



The Right to Return Vis-À-Vis the Right of IDPs to Get Compensation for Properties Lost or Damaged during Displacement in Ethiopia; *Law and Practice*

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SCHOOL OF LAW POST GRADUAGE STUDIES- HUMAN RIGHTS LAW
STREAM**

Addis Ababa, Ethiopia

November, 2022

The Right to Return Vis-À-Vis the Right of IDPs to Get Compensation for Properties Lost or Damaged during Displacement in Ethiopia; *Law and Practice*

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A Thesis Submitted in Partial Fulfilment of the Requirements for the Master of Laws Degree (LL.M) in Human Rights Law at Addis Ababa University Faculty of Law

Addis Ababa University

School of Graduate Studies

Faculty of Law

November, 2022

Declaration

I, Firaol Ofga, hereby declare that the thesis '*The Right to Return Vis-À-Vis the Right of IDPs to Get Compensation for Properties Lost or Damaged during Displacement in Ethiopia; Law and Practice*' represents my original work, with citations and quotations where other people's works have been used. To the best of my knowledge, it has not been submitted to any other University for any other purpose.

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Acknowledgement

This endeavor wouldn't have been possible without God's help in my life; I am truly grateful for his unconditional love and mercy.

I am also deeply indebted to my patient and supportive advisor Dr. Sisay Alemahu for his guidance and feedback throughout my endeavors in this thesis. Thank You Dr.

I would be remiss in not expressing my gratitude to my friends and families who has been my source of encouragement. Thank you all!

Abstract

This paper has critically analyzed the importance of ensuring the right to compensation for IDPs, especially those returning to their home. For that, it has analyzed the existing legal frameworks on the rights from the national and international perspective. It has also gathered the major challenges IDPs face upon returning and claiming property rights specifically of compensation claims. It has unveiled that the national framework on IDPs right to property has caused major challenges in empowering victims to claim their rights and lack of legal and institutional framework for IDPs has caused a responsibility vacuum from the government side. Thus, to fill those gaps, the paper has recommended the adoption of new law that covers the needs and vulnerabilities of IDPs in Ethiopia. Specifically amending existing laws hindering the effective remedies for IDPs is vital. Further, severing of reservation made on the Kampala Convention on the right to compensation, through activism from various actors is needed for effective redress for the right to compensation of IDPs with emphasis on the state compensation scheme to be given priority for consideration.

Acronyms

AfCHPR African Charter on Human and Peoples Rights

CSO Civil Society organization

DSI Durable Solution Initiative

DRMCO Disaster Risk Management Coordination Office

ECHR European Council of Human Rights

FDRE Federal Democratic Republic of Ethiopia

GPID Guiding Principles on Internal Displacement

HF House of Federation

HLP Housing, Land and Property

UN United Nation

ICCPR International Convention on Civil and Political rights

ICESCR International Convention on Economic, Social, Cultural Rights

ICL International Criminal Law

IDP Internally Displaced people

IHL International Humanitarian Law

ILO International Labor Organization

IHRL International Human Rights Law

KC Kampala Convention

NHRI National Human Rights Institutions

RBA Rights Based Approach

UDHR Universal Declaration of Human Rights

Chapter One

1.1. Background of the Study

Only very few experiences can be more traumatic than forced displacement. Every year, millions of people are forced to flee their homes and properties against their will. Whether caused by armed conflict, genocide, ethnic cleansing or large-scale violations of property rights carried out by governments, rebel groups or others, displacement is always vile, always inhuman, but all too rarely is it short.¹ While finding safety from those torments, the displaced often leave behind their property, which is subsequently damaged by fighting or usurped by parties to a conflict or other persons. Hence, forced displacement triggering, *inter alia*, loss of land and property, causes serious consequences on lives, depriving the main source of physical and socio-economic security of victims.²

Often, we may reasonably expect protection against the prospect of losing property rights, simply because the displaced were forced to leave or else fled an insecure situation, and yet the reality is odd. It is against this backdrop of needs and vulnerabilities, the international community initially tended to focus on providing sheer assistance than protection for IDPs. However, with the emergent awareness on the interconnection between the two, numerous essential initiatives are being taken, and still it is an evolving issue.³ There is no internationally comprehensive and binding instrument for the protection and assistance of IDPs,⁴ although scores of international conventions oblige states to ensure the same protection to their citizens but not specifically for IDPs.⁵ International law criminalizes forced transfer of population as a crime against humanity, and prescribes remedy to the victims. Such victims of forced displacement are entitled to return to their home areas and property, a right known as the right to return.⁶ Still, it would not be sufficient to ensure its durability if it's only a return to one's city.

