In the years after the world war various factors have been responsible for the growth of large number of internally displaced persons (IDPs). These factors range from simple rivalry, regional conflict of a country, ethnic issues, unequal distribution of natural resources and development projects to simple persecution of people of minority groups due to racial discrimination. Apart from these man made disasters, natural calamities like earthquake, eruption of volcanoes, landslides, famine, flood have also played a big role for the creation of IDPs in many under developed and developing countries in Asia and Africa. In today’s world internally displaced persons are the one of the most vulnerable section of the society.

Presently the United Nations Guiding Principles on Internal Displacement\(^1\) can be used as a tool to deal with the problems of IDPs. According to the definition as stated in Guiding Principles internally displaced persons are the “persons or group of persons who have been forced or obliged to flee or leave their homes or places of habitual residence in particular as a result or in order to avoid the affects of armed conflicts, situations of generalized violence, violations of human rights or natural or human made disasters and who have not crossed an internationally recognized border”\(^2\).

Involuntary displacement can be conceived as the total deprivation of the community life, amenities, facilities, assets, access to natural resources and the hardships involved before, during and after the process.\(^3\)
1. Analysis of the definition of internally displaced persons

The definition as provided by the Guiding Principles on Internal Displacement highlights two elements. First the coercive or involuntary nature of the movement and second such movement takes place within the boundary of the same country. It has to be mentioned here that the definition does not include persons who migrate due to economic reasons. As the definition is not included in the main body but in the introductory section, it is clear that definition is not supposed to be a legal definition.

The words persons or groups of persons as used in the definition means internal displacement can affect persons in particular or an entire group. The most important fact is that displacement is coerced or involuntary. The term displacement in the definition not only include movements of people running away from immediate danger but can also take the form of prepared and organized departure in anticipation of dangers of eviction. There are certain common causes of involuntary movements such as armed conflicts, violence, human rights violations and disasters. These causes give no choice to the people but to leave their homes and deprive them of the protection mechanisms such as community network, access to services and more importantly livelihoods. Habitual residence as mentioned in the definition is not necessarily a house or building but can also be land on which groups traditionally live.\(^4\)

1.1 Causes of displacement in the definition

(i) Armed conflict

As per the definition in the Guiding Principles international armed conflict as well as non-international armed conflict may be the cause of displacement. International armed conflict means fighting between the armed forces of at least two states and non-international armed conflict refers to fighting within the territory of a state between regular armed forces and identifiable armed groups or between armed groups fighting one another.\(^5\)
(ii) Situations leading to violence

Situations of violence refers to situations of internal tensions and disturbances which fall short of armed conflict, but involve the use of force and repressive measures by government agents to maintain or restore public order. Such a situation may arise when it involves specific type of human rights violations such as large scale arrests, and other large scale measures restricting personal freedom, administrative detention or probable existence of ill treatment or inhuman conditions of detention.⁶

(iii) Violations of human rights

Violations of human rights include governmental transgression of rights guaranteed by national, regional, and international human rights laws and acts and omissions directly attributable to the state including the failure on the part of the government to implement legal obligations from human rights standards.⁷

(iv) Disasters

Disasters may be natural or human made such as draughts, floods, earthquakes, cyclones, famine, landslides, nuclear disaster and so on. Victims of disasters whether natural or man made are covered by the definition, as they too might become the victims of discrimination and other human rights violations as a consequence of displacement.⁸

(v) In particular

The words ‘in particular’ indicates that in addition to the causes as mentioned in the definition there might be other possible causes of internal displacement for example large scale development projects such as dams built without making an attempt to compensate, rehabilitate and resettle the displaced population by the Government. It has to be noted that the
definition does not encompass the persons who move out for economic reasons, thus persons forced to flee from their homes because of economic injustice and marginalization do not come within the of the definition. However, it cannot be denied that very often economic injustice and marginalization amounts to systematic violation of human rights and as such would come within the purview of the definition.\textsuperscript{9}

2. Legal protection to internally displaced persons

As the number of IDPs rising constantly surpassing the refugees, the United Nations has taken a number of steps to enhance the protection capacity of these people. In 1990, the General Assembly entrusted the Resident Coordinators the function of coordinating assistance to internally displaced persons. In the following year the post of Emergency Relief Coordinator (ERC) was created to promote a more rapid and coherent response to emergency situations. In 1992, the United Nations created the Inter-Agency Standing Committee (IASC) chaired by Emergency Relief Coordinator (ERC) which is composed of the heads of the major United Nations humanitarian and development agencies to strengthen coordination in emergency situations. IASC is the principal inter-agency forum for coordination and decision making, on issues of humanitarian action.\textsuperscript{10} After that Executive Committee on Humanitarian Affairs (ECHA), chaired by ERC was created by the Secretary General of UN in 1997 consisting of the heads of humanitarian and development agencies and the UN department on peacekeeping and political affairs. In the same year, a new department called Department of Humanitarian Affairs (DHA) was established to assist the ERC. Later on DHA was replaced by a smaller office named as Office for the Coordination of Humanitarian Affairs (OCHA).

