

CHAPTER- 2

PROTECTION OF HUMAN RIGHTS OF THE INTERNALLY DISPLACED WOMEN ANDCHILDREN IN INTERNATIONAL ARENA

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Protection of Human Rights of the Internally Displaced Women and Children in International Arena

A. An Overview

In the previous chapter an attempt was made to study the historical perspective of internally displaced women and children. The chapter tried to discuss about the international debate and also one of the most crucial issue of the present day government, humanitarian, human rights, political and social implication. A line of tired people drag their possessions down a road that might be anywhere in the world. They are mostly women and children with a look of desperation in their eyes and a long journey is ahead. These persons who have been driven from their homes by war, ethnic violence, development projects, natural disasters, is often interlinked with and simultaneous to conflicts causing the forced movement of people. They lack effective protection from their government and frequently look to international assistance to meet their basic needs.

The researcher had thoroughly focused on the gender dimensions of internal displacement. In view of Benjamin, who had thoroughly examined the IDP literature which reveals few references pertaining to women. Given that women outnumber men in IDP populations and that the needs of women and men differ, the absence of a gender perspective in the assistance community and in the literature illustrates that gender is either being ignored or is not properly understood. Either shortcoming should motivate immediate and deliberate action to promote a focus on gender. Such a gender focus would require that the different needs of women and men would inform and shape the assistance provided them so as to be most appropriate to their

situation.¹ In a word, one might analyse that, they are refugees. Increasingly, however, this image describes persons in a situation very difficult from refugees, both in terms of legal status and international institutional support, for the simple reason that they have not crossed an international border. For this a better term may be given to these people as “internally displaced persons” or “IDPs”. At the end of 2012, the number of people internally displaced across the world is nearly 28.8 million.

B. Definition Of The Term Internally Displaced Persons

In 1992, as noted above, UN Secretary General Boutros Boutros-Ghali appointed Francis M. Deng as his Representative on Internally Displaced Persons with authorization to conduct fact-finding missions, establish dialogue with governments, coordinate with humanitarian and human rights groups, make proposals for legal and institutional protection, and publish reports for action by the UN Commission on Human Rights, the General Assembly, and international organizations.² Prior to Deng’s appointment, in February 1992, the UN Commission on Human Rights issued a report on IDPs in which it defined internally displaced persons as “Persons 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 disasters, and who are within the territory of their own country.”³

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).

¹ Judy A. Benjamin, “*The Gender Dimensions of Internal Displacement: Concept Paper and Annotated Bibliography*”, Women’s Commission for Refugee Women and Children, UNICEF/IDP Gender Issues Paper, November 1998, P. 7.

² David A. Korn, “*Exodus Within Borders: An Introduction to the Crisis of Internal Displacement*” (Washington DC: Brookings Institution Press), 1999.

³ Commission on Human Rights, “*Analytical Report of the Secretary-General on Internally Displaced Persons*”, E/CN.4/1992/23 (United Nations). 1992.

Walter Kalin, one of the international legal advisers who helped to develop the Guiding Principles on Internal Displacement, underscored the difference between refugees and IDPs. Kalin had emphasized and seek to highlight the descriptive and non-legal nature of the term ‘internally displaced persons’ in Guiding Principle. Internally displaced persons need not and cannot be granted a special legal status comparable to refugee status. In international law, refugees are granted a special legal status because they have lost the protection of their own country and, therefore, are in need of international protection not necessary for those who do not cross international borders. Internally displaced persons do not need such a substitute protection. Rather as human beings who are in a situation of vulnerability they are entitled to the enjoyment of all relevant guarantees of human rights and humanitarian law, including those that are of special importance to them.⁴

‘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.’⁵

Establishing the internally displaced as a category of international concern brought about a need to define who is included in this category. At the time, a working definition, put forth by the Secretary-General, existed. It 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.’⁶

⁴ Walter Kalin, “*Guiding Principles on Internal Displacement: Annotations*”, Studies in Transnational Legal Policy, No. 32. The American Society of International Law and the Brookings Project on Internal Displacement. 2000.

⁵ Guiding Principles on Internal Displacement U.N. Doc E/CN.4/1998/53/Add.2.

⁶ Analytical Report of the Secretary-General on IDPs U.N. Doc E/CN.4/23 (1992).

Principle 6 of the Guiding Principles states that⁷

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 alteration of 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 that are not justified by compelling and overriding public interests [emphasis added];
 - 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.

Principle 9 of the Guiding Principles, moreover, provides that “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 the land.”

As Kalin notes, norms of human rights law and humanitarian law prohibit the forced movement of persons while permitting certain exceptions. Article 12(3) of the International Covenant on Civil and Political Rights (ICCPR) states that the right to liberty of movement and freedom to choose one’s residence “shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others.” Article 49, Geneva Convention IV states that forced migration is allowed, on an exceptional basis, if the security of the population or military imperatives so demand.⁸

⁷ W. Courtland Robinson, “*Risks and Rights: The Causes, Consequences, and Challenges of Development Induced Displacement*”, The Brookings Institution-SAIS Project on Internal Displacement, May 2003, Pg 7-8.

⁸ *Ibid* Pg 7.

It clearly emerges that forced displacement of persons may be allowed in certain circumstances but that these exceptions from protection against displacement are restricted to cases of an ultimate ratio which shall be resorted to only if there are no other alternatives. In this regard, the term 'arbitrary' implies that the acts in question contain 'elements of injustice, unpredictability, and unreasonableness.'⁹

In addition to the above definition the Researcher may also include the 'natural or human-made disasters' in the terminology of IDPs. The Researcher may argue that persons who leave their homes or places of habitual residence due to natural or human-made disasters face only part of the problems encountered by persons displaced as a result of armed conflicts or systematic human rights violations. They do not find themselves in refugee-like situations, but rather face problems relating to the field of economic and social rights.

In the term of Maria Stavropoulou argues that natural and human-made disasters cannot be attributed to the state as they lack an element of coercion and should thus be left out of a definition.¹⁰

Another important distinction with the 'refugee' concept is that not all situations of internal displacement will necessarily be of concern to the international community. If the needs of internally displaced populations are met effectively by their own government, the international community need not become involved, unless of course the government requests assistance. If, on the other hand, internally displaced persons are denied the protection and assistance of their government, they are of legitimate concern to the international community. Of course, not all IDPs will be of concern to each organization that has a mandate or readiness to engage in situations of internal displacement.¹¹

Regarding to the concept of the definition of the term IDP definition is a descriptive rather than legal definition, it allows for organizations to adapt the IDP

⁹ *Supra Note 202, Pg 15.*

¹⁰ Elias Lema Ngugi, "*Internally Displaced Persons: Towards An Effective International Legal Protection Regime*", Pg 18, *website- Nggeli001.Pdf*, visited on 04.08.13.

¹¹ *Ibid, Pg. 21.*

concept to their particular mandates and institutional perspectives. For instance, the ICRC, given its mandate in armed conflicts, inevitably will focus on those IDPs uprooted by armed conflict. The ICRC acknowledges the broader IDP definition, which it finds to be ‘fully suited for the purposes of the Guiding Principles.’¹²

Lastly the Researcher after taking concern of the above definition of the term IDP, it finally may present that the context shall not refer the persons displaced by natural or man-made disaster. The key issue which renders IDPs a category of utmost concern to the international community is their vulnerable position. Although disaster displaced persons may well be vulnerable they do not face threats, such as physical attacks, sexual assault, abduction or forcible recruitment, constantly faced by persons displaced because of armed conflict or massive human rights abuses. Due to the different causes of suffering, remedies will naturally differ. And, when it comes to the root causes and how they can be prevented, different prevention strategies are required if prevention is possible at all – natural disasters may prove to be beyond the realm of prevention.

The term IDP will refer to persons who, as a result of armed conflict, internal strife or gross human rights violations, have been forced to flee or leave their homes or usual place of residence but who remain within the borders of their own country.¹³

C. Internally Displaced Persons: Global Figure And Hotspots

The latest figure at the end of 2012, the number of people internally displaced by armed conflict, generalised violence and human rights violations stood at approximately 28.8 million worldwide, an increase from 26.4 million reported in 2011 and the highest figure ever recorded by the Internal Displacement Monitoring

¹² ICRC ‘*Internally displaced persons: The mandate and role of the International Committee of the Red Cross*,’ International Review of the Red Cross. (2000), Pg. 491-492, website-<http://unhcr.org/home/RSDLEGAL/3decdecbe4.pdf>, assessed on 30.07.2013.

¹³ *Supra Note 204 Pg 8.*

Centre (IDMC). An estimated 2.1 million IDPs were able to return home in 2012, however around 6.5 million people were newly displaced – almost twice as many as in 2011. Some 17.7 million IDPs were being protected and/ or assisted by the United Nations High Commissioner of Refugees (UNHCR) at the end of 2012. More than 1.1 million people became refugees in the course of 2012, the highest number in more than a decade. The number of refugees under the mandate of UNHCR stood at 10.5 million at the end of 2012.¹⁴

a) IDP estimates by region (millions of people)

In 2012, the number of IDPs in Africa was the highest recorded in this decade. With the exception in the year 2008 the number of IDPs in Africa was the lowest recorded. South and South-East Asia was the region with the largest relative increase in the IDP population during that period.

i. Africa¹⁵

There were over 10.4 million IDPs in the 18 sub-Saharan countries IDMC monitored in 2012, almost a third of the global total. The Democratic Republic of the Congo (DRC), Sudan and Somalia continued to have Africa's largest internally displaced populations, and among the largest in the world. Displacement in Nigeria was also known to be significant, but no reliable figures are still yet available.

The largest new displacement in the region took place in eastern DRC, where a million people fled for worsening violence in the provinces of North and South Kivu, Orientale and Katanga, bringing the total number of IDPs in the country is about 2.7 million. The March 23 Movement (M23), a new rebel group formed in

¹⁴General Assembly, Economic and Social Council, Sixty-eight session, substantive session of 2013, Item 70 (a) of the preliminary list (A/67/252) Strengthening of the coordination of humanitarian and disaster relief assistance of the United Nations, including special economic assistance: strengthening of the coordination of emergency humanitarian assistance of the United Nations, P. 3, Website-[sg_report-adv_strengthening_coordination_of_humanitarian_assistance.pdf](http://www.internal-displacement.org/blog/2013/violence-in-central-african-republic-threatens-whole-region-as-idp-numbers-escalate). assessed on 09.07.2013.

¹⁵<http://www.internal-displacement.org/blog/2013/violence-in-central-african-republic-threatens-whole-region-as-idp-numbers-escalate>, assessed on 09.07.2013.

April, attacked the North Kivu capital of Goma in November. The flare-up in conflict displaced 140,000 people in a week; many of them were IDPs living in a large camp on the outskirts of the city.

Close to 230,000 people fled northern Mali throughout the year to escape the uprising by Tuareg rebels early in 2012 and widespread abuses by militant Islamist groups which took control of vast parts of the country in June. Most IDPs fled to the south and the majority were unable to return or achieve other solutions to their displacement.

In Nigeria, increased violence by the radical Islamist group Boko Haram, inter-communal violence between Christians and Muslims and clashes between farmers and pastoralists led to burgeoning displacement. The government is yet to compile reliable figures, but at least 63,000 people were documented as newly displaced by violence.

Fighting over natural resources and an ongoing uprising in South Sudan displaced over 190,000 people, while in Kenya inter-communal violence and clashes over natural resources forced 118,000 to flee. In Sudan, inter-communal violence and fresh clashes between government forces and armed opposition groups forced around 90,000 to flee their homes in Darfur.

ii. Americas¹⁶

As many as 5.8 million people were internally displaced in the Americas at the end of 2012, forced to flee their homes as a result of armed conflict, criminal violence and human rights violations. Despite of changing situations at the country level, the overall figure for the region increased from the previous year.

In Mexico, the total of around 160,000 IDPs in the country included people who have been displaced by drug-cartel violence since 2007 and others living in protracted displacement in the state of Chiapas since the late 1990s.

¹⁶ <http://www.internal-displacement.org/americas/>, assessed on 09.07.2013.

Colombia's internal armed conflict forced around 230, 000 people to flee their homes during the year. The figure is provisional, as because government faced significant challenges in updating its registry for IDPs, and which is not fully the reality on the ground.

In Mexico, an earthquake in March in the state of Guerrero caused displacement, and a storm in August forced people to flee their homes in Guerrero, Oaxaca, Puebla, Quintana Roo, Tabasco and Veracruz states. In Haiti, where more than 320,000 people are still living in displacement following the 2010 earthquake, around 80,000 more were displaced by floods and storms in 2012.

iii. Europe¹⁷

Around 2.5 million people were internally displaced in Europe at the end of 2012. The vast majority fled for armed conflict, generalised violence and other human rights violations, and some have been living in displacement for up to 20 years.

With more than 954,000, Turkey had the largest number of IDPs. The count in Croatia was put at zero after government and UN assessments showed the country's remaining 2,000 IDPs no longer had needed related to their displacement. The only new displacement reported was in Turkey. Figures for Azerbaijan, Cyprus and Georgia rose slightly as more displaced children were still eligible to register as IDPs, while the figure in Kyrgyzstan increased due to new information. In addition, sudden-onset disasters newly displaced over 70,000 people in Russia and Azerbaijan.

iv. South and South-East Asia¹⁸

The decrease in the number of IDPs observed in 2011 in south and south-east Asia continued in 2012. Around 4.1 million people were internally displaced as of

¹⁷ <http://www.internal-displacement.org/europe-the-caucasus-and-central-asia/>, assessed on 09.07.2013.

¹⁸ <http://www.internal-displacement.org/south-and-south-east-asia>, assessed on 09.07.2013.

the end of the year as a result of internal armed conflict, violence and human rights violations, down nearly 5.5 per cent from 4.3 million a year earlier.

Pakistan, Afghanistan and India had the highest number of reported IDPs, accounting for more than a third of the region's displaced population. In many countries, the counting and profiling of IDPs was complicated by their high level of mobility and lack of effective monitoring mechanisms. The flawed registration systems tend to exclude both IDPs outside official camps and those who do not fall within often narrow official definitions of what constitutes an IDP. Camp closures and premature deregistration also meant IDPs were often removed from official statistics and denied further assistance, despite of not having achieved a durable solution. Internal armed conflict between government forces and non-state armed groups (NSAGs) was the main cause of conflict-induced displacement in India, Indonesia, Myanmar, Pakistan, the Philippines, Sri Lanka and Thailand, and in the region as a whole. In some of these countries, and in Bangladesh, the violence was between ethnic and religious groups or clans competing for land, resources and political power. Some of the countries, notably Myanmar and the Philippines, made significant progress towards the peaceful settlement of long-standing conflicts, but it tended not to end displacement.

At least 1.4 million people were newly displaced in the region during 2012. Several waves of inter-communal violence displaced up to 500,000 people in India's north-eastern Assam state. In Philippines, at least 178,000 people fled for clashes between government forces and NSAGs in Mindanao and clan violence affecting mainly in Muslim-majority areas. An estimated 166,000 people were newly displaced in Myanmar, most of them by inter-communal violence pitting Rakhine against Rohingya and other Muslim minorities in Rakhine state. In Afghanistan, an estimated 100,400 people were reportedly displaced, though the true figure is thought to be far higher. Most fled for armed conflict between pro-government forces and the Taliban and widespread conflict-related violence.

v. Middle East¹⁹

The number of IDPs in the Middle East continued to rise in 2012 to stand at more than six million at the end of the year, an increase of 40 per cent as compared to 2011, and the highest figure ever recorded.

The most dramatic increase in the number of IDPs was in Syria, where the figure rose more than five-fold. With at least three million IDPs, Syria is one of the world's largest internal displacement crises. New displacements also took place in Yemen, where the internal conflict forced another 132,000 people to flee their homes. In addition, 1,200 people were newly displaced by flood disaster in Occupied Palestinian Territory (OPT).

Libya was the only country where the number of IDPs dropped substantially. Only 50,000 people were still displaced as of the end of 2012, compared to 243,000 the year before. Most IDPs have managed to return since the fall of Muammar Qadhafi, but those alleged to have supported his regime are unable in fear of reprisals.

D. Developing A Profiling Methodology For Displaced People In Urban Areas

As increasing of the world's rural populations are moving to urban areas, and internally displaced people and other humanitarian populations are amongst the recently urbanized. The UNHCR estimated about half of the world's 10.5 million refugees reside in urban areas.

Information taken from the profile of IDP population, it is very clear and useful for the humanitarian agencies to understand whether displaced people in urban areas are worse off than the urban poor and other migrants who are already in existence. The Researcher is very sanguine that refugees and IDPs are worse off in

¹⁹ <http://www.internal-displacement.org/middle-east-and-north-africa/>, assessed on 09.07.2013.

urban settings, because they have lost their assets and social networks, and lack secure housing, land and property rights, and the cultural knowledge required to survive in a city. However, some research suggests that international migrants, including refugees, are often better equipped to deal with cities than newly urbanized citizens of the host country.

Another major problem has been uprooted ie., the humanitarian agencies is the difficulty of distinguishing refugees and IDPs from the urban poor amongst whom they live. In the towns and cities of Africa, the Middle East and Asia, refugees live in low-income areas, experiencing the same problems of poverty, poor services, crime and lack of employment, and often even sharing housing with the urban poor. This mixing of humanitarian and local populations creates a range of difficulties for aid agencies. While the government and/or UNHCR can register refugees who present themselves to the relevant office, many refugees, including some of the most vulnerable, are often not reached or even known about by agencies. Some of these 'hidden' refugees deliberately choose to avoid contact with aid agencies; others may not know about or be afraid to access agencies that could potentially assist them. This creates difficulties for humanitarian agencies wishing to assist refugees or estimate their numbers.²⁰

The Researcher had made to determine or distinguish the vulnerable refugees from other migrants and the urban poor who are already in existence in that particular town and cities. In this issue a profiling approach will help to obtain information about these issues. The refugees who tend to live in the urban areas face significant health, crime and poverty problems. Humanitarian programs are seen to discriminate these refugees whose neighbors may be equally badly off. It has found by the researcher that, the people who are the resident of the host country like the host governments, local people and donors, usually discriminate the refugees who are the residents of the host country. Agencies if can demonstrate that the target

²⁰ Karen Jacobsen and Rebecca Furst Nichols, "*Developing a Profiling Methodology for Displaced People in Urban Areas*", Feinstein International Center, website-www.sites.tufts.edu/feinstein/files/2012 assessed on 08.07.13

group is more vulnerable, or has special needs not faced by the larger population, targeting of resources can be more easily justified. Some special needs can include for example, family tracing, trauma counseling, provision of documentation, and other problems arising from displacement which are less likely to be experienced by stable population.

E. Age, Gender And Diversity Among Internally Displaced Groups: Specific Needs

A gender framework in humanitarian assistance is not complicated but does require a rudimentary understanding and acceptance of the basic premise upon which all gender theory rests. Gender, simply refers to the female and male roles within a given culture. One cannot study gender by concentrating on females or males to the exclusion of the other sex; gender involves dynamic interactions between the women and men.

Feminist social theory describes the social construction of gender. How gender is constructed explains the position of women in society. Women in developing countries negotiate their lives within a construction of gender framed by their particular cultural groups. When lives drastically change as in the case of forced displacement, women often lose their negotiated positions and revert to less equitable social statuses.²¹

a) Displaced Women

It is very much fortunate that women and children make up the majority of the world's refugees, but to this, internally displaced persons can be added. Movement and living in displacement creates numerous problems for women and children around the world and often exposes women to enormous risks. Women who generally flee take possessions with them and many become separated from family

²¹ For a cogent discussion of the biological versus the cultural roles of women refer to Shery B. Ortner, *Making Gender: The Politics and Erotics of Culture*, "Is Female to Male as Nature is to Culture?", Boston: Beacon Press. 1996.

members. Displacement may affect women's rights to inherit land and property. Over time, the cumulative effects of personal loss may result in depression and physical deterioration. Post-traumatic stress syndrome is a common ailment among women who have been displaced for more than a few months. The long-term impact of displacement on women may mean the permanent loss of social and cultural ties, the termination of career and regular employment, and disruption or loss of educational opportunities. Some marriages do not survive the stress of displacement; divorces are common in IDP settings. Children suffer most when displacement spans periods of several years. They miss education during their formative years, undergo immeasurable trauma and psychological stress, suffer stunted growth due to extended poor nutrition, and have difficulties in socialization.²²

These people often have to travel a long distance in search of food, water and shelter for themselves and their families. Often in search of these necessary they frequently face in attack with injury due to the fighting, mines, unexploded ordinance, as well as sexual abuse, especially rape.

Women show a tremendous strength and resourcefulness in the coping mechanisms they adopt in trying to ensure their own survival and that of their family. Women who are in camps for displaced persons may be particularly vulnerable, especially when they are heads-of-household, widows, elderly women, pregnant women or mothers with small children, for they have to shoulder all the daily responsibilities for survival which consume enormous amounts of time and energy. These women are overlooked by camp authorities and organizations providing assistance. This is due to the fact that in many cultures women are rarely in the public sphere and thus are not included in assessments and needs evaluations. As such, their special needs and not be taken into account.

b) Displaced Children

Looking to Global ratio there are at least 13.5 million internally displaced children in the world, forced from their homes by conflicts in Africa, Asia, Europe,

²² *Supra Note 203, P. 13.*

and the Americas. During flight and in displacement, these children become some of the most vulnerable members of society.

Internally displaced children have been forced to leave their homes behind, to get involved in a harsh violence, and may have been separated from their families. They become increasingly at risk of forced labour, forced early marriage, domestic violence, sexual exploitation, and recruitment into armed groups.

Displacement exacerbates poverty and can cause the breakdown of family and community structures. Faced with disintegration of their social norms, displaced children can find themselves without basic necessities such as shelter and their education can be disrupted or terminated.

National governments have the primary responsibility for ensuring children's rights in displacement. Yet in most cases, national governments do not provide sufficient assistance and protection for internally displaced children. In several countries, child protection working groups and / or monitoring systems on violations against children in armed conflict have been established, and UNICEF, the Office of the Special Representative of the UN Secretary-General for Children and Armed Conflict, and others conduct advocacy on the issue.²³

c) Elderly Displaced People

The Guiding Principles on Internal Displacement states the “elderly persons.. shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs”.²⁴ Till date, different policy makers have devoted attention to the impact of displacement caused by human rights violations, conflict and natural hazards on older men and women. Yet people forced

²³IDMC Report website-[http://www.internaldisplacement.org/8025708F004D404D/\(httpPages\)/6E780F0E0FE6BA1AC1257214003D980E?OpenDocument](http://www.internaldisplacement.org/8025708F004D404D/(httpPages)/6E780F0E0FE6BA1AC1257214003D980E?OpenDocument), assessed on 07.07.2013.

²⁴ UN Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2, 17 April 1998, reprinted in *International Review of the Red Cross*, No 324, September 1998, pp. 545-556.

from their homes by crises are among the world's most vulnerable and, among them, older persons are generally acknowledged to be especially at risk.

Older people usually become more difficult in accessing services, and are less able to flee quickly or to protect themselves from different displacements. They are often the primary care-givers of their grandchildren and of orphans. Yet, they often experience particular assistance and protection challenges, and are frequently the last to achieve durable solutions to their displacement, as wider efforts focus on younger generations.