¹ The Pinheiro Principles; Foreword; United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons Centre on Housing Rights and Evictions, p-3.

² Global Protection Cluster Working Group, 2007, Handbook for the protection of internally displaced persons, p-255.

³ IASC, Policy Protection of IDPs, December 1999, p-1.

⁴ Save for the Kampala convention in regional level.

⁵ Andrew Solomon, Forced Displacement and Housing, Land, And Property Ownership Challenges in Post-conflict And Reconstruction, INPROL Consolidated Response (09-003).

⁶ iDMC, Training on the Protection of IDPs, the right of IDPs to return home and property restitution, p-1.

The expansion of the idea of return, in to concepts involving return to and re-assertion of control over one's original home, land or property, is vital in ensuring durability.⁷

Accordingly, the emphasis that came through historic change from humanitarian-driven approach to rights-based approach to return, profoundly embedding upon the principle of restorative justice and of restitution as a legal remedy, has influenced the entire return dynamics.⁸

As a result, return without restitution can only ever provide an incomplete durable solution, the international, regional and national laws and other instruments reflected the right as a basic, self-standing human right, interdependent with a series of related rights, than a sheer political or humanitarian thought.⁹ The growing recognition, therefore at an international level, on the direct links between property restitution and peace, stability, reconciliation and economic development, has strengthened the former as a right being viewed as a key element of any constructive peace-building strategy, and is held necessary in ending the effect of displacement.¹⁰

A number of factors, however, hinder IDPs the security of property including the right to get compensation upon return including lack of safety and security in areas of origin.¹¹ Accordingly, the pre and post displacement protection concerns have to be at the center of restitution-equation; despite its cause, it has to be treated as an incident in need of remedy and redress. Despite protection needs and the possible remedies, the responses vary from national, regional, and to international perspectives. It is with this cautiousness, forced displacement requires not only response but also protection to deprivation of property, in pre- and post-displacement scenarios, including remedy/compensation.¹²

Under the African human rights system, the recognition of compensation schemes for lost/damaged properties of IDPs is exemplary.¹³ At the United Nations level, there are steps taken like the Guiding principles, and Pinheiro principles, for the protection of IDPs property, but they

⁷ Handbook on Housing and Property Restitution for Refugees and Displaced Persons Implementing the 'Pinheiro Principles', March 2007, p-10-11; The Pinheiro Principles; United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons Centre on Housing Rights and Evictions, p-3.

⁸ *Id.*, p-10-11.

⁹ *Id.*

¹⁰ The Pinheiro Principles; (n-1) p-4-5.

¹¹ *Id.*, p-3.

¹² Global Protection Cluster Working Group, 2007, Handbook for the protection of internally displaced persons, p-258.

¹³ Article 12(2) & (3) of the KC.

are, softer than soft laws, and not binding.¹⁴ Coming to Ethiopia, the protection needs of IDPs (specifically property rights) are made to be covered with government assistance efforts on a policy level, which is a humanitarian-driven approach than rights-based approach to socio-economic security of IDPs. Of which the policy themselves are ambiguous as to some issues essential for the protection and assistance of IDPs.¹⁵

1.2. Literature of Review

The international community has moved towards the protection and response to IDPs, even though not comprehensive and binding. Moreover, it has myriad of imprecise legal concepts, resource constraint, and institutional inadequacy predicating a very circumscribed protection regime for IDPs.¹⁶ That requires a comprehensive, holistic and rights-based internationally binding treaty with in-built strategies for addressing causes of displacement and rights of the displaced.¹⁷ This is a reminder that the protection and assistance needs of IDPs are left internationally (except the Kampala Convention (KC)) for states margin of appreciation. Nationally numerous studies, regarding the general protection needs (whether legal or institutional needs) of IDPs, have doctrinally and/or empirically tried to show the inadequacy of those frameworks in Ethiopia vis-à-vis international and regional frameworks.¹⁸