2.1 Development of law

In 1992, the United Nations Commission on Human Rights requested the Secretary General to appoint a Representative on the issues of Human Rights of Internally Displaced Persons. Accordingly Francis Mading Deng
was appointed as a Representative on Internally Displaced Persons to undertake work for better understanding of problems faced by displaced persons. To this end, two studies were prepared—one by the Ludwig Boltzmann Institute of Human Rights (Austria) and was authored by Manfred Nowak and Otto Linher and another by the American Society of International Law and the International Human Rights Law Groups based in Washington. The later study was written by Robert K. Goldman, Cecile E.M. Meijer and Janelle M. Diller. Subsequently a more comprehensive two volume study was published in 1996 and 1998.\textsuperscript{11}

The Representative with the support of the Secretary General established Brookings Project on Internal Displacement in 1994, with a view to providing an effective system at national, regional and international level for the protection of IDPs.\textsuperscript{12} The work results in Compilation and Analysis of Legal Norms relevant to internally displaced persons.\textsuperscript{13} The document aims at restating obligations within the framework of existing norms as well as identifying areas where existing international law does not respond adequately to the protection and assistance need of internally displaced persons. With a team of legal experts and scholars and in consultation with non-governmental, regional and international organizations, Deng presented the newly developed international standard to the United Nations in 1998, called Guiding Principles on Internal Displacement or Deng Principles.\textsuperscript{14}

Over the years, the Representative has focused his work on four main areas—(i) the development of normative framework, (ii) the development of effective institutional framework, (iii) country mission and (iv) on going research into specific issues of concern.

\textbf{2.1.1 The normative framework}

The first part of the compilation examined the relevant provisions of international law once people have been displaced. It concluded that while existing law covers many aspects of situations of internally displaced
persons, there nevertheless exists significant gaps and grey areas where the law fails to provide sufficient protection. The compilation therefore made recommendations for addressing the identified gaps and grey areas with a view to ensure a more comprehensive normative framework for the protection and assistance of the internally displaced.\textsuperscript{15} The study concluded that it would be useful to prepare a compilation and analysis of relevant international standards which would include a commentary on the implications of these standards, the extent to which they address the problem of IDPs, and practical proposal for their implementation. It considered that the compilation would be of great value both to the governments and to the international bodies and would provide a international standard concerning the specific needs of internally displaced persons.\textsuperscript{16}

In addition to providing protection and assistance to displaced population the other purpose of developing the Guiding Principles is to provide assistance to the concerned states, all other authorities, groups, persons, inter-governmental and non-governmental organizations when addressing internal displacement. There are thirty principles in the Guiding Principles. These principles cover all phases of displacement, providing protection against arbitrary displacement, protection and assistance during displacement and for safe and dignified return or resettlement and reintegration.

\textbf{2.2. Institutional framework}

There is no single organization within the United Nations system responsible for protection and assistance of IDPs. After the appointment, the Representative identifies three options to deal with the problem of internal displacement first to create a new organization, second to assign the responsibility to an existing body and third the collaborative approach among the different agencies, coordinated by a central mechanism. However, rather than creating anew agency the international community opted for a collaborative approach which would draw upon the mandates and expertise of the UN’s humanitarian and development agencies.\textsuperscript{17} In the collaborative
arrangements there are two prerequisites (i) these agencies focus attention on the needs of internally displaced and (ii) that agencies coordinate better among themselves. Under the approach the responsibility for protecting and assisting IDPs was shared among various UN agencies, i.e. UNHCR, UNICEF, WFP, UNDP, OHCHR, the inter-governmental organization IOM, the ICRC, and international NGOs. Under the approach the UNHCR has the lead role in overseeing the protection and shelter needs of IDPs as well as coordination and management of camps.

To make the approach more effective in July 2000, a senior Inter-Agency Net Work on Internal Displacement was created with the charge of identifying ways in which the collaborative approach could be made to work more effectively. The Agency recommended for the establishment of the Internal Displacement Unit within the UN Office for the Coordination of Humanitarian Affairs (OCHA). The Unit’s aim is to ensure a predictable and concerted response among all concerned actors to the problem of internal displacement. The Unit also aims to identify and highlight gaps in the humanitarian response to displacement situation. In 2003 the Unit undertook two studies namely Protection Survey and IDP Response Matrix which sought to analyse, both qualitatively and quantitatively, the effectiveness of the international response to the IDP problem. Thus the collaborative approach shares the responsibility for protecting and assisting IDPs among the various UN agencies. However, the approach had come under immense criticism as no organization is entrusted with the real responsibility in the field of assisting and protecting IDPs. The Emergency Relief Coordinator (ERC) is responsible for inter-agency coordination in complex emergencies as well as natural disaster.

The collaborative approach had certain problems such as when agencies back tract from their promises to provide assistance and protection because of lack of responsibility and accountability. Therefore cluster approach is adopted to do away with such problems. In the cluster approach individual agencies are designated as ‘sector leaders’ to coordinate operations in specific areas. The cluster approach is designed to operate at two levels—
the global (headquarters) level and the country or field level. At the global level, the approach is meant to build up capacity in eleven key gap areas by developing better surge capacity, ensuring consistent access to appropriately trained technical expertise and enhanced material stockpiles, and securing the increased engagement of all relevant humanitarian partners. At the field level, the cluster approach strengthens the coordination and response capacity by mobilizing clusters of humanitarian agencies to respond in particular sectors or areas of activity.

The clusters are originally concentrated on nine areas—logistics (WFP); emergency telecommunications; camp coordination and management (UNHCR) for conflict-generated IDPs and IOM for natural disaster-generated IDPs; emergency shelter (IFRC); health (WHO); nutrition (UNICEF); water, sanitation and hygiene (UNICEF); early recovery (UNDP); and protection. These original nine clusters were later on expanded to include agriculture and education.

2.3. Country focus

The Representative undertakes country visits to draw national and global attention towards the plight of internally displaced persons. To this end, the Representative dialogues with the Heads of the Governments and other actors to promote national responsibility. The Representative also communicates with donors, international agencies and NGOs, civil society and internally displaced persons themselves. The Representative continues to follow the situations in the countries where there exist situations of internal displacement and report his findings and recommendations annually to the Human Rights Council and bi-annually to the General Assembly of the United Nations.

