



JIMMA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE

SCHOOL OF LAW

**AN INQUIRY IN TO THE STATE'S OBLIGATION TOWARDS
INTERNALLY DISPLACED PERSONS: THE CASE OF ETHIOPIA**

**A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE of LL.M IN HUMAN RIGHTS AND
CRIMINAL LAW**

BY: WONDU TAMIRE (ID No.RM0740/10)

- 1. PRINCIPAL ADVISOR:-ZELALEM SHIFERAWU (ASSISTANT PROFESSOR)**
- 2. CO-ADVISOR -KALKIDAN MISGANAW (LL.B, LL.M)**

OCTOBER, 2019

Declaration

I hereby declare that this work titled “An Inquiry in to the State’s Obligation towards Internally Displaced Persons: The Case Of Ethiopia” is my own work that it has not been presented before for any degree or examination in any other university and that all sources I have used or quoted have been indicated and duly acknowledged as complete references.

Name of Author

signature

Wondu Tamire

Advisors: - 1. Zelalem Shiferawu

2. Kalkidan Misganaw

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APPROVED BY EXAMINATION BORD

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ABBREVIATION AND ACRONYM

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| Art | Article |
| ACHPR | African Charter on human and people's right |
| DRMFSS | Disaster Risk Management and Food Security Sector |
| DRMC | Disaster Risk Management Commission |
| FDRE | Federal Democratic Republic of Ethiopia |
| GoE | Government of Ethiopia |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| IMDC | Internal Displacement Monitoring Center |
| IDPs | Internally Displaced Persons |
| IHL | International Humanitarian Law |
| IHRL | International Human Rights Law |
| IOM | International Organization for Migration |
| MoP | Ministry of Peace |
| SNNPRS | South Nations Nationalities Peoples Regional State |
| UDHR | Universal Declaration of Human Rights |
| UNHRC | United Nations Human Rights Committee |

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ABSTRACT

IDPs are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border. This situation inevitably results in human rights concerns of victims. Then it poses the question of government obligations towards the victims. For that this research aimed to make an inquiry into the human rights obligations of Ethiopia towards IDPs then to investigate whether government of Ethiopia has carried out obligations imposed on it by relevant international, regional and national laws or not. The obligations of government Ethiopia towards IDPs has been analyzed by focusing on legislative and institutional measures at national plane. The qualitative research approach used to write this research. A desk review of primary documents and secondary sources was made; interview with key informants from focal point institutions in relation to IDPs was employed to collect data. The research has revealed that although FDRE Constitution and other legislations embrace some relevant provisions of general application for protection the rights of IDP, however the country lacks comprehensive and adequate laws and policies for addressing the plight of IDPs. On top of lacking compressive law, legislations which are of especial importance towards the protection of IDPs do not cover all causes of displacement or are cause specific. Additionally, policy framework relevant for protection of IDPs confined to life saving measures though bringing development oriented and durable solution is necessary. Besides the limitations in national laws there is also ratification gap, because Ethiopia has not ratified Kampala convention, the first binding specific framework for protection and assistance of IDPs. Regarding institutional focal points, they are not effectively functioning towards protection because of institutional arrangement problem, security issue as well as resource deficiency. To solve the above problems hindering government of Ethiopia to fully address the plight of IDPs and to fulfill its human rights obligations towards them, the research recommends the government to enact comprehensive legal and policy instrument. The study urges the government to look into institutional focal points and then uproot hindrances impeding well functioning of them.

Key words: GoE, Human rights, internally displaced persons, international human rights law, human rights obligations.

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CHAPTER ONE

1. BACKGROUND

The term Internally Displaced Persons (IDPs) is a recent development, despite the fact of long existence of the situations giving rise to internal displacement. The problem of internal displacement emerged in recent years as one of the most pressing humanitarian, and human rights issues facing the international community.¹ It was not until the last decade of the 20th century that the term “internally displaced persons” (IDPs) came into regular usage and that international attention turned toward the potential creation of an international system to deal with IDPs.² Some attribute the use of such term during the Cold War when receiving the nationals from opposition blocs fleeing for political or other reasons.³ UN Guiding principles describes IDPs as persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.⁴

Globally today there exist more than sixty million people internally displaced as a result of violent conflicts, developmental projects and other human rights violations⁵ and displacement became one of the major humanitarian, human rights and security problems in the world. Majority of IDPs dwell in Africa.

Despite this fact, there is no single international legal instrument that is exclusively devoted to their specific protection needs. Francis M. Deng said “the issue of internal displacement has

¹ Deng Francis in foreword to Marc Vincent and Refslund Sorensen (Eds) Caught between Borders: Response Strategies of the Internally Displaced (2001)13.

² Magdalena Silska, Protection of Internally Displaced Persons: An International Legal Obligation? Is available at www.czasopisma.pan.pl accessed on May 13 2019

³ Catherine Phuong, the International Protection of Internally Displaced Persons (2004)3

⁴ UN Guiding Principles on Internal Displacement (1998) Paragraph 2.

⁵ IDMC, “Global Review of People Displaced by Conflict and Violence”, Internal Displacement Monitoring Center, Norwegian Refugee Council, (2017). <http://www.internal-displacement.org/> (accessed March 17, 2019).

remained glaring humanitarian and human right challenge before the international community”.⁶ That is, unlike the refugees who benefit from the international convention (1951 Refugee Convention) and international institution (Office of the United Nations High Commissioner for Refugees), the IDPs neither have separate international convention nor international institution to address their problems⁷less the non-binding 1998 UN Guiding Principles on Internal Displacement, which is developed as a means to draw attention from the international community’s to address the problem of these people.⁸ Due to that resorting to regimes of general applications will be necessary to assess the protection of IDPs. Therefore the protection cover of IDPs emanates from different international laws though still the protection under these regimes is not tailored to the situation of this vulnerable group.

Specifically, the legal protection of IDPs stems, first from human rights law⁹, which remains relevant in most cases of internal displacement¹⁰ and they are entitled to enjoy, in full equality, the same rights and freedoms under domestic and international law as the rest of a country’s citizens.¹¹ Therefore, IDPs can enjoy those basic and fundamental rights embraced under IHRL.¹²To this end International Bill of Human Rights (UDHR, together with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)) and other international and regional instruments of human rights will be relevant legal frameworks for protection of IDPs. Although IDPs are not specifically mentioned in any of these documents, the provisions included in those documents can still provide them with protection¹³as these instruments are applicable to ‘everyone’. IHRL

⁶Francis M. Deng, "The Global Challenge of International Displacement" Washington University Journal of Law and Policy, (2001)141-142

⁷Goodwin Gill, “International Protection and Assistance for Refugees and Displaced: Institutional Challenges and United Nations Reform” Oxford (2006)1-3

⁸ Francis Deng, “Guiding Principles on Internally Displacement”, International Migration Review 33 (1999) 484-493

⁹ Erin D. Mooney, Principles of Protection for Internally Displaced Persons(Vol. 38,International Migration review) 81

¹⁰ Internally displaced persons: Compilation and Analysis of Legal Norms, (5 December 1995); Internally displaced persons: Compilation and Analysis of Legal Norms, Part II, (11 February 1998). Conversely the Convention on the Rights of the Child includes no derogation clause thus it is applicable to all children in all situations.

¹¹ Guiding principles(n 4), principle 1

¹² “International Human Rights Law and the Role of Legal Professions: A General Introduction,” ,Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers (United Nations 2003) 4

¹³ Catherine Phuong, the International Protection of Internally Displaced Persons (Cambridge University Press 2004) 43

aims to protect individuals from state abuse (vertical obligation) and imposes obligation on the state to protect from abuse by peers (horizontal obligation). Therefore, IHRL remains relevant as far as state obligations towards this vulnerable group of persons are concerned.

The second is IHL. Whenever internally displaced persons find themselves in a situation of armed conflict, they are also protected by IHL. In international armed conflicts this includes in particular the Fourth Geneva Convention and Protocol I Additional to the Geneva Conventions, and in non-international armed conflicts Article 3 common to the Geneva Conventions and Protocol II thereto. IHL provides important protection for those who have already been uprooted, and, most importantly, against arbitrary displacement.

Moreover, at international plane other important layer of law that is relevant for protection of IDPs is international criminal law that closes the opportunity of impunity as well as denies safe haven for perpetrator of act which constitute international crime that possibly involve displacement of individuals. This shows protections and rights of IDPs are scattered under different these binding international instruments.

Besides the above binding legal regimes of general application at international level towards IDPs, we have also non-binding normative framework, UN Guiding principles for protection and assistance of IDPs. Be that as it may, still there is gap in protection needs of IDPs at international plane is concerned.

To solve the problem of protection gap, there are new evolutions at regional and sub-regional level for protection of internally displaced persons. At regional level we have AU convention¹⁴ which is the first regionally binding specific legal framework in the world. At sub regional level we have great lake protocol.¹⁵ Many African countries are state parties to Kampala convention and assumed obligations embraced under the convention.

¹⁴AU convention on protection and assistance of internally displaced (2009) or Kampala convention

¹⁵Great Lakes Region Protocol on the Protection and Assistance to Internally Displaced Persons 2006

As far as the protection and assistance of internally displaced persons is concerned, the primary responsibility on the state under whose territory displacement occurs.¹⁶ The nature of these obligations, that to be shouldered by states, can be of negative and positive.¹⁷ Regarding internal displacement, the most important negative obligation for a state would be not to displace individuals and the most important positive obligation would be to prevent individuals from being displaced (by others)¹⁸ and provision of protection of and assistance to victims. The typology of these obligations imposed by international standard setting instruments (of human rights) are classified as ‘to respect’, ‘to protect’, and ‘to fulfill’.¹⁹ As far as IDPs are concerned these obligations need to be undertaken in all phases of displacement: protection from arbitrary displacement, protection and assistance during displacement, and securing solutions to displacement. To give effect to these international obligations, it requires that state parties adopt legislative, judicial, administrative, educative and other appropriate measures.²⁰ In context of IDPs this requires specific law and institution. To this end, some countries have displaced persons specific law and institution²¹ as the situation IDPs exist demand comprehensive law tailored to the situation.

The existence of rapid economic development, ethnic conflicts, recurrent droughts while lack of drought-resilience, seasonal floods and other natural disasters resulted in large number of IDPs in Ethiopia.²² Currently, the country is facing problem of internal displacement in alarming manner, mainly due to ethnic conflict.²³ The GoE also started to acknowledge the existence of IDPs in the country²⁴ and has in recent years adopted strategic plan to address internal displacement in

¹⁶ Guiding principles (n 4) principle 3; see also Kampala convention Art. 3

¹⁷ UN Human Rights Committee General comment No. 31, para.6; Committee on Economic, Social and Cultural Rights General comment No. 3, para

¹⁸ Francis M. Deng (6) 44

¹⁹ Henry Shue, basic Rights: Subsistence, affluence and US foreign policy (2nd Ed.) (1996) 35; “Handbook for the Protection of Internally Displaced Persons” (Global Protection Cluster Working Group 2009) rep 21

²⁰ General comment No. 31(n 17), para.7

²¹ Kenya has the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act 2012

²² “DMC: Ethiopia: Country Information” (Internal Displacement Monitoring Centre (IDMC))

<<http://internaldisplacement.org/countries/ethiopia>>

²³ About 3.1 million persons are displaced because of ethnic tension occurring here and there, www.fanafb.com accessed March 7, 2019

²⁴ Global report on internal displacement (2019) 14

the country.²⁵ Still, the number of new displacements each year continues to be alarmingly high.²⁶ The number of people forced to leave their homes and move to another place in Ethiopia has risen over 3 million. About 1.4 million people were forced from their homes in the first half of 2018. This is more than in Syria, Yemen, or the Democratic Republic of Congo and represents the fastest growing displacement crisis in the world.²⁷ Two-thirds of today's displaced people have fled inter-communal violence. Ethnic tensions have boiled over into violence; the violence and displacement has spread even further with the sweeping reforms and profound transformation that are undergoing in the country.

According to “handbook for the protection of internally displaced persons”²⁸ displacement exposes the victims to violation of their rights and to most commonly threats to life, safety and security such as Stigmas, discrimination, marginalization, arbitrary detention or arrest, family separation, to torture or cruel, inhuman and degrading treatment, sexual and gender-based violence, sexual exploitation, sexual slavery and harmful traditional practices, enslavement, forced recruitment and human trafficking, forced displacement, forced return or relocation, destruction of livelihoods and property, confiscation and disappearance of property, obstructing and impeding of humanitarian assistance. The Ethiopian IDPs faces inevitably some of these plights, despite their entitlement to different rights as with other compatriots of the country.

GoE is state party to almost all core international human rights treaties²⁹ as well as state party to regional human rights instrument which is ACHPR.³⁰ These treaty instruments are part and parcel of law of the land.³¹ Ethiopia has signed IDPs specific Kampala convention but yet to ratify it. As per the ratified instruments, IDPs in Ethiopia are entitled to various rights equally

²⁵ Strategic Plan to Address Internal Displacement in Ethiopia, Prepared by Ministry of Peace and National Disaster Risk Management Commission, April 2019.

²⁶ *ibid*

²⁷ European Civil Protection and Humanitarian Aid Operation , updated 17/12/2018

²⁸ “Handbook for the Protection of Internally Displaced Persons” (Global Protection Cluster Working Group 2009) report 1

²⁹ Ethiopia is a party to 6 of 7 core human rights treaties. It joined the ICERD in 1976, ratified CEDAW in 1981, CRC in 1991, ICCPR and ICESCR in 1993, CAT in 1994. See the country report to treaty body report www.abyssinalaw.com accessed on March 3 2019.

³⁰ Ratification story of ACHPR as of may 2016 reveals 53 countries including Ethiopia has ratified the convention

³¹ FDRE constitution proclamation No.1/1995 , Art 9(4)

without discrimination with other citizens.³² This imposes obligations on GoE to ensure enjoyment of different rights by IDPs.

Indeed, based on the above mentioned international and regional human rights instruments to protection of IDPs, GoE has three obligations .i.e. ‘to respect’, ‘to protect’, and ‘to fulfill’ and giving effect to these obligations requires to take legislative, judicial, administrative, educative and other appropriate measures for the protection of IDPs.

1.1. Statement of problem

The impact of drought and flooding, regional border disputes, inter-communal conflict and ethnic tension caused substantial growth of IDPs over 3 million.³³ Conflict and displacement were recorded along three of the Oromia region’s borders, with the Southern Nations, Nationalities and Peoples’ (SNNP) region in the south-west, the Benishangul- Gumuz region in the north-west and the Somali region in the east.³⁴ Urban centers were also affected, including Addis Ababa and Jigjiga, the capital of the Somali region.³⁵ The sizes IDPs in Ethiopia get more than tripled between 2015 and March 2019.³⁶ Ethnic conflict is the leading cause for the current displacement.³⁷

The situation caused violation of civil- political and socio- economic rights of IDPs. It resulted in death of unknown numbers of victims, many were injured and others suffered gender-based violence.³⁸ It also caused loss of homes, and then victims fall in need of shelter, losing access to land and other property and then cut off from normal livelihoods and sources of income which exposed victims to suffer poverty, marginalization, exploitation and abuse. It caused difficult to them to access adequate food, safe water and public services, such as education and health care.

³² ICCPR 1976 Art. 2(1) and other human rights instruments provides for guarantee of equality. The non discrimination clause included human rights instruments dictates equal enjoyment of rights by all human beings which holds true to IDPs.

³³ Ethiopia Humanitarian Needs Overview of 2019

³⁴ Global Report On Internal Displacement(GRID)MAY 2019

³⁵ Addis Fortune, “Ethiopia: Displacement, No Easy Way Out”, August 28, 2018

³⁶ It rose from 636,305 by the end of 2015 to 3.19 million in March 7, 2019.

³⁷ IDM, Summary : New displacements between January and June 2018, www.internal.displacement.org accessed on 3 June 2019

³⁸ OCHA Country Emergency Situation, Ethiopia Situation Report No. 23. Eight GBV cases were reported from four Woredas of west Guji zone accessible from www.unoha.org accessed 3 June 2019

The situations also resulted in high levels of hunger, malnutrition and disease as result of inadequate humanitarian assistance.³⁹ Getting worse humanitarian situation in some sites where displaced exist was reported by local and international media.⁴⁰ In addition, displacement collapsed of family and community-structures and separation of family members, which eventually ends with unaccompanied and separated children, single-headed households, then exposes older persons and persons with disabilities to heightened risk of abuse. Identity documents often are lost, destroyed or confiscated in the course of displacement. As a result, IDPs often faced difficulties in accessing public services, such as education and health care, limits on freedom of movement and heightened risk of harassment, exploitation or arbitrary arrest and detention. In response to this, the authorities are inviting the IDPs to return to their place of origin. Lack of security guarantee, in some place, caused secondary and tertiary displacement after returning to original place.⁴¹ Returning IDPs before taking preliminary measures such as peace building and assuring security needs of returnees amounts to premature return.⁴²

As shown in background the primary responsibility of protecting (human rights) of IDPs rests with state under whose territory the displacement occurs.⁴³ Ethiopia cannot be exception to this international consensus. The human rights obligations of Ethiopia towards IDPs are obligation to respect, to protect and to fulfill. To live up to these obligations GoE has to take legislative (including ratification), judicial, administrative, educative and other appropriate measures.⁴⁴ At national level besides ratification of international treaties⁴⁵ constitution devoted more than one third of its content to provisions on fundamental human and democratic rights, which IDPs are

³⁹ OCHA, Humanitarian Bulletin Ethiopia Issue #5| 4-17 March 2019 , www.unocha.org/ethiopia accessed on 3 April 2019

⁴⁰ Al Jazeera report of 25 August 2018 Gedeb woreda (Gedeo zone, SNNPR) ,www.aljazeera.com accessed on 3 April 2019

⁴¹ Ethiopia humanitarian bulletin issue#5|4-17march 2019; IDPs in Gotiti have suffered secondary and tertiary displacement.