Specific thematic areas of IDPs like their socio-economic rights have also been studied.¹⁹ However, the specific area on the right to compensation for IDPs has not been studied. That said, questioning the civil codes suitability, as it governs private affairs for compensation of human

¹⁴ They do not even constitute typical soft law, i.e. recommendations that rest on the consensus of States and thereby assume some authority that may be taken into account in legal proceedings, but whose breach does not constitute a violation of international law in the strict sense, and thus does not entail State responsibility. See, Walter Kälin (2001), *How Hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework*, Brookings/CUNY Project on Internal Displacement, p-5-6.

¹⁵ Enguday M. Ashine (2021), *The Adequacy of Law and Policy Frameworks on Internal Displacement in Ethiopia: A Critical Appraisal*.

¹⁶ Elias Lema Ngugi, *Internally Displaced Persons: Towards an Effective International Legal Protection Regime* (LLM thesis, University of Cape Town).

¹⁷ *Id.*

¹⁸ Wakgari Kebeta, 'The Protection of Internally Displaced Persons in Ethiopia: Leave No One Behind' (2019) 9(1) *JID* 40; Enguday M. (n-20); Admasu Alemayehu, 'The African international displacement problem and the response of AU: An examination of essential features of the AU IDPs Conventions' (LL.M Thesis, Addis Ababa University 2010) 7.

¹⁹ Genene Negussie, *Assessment of Socio-Economic Rights Protection of Conflict-Induced Internally Displaced and Resettled Persons in Sululta Town of Oromia Region*, (2020), LLM Thesis AAU. The study found, *inter alia*, 100% respondents not compensated for their property, in Somali region.

rights violations, Tilahun argue for a separate legal regime.²⁰ However, Abdi Jibril argues, there is no lack of legislative framework for the victims of human rights violations, but of financial, educational, and institutional measures, that triggered the practical challenge especially via impunity for the public servants in criminal proceeding context in particular and for victims of human rights violation in general.²¹ This study, however, focus on the determination of analyzing the legal frameworks in Ethiopia, in terms of ensuring the right to compensation for IDPs. Its focus on the practice in Dire Dawa City returnees also distinguishes it from other researches.

1.3. Statement of the Problem

International duties oblige states usually to ensure the protection of security for the property of their citizens; corollary national norms also put it as a right for citizens. One may wonder the issue of citizenship vis-à-vis status of IDPs in a state. Other than sheer status of citizenship, the fact that IDPs do not cross borders though forced, have rendered them status-less, categorized neither as refugees, off-putting the benefit of international protection. This led their protection to be left primarily to national states, counting in the international community's responsibility to assist and support them,²² and save for the regional protection scheme in Africa.

The return of IDPs to their original place is one of the durable solutions suggested by national and international actors, making the legal protection of property-related interests a key part of finding durable solutions categorical. Despite such international or national efforts, in Ethiopia, the right to compensation for the properties of IDPs has been considered as a matter of policy, than law, save for the development-induced displacement, which is constitutionally recognized²³ with its corollary legal tool for enforcement.²⁴ Conflict and disaster induced displacements are made subject to policy matters as only imposing duties of providing a '*timely assistance to the victims*'²⁵ upon the government.

²⁰ Tilahun Gebre, Compensation of Victims of Human Rights Violations in Ethiopia In Light of International Human Rights Law: With Specific Reference to Addis Ababa And Oromia, (2010), LLM thesis, AAU

²¹Abdi Jibril Ali, Remedies for Human Rights Violations: A Reform Proposal for Addressing Victims of Criminal Proceedings in Ethiopia, 19 NW. J. HUM. RTS. 12(2021). <https://scholarlycommons.law.northwestern.edu/njihr/vol19/iss1/2>

²² IPI, Reaching Internally Displaced Persons to Achieve the 2030 Agenda, 2018, p-1.

²³ Article-40 (8), (4), (5), and 89 (5) of FDRE constitution.

²⁴ Expropriation of Land Holding for Public Purposes, Payment of Compensation and Resettlement of Displaced People Proclamation No. 1161/2019 (Hereinafter 'the proclamation').