In the few countries affected by internal displacement in which older people received a state pension, IDPs often lacked the documentation needed to claim their entitlements. For example in the Russian Federation, older IDPs struggled to get their full pensions as archives had been destroyed and they had no way of replacing documents lost during the conflict. As a result they received a minimum pension and have to continue to work or rely on the care of relatives who often have limited means themselves following their displacement.²⁵ Nevertheless, the findings and policy recommendations are applicable to both refugees and IDPs.

F. Effects Of Displacement On Internally Displaced Persons

IDPs in many countries faced continuing threats to the enjoyment of their human rights. In many situations, they remained without the protection that their governments were responsible to provide. The internal displacement situations described in the Paper experiences of IDPs of different countries. Having been forcibly displaced by conflict, mega projects or violence, IDPs have been particularly vulnerable to protection risks and face challenges that are difficult, but not impossible, to resolve.

²⁵ Nina M. Birkeland, “*Internal displacement: global trends in conflict-induced displacement*”, *International Review of the Red Cross*, Vol. 91 No. 875, Sep 2009, P. 503.

a) Discrimination

IDPs worldwide routinely experience discrimination. Discrimination is a significant experience of the internally displaced population, because these members are already discriminated group, for example as minorities, or because of the fact that they are displaced in relation to the non-IDPs. Members of minority groups are often at risk of displacement due to the discriminatory policies of a government which predominantly represents a majority group. These groups often grew out of the disenfranchisement of minority groups or the neglect of the regions they lived in. Members of majorities have often failed to identify with the claims of people in these regions, and governments fighting the armed groups have often used excessive force against them, but failed to distinguish between the combatants and civilian. Thus the minority groups are not only more likely to have lived in areas with conflict or violence, but they are particularly likely to have been affected and displaced by it.

As members of minorities, some IDPs have less access to formal state support and informal communal protection. For example, internally displaced women from the minority Bantu and Benadiri groups in Puntland in northern Somalia have experienced persistent sexual violence perpetrated by men from majority groups including members of the local police, army and security services. Their lack of access to judicial protection was aggravated as they had lost the support of communal structures when they were displaced.²⁶

Many IDPs encountered discrimination due to policies and practices which either targeted displaced communities, or failed to consider their distinct needs and so put them at a disadvantage. Discrimination added to the vulnerability of IDPs with particular needs, such as children, members of female-headed households, disabled and older people, in many countries.

²⁶ Norwegian Refugee Council, March 2011, Pg. 22 Website-
https://www.nrc.no/arch/_img/9551909.pdf, assessed on 18.08.2013.

As IDPs are often displaced into areas where they are in a local minority, discrimination can also be exercised by host communities anxious to keep their access to resources. Discrimination can also be a significant hurdle in preventing minority IDPs from resolving their situations. Most IDPs in Turkey are from the Kurdish minority; after a decade or more displaced on the peripheries of cities, they continued to face discrimination which limited their access to housing, education and health care facilities, and so prevented their full integration. Roma people displaced within Kosovo or into Serbia have remained the victims of systematic social exclusion.

Lack of documentation is often a particular barrier for IDPs from traditionally marginalised groups. Internally displaced children from Dalit communities in Nepal are less likely to possess birth certificates, and so the children may be prevented from enrolling in school. Many Roma families have avoided contact with the state for generations, and displaced and non displaced Roma in Serbia lack the documentation they need to register for benefits or are barred from renewing them by ineffective and demanding bureaucratic procedures.²⁷

In some of the regional countries like Africa, America, Europe, and Middle East IDPs often find it very difficult to obtain official residence status in the city or province they have been displaced to. Discrimination often adds to the vulnerability of groups of IDPs with particular needs, such as children, members of female-headed households, older and disabled people.

In Iraq, women heading internally displaced households faced major obstacles in their search for livelihoods with which to support their families in 2010, due to part in prevailing gender discrimination. Displaced widows in Nepal continued to face social discrimination and a similar lack of employment. For the most part those whose husbands were killed by Maoists, rather than security forces, were reported to have received compensation for the deaths of their husbands, and

²⁷ *Ibid.*

many had encountered significant barriers in recovering property or obtaining compensation.

b) Absence of Physical Security

Internally displaced people generally face threats to their physical security. Except in situations where people have been forcibly relocated, they have taken the decision to flee from immediate insecurity or violence. IDPs face threats of physical security, as well as actual attacks, during their displacement and also face after they returned to their homes. Gender based violence, including sexual violence, is one of the major problem during displacement. Women and girls are frequently raped and then killed.

Many IDPs faced threats to their lives, dignity and physical, mental and moral integrity, during their displacement and also after they returned to their home areas. IDPs in camps or settlements were specifically targeted in Darfur, the DRC, Kenya and Myanmar. IDPs in Chad women going out to collect water or firewood were victims of attacks and violence in areas surrounding camps and settlements.

In eastern Myanmar the IDPs who are forcibly displaced number of times but not been settled down in current locations, faced force relocations. The displaced who defying the orders of the army to relocate from their current locations ran the risk of being attacked.

In Sudan, IDPs are always subject to arbitrary arrest and detention. Large areas of Afghanistan remained inaccessible to humanitarian organisations. In Yemen, humanitarian convoys were seized, vehicles hijacked, and staff kidnapped. Violence and insecurity in south and central Somalia severely limited the access of UN and other international agencies and NGOs. In Colombia, new armed groups directly threatened international agencies, reducing their access at a time when their

presence was identified as critical to respond to IDPs' protection and assistance needs.²⁸

c) Land and Property Rights

Shelter and settlement projects for forcibly displaced populations frequently introduce complex issues of access to land for residential as well as agricultural use. Disputed property rights are an endemic feature in permanent resettlement sites and especially for returnees. The emergence of the rights-based agenda for those displaced in conflicts and natural disasters to repossess and return to their homes is, one of the most important developments in recent peace-building efforts.²⁹

The flurry of law making around property rights of returnees must include gender equal laws for property, other assets and inheritance. Policies and guidelines must pay special attention to these questions for female heads of household. Particular issues of equity arise in relation of inheritance, property rights and access to family land and homes where the displaced or returning women are widows, divorced or separated.³⁰

It is very often that, once new gender equal laws are promulgated, customary law usually continues to prevail, often impeding women's enjoyment of their newly established statutory rights. Thus other reforms are necessary that develop women's legal literacy and access to justice through the courts and legal professionals. The main impediments women confront are the lack of information about their legal rights, and the lack the capacity and resources to pursue their rights (such as literacy, money, and power within their families).

²⁸ Internal Displacement, Global Overview of Trends and Developments in 2010, IDMC, Norwegian Refugee Council, March 2011, Pg. 23-24.

²⁹ Roger Zetter and Camillo Boano, "*Gendering Space for Forcibly Displaced Women and Children: Concepts, Policies and Guidelines*", in edited book of S.F.Martin, J. Tirman "*Women, Migration and Conflict*", Director Refugee Studies Centre, University of Oxford, Oxford OX1 3TB, UK, 2009, Pg. 213-214.

³⁰ *Ibid* Pg. 214.

d) Right to Food

From the various facts of displacement the evidence suggests that displaced women and girls are worse off than men; they receive an unequal ration of food, eat less, and eat last. Female-headed households fare worse in terms of food allocations, especially when men control the distribution. The ideal method of assuring that women get their share of food in displacement settings has not been established, although the World Food Programme tries to ensure that women are the direct beneficiaries of food aid.

The primary assistance on both CARE and Save the Children has begun to look more closely at livelihoods and household food supplies in a number of locations. That approach makes sense because it reveals whether or not food actually reaches the intended beneficiaries. The shortfall of the approach is that it is time consuming, requires trained field workers, and good access to the population to be studied.

Women's lack of access to agricultural land often underlies their food insecurity. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Article 14.2, addresses the rights of rural women, in particular that they have equal treatment in land reform, resettlement schemes, and access to agricultural credit and loans. In CEDAW there are still no immediate remedies for women whose rights are violated as there are no avenues for individual petitions. Moreover, CEDAW cannot force states to comply with their reporting obligations.

e) Right to Reproductive Health Care

In addition to the role of violence in increasing the risk of infection with HIV and STIs, women and girls trafficked or forced into prostitution will be at increased risk of infection when they have limited knowledge of protective contraceptive methods, or are unable to access or afford contraceptives. These issues are of

particular concern within settings of conflict and forced migration due to the disruption or lack of health service infrastructure.

Women trafficked or forced into sexual exploitation are thus at elevated risk of contracting HIV and others sexually transmitted infections. This issue is particularly pertinent in settings of conflict and forced migration, which have been characterized as posing a serious threat to the individual risk of infection and the spread of infection within specific settings.³¹

Trafficked children exposed to HIV may be at elevated risk of infection relative to trafficked adults, due to greater biological vulnerability, poorer knowledge of HIV/AIDS risk and appropriate protection methods, and inability to negotiate safe sexual practices.

f) Education, skills training, and economic opportunity

Armed conflict around the world is one of the most formidable obstacles to education. Worldwide, approximately 120 million children are estimated to be out of school. More than half of these children— two-thirds of them girls – are living in countries engaged in or recovering from conflict. Many of those in areas of conflict are doubly disadvantaged by being refugees or internally displaced.³² A survey on education in emergencies carried out by the Women’s Commission found that in just 10 countries with conflict induced displacement in 2002, 27 million children had no access to formal schooling.³³ The vast majority of these (more than 90%) were IDPs. While attendance for all displaced children and youth was staggeringly low, the attendance and retention of displaced female students of all ages continued to lag significantly behind that of males. Many factors exacerbate the lack of educational opportunities for IDP children and youth, even relative to refugees. The quality of

³¹ Michele R. Decker, Sian Oram, Jhumka Gupta, and Jay G. Silverman, “*Forced Prostitution and Trafficking for Sexual Exploitation Among Women and Girls in Situations of Migration and Conflict: Review and Recommendations for Reproductive Health Care Personnel*”, in edited book S.F.Martin, J. Tirman, “*Women, Migration, and Conflict*”, Springer Science+Business Media B.V. 2009, Pg. 72.

³² www.fmreview.org/FMRpdfs/EducationSupplement/full.pdf.

³³ www.womencommission.org/pdf/ed_emerg.pdf.

education in IDP camps is generally much lower than the education provided by international agencies in refugee camps. More than one third of all IDPs remain beyond the reach of UN assistance.

Different assistance ensures women to have equal access to education, skills training and meaningful income generating activities. Traditionally, skills-training and income-generating programmes have relegated women to activities such as sewing and embroidery, which generate little income. Though displaced women have been found to prove adept at working in non-traditional, more meaningful income-generating activities including those such as reforestation and reconstruction associated with large-scale development projects.

Most IDPs have limited opportunities for income generation. Apart from small, short termed projects supported by the UN or NGOs, and linked to skills in training, few jobs are available to IDPs. Many IDPs lack social ties and connections that would help them in securing employment. Women are less likely to find work in urban centers due to lower literacy rates, lack of daycare facilities to care for children and fear of moving around in unfamiliar surroundings on their own.³⁴

G. Women Deprived Of Their Freedom

Civilians need to be protected from forced displacement. Active measures can be taken by humanitarian agencies to improve the situation of populations affected by armed conflict so that they do not have to flee from their homes. If displacement occurs, the lives, dignity and welfare of women must be respected and protected. According to IDPs it is important to appreciate that a further problem they may face is resentment by the host population who may view them as burden on the local economy and infrastructure, especially where resources are limited and the local population is equally in need. Assistance to projects which strengthen ties

³⁴ Roberta Cohen, *“Refugee and Internally Displaced Women: A Development Perspective”*, The Brookings Institution, 1995.

between IDPs and the local community are important not only in a material sense, but as a way of avoiding tensions and respecting the dignity of such persons.

In sharing the problems of IDPs, women and children need special protection. The needs of displaced women pertaining, inter alia, to privacy, respect for physical safety and reproductive health should be incorporated into all aspects of programming. While fleeing, women may be particularly exposed to violence. The economic strain that accompanies the displacement/ resettlement process, coupled with the concomitant loss of legal and social status, can cause acute depression and anxiety. This is often compounded by the loss of, and separation from, family members. When operating in periods of large movements of populations, humanitarian organizations should make all possible coordinated efforts to help families avoid separation.

Women deprived of their freedom often have the added concern of their children's well-being, both because young children are detained with them and are being raised in difficult conditions, or because they have been separated from their children and are uncertain as to who is raising them and how. Even where a family member has taken responsibility for the children, this enforced separation can be very difficult for women to bear.³⁵

Internally displaced and refugee women need privacy in order to maintain their safety, dignity, personal health and hygiene. Their particular needs must be taken fully into consideration in the design and implementation of programmes and accommodation in camps. Health care provided must include reproductive health care. It should be noted that the health requirements of women are likely to be overlooked by camp authorities and programme planners as, in many cultures, only men are traditionally consulted with respect to such matters. Such fundamental

³⁵ Charlotte Lindsey, "The Impact of Armed Conflict on Women", in edited book of Helen Durham and Tracey Gurd, "Listening to the Silences: Women and War", Leiden, Boston, Martinus Nijhoff Publishers. Pg. 30.

requirements as the fact that pregnant women need facilitated access to health services and food assistance adapted to their needs should never be neglected.³⁶

H. Internally Displaced Persons And International Human Rights And Humanitarian Law

From an international law perspective the primary responsibility for the protection and assistance of Internally Displaced Person (IDPs) rests with individual states in accordance with the principles of sovereignty and non-intervention.³⁷

International humanitarian law comprises all the treaty- based and customary rules of international law whose aim is to limit the horrors of war by regulating the means and methods of combat and by protecting war victims. In terms of ICRC, following up on Henry Dunant's proposals, suggested that the States adopted a convention protecting wounded soldiers and those endeavoring to come to their aid. Initiative led to the adoption of the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. In Geneva on August 22, 1864, signed the Convention which marked the inception of modern international humanitarian law. It was revised in 1906, 1929, and 1949, and supplemented with new conventions protecting the shipwrecked, prisoners of war and civilian.³⁸

Concerning humanitarian law applicable to situations of non-international conflicts, article 3 common to the four 1949 Geneva Conventions (common article 3 GC) is the cornerstone for the protection of internally displaced persons. The governments are often tempted to label a conflict a mere riot or internal disturbance, rather than an internal armed conflict, in order to avoid the application of common article 3 GC. The common State practice is aggravated by the fact that, there is no

³⁶ Charlotte Lindsey-Curtet, Florence Tercier Holst-Roness and Letitia Anderson, "*Addressing the Needs of Women Affected by Armed Conflict, An ICRC Guidance Document*", International Committee of the Red Cross Women and War, ICRC, March 2004, Pg. 40.

³⁷ Article 2(1) of the Charter of United Nations articulates the principle of 'sovereign equality' and 2(7) prohibits UN intervention 'in matters which are essentially within the domestic jurisdiction of any state'.

³⁸ Francois Bugnion, "*Refugees, Internally Displaced Persons, and International Humanitarian Law*", Fordham International Law Journal, Vol. 28 No. 5, May 2005, Pg 1400.

precise definition of the notion of armed conflicts of a non-international character, and that no institution exists with the authority to designate a conflict as an armed conflict in the sense of this ‘Convention en miniature’. The common article 3 GC is applicable whenever open armed conflicts occur within the territory of a country which is led by military units of a relatively organized structure and responsible command.³⁹

Additional Protocol II of 1977 is applicable to non-international armed conflicts, which has a considerably higher threshold of application on a substantiated territorial control of the dissident armed forces. It has its principle to reaffirm and developed the content of common article 3 GC. It has acquired little relevance in State practice. The international human rights law has at least a weak supervisory system, which is neither common to article 3 GC nor Protocol II to provide for any complaints or enforcement mechanisms. In order to get access for the internally displaced persons, organizations under international law only allowed to offer their services; otherwise the country may also refuse to allow access for IDPs.

IDPs are not expressly mentioned in any international humanitarian law instrument but this does not mean that they are not protected. If they find themselves in a state that is experiencing an armed conflict, and are not taking a direct part in hostilities, IDPs are entitled to protection as civilians, regardless of the fact and cause of their displacement.

In the context of occupation, article 49 of the Fourth Geneva Convention contains a general prohibition on individual or mass forcible transfers, both within the occupied territory and beyond its borders, either into the territory of the occupying power or, as is more often the case in practice, into third states.⁴⁰ A limited exception to this rule permits an occupying power to ‘evacuate’ the

³⁹ Nils Geissler, “*The International Protection of Internally Displaced Person*”, International Journal of Refugee Law, Vol 11 No. 3, 1999, Pg. 461.

⁴⁰ Article 49 of the GC IV provides that: ‘individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive’. International humanitarian law employs the term ‘transfer’ to refer to displacement within the territory of a state and the term ‘deportation’ to denote displacement across a border into the territory of another state.

inhabitants of a particular area either if this is necessary for the security of the civilian population or for imperative military reasons. In some of the cases the evacuations should not involve the displacement of civilians outside the occupied territory unless this is impossible for material reasons. The displaced persons must be transferred back to their homes as soon as the hostilities in the area in question have ceased.⁴¹ The prohibition on displacing the civilian population for reasons related to the conflict unless the security of the civilians or imperative military reasons so demand is also applicable in non-international armed conflicts and also extends to both transfers within a country and deportations across a border.⁴²

Unlawful deportation or transfer of protected persons is a grave breach of the Fourth Geneva Convention and is included in the list of war crimes under the Statute of the International Criminal Court.⁴³ In addition to prohibiting displacement and laying down protections to be granted to displace civilians, international humanitarian law requires states parties of the Geneva Conventions to criminalise the violation of the prohibition under their national law and to search for and prosecute persons alleged to have violated it.⁴⁴ However, violation of the prohibition of displacement in no international conflict is not criminalised by the Geneva Conventions or Additional Protocols.⁴⁵

In addition to prohibition against unlawful deportation or transfer of persons, the rules of international humanitarian law which aim to cushion civilians from the effects of hostilities also play an important role in the prevention of displacement, as it is often violations of these rules that are at the root of displacements in situations of armed conflict. The following are the important rules:

- the prohibition on making civilians the target of attacks;⁴⁶
- the prohibition on conducting hostilities in an indiscriminate manner;⁴⁷

⁴¹ Article 49 of GC IV.

⁴² Article 17 of AP II.

⁴³ Article 147 of GC IV.

⁴⁴ E Gillard, *"The Role Of International Humanitarian Law In The Protection Of Internally Displaced Persons"* Refugee Survey Quarterly, Vol 24 No.3, (2005), Pg. 43.

⁴⁵ *Ibid.*

⁴⁶ Article 51(2) AP I

- the duty to take precautions in attack to spare the civilian population;⁴⁸
- the prohibition of acts or threats of violence the primary purpose of which is to spread terror among the civilian population;⁴⁹
- the prohibition on civilian property the object of attack;⁵⁰
- the prohibition on the starvation of the civilian population as a method of warfare and of the destruction of objects indispensable to its survival;⁵¹ and
- the prohibition on reprisals against the civilian population and its property.⁵²

Also of relevance is the prohibition on collective punishments which, in practice, have often taken in form of destruction of homes, leading to displacement;⁵³ and the rules requiring parties to a conflict, as well as all other states, to allow the unhindered passage of relief supplies and assistance necessary for the survival of the civilian population.⁵⁴ These basic rules for the protection of the civilian population apply in both international and non-international armed conflicts. Additional Protocol II contains similar prohibitions on attacks on civilians, the starvation of the civilian population as a means of warfare and collective punishments, as well as rules requiring parties to a conflict to permit humanitarian relief actions.⁵⁵

Although prohibited by international humanitarian law, displacement of civilians frequently occurs in practice. Once the people are displaced or evacuated, they are entitled to various basic protections and rights. The Fourth Geneva Convention lays down rules on the manner in which evacuations must be effected. These safeguards require such transfers to be carried out in satisfactory conditions of

⁴⁷ Article 51(4) AP I.

⁴⁸ Article 57 AP I.

⁴⁹ As above.

⁵⁰ Article 52 AP I.

⁵¹ Article 54 AP I.

⁵² Articles 51(6) and 52 AP I

⁵³ Article 75(2) (d) AP I.

⁵⁴ Article 70 AP I.

⁵⁵ Articles 4(2)(b), 13-16 and 18 AP II.

hygiene, health, safety and nutrition, that during evacuations persons be provided with appropriate accommodation and those members of the same family not to be separated.⁵⁶ Additional Protocol II lays down similar basic conditions to be ensured in evacuations in non international armed conflicts.⁵⁷ Although these provisions relate to conditions to be ensured during evacuations – i.e. ‘lawful’ displacements for the safety of the persons involved security or for imperative military necessity - these conditions apply more strongly in situations of unlawful displacement.⁵⁸

IDPs also benefit from the provisions of international humanitarian law on family unity, an issue that is particularly relevant in situations of displacement due to separation of families particularly during flight.⁵⁹ In addition to special provisions relating specifically to persons who have been displaced, such persons are civilians and, as such, entitled, even during displacement, to the whole range of protection appertaining to civilians set out under international humanitarian law.

a) Towards a Convention Protecting Internally Displaced Person

People who have been displaced because of an armed conflict and who remain on the territory of a party to the conflict are, obviously, protected by international humanitarian law. In international armed conflicts, these people are protected by the provisions of the Fourth Geneva Convention and of Additional Protocol I. in the case of non-international armed conflicts, they are protected by Article 3 common to the four Geneva Conventions, Additional Protocol II, and the customary international law applicable in such conflicts. In different occasions in the past few years there is possibility and necessity of adopting a new convention protecting people displaced within the borders of their country –a kind of sister treaty to the 1951 Refugee Convention-has been invoked.⁶⁰

⁵⁶ Article 49 GC IV.

⁵⁷ Article 17 AP II.

⁵⁸ E Gillard, “*The Role Of International Humanitarian Law In The Protection Of Internally Displaced Persons*” *Refugee Survey Quarterly*, Vol 24 No.3, (2005), Pg. 40.

⁵⁹ Articles 25 and 140 GC IV and Articles 32 and 74 AP I.

⁶⁰ Francois Bugnion, “*Refugees, Internally Displaced Persons, and International Humanitarian Law*”, *Fordham International Law Journal*, Vol. 28 No. 5, May 2005, Pg. 1410.

This Convention specifically adopted for the displaced people who remain on the territory of a belligerent State. Any new convention covering such people specifically could give rise to confusion and might water down existing standards. This was clearly understood by the United Nations Secretary –General’s former Special Representative on Internally Displaced Persons.

International humanitarian law continues to provide the best means of preventing people from being uprooted, the efforts of the international community should be directed towards ensuring respect for existing law rather than at preparing new legal texts.⁶¹

b) The International Committee Of The Red Cross (ICRC) And The Protection Of Displaced Persons

The ICRC initiated in 1998, aimed to better identify the ways in which women are affected by armed conflict and to determine whether its own response could be improved. The study aimed to:

- a) Identify the needs of women, including their access to basic goods and services such as food, water, shelter and health care;
- b) Draw up a realistic and comprehensive picture of ICRC in favour of women affected by armed conflict, and assess whether these activities adequately respond to the needs identified; and
- c) Examine international law, in order to assess the extent to which it provides adequate coverage of the needs identified.

Following to the visits of ICRC throughout the world a periodic report had placed that, to publish a Guidance Document to enhance the protection and assistance of women affected by armed conflict. This initiative was supported at the 27th International Red Cross and Red Crescent Conference in Geneva, 1999, by States Parties to the Geneva Conventions and by the International Red Cross and Red Crescent Movement.

