shall cooperate with each other upon the request of the concerned State Party or the Conference of State Parties in protecting and assisting internally displaced persons.
3. States Parties shall respect the mandates of the African Union and the United Nations, as well as the roles of international humanitarian organizations in providing protection and assistance to internally displaced persons, in accordance with international law.
4. States Parties shall take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change.
5. States Parties shall assess or facilitate the assessment of the needs and vulnerabilities of internally displaced persons and of host communities, in cooperation with international organizations or agencies.
6. States Parties shall provide sufficient protection and assistance to internally displaced persons, and where available resources are inadequate to enable them to do so, they shall cooperate in seeking the assistance of international organizations and humanitarian agencies, civil society organizations and other relevant actors. Such organizations may offer their services to all those in need.
7. States Parties shall take necessary steps to effectively organize, relief action that is humanitarian, and impartial in character, and guarantee security. States Parties shall allow rapid and unimpeded passage of all relief consignments, equipment and personnel to internally displaced persons. States Parties shall also enable and facilitate the role of local and international organizations and humanitarian agencies, civil society organizations and other relevant actors, to provide protection and assistance to internally displaced persons. States Parties shall have the right to prescribe the technical arrangements under which such passage is permitted.
8. States Parties shall uphold and ensure respect for the humanitarian principles of humanity, neutrality, impartiality and independence of humanitarian actors.

9. States Parties shall respect the right of internally displaced persons to peacefully request or seek protection and assistance, in accordance with relevant national and international laws, a right for which they shall not be persecuted, prosecuted or punished.

10. States Parties shall respect, protect and not attack or otherwise harm humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons.

11. States Parties shall take measures aimed at ensuring that armed groups act in conformity with their obligations under Article 7.

12. Nothing in this Article shall prejudice the principles of sovereignty and territorial integrity of states.

Article 6

Obligations Relating to International Organizations and Humanitarian Agencies

1. International organizations and humanitarian agencies shall discharge their obligations under this Convention in conformity with international law and the laws of the country in which they operate.

2. In providing protection and assistance to Internally Displaced Persons, international organizations and humanitarian agencies shall respect the rights of such persons in accordance with international law.

3. International organizations and humanitarian agencies shall be bound by the principles of humanity, neutrality, impartiality and independence of humanitarian actors, and ensure respect for relevant international standards and codes of conduct.

Article 7

Protection and Assistance to Internally Displaced Persons in Situations of Armed Conflict

1. The provisions of this Article shall not, in any way whatsoever, be construed as affording legal status or legitimizing or recognizing armed groups and are without prejudice to the individual criminal responsibility of the members of such groups under domestic or international criminal law.

2. Nothing in this Convention shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

3. The protection and assistance to internally displaced persons under this Article shall be governed by international law and in particular international humanitarian law.

4. Members of Armed groups shall be held criminally responsible for their acts which violate the rights of internally displaced persons under international law and national law.
5. Members of armed groups shall be prohibited from:
 - a. Carrying out arbitrary displacement;
 - b. Hampering the provision of protection and assistance to internally displaced persons under any circumstances;
 - c. Denying internally displaced persons the right to live in satisfactory conditions of dignity, security, sanitation, food, water, health and shelter; and separating members of the same family;
 - d. Restricting the freedom of movement of internally displaced persons within and outside their areas of residence;
 - e. Recruiting children or requiring or permitting them to take part in hostilities under any circumstances;
 - f. Forcibly recruiting persons, kidnapping, abduction or hostage taking, engaging in sexual slavery and trafficking in persons especially women and children;
 - g. Impeding humanitarian assistance and passage of all relief consignments, equipment and personnel to internally displaced persons
 - h. Attacking or otherwise harming humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons and shall not destroy, confiscate or divert such materials; and
 - i. Violating the civilian and humanitarian character of the places where internally displaced persons are sheltered and shall not infiltrate such violations.