²⁵ Article 89(3) of the constitution.

In addition, the FDRE Constitution contains bill of rights that could potentially address the protection needs of IDPs. Unfortunately, there is no legislative translation of those provisions into actual tools towards better protection.²⁶ Moreover, Ethiopia has even reserved the right to compensation under the KC to be left to the matter of policy.²⁷ Accordingly, the right to compensation for the displaced communities seems to be disputable under the constitution and the complementary legislations, in Ethiopia. Remarkably, with all these ambiguities the government's response focus is to find a durable solution to IDP situation in the country, prioritizing return.²⁸

Given the national and international efforts to return IDPs to their place of origin with their vulnerabilities, and legal un-clarity on the right to compensation for their properties, the importance of studying the thematic area was felt necessary. In this regard, studying the existing laws and policies- whether they include the matter of compensation for IDPs is principal. Further, analyzing the existing laws against international standards to make a rational recommendation through determining the prospect as well as the challenges of those frameworks is one of the aims, with practical analysis on Dire Dawa City returnees.

1.4. Research Question

- ❖ Does the existing legal framework allow IDPs to claim compensation for their property?
- ❖ Different from the ordinary civil claims, do IDPs need another kind of compensation scheme for their properties after they return to their place of origin?
- ❖ How is the practice and challenges in Dire Dawa City vis-à-vis the right of IDPs to get compensation for their lost properties?

1.5. Research Methodology and Methods

1.5.1. Research Methodology

The study was conducted under a doctrinal methodology, assessing the existing legal stances regarding compensation schemes for lost properties of IDPs. Moreover, the practice in Dire

²⁶ For Ethiopia does not have a comprehensive legal or policy instrument that guides responses to internal displacement.

²⁷ Proclamation No 1187/2020, To Ratify the AU Convention for The Protection and Assistance of IDPs In Africa (Kampala Convention), Article-3(1) (b) (hereafter 'the ratification proclamation).

²⁸ OCHA, Ethiopia: Oromia – Somali Conflict-Induced Displacement, Situation Report No. 4, 20 June 2018, p-3.

Dawa City Administration was also qualitatively assessed, in terms of the extent to which IDPs get compensation for their lost properties.

1.5.2. Research Approach

As the study aims to find the legal stance on the existing compensation schemes for IDPs, in general, and returnees, in particular; it used qualitative legal research approach. Accordingly, conceptual clarifications, theoretical frameworks, discussions, and data analysis parts of this study will be qualitatively described and presented.

1.5.3. Sources of Data

Relevant data was obtained from both primary and secondary data sources. Primary sources were from laws, and views of informants selected from; IDPs returnees in Dire Dawa City,²⁹ and Dire Dawa Disaster Risk Management Office. Secondary data was collected from published and unpublished materials on the subject area such as; books, journal articles, newspapers, magazines, official government and non-governmental reports, minute reports, remarks, which closely relates with theme understudy.

1.5.4. Methods of Data Collection

The method of gathering primary data for this study was semi-structured interviews, for the returnees in Dire Dawa City. This tool was preferred for; it helps the respondents to talk about the questions in their own words; it allows the researcher to inquire on unclear issues or requiring further clarification. Moreover, to determine the direction of the discussion and provide reliable and comparable qualitative data to generate themes for analysis, the researcher has employed this approach. Expected insight would be the legal and practical challenges they face in getting/ensuring the right to property, when returning to their original place, including possible solution they suggest. The interview was conducted via a face-to-face interview and phone calls when the later was impossible. Secondary data was collected through analyzing written materials that are relevant to the issues understudy. Accordingly, contents of published and unpublished materials, which back to achieve the objective of the study, were reviewed.

²⁹ Practically the city was selected, because starting from 2019 the city was the only one along with Harar city that has shown continues increase in returning IDPs to their place of origin in the country. OCHA, Humanitarian bulletin Ethiopia, Issue #19/04-17, Nov 2019, p.1. IOM Ethiopia, DTM Ethiopia, Mobility Overview 2021, Feb 2022.