⁴² OCHA Country Emergency Situation (n 36)

⁴³ Guiding principles (n 4), principle 3

⁴⁴ International Human Rights Law and the Role of Legal Professions: A General Introduction, supra note12.

⁴⁵ FDRE constitution (n 31), according to its article 9(4) all treaties ratified by Ethiopia are part and parcel of the law the land. Based on this, IDPs can claim rights recognized under those relevant treaty instruments.

entitled to can be taken as important legislative measure.⁴⁶ Constitution also embodies rights of specific relevance towards IDPs such as the right to liberty of movement and freedom to choose their residence as per article 32.⁴⁷ These rights prohibit forced displacement.⁴⁸ Moreover, the constitution embraces right to engage freely in economic activity and to pursue a livelihood of his/her choice anywhere within the national territory.⁴⁹ Additionally, the constitution imposes the obligation to take measures to avert any natural or manmade disaster⁵⁰ which possibly cover displacement. Despite these constitutional guarantees and corresponding duties on the government, displacement continued to occur here and there.⁵¹

On top of constitution's provisions, subsidiary legislations such as national policy and strategy on disaster risk management (2013) which addresses humanitarian needs of IDPs and Proclamation on expropriation of Landholdings for public purposes and payment of compensation (Proc. № 455/2005) which address the displacement induced by development projects⁵² are there. Return or resettlement of the victims and compensating them for the losses, and then rehabilitate them need to be addressed without resorting to forced and premature return.

Moreover, the obligation to protect requires preventing violations of human rights of IDPs by third parties. This can be assured by criminalizing the acts that gives rise to displacement. In this regard criminal laws play prevention role.

Institutions such as National disaster risk management commission (NDRMC) and the MoP⁵³ are focal points of IDPs. The first one is mainly mandated with humanitarian aids to the victims of

⁴⁶ Adem Kassie, 'human rights under the Ethiopian constitution: a descriptive overview', (Vol. 5, Mizan Law Review Spring 2011) 43

⁴⁷ FDRE constitution (n 31), Art. 32

⁴⁸ UN HRC General Comment No. 27 Sixty-Seventh Session (1999), para. 7. According to this general comment on article 12 (the right to movement) of ICCPR, UN Human rights committee said that, the right to reside in a place of one's choice within the territory includes protection against all forms of forced internal displacement.

⁴⁹ FDRE constitution (n 31), Art. 41

⁵⁰ *ibid* Art. 89

⁵¹ Currently 3.1 million persons are displaced because of ethnic tension occurring here and there. www.fanafb.com accessed March 7, 2019.

⁵² Proclamation on expropriation of Landholdings for public purposes and payment of compensation (Proc. № 455/2005), in case of displacement induced by development project this proclamation establishes and affirms framework for the basis and compensation for displacement and land expropriation.

⁵³ Proclamation for "Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia," Proclamation No. 1097/2019, Art. 9

displacement.⁵⁴ The proclamation on power and function of executive organ of Federal government specifically entrusted MoP with the powers and duties relevant to protection of IDPs such as to develop sustainable political solutions for disputes and conflicts that may arise within or between regional states.⁵⁵ The commission also is established with the objective of maintaining peace, justice, national unity and consensus and reconciliation among Ethiopian peoples.⁵⁶ Administrative measure also is taken by the Government in that it organized under three sub-committees reporting to a Steering Committee chaired by the Deputy Prime Minister. Despite, the measures on the behalf of government of Ethiopia the situation displacement continued and infringement of rights of displaced too. Therefore, it will be useful to examine the obligations of GoE towards IDPs and to look into sufficiency of measures.

1.2. Literature Review

The existing studies on internal displacement are mainly concerned with the cause, consequence and challenges IDPs. The studies mainly focus on area of displacement induced by development projects. Accordingly, Muhidin Aman⁵⁷ under his thesis entitled “development induced displacement in the context of UN guiding principles and AU convention: experience from Addis Ababa city urban renewal projects” assessed that process of development induced displacement in the city is not in line with international standards. In addition, Etenesh Melesse⁵⁸ scrutinized the impact of development induced displacement on female household heads where she finds out the existence of high problems or risks as a result of displacement on female household heads than their male counterpart. Furthermore, Mathewos et al⁵⁹ in their study shows business have been growing in parallel with urban development, hence Ethiopian urban

⁵⁴ National Disaster Risk Management Commission Establishment Council of Ministers Regulation No. 363/2015, Art. 3 NDRMC is established as independent institution responsible to prime minister according to CoM regulation for establishment the commission.

⁵⁵ Proclamation No.1097/2019 (n 53), Art. 13

⁵⁶ Draft Reconciliation commission establishment Proclamation, Art.4

⁵⁷ Muhidin Aman(2016), “development induced displacement in the context of UN guiding principles and AU convention: experience from Addis Ababa city urban renewal projects”, LL.M thesis, AAU available at www.chilot.com, accessed on 7 may 2019

⁵⁸ Etenesh Melesse (2007), “Impact of development induced displacement on female Household in inner city slum areas in Addis Ababa: The case of Sheraton Addis expansion project”, MA Thesis, AAU. available at www.chilot.com, accessed on 7 may 2019

⁵⁹ Mathewos Asfaw, etal (2011), Assessment of Urban Development Practices on Business Expansion in Ethiopia, Private Sector Development Hub/Addis Ababa Chamber of Commerce and Sectoral Associations, Addis Ababa, Ethiopia www.chilot.com, accessed on 7 may 2019

development seem to favor business while low income businesses are negatively affected. Mehari Taddele Maru⁶⁰ under the working paper entitled “Causes, Dynamics, and Consequences of Internal Displacement in Ethiopia” assessed the causes of displacement in Ethiopia, its dynamics and the consequences of displacement. However, his paper not devoted to discuss obligation of government towards IDPs. Under the working paper, He recommended the Ethiopian government to build national capabilities that can transform the existing system into an effective governance Programme that will compensate and protect the victims of internal displacement, however, he recommended doing such thing not as obligation of the government. M.A. Arbouw conducted a study entitled “the role of the African Union in addressing the lack of legal protection afforded to internally displaced persons in Ethiopia “which assessed the extent to which the AU can provide a solution to the lack of legal protection afforded to IDPs in Ethiopia. Specifically, the thesis aimed to answer the question to what extent the AU is able to address the gaps that exist in the international and national legal framework regarding the protection of the needs of IDPs. This shows that his work is confined to assess the role of AU regarding protection and assistance of IDPs However, his assessment aimed not to assess state’s human rights obligations towards IDPs. Moreover, his work does not thoroughly address the legislative measures. In general, there is no exhaustive and comprehensive research done that explores the human rights obligations of the state towards IDPs in Ethiopia. Therefore, this research will attempt to fill this gap.

1.3. Objectives of the study

1.3.1. General objective

The general objective of this study is to analyze the obligation of the government of Ethiopia towards IDPs emanating from international human rights treaties ratified by the government and evaluate their implementation.

1.3.2. Specific objectives

Specifically this study strives:-

- i. To asses human rights obligations of Ethiopia towards IDPs
- ii. To assess measures GoE should take to fulfill its obligations

⁶⁰Mehari Taddele Maru(2017), Causes, Dynamics, and Consequences of Internal Displacement in Ethiopia

- iii. To look into measures (legislative, institutional and administrative) taken by the GoE to live up to its obligations
- iv. To examine whether the existing national legal frameworks of Ethiopia are adequate to ensure the protection of the human rights of IDPs and comply with the international obligations of the government
- v. To assess whether GoE is living up to its human rights obligations towards IDPs

1.4. Research questions

1. What are the human rights obligations of Ethiopia towards IDPs?
2. What measures should the government of Ethiopia take to fulfill its human rights obligations towards IDPs?
3. What measures (legislative, institutional and administrative) GoE has taken to live up its obligations towards IDPs?
4. Are the measures taken are adequate to ensure the protection the human rights of IDPs?
5. Whether GoE is living up to its human rights obligations towards IDPs?

1.5. Scope and limitation of the study

IDPs are citizens forced to be in plight and in need of action that alleviates the suffer they face. Unequivocally, the full protection of IDPs requires involvement of different stakeholder and seeks multidimensional responses. However, they out the ambit of the study. There is consensus that it is the state under whose territory displacement occurs that bears primary responsibility to protect and assist them. Therefore, it is GoE that shoulder the obligations as far as IDPs in the country are concerned. The source obligations as far as protection of IDPs may emanate from different regimes. However, this study is confined to making an inquiry into human rights obligations of GoE towards IDPs. In doing so, the researcher will assess the legislative and institutional or other measures taken or need to be taken by state to live up to the obligations assumed by ratifying relevant international human rights instruments for protection of IDPs. According, it will assess whether the government is observing its human rights obligations towards IDPs.

As far as the limitation of the study is concerned, as the issue very sensitive accessing victims was made impossible. Due to that analysis is mainly based on secondary sources.

1.6. Significance of the Research

The study intended to make an inquiry into human rights obligations of government towards IDPs. While doing so it addresses the measures that should be taken the government to live up to obligations assumed by government by ratifying international regional human rights treaties. Then it will identify the inadequacy or otherwise of national measures (legal and institutional) f via which GoE fulfills its obligations towards the protection of IDPs. Then the study work will come up with recommendations for allowing the government to live to its international obligations that emanate from international human rights instruments. Accordingly, it could inform the Policy and law makers to make a new legislation or amend the existing legislation in order to fulfill the obligations of state towards IDPs then to be in line with the country's international commitment. Further the finding of the study may enable government to look in to institutional frameworks to make the protection of internally displaced comprehensive and adequate. This study will be worthwhile for further inquiry concerning IDPs and may serve as stepping stone for such purpose. Moreover, the study will contribute a prologue to readers as to whether the existing legal and institutional frameworks in Ethiopia satisfy the protection needs of IDPs.

Finally, this study also could add some knowledge to the existing academic literature and make way to consider displaced person's durable solution.

1.7. Research Methodology

Research is combination of doctrinal as well as qualitative research (socio-legal) type of study. It is doctrinal since the study starts with exploring obligations of state human rights regime. Then based on the international standard it analysis the adequacy or otherwise of national legal frameworks. The study is also socio-legal research as it aims at examining the fulfillment or non-fulfillment of obligations through qualitatively analyzing measuring taken in respect to some needs of IDPs.

Both primary and secondary data sources have been used in conducting this research. gather data primary data used in the research are documentary sources, interviews, interview with key informant officials from concerned focal point institutions of IDPs in Ethiopia was made, and the primary documentary sources used in this study are international and regional human rights laws. National laws such as FDRE Constitution, FDRE criminal code, Expropriation Proclamation No. 455/2005, Ethiopian Nationality Proclamation No.378/2003, Ethiopian Rural Land Administration and Land Use Proclamation No. 456/2005 have been analyzed to test adequacy of legal frameworks for protection, then to whether government of Ethiopia living up to its human rights obligation towards IDPs. In addition, the study also has used the relevant reports on situation of IDPs as secondary sources.

1.8. Ethical consideration

This researcher has got numerous copies of letters from the Dean of School of Law at Jimma University appealing all the concerned bodies to cooperate with researcher in letting access to collections and willing to be interviewed in the course of this study. Hence, the researcher has contacted and communicated with the FDRE Ministry of Peace officials and officials of National Disaster Risk Management Commission. Government officials whom researcher interviewed have consented verbally for their name to be freely cited in the research, and none of them asked for anonymity. Consequently, the researcher has freely divulged the name of all the informants as they have permitted.

1.9. Structure of the Study

The research report organized in to five chapters. The fist one is an introductory chapter. Chapter two of the study addresses the conceptual frame works related to IDPs, causes of IDP, relevant international and regional human rights regimes for protection of IDPs and the corresponding obligations of states under those relevant instruments. Chapter three of the study explores national legal and institutional framework as a means to fulfill the human rights obligations towards IDPs. Chapter four of the research is devoted to make analysis of national measures taken by GoE in light of its human rights obligations towards IDPs. The final Chapter of the research presents conclusions and will forward recommendations based on the discussion in preceding chapters.

CHAPTER TWO

2. CONCEPTUAL AND LEGAL FRAMEWORKS ON IDPs

2.1. The Concepts IDPs and its causes

2.1.1. Concept of IDPs

The definition of IDPs has not been embodied in universally binding documents which are relevant for their protection. However, numerous explanations about the concept of IDPs are there. Accordingly, regard was made to the general definition of the expression – displaced person, which at first obtained its interpretation and significance in the General Assembly Resolution 3454 (XXX) of 9 December 1975.⁶¹ However, the definition applied not only to the internally displaced but also to persons who crossed the borders of home country for reasons of civil strife, etc. who are not refugees according to the statutory definition under 1951 Refugee Convention but are in a similar situation like refugees – externally displaced persons.⁶² The term displaced person merely was employed to refer the category of internally displaced persons in terms of other respective Resolutions of the General Assembly.⁶³ Till 1976, the concept IDPs was given an unclear interpretation, although it, particularly, encompassed and primarily referred to the term of internally displaced persons.⁶⁴

However, in one of the more recent resolutions the General Assembly reiterated the need to provide due assistance to refugees and displaced persons, whereas the latter category was mentioned solely in the context of IDPs.⁶⁵ A widely used working definition of IDPs was expressed by Secretary General Boutros-Ghali in the UN Commission on Human Rights report of 1992, where the internally displaced were defined as follows:

“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

⁶¹ General Assembly Resolution 3435/30 of 1975, para.3

⁶² General Assembly Resolution 35/41 of 1980

⁶³ General Assembly Resolution 2958/28 of 1972 on Assistance to Sudanese Refugees returning from abroad

⁶⁴ Ivor C. Jackson, *The Refugee Concept in Group Situations*, Series: *Refugees and Human Rights*, Vol. 3 (Ed. Prof. Anne Bayefsky), (1999) 416-420

⁶⁵ General Assembly Resolution 50/152 of 1995

rights or natural or man-made disasters, and who are within the territory of their own country.”⁶⁶

However, this working definition presented to be no absolute explanation of the real background on the causes of internal displacement on account of the expression of “fleeing suddenly or unexpectedly”. The contention is that, generally, forcible movement is not necessary to be originated in sudden or unexpected form, to the contrary, it may emerge as a result of long term conflict or systematic human rights violations exercised on part of the authoritarian government, in particular. Another part of this expression which gives rise to concern is about a required quantity of individuals in order to consider them internally displaced persons. The following indication “persons who have been forced to flee in large numbers” cause an ambiguity in identification of those who may fall under the definition of IDPs, since in each certain situation provoking the forced displacement the number of internally displaced persons varies depending on the circumstances made them flee from the places of habitual residence. In other words, the term “large number” is subjective notion and may differ in all situations of forced expulsion.

Another sample of the definition of internally displaced persons was also proposed by the International Organization for Migration (IOM), it states:

“The expression IDPs generally refers to persons who, as a result of armed conflict, internal strife, systematic violations of human rights or natural or manmade disasters, have been forced to flee their homes, suddenly or unexpectedly, and in large numbers (mass movements), and who are within the territory of their country including returnees who, having fled to another country, subsequently return to their own country but are unable to return to their original place of residence”.⁶⁷

The final concept definition of IDPs found its expression in the first document of international standards introduced into the United Nations Commission on Human Rights in April, 1998. The Guiding Principles on Internal Displacement which stipulates the rights of internally displaced

⁶⁶Commission on Human Rights, Analytical Report of the Secretary-General on Internally Displaced Persons, (United Nations, February 14, 1992), para. 17

⁶⁷IOM (Internally displaced persons), Contribution of the IOM to the 3 February 1993 meeting of the United Nations Inter-Agency Standing Committee (IASC).

persons alongside with the related obligations of each sovereign state or other belligerent group covering the whole developing chain of displacement: the period before and during displacement as well as the procedures relative to the return and reintegration of IDPs. Guiding Principles on Internal Displacement defines IDPs as:

“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”.⁶⁸

The Guiding Principles enshrines the definition which is to be considered the broadest descriptive stipulation of the classification of internally displaced persons. It refers to the following different situations: tensions and disturbances regulated by International human rights law, non-international and international armed conflicts generally covered by humanitarian law, and natural and human-made disasters mentioning the cases when state authorities address these disasters in a discriminative manner with regard to certain ethnical minority group. The key elements of the given definition of internal displacement are the forced movement within the borders of the state.

2.1.2. Causes of internal displacement

Internal displacement can be the result of a variety of complex causes that make IDPs extremely vulnerable to a number of threats. Main causes that result internal displacement include conflict and violence, natural and man-made disasters, development projects, arbitrary displacement and forced evictions.⁶⁹ Hereunder, each causes of internal displacement are discussed.

A. Conflict and violence

Conflict and violence are some of the main causes of displacement in Africa and many of these volatile situations are characterized by a severe disrespect for human rights. Because of armed conflicts between States, civil wars, genocides, political instability, inter-communal tensions,

⁶⁸ Guiding Principles (n 4), para. 2

⁶⁹ M. Morel, *The Right not to be displaced in International Law*, Antwerpen, Intersentia (2014) 47-48 and 50-51.

generalized violence and human rights violations, people frequently become displaced⁷⁰ Conflict- and violence-related displacement in Sub-Saharan Africa is triggered by four main factors according to Mr. Walter Kälin, the former Representative of the Secretary-General on the Human Rights of Internally Displaced Persons. These four main factors are: the competition for resources, the presence of rebel groups, endemic poverty and inequality, and the proliferation of small arms.⁷¹ Accordingly, poverty and inequality can be the cause of conflicts and violence, and can therefore also be an indirect cause of internal displacement.