Country missions are one of the most important aspect of the mandate of the Representative as they provide a means for assisting the extent to which the protection, assistance and development needs of internally displaced persons are to be met in specific situations.
2.4. Research

Much of the policy research and information has traditionally emerged from country missions. Although the major task of studying the global crisis of internal displacement and existing legal and institutional frameworks for addressing it is largely complete, there remain issues on which additional research and consideration are required. The Representative was recently asked by the OCHA to explore the question as to when internal displacement ends. Plans are underway to carry out research in a number of other areas and one of the Brookings Project intends to carry out a comparative analysis of national responses to situations of internal displacement with a view to promoting more effective policies and programmes at national level and to guide the international response.\(^\text{23}\)

3. Role of United Nations High Commissioner for Refugees

UNHCR originally had a mandate to lead and coordinate international action for the worldwide protection of refugees guided by the 1951 United Nations Convention Relating to the Status of Refugees.\(^\text{24}\) Thus UNHCR’s original mandate does not specifically cover internally displaced persons. However, because of the agency’s expertise in the field of displacement, it has for many years assisting millions of displaced population. UNHCR assist IDPs either on a specific request made by the UN Secretary General or with the consent of the state concerned. The mandate of the UNHCR was extended by the drafters of the Statute subject to two conditions: firstly, approval of the General Assembly and secondly, availability of funds for conduct of operations.\(^\text{25}\)

Initially there was resistance for extension of mandate to IDPs. Sadruddin, who was the High Commissioner for Refugees in the late 1960s, turned down a request for assistance to internally displaced persons in South Vietnam simply because they were internally displaced.\(^\text{26}\) Despite that in 1972, the General Assembly authorized UNHCR to provide protection to ‘refugees and displaced persons’, which referred internally displaced
persons in Sudan. Internally displaced populations are regrouped under the denomination of other population of concern in UNHCR’s statistics and now UNHCR’s mandate covers not only 1951 Convention refugees, but also refugees under the OAU Convention and Cartagena Declaration.

UNHCR’s role with respect to internally displaced persons has been under discussion and in the year 2000 it reviewed and revised its policy as regards the internally displaced persons. According to the policy UNHCR’s involvement in a specific situation relating to protection and assistance of IDPs require fulfillment of certain conditions.

In 2006, the UNHCR and Norwegian Refugee Council (NRC) signed an agreement to improve the protection of displaced people. In recent years UNHCR has played a an important role for protection, camp management and emergency shelter and is also entrusted with the task to develop strategies and coordinating the work of other agencies and non-governmental organizations for protection of displaced people. The two agencies cooperate in many countries, including Colombia, Uganda and Sudan. In Liberia, for example UNHCR and NRC work closely to carry out protection and monitoring of IDPs and refugees.

Recently in 2011, UNHCR has come forward to address the protection concerns of IDPs, refugees and other populations affected by the floods with the help of Governments and other partners. In addition, UNHCR has collaborated with UNIFEM and UNICEF to reinforce existing gender-based violence and child protection referral mechanism.

4. Role of International Committee of Red Cross (ICRC)

The ICRC has a mandate of ensuring the application of International Humanitarian Law (IHL). ICRC seeks to bring protection and assistance to the victims of international and non-international armed conflict and internal disturbances and tension. In situations of armed conflict, it seeks to give priority to those who are in most urgent need in accordance with the principle
of impartiality. In this respect ICRC considers an internally displaced person to be first and foremost a civilian. Thus displaced population benefits from ICRC protection and assistance activities that includes visit to detainees; medical assistance; food aid; and restoration of family links between persons separated by war.

ICRC generally carries out its operation at the request of UN Secretary General or the General Assembly or at the request of the country involved.\textsuperscript{34}

The ICRC has developed a multidisciplinary approach in order to respond to the basic needs of all civilians, including IDPs. In addition to promoting compliance with IHL, the ICRC helps IDPs in different phases of displacement: (i) displacement as such; (ii) arrival and temporary settlement; (iii) longer term settlement in camps; (iv) final settlement (other than in the place of origin); (v) return to the place of origin.\textsuperscript{35}

5. Geneva Conventions and Protocols

The IHL can provide some protection to internally displaced persons in situations of armed conflict, whether international or non-international. However, in situations of internal armed conflict, most combatants unfortunately are reluctant or failed to grant displaced persons the fundamental protections under humanitarian law.

The fourth Geneva Convention, 1949, grants protection to certain categories of civilians qualified as ‘protected persons’.\textsuperscript{36} The protection under the Convention is granted not only to refugees, but extended even to the internally displaced people. But the lack of specific mention to this group may place the IDPs in more vulnerable position in times of war, when compared to refugees. Though the IDPs do not come within the meaning of ‘protected persons’, they are entitled to basic guarantees as provided for individuals to be treated humanly in all circumstances.\textsuperscript{37} Article 49 of the Geneva Convention IV prohibits displacement of civilians during armed conflict.\textsuperscript{38} Further, Additional Protocol I of 1977 supplies an ingredient missing from the fourth convention that protects civilians against dangers
arising from military operations as well as from indiscriminate attack, which do not distinguish between civilians and combatants.\textsuperscript{39} Protocol I also elaborates on the Fourth Geneva Conventions provision that relief actions be undertaken if a civilian population living in areas other than occupied territories is not adequately provided with the basic supplies essential to its survival.\textsuperscript{40}

The first explicit treaty provision regarding the protection of protected persons in non-international armed conflicts or civil conflicts is found in Common Article 3 of 1949 Geneva Conventions. There are certain criteria which are considered indispensable for application of Common Article 3 to classify a situation of violence as internal armed conflict and not as internal disturbance or tension. Under the international law insurgency is recognized only when it satisfies certain conditions such as insurgents must have occupied control over a considerable part of the territory. Secondly, a majority of people inhabiting the territory must lend support to the rebels out of their own free will. Thirdly, the insurgents must be capable and willing to carry out international obligations imposed upon them.\textsuperscript{41} Lastly, civilian commotion should reach a certain degree of intensity and duration. In other words conflict or violence may not simply consists of riots or sporadic acts of short-lived violence.\textsuperscript{42}