1.5.5. Sampling Technique and Sample Size

To select key participants, the study used purposive sampling technique to understand the reflections, knowledge, and understanding of the issue under investigation. In this design, the researcher has deliberately selected key informants who have, been victims of forced displacement, a good understanding of the subject matter, based on transparent criteria like, as of their life experience, their role, positions, and their knowledge concerning the issue under investigation. The pre-screening was done in Kebele 08 and 09, in Dire Dawa city, consulting the police station in the area, and observation of areas returnees live. These interviewees were purposively selected and snowballing sampling was done, as returnees whose property destroyed didn't live in the same location.

1.5.6. Method and Procedures of Data Analysis

The Study employed thematic data analysis, as study aims to find implications creating themes for the facts generated from the sources was necessary. Accordingly, it themed the results of legal analysis with interview transcripts, which came up repeatedly, and gathered them under the same topic as per their nature. It inferred the legal and practical stance, including the challenges, prospects, and thereby analyzed its implication on the right to get compensation for the property of IDPs. Whereas, data from document review was analyzed by document analysis, which is interpreting the documents to give sound meaning on the selected research topic.

1.6. Organization of the Study

In brief, this study explored the Ethiopian legal regime pertaining to the right to compensation for the properties of IDPs. In so doing, the writer organized the study in to four chapters. Chapter one, generally captioned as introduction, comprises of background, statement of the problem, methodology, scope, and organization of the study. Chapter two deals with theoretical frameworks on the right to compensation for IDPs. The third chapter assesses the Ethiopian legal framework on IDPs right to compensation, and the practice in Dire Dawa City Administration will be covered under chapter four. The fifth chapter presents the conclusion and recommendation of the study.

Chapter Two

Theoretical Framework on The Right to Return and Restitution; Compensation

2.1. Introduction

Granted the scale and intricacy of IDP crisis in the world, addressing the plight would seem challenging and perhaps overwhelming. Yet, one can clearly start from the government as a primarily responsible organ for the protection and assistance of IDPs. Less clear, however, has been the concrete measures governments could take towards the effective realization of the rights. Still, the ambiguity is not limited to determining the concrete measures but also to the constitutive elements of the later. Besides, the steps towards a comprehensive assistance and protection measures needs to adopt rights-based approach in its frameworks, for the solution to be sustainable.

Accordingly, the importance of comprehending the primary responsibility conception, the types of measures and their durability can clearly be noted in helping one grasp the durability of return as a solution and for ensuring the realization of the right to compensation under international and regional protection regimes, in the subsequent sections of the chapter.

2.2. The Perception of ‘Sovereignty as Responsibility’

*If conflict management, political stability, economic growth, and social welfare are functions of governance, then the responsibility for failed policies and their disastrous humanitarian consequences must rest with the governments concerned.*³⁰

The very notion of ‘sovereignty as responsibility’, which was first coined by Deng,³¹ was a radical departure from the traditional conception that only regard sovereignty as a right, to self-governance, and against interference.³² Deng claims that as government is empowered with essential powers to guarantee the rights and freedoms of its citizens, it should be responsible for

³⁰ Francis M. Deng et al, *Sovereignty As Responsibility*. Conflict Management in Africa, Preface.

³¹ Francis M. Deng was the first representative on IDP to the Secretary General of the United nations, (UNCHR (2001), Report of the representative of the Secretary General on internally displaced persons, Mr. Francis M. Deng (E/CN.4/2001/5).

³² Luke Glanville (2010), the antecedents of ‘sovereignty as responsibility’, *European Journal of International Relations*, 17(2) 233–255, DOI: 10.1177/1354066109346889, p.1.

failing to meet those basic obligations. Otherwise, state's failure would make victims fall into a moral vacuum³³ that needs to be filled with international intervention. An intervention guided by the universal standards of human dignity that in return needs to practically be conceived in its minimum content than in its utopian vision.³⁴

In this regard, one may wonder if intervention means substitution of the state in responding to the victims. For Deng '*the international community can attempt to ameliorate their plight but cannot be a substitute for the primary role of governments and local authorities.*'³⁵ That means, '*the duty ... of international actors is to alleviate the plight of IDPs.*'³⁶ On the other hand, sovereignty is to be considered '*as a normative concept of state responsibility to ensure the safety and general welfare of its citizens.*'³⁷ In general, international intervention is complementary to states and humanitarian. This is because the call for increasing international involvement are easily labeled as external interference, particularly if they touch the highly sensitive issue of protection of the basic rights of IDPs.³⁸ He calls for strict understanding of intervention from external actors, if states are unwilling and not receptive to international assistance, international community should be assertive in filling the vacuum of responsibility for those in need.³⁹