Article 8

Obligations relating to the African Union

1. The African Union shall have the right to intervene in a Member State pursuant to a decision of the Assembly in accordance with Article 4(h) of the Constitutive Act in respect of grave circumstances, namely: war crimes, genocide, and crimes against humanity;
2. The African Union shall respect the right of States Parties to request intervention from the Union in order to restore peace and security in accordance with Article 4(j) of the Constitutive Act and thus contribute to the creation of favorable conditions for finding durable solutions to the problem of internal displacement;
3. The African Union shall support the efforts of the States Parties to protect and assist internally displaced persons under this Convention. In particular, the Union shall:

- a. Strengthen the institutional framework and capacity of the African Union with respect to protection and assistance to internally displaced persons;
- b. Coordinate the mobilization of resources for protection and assistance to internally displaced persons;
- c. Collaborate with international organizations and humanitarian agencies, civil society organizations and other relevant actors in accordance with their mandates, to support measures taken by States Parties to protect and assist internally displaced persons.
- d. Cooperate directly with African States and international organizations and humanitarian agencies, civil society organizations and other relevant actors, with respect to appropriate measures to be taken in relation to the protection of and assistance to internally displaced persons;
- e. Share information with the African Commission on Human and Peoples' Rights on the situation of displacement, and the protection and assistance accorded to internally displaced persons in Africa; and,
- f. Cooperate with the Special Rapporteur of the African Commission on Human and Peoples' Rights for Refugees, Returnees, IDPs and Asylum Seekers in addressing issues of internally displaced persons.

Article 9

Obligations of States Parties Relating to Protection and Assistance during Internal Displacement

1. States Parties shall protect the rights of internally displaced persons regardless of the cause of displacement by refraining from, and preventing, the following acts, amongst others:
 - a. Discrimination -against such persons in the enjoyment of any rights or freedoms on the grounds that they are internally displaced persons;
 - b. Genocide, crimes against humanity, war crimes and other violations of international humanitarian law against internally displaced persons;
 - c. Arbitrary killing, summary execution, arbitrary detention, abduction, enforced disappearance or torture and other forms of cruel, inhuman or degrading treatment or punishment;
 - d. Sexual and gender based violence in all its forms, notably rape, enforced prostitution, sexual exploitation and harmful practices, slavery, recruitment of children and their use in hostilities, forced labour and human trafficking and smuggling; and
 - e. Starvation.
2. States Parties shall:

- a. Take necessary measures to ensure that internally displaced persons are received, without discrimination of any kind and live in satisfactory conditions of safety, dignity and security;
- b. Provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health services, sanitation, education, and any other necessary social services, and where appropriate, extend such assistance to local and host communities;
- c. Provide special protection for and assistance to internally displaced persons with special needs, including separated and unaccompanied children, female heads of households, expectant mothers, mothers with young children, the elderly, and persons with disabilities or with communicable diseases;
- d. Take special measures to protect and provide for the reproductive and "sexual health of internally displaced women as well as appropriate psycho-social support for victims of sexual and other related abuses;
- e. Respect and ensure the right to seek safety in another part of the State and to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk;
- f. Guarantee the freedom of movement and choice of residence of internally displaced persons, except where restrictions on such movement and residence are necessary, justified and proportionate to the requirements of ensuring 'security for internally displaced persons or maintaining public security, public order and public health;
- g. Respect and maintain the civilian and humanitarian character of the places where internally displaced persons are sheltered and safeguard such locations against infiltration by armed groups or elements and disarm and separate such groups or elements from internally displaced persons;
- h. Take necessary measures, including the establishment of specialized mechanisms, to trace and reunify families separated during displacement and otherwise facilitate the re-establishment of family ties;
- i. Take necessary measures to protect individual, collective and cultural property left behind by displaced persons as well as in areas where internally displaced persons are located, either within the jurisdiction of the State Parties, or in areas under their effective control;
- j. Take necessary measures to safeguard against environmental degradation in areas where internally displaced persons are located, either within the jurisdiction of the State Parties, or in areas under their effective control;

- k. States Parties shall consult internally displaced persons and allow them to participate in decisions relating to their protection and assistance;
 - l. Take necessary measures to ensure that internally displaced persons who are; citizens in their country of nationality can enjoy their civic and political rights, particularly public participation, the right to vote and to be elected to public office; and
 - m. Put in place measures for monitoring and evaluating the effectiveness and impact of the humanitarian assistance delivered to internally displaced persons in accordance with relevant practice, including the Sphere Standards.
3. States Parties shall discharge these obligations, where appropriate, with assistance from international organizations and humanitarian agencies, civil society organizations, and other relevant actors.