B. Natural and man-made disasters

The UN Disaster Relief Organization defines a disaster as “a serious disruption of the functioning of a society, causing widespread human, material, or environmental losses which exceed the ability of the affected society to cope using its own resources. Disasters are often classified according to their speed of onset (sudden or slow), or according to their cause (natural or man-made)”. As a result of this definition, only those events where the losses exceed a society’s ability to cope and external support is required, are considered to be disasters. People are frequently uprooted and forced to flee their homes because of natural disasters such as floods, droughts, storms, hurricanes, tsunamis, volcanic eruptions, landslides, wildfires and earthquakes. These disasters are now more often than ever climate-related.⁷² According to figures obtained by IDMC, an estimated 19.2 million new displacements in 2015 were related to disasters.⁷³ In its 2009 report IOM also observed that it has been predicted that between 25 million to one billion people could be displaced by climate change by 2050, as climate-related disasters will only intensify in the future.⁷⁴ Africa is one of the regions where these environmental catastrophes are expected to be exceptionally severe. The consequences of climate change could even fuel tensions and conflict due to the competition for scarce resources such as water and food. Post-disaster displacement is furthermore often internal or even local rather than across an

⁷⁰ S. Albuja, E. Arnaud, and Others, “Global Overview 2014: People internally displaced by conflict and violence”

⁷¹ C. D’orsi, “Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa”, 75-76

⁷² F. Z. Guistiniani, “New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa”, *Denv. J. Int’l L. & Pol’y* (2011)363-370

⁷³ IDMC, “Global Report on Internal Displacement”, (IDMC 2016)7

⁷⁴ International Organization for Migration, “Migration, Environment and Climate Change: Assessing the Evidence”, (IOM 2009), 9 and 42.

international border, so the number of IDPs will undoubtedly rise during the upcoming decades.⁷⁵ Man-made disasters that are capable of uprooting people include industrial and technological disasters, such as severe pollution, fires or explosions.⁷⁶

C. Development projects

Internal displacement is also increasingly caused by development projects, i.e. public or private sector projects like the creation of industrial parks, the construction of urban infrastructure such as roads, bridges, dams, airports, railways, canals and electrification, tourism projects, or industrial processes such as natural resource extraction.⁷⁷ These projects can, admittedly, benefit developing communities by creating jobs and improving the economy. Nonetheless, they also generate severe costs which are borne disproportionately by certain members of society, such as indigenous peoples and poor and marginalized groups of people that live on land that is valuable as real estate or because of the presence of natural resources. So once again, poverty-stricken groups of people are more at risk of being displaced. Aforementioned groups are indeed frequently and disproportionately displaced because of development projects, generally without their previous knowledge or consent and without being offered any adequate compensation. They often lose their houses and livelihoods as a consequence and most likely face long-term homelessness, landlessness, hardship and aggravated poverty.⁷⁸

D. Arbitrary displacement and forced evictions

Arbitrary displacement includes displacement due to policies or practices of racial discrimination or other similar practices aimed at altering the ethnic, religious or racial composition of a population; displacement during armed conflicts (unless it occurs because of security or imperative military reasons compliant with international humanitarian law); displacement used as a method of warfare or as a collective punishment; displacement caused by generalized violence or human rights violations; displacement as a result of harmful practices; and forced

⁷⁵S. Albuja, E. Arnaud, And Others, “Global Overview 2014: People internally displaced by conflict and violence”, 12-13

⁷⁶ W. Courtland Robinson, “Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement” *Denv. J. Int'l L. & Pol'y* (2014)9.

⁷⁷ *ibid.* 9-15

⁷⁸ *ibid.* 10-13

evacuations not justified by the affected peoples' safety and health.⁷⁹ In short, it is displacement for unfounded or illegitimate reasons, which may constitute a war crime or a crime against humanity according to several international instruments, such as the Fourth Geneva Convention and the Statute of the International Criminal Court.⁸⁰ In Africa, arbitrary displacement is a widespread cause of displacement. Forced evictions are a common cause as well, because of the fact that people in rural areas typically do not have property deeds, so their lands can easily be reallocated to the State or to a private company. When these people, pastoralists⁸¹ in particular, lose their lands, they in all likelihood also lose their livelihoods and are subsequently forced to leave their homes. This once again results in the severe impoverishment and marginalization of the IDPs.⁸²

2.2. Legal frameworks relevant for protection of internally displaced persons

As IDPs do not cross international borders then they are not entitled to protections under 1951 convention as refugees.⁸³ Although they have departed from their homes because of war, forced evictions or other reasons, they have not left the country whose citizens they normally are. Though displacement situation creates many special needs among victims, there is no specific international convention that addresses protection needs of IDPs. And also none of the innumerable provisions of international human rights law treaties explicitly addresses their plight.⁸⁴ However, they remain entitled to enjoy the full range of human rights that are applicable to other citizens of the country under whose jurisdiction they are.⁸⁵ Therefore, seeing in detail the relevant legal as well as normative frameworks for protection of IDPs is of paramount significance. To this end, under this section the discussion of international as well as regional

⁷⁹Kampala Convention 2009, Art. 4(4); UN Guiding principles, Principle 6 provides for same thing.

⁸⁰Geneva Convention IV 1949, Art. 49 and Art.147; Rome Statute of the International Criminal Court 1998, Art.7.1, Art.7.2, d and Art.8 (2) (e) (viii)

⁸¹International Fund for Agricultural Development (IFAD) 2009, "Livestock and pastoralists" Pastoralists are people who derive more than 50 percent of their income from livestock and livestock products.

⁸² African Union Commission, "The Kampala Convention One Year On: Progress and Prospects", (IDMC 2013) 26-28

⁸³Refugees are entitled to specific international protection under 1951 convention

⁸⁴Walter Kälin, the guiding principles on internal displacement as international minimum standard and protection tool, Refugee Survey Quarterly, Vol. 24, Issue 3,(2005)28

⁸⁵ibid

legal and normative frameworks for protection of rights of IDPs will be made. In doing so, the obligations of state under human rights regime will be addressed.

2.2.1. International legal frameworks

It is obvious that, national laws constitute the primary legal framework for protection activities regarding IDPs, and also it should reflect a State's international legal responsibilities. Besides national laws, understanding of the rights of IDPs and the legal obligations of States under international law is also essential when working within domestic legal systems. Internationally IDPs do not enjoy a specific legal protection that is exclusively applicable to them, i.e. an internationally binding legal document that establishes the full scope of IDPs protection still awaits formulation.⁸⁶ However, there is no doubt that the existing international law (human rights regime for this work) apply to IDPs. Accordingly, internally displaced persons are entitled to enjoy, equally and without discrimination, the same rights and freedoms under international law as do other persons. Therefore, we have some pertinent international laws that provide for the rights of IDPs and the corresponding responsibilities of state under whose jurisdiction displacement happened. At international level, we have various instruments which are pertaining legal and normative framework for protection in all situations of internal displacement, including during armed conflict⁸⁷. These are International human rights law; International humanitarian law (in time of armed conflict); International criminal law (for core international crimes which could possibly involve displacement); and UN Guiding principles. However, for this thesis the discussion will be confined to human rights regimes. Here under the discussion will look into the human rights law in relation to IDPs and the obligations of state towards them, since the aim is to make inquiry in to the human rights obligations of the state towards IDPs.

2.2.1.1. International human rights law

Human rights are freedoms and entitlements that every individual should enjoy. They are innate rights for which all human beings are entitled by nature. In other words, they are the fundamental entitlements which every human being enjoys by the mere fact of being a human being. These

⁸⁶Magdalena Silska "Protection of Internally Displaced Persons: An International Legal Obligation?",XXXIV Polish Yearbook of international law(2014)255

⁸⁷Handbook for the Protection of Internally Displaced Persons, Global Protection Cluster Working Group December 2007

rights are enshrined under the core human rights instruments which comprise the Universal Declaration on Human Rights (UDHR) of 1948, as the first human rights instrument developed by the United Nations. It establishes the main 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. Building upon the UDHR and incorporating its principles, legally binding twin Covenants (ICCPR and ICESCR) come into force. These instruments together with UDHR constitute what is regarded as the “International Bill of Rights.” Several additional instruments that reinforce the protection of human rights are adopted. Particularly on issues such as torture, racial discrimination, and on specific groups of persons who face particular obstacles to the full and equal enjoyment of their rights including women, children, refugee, persons with disabilities and migrant workers. On top of that, the protection of human rights is also reinforced in a number of regional human rights instruments. Though none of these instruments specifically address 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. On top of the treaties, many human rights are also part of international customary law. Norms of customary international law include, for example the rights to life, freedom from torture, freedom from discrimination on grounds of gender, race or ethnic origin, freedom from slavery, and freedom from genocide – all of which also are affirmed in international conventions which are relevant as far as protection of IDPs is concerned. International human rights law, which consists of both customary and treaty law, guarantees plethora of rights relevant towards IDPs and then impose obligation on states to respect, protect and fulfill 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”.

The circumstances of displacement, creates immense potential for serious violations of human rights both before and after the displacement, it may result in unacceptable levels of human suffering and misery.⁸⁸ This paves the room for application of human rights law to the situation.

⁸⁸ Stavropoulou, Maria. "The Right Not to be displaced." *American University International Law Review* 9, no. 3 (1994)692-3

Though international human rights do not specifically mention IDPs, instruments included principle of equality and protection against discrimination on “any ground” which could state being displaced possibly included in to.

This relevant Human rights regime sets out the obligations of states to ensure the survival, well-being and dignity of all “persons subject to their territorial jurisdiction”⁸⁹. This inevitably covers IDPs as human rights concerns cutting across all phases of internal displacement from its cause, to the conditions of displacement and to the search for solutions. Therefore, international human rights law naturally provides an appropriate and useful framework through which to analyze and address the plight of the internally displaced.⁹⁰ Therefore, rights and guarantees to which IDPs are entitled before they fled, by virtue of being human beings and citizens or habitual residents of a particular state, remain intact. This inevitably imposes obligations on state under whose jurisdiction IDPs are.

2.2.1.1. Obligations of State under international human rights law towards IDPs

It is obvious that the phenomenon of internal displacement under international law cannot be elaborated without reference to the human rights regime. Because, there is an undeniable interface between internal displacement and human rights, first and foremost because infringements of international human rights are the primary reason for arbitrary displacement. Here in circumstances of displacement the customary international human rights law as well as all human rights treaties that state has committed itself to implement are applicable.

Generally, the obligations of state that it assumes upon ratification of international human rights treaties or developing customary law are three; duty to respect, duty to protect and duty to fulfill⁹¹. These obligations required to be carried out towards IDPs by states, because international community entrusts principally State with ensuring the protection of individuals within their territory (IDPs). While the balance between these obligations may vary according to

⁸⁹ ICCPR9(1976), article 2, paragraph 1, obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

⁹⁰ Erin D. Mooney, Principles of Protection for Internally Displaced Persons.

⁹¹ Henry Shue, basic Rights: Subsistence, affluence and US foreign policy (2nd ed.) (1996) 35; “Handbook for the Protection of Internally Displaced Persons” (Global Protection Cluster Working Group 2009) rep 21

the rights involved, they apply to all civil, political, economic, social and cultural rights.⁹² It is found to be significant to discuss these obligations in context of IDPs and discussed below.

2.2.1.1.1. Obligation to respect

Obligations to respect require the state to refrain from any measure that may deprive individuals of the enjoyment of their rights or of the ability to satisfy those rights by their own efforts. It prohibits State actions that may undermine the enjoyment of rights. According to this obligation, State is prohibited from engaging in activities that displaces persons forcefully.⁹³ This obligation of is mainly negative in nature. However, sometimes State may be of opinion to limit the enjoyment of human rights that may result in displacement of persons. When doing so, it should be based on standard set under international human rights law. ie. State must demonstrate its necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of the rights. This also obligates States to desist from discriminatory behavior and to alter laws and practices which allow discrimination.

2.2.1.1.2. Obligations to protect

obligations of state under international human rights regime is not confined to the respect of human rights, but that States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by the States parties to enable individuals to enjoy their rights. Accordingly, the obligations to protect require the state to prevent violations of human rights by third parties. The obligation to protect is normally taken to be a central function of states, which have to prevent irreparable harm from being inflicted upon members of society. This obligation entails both a preventative and remedial dimension. A State is thus obliged to enact legislation protecting human rights; to take action to protect individuals when it is aware (or could have been aware) of threats to their human rights;

⁹²Handbook for Parliamentarians NO.26, co-published by the Inter-Parliamentary Union and the United Nations (Office of the High Commissioner for Human Rights) (2016)31.

⁹³ Guiding Principles (n 4), principle 6; ICCPR Art. 12 assure the right movement of individuals.

and also to ensure access to impartial legal remedies when human rights violations are alleged. In context of displacement this obligation requires states to stopping activities which uproots persons by third party and once happened ensuring rule of law and compensating victims of displacement for the sufferings. Generally, obligation to protect entails taking immediate steps to ensure that violations rights which give rise to displacement by the State and its agents as well as by third parties are prevented; Ensuring access to impartial legal remedies in cases of alleged violation rights by State or non-State actors.

2.2.1.1.3. Obligations to fulfill

Obligations to fulfill requires the state to take measures to ensure, for persons within its jurisdiction, opportunities to obtain satisfaction of the basic needs as recognized in human rights instruments, which cannot be secured by personal efforts. Although this is the key state obligation in relation to economic, social and cultural rights, the duty to fulfill also arises in respect to civil and political rights too. This obligation further “incorporates both an obligation to facilitate and an obligation to provide”⁹⁴ where the former involves positive initiatives to enable the full enjoyment of economic, social and cultural rights while latter involves direct or indirect State services when individuals or groups are unable, for reasons beyond their control, to realize the right themselves by the means at their disposal.⁹⁵ As displacement result in huge socio economic needs of the victims, state should respond to it.

To live up to these obligations states are required to “appropriate measures”⁹⁶ at their domestic plane. One of the measures is that, they must ensure that their domestic laws, policies and practices are consistent with these obligations. Legislative measure is indispensable and necessary as it may be difficult to combat existing plight effectively in the absence of a sound legislative foundation for the necessary measures⁹⁷. Beside the legislative measure the provision of judicial remedies with respect to rights when infringed is another appropriate measure to give

⁹⁴ Committee of ESCR General Comment No.12 on the right to adequate food and General Comment No.13 on the right to education

⁹⁵ Handbook for National Human Rights Institutions on Economic, Social and Cultural Rights, Professional Training (Series No. 12)19

⁹⁶ ICESCR, ICCPR, Art.2

⁹⁷ committee of ESCR General comment No. 3: The nature of States parties’ obligations (art. 2, para. 1, of the Covenant), para.3

life to rights. Generally, to give effect to obligations which arise from international human rights law to which states committed themselves, it requires States to take legislative, judicial, administrative, educative, and other appropriate measures⁹⁸. As all of human rights legal norms are of paramount significance for protection of IDPs the obligations they impose are also relevant regarding IDPs and should be shouldered primarily by the states with in which displacement occurred.

2.2.1.4. The UN Guiding Principles on Internal Displacement

The Principles bring together many norms applicable to the internally displaced, which heretofore were dispersed and diffused in different instruments relevant for protection of IDPs. They bring together the rights of IDPs and the responsibilities of national authorities and non-State actors towards them. Although not a binding document, like a treaty, the Guiding Principles are based on and reflect existing standards of international law, which are binding.⁹⁹The Principles' got the wide international acceptance. Accordingly, the principles informed national and regional normative frameworks, the Kampala Convention being among the most significant.¹⁰⁰ They are recognized by States as “an important international framework for the protection of internally displaced persons,” as well as a “tool” and “standard” to guide governments, international organizations and all other relevant actors in situations of internal displacement.¹⁰¹The Guiding Principles provide a definition of an IDP and a comprehensive statement of what protection should mean during internal displacement. It covers all phases of displacement: the pre-displacement phase, providing protection from unlawful displacement; Protection and assistance during displacement; and durable solutions, namely return, local integration at the place of displacement or resettlement in another part of the country and reintegration.

⁹⁸UN HRC General comment No. 31, para.7; General comment No. 3: The nature of States parties' obligations (art. 2, para. 1, of the Covenant) by committee of ESCR,

⁹⁹The basis in international law for each Principle is summarized in: Walter Kaelin, Annotations. Guiding Principles, American Society of International Law (2000)

¹⁰⁰Adama Dieng, Protecting internally displaced persons: The value of the Kampala Convention as a regional example, international review of red cross(2017)269

¹⁰¹United Nations General Assembly, 2005 World Summit Outcome resolution adopted by Heads of State 2005, para. 132; UN Commission on Human Rights Resolution 2003/1 of 23 April 2003; and UN General Assembly Resolution 58/177, 22 December 2003.

Further, it affirms enjoyment of rights by IDPs, in full equality, with other persons in their country and shall not be discriminated on the ground that they are displaced. It also provides for the undertaking of special measures to ensure implementation of general norms in a way so as to address the particular needs of internally displaced persons.

Moreover, the Guiding Principles address a range of particular needs and protection risks that typically arise in situations of internal displacement, such as family separation, loss of documentation, freedom of movement in and out of camps, and loss of property, and identify the corresponding rights and guarantees to address these concerns. Incorporating civil and political rights as well as economic, social and cultural rights, the Principles cover the broad spectrum of rights. It covers rights relating to physical security and integrity (such as the rights to life, protection from torture and rape); basic necessities of life (such as the rights to food, water, shelter, health and sanitation); other economic, social and cultural protection needs (such as access to education, property restitution or compensation); and other civil and political protection issues (such as the rights to personal documentation and to political participation). These Guiding Principles on Internal Displacement are universally recognized as the normative starting point for developing laws, policies, and practices at the national level for the protection of IDPs.¹⁰²

In addition to affirming the fundamental rights and freedoms of those who have been displaced within the borders of their own countries, the Guiding Principles make clear that competent national authorities are responsible for protecting these rights and for facilitating durable solutions for the internally displaced. According to Erin D. Mooney, the use of the term competent authorities can be explained by the broad coverage of the Principles, which are intended to provide guidance not only to states but also to insurgent forces and all other authorities, groups and persons in their relations with internally displaced persons.¹⁰³ Accordingly, principle 3 of Guiding Principles provides that national authorities have

¹⁰² World Summit Outcome, Resolution of the General Assembly 60/1, (September 2005) para. 135 recognize the Guiding Principles as an “important international framework for the protection of internally displaced persons.” The Guiding Principles on Internal Displacement has been referenced by or otherwise has shaped the laws and policies of about 20 countries. Similarly, the Guiding Principles has also been referenced by regional instruments in Europe, Africa, and the Americas.