⁶¹ *Ibid.*

This assistance is fully fledged to protect on women who are forcefully displaced from their own land, also to make sure that their specific needs are appropriately assessed in the ICRC's own operations.

The ICRC study, Guidance Document and pledge comprise part of a long-term for better addressing the needs of women in situations of armed conflict. The ICRC hopes that the initiatives will lead to a more effective operational response for the needs of women affected by armed conflict, as well as to increased respect for and implementation of the protection conferred upon women by international law. Thus, it is a prime responsibility rests with the parties to an armed conflict, namely to observe the rules and to ensure respect for the rules- and also with States to bring individuals who violate these rules to justice. The study also aimed to motive others involved in conflict situations-whether directly or indirectly- to seek ways of preventing and alleviating the suffering of women in war.

c) UN Secretariat

In 1325 resolution on Women, Peace and Security (2000) the UN Security Council acknowledged women's contributions to peace-building, as well as their vulnerabilities resulting from conflict. A particular attention may be taken to the situation of displaced women and girls, and to focus on the application of gender sensitive approaches as highlighted in the resolution. The Guiding Principles provide a foundation upon which the international assistance community may build and open the door for improved coordination and progress towards a shared conceptual framework for assisting IDPs. The Guiding Principles will advance discussions throughout the UN system and open the door for improved coordination and progress towards a shared conceptual framework for assisting IDPs.

d) Office for Coordination of Humanitarian Assistance (OCHA)

OCHA coordinates efforts of the United Nations bodies for humanitarian assistance and IDPs at the UN headquarters level. The OCHA recently appointed a person to be in charge of gender concerns. In special cases, for example in

Afghanistan, OCHA is working with UNDP to dispatch a gender advisor in the field.⁶²

The Inter-Agency Standing Committee (IASC) designated its Working Group as the main inter-agency Forum on IDPs. The Representative of the Secretary-General on Internal Displacement has suggested a more pro-active role for the IASC whereby it could be more active in contingency planning for IDP issues. The Working Group of the Inter-Agency Standing Committee designated UNICEF, the Secretary-General's Special Representative on IDPs, and the Office for the Coordination of Humanitarian Affairs (OCHA) as focal points for a project on best practices for IDPs. The Working Group assigned the Norwegian Refugee Council/Global IDP program to conduct a feasibility study for a database on IDPs.⁶³

The Special Representative on Internally Displaced Persons has always emphasised that strong leadership was needed from OCHA and the IASC in order to ensure that IDP issues were properly addressed within the UN. Whereas the former DHA did not always pay sufficient attention to the protection needs of the internally displaced, OCHA's recent record is more encouraging, as it has already started to define a general protection policy for them. Most UN agencies now hope that OCHA will provide the lead on issues regarding internal displacement, and facilitate the distribution of tasks when a crisis arises. In June 1998, internal displacement became the only standing item on the agenda of the IASC- Working Group, which is supposed to ensure that this problem is not neglected in some emergencies. The IASC Working Group, for instance, has constituted a sub-working group on 'field Practices on internally displaced person', whose project is conducted by UNICEF.⁶⁴

⁶² Judy A. Benjamin, *"The Gender Dimensions of Internal Displacement: Concept Paper and Annotated Bibliography"*, Women's Commission for Refugee Women and Children, UNICEF/IDP Gender Issues Paper, November 1998, Pg. 25.

⁶³ *Ibid.*

⁶⁴ Catherine Phuong, *"Improving The United Nations Response To Crisis Of Internal Displacement"*, International Journal Of Refugee Law, Vol. 13 No. 4, 2002, Pg. 513.

e) UNHCR (United Nations High Commissioner for Refugees)

The UNHCR has assumed responsibility for IDPs in certain situations. Limitation in its mandate, however, as well as financial limitations, staffing, and other constraints restrict UNHCR.s capacity to respond to IDP needed in all situations. Clear guidelines from headquarters regarding involvement on IDP issues are needed in the field so that solutions may be found quickly. UNHCR.s mandate is to protect refugees; it does not have a statutory mandate for assisting victims of internal conflict, although it may be requested to do so by the Secretary-General or by the government of the country of displacement. By establishing the position of Senior Coordinator for Refugee Women and appointing regional focal persons, UNHCR has demonstrated its interest in addressing the needs of refugee women.

f) UNICEF (United Nations Children's Fund)

UNICEF is active in a number of internally displaced situations, in keeping with its mandate to improve the lives of women and children by providing services in the areas of health care, education, nutrition, and sanitation. Sometimes the organization has been the lead agency for situations with large numbers of internally displaced, for example in southern Sudan. UNICEF has demonstrated its recognition of the integral connection between assistance and protection. It has made efforts to address protection problems particularly when they affect the delivery of assistance.⁶⁵

UNICEF has now become one of the most active agencies in the field of internal displacement. It seems that UNICEF has decided to take the lead role to fill the gap which is left by UNHCR. It considers that, in contrast with UNHCR, involvement with these populations is an integral part of the agency's mandate and such involvement is also perceived as less controversial than for UNHCR. In addition, UNICEF is engaged both in emergency and development work, which could contribute to ensure a continuum between these two phases. However, it

⁶⁵ Deng, Francis M. Report to the Secretary-General, E/CN.4/1995/50-Feb 95.

clearly does not have the mandate to assume overall responsibility for all internally displaced persons, but only for internally displaced women and children.⁶⁶

UNICEF has taken the lead role in addressing the gender and IDP issue, demonstrating its intent to promote gender-responsive programming and to mainstream gender awareness throughout the organization by promoting the use of the Gender Equality and Women's Empowerment Training Manual (June 1994).⁶⁷

g) The Office Of The High Commissioner For Human Rights (OHCHR)

OHCHR is 'uniquely placed to help draw the attention of all sectors of UN actively to problems of internal displacement and to ensure that a protection perspective is integrated into the responses to them'. It provides administrative support to the mandate of the Special Representative on Internally Displaced Persons and also has to ensure that all human rights organs pay attention to IDP issues. In addition, when it manages human rights field operations, it intervenes directly in the country concerned to provide protection to the internally displaced. One of its main contributions lies in its advisory services and technical assistance programme which has devised specific projects targeted at internally displaced persons.⁶⁸

There is scope for OHCHR to increase its activities in countries of origin. More cooperation needs to be developed between UNHCR (United Nations High Commissioner for Refugees) and OHCHR in countries where UNHCR is providing in country protection. OHCHR must be granted much more funds, so that it can truly become operational. If it had the material means to send human rights field officers who are experienced and properly trained to situations of internal displacement, this would complement the work of humanitarian agencies.⁶⁹

⁶⁶ *The Impact Of Armed Conflict On Children, Report Of The Expert Of The Secretary General, Ms Grace Machel*, UN doc.A/51/306,26 Aug. 1996, para. 90(d).

⁶⁷ UNICEF Gender Equality & Women's Empowerment. Developed by Longwe, Clarke and Associates for UNICEF, Training and Development Section, June 1994.

⁶⁸ *Supra Note 64, Pg. 510.*

⁶⁹ *Ibid.*

h) United Nations Development Programme (UNDP)

UNDP, in collaboration with the United Nations Development Fund for Women (UNIFEM), and the United Nations Volunteers (UNV), has fielded 16 UNV gender specialists to support UNDP and UN system activities in country offices. These specialists are working to mainstream gender into UN programming. This program does not target IDPs, but could be a model for other UN programs.⁷⁰

i) United Nations Development Fund for Women

UNIFEM's African Women in Crisis (AFWIC) program addresses concerns of refugee and displaced women in Central and East Africa. Their programming includes reproductive health care, trauma counseling and training and development of skills.⁷¹

j) World Food Programme

WFP's activities concentrate on food distribution, rehabilitation, recovery and development programmes. Although priority was previously given to development assistance, emergency relief now accounts for 70 percent of the work of the agency. As WFP is the single largest provider of food aid to the internally displaced, it plays a crucial role in relation to this group. In 1997, WFP provided assistance to 15 million internally displaced persons, who have become the largest category of beneficiaries in term of number.⁷²

WFP has provided food aid to internally displaced persons for over 30 years. The agency takes a definitive stand on engaging the participation of women in food distribution. WFP is committed to:

⁷⁰ *Supra Note 58, Pg 26.*

⁷¹ *Ibid Pg 27.*

⁷² R Cohen and F. M. Deng, "*Masses in flight: the Global crisis of internal displacement*", Washington D.C., The Brooking Institution, 1998, Pg 135-137.

- reducing gender gaps in the access to resources, employment, education, and skills development through the earmarking of resources;
- distributing relief food directly to the household's senior female, where possible, using participatory approaches;
- adopting special measures to ensure women's equal access to and full participation in power structures and decision making on the planning, management, and implementation of food-assisted activities;
- giving due consideration to women's specific nutritional needs when designing food aid interventions;
- generating and disseminating gender-disaggregated data and information for planning and evaluation; and working with NGOs under contractual arrangements that specify conditions to fulfill gender-specific planning, targeting, distribution of food aid, and monitoring of progress.⁷³

k) IOM (International Organisation For Migration)

IOM has been particularly active in providing temporary shelter for the internally displaced, as well as transportation for those who want to return and need assistance because of the breakdown of transport associated with situations of armed conflict. It has played an important role in the return and reintegration phase, and is now a major implementing partner of UNHCR in returning the internally displaced to their original place of residence. IOM has also initiated special programmes for the reintegration of demobilised soldiers when they are internally displaced. These programmes were especially successful in Mozambique for instance. IOM also provides assistance to States, and helps them strengthen their capacities to respond to crises of internal displacement.⁷⁴

l) Non-UN International Organizations

The International Committee of the Red Cross (ICRC) assists war-affected populations. ICRC provides protection and assistance to both IDPs and refugees.

⁷³ World Food Programme, *Sudan Emergency Annual Report*, 1996.

⁷⁴ IOM, *internally displaced persons*, contribution of the IOM to the 3 Feb. 1993 meeting of the IASC, Geneva, Feb. 1993, para. 15.

ICRC's neutrality also applies to gender issues; they normally do not implement programs that target one sex or the other. The ICRC is involved in many activities pertaining to the IDP situation such as tracing, visiting detainees, looking for disappeared persons, to mention but a few. Human rights NGOs with gender analysis play important roles in IDP situations, monitoring and reporting on abuses. Acting as nightmare they can help the spotlight serious protection problems and advocate for action. Human Rights Watch Women's Rights Project, Amnesty International and the Women's Commission for Refugee Women and Children have issued reports on the impact of armed conflict and displacement on women and girls.⁷⁵

m) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):

Displacement arising from armed conflict, persecution and other serious human right violations can intensify discrimination and inequality.⁷⁶ The principles of equality and non-discrimination lie at the heart of CEDAW to analyse for the future work. Not only is CEDAW more comprehensive in the scope of its protection of gender equality, but also it applies to more women and girl child than the narrower forced migration treaties. CEDAW's one of the most affirmative obligations is to eliminate discriminatory laws, policies and practices, and also to eliminate the social and cultural norms against women and children, who suffer significant discrimination within their home. Gender inequality and discrimination can be caused of migration, an obstacle to freedom of movement for women attempting to flee, a risk factor for food insecurity in camp situation, and a limitation on women's ability to find a safety solution, be it integration, resettlement, or return.

⁷⁵ Rathin Bandyopadhyay and Chandrani Das, *Impact of Internal Displacement on Women and Children: A Socio-Legal Introspection*, in edited book of Rathin Bandyopadhyay, Sanjay Kumar Singh, Rajendra Dhar Dubey and Sangeeta Mandal, *Women Rights Human Rights*, R. Cambray & Co. Private Ltd., Kolkata, 1st Edition, 2010, Pg. 29.

⁷⁶ Alice Edwards, *Displacement, Statelessness, and Questions of Gender Equality under the Convention on Elimination of All Forms of Discrimination Against Women*, International Law Girls, Voices on international law, policy, practice, 28th August 2009, website-<http://intlwgrrls.blogspot.com/2009/08/cedaw-and-forced-displacement.html>, assessed on 04.08.13.

Advocates and human rights monitors, non-governmental organizations and researchers have brought issues of concern for refugees, returnees and the internally displaced in policy fora, such as shadow reports to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and related interventions to the CEDAW Review Committee. Thus from the application of resolution 1325 advances in promoting gender equality as an impetus for gender mainstreaming bring further opportunities to address displacement. A challenge has been taken for greater synergy in the UN's work vis-à-vis displacement promotion of gender equality.⁷⁷

I. International Statutory Laws For Internally Displaced Women And Children

The UN has no procedural strategy for mandating the responsibility for the protection of IDPs. Those concerned with IDP issues within international organizations generally agree that it is not feasible to set up a new agency to assist IDPs. As Roberta Cohen has suggested, "what is needed is an international system that assures that no major case of internal displacement goes neglected". Cohen further states that with a central coordinating mechanism in place, the appropriate agencies with the expertise to respond rapidly could do so without having to be asked in each instance.⁷⁸

The UN should establish a coordinating body to assist IDPs, and to ensure that gender and protection issues are a priority. Internally displaced persons-particularly women and children-will continue to be subjected to human rights abuses until their protection is a priority at the highest UN level. In the meantime, individual agencies can assume lead roles in certain IDP areas. The logistics of such arrangements can be worked out and coordinated appropriately among UN agencies

⁷⁷Ramina Johal, "Displacement, Gender and Security: An Analysis", pg 1 www.peacewomen.org/resources/displacement/gender&Sec 1.html.

⁷⁸ Cohen, Roberta, "The Displaced Fall Through World's Safety Net", The Christian Science Monitor, February 6, 1997.

and with NGOs and government agents. It is vital that these agencies understand gender concerns and implement gender-sensitive programming.⁷⁹

a) *Protection Under International Human Rights Law*

International protection of human rights regime is relevant to IDPs because internal displacement raises a wide range of human rights issues. IDPs, like any other human being, benefit from the legal protection of international human rights law without distinction and in almost all circumstances.⁸⁰ When humanitarian law is not applicable, for instance in situations of internal strife or unrest which cannot be qualified as armed conflict, human rights law becomes the only source of legal protection and ensures the rights of IDPs to be respected. With human rights concerns cutting across all phases of internal displacement from its cause, to the conditions of displacement, to the search for solutions international human rights law naturally provide an appropriate and useful framework for the protection of IDPs. Human rights are interdependent and equal.

Human rights are freedoms and entitlements that every individual should enjoy. The international human rights law, consists of customary and treaty law, which guarantees the rights and obligation and obliges the State to respect, protect and fulfil the human rights of all persons without discrimination of any kind, such as on the grounds of age, gender, ethnic origin, language, religion, political or other opinion, national or social origin, property, birth or other status, including on the grounds of being or having been internally displaced.

i. *Key human rights instruments*

The Universal Declaration on Human Rights (UDHR) of 1948, the first human rights instrument developed by the United Nations, establishes the main

⁷⁹ Judy A. Benjamin and Khadija Fancy, *“The Gender Dimensions of Internal Displacement: Concept Paper and Annotated Bibliography”*, Women’s Commission for Refugee Women and Children, November 1998, Pg. 24.

⁸⁰ C. Phuong, *“The International Protection Of Internally Displaced Persons”*, Cambridge: Cambridge University Press, 2004, Pg. 42.

civil, political, economic, social and cultural rights to which all persons are entitled, without discrimination of any kind. Although not a binding instrument in itself, many of its principles constitute customary law and/or have been incorporated into treaties, thus gaining binding force.

The UDHR and incorporating its principles into legally binding instruments are two Covenants that, together with the UDHR, constitute what is regarded as the “International Bill of Rights.” These are:

- *International Covenant on Economic, Social and Cultural Rights (ICESCR) and*
- *International Covenant on Civil and Political Rights (ICCPR).*

Several other additional instruments reinforce the protection of human rights relating to:

- *particular issues, such as torture or racial discrimination; or*
- *specific groups of persons, including women, children and indigenous persons, who have faced particular obstacles to the full and equal enjoyment of their rights.*

Though it found that, none of these instruments specifically addresses internal displacement, they do cover a range of risks that IDPs often face and reinforce protection for particular groups of persons who tend to be disproportionately affected by displacement (summarised in Table 1.1).

Table 2.1: Overview of selected international human rights instruments

Names	Description
Universal Declaration of Human Rights 1948 (UDHR)	Worldwide instrument setting out the basic human rights of all persons on the basis of equality and non-discrimination.
International Covenant on Economic, Social and Cultural Rights 1967 (ICESCR)	Sets out economic, social and cultural guarantees, including the rights to adequate food, shelter, clothing, health care, an adequate standard of living, and guarantees concerning work, social welfare, education and participation in cultural life.

<p>International Covenant on Civil and Political Rights 1967 (ICCPR)</p>	<p>Sets forth a broad catalogue of civil and political rights, including the rights to life, physical integrity, recognition before the law, political participation, freedom of movement and choice of residence, and protection of the family.</p>
<p>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT)</p>	<p>Defines and prohibits torture under all circumstances. Stipulates that States cannot transfer a person to another State if there are grounds for believing that s/he will be tortured (principle of non-refoulement).</p>
<p>International Convention on the Elimination of All Forms of Racial Discrimination 1965 (ICERD)</p>	<p>Prohibits racial discrimination: when a person or group is treated differently because of race, colour, descent, national origin or ethnic origin with the aim or effect of denying their human rights and fundamental freedoms.</p>
<p>Convention on the Prevention and Punishment of the Crime of Genocide 1948</p>	<p>Defines genocide as acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, and declares it as a crime, whether committed during peacetime or war.</p>
<p>Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW)</p>	<p>Sets a framework of national action for ensuring women enjoy, on an equal footing with men, their rights in all fields, including employment, education and administration of property, and for ensuring the protection of women, especially against threats to their physical safety and against rape and sexual exploitation.</p>
<p>Convention on the Rights of the Child 1989 (CRC), together with: Optional Protocol on the sale of children, child prostitution and child pornography 2000 Optional Protocol on the involvement of children in armed conflict 2000</p>	<p>A comprehensive code to protect the rights and best interests of children (below 18 years of age). Obliges States to take measures to ensure protection, care, psychological recovery and social reintegration of children affected by armed conflict, including unaccompanied or separated children. The Optional Protocol on the involvement of children in armed conflict prohibits compulsory recruitment and direct use in hostilities of persons under 18.</p>

Convention on the Rights of Persons with Disabilities 2006 (CPD)	Reaffirms human rights and emphasizes their particular importance to persons living with disabilities. Also provides guidance to States on ways to ensure that those with disabilities, including survivors of landmines and explosive remnants of war, can exercise their rights on a full and equal basis with others.
International Convention for the Protection of all Persons against Enforced Disappearances 2006 (CED)	Defines and prohibits enforced disappearance under any circumstances and obliges States to prevent such acts, to prosecute and punish or extradite those responsible, and provide reparations for victims and their families.
Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention No. 182) 1999	Obliges States to take all necessary measures to eliminate the worst forms of child labour, such as slavery, trafficking, prostitution or forced labour, including recruitment of children (under 18 years) for use in armed conflict.
International Convention on the Protection of all Migrant Workers 1990 (CMW)	Provides a framework for the protection of the human rights of migrant workers during all stages of the migration process; before departure, during transit and in the country of employment.
Indigenous and Tribal Peoples (ILO Convention No. 169) 1989	Sets a framework for ensuring indigenous and tribal peoples enjoy their rights on an equal footing with other persons. Specifically addresses the issue of the relocation of peoples, establishing conditions and guarantees to be fulfilled for this to be lawful.

Source: <http://www.unhcr.org/4c2355229.pdf>

The provisions of the law relating to **armed conflict** for women at the time of the adoption of the Universal Declaration of Human Rights, some occasional references given to the said context. Displacement in the context of armed conflict may violate provisions of the Geneva Conventions and IDPs might consider contacting the International Committee of the Red Cross. Displacement can also constitute a war crime or a crime against humanity, and it might be appropriate to seek the intervention of the International Criminal Court.

The International Criminal Court (ICC) is an institution created by a treaty (commonly called “the Rome Statute”) with the authority to investigate and prosecute genocide, crimes against humanity and war crimes. It is made up of three main parts, the Presidency (i.e. the judges), the Office of the Prosecutor, and the Registry. The ICC can gain jurisdiction by several means, including referral by a state party, referral by the UN Security Council, and independent investigation of the Prosecutor.⁸¹

Moreover, the occupying powers included rape as a war crime in the charters of their national courts set up to try offences committed in Germany, although no prosecutions were ever undertaken on this basis. Generally, rape and sexual violence against women were regarded as an inevitable aspect of armed conflict and seldom if ever prosecuted.⁸²

The four 1949 Geneva Conventions, adopted the major instruments protecting the victims of armed conflict, contain 19 provisions that are specifically relevant to women. The scope of these rules is somewhat limited and many of them are in fact designed to protect children.⁸³ The aim of the Conventions is to provide special protection for pregnant women, nursing mothers and mothers in general and to address the vulnerability of women to sexual violence in times of armed conflict.

Significantly, Article 27(2) of the Fourth Geneva Convention contains the first provision specifically dealing with rape and requires that “women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault”. It has been previewed that this article constitutes a long overdue recognition that rape is acceptable in times of armed conflict, the extent and gravity of the practice are not acknowledged since the provision falls outside the system of grave breaches of international humanitarian law. Although this article. Article 27(2) has also been criticized on the

⁸¹ David Fisher, “*Guide to International Human Rights Mechanisms for Internally Displaced Persons and their Advocates*”, The Brookings Institution – University of Bern Project on Internal Displacement June 2006, Pg 144.

⁸² *Ibid.*

⁸³ Articles 50 and 132 of the Fourth Geneva Convention.

grounds that, like many of the provisions relating to women, it categorises rape as an attack on the victim's honour and thus not reflect the seriousness of the offence of sexual violence.⁸⁴ After looking to the above context the Researcher had found that, protection afforded under these articles, which is clearly valuable as far as it goes, any indication that the difficulties of women experience in armed conflicts might be distinctive and encompass wider issues than their roles as mother and victims of sexual violence is not discernible in the provisions of the Geneva conventions.

b) Protection From Arbitrary Displacement

Both the Human rights and humanitarian law forbid arbitrary displacement, as stated in Guiding Principle 6. Guiding Principle 7 sets out the procedural guarantees required for displacement not to be considered arbitrary, both in times of peace and of armed conflict.

Arbitrary displacement can violate the rights to freedom of movement and to choose one's residence, freedom from arbitrary interference with one's home, and the right to housing. In general, such situations may be brought to the attention of:

i. At the universal level

- Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons
- Special Rapporteur on the Right to Adequate Housing as a Component of the Right to an Adequate Standard of Living
- Human Rights Committee citing CCPR arts. 12(1) (freedom of movement) and 17 (interference with one's home)
- Committee on Economic, Social and Cultural Rights, citing ESCR art. 11 (right to housing)

⁸⁴ J. Gardam, "Women and the law of armed conflict", *International and Comparative Law Quarterly*, Vol. 46, 1997, Pg. 74.

ii. At the regional level

- African Commission (and Court) on Human and Peoples' Rights, citing AfCHPR art. 12(1) (freedom of movement)
- Special Rapporteur of the African Commission on Human and Peoples' Rights on Refugees, Asylum Seekers and Displaced Persons
- Inter-American Commission (and Court) on Human Rights, citing ACHR arts. 11 (interference with one's home) and 22(1) (freedom of movement) and/or ADRDM arts. 8 (freedom of movement) and 9 (inviolability of home)
- European Court of Human Rights, citing ECHR arts. 8 (interference with one's home) and ECHR protocol 4, art. 2(1) (freedom of movement)
- European Committee of Social Rights, citing ESC art. 16 (right to housing), ESC revised, art. 31 (right to housing).