Article 10

Displacement induced by Projects

1. States Parties, as much as possible, shall prevent displacement caused by projects carried out by public or private actors;
2. States Parties shall ensure that the stakeholders concerned will explore feasible alternatives, with full information and consultation of persons likely to be displaced by projects;
3. States parties shall carry out a socio-economic and environmental impact assessment of a proposed development project prior to undertaking such a project.

Article 11

Obligations of States Parties relating to Sustainable Return, Local Integration or Relocation

1. States Parties shall seek lasting solutions to the problem of displacement by promoting and creating satisfactory conditions for voluntary return, local integration or relocation on a sustainable basis and in circumstances of safety and dignity.
2. States Parties shall enable internally displaced persons to make a free and informed choice on whether to return, integrate locally or relocate by consulting them on these and other options and ensuring their participation in finding sustainable solutions.
3. States Parties shall cooperate, where appropriate, with the African Union and international organizations or humanitarian agencies and civil society organizations, in providing protection and assistance in the course of finding and implementing solutions for sustainable return, local integration or relocation and long-term reconstruction.

4. States Parties shall establish appropriate mechanisms providing for simplified procedures where necessary, for resolving disputes relating to the property of internally displaced persons.

5. States Parties shall take all appropriate measures, whenever possible, to restore the lands of communities with special dependency and attachment to such lands upon the communities' return, reintegration, and reinsertion.

Article 12

Compensation

1. States Parties shall provide persons affected by displacement with effective remedies.

2. States Parties shall establish an effective legal framework to provide just and fair compensation and other forms of reparations, where appropriate, to internally displaced persons for damage incurred as a result of displacement, in accordance with international standards.

3. A State Party shall be liable to make reparation to internally displaced persons for damage when such a State Party refrains from protecting and assisting internally displaced persons in the event of natural disasters.

Article 13

Registration and Personal Documentation

1. States Parties shall create and maintain an up-dated register of all internally displaced persons within their jurisdiction or effective control. In doing so, States Parties may collaborate with international organizations or humanitarian agencies or civil society organizations.

2. States Parties shall ensure that internally displaced persons shall be issued with relevant documents necessary for the enjoyment and exercise of their rights, such as passports, personal identification documents, civil certificates, birth certificates and marriage certificates.

3. States Parties shall facilitate the issuance of new documents or the replacement of documents lost or destroyed in the course of displacement, without imposing unreasonable conditions, such as requiring return to one's area of habitual residence in order to obtain these or other required documents. The failure to issue internally displaced persons with such documents shall not in any way impair the exercise or enjoyment of their human rights:

4. Women and men as well as separated and unaccompanied children shall have equal rights to obtain such necessary identity documents and shall have the right to have such documentation issued in their own names.

Article 14

Monitoring Compliance

1. States Parties agree to establish a Conference of States Parties to this Convention to monitor and review the implementation of the objectives of this Convention.
2. States Parties shall enhance their capacity for cooperation and mutual support under the auspices of the Conference of the States Parties.
3. States Parties agree that the Conference of the States Parties shall be convened regularly and facilitated by the African Union.
4. States Parties shall, when presenting their reports under Article 62 of the African Charter on Human and Peoples' Rights as well as, where applicable, under the African Peer Review Mechanism indicate the legislative and other measures that have been taken to give effect to this Convention.