¹⁰³ Erin D. Mooney, Principles of Protection for Internally Displaced Persons, (International Migration Vol. 38)86

the “primary duty and responsibility” to protect and assist victims of internal displacement.¹⁰⁴ Indeed, this general principle (Principle 3) is reiterated several times throughout the text, for instance, in relation to the provision of assistance (Principle 25), the establishment of conditions and provision of means to enable internally displaced persons to return voluntarily, in safety and dignity, to their homes or places of habitual residence (Principle 28), and assistance for internally displaced persons in the recovery of or compensation for property and possessions lost as a result of displacement (Principle 29). Most states affirmed that the Guiding Principles as “an important international framework for the protection of internally displaced persons.”¹⁰⁵ With respect to IDPs, while international actors have a role to play, it is generally construed in most situations of internal displacement as subsidiary to that of the national authorities.¹⁰⁶

2.2.1.4. 1. The obligations of state towards IDPs under UN Guiding principles

Though non-binding instrument it is the first international normative frame which specifically deals with the issue of IDPs. According to the guiding principles all authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons¹⁰⁷. This reveals it affirmed the obligations assumed by states under binding legal frameworks. Further, the principles dictate different measures in relation to internally displaced persons. The obligations of states generally took three forms i.e. obligation to respect which obliges national authorities and actors to respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.¹⁰⁸ Specifically, the Principles also recognize the obligation of national authorities to establish conditions that allow IDPs to return to their homes or resettle elsewhere. This includes an explicit obligation to provide for the restitution of property, compensation, or other forms of just reparation as well as an obligation to create secure conditions for return or resettlement, from which the duty to pursue transitional justice measures can be reasonably inferred. As they are not

¹⁰⁴ Guiding Principles on Internal Displacement (n 4), Principle 3

¹⁰⁵ World Summit Outcome Document, of October 2005, p. 28.

¹⁰⁶ When we say national authorities’ shoulders primary responsibility, regarding IDPs, it reflects international actors come to play its role while national authority is unable or unwilling to carry out its role, i.e. subsidiary role.

¹⁰⁷ Guiding Principles (n 4), principle 5

¹⁰⁸ *ibid.*

binding upon states the most effective way to ensure state compliance with the Guiding Principles, therefore, is for states to incorporate the principles into their domestic legislative framework.

2.2.2. Regional legal frameworks

In Africa, we have African Charter on Human and Peoples' Rights (Banjul charter) which is generally applicable to "every one" subsumes IDPs. It comprises civil political and socio-economic rights which IDPs as human beings are entitled to and this imposes the three human rights obligations on signatory parties to it. This shows that we regional legal underpinning regarding the protection of IDPs. On top that in Africa, we have convention which are particularly relevant towards protection of IDPs then obligate state parties to take various measures to implement obligations towards them. The next part discusses this specific convention.

2.2.2.1. African convention on protection and assistance of internally displaced persons (Kampala convention)

Some regional organizations, such as the Organization of American States (OAS) and the Council of Europe have called on their member states to develop legislation and national policies on internal displacement in line with international standards.¹⁰⁹ It was in Africa, however, that the first legally binding regional instruments for IDPs' protection were developed. The African Union adopted the first ever binding legal framework providing for the protection of internally displaced persons in the region.¹¹⁰ The convention has been described as a landmark legal contribution to the evolving protection framework for IDPs. The convention is a comprehensive legal document covering all phases of displacement from prevention, to protection, assistance and durable solution. It also include all causes of internal displacement including armed conflict, generalized violence, violations of human rights, natural or man-made disasters and development projects.¹¹¹ The Convention provides an excellent opportunity for member states to put in place

¹⁰⁹ OAS, Resolution 2667, 7 June 2011, available at <http://goo.gl/eQzC1q> accessed on 27 May 2019

¹¹⁰ African Union, "African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)" (2009)

¹¹¹ *ibid* Preamble

national frameworks for the prevention of displacement and comprehensive responses when it does take place. However, the Convention is still to be ratified by many AU states despite the increasing number of IDPs and continued obstacles to their achieving durable solutions.¹¹²

2.2.2.1.1. State obligations towards IDPs under Kampala convention

The convention articulates the general obligations of States relating to the protection and assistance of IDPs, and the obligations of the AU itself, international organizations, armed groups, non-State actors and States Parties, during and after displacement. In fact the principle of State responsibility is consistent throughout the Kampala Convention. States bear the primary responsibility in cases of internal displacement. Under the Convention Articles 3 to 14 devoted to lists a variety of obligations and responsibilities of States.¹¹³ Accordingly, states must incorporate these obligations into national law and take all further necessary measures to conform to the Convention, such as providing funds, adopting policies and strategies on internal displacement, and, where necessary, designating (or assigning responsibilities to) an authority or body responsible for coordinating the protection and assistance of IDPs.¹¹⁴ Because States have the primary duty and responsibility to provide protection and assistance to IDPs under the convention,¹¹⁵ they must protect people against displacement,¹¹⁶ including arbitrary displacement and displacement as a result of marginalization, exclusion, discrimination or development projects.¹¹⁷ States must also create early warning systems and disaster strategies in areas of potential displacement.¹¹⁸ Furthermore, they are required to protect the rights of IDPs, no matter what the cause of displacement is, by refraining from and preventing discrimination, genocide, crimes against humanity, war crimes, arbitrary killings and detention, abduction, torture, starvation, etc.¹¹⁹ In line with international humanitarian law,¹²⁰ they must make sure that, *inter*

¹¹² The national responsibility to protect internally displaced people: The Kampala Convention, workshop report of 8 - 10 December 2014 held in Addis Ababa, Ethiopia

¹¹³ A. M. ABEBE, "The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, and Enforcement Challenges", (Refugee Survey Quarterly 2009)28-29, 42 and 56-57

¹¹⁴ Kampala Convention 2009 (n 110), Art. 3(2)

¹¹⁵ *ibid* Art. 4(2)

¹¹⁶ *ibid* Art. 3(1) and 4.

¹¹⁷ *ibid* Art. 3 and 10.

¹¹⁸ *ibid* Art. 4(2).

¹¹⁹ *ibid* Art. 3(1) and Art. 9(1)

¹²⁰ Geneva Convention IV, 12 August 1949, Art. 55, 59, 85, 89, 91

alia, IDPs live in dignified, safe and secure environments and have adequate humanitarian protection and assistance as well as special support for vulnerable groups of IDPs such as children, mothers, persons with disabilities and the elderly. Where appropriate, this support should be extended to host communities as well. Countries moreover have to respect the IDPs' right to information, consultation and participation.¹²¹ Additionally, States have to create and maintain a register of IDPs and give them the necessary personal documents, like passports and birth certificates.¹²² Further, the Convention imposes obligations on States to ensure durable solutions for IDPs through sustainable return, local integration or relocation, and to provide compensation. However, it faces ratification gap. States including Ethiopia have not ratified it.

2.3. What are specific measures should the state take to fulfill its human rights obligations towards IDPs.

It is well recognized, and often emphasized, that because internally displaced persons remain within their country, they should, in accordance with established principles of international law, enjoy the protection and assistance of their own governments.¹²³ It is obvious that internal displacement shatters lives of the victims and threatens the wellbeing and functioning of communities, and often affects countries as a whole. Solving this problem falls on shoulder of the state. To this end, the above discussed relevant human rights instruments towards protection IDPs impose obligations upon the ratifying state parties to them. Accordingly, States have a responsibility to ensure the full and equal enjoyment of human rights by all individuals in their territory or under their jurisdiction including displaced persons. This duty extends to all agents of the State, including the military and the police, and all public authorities, whether at the national, regional or local level.¹²⁴ The international obligations that arise mainly from human rights instruments towards IDPs have three dimensions: to respect, protect and fulfill human rights¹²⁵. Accordingly, the first one requires the State to ensure that all agents of the State act in compliance with human rights law and refrain from any act that might interfere with or impair

¹²¹Kampala Convention (n 110), Art.5 (5) and Art. 9(2)

¹²² *ibid* Art. 13

¹²³ Brooking-Bern project on internal displacement , Addressing Internal Displacement: A Framework for National Responsibility (2005) 5

¹²⁴For a more detailed discussion on State's obligations under international human rights law see General Comment No. 31 of the Human Rights Committee on the nature of the general legal obligation imposed on States Parties to the Covenant

¹²⁵ Henry Shue, *basic Rights: Subsistence, affluence and US foreign policy* (2nd ed.1996) 35

the exercise of rights. This requires the State must refrain from interfering with the enjoyment fundamental freedoms or people must be allowed to flee to safer areas within or outside the country and as IDPs are layer of people this dimension of obligation obliges states to refrain from activities which give rise to uprooting of people.

The second, on the other hand obligates the State to take all necessary measures to prevent or put a stop to any violations of rights by third parties, including other individuals or groups. The State must also investigate, prosecute and punish violations of rights and ensure that victims/survivors have access to an adequate and effective remedy under domestic law. As an example, if the State is aware, or reasonably should have been aware, that there is situation which led to displacement of a given group, it should take action to prevent and put a stop to such acts, unless, it would have failed to live up to its duty to protect.

Finally, the duty to fulfill requires the State to take all possible measures to ensure that individuals under the jurisdiction are able to exercise their human rights. This requires the State to put in place a legal and administrative framework that respects human rights specifically tailored to IDPs in this context and build national capacity specifically in relation to support the implementation of rights. In context of IDPs, this obligation requires the state to provide victims with socioeconomic needs. In other words, to ensure the realization of rights of IDPs, a State must often invest its resources. However, protection of displaced persons is high resource demanding in its nature. Currently as the reality shows many countries experiencing conflict and high displacement are states which face significant resource constraints. Despite this human rights law recognizes that States with very limited resources might not have the capacity to ensure full realization of certain economic, social and cultural rights. However, a State cannot use lack of resources as an excuse to do nothing. Rather a State is obliged to take steps “to the maximum of its available resources, with a view to achieving progressively the full realization” of such rights.¹²⁶ Accordingly it must: at a minimum, ensure access to rights essential to survival, that is, food and water, basic shelter, medical services and sanitation; and request international assistance when State resources are insufficient.

¹²⁶ICESCR, Article 2(1); General Comments of the Committee on Social, Economic and Cultural Rights No. 12(1999) on the right to adequate food and No. 14(2000) on the right to the highest attainable standard of health

Generally responsibility for protecting and assisting the internally displaced rests first and foremost with states and their national authorities is a core concept reflected in the international human rights regimes, UN Guiding Principles on Internal Displacement as well as Kampala convention¹²⁷ and, also is a central tenet guiding international and regional approaches to internal displacement.

However, the human rights instrument which impose obligations on state parties regarding IDPs do not answer critical questions such as what, concretely, measures do human rights obligations of government towards IDPs require? How can it be measured? Promoted? Reinforced? Supported? These questions are not addressed but are critical if national responsibility for IDPs is to be realized.

To solve this problem and in order to provide more specific guidance to governments about how to fulfill human rights obligations towards IDP protection and assistance, in 2005 Erin Mooney, Deputy Director the Brookings Institution-University of Bern Project on Internal Displacement developed a 'Framework for National Responsibility'.¹²⁸The Framework sets out twelve broad areas in which states can directly contribute to the mitigation and resolution of internal displacement. These are: - prevent displacement and minimize its adverse effects, raise national awareness of the problem, collect data on the number and conditions of IDPs, support training on the rights of IDPs, create a legal framework for upholding the rights of IDPS, development a national policy on internal displacement, designate an institutional focal point on IDPs, support national human rights institutions to integrate internal displacement into their work, ensure the participation of IDPs in decision-making, support durable solutions, allocate adequate resources to the problem, cooperate with the international community when national capacity is insufficient

However, this is not an exhaustive list of the measures expected of governments but twelve minimum steps that governments can take to translate their responsibilities into concrete actions. Despite its being illustrate, the framework was used as national initiative for protection of internally displaced persons including Ethiopia. In Ethiopia, the framework and its 12

¹²⁷Kampala convention 2009 (n 110), Art. 5(1)

¹²⁸ A Framework for National Responsibility (2005) (n 123)5

benchmarks were used to guide the assessment of the national response to internal displacement jointly undertaken by UNOCHA and the GoE Federal Disaster Prevention and Preparedness Commission (FDPPC).¹²⁹ This thesis discusses the two indispensable benchmarks from the twelve.

2.3.1. Development of national framework of law as obligation to fulfill human rights obligation towards IDPs.

From the above benchmarks for national response towards IDPs, the development of a national legal framework upholding the rights of IDPs and the adoption of a national policy or plan of action on internal displacement are considered most important part of the national responsibility of all states.¹³⁰ When designing laws and policies on internal displacement as a means to comply with its obligation under international laws covering protection of IDPs states have four principal models¹³¹: these are 1) a brief instrument adopting the Guiding Principles; 2) a law or policy developed to address a specific cause or stage of displacement; 3) a law or policy developed to protect a specific right of the internally displaced; and 4) a comprehensive law or policy addressing all causes and stages of internal displacement. The first model is exemplified by the one page instrument of adoption. The wholesale incorporation of the Guiding Principles may, at first glance, appear an effective way of ensuring the implementation of all provisions of the principles, suggesting absolute agreement with the principles and ensuring against the dilution of its provisions.¹³² However, such an approach may deny national authorities, relevant governmental bodies, civil society, and IDPs themselves opportunities that the development of a more tailored law would present.¹³³ These opportunities relate both to the process of developing a comprehensive law or policy and to the substance of that law or policy. As Guiding Principles contain abstract general principles of international law that, in order to be effectively implemented in a national context, should be translated into concrete action on the ground that reflect each country's context. The process of developing a comprehensive law or policy presents an opportunity for all relevant stakeholders to share perspectives on the best practices for

¹²⁹FDPPC and OCHA, Joint National IDPs Assessment, Concept Note: National Assessment on IDPs, Proposed Comprehensive National Assessment of Internally Displaced Persons (IDPs) in Ethiopia 2005

¹³⁰Brookings Institution-University of Bern Project on Internal Displacement, "Addressing Internal Displacement: A Framework for National Responsibility," (Washington D.C. 2005)16-17.

¹³¹Jessica Wyndham, a Developing Trend: Laws and Policies on Internal Displacement, p.7

¹³²ibid.8

¹³³ ibid

addressing internal displacement. This process would necessarily involve issues unique to each country such as the governmental bodies that need to be engaged in providing assistance and protecting the rights of IDPs; the vulnerable groups that could be adversely affected if displaced, for example, ethnic or linguistic minorities agriculturalists, the disabled, orphaned children, and women heads of household; the potential causes of internal displacement, including conflict, and natural and human-made disaster; and the diverse means of preventing or mitigating the effects of such conflicts and disasters.

The second model, the most common among existing instruments, is a law or policy that addresses a specific cause or specific stage of displacement. The best example can be, the National Policy on Resettlement and Rehabilitation for Project Affected Families of 2003¹³⁴ of India which addresses displacement only as a result of development projects. The same holds true to the Angolan Norms on the Resettlement of the Internally Displaced Populations¹³⁵ address only the stage of return and resettlement. Laws and policies that address only return and resettlement have also been adopted in Azerbaijan, Bosnia and Herzegovina, Colombia, Nepal, and Serbia.

The third model, like the second, is most often developed in relation to an existing situation of internal displacement. Yet instead of addressing a specific cause or stage of displacement, instruments representative of the third model address a specific right of IDPs. The Turkish Law on the Compensation of Damages that Occurred due to Terror and the Fight against Terrorism¹³⁶ is one such law. It was developed specifically to facilitate the provision of compensation to those affected by on-going civil strife within Turkey, many of whom are IDPs.

The fourth model is that of a comprehensive law or policy addressing all causes and stages of internal displacement. The Colombian Law 387¹³⁷ most closely approximates a comprehensive law on internal displacement. Although developed in the specific context of an on-going internal conflict, the law addresses all stages of displacement, from prevention of further displacement to

¹³⁴National Policy on Resettlement and Rehabilitation for Project Affected Families of 2003

¹³⁵Norms on the Resettlement of the Internally Displaced Populations, Decree Number 1/01 of Angola (2001)

¹³⁶Law No. 5233 of Turkey 2004

¹³⁷Law 387 of Colombia 1997

creating durable solutions for return or resettlement and reintegration. The law also addresses a variety of causes of displacement, including internal armed conflict, civil tension, general violence, and violations of international humanitarian law. However, it does not address displacement as a result of natural disasters or development projects. The Ugandan National Policy for Internally Displaced Persons¹³⁸ also approximates a comprehensive policy, addressing all causes of internal displacement. Yet the policy does not specifically address prevention or solutions aimed at the long-term durability of return or resettlement.