One of the advantages of IHL over human rights law is that, in internal armed conflicts, common Article 3 and 1977 Additional Protocol II are also binding on armed opposition groups. Moreover, there can be no derogation from the rules of international humanitarian law. The basic principle of the Common Article 3 to the four Geneva Conventions is to ensure human treatment without adverse discrimination.\textsuperscript{43} The Article also calls for the basic obligation to collect and care for the wounded and sick.\textsuperscript{44}

Under the international humanitarian law attacks are prohibited against dams, dykes and nuclear power stations if they may result in severe civilian losses.\textsuperscript{45} Similarly attacks on objects necessary for the survival of the civilian population such as foodstuffs, agricultural crops, livestock, drinking water
installations and supplies, and irrigation works are prohibited. Additionally, starvation of civilians as a method of combat is also prohibited. If forced displacement is needed to be undertaken for security or imperative military reasons then such displacement are to be carried out after taking all possible measures so that civilian population may receive satisfactory conditions of shelter, hygiene, health, safety and nutrition. Again deportation or transfer of civilian population within or outside the occupied territory is a grave breach of crime under the international humanitarian law. Moreover, according to Article 77 (2) Protocol I of the Geneva Conventions, the parties to the conflict should refrain from recruiting any child who has not yet attained the age of fifteen and should exercise caution in permitting children between the age of fifteen and eighteen to join military forces.

6. Forced displacement as international crime

International criminal law is a relatively new branch of criminal law. International crime consists of violations of international customary rules as well as treaty provisions. Violation of international humanitarian law is considered to be war crime and thus entails individual criminal responsibility of the perpetrator under international law. The prohibition on transfer of civilians goes back to Lieber Code. Under the London Charter of the International Military Tribunal (Nuremberg), deportation of civilian population to slave labour or for any other purpose constitutes war crime. Under the Statute of International Criminal Court, deportation or transfer of all or part of the population by the occupying power within or outside the occupied territory constitutes a war crime in international armed conflict. Similarly, deportation or forcible transfer of population is a crime against humanity.

The Statute of International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) and Statute of the International Criminal Court (ICC) allow for the prosecution of individuals for forcible transfer of population and describes such act as crime against humanity along with other acts.
Protocol II supplements and develops Article 3 Common to the Geneva Conventions and these laws are applied for most instances of non-international armed conflict. However, there are certain serious gaps in Article 3 as it simply states the principle of assistance and protection of the wounded and sick. And does not contain implementation clauses, such as respect for medical or the red cross emblem. Further judicial guarantees and conditions of detention of persons deprived of their liberty are not specified and no rule of protection of civilian population is included as such.

The UN General Assembly, the UN Security Council and UN Commission on Human Rights have condemned instances of forced displacement, not only in international armed conflicts but also in non-international armed conflict in the context of Bosnia and Herzegovina, and in Burundi and Sudan.

7. Human Rights law and legal protection of internally displaced persons

International humanitarian law and human rights law are two distinct but complementary bodies of international law. IHL applies during armed conflict while human rights law applies at all times, in peace and in war. International human rights law that provide some protection to IDPs are mostly found in International Bill of Rights—the UDHR, ICCPR and ICESCR. However, many human rights may be derogated during the times of national emergencies. Human rights law also aims to prevent displacement when it occurs. The prohibition on torture, cruel, inhuman or degrading treatment or punishment, and the right to peaceful enjoyment of property and to home and family life are of particular importance for the prevention of displacement. Right to personal safety, food, shelter, education and access to work are some of the rights which offer vital protection during displacement. Many of these rights have relevance to the issue of return. These and other human rights must be granted to everyone without discrimination, including non-discrimination on the ground of displacement.
In general international law prohibits any form of forced displacement. However, forced displacement is not always unlawful. Under the international law there are few exceptions to this rule such as due to imperative military reasons. Even though in many human rights instruments there is no specific guarantee against forced displacement, it is inherent in a number of human rights instruments, including the right to freedom of movement and the choice of residency, the right to respect for home and privacy. The right to an adequate standard of living that includes food and housing.

8. Guiding Principles governing internal displacement

The Guiding Principles include the norms applicable before the displacement occurs, those that apply in actual situations of displacement and those that apply to the post displacement period. The revised definition used in the Guiding Principles aims to remove two difficulties existed in the working definition. First it has done away with the temporal and quantitative aspect of the working definition which created complications. For example in Iraq, there was nothing ‘sudden or unexpected’ about the displacement of Kurds which took place over a considerable period of time in late 1970s, 1980s, and early 1990s. In Colombia, internally displaced people often flee in ‘small’ rather than in large numbers in order to make them less conspicuous. Secondly the revised definition has also broadened the notion of coerced flight to include not just ‘forced to flee” but those ‘forced to leave’.

Generally the Guiding Principles seek to protect all internally displaced persons in internal conflict situations, natural disaster and other situations of forced displacement. Some development agencies have proposed to expand the definition to encompass the persons forced to leave their homes due to economic injustice, extreme poverty. But the problem is that even though the economic injustice and marginalization tantamount to systematic violation of their economic rights, the element of coercion is not clear. Section I of the Guiding Principles comprises the general principles that relates to the equality and equal treatment of IDPs in the rights and...
freedoms under the national and international law. Internally displaced persons can be distinguished from other persons only in respect of their forced displacement. Therefore, the section asserts that the displaced cannot be discriminated against because of their displacement. Both the domestic and international law apply equally to internally displaced people and to those who do not leave their homes. Government cannot discriminate against internally displaced population because of their displacement. Similarly internally displaced people cannot violate international and domestic law with impunity. Like all other persons these people are subject to individual criminal responsibility for genocide, crime against humanity and war crimes. The principles emphasize on non-discrimination as many displaced population have been forced to flee because they are minorities or have racial, religious or other characteristics that make them vulnerable to discriminatory practices. The Guiding Principles recognizes four categories of persons who need specific protection and established that internally displaced persons must not be discriminated simply because of their race, sex, language, religion, social origin or other similar factors.