Final Provisions

Article 15

Application

1. States Parties agree that except where expressly stated in this Convention, its provisions apply to all situations of internal displacement regardless of its causes.
2. States Parties agree that nothing in this Convention shall be construed as affording legal status or legitimizing or recognizing armed groups and that its provisions are without prejudice to the individual criminal responsibility of their members under domestic or international criminal law.

Article 16

Signature, ratification and membership

1. This Convention shall be open to signature, ratification or accession by Member States of the AU in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession shall be deposited with the Chairperson of the African Union Commission.

Article 17

Entry into force

1. This Convention shall enter into force thirty (30) days after the deposit of the instruments of ratification or accession by fifteen (15) Member States.
2. The Chairperson of the AU Commission shall notify Member States of the coming into force of this Convention.

Article 18

Amendment and Revision

1. States Parties may submit proposals for the amendment or revision of this Convention.
2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission of the AU who shall transmit the same to the States Parties within thirty (30) days of receipt thereof.
3. The Conference of States Parties, upon advice of the Executive Council, shall examine these proposals within a period of one (1) year following notification of States Parties, in accordance with the provisions of paragraph 2 of this Article.
4. Amendments or revision shall be adopted by the Conference of States Parties by a simple majority of the States Parties present and voting.
5. Amendments shall come into force thirty (30) days following the depositing of the fifteenth (15) instrument of ratification by the States Parties with the Chairperson of the AU Commission.

Article 19

Denunciation

1. A State Party may denounce this Convention by sending a written notification addressed to the Chairperson of the AU Commission, while indicating the reasons for such a denunciation.
2. The denunciation shall take effect one (1) year from the date when the notification was received by the Chairperson of the AU Commission, unless a subsequent date has been specified.

Article 20

Saving Clause

1. No provision in this Convention shall be interpreted as affecting or undermining the right of internally displaced persons to seek and be granted asylum within the framework of the African Charter on Human and Peoples' Rights, and to seek protection, as a refugee, within the purview of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa or the 1951 U.N Convention Relating to the Status of Refugees as well as the 1967 Protocol Relating to the Status of Refugees.
2. This Convention shall be without prejudice to the human rights of internally displaced persons under the African Charter on Human and Peoples' Rights and other applicable instruments of international human rights law or international humanitarian law. Similarly, it shall in no way be understood, construed or interpreted as restricting,

modifying or impeding existing protection under any of the instruments mentioned herein.

3. The right of internally displaced persons to lodge a complaint with the African Commission on Human and Peoples' Rights or the African Court of Justice and Human Rights, or any other competent international body shall in no way be affected by this Convention.

4. The provisions of this Convention shall be without prejudice to the individual criminal responsibility of internally displaced persons, within the framework of national or international criminal law and their duties by virtue of the African Charter on Human and Peoples' Rights.

Article 21

Reservations

States Parties shall not make or enter reservations to this Convention that are incompatible with the object and purpose of this Convention.

Article 22

Settlement of Disputes

1. Any dispute or differences arising between the States Parties with regard to the interpretation or application of this Convention shall be settled amicably through direct consultations between the States Parties concerned. In the event of failure to settle the dispute or differences, either State may refer the dispute to the African Court of Justice and Human Rights.

2. Until such time as and when the latter shall have been established, the dispute or differences shall be submitted to the Conference of the States Parties, which will decide by consensus or, failing which, by a two-third (2/3) majority of the States Parties present and voting.

Article 23

Depositary

1. This Convention shall be deposited with the Chairperson of the AU Commission, who shall transmit a certified true copy of the Convention to the Government of each signatory State.

2. The Chairperson of the AU Commission shall register this Convention with the United-Nations Secretary-General as soon as it comes into force.

3. This Convention is drawn up in four (4) original texts; in the Arabic, English, French and Portuguese languages, all four (4) being equally authentic.

BY VIRTUE OF WHICH, WE, the Heads of State and Government of the African Union (AU), have signed this Convention. Adopted by the Special Summit of the Union held in Kampala on the 22nd day of October 2009