2.3.2. Establishment of institution as measure to fulfill human rights obligations towards IDPs.

Internationally there is no binding legal regime for the protection of IDPs while compared to refugee¹³⁹ though they experience tragedy similar to refugees. The same problem exists internally regarding the lack of a specific institution mandated with protecting IDPs still refugee enjoys protection of Office of the UN High Commissioner for Refugees (UNHCR). The adverse effect of the lack of a specific institution or convention with a global mandate to address the challenge of IDPs has been significant.¹⁴⁰ However, as part of its humanitarian reforms, the UN made efforts through the “cluster approach” to enhance assistance and protection for IDPs. Under this approach, three clusters were established. UNHCR was tasked with overseeing protection, camp management, camp coordination and emergency shelter, the UN International Children’s Emergency Fund was tasked with water, sanitation and nutrition, the World Food Programme focused on logistics, and the UN Development Programme dealt with recovery. Also essential is the identification of specific institutions and organizations to oversee the implementation of policies and laws, ensure effective coordination, and guard against duplication or gaps in activities. A given state has different institutional options. It can attach responsibility for the internally displaced to the mandate of an existing government agency, such as the government body charged with refugee issues¹⁴¹ or the department of social welfare. It can also assign to a body is designated to focus exclusively on IDPs or can establish a government committee,

¹³⁸National Policy for Internally Displaced Persons of Uganda of 2004

¹³⁹ Convention relating to the Status of Refugees 1951 (entered into force 22 April (1954).

¹⁴⁰ Adama Dieng, Protecting internally displaced persons: The value of the Kampala Convention as a regional example, international review of red cross(2017)266.

¹⁴¹ Brooking-Bern project on internal displacement , Addressing Internal Displacement: A Framework for National Responsibility of (2005)18

working group, or task force on IDPs that regularly brings together officials from the relevant ministries and departments to jointly discuss IDP needs, facilitate coordination including with the international community, and develop strategies for ensuring an effective response.

The model preferred under the National Responsibility Framework, developed by the Brookings-Bern Project on Internal Displacement, is the appointment of a national institutional focal point for IDPs as essential to carrying out the provisions of laws and policies.¹⁴² Generally, lack of the institution responsible for protection of IDPs leaves victims of displacement and their advocates without any effective recourse for complaints.¹⁴³

¹⁴²Brookings Institution-University of Bern Project on Internal Displacement, p. 18.

¹⁴³ Adama Dieng (2017), p.267.

CHAPTER THREE

3. LEGAL AND INSTITUTIONAL FRAMEWORKS FOR PROTECTION OF IDPs

3.1. Introduction

The value of domestic laws and policies on internal displacement is unquestionable, whether or not international as well as regional frameworks are in place. Same holds true to institutional framework. National legal frameworks clarify government responsibilities or define responders' roles and increase the predictability of protection by institutionalizing collaborative arrangements. They also should define IDPs' rights and the measures to be taken to ensure full protection of rights of victims of displacement. If they do so, national normative frameworks can serve as pillars of a solid response. In the absence of a legal framework and institution; provision of assistance, protection of the rights, reintegration and resettlement obligation of government towards IDPs will be impossible. Thus, having comprehensive IDPs tailored national legal and institutional frameworks is indispensable means via which state fulfills its human rights obligation towards IDPs which it assumed by ratifying international human rights law. In this respect some countries have compressive national policy regarding internally displaced persons and focal point established for protection of victim of displacement. This holds even true in some African countries. For instance Kenya¹⁴⁴ and Uganda¹⁴⁵ adopted national IDPs specific acts which stipulate the rights of displaced persons and the corresponding obligation of government and establishes focal institutions for protection of IDPs.

3. 2. Legal Frameworks in Ethiopia towards protection IDPs

In principle, constitutions and national legislation remain applicable in situations of internal displacement, and IDPs are entitled to protection under these laws. They rarely reflect the specific needs of the displaced, however, and may even have detrimental effects. According to international law, it is States that bear the primary responsibility of protecting and fulfilling the rights and freedoms of all that fall under their jurisdiction. Therefore, national legislation

¹⁴⁴The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act of 2012 of Kenya provides for rights of IDPs and establishes national institution for prevention, protection and assistance of the victims. Further, this act of Kenya adopted the UN Guiding Principles for protection of internally displaced persons.

¹⁴⁵National Policy for Internally Displaced Persons of Uganda (2004)

undeniably serves as the principal legal basis for the protection of all individuals including IDPs. This national law, nevertheless, should be in line with obligations assumed by a State under international law. This means that a State's commitments under international law need to be put into practice by embracing international obligations within their national legislation.¹⁴⁶ The process of developing a law or policy on internal displacement is an opportunity to bring together all relevant stakeholders to consider the role that each should play in protecting the rights of IDPs. In order to provide protection from, during and after displacement; it is strongly recommended that States revise their national legislation and enforce the Guiding Principles on internal displacement through their national laws and policies.¹⁴⁷ This part discussion looks into Ethiopian legal frameworks relevant to IDPs. The discussion launches with FDRE constitution.

3. 2. 1. FDRE constitution

The FDRE Constitution is the supreme law of the country. It introduces all international agreements ratified by Ethiopia part of Ethiopian legislation as per Art.9 (4).¹⁴⁸ It safeguards the principles of equality and non-discrimination. Hence, all principles regarding equality and non-discrimination embraced in the ICCPR, ICERSC and other international human rights instruments are also of effect under Ethiopian legislation because article 13(2) states that all fundamental rights and freedoms included in the Constitution shall comply with and reflect the principles that are laid down in the UDHR and the core international human rights instruments.¹⁴⁹ The happening of inter-communal and ethnic violence constitutes major cause of internal displacement in today's Ethiopia. This possibly expose members of ethnic groups to experience discrimination and unequal treatment prior to their displacement and the likelihood they become victims of discrimination and inequality increases during their displacement. Not only are they at risk of being discriminated because of their ethnic origin, but also their condition of 'being displaced' may create all kinds of issues upon arrival at their displacement site. To

¹⁴⁶ "Handbook for the Protection of Internally Displaced Persons" (Global Protection Cluster Working Group 2009) rep 35

¹⁴⁷ *ibid* p.36

¹⁴⁸ FDRE Constitution (n 31), Art. 9(4)

¹⁴⁹ *ibid* Art. 13(2)

solve this possible problem the constitution embodies principle equality and non-discrimination;¹⁵⁰ which possibly cure it, if implemented.

Further, regarding Protection of life and personal security of IDPs, as they are at risk of becoming victims of conflict which poses them to violence and threats to life, security and safety problem such as sexual and gender based violence (GBV) and inhuman or degrading treatment, the inclusion Articles 14, 15 and 16 to the right to life, personal security and protection against bodily harm under the FDRE constitution is of paramount importance. On top of that, article 18 prohibits the use of inhuman treatment. This includes cruel, inhuman and degrading treatment and punishment, slavery, servitude, trafficking of persons and forced labor. Additionally, article 35(4) prohibits all laws, customs and practices that result in mental or physical harm to women. Therefore, FDRE Constitution, in theory, provides sufficient protection to the above important rights to IDPs without forgetting the possibility of these rights can be derogated from during a State of Emergence.¹⁵¹

Moreover, FDRE constitution provides for personal liberty of every one. Given the fact that, IDPs are vulnerable due to their displacement and are at risk of losing their personal liberty which possibly because of arbitrary arrest or detention, forcible recruitment and slavery practices, Article 17 of the Constitution sets out the right to personal liberty and states that no individual may deprived of his or her liberty, except on the grounds that are in accordance with the law. It also states that no individual shall be subject to arbitrary arrest or detention.¹⁵² Additionally, slavery practices are prohibited by article 18. While these general rights are briefly mentioned in the Constitution, they are not backed specific legal framework provisions included to provide protection to those who are internally displaced. On top of that, most these rights are derogable during a SoE. According to Article 93(4) (c), only the rights laid down in article 1 (nomenclature of the State whether that is right at all?), 18 (prohibition against inhuman treatment), 25 (right to equality) and sub-articles 1 and 2 of article 39 (rights of nations, nationalities and peoples) cannot be suspended, limited or derogated from during a SoE.

¹⁵⁰ ibid Art.25

¹⁵¹ ibid Art. 93(4)(b)

¹⁵² ibid Art.17

Relevancy FDRE constitution also could be tested with respect to subsistence needs of IDPs as they become in need of access to basic goods and services and remain to be largely dependent on relief operations. Regarding these things, Article 41(3) of the Constitution sets out the right of Ethiopian nationals to access publicly funded social services. However, these services are not specified in the Constitution. Additionally, article 41(4) describes the duty of the GoE to improve public health, education and other social services through funding. Furthermore, Article 43(1) sets out the right of all Ethiopians to improved living standards and sustainable development. It is also not specified what is meant by improved living standards. Most importantly, Article 90(1) states: “To the extent the country’s resources permit, policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security”.

Freedom of movement is of significance as far as protection of IDPs is concerned because first and foremost it protects them from involuntary displacement.¹⁵³ On top of that, the right embraces the right to choose their own residence, to move around freely and the prohibition of forced relocation and return. In addition, as IDPs are in need of durable solutions that can be either facilitated voluntary return, voluntary relocation or voluntary and sustainable integration, Article 32(1) of the Constitution sets out the right to the freedom of movement and the freedom to choose his or her residence.¹⁵⁴ On top of that, article 44(2) states:

“All persons who have been displaced or whose livelihoods have been adversely affected as a result of State programmes have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance.”¹⁵⁵

Furthermore, 40(5) state that Ethiopian pastoralists have the right to not be displaced from their lands.¹⁵⁶ These provisions are of paramount importance to Ethiopian IDPs because all persons affected by development-induced displacement and displacement caused by other State-initiated programs are entitled to compensation. In addition, the displacement of Ethiopian pastoralists is prohibited by law.

Protection of the need for personal identification, documentation and registration IDPs are at risk of losing their identification documents. For Ethiopian IDPs this often creates difficulties

¹⁵³ UN Human Rights Committee, General comment No. 27: Article 12 (Freedom of movement), para. 7

¹⁵⁴FDRE Constitution (n 31), Art. 32(1)

¹⁵⁵ ibid Art. 42(2)

¹⁵⁶ibid Art. 40(5)

regarding the registration for basic services. On top of that, the registration of births, deaths and marriage becomes impossible. There is no provision in the Ethiopian Constitution that sets out the right to personal identification, documentation and registration, other than the rights related to the Ethiopian nationality. However, the Ethiopian Nationality Proclamation No.378/2003 states in article 13 that all Ethiopian citizens above 18 should be provided with a national identity card.¹⁵⁷ Yet, this is not sufficient to address the problems IDPs encounter when they lose their documentation.

Further, assessment constitution reveals other significant Protection towards IDPs with respect to property-related needs. Inevitably IDPs are at risk of losing their property and personal belongings when they become displaced. Even If they are able to voluntarily return to their place of origin, they often find their property to be damaged or destroyed, occupied by others or that their property and belongings have disappeared altogether. In this regard, Article 40 of the Constitution provides for the right to property. It states that “every Ethiopian citizen has the right to ownership of private property”¹⁵⁸. However, this does not include rural or urban land and its natural resources as Ownership of land exclusively vested in the State less the right to obtain land without payment and protected against eviction of Ethiopian peasants, and Ethiopian pastoralists have the right to free land for grazing and cultivation and have the right to not be displaced from their lands.¹⁵⁹ As described under the section of ‘movement-related needs’, those whose property got expropriated are entitled to compensation and displacement compensation. The system of holdings of rural land is further defined in the Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation No. 456/2005. On top of that, article 35(7) states the right of women to acquire, administer, control, use and transfer property.¹⁶⁰ However, the rights laid down in Ethiopian legislation do not offer sufficient protection to all Ethiopian IDPs. While compensation arrangements are available for those whose property was expropriated for a public purpose, there are no policies in place for IDPs who lost their land due to their displacement as a consequence of conflict or disasters.

Family separation frequently occurs as a consequence of displacement because during their flight, IDP children are at great risk of becoming separated from their parents or caregivers. This

¹⁵⁷Ethiopian Nationality, Proclamation No. 378/2003, Art. 13

¹⁵⁸FDRE Constitution (n 31), Art. 40

¹⁵⁹ibid Art. 40

¹⁶⁰ibid Art. 35(7)

results in discrimination and violence of separated family members, especially separated and unaccompanied children as well as mothers. Therefore, maintaining family and community values become necessary. To prevent prolonged separation, policies working towards family reunification need to be implemented. In this respect Article 34(3) of the Constitution states that the family is a natural and fundamental unit of society and that it is entitled to protection of the State.¹⁶¹ However, what is meant by ‘protection of state’ is not specified. Besides, article 36(1) (c) states that the child has a right to know and be cared for by his parents or legal guardians.¹⁶² Additionally, article 41(5) describes the duty of the State to allocate resources to provide the rehabilitation and assistance to children who are left without their parents or guardian.¹⁶³

The other issue that cannot be ignored is, the Protection of the need of IDPs to build self-reliance. It is important to offer IDPs ways to build self-reliance. The only way to overcome their state of being displaced and their deprived and vulnerable way of life as a consequence of their displacement is to become self-reliant again. Tools to achieve self-reliance of IDPs are employment and education. In this respect Article 41 of the Constitution provides for the economic, social and cultural rights of every Ethiopian. It states that every Ethiopian has the right to choose its means of livelihood, profession and occupation and to freely engage in economic activity. Same provision also describes the duty of the State to increase gainful employment opportunities for its citizens and to undertake programmes and public works projects to assist the unemployed and the poor.¹⁶⁴ The right to education is not directly included in FDRE constitution. Article 36(5) describes the duty of the State to encourage the establishment of institutions that ensure the education of orphans.¹⁶⁵ On top of that, the State has the duty to allocate resources to provide education to the public, as stated in article 41(4)¹⁶⁶ and to provide access to education for all Ethiopians, as stated in article 90(1).¹⁶⁷ However, no provisions are included that address the rights of those who have lost (temporary) access to education. Regarding the need to build self-reliance, education is the least protected under Ethiopian legislation. Even though it is the duty of the State to provide access for all Ethiopians

¹⁶¹ibid Art. 34(3)

¹⁶²ibid Art. 36(1)(c)

¹⁶³ibid Art. 41(5)

¹⁶⁴ibid Art. 41

¹⁶⁵ibid Art. 36(5)

¹⁶⁶ibid Art. 41(4)

¹⁶⁷ibid Art. 90(1)

to education, this duty is subject to the ability of the government to do so. On top of that, no special protection is offered to girls, women, persons with disabilities and IDPs. Primary, secondary, higher and adult educations as well as vocational and technical training are of critical importance to someone's ability to become self-reliant again. No specific rights recognizing the need of IDPs to have access to income generating activities or other activities key to building self-reliance are included in Ethiopian legislation.

On top of the above Article 89 of the Constitution describes the economic objectives of the State. This article discusses, amongst other things, the duty of the government to ensure equal opportunity for all Ethiopians to improve their economic conditions and to avert natural and man-made disasters and provide timely assistance to the victims of such disasters.¹⁶⁸ This is especially of relevance to IDPs since they are often displaced due to disasters and suffer from poor economic conditions as a consequence of their displacement.

3. 1. 2. Subsidiary laws

Under Ethiopian legal land we have also other laws which touch displaced persons in one way or other. These laws could not depart from the standard of FDRE constitution.¹⁶⁹ For protection of internally displaced persons, generally all laws applicable by virtue of principle of equality and non discrimination when there is no specific law dedicated towards protection of IDPs. However, under single work assessing all existing national laws and their relevancy towards displaced persons is difficult if not impossible. Therefore; researcher selected some subsidiary laws most approaching to IDPs. The relevant provisions for the protection of IDPs exist in scattered manner. Accordingly, Proclamation No. 455/2005 Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation, Ethiopian Nationality Proclamation No.378/2003, Ethiopian Rural Land Administration and Land Use Proclamation No. 456/2005, criminal code of Ethiopia and policy frameworks will be assessed.

3. 1. 2.1. Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No. 455/2005

¹⁶⁸ibid Art. 89

¹⁶⁹ ibid Art.9(1)

This legislation provides for the power of the authorities to expropriate rural or urban landholdings for public purpose. Expropriation, as stated in the Proclamation, must be compensated by means of monetary compensation or by means of land and displacement compensation shall be paid to those who were displaced as a result of this expropriation.¹⁷⁰ This proclamation addresses only the concern of displacement induced by development projects. Therefore, this proclamation is cause specific and is of very limited scope i.e. is relevant to small layer of displaced persons. Still even regarding the layer of displacement it tries to address, it is highly criticized for its limitations as it does not worry about the rehabilitation and sustainability of displaced people's life. Then this leads to miserable events to the life of displaced persons. Above all it does not consider about life of offspring's of displaced person. However, the proclamation is under way to be changed with new one. Still, the draft proclamation defines "Displacement compensation" as payment to be made to a land holder for the loss of his use right on the land as a result of expropriation.¹⁷¹ This is, if not, final proclamation widens the scope displacement compensation to include compensation for losses incurred due to displacement caused by other than development projects or expropriation, limitation existing under this proclamation will be retained.

3. 1. 2.2. Ethiopian Nationality Proclamation No.378/2003

According to registration of vital events and national identity card proclamation, having personal documents such national identity card is obligation of nationals of Ethiopia who attained age of 18.¹⁷² The victims of displacement will lose various things including their important document. So, it requires laws that address this problem of IDPs. As far as this issue is concerned Ethiopian Nationality Proclamation No.378/2003 is relevant law. This proclamation states in its article 13 that all Ethiopian citizens above 18 should be provided with national identity card.¹⁷³ Same proclamation provides for the obligation of government of Ethiopia to protect the rights and lawful interests of nationals.¹⁷⁴ Yet, this is not sufficient to address the problems IDPs encounter

¹⁷⁰Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No. 455/2005, Art.7 and 8

¹⁷¹Draft proclamation "Expropriation of Landholdings for Public Purposes and Payments of Compensation Proclamation of 2019,Art.2(3)

¹⁷²Proclamation for registration of vital events and national identity card proclamation No. 760/2012, Art.56

¹⁷³Ethiopian Nationality proclamation (n 157), Art. 13(1)

¹⁷⁴ ibid Art.14(1)

when they lose their documentation because; the law does not provide exceptional means of obtaining identity documents for IDPs. For instance in case Loss or Damage of National Identity Card it imposes obligation¹⁷⁵ on national to apply to the appropriate organ for issuance of a replacement upon attaching with his application: in case of loss, an evidence of a report made to the police; or in case of damage, the damaged identity card; further payment of the fee prescribed for issuance of new identity card. This is too cumbersome to the victims of displacement.