The Principle 6 of the Guiding Principles restate the right not to be arbitrarily displaced and explicitly states the grounds and conditions on which displacement is prohibited. However, the Guiding Principles does not specifically mention development projects as possible cause of displacement. as noted by Walter Kalin because development projects can contribute significantly to the realization of human rights and therefore such development-related displacement is permissible only when compelling and overriding public interest justify this measure. The word ‘compelling’ indicates the notion of proportionality whereas the word ‘overriding’ demands the balancing of public and private interest.

The right to life is the most valuable fundamental right. The Guiding Principles therefore prohibits the arbitrary deprivation of life. The principles have made it clear that displacement should not be carried out in a manner that violate the right to life, dignity, liberty or the security of those affected. Moreover, States have a particular obligation to provide protection to
indigenous people and other groups with a special dependency on and attachment to their land.\textsuperscript{74}

After prescribing the general norms prohibiting cruel and inhuman treatment the principles specify that internally displaced persons must not be forcibly returned or resettled to conditions where their life, safety, liberty and health are at risk.\textsuperscript{75} Principles also contain norms in respect of family life specifying that families separated by displacement should be reunited as quickly as possible.\textsuperscript{76} Recognition of a person before the law is universal human right.\textsuperscript{77} The right is given effect by specifying that IDPs shall be issued all documents necessary to enable them to enjoy their legal rights and that authorities must facilitate the replacement of documents lost in the course of displacement.\textsuperscript{78}

In the Guiding Principles special attention is paid to the needs of women and children including prohibition against gender specific violence.\textsuperscript{79} As the women are often not included in community consultation and decision making process the principles therefore, call for the full participation of women in the planning and management of their relocation.\textsuperscript{80} Further women’s health needs not often met because of which the Guiding Principles affirmed access by women to female health care services.\textsuperscript{81} Women have been given equal right with men to obtain necessary documentation issued in their names.\textsuperscript{82} The forcible recruitment of children into armed forces is prohibited \textsuperscript{83} and special efforts are to be made to reunite children with their families.\textsuperscript{84} The principles make it clear that international humanitarian organizations and other appropriate actors have the right to offer their services and aid to the internally displaced persons.\textsuperscript{85}

\textbf{8.1. Right to freedom of movement and return}

In the context of internal displacement, return is used to mean the process of going back to one’s place of habitual residence and resettlement. The term is used to describe the process of starting a new life in any place other than the place of habitual residence, but still within the same country.
Reintegration is the process which makes the return or resettlement sustainable or durable. In the context of internal displacement reintegration is used to describe the formal entry of IDPs into social, economic, cultural and political fabric of their original community where displaced persons have settled.

The rights of movement is the most crucial right for displaced persons as they tend to protect IDPs from involuntary movement and expulsion as well as from forcible return or resettlement to any place where their health, safety and liberty is at risk. The right is similar to the Principle of ‘Non-refoulement’ which protects refugees from forcible return.\textsuperscript{86} International law not only prohibits forcible transfer but also provides a remedy for persons displaced forcibly. There are number of international human rights instruments that recognize the right to return to one’s country. This right is called ‘right to return’.\textsuperscript{87} Although there is no specific international convention affirming the right of internally displaced persons to return to their place of origin, from the provisions available in various international instruments it can be implied that at least there is obligation of States not to impede the return of people to their places of origin. At present the right to return to one’s country is increasingly seen as linked to adequate housing.\textsuperscript{88}

Recognizing these various rights of displaced persons, the UN Sub-Commission on the Promotion and Protection of Human Rights approved the ‘Principles on Housing and Property Restitution for Refugees and Displaced Persons on August 11, 2005, known as Pinheiro Principles.\textsuperscript{89} The Principles are not a treaty or formal law and they do not attract the authority like other international legal documents. Nevertheless, the principles do have persuasive authority and are explicitly based on existing international, regional and national law.

The Pinheiro Principles apply in all cases of involuntary displacement resulting from international or internal armed conflict, gross human rights violations such as ethnic cleansing, development projects, forced evictions and natural and man made disasters. Whenever a person or community is
arbitrarily displaced from their homes and lands the Principles can be used as guidance.\textsuperscript{90} The principles are primarily concerned with the rights of refugees and displaced persons to land, housing and property which they owned, held right or otherwise lived at the time of displacement. The principles do not make any distinction between refugees and internally displaced persons including those displaced by disasters, and those who flee across national boundaries but are not refugees.\textsuperscript{91} Guiding Principles also provides for compensation or just reparation when relocation of property is not possible.\textsuperscript{92}

The UN Security Council and other bodies have also asserted the right of IDPs to return to their homes. The Security Council in its resolution while dealing with Bosnia and Herzegovina,\textsuperscript{93} states that all displaced persons have the right to return in peace to their former homes and should be assisted to do so.