In the case of **massive displacement**, where mercenaries are responsible for displacement, the Working Group on the Use of Mercenaries as a Means of Impeding the Exercise of the Right of People to Self Determination may be interested. Displacement resulting from the "war on terror" may interest the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism.

Displacement resulting from **development** projects may concern a number of additional mechanisms. The World Bank, Inter-American Development Bank, Asian Development Bank and European Bank for Reconstruction and Development all have policies calling for minimizing and mitigating displacement from any projects in which they are involved as well as complaints mechanisms for persons affected by them. Use of these procedures might result in greater information sharing, reduction or elimination of displacement, or more generous provisions for resettlement. The Special Representative of the Secretary- General on Human Rights and Transnational Corporations and other Business Enterprises might intervene in development projects sponsored by private actors.

Situations of displacement due to **toxic and other dangerous products** might be referred to the Special Rapporteur on the Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights.

Displacement of **indigenous persons**, particularly due to development projects, is a special concern of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples and can be brought to the International Labour Organization, citing ILO Conventions 107 art. 12 and 169 art. 16. If minority groups are targeted, the mechanisms focused on minorities might also be of assistance.

Displacement is frequently motivated by **racial or ethnic bias**, sometimes with the goal of “ethnically cleansing” a particular geographic area. In such cases it may be useful to seek the involvement of mechanisms focused on racial and ethnic discrimination citing, in the case of the Committee on the Elimination of Racial Discrimination, CERD arts. 3 (racial segregation), 5(d)(i) (freedom of movement and residence), 5(d)(v) (right to property), and/or 5(e)(iii) (right to housing).

c) Specific Aspects Of The Legal Protection Of Internally Displaced Persons

i. Areas of adequate legal protection

Considering the extent to which human rights obligations are violated in practice, it is very difficult to visualize and to describe areas where individuals are in fact legally and adequately protected from abuses. Adequately legal protection presupposes either the ratification without limiting reservations of the relevant treaties or the existence of customary international law. In the area of human rights law provides comprehensive protection concerning to right to life and the right to personal integrity. The right to life of internally displaced persons as their ‘supreme right’ is protected against various threats, in both case of internal and external disturbances and also non-international armed conflicts. The non derogable guarantees of the right to life include the prohibition of genocide, of arbitrary or

summary executions, and of indiscriminate and disproportionate attacks on the civilian population in situations of armed conflict.

The right to personal integrity is not only the main root cause for internal or external forced migration, but occurs also during and after flight. The rights of the displaced people usually infringed due to torture, cruel, inhuman or degrading treatment or punishment often includes gender-specific crimes such as rape. The right of personal integrity is non-derogable rights under all human rights which can be observed under comprehensive legal protection.⁸⁵

ii. Areas of inadequate legal protection

I. The right to personal liberty

The internally displaced persons' right to personal liberty is constantly violated by, for example, interment in closed camps, hostage taking, 'shielding', or forced recruitment into armed forces affecting adults and children alike. The infringement of personal liberty is of a major root cause internal displacement, but also occurs during and after flight or forced displacement. It is very evident that, there is no such protection of the right to personal liberty, as because its limitation by the State is generally accepted, so long as it is not arbitrary or unlawful. The right of personal liberty can be derogated during the period of emergency, but under some limitations.

The permissible derogations under human rights law are further aggravated by the fact that Article 3 GC contains no rules regarding the deprivation of the right to personal liberty of non-combatants. The right to personal liberty has been encountered by internally displaced persons are expressly unlawful under international law, other infringements are not explicitly prohibited, or stem from derogations and limitations which are permitted in principle, but unlawfully implemented in practice.⁸⁶

⁸⁵ Nils Geissler, "*The International Protection Of Internally Displaced Persons*", International Journal of Refugee Law, Vol. 2 No. 3, 1999, Pg. 463.

⁸⁶ *Ibid.*

The humanitarian law does not prescribe any preconditions in regard to internment, in particular, which constitute a clear gap in the legal protection of internally displaced person.⁸⁷ At least threats to the internally displaced persons are expressly unlawful under the international law on regard to rights to personal liberty. The infringements are not explicitly prohibited, or stem from derogations and limitations which are permitted in principle, but unlawfully implemented in practice. The Guiding Principles' recommends that legal or factual gap of protection in a number of provisions, as does the Statute of the International Criminal Court (ICC).⁸⁸

II. Freedom of movement and related rights

It is very crystal clear about the movement in case of internal displacement. The most brutal practice is often done with them. It shows that frequently individual rights are violated when internal displacement occurs. The right not to be displaced is not explicitly contained in any binding human rights documents, it can be derives from norms which protect freedom of movement, such as Article 12(1) ICCPR, or other relevant international or regional instruments.⁸⁹

It is very unfortunate that, like right to personal liberty, there is no absolute protection of the right to freedom of movement in human right law. Legal protection is not very clear / incomplete in the context of displacement during non-international armed conflict. The Common Article 3 GC does not protect freedom of movement at all and article 17 of Protocol II is only concerns protection from arbitrary displacements, that is, those which are not required for imperative military reasons.⁹⁰

⁸⁷ Robert Goldman & Walter Kalin, "*Legal Framework*", in edited book Roberta Cohen & Francis Deng, "*Masses in Flight- The Global Crisis of Internal Displacement*", Brooking Institution, 1998, Pg. 99.

⁸⁸ Article 7(1)(e), 8(2)(c)(iii), (e)(vii) ICC Statute.

⁸⁹ Article 5(1)(d)(i) International Convention On The Elimination Of All Forms Of Racial Discrimination, 21 Dec. 1965; UN doc A/2106 A (XX).

⁹⁰ Roger Zetter and Camillo Boano, "*Gendering Space for Forcibly Displaced Women and Children: Concepts, Policies and Guidelines*", in edited book of S.F.Martin, J. Tirman "*Women, Migration and Conflict*", Director Refugee Studies Centre, University of Oxford, Oxford OX1 3TB, UK, 2009, Pg 464.

The articulation of a right not to be arbitrarily displaced would significantly strengthen the legal basis for providing protection against displacement, one of the important aspects regarding the legal protection of internally displaced persons relates to the right to return to the former home or place of habitual residence. Article 16(3) of ILO Convention 169, there is no explicit mention of a right to return in human rights instruments. Right not to be displaced, the right to return can be derived from the norms relating to freedom of movement.⁹¹ Thus, developing *opinio iuris* seems to affirm the existence of a right to return for internally displaced persons.⁹²

As the return to the former home or place of habitual residence is not always affected voluntarily, the question of protection from forced return to places where the life or personal integrity of internally displaced persons is threatened occurs. For an example, during the post-conflict situations, a continuously violent climate can often be observed, which affects returning refugees and internally displaced persons alike. The absence of explicit guarantees against forcible return, the refugee law concept of non-refoulement, though not directly applicable, can give some guidance. The Guiding Principles and the ILA Draft Declaration stipulates a detailed protection from forcible return.⁹³

Freedom of movement is “an indispensable condition for the free development of a person”. For children, it entails the right to move freely with their family. Children’s ability to attend school, to access medical care, to assist their parents by cultivating fields or collecting water or firewood without fear of rape or abduction, and even to exercise their right to play safely, for instance, is contingent upon their ability to move freely. Obstacles to freedom of movement frequently come in the form of checkpoints, where civilians—including children on the way to school—are at high risk of harassment and abuse, including theft, arbitrary arrest, military recruitment, sexual exploitation and rape. The lack of documentation often serves as a pretext for harassment and abuse. Internally displaced persons also often

⁹¹ M Stavropoulou, “*The Right to be Displaced*”, *American University International Law Review*, Vol. 9 Issue 3, Article 2, (1994), Pg. 726.

⁹² UN World Conference on Human Rights – Vienna Declaration and Programme of Action: UN doc. A/CONF. 157/23, 12 July. 1993, Para. 2.

⁹³ Article 15 (1)(c), ‘Guiding Principles’; Article 17, ILA Declaration.

are at risk of forced return or resettlement, even to areas where conditions are not safe.⁹⁴

In Uganda, for example, internally displaced persons in overcrowded, congested and unsanitary camps were subjected to curfews and restrictions on movement that were found to often put them at greater risk in a range of ways, including children's abduction, military recruitment, high malnutrition and mortality rates and lack of access to education. Further, unable to leave the camp to cultivate their fields, many internally displaced persons, including many young girls and boys, "have been forced by hunger to turn to survival mechanisms that are not only dangerous, but also humiliating and degrading, such as survival sex".⁹⁵

III. Other Civil and Political Rights

The internally displaced persons are far more concentrating on the civil and political rights. They are basically concerned to the right of personal documentation and the rights to family reunion are not sufficiently protected under international law. It is related to the aspect which needs further consideration of the right to restitution or compensation of internally displaced persons, an area so far dealt with only in respect of refugees.⁹⁶

The right to recognition as a person before the law, as such, is comprehensively regulated and non-derogable,⁹⁷ there is very few binding provisions in human rights law which is concerning the issuance of papers for personal identification.⁹⁸ There is merely a formal problem which can be ignored, but is considerable importance for, among others, the registration of births,

⁹⁴ Office of the Special Representative of the Secretary-General for Children and Armed Conflict, Working Paper No. 2, "*The Rights and Guarantees of Internally Displaced Children in Armed Conflict*", September 2010, Pg. 53-54.

⁹⁵ Diane Paul, "*Heading home? Protection and return in Northern Uganda*", Humanitarian Exchange Magazine, Issue 36, December 2006, website -<http://www.odihpn.org/report.asp?id=2863>, visited on 08.05.2014.

⁹⁶ Nils Geissler, "The International Protection Of Internally Displaced Persons", International Journal of Refugee Law, Vol. 2 No. 3, 1999, Pg. 466.

⁹⁷ Article 16, 4(2), ICCPR66.

⁹⁸ Article 24(2), ICCPR66.

marriages or deaths, and participation in elections; the lack of personal documentation can complicate such matters, or even make them impossible. Persons without any identification face more arbitrary arrests.⁹⁹

Guaranteeing the right to vote and to participate in public and political affairs for all citizens is an important responsibility. Given the precarious position that IDPs can find themselves in and considering the extent to which they may need to rely on national authorities for assistance, IDPs have a legitimate and a heightened interest in influencing the decisions that affect their lives by participating in elections.¹⁰⁰

To influencing public policy, elections can also be about reconciliation and addressing divisions and inequities that exist within society. For these reasons and others, IDPs should be afforded an opportunity to fully participate in elections as voters and as candidates.¹⁰¹

As noted in a press release of the Representative of the Secretary General of the United Nations on the Human Rights of Internally Displaced Persons following an official mission to Georgia in December 2005,

“[IDP] participation in public life, including elections, needs promotion and support. Supporting internally displaced persons in their pursuit of a normal life does not exclude, but actually reinforces, the option of eventual return. ... Well integrated people are more likely to be productive and contribute to society, which in turn gives them the strength to return once the time is right.”¹⁰²

⁹⁹ ECOSOC, “*Analytical Report Of The Secretary-General On Internally Displaced Persons*”, UN doc. E/CN.4/1992/23 (1992), Para. 72.

¹⁰⁰ Andrew Solomon, “*Election-Related Rights and Political Participation of Internally Displaced Persons: Protection During and After Displacement in Georgia*”, Publisher Brooking-Bern Project on Internal Displacement, November 2009, Para 4.

¹⁰¹ *Ibid*, Para 6.

¹⁰² United Nations Press Release - U.N. Expert Voices Concern for Internally Displaced Persons in Georgia, 27 December 2005, available at http://www.brookings.edu/projects/idp/RSG-Press-Releases/20051227_georgiapr.aspx.

The fact that the family is recognized in human rights law as the natural and fundamental group unit of society, no provisions provide for a right to family reunion. In humanitarian law applicable to international conflicts the right to family reunion is recognized in various norms,¹⁰³ only article 4(3)(b) and (e) of the rarely applicable Protocol II contain similar provisions. Thus, in the light of the need to end involuntary separation of families as quickly as possible, another gap of the legal regime can be observed. Again, both the ‘Guiding Principles’ and the ILA Draft Declaration cover this problem by stipulating a right to family reunification.¹⁰⁴

d) Regional mechanisms for the protection of the rights of Internally Displaced Women and Children

IDPs are protected by regional human rights conventions where they exist. This protection is particularly relevant for IDPs in Africa, Latin America and Europe, where their rights can be enforced in regional human rights courts.

i. The African Charter on Human and Peoples Rights

The mandate of the African Union allows it to address the security situation in member states by monitoring and responding to human rights violations and by pursuing other activities, including peacekeeping operations. It may enhance the protection of civilians, including internally displaced persons, by deploying police and military units to provide security in IDP camps and in areas of return. Through this presence, the African Union can deter armed groups from committing hostile acts against displaced persons and facilitate their movement. The African Union can also deploy resources and assist with mine and ordinance disposal in order to facilitate the safe return of IDPs. Finally, the African Union has elaborated a binding Convention on Assistance and Protection for Internally Displaced Persons in Africa.

The African Charter on Human and Peoples’ Rights was adopted in June 1981 and entered into force in October 1986.¹⁰⁵ The African Charter on Human and

¹⁰³ Fourth Geneva Convention, Article.25-27, 82; article 74, Protocol I.

¹⁰⁴ ‘Guiding Principles’, Principle 17; article. 7, ILA Draft Declaration.

¹⁰⁵ OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, June 1981, African Charter on Human and Peoples’ Rights.

Peoples' Rights 1981 sets out general human rights principles applicable to all individuals, including IDPs. The right to adequate food is not specifically recognized in the charter, although Article 21 stipulates that '*all peoples shall freely dispose of their wealth and natural resources.*' The additional instruments set out, for example, the obligations of the State towards women and children, including specifically in situations of armed conflict.

The protocol to the Charter on Human Rights concerning the rights of women does however explicitly recognize the right to food security for women.¹⁰⁶ In 1990, the OAU adopted the African Charter on the Rights and Welfare of the Child¹⁰⁷ which stipulates the right to adequate food in Article 14 and 20. In 2009, the AU adopted the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Arica (Kampala Convention). In this convention the States Parties pledge themselves to provide internally displaced persons with adequate humanitarian assistance, including food and water.¹⁰⁸ The Members of armed groups 'shall be prohibited from denying internally displaced persons the right to live in satisfactory conditions of dignity, security, sanitation, food water, health and shelter...'.¹⁰⁹

The international crisis is the fact that many IDPs face unique vulnerabilities as women in conflict and post-conflict situations.¹¹⁰ It is widely acknowledged that, in the context of both international and internal conflict, women and children will bear the brunt of suffering and violence.¹¹¹ The breakdown of traditional societal norms and the prevalence of female headed households means that women suffer disproportionately from abuse, exposure to gender based violence, loss of home and possessions, loss of social and cultural ties, and the termination of employment and

¹⁰⁶ Additional Protocol to the African Charter on Human and Peoples' Rights and the Rights of Women in Africa, 11 July 2003, Article 15.

¹⁰⁷ OAU Doc. CAB/ LEG/ 24.9/49, July 1990, African Charter on the Rights and Welfare of the Child.

¹⁰⁸ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 22 October 2009, Article 9 (2) (b).

¹⁰⁹ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 22 October 2009, Article 7 (5) (c).

¹¹⁰ J. A. Benjamin, "The Gender Dimensions of Internal Displacement: A Concept Paper and Annotated Bibliography", New York, UNICEF Nov. 2008, Pg. 7.

¹¹¹ *Ibid* Pg. 2.

educational opportunities.¹¹² Yet, despite being inordinately affected by displacement and its aftermath, ‘the rights of women, including access to basic services – food, water, shelter, and health care – are often ignored’.¹¹³

With such circumstances in mind, this article will consider the progressive steps the Kampala Convention has taken toward recognizing and accommodating the unique vulnerabilities of internally displaced women, while also highlighting continued limitations. In considering the efficacy of the Kampala Convention and the role it can play in the protection of IDPs, it is imperative that veritable advances (or regressions) of the Kampala Convention, as they relate to gender, be considered. Indeed, an analysis of the implications for gender within the Kampala Convention is critical in displacement for three overlapping reasons: 1) gender may be a determining factor in the cause of displacement if women and girls are targeted with violence that compels their flight; 2) the consequences of displacement are highly gendered; and 3) remedies for displacement must operate within a gendered context of rights and resources.¹¹⁴

In order to establish a framework for analysis, part 2 presents a gendered context for the article and provides guidance on the specific attributes of international law that feminist theorists find most significant to improving the rights of women. Part 3 considers the existing protections for internally displaced women, including the Guiding Principles, as context to the Kampala Convention. Part 4 will then analyze how the Kampala Convention addresses the rights of internally displaced women. It will suggest that women, while underrepresented in the drafting process, stand to benefit from the Kampala Convention’s expanding concepts of violence; consideration of economic, social, and cultural rights; and attempts to

¹¹² *Ibid* Pg 13.

¹¹³ *Ibid*, Pg. 7.

¹¹⁴ E. Mooney, “*Internal Displacement and Gender*”, (OHCHR to Humanitarian Principles Workshop, Oct. 1998), website-
http://www.reliefweb.int/library/documents/Internal_Displcmt_Gender.htm, visited on 08.05.2014.

obligate non-state actors. Finally, part 5 will touch on the necessity of comprehensive implementation and enforcement of the Kampala Convention.¹¹⁵

I. A Feminist Critique: The Importance Of Focusing On Internally Displaced Women

Within the category of displaced persons, women are arguably the most vulnerable, bearing the burden of displacement on both an individual and household basis. As UNICEF has reported, ‘displaced women have no voice, their circumstances compel them to accept the little assistance offered while being denied the opportunity to actively participate in program design, monitoring, or assessment on activities that affect their lives’.¹¹⁶ Given these circumstances, this article argues that a feminist consideration of existing legal protections, specifically the Kampala Convention, can best serve the development of protection standards for internally displaced women and ensure their representation as the demographic most frequently categorized as IDPs.

The importance of such analyses has only recently gained by recognition of the international academic community;¹¹⁷ Since their groundbreaking work in 1991, numerous scholars have sought to elucidate the roles and needs of women, the hidden assumptions and biases in the ‘neutral’ legal rules that affect women and the extent to which international law and international institutions play a supportive or suppressive role in considering women’s real world experience.¹¹⁸ This endeavor has led to two fundamental acknowledgments that guide this article: 1) the importance of valuing individual women’s different experiences and perceptions, and 2) the recognition that the differences between males and females, as

¹¹⁵ Lauren Groth, “*Engendering Protection: an Analysis of the 2009 Kampala Convention and its Provisions for Internally Displaced Women*”, *International Journal of Refugee Law* Vol. 23 No. 2, Pg. 223.

¹¹⁶ *Supra Note 110*, Pg. 7.

¹¹⁷ A. X. Fellmeth, “*Feminism and International Law: Theory, Methodology, and Substantive Reform*”, *Human Rights Quarterly*, Vol 22, (2000), Pg. 658- 659.

¹¹⁸ *Ibid*, Pg. 665.

constructed by society, often result in the privileging of male over female, requiring conscious efforts to combat this privilege.¹¹⁹

Within the context of internal displacement, much has been done to research and understand the experiences and perceptions of women in both conflict and post-conflict settings. However, the analysis of the legal rules that frames their experiences, and the international instruments and institutions that construct gendered notions of violence and protection, has received far less consideration. Although this may be, to some extent, a result of the limited actors and agreements that contemplate IDP rights, a discussion of their implications for women facing displacement is no less important. While issues of implementation and enforcement may most greatly affect these women in the immediate future, it is the analysis of normative change, as discussed here that can help us to recognize the assumptions of gendered privilege that undercut women's realities, and in turn, assist in long-term efforts to combat such privilege on a regional scale.

II. The Existing Protections For Internally Displaced Women

In order to contextualize the achievements of the Kampala Convention, as it concerns internally displaced women's rights, it is also important to acknowledge the historical foundations of IDP protection. While the rights of those displaced across borders have been recognized for more than half a century in the form of the 1951 Refugee Convention, 1967 Protocol, and 1969 OAU Convention, the consideration of enforceable rights for those displaced within national borders has risen to significance only in the last twenty years.¹²⁰ Until recently, although both refugees and IDPs experienced violations of their rights through displacement and violence, only refugee rights had acquired a robust enforcement mechanism. While increasing rates of internal conflict, and consequently, internal displacement, have gradually raised awareness of the plight of IDPs, advocates fighting for their legal

¹¹⁹ S. Desai, "Hearing Afghan Women's Voices: Feminist Theory Re-Conceptualization of Women's Human Rights", *Arizona Journal of International and Comparative Law*, Vol 16 (1999) Pg. 805- 811.

¹²⁰ C. Phuong, "The International Protection of Internally Displaced Persons", *International Journal of Refugee Law* Vol 17, No. 4 (2005), Pg. 39-70.

protection have faced the challenge of reconciling international rights for those within a nation's borders with issues of national sovereignty and non-interference with the domestic matters of the state.¹²¹ Indeed, it is important to recognize from the outset that the term 'IDP' has in and of itself been largely descriptive, and has only recently conferred specific legal rights.¹²²

One of the first documents to both consider the rights of IDPs and to explicitly address the needs of internally displaced women was the Guiding Principles, a product of the UN's efforts to bring awareness to the plight of IDPs. As the Kampala Convention both builds upon and expands the gendered provisions of this predecessor, it is helpful to provide a brief overview of its intentions.

ii. The Asian Human Rights Charter

Asia is the only region in the world without a regional treaty on human rights broadly adopted by its governments. Several non-governmental initiatives were taken to stimulate regional recognition of human rights.¹²³ A large group of NGOs and individuals created the Asian Human Rights Charter, a document with the intention to '*deepen the Asian debate on human rights, to present the peoples' views on human rights against those of some Asian leaders who claim that human rights are alien to Asia and to promote political, social and legal reforms for ensuring human rights in the countries of the region.*' The Charter recognizes the right to food in Article 7.1, and underlines in Article 14.2 that: 'arbitrary arrests, detention, imprisonment, ill-treatment, torture, cruel and inhuman punishment are common occurrences in many parts of Asia. Detainees and prisoners are often forced to live in unhygienic conditions, are denied adequate food and healthcare and are prevented from having communication with, and support from, their families.'

¹²¹ L. T. Lee, "*Internally Displaced Persons and Refugees: Toward a Legal Synthesis?*", *Journal of Refugee Studies*, Vol 9, No. 1 (March 1996) Pg. 37.

¹²² The first regional instrument to confer IDPs with legal status was the Great Lakes Protocol on the Protection and Assistance of Internally Displaced Persons. It entered into force in June 2008.

¹²³ Website- books.google.co.in/books?isbn=908686239X, visited on 12.05.2014.

iii. The Charter of the Organisation of American States

In 1948, the Organisation of American States (OAS) adopted the Charter of the Organisation of American States. Article 34 of the Charter states that proper nutrition and modernization of rural life and land reforms are basic goals in order to support inter alia equality of opportunity, elimination of poverty and equal distribution of wealth and income.