3. 1. 2.3. Ethiopian Rural Land Administration and Land Use Proclamation No. 456/2005

This proclamation provides for land holding rights of peasant farmer or semi-pastoralist and pastoralists which embraces the right use rural land for purpose of agriculture .and natural resource development, lease and bequeath to' members of f his family or other lawful heirs, and includes the right to acquire property produced on his Land thereon by his labor or capital and' to sale, exchange and bequeath same.¹⁷⁶ According to article 7(3) of the proclamation, the holder of rural land who is evicted for purpose of public use shall be given compensation proportional to the development he has made on the land and the property acquired, or shall be given substitute land thereon. Further the proclamation attaches condition transfer of rural land use right as pursuant to article 8(1). Accordingly, the land holder can lease to other farmers or investors land from their holding of a size sufficient for, the intended development in “a manner that shall not displace them”, for a period of time to be determined by rural land administration laws of regions based on pmlicular local conditions.¹⁷⁷ This could be taken as legal measure to prevent displacement.

3. 1. 2.4. Criminal code of Ethiopia

FDRE criminal code is enacted with the objective to ensure order, peace and the security of the State, its peoples, and inhabitants for the public good.¹⁷⁸ It aims at the prevention of crimes by giving due notice of the crimes and penalties prescribed by law and should this be ineffective by providing for the punishment of criminals in order to deter them from committing another crime and make them a lesson to others, or by providing for their reform and measures to prevent the

¹⁷⁵Proclamation for registration of vital events and national identity card, proclamation No. 760/2012, Art.62.

¹⁷⁶ Ethiopian Rural Land Administration and Land Use Proclamation No. 456/2005, Art.2(4)

¹⁷⁷ ibid Art.8(1)

¹⁷⁸FDRE Criminal Code Proclamation No.414/2004, Art.1

commission of further crimes.¹⁷⁹ As far as IDPs is concerned the criminal law is relevant in that it criminalizes acts which give rise to arbitrary displacement and attaches the penalties and measures applicable to criminals. With respect to criminal responsibility of individuals, FDRE criminal code provides for different acts or omissions that are crimes in its specific part. These provisions are relevant for the protection of IDPs. They set out crimes that can be committed against personal liberty¹⁸⁰ crimes against person and health¹⁸¹ crimes against public safety¹⁸² crimes against life.¹⁸³ These provisions are relevant to protection of internally displaced persons, though no provision specifically mention directly displacing act as crime.

3. 1. 2.5. National policy framework

The policy document relevant to protection and assistance IDPs in Ethiopia is National Policy and Strategy on Disaster Risk Management (2013) contains within it a specific objective to link protection with durable solution needs for IDPs. It states that: “In times of disasters, to save lives, protect livelihoods, and ensure all disaster affected population are provided with recovery and rehabilitation assistances”. The policy recognizes women, children, elderly, people with disabilities as well as those living with HIV/AIDS as the most vulnerable to the impact of hazard and related disaster and also warrants special attention to be given to these vulnerable groups based on the above objective the policy responses to internal displacement in Ethiopia have to date been largely focused on life-saving humanitarian action¹⁸⁴. Although humanitarian responses play a vital role in providing a safety net for those in desperate need, it is equally crucial to ensure a smooth transition to development-oriented assistance and Ethiopia’s lack of a comprehensive dedicated framework to guide responses to internal displacement has hampered such transition.

3.2. Institutional framework

Other indispensable measure in order to fully address of plight of IDPs and to carry out national responsibility to protect them is designating an institutional focal point on internal displacement

¹⁷⁹ ibid para.2

¹⁸⁰ ibid Art.580-60

¹⁸¹ ibid Art.553 -560

¹⁸² ibid Art.494-504

¹⁸³ ibid Art.538-552

¹⁸⁴ Behigu Habte and Yun Jin Kweon, Addressing internal displacement in Ethiopia, accessible from www.fmreview.org/GuidingPrinciples20 accessed on 28 May 2019

at the national level and, when appropriate, at the sub-national level to ensure sustained attention to the problem of internal displacement and to facilitate coordination is necessary.¹⁸⁵ Human rights violation is both cause for and effect of displacement. Since displacement involves issues of human rights, all organs of government existing at all levels shall have the responsibility and duty to respect and enforce it.¹⁸⁶ Besides the general human rights obligation imposed on all organs of government, in this part the discussion will address institutions of focal points towards the protection of IDPs. In this respect the in Ethiopia the following institutions can be taken as institutional relevant to protect and assist IDPs throughout the country.

3.2.1. Ministry of peace (MoP)

The MoP is one of focal institution, which is considered the lead government line ministry and serves as the institutional focal point for addressing the problem of conflict-induced internal displacement.¹⁸⁷ This minster was formerly known by its name ministry of federal affairs and pastoralists affairs. This minster of peace is given important roles for protection displaced persons. To delve on its role reading article 13(1) (a-t) of proclamation No. 1097/2019 is necessary. According to this provision, it cooperates with concerned federal and regional state organs in maintaining public order; facilitate the resolution of disputes arising between regional states; devise and implement sustainable political solutions for disputes and conflicts that may arise within regional states; coordinate the implementation of decisions authorizing the intervention of the federal government in the affairs of regional states work in collaboration with pertinent government organs, without prejudice to the provisions of Article 48 and 62(6) of the Constitution of the Federal Democratic Republic of Ethiopia, facilitate the resolution of disputes arising between regional states; religious institutions and other organs to ensure that peace and mutual respect will prevail among followers of different religions and beliefs, and to be able to prevent conflicts. To effectively carry out these duties, the ministry is empowered to lead key institutions such as national security intelligence office which could avail the ministry with information that enable MoP to avert the conflicts or mitigate evil consequences of conflict one being the uprooting of citizens. Further, the same proclamations art.13 (1) (m) stipulates power of the ministry which is specifically relevant to IDPs. It obliges the ministry to be prepared

¹⁸⁵ Framework for national responsibility 2005

¹⁸⁶ FDRE constitution , Art.13(1)

¹⁸⁷ Definition of power and duties of the executive organs of the FDRE, proclamation No. 1097/2019, Art. 13

towards natural and manmade disasters and to spearhead and follow-up the works regarding national disaster management.¹⁸⁸ This is new introduction while compared to the proclamation for definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 691/2010. Under the latter no such express provision relevant for protection of IDPs. This could be inferred from the comparative reading of article 14 Proclamation No. 691/2010 and article 13 of proclamation No. 1097/2019.

3.2.2. Natural Disaster Risk Management Commission (NDMC)

In addition to MoP, the short-term needs of those affected and displaced by natural disasters are addressed by the Ethiopian Natural Disaster Risk Management Commission (NDMC), a sub-ministerial body responsible for coordinating emergency response and post-disaster recovery.¹⁸⁹ the commission is entrusted with important roles towards protection of IDPs such ensuring that disaster risk management is mainstreamed into Government development policies, strategies, development plans and programs, and in the plans of the private sector as well as in the school curricula; and providing support to concerned bodies in relation to such issues; ensure and follow-up the inclusion of disaster risk management in the plans of the executive organs which are identified as lead sector institution in the Disaster Risk Management Policy and Strategy document; collect and compile nationwide action plans for the implementation of disaster risk management policy and strategy; regularly monitor and evaluate implementation of same, and submit at least bi-annual performance reports to the Disaster Risk Management Council coordinate, follow up and evaluate disaster risk reduction, disaster response and rehabilitation programs of disaster victim; implement, lead, and coordinate responses in the event of disasters that either do not fall under the responsibility of any one of designated lead sector institutions or a sudden disaster that is beyond the capacity of the lead sector institution; hold and administer disaster response fund, relief food and non-food stock; whenever necessary, emergency relief food supplies, distribute up on discharging from concerned government institution in charge of administration of the strategic food reserve; in collaboration with concerned bodies, lead and coordinate work on the development and revision of disaster risk profiles at the national level; on the basis of the disaster risk profile, develop and implement comprehensive contingency plans

¹⁸⁸:ibid

¹⁸⁹ NDRMC establishment council ministers Regulation (n 54), Art.6

at all levels; facilitate conditions to undertake regular and planned simulation exercises at all levels to assess existing emergency response preparedness, including the contingency plan, and take corrective measures accordingly; lead and coordinate studies and assessments conducted at national level before, during, and after the disaster period including disaster risk forecaster; lead and coordinate the Federal Early Warning and Emergency Coordination Center by supporting it with modern technologies; support the establishment of similar centers in lead sector institutions at Federal, Regional, Zonal and Woreda Administration levels and others. In hand with MoP this focal point coordinates the protection and assistance at the national level with other government bodies and international protection oriented actors.

3.2.3. The Ministry of Urban Development and Housing

Establishment of infrastructure network” includes transport network line such as road, railway airport, dry ports and other service facilities; water supply, drainage and sewer lines; telecom and communication facilities; energy and power supply facilities; and the like inevitably cause displacement of persons. While carrying out these development projects the concerned institutions are required to take into Consideration of continuity of sustainable socio-economic life of the displaced citizens as a result of development at urban expansion and urban redevelopment areas in the process of urban plan preparation and implementation¹⁹⁰ assuring the implementation of the urban plan proclamation which regulate the urban development that may result in displacement of persons is entrusted on ministry of urban development and housing in that it ensures continuity of sustainable socio-economic life of the displaced citizens as a result of development at urban expansion.¹⁹¹

¹⁹⁰ Draft Urban Plan Proclamation , Art.4(5)

¹⁹¹Urban plan proclamation No.574/2008, Art.55

CHAPTER FOUR

AN ANALYSIS ON FULFILLMENT OR OTHERWISE OF OBLIGATIONS BY GOVERNMENT OF ETHIOPIA TOWARDS IDPS

4.1. Introduction

Dictates of state sovereignty determine that responsibility for providing protection and assistance to IDPs rests with their government. The responsibility mainly emanates from the human rights regime to which the state is signatory party. These human rights obligations of state towards IDPs go beyond humanitarian assistance through the provision of food, medicine and shelter to include measures that ensure enjoyment of rights by IDPs. Like all human beings, IDPs are entitled enjoy human rights that are articulated under international, regional as well as national human rights instruments.¹⁹² Ethiopia has ratified almost all international as well as regional human rights treaties. From this it is safe to conclude that IDPs in the country are entitled fundamental human rights are applicable co-citizens of the country. This suggests once displaced, individuals should in theory continue to enjoy the same human rights with the rest of the population. The writer is mindful that, in practice, this is rarely the case, because displacement by its very nature generally entails the deprivation of many human rights. However, the situation they exist creates special needs on the behalf IDPs. Therefore, mere incorporation of rights existing under international is not enough to fully address the plight of IDPs. This imposes various obligations on the state under whose jurisdiction displacement occur. The core obligation is adopting legal or policy frameworks that address all phase of displacement, rights of victims, designate focal point, clearly stipulate obligations of government. Besides it, prevention obligation, respecting and assuring respect of rights of IDPs, adequately providing fund for needs of victims can be mentioned as obligations of state. This chapter therefore seeks to assess whether the GoE has discharged such duties.

4.2 Internal displacement in Ethiopia

There are several categories of IDPs in Ethiopia, but the most extreme category in terms of acuteness of the causes of displacement are those uprooted as a result of inter-communal

¹⁹² Principle of equality embodied under international human rights instruments prevents discrimination in ‘any ground’ including on ground of displacement.

conflict/ ethnic conflict.¹⁹³ Hiwot Bayu¹⁹⁴ espoused that ethnic federalism is fueling cause to displacement because the system puts for rights of NNP without including protection of minority. So, driving out minorities from localities where one group is majority occupant will become inevitable. Because of this ongoing security problem, over three million people are currently displaced within the country. This increment in size of IDPs is alarming while compared with an estimated 291,000 in July 2012.¹⁹⁵

This situation entails GoE with human rights obligations i.e. obligation to respect, to protect and to fulfil. To live up to these human rights obligations towards IDPs GoE should take measures to allow displaced persons to enjoy their human rights and fundamental freedoms. These possibly comprise legislative, administrative and others appropriate measures. Other essential measure is the identification of specific institutions and organizations to oversee the implementation of policies and laws, ensure effective coordination, and guard against duplication or gaps in activities regarding protection of IDPs.

4.3. National measures towards the plight of IDPs

National responsibility extends across all phases of displacement. It includes preventing arbitrary displacement, ensuring the security and well being of displaced persons once they are displaced, and creating the conditions for durable solutions to their plight, namely through voluntary and safe return or resettlement and reintegration¹⁹⁶. Decisions as to “when internal displacement ends” must be taken on the basis of objective criteria ensuring respect for the human rights of the internally displaced. For that the thesis made assessment of national response to the human rights obligations of GoE towards IDPs.

¹⁹³ OCHA, Ethiopia: Oromia – Somali Conflict-Induced Displacement Situation Report No. 4

¹⁹⁴ Interview with Hiwot Bayu , senior legal professional, legal directorate, MoP(Addis Ababa , 8 July 2019)

¹⁹⁵ According to the IOM’s Displacement Tracking Matrix the increase in numbers is partly due to improved data collection methodologies, more comprehensive coverage and wider range of actors accessing IDPs in previously hard-to-reach areas. It should be noted that IDP statistics remain contested in Ethiopia.

¹⁹⁶ Addressing internal displacement :a framework for national responsibility ,the Brookings institution university of Bern project on internal displacement, april,2005.

4.3.1. Adequacy Legislative and policy measures by GoE towards protection of IDPs

The development of a national legal framework upholding the rights of IDPs and the adoption of a national policy or plan of action on internal displacement are considered most important part of the national responsibility of state.¹⁹⁷ The world experience in developing laws and policies on internal displacement as a means to comply with human rights obligations towards IDPs shows that states have four principal models¹⁹⁸: 1) a brief instrument adopting the Guiding Principles¹⁹⁹; 2) a law or policy developed to address a specific cause or stage of displacement;²⁰⁰ 3) a law or policy developed to protect a specific right of the internally displaced;²⁰¹ and 4) a comprehensive law or policy addressing all causes and stages of internal displacement.²⁰² Whichever model is taken, the guidance contained in the Brookings-Bern manual for law and policymakers is particularly relevant. Developed under the auspices of the then special representative on IDPs' human rights, it identifies the minimum core elements of a national instrument to regulate IDPs' protection.²⁰³ As per this manual a number of key areas should be addressed by the legislation. Accordingly, the frameworks should embrace the definition of an IDP, affected communities and other groups, appoint an institutional focal point, provide coordination mechanisms, provide about the allocation of adequate financial and human resources, address the identification of an institution in charge of operational and financial oversight ,the establishment of data collection and management systems, the prevention of displacement and prohibition of arbitrary displacement, protection and assistance during displacement, including a restatement of IDPs' rights, the pursuit of durable solutions. The following discussion will delve on the relevant national legal instruments as far as IDPs in Ethiopia are concerned in light of guidance provided in manual.

¹⁹⁷Brookings Institution-University of Bern Project on Internal Displacement, "Addressing Internal Displacement: A Framework for National Responsibility," (Washington D.C. 2005)16-17.

¹⁹⁸Jessica Wyndham,a Developing Trend: Laws and Policies on Internal Displacement

¹⁹⁹ Instrument of Adoption of Liberia (November 2004).This instrument adopts the Guiding Principles "as a source of ongoing guidance and reference for the protection, dignity and rights of internally displaced persons."

²⁰⁰ The National Policy on Resettlement and Rehabilitation for Project Affected Families of 2003 of India and the Angolan Norms on the Resettlement of the Internally Displaced Populations.

²⁰¹ Law No. 5233 [of Turkey] (2004),and also Hurricane Education Recovery Act of US which addresses damages occurred due to terrorism or fighting against terrorism and right displaced students and teachers, respectively.

²⁰² Law 387 [of Colombia] (1997) and National Policy for Internally Displaced Persons [of Uganda] (2004),

²⁰³ Brookings-Bern, Protecting Internally Displaced Persons: a Manual for Law and Policymakers,(October 2008)12

A. FDRE Constitution

One fundamental measure that states can take to exercise their responsibility with regard to internal displacement is to take steps to prevent it. Such measures should focus on both preventing unnecessary displacement and, when displacement is unavoidable, taking steps in advance to mitigate its harmful effects²⁰⁴. A concrete step to prevent and mitigate displacement includes a review of relevant national laws and policies to ensure that they incorporate basic international law protections relevant for IDPs. In this regard Ethiopia has enacted relevant legal framework for the protection of the rights of IDPs. The 1995 FDRE Constitution contains various bills of rights providing for civil and political rights, as well as economic, social and cultural rights which are inherent, inviolable as well as inalienable as per Art.10. This makes strong base for enjoyment of constitutional rights by IDPs in the country. Further, the constitution imposes obligations on all organs and agencies of government to uphold and promote the rights and freedoms enshrined in the Constitution.²⁰⁵ However, as the situation of IDP requires focal point the constitution has not envisaged the establishment of specific institution for them. Same constitution introduces ratified human rights instruments in to law of the land according to article 9(4) and also it dictates that all fundamental rights and freedoms included in the Constitution shall comply with and reflect the principles that are laid down in the UDHR and the core international human rights instruments article 13(2). However, the scrutiny of constitution reveals Protection of IDPs regarding equality and non-discrimination is provided by provision of constitution. However, there is a need for a more specific reference to the prohibition of discrimination on the grounds of 'being displaced'. Protection of the needs regarding life and personal security Protection is provided by provisions under international law. However, some rights can be derogated from during SoE. Seen in light of obligation of GoE under ICCPR with respect to the right to life, the protection under constitution is inadequate.