The Commission on Human Rights has also among other things recognized the need for property restitution as an effective remedy for victims of forced displacement.\textsuperscript{94} There is an increasing trend in international law to award compensation for loss of property resulting from displacement. In the Miskito case\textsuperscript{95} the Inter-American Commission on Human Rights recognizes that just compensation should be awarded to returning internally displaced persons for the loss of property. Since 1998 the European Court of Human Rights as awarded compensation for destruction of property by state security forces which often lead to internal displacement.\textsuperscript{96}

**8.2. Right to humanitarian assistance**

Under the international law both the government and insurgent groups have obligation to provide assistance to IDPs as civilian population. However while carrying out assistance activities they should do so in accordance with the principles of humanity, with impartiality and without discrimination.\textsuperscript{97} If they are unwilling to provide aid, they must grant rapid and unimpeded access to other humanitarian actors who are willing to undertake aid
programmes. National authorities and insurgent groups shall not regard their offer as unfriendly acts or interference in their internal affairs and must not withhold consent arbitrarily.\textsuperscript{98} International non-governmental and regional non-governmental organizations also play a very important role in the protection of internally displaced persons. The Guiding Principles stipulates that these organizations should give due regard to the protection need and human rights of these people and to take appropriate measures in this regard.\textsuperscript{99}

Very often, humanitarian personnel are being subject to threats and attacks, leading to injury and death. Such attacks restricts humanitarian access to IDPs. The Guiding Principles stress the need to protect the safety and security of humanitarian personnel. The primary responsibility to ensure the safety of aid workers lies with the authorities who are in control of the territory in which aid workers operate. Aid workers should not be the object of attack or other acts of violence.\textsuperscript{100}

The Guiding Principles also calls for respect and protection for transport and supplies, in particular humanitarian assistance should not be diverted to political or military purpose.\textsuperscript{101} Unfortunately this principle is very often abridged. In some cases the entire shipment of food or other supplies are captured by Governments or insurgent groups for their own use. Of course, in certain situations responsibilities to protect and assist IDPs are difficult to discharge because in some situations like conflict-induced displacement, infrastructure is destroyed and it may not be possible for the people to return to places where there is no health clinic, roads, schools, food stores, or other basic services.

\textbf{9. Mental health of IDPs}

Displacement, violence and poor living conditions, poverty, unemployment, lack of education opportunities can, in most cases create, severe mental strain on internally displaced persons. Women and other vulnerable groups such as children, the elderly and the disabled are more seriously affected by
the displacement than men. In addition to the mental and emotional distress, they have to bear the loss of privacy in overcrowded temporary shelters.

According to an estimate of World Health Organization (WHO) out of 50 million refugees and internally displaced persons displaced by conflict situation in January 1999 only 23 million are protected and assisted by the UNHCR. Some five million people are suffering from chronic mental disorders even prior to the war and seriously traumatized, who require specialized mental health care. Another five million people suffer from psychological disorder affecting their life and community. It has been universally acknowledged that relocation is psychologically stressful and in the relocation process families and communities should be kept intact. However behavioural and mental health problems associated with displacement have largely been ignored while adopting policies and laws for protection of these people.

10. Rights of Internally Displaced Persons in India

Even though there is no separate law in India pertaining to the State’s legal responsibility to the IDPs, the Constitution of India and writ jurisdiction of the Court can provide some relief to the internally displaced population. One of the most important right guaranteed by the Constitution is the Article 21 that provides the framework for securing the right to life. In addition Article 39 of the Constitution of India directs the state to secure its citizens with right to an adequate means of livelihood. Besides, Article 41 of the Constitution imposes responsibility on the state to make effective provision to secure the right to work, education and to public assistance in cases of unemployment, old age, sickness and in other case of disabilities.

In a landmark decision popularly known as ‘pavement dwellers case’, the Supreme Court of India expanded the meaning of right to life to include the ‘right to livelihood’. In this case the Court ruled that any person deprived of his or her right to an adequate livelihood or right to work can challenge the deprivation of livelihood as violation of right to life as guaranteed by the
Article 21, the Supreme Court of India in Francis Coralie Mullin vs. the Administrator, Union Territory of Delhi and Others elaborated on right to adequate shelter as part of all encompassing right to life.\(^{107}\) In another case the Supreme Court has held that the right to life includes the right to food, water, decent environment, education, medical care and shelter.\(^{108}\) The Court further held that right to life prohibited the eviction of slum dweller families unless alternative accommodations are provided.\(^{109}\) In the Maneka Gandhi’s case the Supreme Court gave a new dimension to the Article 21. The Court held that right to ‘live’ is not merely confined to physical existence but includes within its ambit the right to live with human dignity.\(^{110}\)

Under the existing land law i.e. Land Acquisition Act, 1894 Government can acquire land for public purposes and specifies only cash compensation and State has no obligation to rehabilitate the displaced population. Government’s position is that rehabilitation is not a prime consideration when acquiring land for public purpose. Therefore, in India Supreme Court is the only forum for individuals whose land is acquired by the Government for public purpose. As a result rights of displaced persons have been significantly curtailed.

Among the States in India only the State of Maharashtra has a legislative enactment recognizing the rights of displaced people. Other States have passed only resolutions and issued circulars regarding the need for adequate resettlement and rehabilitation of displaced persons. In absence of legal enactment these ad-hoc decisions and measures largely depend on strong public opinion and how well organized the affected people are in a particular project area. As a result it produces inequality in the treatment of project displaced persons. Thus the equality before the law and equal protection of law in equal circumstances guaranteed as fundamental right by the Constitution of India cannot apply.\(^{111}\)

Displaced persons belonging to the tribal communities have been given another valuable fundamental right under Article 29 of the Constitution of India. The right guarantees the fundamental right to preserve the cultural
identity of any citizen or group of citizens from Governmental encroachment. The fundamental right contained in the Article is an absolute right and not subject to reasonable restriction. If, for example, the rehabilitation of tribal communities is detrimental to cultural identity then it may be challenged in court for the violation of their fundamental rights guaranteed by Article 29.112

11. Role of National Human Rights Commission in protecting IDPs

National Human Rights Commission has offered a number of recommendations to ensure that the human rights of IDPs are protected and respected in all situations of displacement.113 These recommendations relate not only to development-induced displacement but also to displacement on account natural and man made disasters including conflict. The Commission has recommended the incorporation of the norms of the National Relief and Rehabilitation Policy (NRRP) in the Rehabilitation and Resettlement Bill, 2007. However, the Bill could not come into force as it lapsed in the Parliament. The Commission also recommended that as a part of relief and rehabilitation, authorities should provide food, potable water, clothing, shelter, basic health care, education etc.