In 1969, the American Convention on Human Rights was adopted by the OAS, and entered into force on 1978.¹²⁴ The Convention has a strong focus on civil and political rights, and goes no further than obliging States to guarantee a progressive development of the economic, social and cultural rights (Article 26). The Inter American Court of Human Rights supervises a State complaint procedure, while the Commission may receive individual petition or communications of alleged human rights violation by a Member State, and supervises a corresponding friendly settlement procedure. The Committee furthermore promotes the respect for human rights through inter alia make recommendations and prepare reports and studies, and ‘to request the governments of the Member states to supply it with information on the measures adopted by them in matters of human rights.’¹²⁵

The San Salvador Additional Protocol to the American Convention on Human Rights, adopted in 1988, does however stipulate economic, social and cultural rights, and recognizes the right to adequate food in Article 12. The protocol has a non-discrimination Provision (Article 3), recognizes the right to just, equitable, and satisfactory conditions of work (Article 7), the right to social security (Article 9), and the right to health (Article 10). Special protection is underlined for the family (Article 15), children (Article 16), the elderly (Article 17) and persons and persons with a handicap (Article 18). The protocol includes a monitoring procedure that involves the obligation of member States to submit periodic reports on the implementation of the Protocol, and a very limited procedure for complaints

¹²⁴ The American Convention on Human Rights, 22 November 1969, adopted at the Inter-American Specialized Conference on Human Rights.

¹²⁵ *Ibid*, Article 41.

regarding trade union rights and the right to education, both supervised by the Inter-American Commission on Human Rights.¹²⁶ The Members States have an obligation to adopt measures 'to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of achieving progressively and pursuant to their internal legislations, the full observance of the rights recognized in this Protocol,¹²⁷ and to enact domestic legislation if the rights are not already guaranteed by domestic law 'in accordance with their Constitutional processes and the Provisions of this Protocol, such legislative or other measures as may be necessary for making those rights a reality.¹²⁸

iv. The European social charter

The European Social Charter was adopted in 1961,¹²⁹ and revised in 1991.¹³⁰ The ESC is the counterpart of the European Convention on Human Rights, is strongly based on ILO Legislation, and has therefore a focus on labour-law. The Charter contains no provision that specifically recognises the right to food, although in Article 8, the right for employed women to have sufficient time to nurse their infants is recognised. Nevertheless, some Provisions may contribute to the realization of the right to food, such as the right to safe and healthy working conditions (Article 3), the right to a fair remuneration sufficient for a decent standard of living for themselves and their families (Article 4), the right to protection of health (Article 11), the right to social security (Article 12), the right to social and medical assistance (Article 13), and the right to benefit from social welfare services (Article 14). Also, the rights of children (Article 7), women (Article 8), the family (Article 16), and migrant workers (Article 19) receive additional protection in the Charter. The European Committee of Social Rights (ECSR) supervises the monitoring of the implementation of the legal obligations of the

¹²⁶ The San Salvador Additional Protocol to the American Convention on Human Rights, November 1988, adopted by the General Assembly of the Organization of American States, Article 19.

¹²⁷ *Ibid.*, Article 1.

¹²⁸ The San Salvador Additional Protocol to the American Convention on Human Rights, November 1988, adopted by the General Assembly of the Organization of American States, Article 1.

¹²⁹ The European Social Charter, 18 October, 1961, Turin, in: European Treaty Series 35

¹³⁰ European Social Charter (revised), 3 May 1996, Strassbourg, in: European Treaty Series 163.

Charter through a reporting system¹³¹ and, under an additional protocol, through a collective complaint procedure.¹³²

J. Critical Analysis Of Rights Protection Situation Of Internally Displaced Women Under The United Nations Convention On The Elimination Of All Forms Of Discrimination Against Women

Displacement arising from armed conflict, persecution and other serious human rights violations can intensify this discrimination and inequality. Discrimination against women can be the, or a contributing, cause of displacement and it can occur at all stages in the displacement cycle – during flight, settlement and return. Although all forcibly displaced persons face protection problems, ‘women and girls can be exposed to particular protection problems related to their gender, their cultural and socio-economic position, and their legal status’. Similarly, many persons are at risk of statelessness because of gender based discriminate nationality laws and women who are already stateless face various protection problems, not least gender-based barriers to the recognition of nationality.¹³³

Much has already been done to advance the rights of displaced and stateless women and girls. The United Nations High Commissioner for Refugees (UNHCR) has adopted a myriad of policies, guidelines and programmes since the early 1990s, which sought recognition for the now accepted fact that displacement affects men and women differently and that protection responses and strategies must recognise

¹³¹ This was originally embedded in part IV of the 1961 Charter, later altered in the Amending Protocol of 19.91 reforming the supervisory mechanism, 21 October 1991, Turin, in: European Treaty Series 142, and currently referred to in Section IV, Article C of the 1991 Charter.

¹³² Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, 9 November 1995, Strassbourg, in: European Treaty Series 158.

¹³³ Alice Edwards, “*Displacement, Statelessness, and Questions of Gender Equality and the Convention on the Elimination of All Forms of Discrimination against Women*”, Background paper prepared for a joint United Nations High Commissioner for Refugees and the UN Committee on the Elimination of Discrimination against Women seminar, to be held at the United Nations in New York, 16-17 July 2009 April 2009, Pg. 5.

and take account of these differences.¹³⁴ According to the Organization, ‘The protection of refugee women and children is a core activity and an organizational priority.’¹³⁵ Internally displaced (IDP) women have also been incorporated into the Organization’s policy documentation and practical programmes.¹³⁶ The Executive Committee of the High Commissioner’s Programme (EXCOM) has likewise adopted statements concerning the international protection of refugee and IDP women. Some states have likewise attempted to incorporate gender-sensitive applications of international standards into national protection mechanisms for displaced women,¹³⁷ and to amend nationality laws that discriminate against women.

Protection of human rights is also reinforced in a number of regional human rights instruments CEDAW is, in theory, the most applicable treaty for women refugees because it condemns all forms of discrimination against women. Though CEDAW does not specifically include or exclude refugees or internally displaced women,¹³⁸ several of its articles are relevant to refugee women.

Displaced women, like all women, are entitled to benefit from the rights contained in the CEDAW and they should not be discriminated against in any sphere of life. Displaced women face many barriers to the equal enjoyment of their human rights, but they also face **additional obstacles and hardships** arising from the fact of being either outside their country of origin or away from their homes. Discrimination may be compounded, inter alia, because of her legal status (or lack of or precarious legal status) in the asylum country (or loss of documentation needed

¹³⁴ UN High Commissioner for Refugees (UNHCR), UNHCR Policy on Refugee Women, 20 August 1990, Pg. 4, website- <http://www.refworld.org/docid/3bf/1338f4.html>. Visited on 13 May 12014.

¹³⁵ UN High Commissioner for Refugees (UNHCR), Agenda for Protection, October 2003, Third Edition, Pg 85, website- <http://www.refworld.org/docid/4714a1bf2.html>. Visited on 13 May 12014.

¹³⁶ UN High Commissioner for Refugees (UNHCR), The Protection of Internally displaced Persons and the Role of UNHCR, Informal Consultative Meeting with UNHCR Executive Committee 27 February 2007, website- <http://www.refworld.org/docid/45dde5c04.html>. Visited on 13 May 12014.

¹³⁷ Alice Edwards, “Age and Gender Dimensions in International Refugee Law”, in edited book of E. Feller, V. Türk and F. Nicholson, “*Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection*”, Cambridge University Press, 2003, Pg.46-80, website- <http://ssrn.com/abstract=1535356>, visited on 13.05.2014.

¹³⁸ J. Oloka-Onyango, “*The Plight of the Larger Half: Human Rights, Gender Violence and the Legal Status of Refugee and Internally Displaced Women in Africa*”, 24 Denver Journal of International Law and Policy, Spring, 1996, Pg. 351.

to access local services, including social housing, in internal displacement situations), socio-economic position, trauma arising from armed conflict or persecution, prior subjection to violent conduct, loss of livelihood and family, or cultural, social and linguistic differences between themselves and their displacement country and/or community.¹³⁹

The Researcher while surveying on the matters of displacement regarding women and children found that, the discrimination against women does occur at all stage of displacement cycle. The gendered dimensions of displacement may further be compounded by discrimination and abuse on other grounds, such as ethnicity, religion, and class. Sex discrimination is also evident in refugee status determination procedure in many countries of asylum, in which gendered nature of persecution may not be recognised or where sex/ gender may not be seen as a legitimate ground for asylum.¹⁴⁰

Women's access to asylum procedures and related services may be hindered by gender factors. Even if her claim to asylum, for example, relates to racially- or politically- motivated persecution, she may still face difficulties presenting her case because of gendered barriers to asylum, such as lack of access due to assumptions by asylum authorities that her husband is the 'proper' claimant, culturally or religiously insensitive interviews and interview settings, or lack of child care facilities to care for any children.¹⁴¹

Though there is many way to access the asylum proceedings, but many factors prevent women from reaching the asylum destination. These includes

¹³⁹ Rathin Bandyopadhyay and Chandrani Das, *Impact of Internal Displacement on Women and Children: A Socio-Legal Introspection*, in edited book of Rathin Bandyopadhyay, Sanjay Kumar Singh, Rajendra Dhar Dubey and Sangeeta Mandal, *Women Rights Human Rights*, R. Cambay & Co. Private Ltd., Kolkata, 1st Edition, 2010, Pg. 35.

¹⁴⁰ CEDAW Concluding comment on Lebanon, 41th Session, Annual Report 2008, UN Doc. A/63/38 (2008): 'It also recommends that the State party full integrate a gender-sensitive approach throughout the process of granting asylum/refugee status ...' paras. 200-201.

¹⁴¹ By analogy the CERD's General Recommendation No. XXV: Gender-Related Dimensions of Racial Discrimination (2000), UN Doc. HRI/GEN/1/Rev.7, in which the CERD notes that 'Women may also be further hindered by a lack of access to remedies and complaint mechanisms for racial discrimination because of gender related impediments, such as gender bias in the legal system and discrimination against women in private spheres of life.'

restriction from freedom of movement of women in her country of origin,¹⁴² lack of necessary documentation, including passports, legal requirements for permission from husbands to travel,¹⁴³ or cultural factors that put women travelling alone or without male family members at risk of violence. Women and girls may also be forced into providing sexual services in exchange for safe passage for themselves or their families, or to obtain necessary documentation or other assistance.¹⁴⁴ Many of these same restrictions may also be imposed upon IDP women.

Women also often suffer discrimination and related human rights abuses throughout their **settlement and return**. Displacement, whether internal¹⁴⁵ or international, weakens existing community and family protection mechanisms, which exposes refugee and IDP women and girls to sexual and gender-based violence.¹⁴⁶ Increased militarization and the presence of both civilians and combatants in camps heighten insecurity for all refugees and IDPs, but women and girls may be exposed to particular forms of insecurity. Poorly lit camps, or those that lack adequate security, place women and girls at heightened risk of attack by men inside and outside of the camps.¹⁴⁷

Responsibilities of women and girls, dictated by social and cultural norms, such as those relating to the collection of water and firewood, can heighten a woman's risk of injury and violence outside camps, including from landmines, banditry or sexual attack. Distribution systems that allocate food and non-food items

¹⁴² CEDAW, Art. 15(4).

¹⁴³ By analogy, CEDAW, General Recommendation No. 26: Women Migrant Workers, UN Doc. CEDAW/C/2009/WP.1/R.

¹⁴⁴ Women, Peace and Security, Study Submitted by the Secretary-General pursuant to Security Council Resolution 1325 (2000), Publication Date 2002, paras. 93-108, website- at <http://www.un.org/womenwatch/daw/public/eWPS.pdf>, visited on 13.05.2014.

¹⁴⁵ J.A. Benjamin and K. Fancy, "The Gender Dimensions of Internal Displacement: Concept Paper and Annotated Bibliography", (Women's Commission on Refugee Women and Children, Nov. 1998).

¹⁴⁶ UNHCR and Save the Children UK, "The Experience of Refugee Children in Guinea, Liberia and Sierra Leone based on Initial Findings and Recommendations from Assessment Mission 22 October – 30 November 2001", Feb. 2002, referred to in Women, Peace and Security, Study Submitted by the Secretary-General pursuant to Security Council Resolution 1325 (2000), 2002, website-<http://www.un.org/womenwatch/daw/public/eWPS.pdf>, visited on 14.05.2014, paras. 93-108.

¹⁴⁷ (UN High Commissioner for Refugees) UNHCR, Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines on Prevention and Response, May 2003, website- <http://www.refworld.org/docid/3edcd0661.html> visited on 14.05.2014.

to the 'head of the household', often interpreted as the male family member, have been found to deprive women and their children of food security and exacerbate the neglect and malnourishment of women and children.¹⁴⁸ Measures adopted to reduce this risk, such as distributing such items to women, have yet to fully resolve the problem of family tensions and family-based violence, which can be exacerbated by such measures if they are not implemented in consultation with the community, or they may add burdens on women who now have added the responsibility for collecting the food and non-food items. That is, it can contribute to women's allocation to family-related activities and prevent their full participation in other aspects of community life. Similar efforts to transport firewood to camps to reduce the need for women to walk long distances to collect it, which increases their risk of attack, have produced some important short-term benefits (reduction in such attacks), but they have done little to address the underlying causes of structural inequality. Although much has now been done to address the shortcomings in some of these programmes,¹⁴⁹ the problems remain.

CEDAW specifically calls upon state parties to "condemn discrimination against women in all its forms [and] pursue by all appropriate means . . . a policy of eliminating discrimination against women."¹⁵⁰ CEDAW specifically requires state parties to eliminate discrimination against women by individuals and state actors in public life¹⁵¹ and to ensure that women's rights are legally protected¹⁵² and that "public authorities and institutions shall act in conformity with this obligation [to end discrimination]."¹⁵³ It is evident that, the host nation has an obligation to ensure

¹⁴⁸ (UN High Commissioner for Refugees) UNHCR, UNHCR Handbook for the Protection of Women and Girls, 1st Edition, January 2008, website- <http://www.refworld.org/docid/47cfc2962.html>. visited on 14.05.2014.

¹⁴⁹ Women's Commission on Refugee Women and Children, UNHCR Policy on Refugee Women and Guidelines on Their Protection: An Assessment of Ten Years of Implementation, May 2002, Pt 4.4.3, website <http://www.refworld.org/pdfid/48aa83220.pdf>.

¹⁵⁰ Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature March 1, 1980, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, art. 2, at 194, U.N. Doc. A/34/180, 1249 U.N.T.S. 14 [hereinafter CEDAW]. For example, Article 2(f) requires state parties "To take all appropriate measures, including legislation, to modify or abolish existing law, regulations, customs and practices which constitute discrimination against women."

¹⁵¹ CEDAW, Art. 2(e), G.A. Res. 34/180 at 195.

¹⁵² CEDAW, Art. 2(c), G.A. Res. 34/180 at 195.

¹⁵³ Art. 2(d), G.A. Res. 34/180 at 195; Rebecca J. Cook, "State Responsibility for Violations of Women's Human Rights", Harvard Human Rights Journal, Vol. 125 No. 7, (1994), Pg. 159.

that national and camp rules should not discriminate against women. For example, if a camp only gives food cards to the male head of the household, the host government would be required under CEDAW to eliminate this policy and issue food cards to both men and women. In addition, if refugees publicly beat an old woman for witchcraft in a camp, the state should, under CEDAW, investigate and prosecute the perpetrators.¹⁵⁴

Article 5(a) of the CEDAW requires states to deal with the **root causes of inequality** that lie in patriarchal cultures and religions and to engage with and to take steps to eradicate them:

Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.¹⁵⁵

The obligation contained in the CEDAW is not simply for states parties to respond to the consequences of discrimination (e.g. to bring the firewood to women), but rather ‘to take all appropriate measures ... to modify the social and cultural patterns of conduct of men and women ...’¹⁵⁶ Articles 5(b) and 16(c) further recognise the common responsibility of men and women in the upbringing and development of their children. Read together Articles 5(a) and 2(f) have been interpreted as to establish an *immediate obligation*, and not an obligation merely to take steps with a view to achieving progressively the full realisation of rights, as required in the International Covenant on Economic, Social and Cultural Rights

¹⁵⁴ Malinda M. Schmiechen, “*Parallel Lives, Uneven Justice: An Analysis Of Rights, Protection And Redress For Refugee And Internally Displaced Women In Camps*”, Saint Louis University Public Law Review, Vol. 22 No. 473, Pg. 497.

¹⁵⁵ CEDAW, General Recommendation No. 19: Violence against Women, 1992, para. 11.

¹⁵⁶ CEDAW, art. 5(a).

(ICESCR).¹⁵⁷ The Committee itself has recognised that ‘unequal power relationships between women and men in the home and workplace may [also] negatively affect women’s nutrition and health.’¹⁵⁸

Failure to **individually register all refugees**, especially adult women, can make refugee women ‘non-persons’ and unable to access the assistance and help that they need. Articles 3 and 15 of the CEDAW require that women shall be equal before the law and shall enjoy equality in all fields. Access to identity documentation and legal status must be ensured as a prerequisite to equal access and enjoyment of many rights. It can access assistance and services and enjoy basic rights, including freedom of movement and family reunification, is often dependent on proof of identity.¹⁵⁹

Refugee and IDP women who lack adequate registration and personal documentation, including identity cards, marriage certificates, divorce certificates, and birth certificates for their children have sometimes been denied freedom of movement and access to basic rights.¹⁶⁰ In addition, refugee and IDP woman and their children are made more vulnerable to being **rendered stateless**, they have been unable to **claim or inherit property** upon return, to seek **support for children from estranged husband’s or partners**, have been **arrested and detained** by police because they do not have proper documents, and they **risk refoulement** being unable to prove their refugee status.¹⁶¹ In spite of efforts to guarantee registration of all refugees – men and women alike – proper care also needs to be taken in carrying out the registration process, as women have been **intimidated, bullied, and subjected to sexual exploitation during registration exercises and procedures**.¹⁶²

¹⁵⁷ F. Raday, ‘Culture, Religion, and CEDAW’s Article 5(a)’, in H.B. Schöpp Schilling and C. Flinterman (eds.), *Circle of Empowerment: Twenty-Five Years of the UN Committee on the Elimination of Discrimination against Women* (New York: Feminist Press, 2007) 68-85, Pg 74.

¹⁵⁸ CEDAW, General Recommendation No. 24: Women and Health (Article 12) (1999), para. 12 (b).

¹⁵⁹ CEDAW, arts. 15(4) (freedom of movement and choice of residence) and 16(f) (the same rights with regard to guardianship, wardship, trusteeship and adoption of children).

¹⁶⁰ CRC, arts. 7-8.

¹⁶¹ UNHCR, *Handbook on Registration, Procedure and Standards for Registration, Population Data Management and Documentation*, (Provisional Release, Sept. 2003), Pg. 12.

¹⁶² *Ibid*, Pg. 13

Displacement is normally portrayed as a setting of risk for women, it can also be a **site of empowerment, self-reliance, and opportunity**. Girls may have to access to education for the first time, women may have opportunities for micro-credit projects that advance their skills not available to them at home, and many women take part in camp leadership training and management committees.¹⁶³ However in other words, women's access too many of the rights contained in the CEDAW may be enhanced during displacement. Displacement can also provide space and opportunity to alter traditional and cultural practices that reinforce the inferiority of women due to the influence of rights-based approaches to humanitarian assistance and protection.

Women's **reproductive health** is also often compromised in displacement, in contravention of Article 12 of the CEDAW.¹⁶⁴ In this regard, the Committee has recognised that societal factors can compound the inequality of women belonging to 'vulnerable and disadvantaged groups', including 'refugee and internally displaced women.'¹⁶⁵ In addition, it has stated that 'States parties should ensure that adequate protection and health services, including trauma treatment and counseling, are provided for women in especially difficult circumstances, such as those trapped in situations of armed conflict and women refugees.'¹⁶⁶ At times there is inadequate or non-existent provision of sexual and reproductive health services in displacement, let alone during an emergency.

The inadequate provision of sanitation materials during menstruation has resulted in adolescent girls not attending school and women missing the distribution

¹⁶³ CEDAW, arts. 7 (elections and public office), 10 (education), 13(b) (right to bank loans, mortgages and other forms of financial credit), 14(2)(a) (participation in the elaboration and implementation of development planning at all levels), 14(2)(g) (access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as land resettlement schemes).

¹⁶⁴ CEDAW, art. 12 provides: "1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. 2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation."

¹⁶⁵ CEDAW, General Recommendation No. 24: Women and Health (Article 12) (1999), para. 6.

¹⁶⁶ CEDAW, General Recommendation No. 24: Women and Health (Article 12) (1999), para. 16.

of assistance.¹⁶⁷ Other issues includes, separate latrines for males and females, ensuring that latrine doors close properly, and there are appropriate places to dispose of feminine hygiene products,¹⁶⁸ and latrines must be accessible and well lit at night.¹⁶⁹ Proper information about family planning, including for women who have been raped, availability of care and services during pregnancy and after birth, information and protection against HIV/AIDS and other sexually transmitted diseases, and zones of safety, respect, privacy and confidentiality, are often missing in refugee and IDP settings, and are far from availability during the emergencies.¹⁷⁰

The exposure to **sexual and gender-based violence** (SGBV) is exacerbated in times of displacement, it is one of the greatest human rights violations occurring in refugee and IDP settings. After the thorough study of 13 refugee hosting countries, rape was reported as a problem by all the countries surveyed, and within this category, attempted rape, gang rape, and statutory rapes were mentioned specifically. Other forms of SGBV included, inter alia, forced and/or early (child) marriage; abuse by authorities, including physical abuse; sexual exploitation; sexual assault; other inappropriate sexual behaviour, indecent acts and sexual harassment; incest; abductions or kidnapping (especially of girls and women); trafficking of women and girls; forced prostitution; and disappearances of women and girls.¹⁷¹ Amongst the most frequently mentioned crimes in refugee camps, and the most prevalent forms of SGBV, were the various forms of domestic violence, rape and forced or early marriages.¹⁷²

Lack of secure livelihood opportunities can force women to have recourse to prostitution.¹⁷³ Women also therefore become at **risk of traffickers**. Under Article 6

¹⁶⁷ UNHCR, 'Report of the High Commissioner's Five Commitments to Refugee Women', UN Doc. EC/55/SC/CRP/17, 13 June 2005.

¹⁶⁸ Article 5(1)(d)(i) International Convention On The Elimination Of All Forms Of Racial Discrimination, 21 Dec. 1965; UN doc A/2106 A (XX), *Para 103*.

¹⁶⁹ UNHCR, SGBV Guidelines and UNHCR, Handbook on the Protection of Women and Children, Pt. 5.3.

¹⁷⁰ *Ibid*, Pt 5.5.2.

¹⁷¹ Rosa da Costa, "*The Administration of Justice in Refugee Camps: A Study of Practice*", UNHCR, Legal and Protection Policy Research Series, UN Doc. PPLA/2006/01, Mar. 2006, website-<http://www.refworld.org/docid/4417f9a24.html>, visited on 14.05.14.

¹⁷² *Ibid*.