Protection of the needs regarding personal liberty Protection is not sufficiently provided for by provisions of constitution. Other rights related to personal liberty can be derogated from during a SoE. No specific rights are included that protect IDPs. There is also insufficiently of Protection of subsistence needs of IDPs by Ethiopian Law. The majority of subsistence needs are not

²⁰⁴ibid

²⁰⁵ FDRE constitution , Art.13(1)

explicitly stated in Ethiopian Constitution or other subsidiary legislation. In addition to this, the duties of the GoE mentioned in the Constitution are subject to the GoE's ability to do so. This therefore does not guarantee access to basic services. There is a need for more specific rights related to the subsistence needs of IDPs and specific duties of States to fulfil those needs. Even the issue of adequately financing the need is not considered. Further Protection of movement-related needs of IDPs is not sufficiently provided for by Ethiopian law. Pastoralists are protected from forced displacement. Compensation is available for those whose land or property was expropriated for a public purpose. However, this is not sufficient to provide protection to all IDPs. The right to durable solutions is not recognized.

Protection of the need for personal identification, documentation and registration Protection is not sufficiently provided for by provisions of constitution. There is no explicit right to possess documentation or identification papers. No protection is offered to those who lost their documentation. Same holds for Protection of property-related needs of IDPs. There is a need for more specific property rights for IDPs. The right to restitution or compensation is not recognized except for those whose land or property was expropriated for public purpose. It is not available for all other causes of displacement or loss of property. With respect to the need to maintain family and community values Protection provided for by Ethiopian law is not sufficiently. There is a gap regarding the right to family reunification. Same can be grasped in relation to Protection of the need to build self-reliance as the duty of the GoE to provide all Ethiopians with access to education is subject to its ability to do so. Access of IDPs to income generating activities is not recognized. In addition, no other provisions specifically address the needs of IDPs are included. On top of protection insufficiency by the provisions of constitution, the country is facing implementation problem. According to Mengistu Abera, law directorate director in MoP which is relevant institution towards protection of IDP regarding displacement induced by conflict²⁰⁶ in current situation of displacement, the basic problem is not only lack of comprehensive law but assuring of rule of law and security of inhabitants. In this regard he admits existence limitations on behalf of government. Further, he added that the existing state structure contributed to the current conflict and then displacement. He said though ethnic based federalism by itself may not be taken as cause for the current displacement, its implementation and understanding by local

²⁰⁶ Interview with Mengistu Abera, law professional, director of law , MoP(Addis Ababa, 9 July 2019)

authority might be root cause for contemporary uprooting here and there. As per him, problem of functioning of administrative system based on ethnic arrangement partly is attributable to the long preaching about difference so long practiced in country than unity and identity than humanity. He admitted that a lot has to be done with respect to this issue though there is movement at pinnacle especially after coming into power of new premier. He also added that political land escape in Ethiopia seems to priority to group rights though FDRE constitution embraces individual rights. However, the work of promoting of rights other than group rights is minimal. This shows existence promotion gap in Ethiopia with respect to individual rights and rights of minority. Therefore, someone can argue that current displacement is offspring of policy of the government.

B. Subsidiary Legislation and Policy Measures

Ethiopia has also made developments on laws specifically important for the protection some layer of IDPs. In this respect legislation such as Proclamation No. 455/2005 Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation, Ethiopian Nationality Proclamation No.378/2003, Ethiopian Rural Land Administration and Land Use Proclamation No. 456/2005 relevant. However, these proclamations do not fully address the plight of IDPs in the country. So, generally they are of limited scope of application. For example, Proclamation No. 455/2005 Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation addresses only the concern of displacement induced by development projects. Therefore, this proclamation is cause specific and is of very limited scope i.e. is relevant to small layer of displaced persons. Given the current displacement mainly caused by inter communal conflict; the capacity of this proclamation to address the current displacement situation is very limited.

With respect documentation of IDPs the Ethiopian Nationality Proclamation No.378/2003 is relevant. It states in Art.13 that all Ethiopian citizens above 18 should be provided with a national identity card.²⁰⁷ Yet, this is not sufficient to address the problems IDPs encounter when they lose their documentation, because; the law does not provide exceptional means of obtaining

²⁰⁷Ethiopian Nationality Proclamation No. 378/2003, Art. 13

identity documents for IDPs. For instance in case Loss or Damage of National Identity Card it imposes obligation²⁰⁸ on nationals to apply to the appropriate organ for issuance of a replacement upon attaching with his application: in case of loss, an evidence of a report made to the police; or in case of damage, the damaged identity card; further payment of the fee prescribed for issuance of new identity card. This is too cumbersome to the victims of displacement. The situation they are living in supposes the above requirement not be applied to them. Therefore this proclamation fail to consider the special situation IDPs are in and government should have provided exceptions under the provision to cope the needs of victims.

Moreover, policy framework for protection of IDPs in Ethiopia which is National Policy and Strategy on Disaster Risk Management (2013) largely focused on life-saving humanitarian action.²⁰⁹ Although humanitarian responses play a vital role in providing a safety net for those in desperate need, it is equally crucial to ensure a smooth transition to development-oriented assistance. However, this requires huge resource inevitably the policy implementation will be confined only to the humanitarian needs of IDPs. Issues such as compensation, rehabilitation of IDPs are remaining not addressed by the policy instrument.

Generally, the assessment of legislative measures in the country reveals that country's lack of a comprehensively dedicated framework to guide responses to the plight of IDPs. Though rights relevant for protection of IDPs are stipulated under various provisions of FDRE constitution as well as in subsidiary laws, they are still insufficient to fully address the plight of IDPs. According, the seiner legal professional Ms. Hiwot Bayu, dealing with the government obligations towards IDPs without having tailored law on the area means "voyage without destiny."²¹⁰ Besides its insufficiency legislative measures in Ethiopia do not cover prohibition of forced displacement except pastoralists, compensation rights of IDPs except for those displaced due to development projects, rehabilitation and recovery of victims is also not addressed, about providing adequate fund to respond to needs of needs of IDPs. In this circumstance one will get

²⁰⁸Proclamation for registration of vital events and national identity card No. 760/2012, Art.62.

²⁰⁹Behigu Habte and Yun Jin Kweon, Addressing internal displacement in Ethiopia, available at www.fmreview.org/GuidingPrinciples20 accessed on 12 July 2019

²¹⁰Interview with Hiwot Bayu , senior legal professional, legal directorate, MoP(Addis Ababa , 8 July 2019)

surprised in this fact because GoE made high progress in adoption legal framework²¹¹ for protection of refugees while failing to do so in relation to its citizens who are displaced. Because of this Mark Yalle, stated “Ethiopia government receiving, deservedly, international praise for its increasingly progressive policies towards refugee. But the way it is treating its own displaced citizens is not only shameful, it’s inhumane”²¹² However, the human rights obligation towards IDPs dictates adopting law that covers all causes, phases as well as upholds the rights of IDPs and precisely indicating the corresponding obligations of government. From this, based on the above assessment, it is possible to conclude that GoE is not living up to its obligation to take legislative measure and violating its human rights obligations and existing legal frameworks are inadequate to address the needs of IDPs in the country.

4.3.3. Observance of institutional measures taken by Government of Ethiopia to fulfil its obligations towards IDPs

Human rights obligation requires taking appropriate measures at national plane to fulfill obligations and allow enjoyment of rights by holders. The appropriate measures possibly include establishment of institutions working towards allowing enjoyment of rights by rights holder. To this end FDRE constitution imposes human rights obligations on all organs and agencies of government to uphold and promote the rights and freedoms enshrined in the Constitution.²¹³ However, in context of IDP the obligation to take intuitional measure requires designating focal point IDPs but constitution has not envisaged the establishment of specific institution for them. Designating a national institutional focal point on internal displacement is essential to ensure sustained attention to the problem and also to facilitating coordination within the government and with local and international partners. Therefore, establishing such institution devoted to work towards the needs of victims is one of necessary measure to be taken by state to live up to obligations towards them. According to framework on national responsibility²¹⁴ different institutional options exist in various countries, some attach responsibility for the internally displaced the mandate of an existing government agency, such as the government body charged

²¹¹ Proclamation No.1110/2019

²¹² <<<https://reliefweb.int/report/et>>> accessed on august 21 2019

²¹³ FDRE constitution , art.13(1)

²¹⁴Addressing Internal Displacement: A Framework for National Responsibility

with refugee issues or the department of social welfare while in other countries a body is designated to focus exclusively on IDPs. In still other cases, a government committee, working group, or task force on IDPs is established that regularly brings together officials from the relevant ministries and departments to jointly discuss IDP needs, facilitate coordination including with the international community, and develop strategies for ensuring an effective response.

When Seen in light of these models of national institutional focal points, institutional setup towards protection in Ethiopia is scattered one. Accordingly, MoP, NDRMC and others play some roles in protection and assistance of IDPs. Besides these relevant institution steering committee was established to facilitate the protection of IDPs. This shows that the country lacks specific institution entirely devoted to watch over the problem of internal displacement and assure consumption of human rights by the victims then enable the government to live up to its obligations. Besides lack of entirely devoted specific focal point, the relevant institutions are also not effectively reacting to the plight of IDPs in Ethiopia. This is partly attributable to the arrangement of the institutions themselves and partly to external factors. Regarding arrangement of the institutions, for example, MoP which is main institution for protection of IDPs is established at federal level. However, the same office are lacking at local levels where displacement mainly occurs. The bureaus at regional levels are of obligation to cooperate rather not subordinate to MoP. According, to Baharu Adugna²¹⁵ lack of institutional arrangement at local level where “producers of IDPs” are dwelling is main challenge to the effectiveness of the institution. He added that such gap resulted in delay of reaction towards the situation then failure to met obligations to protect as well as fulfill of the government. It is not doubtful that having institutions locally established and backed by financial and human resources to address the plight of IDPs. Same holds true to NDRMC. The commission is independent at federal level, however, not the same institutions at regional levels except in Oromia and Dire Dawa. In rest regional states, the commission carries out its mandate via bureaus of agriculture. According to Mr.Yitbarek Tesfaye, lack of offices at regional and local levels is one the challenge to effectiveness of the commission. He added what happened in case of Gedeo is the effect of lack of office there to urge the commission to react to the humanitarian situation on time. This

²¹⁵ Interview with Mr. Baharu Adugna , professional of conflict resolution department ,MoP(Addis Ababa, July 9 2019)

limitation resulted in worsening of humanitarian situation of IDPs there.²¹⁶It caused starvation of victims exposed them to health rights violation. On top of challenges relating to institutional arrangement, conflict also the challenge to effectiveness institutional focal points. Here conflict is both cause as well as impediment to institutions mandate to address the plight of displaced persons. According to Mr. Getnet Amare, conflict created difficulty of accessing to sites of IDPs as well as caused destruction of the logistics cars destining to the victims of displacement.²¹⁷ According to him, limitation in “ensuring rule of law” is impeding humanitarian actions. Given the obligation to assure security of the country and establishing rule of law mandate of government, this could not be legal defense for the writer. This shows failure on the behalf of GoE to live up to its human rights obligation to protect. Another justification rise as factor affecting effectiveness of institutions for protection of IDPs is resource deficiency. According Abraham Abebe, government is forced even to utilize budget assigned to other projects.²¹⁸ He added that this resource demand is due to increment in size of IDPs, which made the difficult supply sufficiency and on time. Shifting of budget could be seen as positive commitment but is not sufficient and could also be taken as lack of attention to the problem on the behalf of government when seen in light of severity of the problem. Because, as the problem of internal displacement is sustaining in the country it will not be wrong to expect reserving financial resources to the needs. Given the human rights duty to fulfill of the government should strive to cooperate even with international humanitarian institutions. However, the fact shows failure in fulfilling this obligation on behalf of GoE. Generally, the country lacks specific focal point entirely devoted towards IDPs and also the existing scattered institutions are ineffective. Therefore, GoE is not living up to its human rights obligation towards IDPs in relation to taking institutional measure and existing institutions are adequately addressing the plight of IDPs.

²¹⁶ Interview with Mr. Yitbarek Tesfaye, notice and urgent humanitarian response professional, NDRMC (Addis Ababa, 8 July 2019)

²¹⁷ Interview with Mr. Getnet Amare, professional logistics safety net, NDRMC (Addis Ababa, 8 July 2019)

²¹⁸²¹⁸ Interview with Ato Abraham Abebe, Directorate Director , returning and rehabilitation department, NRDMC(Addis Ababa , 8 July 2019)

4.4. Human Rights Abuses against IDPs

Ethiopia is state party to almost all core international human rights instruments. And it is also a state party to regional human rights instrument which is ACHPR and other instruments concerning specific subjects. Besides them the country also has constitution which devoted numerous provisions towards human and democratic rights. As per these ratified instruments as well as national bill of human rights, IDPs in Ethiopia are entitled to various rights equally without discrimination with other citizens.²¹⁹ This imposes corresponding obligations to ensure enjoyment of different rights on GoE. These obligations are; obligation to respect, to protect and fulfil. Despite the existence of obligation imposing national, regional and international frameworks, protection of IDPs in Ethiopia has fallen short of the national and international obligations of the state, as IDPs continue to suffer gross human rights violation. The human rights situation of IDPs in Ethiopia and fulfillment or otherwise of obligations by GoE was assessed on the following points.

4.4.1. Personal security and integrity/physical protection

The situation they live makes IDPs the most vulnerable groups of people in the world and often they face serious risks and threats to their life, liberty, safety and security. These rights are guaranteed under international as well as national human rights instruments. Therefore, the state is of obligation to respect and protect these rights of IDPs. How these rights of IDPs are exercised needs data on them. However, except generally understood amongst humanitarian organizations that these risks exist, data assessment reports often do not include specific information on risks of personal security and physical protection towards IDPs. However, some reports included issues of personal security and physical protection of IDPs. Specifically in reports regarding displaced persons in Gedeo and West Guji, partners have reported a number of protection concerns like intimidation, detention, and sporadic reports of IDPs have been beaten by security forces.²²⁰ This amounts to violation of the right to personal security of displaced

²¹⁹ The non discrimination clause included human rights instruments dictates equal enjoyment of rights which holds true to IDPs. For instance; see art. 2(1) of ICCPR. See also article 25 of FDRE constitution.

²²⁰ OCHA, humanitarian Access Situation Report of Ethiopia May 2019, available www.unocha.org/ethiopia accessed on 15 July 2019

persons. According to the report it is the security force that engaged in activity that infringes the right of IDPs. Apart from security force in Ethiopia also the “local authorities are becoming both masterminds of displacement and reporters of it.”²²¹ In this respect GoE has undertaken to ensure effective remedy to person whose rights or freedoms recognized under international human rights instruments are violated, notwithstanding that the violation has been committed by persons acting in an official capacity.²²² In the country security force is under the control of executive wing of government. Since it is under the auspices of the government, the activities are attributable to it. This specific instance shows engagement of government in activities that violate the right to personal security and integrity rights of IDPs. Under human rights instruments the government is of obligation to respect the rights embraced under them. This obligation requires the state not to engage in the activity that infringes the rights. With respect to criminal remedy, there is move in Ethiopia. In his statement to parliament, prime minister Abiy Ahmed, said at national level 2500 suspects were identified for aiding and intensifying internal displacement.²²³ Further, in some area conviction of criminals for instigating killings and displacement was undertaken.²²⁴ Though enhancing criminal remedy is positive move, the writer opines the identified suspect should embrace the master minds who are political arsonists. Ongoing justice administration does not reveal that. This helps to conclude GoE has failed to observe its obligation to respect as well as protect human rights of IDPs.

4.4.2 .Access basic socio-economic needs of IDPs

Overall, socio-economic needs of IDPs remain high in both areas of displacement and of return. Most assistance in displacement areas is disrupted following the mass government return operation and the dismantling of sites, while assistance in areas of return remain scant to non-existent, affecting the sustainability of the returns.²²⁵ The majority of the returnees require assistance pending full recovery and rehabilitation of damaged houses, properties and livelihoods. This calls for continued humanitarian assistance in the interim and a scaled-up

²²¹ Interview with Mr. Baharu Adugna , professional of conflict resolution department ,MoP(Addis Ababa, July 9 2019)

²²² ICCPR 1976, Art.2(3)

²²³ Feature: How Ethiopia is dealing with unprecedented IDP crisis available on www.addisstandars.com accessed on 20 July 2019

²²⁴ According to Sergeant Kemal Elemo, West Guji Zone Police Chief, 89 criminals were convicted 2 to 20 years; available on www.Dwamaharic accessed on 21 July 2019

²²⁵ OCHA, IDP situation report, may 2019

recovery and rehabilitation support in the large areas where this kind of support is viable. Secondary displacements of returnees have been reported in most areas of East and West Wollega zones due to lack of assistance and insecurity in areas of return.²²⁶ In other areas of the country where returns have taken place, most IDPs have returned to their damaged homes or to areas nearby. This complicates the life of returnees. However, the human rights obligation (especially obligation to fulfill) assumed by GoE obligates the government to take positive measure provide socio-economic needs of IDPs. Therefore, the above lack provision in socio-economic needs of IDPs then is causing secondary displacement amounts failure of the government to fulfill its obligation to protect and to fulfill. So, this reveals the existence of gap in protection of the right access humanitarian needs of IDPs in Ethiopia which inevitably result in violation of interrelated human rights.