The Commission has suggested that there is a need for Central and State Governments to re-examine and amend laws, policies, plans, regulations and practices to mainstream and integrate human rights concerns on issues related to pre-displacement, displacement, relief and rehabilitation. According to the Commission minimum non-negotiable human rights standards should be adhered to for all especially for vulnerable and marginalized groups like women, children, elderly and disabled.

12. Reception of the Guiding Principles

12.1. International bodies

There is evidence that at present Guiding Principles on Internal Displacement are accepted at all levels of the international community. In
2005, the CHR appreciated the principles as an important tool to deal with the situations of internal displacement. The UN Security Council noted that UN agencies, regional and non-governmental organizations in cooperation with the host Governments, are making use of the Guiding Principles on Internal Displacement.

The UN General Assembly welcomed the fact that the Representative of Secretary General on Internal Displacement continues to use the Guiding Principles in his dialogue with Governments intergovernmental and non-governmental organizations and other relevant actors. Intergovernmental agencies, UNHCR, UNDP, OHCHR have incorporated these principles in their policy with regard to internal displacement.. United Nations treaty bodies, which monitor the implementation of UN human rights conventions by state parties, such as Human Rights Committee or the Committee on the Rights of the Child, have referred to the Guiding Principles in their observations to the states. Regional organizations have made use of the Guiding Principles in their work and have further encouraged their dissemination. References to the Guiding Principles can be found in resolutions, recommendations and reports adopted by a number of organizations. For instance, the Organization of African Union (OAU) has formally acknowledged the principles. The Economic Community of West African States (ECOWAS) has called on its member states to disseminate and apply them. A ministerial declaration of the Intergovernmental Authority on Development (IGAD) has called the principles a useful tool in development of national policies on internal displacement. The Organization for Security and Cooperation in Europe (OSCE) has recognized the principles as a useful framework in addressing internal displacement and lastly the Parliamentary Assembly of Council of Europe has urged the member states to to incorporate the principles into their domestic laws.

12.2. Individual States

The utility of Guiding Principles are becoming evident at the national level also. An increasing number of Governments, in all regions of the world, are
making use of the principles, in particular in development of national law and policy on internal displacement. Several Governments like Angola, Burundi, Liberia, Uganda, Peru and Turkey have made explicit references to the Guiding Principles in their policies and laws on internal displacement. Some other countries are in the process of developing or revising their displacement-related laws and policies. The Government of Angola incorporated the Guiding Principles into its law on resettlement in order to facilitate internally displaced persons’ return after civil war. The Constitutional Court in Colombia cited the Guiding Principles as a basis for its decision in support of internally displaced persons. Peru Government adopted a law in 2004 based on these principles, establishing material benefits to IDPs. In the United States the US foreign aid agency, issued a policy document to guide its assistance to internally displaced persons.

Comment

Today major challenge before the international community is the increase in the number of internally displaced persons all over the world and the number has been continuously increasing surpassing the number of refugees. There is no official institution to keep tract of the internal movement of the population both in the states and international level. The institutions which keep account tend to vary from one organization to another. Guiding Principles are not legally binding document and that may be considered as a serious lacuna for the protection and assistance of IDPs.

There are a number of provisions in the Geneva Conventions, 1949 and 1977 Protocols which apply to internally displaced persons in situations of conflict. But these instruments often difficult to apply in situations of internal conflict as the States concerned are reluctant to recognize them as non-international armed conflict and termed such conflict as law and order situation or internal disturbances.

Another most important reason as to why the international community fails to provide an effective regime is that there exists no single organization within
the UN system that has been mandated to assume full responsibility for the protection of displaced population.
The Guding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced as during return or resettlement and reintegration.


Participants in the IASC include International Organization for Migration (IOM), major international NGOs, the UN Representative of the Secretary General in Human Rights of Internally Displaced Persons, as observers the Red Cross Crescent Movement represented by the International Committee of Red Cross (ICRC) and the International Federation of the Red Cross and Red Crescent Movement.

The two volume study was prepared by Francis M. Deng, then Representative of the Secretary General on the Human Rights issues related to internally displaced persons, and Roberta Cohen senior adviser to RSG and a great scholar at the Brookings Institute. The first volume ‘Masses in Flight: Global Crisis of Internal Displacement’ is an in-depth examination of overall problem of internal displacement and the second volume ‘Forsaken People’ contains case studies as regards the crisis of displacement.

The project prepares major studies and articles on internal displacement. Organizes regional and country meetings to disseminate the Guiding Principles on Internal Displacement. It also initiated, organized and supervised the legal process that resulted in the development of the Guiding Principles.


Note 1, Supra, ch.II.


Simon Bagshaw was a research assistant to Dr. Francis M.Deng, and did his Ph.D. at the European University Institute , Florence.

Id.

Forced Migration Review (FMR)."The Internal Displacement Unit-OCHA", 57
United Nations Commission on Human Rights (CHR) was a functional commission within the framework of UN from 1946 until it was replaced by the United Nations Human Rights Council in 2006. CHR was a subsidiary body of the UN's Economic and Social Council.


UNHCR's mandate was originally set out in the Statute of the UNHCR. The Statute was adopted by the General Assembly on 14 December 1950 as Annex to Res. 428 (V). UNHCR’s competence is defined in Article 6 of the Statute which stated that UNHCR’s mandate covers only those persons who qualify under the Refugee Convention.


GA Res. 2958 (XXVII), 12 December 1972.


Phuong, op.cit. pp. 79-80.