¹⁷³ Report of the Special Representative of the Secretary-General on Internally Displaced Persons, UN Doc. E/CN.4/2000/83/Add.1, 11 Jan. 2000.

of the CEDAW, states parties must take ‘all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.’ This has been held to include accession to the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children to the UN Convention against Organized Crime 2000* and the revision of laws so that they are in conformity with it. It has also been held to afford protection under the 1951 Convention to trafficked women who seek asylum on grounds of gender-related persecution.¹⁷⁴ The UNHCR’s had approached regarding the trafficking in which it has recognised the links between displacement and risk of trafficking, and between trafficking and the need for asylum.¹⁷⁵ Reduction in assistance or the **limited availability of international resettlement places** can also have a similar impact, and can lead to sexual exploitation, bribery, and corruption by government officials, humanitarian workers, and other displaced persons in positions of authority.¹⁷⁶

Follow-up services and redress mechanisms for victims of violence or exploitation are often lacking in refugee and IDP settings. **Access to justice**, guaranteed by Article 15 of the CEDAW, is far from straightforward for any victim of SGBV. The Committee has stated that the guarantee of ‘equality before the law’ in Article 15 of the CEDAW requires states parties to establish effective complaints procedures and remedies, support services for victims and their families, and criminal investigation, prosecution and punishment.¹⁷⁷ National criminal law

¹⁷⁴ CEDAW, concluding observations on Finland (40th Session, para. 389): Annual Report 2008, UN Doc. A/63/38 (2008); Paraguay (32nd Session, para. 283), Israel (33rd Session, paras. 149-150): Annual Report 2005, UN Doc. A/60/38 (2005); Spain (31st Session, para. 33-37) (including urging the state party to afford full protection under the 1951 Convention to trafficked women who seek asylum on grounds of gender-based persecution in line with the latest developments): Annual Report 2004, UN Doc. A/59/38 (2004).

¹⁷⁵ UNHCR, Guidelines on International Protection: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked, UN Doc. HCR/GIP/06/07, 7 Apr. 2006.

¹⁷⁶ By analogy, UNHCR and Save the Children (UK), Note for Implementing and Operational Partners, Sexual Violence and Exploitation: The Experience of Refugee Children in Guinea, Liberia and Sierra Leone, Feb. 2002.

¹⁷⁷ These are taken from paras. 24(i), (k) and (r)(ii) of the CEDAW, General Recommendation No. 19: Violence against Women (1992), although it notes that the Committee has now moved on from requiring only ‘civil remedies in domestic violence cases’, which is provided for in this Recommendation, to criminal sanction: e.g., Concluding observations on Tanzania (41st Session, para. 144-145) (concern about women’s inadequate protection from and redress for all forms of violence in communities of refugees and the apparent impunity of the perpetrators of such violence), Nigeria (41st Session, paras. 340-341) (requests state party to ensure the protection of internally

systems may, for example, legalise marital rape, provide exemptions from prosecution for rapists who agree to marry the victim, support a compensation culture rather than justice system, under sharia systems women alleging rape are at risk of prosecution for adultery should they be unsuccessful and could face death, or operate prejudiced judicial systems that do not prioritise crimes against women or in which low levels of rape convictions are the norm leading to a sense of impunity. There may be few safeguards for victims, such as anonymity, access to legal advice, or safeguards against community, social or family ostracism as a result of making a complaint.¹⁷⁸

Looking to the above issues the researcher had made some comment in culture of sex discrimination and unequal treatment of women. As a discrimination-based treaty, the CEDAW can serve to reinforce the legal basis for many of the arguments made for involving women in all aspects of the displacement cycle, for improving the treatment of women and girls in these settings, and for eradicating some of the causes of discrimination and displacement. The loss of property and livelihood and the fact of displacement raise many serious human rights issues for women and children. Gender relations and inequality impact and compound the experiences of displaced women and girls in these settings.

K. The World Bank Scenario Upon The Internally Displaced Women And Children

Between the 1980s and until end of 2009, the World Bank has taken to address issues of displaced people as part of vulnerable groups, and Bank policies have made more explicit to provide a clear mandate for addressing the development challenges of displacement. It has taken a prolonged operation for funding the displaced people from the trust funds and IDA operations. IDA/IBRD operations constitute 47% of the activities, followed by Trust fund operations (42%), and

displaced women from violence and their access to immediate means of redress): Annual Report 2008, UN Doc. A/63/38

(2008).

¹⁷⁸ Special Rapporteur on Violence against Women, Its Causes and Consequences, Cultural Practices in the Family that are Violent Towards Women, UN Doc. E/CN.4/2002/83, 31 Jan. 2002;

analytical work (11%). Of the 94 activities, 42 (45%) are active, while 52(55%) are closed.¹⁷⁹

The bulk (68%) of the 84 Bank supported operations entail support for return to communities of origin for either refugees or IDPs. Durable solutions for IDPs in either their original communities or in another location within their country has been supported by 20% of the operations, while 7% have supported refugees in finding durable solutions in exile. Together these activities that support durable solutions constitute 91% of the operations. The remaining 9% of the operations either address development needs for IDPs or refugees in protracted displacement situations.¹⁸⁰

Bank engagement in addressing displacement has been generally modest and declined slightly, although global displacement figures have remained high with most displaced in protracted situations. Operations on forced displacement have been addressing most of the critical development challenges such as post-conflict reconstruction, restoration of livelihoods, community driven development (CDD), delivery of services, as well as reconciliation and peace, women and youth. The wide span of development themes supported in activities addressing displacement indicates richness in approaches and global experiences. However, little has been done so far in terms of evaluating operations addressing displaced people and drawing out the lessons that could inform future interventions.¹⁸¹

The World Bank operates in Europe and Central Asia Region are the targeted support for IDPs in Azerbaijan, support for self reliance opportunities for IDPs in Georgia, for IDP income generation and improved access to services in Croatia, and for education in area in Albania hosting refugees from Kosovo. In the East Asia and Pacific Region, activities supporting IDPs are implemented in Mindanao in the

¹⁷⁹ Forced Displacement- Overview of the World Bank Portfolio, July 2009, by the Conflict, Crime and Violence team in the Social Development Department, Pg. 2.

¹⁸⁰ Asger Christensen and Niels Harild , “*Forced Displacement – The Development Challenge*”, Conflict, Crime & Violence Issue Note, Social Development Department, The World Bank Group, December 2009, Pg. 20.

¹⁸¹ Website <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/0,,contentMDK:22463823~pagePK:148956~piPK:216618~theSitePK:244363,00.html>, visited on 15.05.2014.

Phillipines, Aceh in Indonesia, and Timor Leste. In the South Asia Region, the engagement has comprised support to IDPS in Sri Lanka, different forms of support for Afghan refugees in Pakistan from the eighties onwards, and more recently rehabilitation assistance in Afghanistan to returning refugees and IDPs as part of an IDA supported CDD project. In the Africa Region examples include community based reintegration of IDPs and refugees in Cote d'Ivoire and in rural areas in Burundi, as well as the IDA funded Community Reintegration and Recovery Fund in Sierra Leone and a social fund operation in Angola. In the Middle East and North Africa Region, activities have been initiated to support displaced Iraqis in Jordan, Lebanon, and Syria, and Palestinian refugees displaced by fighting in Lebanon. In Latin America an operation to protect the land rights of IDPs is being implemented in Colombia.

Strategic Principles: The implications for Bank involvement is that the approach to deal with forced displacement as a development issue should be based on the following principles:¹⁸²

- a. Comparative advantage: the Bank's involvement in addressing forced displacement should draw on its comparative advantage involving analytical work, sector development expertise, and convening ability to complement the work of other actors (UN, bilateral, NGO, governments) in supporting the transition between humanitarian aid and the development assistance required to promote sustainable solutions for displaced people.
- b. Early engagement and partnership: the Bank should engage with governments and international actors from the start of a crisis generating displacement, so that it can be in a position to support effectively the early recovery strategies and activities in coherence with the activities of partners and the concerned government. Such involvement will help ensure that the frequent gaps between humanitarian aid and development assistance with

¹⁸² Asger Christensen and Niels Harild, "Forced Displacement – The Development Challenge", Conflict, Crime & Violence Issue Note, Social Development Department, The World Bank Group, December 2009, Pg. 21.

regard to both planning and funding do not contribute to create protracted displacement situations.

- c. Continuity and flexibility in engagement: while early involvement by the Bank is critical, development activities to promote lasting and sustainable solutions for those displaced also require continuity in the engagement, as well as sufficient flexibility to enable adjustment to rapidly evolving circumstances.
- d. Field based engagement: the Bank's engagement should as much as possible be field based, and take into consideration the country context including the needs of those displaced, the opportunities and constraints for addressing displacement defined by the political economy conditions of the country (or region) and by champions in the government, as well as activities of partner agencies (e.g. within the cluster approach where UNDP leads the early recovery cluster). Interventions should be broad based and not only focus on the displaced, but should also support communities in the geographical areas of displacement and return. Interventions could comprise either new operations, or existing sector operations adapted to ensure inclusion of displaced people among the beneficiaries.
- e. The Bank should apply a displacement angle/ filter to ensure that displacement is addressed in analytical (e.g. Poverty Assessments) and operational work, and where relevant also in country Assistance Strategies (CAS) and Interim Strategy Notes (ISN).

Displacement can end in different ways. IDPs may return to the place they fled from, settle in the place they fled to, or move to a third location within the country. Refugees may return to their place of origin; return to another part of their country of origin, settle in the host country, or resettle in a third country. For both IDPs and refugees, the return to their area or country of origin, or settlement elsewhere does not necessarily mean that they find durable solutions to the situation of displacement. The critical barriers to durable solutions for the displaced, which also constitute the key development challenges are:

- ***Rights to land, property, and houses*** that belonged to the displaced have in many IDP and refugee situations been taken over by others,
- ***Livelihoods*** are in a critical condition. The returnees areas are characterized by the legacy of past conflict or low level violence often have limited economic growth and few employment opportunities, and areas of displacement are frequently characterized by poverty. It is finally be difficult to reestablish,
- ***Delivery of services*** such as health care, education, infrastructure (drinking water, sanitation, roads, etc), and housing assistance are essential for durable solutions both upon return and in places of displacement ,
- **Accountable and responsive governance** and rule of law are often weak particularly at the local level. Government capacity is limited with its legitimacy damaged and social capital at the community level impaired.

Bank Contribution: within its expertise and mandate, the Bank would bring to the table:

- Country specific knowledge and analytical work facilitate government, partner and Bank planning.
- Different sector expertise in area such as education, skills development, inclusive areas development, community driven development (CDD) approaches, land management, private sector development, agricultural development, and government capacity building should contribute to develop the mechanisms which are required for sustainable solutions during and beyond humanitarian assistance.
- Financial resources in the form of grants from Trust Funds for urgent needs and pilot operations, or grants and loans for larger operations from IDA or IBRD resources, including Bank mobilized resources from other donors that

contribute to bridge the partnership between client countries, donors, the UN and NGOs.

- Several support for infrastructure (e.g. port or road facilities) that are critical for either humanitarian access or longer term development activities to assist the displaced.
- Experience gathered by coordinating and administered for several multi donor trust funds.
- Convening of government and development actors to develop shared approaches to address specific situations.

Alignment with Bank Policies and Priorities: more focused and consistent engagement in addressing the development dimensions of forced displacement to support durable solutions for displaced people is fully aligned with Bank policies and priorities.

The Operational Policy 2.30 of 2001 on Development Cooperation and Conflict for support to countries vulnerable to conflict, countries in transition from conflict.

- In countries determined to be vulnerable to conflict, the objective is to promote economic growth and poverty reduction through development assistance that minimizes potential causes of conflict,
- The objectives in countries in conflict are continued efforts at poverty reduction and maintenance of socioeconomic assets (which conceivably should include the human capital represented by IDPs and refugees), impact analysis, and preparation for resumption of Bank assistance.
- For countries in transition from conflict, the priorities to support the overall policy objective of economic and social recovery can include reintegration of refugees and other war affected populations (e.g. IDPs) into the economy.¹⁸³

A new Operational Policy 8.00 on *Rapid Response to Crises and Emergencies* came into effect in March 2007. By its guiding principles, Bank

¹⁸³ 2005 World Summit Outcome, U.N. Doc. A/60/L.1, para. 132, and reaffirmed in several UN General Assembly resolutions.

support for relief to recovery transitions should be based on its core development and economic competencies, and such support should be provided in close coordination involving establishment of appropriate partnership arrangements with other development partners, including the United Nations. One of the objectives of the policy is to establish and/or preserve human, institutional, and/or social capital including economic reintegration of vulnerable people, who include refugees and IDPs.

In October 2007, the Bank's President identified fragile states as one of the six global challenges confronting the Bank.⁵⁴ In a speech on *Fragile States: Securing Development* in Geneva in September 2008, the President further singled out displacement (of refugees) as both resulting from and contributing to the fragility of such states. He listed ten priorities to be considered in meeting the challenge posed by fragile states, and eight of these – other than provision of security and macro-economic stability – are embedded in the approach outlined above for Bank engagement in addressing the development dimensions of forced displacement.¹⁸⁴

L. Rights Protection Scenario For Internally Displaced Children Under The United Nations Convention On The Rights Of The Child: An Analysis

Internally displaced persons, or “IDPs”, are people who have been forced to flee or to leave their homes or places of habitual residences and who, unlike refugees, remain within their own country.¹⁸⁵ Around the world today, across more than 50 countries, there are an estimated 27.1 million internally displaced persons as

¹⁸⁴ The other eight priorities are (i) build the legitimacy of the state, (ii) build rule of law and legal order, (iii) bolster local and national ownership, (iv) pay attention to the political economy, (v) crowd in the private sector, (vi) coordinate across institutions and actors, (vii) consider the regional context, and (viii) recognize the long-term commitment.

¹⁸⁵ Guiding Principles on Internal Displacement. Report of the Representative of the Secretary General on Internally Displaced Persons, UN Commission on Human Rights, E/CN.4/1998/53/Add.2.

a result of armed conflict. At least half of these internally displaced persons that is, at least 13.5 million, and likely more, are children.¹⁸⁶

Displacement is an especially destabilizing and traumatic experience for children as it uproots and exposes them to risks at a time in their lives when they most need protection and stability. Perhaps most troubling, the difficult conditions that internally displaced persons endure typically persist for years, even decades, without a solution. Worldwide, the average duration of displacement today is nearly 20 years. Many children grow up experiencing life as internally displaced persons.

People who are partly to conflict have obligations under international humanitarian law to protect civilians in times of war. The International Committee of the Red Cross (ICRC) rightly emphasizes that if only these obligations and human rights were respected, most people who today are displaced by violence would have been able to remain safely at home.¹⁸⁷ In reality, as the Internal Displacement Monitoring Centre (IDMC) points out, "displacement will continue to disrupt and destroy people's lives unless there is continuing engagement to encourage all parties to conflicts to uphold these obligations".¹⁸⁸

a) The Legal foundation: an overview

Children presented in armed conflict specially the internally displaced, or are at risk of becoming displaced, have rights just like all other children. The rights which are expressly guaranteed and firmly entrenched in an extensive body of international law, in particular international human rights law and international humanitarian law.

Human rights are that freedom which guarantees every human being to enjoy. International human rights law, consists of both treaty law and customary law, affirms these rights and obliges States to respect, protect, and fulfil the human

¹⁸⁶ IDMC, Global Overview of Trends and Developments in 2009, Pg. 8.

¹⁸⁷ International Committee of the Red Cross (ICRC), Internal Displacement in Armed Conflict: Facing Up to the Challenges (ICRC, 2009),Pg. 4.

¹⁸⁸ IDMC, Global Overview of Trends and Developments in 2009, Pg. 9.

rights of all persons without discrimination of any kind, including on the bases of age, gender, ethnic origin, religion, birth or other status.

The UDHR although not a binding legal instrument in and of itself but, many of its principles constituted customary law and/ or have been incorporated into treaty law which is binded by two Covenants: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR), both of 1966.

Several additional international human rights instruments reinforce and elaborate the protection of human rights relating either to: (a) particular issues, such as torture or racial discrimination; or (b) specific groups of persons who may face particular obstacles to the full and equal enjoyment of their rights, including women, persons with disabilities, and children.¹⁸⁹

The rights of children are most comprehensively articulated in the Convention on the Rights of the Child (CRC) of 1989. Significantly, the CRC is the most widely ratified international human rights instrument in the world; all but two States—Somalia and the United States—are signatories. Many of the provisions of the CRC also form part of customary law, meaning they apply irrespective of whether a particular State has ratified the CRC. Moreover, the CRC does not allow any derogation in times of emergency: the full range of rights it articulates apply in all circumstances. In situations of armed conflict, the CRC's Optional Protocol on the Involvement of Children in Armed Conflict of 2000 is particularly relevant.¹⁹⁰

In situations of armed conflict, international humanitarian law (IHL) comes into effect (and applies along with the international law applicable in armed conflict in general, including most provisions of international human rights law). IHL applies in all situations of armed conflict, whether international or non-international,

¹⁸⁹ Website- <http://www.ohchr.org>, visited on 16.05.2014.

¹⁹⁰ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, UN General Assembly resolution A/RES/54/263, 25 May 2000; entry into force 12 February 2002.

and it applies equally to all parties to a conflict. The core instruments of IHL are the four Geneva Conventions of 1949 and their two Additional Protocols of 1977.¹⁹¹ IHL, in particular its core principle of distinction—demanding that parties to a conflict must distinguish between combatants and civilians at all times—provides critically important protection for civilians, including special protection for children. Especially important in this regard are:

- Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (GC IV);
- Article 3 common to all four Geneva Conventions, which affirms that in non-international armed conflicts persons not taking part in hostilities must “in all circumstances be treated humanely without adverse distinction”, specifically prohibits acts including: “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment” and provides that “the wounded and sick shall be cared for”;¹⁹²
- Additional Protocol relating to the Protection of Victims of International Armed Conflict (GC AP I); and
- Additional Protocol relating to the Protection of Victims of Non-International Armed Conflict (GC AP II).

International humanitarian law (and international law applicable to armed conflict in general) grants children special protection, in addition to the general protection granted to civilians through a number of specific provisions setting out, for instance: special measures for the welfare of children, for the protection of expectant mothers, measures for family reunification, guarantees of education, and the prohibition of attacks against civilian objects, including schools.¹⁹³

¹⁹¹ The Geneva Conventions of 1949 and their Additional Protocols, website- [http:// www.icrc.org](http://www.icrc.org), visited on 16.05.2014.

¹⁹² Article 3 common to the four Geneva Conventions.

¹⁹³ ICRC, Summary Table of IHL Provision Specifically Applicable to Children, website- [http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/5FFLJ5/\\$File/ANG03_04a_tableauDIH_TOTAL_logo.pdf](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/5FFLJ5/$File/ANG03_04a_tableauDIH_TOTAL_logo.pdf), visited on 16.05.2014.

However neither the international human rights law nor international humanitarian law contain any explicit mention of “internally displaced persons”, much less “internally displaced children”, the rights and guarantees that they articulate offer extensive protection for internally displaced children and provide a solid legal foundation upon which to advocate for their rights.

Reaffirming the main rights and guarantees provided for in international law, regional legal instruments and recommendations often also elaborate upon them, including with express reference to internally displaced children. Most notably, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), adopted in October 2009, reaffirms the commitment of States to implement international human rights law and international humanitarian law, and includes specific provisions reaffirming the right of internally displaced persons to personal documentation, to education, for children to be protected against recruitment and any other participation in hostilities and against kidnapping, abduction, sexual slavery and trafficking, and for protection that addresses the special needs of separated and unaccompanied minors as well as of mothers with young children.¹⁹⁴ The African Charter on the Rights and Welfare of the Child¹⁹⁵ of 1990 emphasizes the responsibility of States to ensure that internally displaced children “receive appropriate protection and humanitarian assistance” and pays special attention to the importance of reuniting families separated by displacement (Articles 23 and 25). The Council of Europe has adopted a number of recommendations concerning internal displacement, including as regards the right of internally displaced children to education.¹⁹⁶

National legislation is important for reaffirming international and regional standards within the domestic context. A growing number of countries have adopted

¹⁹⁴ African Union Convention for the Protection and Assistance of internally Displaced Persons in Africa (Kampala Convention), Articles 7, 9, 13. Website- www.africa-union.org/.../AU-IDP%20Convention%20-%20Assembly%20-%20Final%20-%202010.23%20pm%2023%20Oct.doc, visited on 16.05.2014.

¹⁹⁵ African Charter on the Rights and Welfare of the Child, 1990, website- <http://www.africaunion.org>, visited on 16.05.2014.

¹⁹⁶ Council of Europe, Committee of Ministers, “Internal displacement in Europe - Parliamentary Assembly Recommendation 1631 (2003)”, CM/AS(2004)Rec1631 final 5 July 2004, website- <https://wcd.coe.int/ViewDoc.jsp?id=758899&S> visited on 16.05.2014.

or revised national legislation in order to better promote and protect the rights of internally displaced persons.¹⁹⁷ Typically, these national laws and policies relating to internal displacement include specific provisions reaffirming the rights and guarantees of internally displaced children.

b) The Guiding Principles on Child Displacement

Useful guidance in support of efforts to realize the rights and guarantees of internally displaced persons is found in the Guiding Principles on Internal Displacement (GPIDP) of 1998. Developed by the Representative of the United Nations Secretary-General on Internally Displaced Persons at the request of the UN General Assembly and UN Commission on Human Rights, the Guiding Principles spell out the rights of internally displaced persons and the responsibilities of States and other actors towards them.

Though it is not a binding document, like a treaty, the Guiding Principles are based on and reflect existing standards of international law (international human rights law and international humanitarian law as well as international refugee law by analogy), which are binding.¹⁹⁸ The Guiding Principles bring together in one document of 30 Principles the relevant norms of international law, which otherwise were dispersed across a range of instruments, and clarify how these norms should be applied in the specific context of internal displacement.

The authoritative nature of the Guiding Principles is reinforced by their broad international acceptance; they have been recognized by all heads of State, at the 2005 World Summit, as “an important international framework for the protection of internally displaced persons”, as well as a “tool” and “standard” to guide

¹⁹⁷ The Global Database on the Guiding Principles, website- <http://www.law.georgetown.edu/idp/english/>ld.cfm?action=searchform, visited on 16.05.2014.

¹⁹⁸ Walter Kälin, Guiding Principles on Internal Displacement, Revised Edition (Brookings-Bern Project on Internal Displacement and American Society of International Law, 2008), website- <http://www.asil.org/pdfs/stlp.pdf>, visited on 14.05.2014.

governments, international organizations and all other relevant actors in situations of internal displacement.¹⁹⁹

The Guiding Principles cover all phases of displacement: protection from arbitrary displacement; protection and assistance during displacement; and while finding a durable solution, whether return, local integration or resettlement, and reintegration. They address a wide range of particular concerns that typically arise in situations of internal displacement, covering rights relating to:

- Physical security and integrity (e.g. right to life and to protection from torture and rape);
- Basic necessities of life (food, potable water, shelter, health and sanitation);
- Other economic, social and cultural protection concerns (e.g. access to education);and
- Other civil and political protection issues (e.g. right to personal documentation and to participate in community affairs).