4.2.4. Forced and involuntary of return

Government IDP returns operations have been implemented at full scale since early May 2019 following the announcement of the Federal Government's Strategic Plan to Address Internal Displacement and a coasted Recovery/ Rehabilitation Plan. This could be taken as one of administrative and good move on the side of government. The overall objective of this plan is to ensure the voluntary, safe, dignified and sustainable return or relocation of displaced persons due to conflict in different regional states. Despite the objective the strategy, GoE is criticized for forced return to areas that are still unsafe.²²⁷ The means used to achieve the goal of strategic plan has challenged IDPs individual rights and access to aid. Action such as stoppage of aids, dismantling of displacement sites, the dispersing of IDPs undertaken.²²⁸ However, obligations assumed by the GoE dictate government not to engage in such activities. For instance discontinuing of humanitarian aids results in violation of the right to food which could lead to deterioration of heath IDPs then the right to life will be at risk. So, improper actions undertaken to implement the plan will result in violation of plethora of rights of the victims. According to Mr. Beyene some improper implementation caused premature returning and resulted secondary displacement, by citing Harari and Gedeo case in which secondary displacement of over 62

²²⁶ *ibid*

²²⁷ Critiano D'orsi, Ethiopia needs to act fast to solve its ID problem, university of Johannes burg, www.conversation.com/lamp/ accessed on 18 august 2019.

²²⁸ OCHA, IDP situation report, may 2019

thousand persons. “...some improper implementation”²²⁹ caused violation rights of the above size of persons. Specifically the freedom of movement prohibits the government from forcefully returning IDPs.²³⁰ Still premature return also leaves the security and life IDPs at risk. This enables to infer that GoE is failing to respect and protect human rights of IDPs.

According to the interview made with Mr. Beyene Fisha Abay, the directorate director of lasting solution for conflicts²³¹ their department engages on mainly peace building issues before returning displaced persons to their homelands though facilitating inter communication between groups in conflict, singling out the individuals who are suspect for triggering conflict and engaged in displacing persons. This reveals failure on the side of the GoE to fulfill its human rights obligation to protect towards IDPs. Still even in those voluntary returns, ID has continued to return to their home lands with minimal to no assistance. According to the returning and rehabilitation department directorate director, Ato Abraham Abebe under NDRMC,²³² the current displacement which was unexpected, made things difficult on the side of government to fully address the plight of IDPs. As per him the main work now the government engaged on is life saving works. Besides this, he added that returning and relocation of IDPs to their homeland and other part of the country is going on swiftly. He raised this as commitment on behalf of government. However, he said returning is not difficult; the problem exists in stage rehabilitation. Accordingly, he admits since the rehabilitation stage seeks huge resources, government could not dare to say it run as required. This implies the government simply engaging in returning of IDPs, without being ready to allow recovery. As displacement causes losing of property and sources of livelihood of victims, merely returning to the place of origin expose them to the chronic social problems. Despite this fact, assistance in areas of return remains scant to non-existent,²³³ affecting the sustainability of the returns. Though returning IDP is positive move, returning to bare situation without ensuring recovery and rehabilitation the victims exacerbates the plight of returnees. Recovery is envisaged by different rights of IDPs

²²⁹ Interview with Mr. Beyene Fisha Abay, the directorate director of lasting solution for conflicts, MoP (Addis Ababa, 7 July 2019)

²³⁰ UN HRC General Comment No. 27 Sixty-Seventh Session (1999), para.7

²³¹ Interview with Mr. Beyene Fisha Abay, the directorate director of lasting solution for conflicts, MoP (Addis Ababa, 7 July 2019)

²³² Interview with Ato Abraham Abebe, Directorate Director, returning and rehabilitation department, NRDMC (Addis Ababa, 8 July 2019)

²³³ OCHA, Ethiopia IDP Situation report, May 2019

mainly rights relating to economy requires it. However, facts on ground reveal existence of non-fulfillment the obligation to fulfill towards IDPs by the government because though the informant claims resource limitation as excuse , the government is still of obligation to cooperate with international community to fill its inability. Generally, from the above discussion, it is safe to conclude that the GoE has largely failed to protect the IDPs within their territories, as the displaced continue to suffer gross human rights violations.

CHAPTER FIVE

5. CONCLUSION AND RECOMMENDATION

5.1. Conclusion

The term Internally Displaced Persons (IDPs) has been a recent development despite the fact of long existence of the situations giving rise to internal displacement. It emerged in recent years as one of the most pressing humanitarian, and human rights issues facing the international community. It was not until the last decade of the 20th century that the term “internally displaced persons” (IDPs) came into regular usage and that international attention turned toward the potential creation of an international system to deal with IDPs. Guiding principles defines IDPs as 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.

Globally today there exist more than sixty million people internally displaced as a result of violent conflicts, developmental projects and other human rights violations. Internal displacement is taking place in every corner of the world. Majority of IDPs exist in Africa. Inevitably displacement exposes the victims to face violation human rights and fundamental freedoms. Despite this fact, there is gap with respect to protection and assistance IDPs at international plane. That is at international level there is no specific legal and institutional framework devoted towards protection and assistance of IDPs. However, there is no doubt that human rights apply to IDPs in all phases because human rights are inherent by their nature and rights of IDPs remain intact as they are entitled before the displacement. Besides human rights regime, which are of general application, specific standards are included under the UN Guiding Principles on protection and assistance of IDPs. Additionally, IDPs in Africa enjoy protection under Kampala convention. The generally applicable human rights regime, the specific Kampala convention as well as the normative UN Guiding Principles on protection of IDPs provides for the rights of displaced persons on one hand and corresponding obligations of states on the other hand. Accordingly, the human rights obligations of state towards IDPs are three i.e. obligation to

respect, to protect and fulfill. The state that is state party to human rights treaty shoulders these obligations towards IDPs. To live up to its obligations, state is required to take legislative, judicial, administrative, educative and other appropriate measures.

Ethiopia is state party to almost all core international human rights instruments as well as to regional human rights instruments such as ACHPR and others. These treaty instruments are part and parcel of law of the land according to FDRE constitution. Beyond that the constitution itself devotes many provisions to human and democratic rights, to use the word of the constitution. As per these human rights regime, 'every one' entitled to rights embraced in the instruments 'without discrimination on any ground'. Based on these international standards, IDPs are entitled to all rights equally with compatriots. Therefore, primary responsibility of protecting IDPs rests with state under whose territory the displacement occurs. So, it is the GoE that shoulder obligation of protecting IDPs.

However, the human rights instrument which impose obligations on state parties do not answer critical questions such as what, concretely, measures do human rights obligations of government towards IDPs require? How can it be measured? Promoted? Reinforced? Supported? To solve this problem and in order to provide more specific guidance to governments about how to fulfill human rights obligations towards IDP protection and assistance, in 2005 Erin Mooney, Deputy Director the Brookings Institution-University of Bern Project on Internal Displacement developed a 'Framework for National Responsibility'. The Framework sets out twelve broad areas in which states can directly contribute to the mitigation and resolution of internal displacement. These are preventing displacement and minimizing its adverse effects, raising national awareness about the problem, collecting data on the number and conditions of IDPs, supporting training on the rights of IDPs, enacting a legal framework upholding the rights of IDPs, development of a national policy on internal displacement, designating an institutional focal point on IDPs, supporting national human rights institutions to integrate internal displacement into their work, ensure the participation of IDPs in decision-making, support durable solutions, allocate adequate resources to the problem, cooperate with the international community when national capacity is insufficient.

Bearing this in mind, the theses aimed to analyze the obligation of the GoE towards IDPs emanating from international human rights treaties ratified by the government and evaluate their implementation. In doing so the thesis tried to look into mainly legislative and institutional measures at national plane. To achieve the objectives five fundamental research questions have been raised. The first is what human rights obligations of Ethiopia towards IDPs are. Subsequent were what measures should the GoE take to protect the rights of IDPs and whether the national measures taken are adequate to ensure the protection of the human rights of IDPs. The extents of IDPs in Ethiopia as well as the impact of inadequacy of frameworks on the rights of IDPs were also dealt.

The country is leading the world in size of displaced persons. The main cause of current displacement is ethnic tension. This requires working on the issue of restoring law and order in the country. The existence gap in this regard resulted in forced displacement of numerous citizens on ground of their ethnic identity. Therefore, this reveals the GoE is not fulfilling its obligation of protection human rights.

International human rights instruments obligate state to take legislative measures to assure equal enjoyment of rights by everyone. To this end, Ethiopia adopted different legislative measures. Specifically, FDRE constitution provides for different Protection of the needs displaced persons. For instance it embodies important principle; principle of equality and non-discrimination which allows displaced persons to enjoy rights with others. However, there is a need for a more specific reference to the prohibition of discrimination on the grounds of ‘being displaced’ and ethnicity. It also addresses protection of the needs regarding life and personal security. Protection is in theory provided by Ethiopian law. However, these rights can be derogated from during SoE. Other Protection need of IDPs which is not sufficiently provided for by Ethiopian Law is the subsistence needs. The majority of subsistence needs are not explicitly stated in Ethiopian Constitution or other specific legislation. In addition to this, the duties of the GoE mentioned in the Constitution are subject to the GoE’s ability to do so. This therefore does not guarantee access to basic services. Further relating to movement-related needs of IDPs, protection is not sufficiently provided for by Ethiopian law. Pastoralists only are protected from forced displacement. This implies except pastoralists other layer of population are not protected from

forced displacement. In relation to property right related protection, Compensation is available only for those whose land or property was expropriated for a public purpose. Still the problem is intact in subsidiary law as it in constitution. However, this is not sufficient to provide protection to all IDPs. Further protection of the need for personal identification, documentation and registration Protection is not provided for by Ethiopian law. Protection of the need to maintain family and community values protection is not sufficiently provided for by Ethiopian law. There is a gap regarding the right to family reunification. Protection of the need to build self-reliance Protection is not sufficiently provided for by Ethiopian Law. The duty of the GoE to provide all Ethiopians with access to education is subject to its ability to do so. Access of IDPs to income generating activities is not recognized. In addition, no other provisions specifically address these needs of IDPs are included.

Generally assessment of Ethiopian legislative measure reveals that the country lack comprehensive IDP-specific legal instrument that affirms the human rights of those who are internally displaced. Nor have formally adopted normative instrument that allows government for ensuring full respect for IDPs' human rights. Therefore, from discussion it is safe to conclude that the existing framework of Ethiopian law does not provide sufficient protection to the needs of IDPs. This shows the GoE is failing to fulfill its obligation of taking legislative measure to live up to human rights obligation towards IDPs.

Additionally, in the African region, IDPs have possibility to enjoy protection included under the IDPs tailored Kampala convention. The displaced person living in country which state part claim rights embraced in it and government shoulders obligations stipulated therein. This creates great opportunity to IDPs of state party when there is no specific law at national plane. Unfortunately IDPs in Ethiopia cannot enjoy the protection under the convention because the GoE has signed it but yet to ratify. Therefore, as far as the obligation to take legislative to address plight of IDPs, there is ratification gap in the country.

Moreover, even in relation to basic needs and vulnerabilities of IDPs addressed by variety of constitutional provisions and other subsidiary legal instruments, there is problem of implementation. Discussion shows there are risks of personal security and physical protection

towards IDPs, worsening of humanitarian access as a result of an increase of security incidents and restrictions on IDP access to assistance, existence of a number of protection concerns like intimidation, detention, and beating of IDPs by security forces. Therefore, violations of these rights and freedoms are the result of the unwillingness of the federal government, regional government or other government institutions to abide by the law. This leads to conclude that in issues addressed by laws, GoE is failing to observe the rights of IDPs then violating its obligation to respect human rights of the victims.

Further, the discussion shows existence of positive movement on the side of government to return IDPs to their original home land. As current displacement is mainly due to ethnic tension it needs preliminary actions such peace building and working on security issues. In this regard the GoE come up with strategic plan to address internal displacement geared toward returning IDPs. However, in implementation there is gap in that government before creating safe area of origin dismantled sites and discontinued the humanitarian assistances to force displaced persons to return to their homeland. This resulted in secondary and tertiary displacement in some places. In other word the returning process is premature. This lead to secondary and tertiary displacement violation of rights again happened due to actions taken to attain returning plan. Therefore, this amounts to violation of rights by government. From this it is possible to come up with the conclusion that GoE is not fulfilling its human rights to respect. Additionally, even in voluntary return the assistance remain scant to non-existent, affecting the sustainability of the returns. This yields conclusion that of there is failure on behalf of GoE to observe its human rights obligation to fulfill.

Governments bear the primary responsibility for their internally displaced citizens. This responsibility obligates state to allocate clear responsibilities to competent authorities at the national and local level, or to provide a sound basis for making adequate resources available. Discussion in the body part reveals that in Ethiopia there are institutions of focal points as far as protection of IDPs is concerned. Though these institutions are relevant to protect IDPs still they are not entirely devoted towards IDPs or address only portion of plight of IDPs. For instance NDRMC is one of relevant institution in relation to protection of IDPs. However, it only addresses humanitarian needs of the victims. Further, MoP which is another institutional focal point towards IDPs is not clearly entrusted with responsibility of addressing the plight of IDPs.

Rather it is only through deducting the powers given to the institution that one can reach in conclusion that it relevant institution to protection of IDPs. This shows in Ethiopia there is no specific institution that addresses the plight of IDPs. Therefore, GoE has not fulfilled its obligation to take institutional measure to live up to its human rights obligation towards IDPs.

Still effectiveness of these institutions especially NDRMC is highly affected problem of institutional arrangement and limitation of resource. Further, security problem blocking of ways to victims, attack against logistics fueled the problem of humanitarian problems in some sites. MoP also faces the problem of institutional arrangements at local level where the problem emerges. This highly impacted the efficiency of the institutions. Therefore, besides lack of entirely devoted institution towards IDPs, institutions relevant to IDPs are not acting to extent expected from them.

5.2. Recommendations

Based on the above facts and reality, the following points are recommended.

1. The problem of displacement in the country is no longer a temporary situation – rather, it is a growing problem which requires a permanent solution. Adopting a national legal instrument which covers all causes and phase of displacement, upholding human rights of the victims and specifically addressing the obligations of the government is necessary. As the discussion reveals the legal frame works of the country embrace some important rights as far as IDPs are concerned. However one core problem in the country is lack of comprehensive legal or normative framework that covers all causes and phases of displacement, uphold rights of IDPs and corresponding obligations of government. For this purpose, the GoE should enact legal framework that covers all causes and phases of displacement, upholding the rights of IDPs and precisely indicate the corresponding obligations of government.
2. Beyond lack of comprehensive national legislative and policy instrument there is also ratification gap, because Ethiopia has not ratified Kampala convention, the first binding

specific framework for protection and assistance of IDPs in the world. The convention a landmark instrument that established a common regulatory standard for IDPs and creates important opportunity to GoE to address the needs of IDPs given the fact of lacking comprehensive legal framework. On this regard ratification of the convention is recommended.

3. In Ethiopia there is no specific institution that entirely devoted to address the plight of IDPs. However, there are some institutions that are relevant as far as protection of IDPs is concerned. These institutions address some fraction of plight of IDPs or are not precisely entrusted with the obligations towards IDPs. Further, these institutions are not acting to extent expected from them due to arrangement and resource limitations. For that it is recommended to solve limitations of relevant for the time being and establish institution entirely entrusted with obligations in relation to IDPs.
4. The discussion also revealed that beside lack entirely devoted institutional setup towards IDPs; the existing institutions are also not acting to extent expected from them. This is attributable to problem relating to institutional arrangement as well as resource. Further security concern impacted their effectiveness. For that, the GoE should establish subordinate institutions at regional and local levels and should fund sufficiently. Further it is recommended that government should solve the problem of security highly affecting response of national as well as international humanitarian partners.
5. Most importantly, in the country there is positive movement on the side of government to return IDPs to their original home land. However, the discussion revealed existence of violation of rights of IDPs included in national as well as international human rights instruments to which the country is state party, on process achieving the plan of returning. In other word there is forced and premature return. This fact stands against the obligation to respect of state human rights of IDPs. According to the obligation to respect, government should refrain from activities that violate human rights. For that GoE should not undertake forced and premature return.

6. Further even in return which is voluntary and safe the assistance remain scant to non-existent, affecting the sustainability of the returns. The majority of the returnees require assistance pending full recovery and rehabilitation of damaged houses, properties and livelihoods. This calls for GoE to provide continued humanitarian assistance in the interim and a scaled-up recovery and rehabilitation support.
7. On top of the above recommendations there is with respect to restoring law and order in the country. The existence gap in this regard resulted in forced displacement of numerous citizens on ground of their ethnic identity, reveals that GoE is not fulfilling its obligation of protection human rights. For that GoE should take steps to restore law and order in the country.

Therefore, the writer believes that the above measures, if implemented, will enable the GoE to solve problem of internal displacement and minimize violation of the rights of victims and allows it to live up to its human rights obligations.

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Appendix

Appendix A

- **Interview Guide for officials from ministry of peace**

Introduction: I am Wondu Tamire, LLM student at Jimma University School of law. I am doing my LLM thesis on a title “an inquiry into the obligations of state towards IDPs :case of Ethiopia The purpose of this interview is to get information about the role of your institution as far as the protection of IDPs is concerned and whether your institution is adequately addressing the plight of victims of internal displacement.

Questions

1. Can you tell me about IDPs in Ethiopia?
2. What are measures taken by the government to respond to the problem of internal displacement?
3. Do you think the measures the government has taken are adequate to protect IDPs?
4. What are challenges that face your institution then affect its effectiveness in protection of IDPs?
5. Do think that GoE is discharging its obligations sufficiently?

Appendix B

Interview Guide for officials at NDRMC.

- **Introduction:** I am Wondu Tamire, LLM student at Jimma University School of law. I am doing my LLM thesis on a title “an inquiry into the obligations of state towards IDPs :case of Ethiopia The purpose of this interview is to get information about the role of your institution as far as the protection of IDPs is concerned and whether your institution is adequately addressing the plight of victims of internal displacement.

Questions

1. What is the role of your office towards IDPs?
2. Can you about the structure of your institution?
3. What guides you to address all phase of displacement?
4. What are challenges of your while discharging the obligations?
5. What is future plan of your institution to solve the problem of internal displacement?