UN Doc. EC/50/SC/INF.2, 20 June 2000, p.2, The Report of the Executive Committee of the High Commissioner’s Programme, The UNHCR’s involvement in a specific operation requires: (i) a request or authorization from the Secretary General or a competent principal organ of UN; (ii) consent of the state concerned, and where applicable, other entities in a conflict; (iii) access to the affected population; (iv) adequate security for staff of UNHCR and implementing partners; (v) clear lines of responsibility and accountability with the ability to intervene directly on protection matters; and (vii) adequate resources and capacity.

Norwegian Refugee Council is an independent, humanitarian non-governmental organization which provides assistance, protection and durable solutions to refugees internally displaced persons, and returnees worldwide.

Art. 4, Geneva Convention Relative to the Protection of Civilian Persons in Times of War, 12 Aug. 1949. The Article defines ‘protected persons’ as those who at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are no nationals.


Para 1 provides individual or mass forcible transfer, as well as deportation of protected persons from occupied territory to the territory of occupying power or to any country, occupied or not, are prohibited.

Art. 51.

Ibid, Article 70 (1).


The Article prohibits violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity and passing of sentences and carrying out of executions without previous judgement pronounced by a regular court.

Id.


Ibid, Article 14.

Id.

Ibid, Art. 17(1).


Art. 23, Lieber Code, April 24, 1863,

Lieber Code provides that private citizens are no longer murdered, enslaved or carried off to distant parts. Lieber Code was an instruction signed by the President Abraham Lincoln to the Union Forces of United States during the
American Civil War that dictated as to how soldiers should conduct themselves in wartime.

51 Principle VI (b), Nuremberg Tribunal 1950,

Nuremberg Principles were a set of guidelines for determining what constitute a war crime. The document was created by the International Law Commission of the United Nations to codify the legal principles on account of trial of Nazi party members following World War II.

52 Art. 8 (2) (e) (vii), Rome Statute of the ICC, 1998.

53 Ibid, Art. 7 (1) (d).

54 Article 2 (g), Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia, 1993; Article 3 (d), Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Serious Violations of International Humanitarian Law in the Territory of Rwanda, 1994.

55 Additional to the Geneva Conventions, 1949 and Relating to the Protection of Victims of Non International Armed Conflict, 8 June 1977.

56 The Article is a major development for protection of civilians in internal armed conflict. It requires that all those who are not or no longer participating in hostilities should be treated humanly. The Article prohibits violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture taking of hostages; outrages upon personal dignity, in particular, humiliating and degrading treatment; the passing of sentences and carrying out of executions without previous judgement pronounced by a regularly constituted court and wounded, sick and shipwrecked shall be collected and cared for.


60 Art. 12, UDHR; Art. 17, ICCPR.

61 Art. 25, UDHR; Art. 11 ICESCR, 1966.

62 Supra, Note 10, Ch. I.

63 Supra, Note 8 Ch. I.


65 Id.


67 Ibid. Principle 1(2).

68 Ibid, Principle 4 (2).
Special protection is accorded to children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons.

69 Ibid, 4 (1).

70 Displacement is prohibited when it is based on policies of apartheid, ethnic cleansing and other practices; in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand; in cases of large scale development projects which are not justified by compelling and overriding public interests; in cases of disaster; and when it is used as a collective punishment.

71 Walter Kalin is a Swiss legal scholar and professor of constitutional and international law at the Faculty of Law University of Bern. Kalin served as Chair of the Committee of Legal Experts that developed the Guiding Principles. From 1991-1992 Kalin served as the Special Rapporteur of the CHR on the situations of human rights in Kuwait under Iraqi occupation.


73 Guiding Principles on Internal Displacement, Principle. 8.


75 Ibid, Principle 15 (d).

76 Ibid, Principle 17 (3).

77 Art. 6, UDHR.

78 Ibid, Principle. 20 (2).

79 Ibid, Principle 11 (2) (a).

80 Ibid, Principle 7 (3) (d).

81 Ibid, Principle 19 (2).

82 Ibid, Principle 20 (3).

83 Ibid, Principle 13 (1).

84 Ibid, Principle 17 (3).

85 Ibid, Principle 25 (2).


87 Art. 13, UDHR; Art. 12 ICCPR.
   The Articles recognize the right to enter one’s country as well as the right to choose freely one’s own place of residence, which incorporate the right to return to one’s home area.


Pinheiro Principles are universally applicable international legal standard designed to protect the rights of refugees and displaced persons to return to their original homes or, when this is not possible, to receive just and satisfactory compensation adequate to replace their housing, land and property losses. Work on ‘Pinheiro Principles was initially started by the Sub-Commission on Promotion and Protection of Human Rights in 1998. That was followed by a formal study conducted between 2002-2005 by Special Rapporteur Sergio Pinheiro. On the basis of the study Pinheiro Principles were adopted.


91 Id.

92 Ibid, Principle 29 (2).


95 Opario Lemoth Morris and Others (Buzos Miskitos), Case No. 12.738, IACHR, The case is regarding alleged discrimination against Miskito people in Honduras.

96 Phuong, op.cit, pp.62-63.

97 Principle 24 (1), op.cit.

98 Ibid, Principle 25 (2).

99 Ibid, Principle 27 (1).


103 Id.

104 Article reads: No person shall be deprived of his life or personal liberty except according to procedure established by law.

105 Article reads: The state should direct its policy towards securing, among other things, a right adequate means of livelihood for men and women equally and equal pay for men and women.


109 Ram Prasad vs. Chairman, Bombay Port Trust, AIR 1989 SCR 1360.

110 AIR 1981 SC 746.


112 Id.

113 NHRC’s recommendations on Relief and Rehabilitation of Displaced Persons, New Delhi, Oct. 2008.


116 Id.