Special attention is paid in the Guiding Principles to the situation of internally displaced children. As a general principle, internally displaced children, especially unaccompanied minors as well as expectant mothers and mothers with young children are “entitled to protection and assistance required by their condition and to treatment which takes into account of their special needs” (Principle 4.2). More specifically, the Principles also affirm:

- The right of families to remain together and to be rapidly reunified (Principles 7 and 17);
- Protection of children from sale into marriage, exploitation and forced labour (Principle 11);
- Protection of children from recruitment or from taking part in hostilities (Principle 12);

¹⁹⁹ UN General Assembly, 2005 World Summit Outcome resolution adopted by Heads of State, UN doc. A/RES/60/1, 15 September 2005, para. 132.

- The right to documentation in their own names, including birth certificates (Principle 22);
- The right to education, including the equal participation of girls (Principle 23).

Around the world, the Guiding Principles, which have been translated into over 40 languages, are being widely disseminated and used, including by and among internally displaced children, to promote and protect the rights of internally displaced persons. For example: in Indonesia, a comic book version of the Guiding Principles was published and widely circulated in conflict affected areas, especially targeted to children and adults with low literacy; in Colombia, launched a public awareness campaign based on the Guiding Principles that focused on the rights of internally displaced children; in Burundi and Liberia, performance troupes communicated key messages of the Guiding Principles to IDP and host communities through drama, dance and song; and in Georgia, a local NGO supported internally displaced children to produce drawings and paintings depicting key messages the Guiding Principles, for instance about property rights, which were made into posters as part of a country-wide advocacy campaign.²⁰⁰

M. Efficacy Of World Food Programme For IDPs With Special Reference To Displaced Women And Children

Refugees or the IDPs often live in difficult conditions for long periods of time, and rely heavily on an uninterrupted supply of international food assistance in camps where they are often confined for lengthy durations. The United Nations High Commissioner for Refugees (UNHCR) plays the lead role in helping to ensure the protection and assistance needs of refugees living in camps are met, the World Food Programme (WFP) plays a crucial role in meeting their food assistance needs. Given the needs of other WFP operations, donors often overlook the IDPs programs. So, as a result, in many operations, rations for refugees and IDPs are often below

²⁰⁰ Office of the Special Representative of the Secretary-General for Children and Armed Conflict, The Rights and Guarantees of Internally Displaced Children in Armed Conflict, working paper No. 2, September 2010, Pg. 16.

minimum standards. UNHCR and WFP have thus joined efforts to raise awareness on programming gaps affecting refugees and the IDPs, and to address acute malnutrition in humanitarian contexts.

According to the UNHCR “households are considered to be food secure when they have year-round access to the amount and variety of safe foods that their members need to lead active and healthy lives”²⁰¹. The food security refers the ability of a household to secure the needs through their own production, purchases, barter or other means. Addressing the food security needs of refugee women occurs within the context of relief, aid and development. UNCHR and WFP provided food aid to the refugees and IDPs, the majority of which were women and their dependents.

The Refugees and IDPs live in a variety of settings. They usually may be found in rural or urban settings, who settle in loose groups or live in defined refugee camps. There are some camps which are open and the refugees are permitted to come and go while others are closed. The majority of camp-based populations are in protracted situations in Africa. Refugees who live in a situation of partial or complete dependence over decades are often unable to meet their own food needs due to lack of land, skills, training, or key inputs. Women frequently experience gender based violence during the transitory phases and may be responsible for the welfare of their children without the support of a male family member, a significant loss in many cultures. Women and children often usually comprise the majority of food aid beneficiaries (FAB).

One of the important documentation which is needed for women is that, women should receive their own identity and ration cards ensuring that they are not dependent on men for either status as a refugee/IDP or to secure food rations. Rates of familial abandonment by men rises in displaced settings and men have often been killed in conflict or are away fighting. The IDP women are acting as heads of

²⁰¹ Strategic Plan for Nutrition and Food Security 2008, Pg. 114.

household and issuing individual identification and ration cards acknowledges this condition and lowers rates of abuse related to obtaining food.

It is pertinent to mention by the researcher that any programme for the displaced people will succeed unless it is designed to involve women in decision making at all levels. Certain practices or programs are usually preferred for refugee and IDP women, their participation is vital for creating a programme that best meets their needs.

Women IDPs living in the camps are from varied in culture which they had little opportunity to contribute as leaders within society. When the camps were first established it was found that, there were no women section leaders. However, women's participation was valued and encouraged and by the time the refugees returned, women held many positions of leadership, up to the highest levels. This allowed women a significant role in camp design, including the distribution of food aid. In one camp, meals for everyone were prepared in communal kitchens and women took turns preparing and serving the food. These camps provided women with the time for community organization and leadership development. When they left the camps, the women went on to play a significant role in reclaiming their human rights and in repopulation movements.

Two primary areas of education important to refugee and displaced women are general nutrition and breastfeeding. Learning about general nutritional guidelines provides women with the tools needed to make informed decisions about ration usage, including barter for fresh vegetables or animal source products as rations often contain more grain or cereal than is needed. The 2007 UNHCR/WFP Joint Assessment Report noted that for Cameroun, in addition to generalized education available to all, gender-specific programming for women is also needed (17) Cooking demonstrations are helpful.²⁰²

²⁰² Sarabeth Harrelson, "*Food Security of Refugee and Displaced Women: Best Practices*", Humanitarian Assistance in Complex Emergencies, University of Denver, 2011.

If women are not infected with HIV/AIDS breastfeeding is the healthiest option for their babies, however many communities (especially in Africa) bottle-feed instead. Educating women about the health benefits associated with breastfeeding and providing breastfeeding instruction should be prioritized. In cases of extreme malnourishment mothers' breast milk may have dried up. In these cases, special breastfeeding centers can be established in which breastfeeding coaches help women re-lactate.²⁰³

Thus the researcher may comment from the above contention that, however the recent decades have seen a great shift toward acknowledging the unique needs of refugee and displaced women. Involving women in planning and distribution is key, though registration, communication, utilization and education are also important areas of consideration. Several best practices have been identified within specific programs as well. Appropriately including women in food for work programs may be one of the most significant programmatic shifts for many women. Focusing on the needs of women helps aid providers to better meet the needs of the population in general.

N. Incorporating The Guiding Principles For Internally Displaced Persons

The international community is confronted with the monumental task of ensuring protection for persons forcibly uprooted from their homes by violent conflicts, gross violations of human rights and other traumatic events, but who remain within the borders of their own countries. Normally they always suffer from severe deprivation, hardship and discrimination. It is to meet this challenge that the Guiding Principles on Internal Displacement were developed.

The Principles identify the rights and guarantees relevant to the protection of the internally displaced in all phases of displacement. They provide protection against arbitrary displacement, offer a basis for protection and assistance during

²⁰³ *Ibid.*

displacement, and set forth guarantees for safe return, resettlement and reintegration. Though they do not constitute a binding instrument, these Principles reflect and are consistent with international human rights and humanitarian law and analogous refugee law.

By the 1990s, the number of persons internally displaced by conflict rose to 20 to 25 million, almost twice the number of refugees.²⁰⁴ As concern mounted over the gravity of the situation, international humanitarian organizations began to ask how to define IDPs, what rights they had and what responsibilities governments and the United Nations had toward them. The UN began to explore institutional capacities to protect and assist IDPs, while a 1992 *Analytical Report* of the Secretary-General 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 existing standards to assure effective human rights protection.²⁰⁵ The report also called for the designation of a focal point on internal displacement within the UN human rights system.²⁰⁶

The appointment in 1992 by the Secretary-General of a Representative on Internally Displaced Persons, at the Commission’s request, reflected not only concerns about the growing number of IDPs and their desperate material and protection needs, but also the legal and institutional gaps that had become evident in the international system. Francis M. Deng, the first Representative of the Secretary-General (RSG), was therefore asked by the Commission to look into the applicability of human rights and humanitarian law, as well as analogous refugee law, to IDPs. Under his guidance, a team of lawyers developed a compilation of existing norms, which found significant gaps and grey areas in the law despite its broad coverage.²⁰⁷ The Representative had recommended a restatement of the law

²⁰⁴ Cohen, R. and Deng, F.M. (1998) *Masses in Flight: The Global Crisis of Internal Displacement*, Washington DC, Brookings Institution Press, 27 January 2012, Social Science, Pg. 32.

²⁰⁵ United Nations (1992) *Analytical Report of the Secretary-General on Internally Displaced Persons*, UN Doc. E/ CN.4/1992/23/, paras 103-104.

²⁰⁶ *Ibid*, para 110.

²⁰⁷ United Nations Commission on Human Rights (1995) *Compilation and Analysis of Legal Norms*, Report of the Representative of the Secretary-General on Internally Displaced Persons, UN Doc. E/CN.4/1996/52/Add.2, para 413-416.

for the better protection of IDPs, and the Commission and General Assembly expressed their view on support for the development of a normative framework.

The Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng, the Guiding Principles on Internal Displacement have been prepared. This document reflects an attempt to address the human rights needs of internally displaced persons by codifying a set of human right guarantees. The document had restated relevant principles from a comprehensive range of international human rights and humanitarian law instruments clarify the grey areas and address the gaps. These principles address all phases of displacement and are organised into 5 main sections:²⁰⁸

- General principles,
- Principles relating to protection from arbitrary displacement,
- Principles relating to protection during displacement,
- Principles relating to humanitarian assistance, and
- Principles relating to return or resettlement and integration.

The wide usage and success of the Principles have led human rights experts to study them as a model for developing new standards in other areas.²⁰⁹ Generally, what have attracted expert attention are both the innovative non-governmental process by which they were developed, as well as the exercise of restating existing law so as to address grey areas and gaps and make the law more specific to the needs of a particular group.

a) Initiating new standards on internally displaced persons

The Guiding Principles are an important document and contribution to the successful development and outcome on internal Displacement some of its features deserve special comment.

²⁰⁸ Promod Nair, “Towards a Regime for the Protection of Internally Displaced Persons”, The Indian Society of International Law Year Book of International Humanitarian and Refugee Law, Vol 1, 2001, Pg. 200- 201.

²⁰⁹ United Nations (2011) The Guiding Principles on Business and Human Rights, endorsed by the UN Human Rights Council, UN Doc. A/HRC/17/31.

i. Establishing need and widely publicizing the issue

The non-governmental organizations (NGOs) and research institutions pioneering the subject of internal displacement recognized that prior to initiating new standards, it was first important to “put the issue on the map.” Beginning in the mid-1980s, they developed statistics about the upsurge in numbers of persons in “refugee-like situations” in their own countries, called attention to their desperate conditions, and sought to close the gap in the international system when it came to IDPs.²¹⁰

International humanitarian staff also began to call attention to the problem, finding themselves increasingly confronted with IDPs in the field and not having “a piece of paper” to turn to that set forth IDP rights and the obligations of governments and international organizations toward these populations²¹¹ The UN High Commissioner for Refugees, Sadako Ogata, called for “clearer standards” for internally displaced populations, especially with regard to the right to remain, the right to return and the right to humanitarian assistance and protection.²¹² Agencies like the World Food Program (1994) pointed to the importance of addressing their special needs, which the Secretary-General’s *Analytical Report* considered different from those of the general population and thus requiring international attention.²¹³

ii. Appointment of the expert by the UN for leading the IDPs

The 1992 appointment by the Secretary-General of a Representative on IDPs was critical to governmental acceptance of the idea of developing Guiding Principles. Deng made one of his principal objectives a normative framework for IDPs. In his statements and reports to the Commission and General Assembly, in his

²¹⁰ US Committee for Refugees World Refugees Survey, 1983.

²¹¹ Sadako Ogata and Kofi A. Annan, *The Turbulent Decade: Confronting the Refugee Crises of the 1990s*, New York, W.W. Norton & Co., 2005, Pg. 19.

²¹² S. Ogata, Address at Norwegian Government Roundtable Discussion on United Nations Human Rights Protection for Internally Displaced Persons, Norwegian Refugee Council/Refugee Policy Group, Nyon, February, 1993, Pg. 82-84.

²¹³ United Nations (1992) *Analytical Report of the Secretary-General on Internally Displaced Persons*, UN Doc. E/ CN.4/1992/23/, paras 6-7.

dialogues with governments, and in his meetings with regional organizations and NGOs, he emphasized the importance of developing international standards for IDPs. From 1992 to 1998, he not only kept states apprised of the progress made in compiling the norms applicable to IDPs and the drafting of the Guiding Principles, but also mobilized UN agencies, regional bodies and NGOs in support of this endeavor. He was reinforced by the Project on Internal Displacement at the Brookings Institution, which—given the limited resources and staff of the Office of the UN High Commissioner for Human Rights (OHCHR)—organized the process leading to the Guiding Principles and mobilized the resources to bring together experts, UN agencies and other interested constituencies.²¹⁴ The association between a UN expert and an independent institution was essential to the development of the Principles.

iii. Support given by the Key Government

It is pertinent to mention by the researcher regarding the two governments i.e., Austria and Norway, chosen the way for the Principles by taking the lead in introducing resolutions on IDPs into the Commission and General Assembly each year. Both countries have used their diplomatic skills to attract more than 50 co-sponsors for the IDP resolutions, and by means of these resolutions reinforced the efforts of the RSG to develop a normative framework for IDPs. When opposition arose for including the words “legal framework” in the resolutions, both the government had managed to achieve consensus resolutions that lent their support to the development of guiding principles.

Thus when the Principles were introduced, Austria skillfully managed to avoid pitfalls that had buried another set of humanitarian standards which developed around the same time with ICRC support. The government of Switzerland also played a valuable role. When Sudan, Egypt and Algeria raised questions in 2000 about the authority of the Principles and the process by which they were developed, the Swiss Ambassador to the UN in New York had hosted a series of informal

²¹⁴ T.G. Weiss and D.A. Korn, “*Internal Displacement: Conceptualization and its Consequences*”, 6th Edition, (2006), Routledge, Pg. 41-42.

meetings to facilitate a dialogue.²¹⁵ The meetings brought the legal team together with the governments expressing reservations about the Principles as well as with governments and organizations like the African Union which supported them. The result was a building of consensus around the Principles. Those with reservations later expressed support.²¹⁶

iv. Comments from different legal experts on Guiding Principles

The Representatives of Secretary General (RSG) has turned to legal experts to compile the law and than to draft the Guiding Principles as because they wanted a non-political process which is giving the sensitivity of the subject, as because the intergovernmental process did not seem it necessary.

A legal team consisted of experts from different law background, human rights organizations, the ICRC, UNHCR and OHCHR. In the case of ICRC, its representatives sought to make sure that the Principles did not in any way conflict with the provisions of Geneva Conventions. As in the case of UNHCR, the representatives had sought to ensure that, the right to asylum being protected and the application of refugee law by analogy done effectively.

The Guiding Principles were developed in response to successive resolutions of the Commission on Human Rights and the General Assembly and the wide support they have received since their presentation to the appropriate UN bodies, it would not be strictly correct to assume that they have not been considered in pertinent intergovernmental bodies, even though formal adoption was not called for, given their nature as guidelines restating existing law and thereby facilitating their implementation.²¹⁷

v. The Draft Guiding Principles for the Internally Displaced Persons

²¹⁵ R. Cohen, “*The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting*,” *Global Governance*, Vol. 10No. 4, 2004, Pg 474-475.

²¹⁶ *Ibid.*

²¹⁷ Roberta Cohen, “*Lessons Learned From the Development of the Guiding Principles on Internal Displacement*”, The Crisis Migration Project, Institute for the Study Of International Migration, October 2013, Pg. 4.

According to Walter Kalin, the Guiding Principles are based on the following conceptual ideas:²¹⁸

1. Although internally displaced persons have departed from their homes, unlike refugees they have not left the country of which they are citizens. As such, they remain entitled to enjoy the full range of human rights as well as those guarantees of international humanitarian law which are applicable in a given situation.
2. Internally displaced persons experience a very special factual situation, and therefore, have specific needs. Like the other vulnerable groups such as children, or the wounded and the sick for which special provisions are made in international humanitarian law and refugee law, internally displaced persons do not constitute a distinct legal category.
3. There is necessary to restate in more detail those legal provisions which respond to the needs of the internally displaced persons and to spell them out in order to facilitate their application in situations of internal displacement. The present international law contains sufficient protection for the specific needs of internally displaced persons in specific areas, but there are many grey areas where clarification is necessary.

The protection of internally displaced persons is complicated by the application of different sets of laws in different situations:²¹⁹

- i. In situations of tensions and disturbances which fall short of internal armed conflict or disaster, human rights law is applicable,
- ii. Situations of non- international armed conflict are governed by some of the most important principles of humanitarian law and by many human rights guarantees; and
- iii. In situations of inter-state armed conflict, the detailed provisions of international humanitarian law become primarily operative although many important human rights guarantees become applicable.

²¹⁸ Rebecca J. Cook, "State Responsibility for Violations of Women's Human Rights", Harvard Human Rights Journal, Vol. 125 No. 7, (1994), Pg. 159. Pg. 202.

²¹⁹ *Ibid.* Pg. 202-203.

The IDP Guiding Principles are known as ‘soft law’ because they do not in themselves create binding legal obligation on states. In spite or because of that fact, the IDP Guiding Principles have attracted broad support and endorsement since their formulation. The IDP Guiding Principles set out standards relating to protection of IDPs and the provision of humanitarian assistance. To the extent that humanitarian assistance may be a material means of fulfilling protection objectives, protection and humanitarian assistance may overlap in operational terms.²²⁰

It is seen that some of the IDP Guiding Principles simply reiterate existing norms of inter-national human rights and international humanitarian law, or restate them in terms directly applicable to the IDP context. The other provisions of Guiding Principles adapt by analogy from the UN Refugee Convention and regional refugee instruments. The Guiding Principles also draw from other sources of ‘soft law’, which often offer greater precision and detail than broadly worded norms contained in international treaties and conventions.²²¹

The Guiding Principle is a non-binding instrument which could help to create the moral and political climate needed to improve protection and assistance for the internally displaced; and they eventually might attain the force of customary international law and then lead to the development of a binding legal instrument. These principles are based upon the existing international humanitarian law and human rights instruments, are to serve as an international standard to guide governments as well as international humanitarian and development agencies in providing assistance and protection to IDPs. These principles pertain to all phases of displacement: they include the norms applicable before internal displacement occurs, those that apply in actual situation of displacement, and those that apply in post conflict period.²²²

²²⁰ Susan Forbes Martin and John Tirman, “*Women, Migration, and Conflict: Breaking a Deadly Cycle*”, Springer Science + Business Media, 2009, Pg. 26.

²²¹ *Ibid*

²²² K. Ratnabali, “*Internal Displacement of People: Absence of Law and the Urgent Need to Frame One in India*”, Delhi Law Review, Vol. 26, 2004, Pg. 158.

The introduction to the Guiding Principles contains a very broad definition of the terms ‘internally displaced person’. The definition does not confer any legal status upon the persons covered, it serves to specify the document’s field of application. The Guiding Principles endeavor to encounter this shortcoming by stipulating, in Principle 1, that internally displaced persons are on an equal footing with the rest of their country’s population. The definition of internally displaced person is somewhat arbitrary. The ICRC for its part has consistently refrained from estimating the number of internally displaced persons worldwide.

The document fully covers the problem of internal displacement. It deals with the various stages and issues involved, i.e., protection of and humanitarian assistance to the displaced, and their return, resettlement and reintegration.

The Guiding Principles seek to prevent displacement by reaffirming the obligation to respect and ensure respect for human rights and international humanitarian law (Principle 5). ‘The right to be protected against being arbitrarily displaced’ on Principle 6 is an illustrative example of this Guiding Principle. No other existing instrument mentions any such right so explicitly. However, humanitarian law prohibits displacement in some specific and limited situations, and human rights law, in a more general sense, guarantees not only freedom of movement but also the right to choose one’s own residence, and thus, a right to remain.²²³ A right not to be displaced can also be found in instruments on the rights of indigenous peoples.²²⁴ From this it can be inferred that a right not to be arbitrarily displaced is already implicit in international law.

Principle 15 states the right of internally displaced persons “to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk”. Such a principle, though not stated yet in an

²²³ See article 12(1) of the International Covenant on Civil and Political Rights, articles 49 and 147 Geneva Convention IV, Articles 51(7), 78(1) and 85(4) of Protocol I, Articles 4(3)(e) and 17 of Protocol II.

²²⁴ Article 16 of the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

authoritative document, is in line with the spirit of existing international law and reflects its underlying principles.

The voluminous study on customary international humanitarian law recently published by ICRC²²⁵ confirms that the Guiding Principles, insofar as they are applied in situations of armed conflict, restate to a very large extent existing customary law. This study identifies 161 rules of customary law, most of which are applicable not only during international but also internal armed conflict, and which are also relevant to IDPs.

Regarding Principle 6 (2) on arbitrary instances of displacement, Rule 129, e.g., confirms that deportations and displacement in times of armed conflict are strictly prohibited, “unless the security of the civilians involved or imperative military reasons so demand”; so is “ethnic cleansing” as a particularly serious form of unlawful displacement. Rule 103 prohibits all forms of collective punishment which must also cover instances where displacement or the destruction or appropriation of property belonging to IDPs is used as punishment, and thus supports Principles 6(2)(e) and 21(2)(e). According to Rule 131, in “case of displacement, all possible measures must be taken in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated”, thus confirming the customary character of many of the provisions underlying Guiding Principles 7(2), 17, 18 and 19. Principle 16 on missing persons and deceased family members has a firm foundation in Rules 112 – 115 and 117. Rules 31 and 32 affirm the customary law character of the content of Principle 26 on respect for personnel engaged in humanitarian assistance, their transport and supply. Of particular importance is Rule 132 which, in accordance with Principle 28(1), reaffirms the right of displaced persons “to voluntarily return in safety to their homes and places of habitual residence as soon as the reasons for their displacement cease to exist.” Finally, Rule 133 on the obligation to respect “the property rights of displaced

²²⁵ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules, ICRC/Cambridge University Press 2005.

persons” points to the customary law foundation of Principles 21 and 29(2) in situations of armed conflict.²²⁶

Thus, the Researcher may make the conclusion regarding the Guiding Principles on Internal Displacement which is drafted in a way that carefully restate existing international law with a view to make more general norms applicable to the specific situation of internal displacement. The text has the merit of combining, in a single document, elements from different branches of international law, and makes it possible to address the numerous needs of internally displaced persons in a comprehensive fashion.

O. Special Analysis Of Rights Of Internally Displaced Women And Children Due To The Cause Of Disaster: An Overview

Since 1988, with the sponsorship of the United States Agency for International Development’s Office of Foreign Disaster Assistance (USAID/OFDA), CRED has maintained EM-DAT, a worldwide database on disasters. It contains essential core data on the occurrence and impacts of more than 20 400 disasters in the world dating from 1900 to the present. The data are compiled from various sources, including UN agencies, non-governmental organizations, insurance companies, research institutes and press agencies. Priority is given to data from UN agencies, followed by OFDA, governments and the International Federation of Red Cross and Red Crescent Societies. This prioritization is not only a reflection of the quality or value of the data, but it also reflects the fact that most reporting sources do not cover all disasters or have political limitations that can affect the figures. The entries are constantly reviewed for redundancy, inconsistencies and incompleteness. The database’s main objectives are to assist humanitarian action at both national and

²²⁶ Walter Kalin, “*The Guiding Principles on Internal Displacement as International Minimum Standard and Protection Tool*”, *Refugee Survey Quarterly*, Vol. 24, Issue 3, Pg. 30.

international levels; to rationalize decision-making for disaster preparedness; and to provide an objective basis for vulnerability assessment and priority setting.²²⁷

a. Global overview of disaster management²²⁸

In 2012, 357 natural triggered disasters were registered. This was both less than the average annual disaster frequency observed from 2002 to 2011 (394), and represented a decrease in associated human impacts of disasters in 2012, which were at their lowest level compared to previous years. The natural disasters killed a significant number, a total of 9,655 people were killed (annual average 2002-2011:107,000) and 124.5 million people become victims worldwide (annual average 2002-2011:268 million). Contrary to other indicators, economic damages from natural disasters did show an increase to above average levels (143 billion 2012 US \$), with estimates placing the figure at US\$ 157 billion.

Amongst the top 10 countries in terms of disaster mortality in 2012, six countries are classified a slow-income or lower-middle income economies and four as high-income or upper-middle income economies. These countries²²⁹ accounted for 68.2% of global reported disaster mortality in 2012. The single deadliest disaster was typhoon Bopha which killed 1,901 people in Philippines.

Most disaster victims in 2012 were sourced the flood that affected China in June, causing 17.4 million victims. Furthermore, China was affected by another flood in April (13.1 million victims) and by two storms in August (9.8 million victims), further contributing to a total of 44.6million victims, a figure representing 34.7% of global reported disaster victims. Droughts and consecutive famines made many victims in Kenya (3.8 million), Mali (3.5 million), Sudan (3.2 million), Northern Korea (3 million), Niger (3 million) and Burkina Faso (2.9 million). When

²²⁷ Debarati Guha-Sapir, Philippe Hoyois and Regina Below, “*Annual Disaster Statistical Review 2012-The numbers and trends*”, Brussels: CRED; 2013, Pg. 7, website-http://www.cred.be/sites/default/files/ADSR_2012.pdf, visited on 05.05.14.

²²⁸ *Ibid*, Pg. 1-3.

²²⁹ High-income: Japan, United States; Upper-middle income: China, Russia; Lower-middle income : India, Indonesia, Philippines; Low income : Afghanistan, Bangladesh, Haiti.

considering the population size of the country, more than 20% of populations of Lesotho, Gambia, Mali and Niger were made victim of natural disasters in 2012, mostly as a result of drought.

The estimated economic losses from natural disasters in 2012 (US\$ 157 billion) surpassed of almost 10% the annual average damages from 2001 to 2010 (US\$ 143 billion). Hurricane Sandy (US\$ 50 billion) was the second costliest storm of the decade, but far behind Hurricane Katrina (2012 US\$ 147 billion). Damages from the drought in the South-Western and Mid-West regions of the United States (US\$ 20 billion) were the highest reported for the decade. These two disasters accounted for 45% of the total amount of reported damages.

Looking at the geographical distribution of disasters, Asia was the continent most often hit by natural disasters in 2012 (40.7%), followed by the Americas (22.2%), Europe (18.3%), Africa (15.7%), and Oceania (3.1%). This regional distribution of disaster occurrence resembles the profile observed from 2002 to 2011. In 2012, disaster occurrence in Europe was more than three times the one for 2011 and surpassed its 2002-2011 annual average. Inversely, in Africa, the Americas, Asia and Oceania, disaster occurrences were below the decade annual average.

Asia accounted in 2012 for 64.5% of global disaster victims, followed by Africa (30.4%). Compared to their 2002-2011 annual averages, the number of victims in 2012 increased in Africa and Oceania, but decreased in the Americas, Asia and Europe. On a more detailed note, climatological, hydrological and meteorological disasters caused more victims in 2012 in Africa. Climatological and geophysical disasters made also more victims in the Americas and hydrological disasters in Oceania. In Africa, it was floods and droughts which most increased the number of victims.

In 2012, the Americas suffered the most damages (65.7% of global disaster damages), followed by Asia (17.8%) and Europe (15.4%). For both Africa and Oceania, a share of around 0.6% of global disaster damages was reported. This

distribution of disaster damages between continents differs from the distribution seen over the last decade when Asia experienced the most damages, followed by the Americas and Europe. Damages in the Americas increased the most in 2012 compared to the 2002-2011 annual average, but damages in Europe were also higher. In contrast, damages in Asia decreased. More precisely, meteorological and climatological disasters contributed most to the increased damages in the Americas, mainly due to the hurricane Sandy and the drought in the U.S. In Europe, the increase in damages is largely attributable to the two earth quakes in Italy.

EM-DAT's global approach to the compilation of disaster data continuously provides us with valuable information and trends on the occurrence of natural disasters and their impacts on society. However, the development of guidelines and tools for the creation of national and sub-national disaster databases for the compilation of reliable, standardised, interoperable disaster occurrence and impact data should be prioritised for more effective disaster risk reduction.

b. Types Of Disasters

There is no country that is immune from disaster, though vulnerability to disaster varies. There are four main types of disaster.

- Natural disasters: including floods, hurricanes, earthquakes and volcano eruptions that have immediate impacts on human health and secondary impacts causing further death and suffering from (for example) floods, landslides, fires, tsunamis.
- Environmental emergencies: including technological or industrial accidents, usually involving the production, use or transportation of hazardous material, and occur where these materials are produced, used or transported, and forest fires caused by humans.
- Complex emergencies: involving a break-down of authority, looting and attacks on strategic installations, including conflict situations and war.

- Pandemic emergencies: involving a sudden onset of contagious disease that affects health, disrupts services and businesses, brings economic and social costs.

Any disaster can interrupt essential services, such as health care, electricity, water, sewage/garbage removal, transportation and communications. The interruption can seriously affect the health, social and economic networks of local communities and countries. Disasters have a major and long-lasting impact on people long after the immediate effect has been mitigated. Poorly planned relief activities can have a significant negative impact not only on the disaster victims but also on donors and relief agencies. So it is important that physical therapists join established programmes rather than attempting individual efforts.

Local, regional, national and international organisations are all involved in mounting a humanitarian response to disasters. Each will have a prepared disaster management plan. These plans cover prevention, preparedness, relief and recovery.

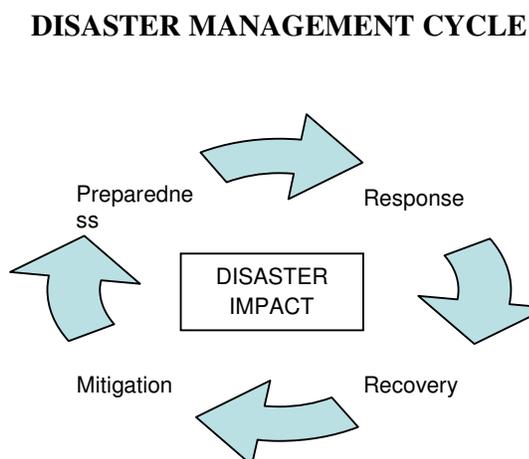
c. Disaster Management Cycle

Disaster management is a cyclical process; the end of one phase is the beginning of another, although one phase of the cycle does not necessarily have to be completed in order for the next to take place. Often several phases are taking place concurrently. Timely decision making during each phase results in greater preparedness, better warnings, reduced vulnerability and/or the prevention of future disasters. The complete disaster management cycle includes the shaping of public policies and plans that either addresses the causes of disasters or mitigates their effects on people, property, and infrastructure.

The mitigation and preparedness phases occur as improvements are made in anticipation of an event. By embracing development, a community's ability to mitigate against and prepare for a disaster is improved. As the event unfolds, disaster managers become involved in the immediate response and long-term

recovery phases. The four disaster management phases illustrated here does not always, or even generally, occurs in isolation or in this precise order. Often phases of the cycle overlap and the length of each phase greatly depends on the severity of the disaster.

The diagram below shows the Disaster Management Cycle in (Figure 1.1).²³⁰



Mitigation: Measures put in place to minimize the results from a disaster. Examples: building codes and zoning; vulnerability analyses; public education.

Preparedness: Planning how to respond. Examples: preparedness plans; emergency exercises/training; warning systems.

Response: Initial actions taken as the event takes place. It involves efforts to minimize the hazards created by a disaster. Examples: evacuation; search and rescue; emergency relief.

Recovery: Returning the community to normal. Ideally, the affected area should be put in a condition equal to or better than it was before the disaster took place. Examples: temporary housing; grants; medical care.

²³⁰ Himayatullah Khan And Asmatullah Khan, “*Disaster Management Cycle – A Theoretical Approach*”, Website-[Http://Www.Mnmk.Ro/Documents/2008/2008-6.Pdf](http://Www.Mnmk.Ro/Documents/2008/2008-6.Pdf), Visited On 25.06.14.

d. Physical and Socio-economic Impacts of Disasters

Looking to the factors of disaster the Researcher may give some impacts which causes after the destruction. Impacts of a disaster can be either physical or social. Usually the physical impacts of a disaster lead to the social impacts of disaster. So if the physical impacts of a disaster can be reduced so too can the social impacts. The impact of any disaster can be reduced by being prepared for the hazard.

The impact intensity felt by a community from a disaster is dependent upon the vulnerability of the community before the hazard struck (e.g. proximity to hazard, any education and awareness done etc) and thus their preparedness level. In any community the most obvious impact is the physical impact. The physical impacts in turn lead to the social impacts felt by the community.

Physical Impacts

The physical impacts of a disaster are the deaths and injuries, and the damage to property and the built environment. The built environment can be classified as infrastructure and service sectors such as electricity, water etc. The amount of deaths can lead to a reduction in the population, and thus the workforce, which will in turn have an impact on the socio economic sector of the community. It should be noted here that the amount of physical damage caused by a hazard can affect the speed at which the response to the area can occur. If roads are cut off, this means alternative means need to be looked at to bring relief in to the disaster zone.

Social Impacts

i Welfare

Welfare falls into the socioeconomic and socio-political category. On the socioeconomic front this is represented by significant losses to Gross Domestic Product of the affected country or region. The local and national economy can experience low productivity, price slump, high unemployment and inflation. Small

island states are more vulnerable compared to the larger developed nations when confronted with disasters of a large magnitude.

ii Economic Impacts

Economic costs of disasters vary across space and time. Evidence suggests a strong correlation between a country's level of development and disaster risk.

e. Vulnerable Groups in Disasters

In the event of a disaster we expect that the needs of everyone are catered for the response and recovery stage. Sometimes this is not so. It usually happens that if a certain group of people were marginalized during normal times, it is most likely that they will not be catered for during disaster times. Vulnerable groups also refers to those who do not feel safe enough during response and recovery stage, and those who cannot safely and comfortably access and use the resources provided in the preparedness, response and recovery stages of a disaster.

The most vulnerable group of people are the People with Disabilities, Elderly People, IDP and Refugees. The Researcher is very much concentrating to the group of people who are falling under the IDP women and children.

For the internally displaced people, there is little hope for any kind of future. Groups of internally displaced people band together and form camps in an effort to share resources and support themselves, to create a sense of community, and to provide themselves with some semblance of security. It is very common that the people of this group or community have the feelings for sharing their needs. So when there is displacement found, the rest of the villagers allow the displaced people to share their necessary needs. There is no reason for one person to hoard supplies because what one has is shared by all.

This sense of continuity is disrupted by the destruction of communities by rebel groups. When people band together in an internally displaced persons camp, it is difficult to continue any kind of schooling for there is no buildings, no materials, and often no people to teach. Even among the elders there is a sense of futility and depression about their situation. In some camps there are few adults left to raise the children, so the children run wild and are not taught the ways of the community. This problem is of great concern to many adult, not just those in the camps.

Women

Most research done on disasters has come up with the conclusion that those who are most vulnerable are the women and children. As it is human nature, living conditions and responsibilities of women subject many to risk before, during, and after disasters. Women also exercise formal and informal leadership roles and are central actors in family preparation for, and recovery from, disaster.

There is lack of involvement of women in the planning and implementation of preparedness, response and recovery programs the overall national performance will suffer. In spite of this, it has to be taken into account that due to rape and abuse of young girls and women, their vulnerability increases. This leads to the spread of HIV/AIDS and other communicable diseases. The following are some of the major areas that need to be considered in the preparation of disasters.²³¹

1 Prioritise protection of human rights irrespective of nationality, sex, age, with/without disabilities.

2 Include measures to prevent violence against women (domestic and sexual violence) in disaster management planning.

²³¹ *Introduction To Disaster Management*, Virtual University For Small States Of The Commonwealth (VUSSC), Disaster Management Version 1.0, Pg. 189-190, Website-Meghomeguards.Gov.In/DM/DM-Course_Manual.Pdf.visited on 25.06.14.

3 Make sure that women are included in the management of shelter and temporary housing.

4 Provide special support to new born babies and their mothers and prevent child abuse by counselling, support and frequent medical check-ups for both mothers and children.

5 Ensure that both men and women get the opportunity to take “disaster leave” to care for children and elders.

6 Provide adequate support (financial, information), for marginalized women.

Children²³²

Children who lose their caregivers during disasters get psychologically affected as they get more exposed to violence, especially gender based violence. Mostly this leads older children to wind up their education and get into the labour force to support the younger. Children are also vulnerable to:

- inhaled chemicals as they breath more times than adults;
- agents that act on or through the skin because their skin is thinner and they have a larger surface-to-mass ratio than adults;
- they do not have the cognitive ability to understand how to flee from danger or to follow directions from others; and
- the effects of agents that produce vomiting or diarrhoea because they have less fluid reserve than adults, increasing the risk of rapid dehydration.

Therefore, in the aftermath of disasters, children’s rights must be protected and promoted. Support children who are exposed to violence and prevent the recruitment of children into the armed forces and, equally, to help those who already have direct experience of fighting. Prioritize children to be the first to get assistance in healthcare, protection and shelter.

²³² Ibid.

P. A Sum-Up²³³

1. In theory, the international community has come down firmly on the side of gender equality in laying out guidelines on the protection of refugee women. As early as 1991, the UN Economic and Social Council, following the guidance of the UNHCR Executive Committee, stressed that all action taken on behalf of refugee and displaced women and children must be guided by the relevant international instruments relating to the status of refugees, as well as other human rights instruments, in particular, the Convention Relating to the Status of Refugees, adopted on 28 July 1951, and its 1967 Protocol, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child.²³⁴
2. In referencing CEDAW, the Executive Committee, composed of governments (not all of whom signed CEDAW) recognized that UNHCR would be bound by universal human rights principles in its treatment of refugee women, just as it is bound to universal principles contained in the now 60 year old Refugee Convention. UNHCR's subsequent Guidelines on the Protection of Refugee Women and more recent Handbook for Protection of Women and Girls reiterated that CEDAW and the other human rights instruments provide a "framework of international human rights standards for carrying out protection and assistance activities related to refugee women."²³⁵
3. In practice, achieving protection of refugee women, particularly where gender inequality is a barrier, has been much more difficult. The gap between rhetoric and reality for women and girls is still very large. They remain the civilian casualties of conflict and, with their dependent children, form a majority of the displaced. They remain the victims of sexual violence

²³³ Susan Martin, "Refugee And Displaced Women: 60 Years Of Progress And Setbacks", Amsterdam Law Forum, Vol 3 No2, Pg 89-91.

²³⁴ UN Economic and Social Council, Resolution on Refugee and Displaced Women and Children (E/RES/1991/23), New York: United Nations, 1991. Available online at: <http://www.unhcr.org/excom/EXCOM/3ae69eee14.html> (28 July 2010).

²³⁵ UNHCR, Guidelines on the Protection of Refugee Women, Geneva: UNHCR, 1991, para 6.

and exploitation. They remain without equal access to education and livelihoods. Women and girls remain the principal target of traffickers. And cultural traditions remain a potent barrier to improving their lives.

4. Advocacy in support of the following interventions would help women who have been forced to flee from their homes overcome the formidable barriers that still exist. First, there should be renewed efforts to implement fully the various legal instruments and guidelines that set out norms and standards of protection for refugees generally and women and girls specifically. These include, *inter alia*, the 1951 UN *Convention Relating to the Status of Refugees* and its 1967 Protocol; the UNHCR *Guidelines on the Protection of Refugee Women*; the UNHCR *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*; the *Guiding Principles on Internal Displacement*; the UNHCR *Handbook for Protection of Women and Girls*, and other policies offer guidance on ways to empower refugee and displaced women and protect their rights and physical safety and security.
5. Yet, further policies and programmes should be adopted to enable refugee and displaced women to participate actively in decisions that affect them and their families. Improvements are also needed in the socio-economic status of refugee and displaced women to enable them to support themselves and their families in dignity and safety. This means improving access to employment, credit, education and skills training as well as access to adequate and safe housing. Not only are women refugees entitled to the exercise of these rights, but access to them would have strong, positive protection ramifications. In particular, steps should be taken to help refugee and displaced women protect themselves from sexual exploitation, trafficking, involuntary prostitution and other exploitable situations. This means lessening dependence on international humanitarian assistance while increasing the potential for self-support.
6. Policies should ensure access for women who have been forced to migrate to primary and reproductive health care services, including programmes to address sexual and gender-based violence, trauma resulting from flight and

conflict, and sexually transmitted diseases and HIV/AIDS. Education programmes should be implemented that inform migrant women of their rights and responsibilities under international and national laws. These programmes should use an array of media techniques to reach the women in a culturally and linguistically appropriate manner.

7. In order to ensure that these reforms are made, improvements are needed in the collection of data on refugees and internally displaced persons, with particular attention to collecting sex and age disaggregated statistics. A specific focus on urban refugees and displaced persons as well as collection of data on those who spontaneously settle, including those with irregular status, would help to ensure that all refugee and displaced persons find adequate legal and physical, social and economic protection.
8. It is very evident to verify the rights of the vulnerable people throughout the world. Therefore the Researcher had made some of the variations on rights of the people. Very often in many countries of every region of the world, internally displaced persons are victims of violations of human rights. These span the whole range of civil, political, economic, social and cultural rights. At the same time, the internally displaced are also a group particularly vulnerable to violations of their rights, both during and after displacement. They face discrimination on account of their status as displaced persons, as well as exposure to discrimination on racial, ethnic and gender grounds. For internally displaced persons, this kind of “double discrimination” can prove devastating.
9. The two primary components of the definition of an IDP are **coerced movement** and **remaining within national borders**. The first establishes the importance of distinguishing between persons who must involuntarily leave from those who choose to migrate, for instance, to seek better employment opportunities elsewhere. The second component excludes persons who cross borders because other legal regimes pertinent to migrants, asylum seekers and refugees already cover their situation.
10. In armed conflict and gross human rights violations account for approximately 23.7 million internally displaced persons worldwide. Millions

more are displaced by natural and technological disasters and development projects.

11. **The International law** is the set of rules that bind states (i.e. countries) in their relations with each other. They enter into a **treaty**, a written agreement by two or more states intended to be legally binding between them. Treaties are also sometimes called “covenants,” “conventions,” “protocols” and “charters.” States can also create international law through “**custom**,” when a group regularly behaves in a particular way over a period of time and comes to believe that the practice is required. States can also indirectly create law by empowering **international organizations** or international courts to develop binding rules or standards, or by accepting standards developed by other nongovernmental actors.
12. **The Human rights** are a relatively new branch of international law and one that, in some ways, challenges its central assumptions. In particular, human rights are considered to “derive from the inherent dignity of the human person” (Convention on Economic Social and Cultural Rights). It harks back to an early theory of international law (known as “natural law” theory) that held that some rules and principles of international law arose through the natural order (or through divine law) independent of the desires or actions of states. Human rights, in focusing on individuals, make the behavior of states within their own borders as an issue of international concern at a previously unprecedented level. Nevertheless, states still retain a primary role in recognizing and enforcing these “inherent” rights.
13. The United Nations adopted the Universal Declaration of Human Rights (UDHR), the most comprehensive international human rights instrument as of that date. The UDHR itself was not originally intended to be binding, but spawned a number of binding treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights that were both adopted in 1966 and entered into force in 1976. Together, these instruments and the UDHR are considered the “International Bill of Human Rights.” They have been followed by a number of more particular human rights treaties that mainly elaborate on the same

themes. Extremely important **regional human rights regimes** have also developed in the Americas, Africa and Europe.

14. Most human rights laws may be broadly divided into “**civil and political rights**,” which include, among others, the rights to life, physical integrity, and political participation as well as freedom from discrimination, arbitrary detention, and suppression of opinion or expression, and “**economic, social and cultural rights**,” which include, among others, the rights to adequate food, shelter, clothing, health care, an adequate standard of living, as well as guarantees concerning work, social welfare, education and participation in cultural life. In theory, it is asserted that all human rights are interdependent and indivisible, and both sets of rights were included in the UDHR. In practice, however, most other human rights instruments – and human rights mechanisms – fall primarily into one or the other of these categories.
15. With the encouragement of the UN Human Rights Council’s predecessor, the Commission on Human Rights, and the General Assembly, he convened a team of international legal experts and developed the **Guiding Principles on Internal Displacement** in 1998. The Guiding Principles compile, restate and interpret the existing rules of human rights and humanitarian law applicable to IDPs and also refer to refugee law standards by analogy, where appropriate.
16. The Guiding Principles are divided into four sections, articulating guarantees against arbitrary displacement in the first instance, the rights of persons once they have been displaced, rights and obligations connected with humanitarian assistance, and the rights of IDPs to voluntary, safe and dignified solutions to displacement. In some areas, they clarify how general rules apply to the specific situations of IDPs. For instance, Guiding Principle 12 provides that IDPs “shall not be interned or confined in a camp” absent exceptional circumstances. This is a particular application of more generally-worded rules in human rights instruments concerning freedom of movement and residence and arbitrary detention.
17. The growing use of the Guiding Principles has been welcomed by the UN General Assembly as well as the UN Human Rights Council’s predecessor,

the Commission on Human Rights. The General Assembly's 2005 World Summit Outcome recognized the Guiding Principles as "an important international framework for the protection of human rights."⁴ A number of regional organizations have adopted similar resolutions or declarations encouraging their implementation. Similarly, a number of national legislative bodies, executives and courts have made use of the Guiding Principles in the development of domestic law and policy concerning IDPs.

18. There are other two major branches of international law that are also of interest to IDPs: **Humanitarian law** (also known as "the law of war") applies only in situations of armed conflict, and provides protections for persons not, or no longer, taking part in hostilities. Humanitarian law requires combatants to refrain from attacks on or abuse of civilians and civilian property and to ensure that civilians receive items necessary for their survival. Its best-known codification is in the Geneva Conventions of 1949, their two Additional Protocols of 1977 and the third Additional Protocol of 2005.
19. While providing crucial legal protections for IDPs and other civilians, humanitarian law has not spawned the multitude of interpretive and enforcement mechanisms that have grown up in the field of human rights. However, the International Committee of the Red Cross is acknowledged as the primary "custodian" and promoter of the implementation of humanitarian law and it has an acknowledged role to monitor and formally consult with parties to armed conflict about their obligations and conduct. Moreover, the International Criminal Court tries and punishes war crimes defined by humanitarian law in addition to crimes against humanity and genocide.
20. Nearly all of the mechanisms compiled in this guide refer primarily to human rights law; however, they will sometimes also make reference to provisions of humanitarian or refugee law. The relevant provisions of human rights and humanitarian law and analogous concepts from refugee law have been compiled and restated in the Guiding Principles on Internal Displacement.
21. Following to the realities of the shame of having different type of world's worst disasters, India has become a glowing example for other countries to

follow in not only responding within the country during regional catastrophic disasters, but also to respond simultaneously in the neighbouring countries.

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