Governments are often both the primary protector and the violator of human rights. i, enhancing the capacity of the government in its duty as a protector through cooperation than intervention is more accepted in international instruments concerning IDPs response and protection. Besides, empowering the victims to ensure accountability of the government has internationally been gaining momentum. Such a conception has been considered internationally vital especially after

³³ However, citizens are the one with power to hold their government accountable, such limited for they are being oppressed. (Francis M. Deng et al, (n-1)).

³⁴ The quest for human dignity usually translates into a struggle for recognition, respect, and equitable participation in the political, economic, social, and cultural life of the country. Francis M. Deng et al, *Sovereignty As Responsibility*. Conflict Management in Africa, Preface.

³⁵ Francis Deng and Dennis McNamara, International and national responses to the plight of IDPs, *Forced Migration*, review 10, p.26.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Refugees Magazine Issue 103 (IDPs)*, Interview: Dr. Francis M. Deng, advocate for the uprooted, UNHCR | 01 March 1996.

the incident in Bosnia, Herzegovina, and then Afghanistan, Iraq, and others.⁴⁰ In general, states are the primary responsible actors derived from their sovereignty. Accordingly, the kind of governmental measures that needs to be taken and ways of empowering citizens is covered under the subsequent section.

2.3. Durable Solutions to The Assistance and Protection of IDPs

2.3.1. The Solutions

Solutions are the measures states take to ameliorate the conditions of IDPs. Those measures have been provided under the AU Convention for the Protection and Assistance of IDPs in Africa (Kampala Convention) and Guiding Principles on Internal Displacement (GPID). The GPID starts from prevention of forced displacement and then to protection and assistance both during displacement and in the process of providing solutions.⁴¹ The solutions enumerated under the GPID are return and resettlement with reintegration. The GPID specifically⁴² sets out responsibilities of states, rights of IDPs, and the role of other actors.

Principle 28 of GPID state ‘...IDPs ...right to return voluntarily, in safety and dignity to their homes ... or resettle voluntarily in another part of the country ...with reintegration’ The measures under the guideline seem to be comprehensive and complete however, local reintegration is not provided as a single solution, but reintegration as an attachment to the two other alternative solutions. Conversely, the former has been added as a separate solution under the KC.

Unlike the GPID, the Convention is specific on the measures to be taken by the states. It has the prevention paradigm,⁴³ which starts from the root causes of forced displacement and go through ways of tackling them by providing legal frameworks, and durable solutions.⁴⁴ It is with this wider legal recognition that article 11 (1) of the Convention puts the three durable solutions as follows; ‘...lasting solutions to the problem of displacement ... voluntary **return, local**

⁴⁰ Forced Migration Review, Home for good? Anne Davies, challenges of return and reintegration, Anne Davies, 21, September, 2004, p.12. ‘The Dayton Peace Agreement in the late 1995 was an innovative strategy to facilitate return by addressing the issue of property restitution.’

⁴¹ GPID, under Scope and Purpose Section.

⁴² Section V (Principles 28-30) the GPID.

⁴³ Article 4 of the KC.

⁴⁴ *Id.* Article 2, armed groups, non-state actors and other relevant actors, including civil society organizations.

integration or relocation... From these provisions, the three solutions to improve the condition of IDPs are return, local integration, and resettlement.⁴⁵

2.3.2. Durability of The Solutions

The bare measures aren't enough when it comes to sustainability. Rather it has to have the aim of ensuring the displaced no longer experience the trauma due to the displacement. That is to be achieved when IDPs no longer have specific assistance and protection needs linked to their displacement.⁴⁶ Equally, leaving IDPs in a continued marginalization without the prospect of a durable solution may become an obstacle to the state's best interest in long-term peace, stability, recovery and reconstruction in post-crisis scenarios. Thus, durability needs to be conceptualized as a process not to be completed by sole state-centered efforts, but of all stakeholders,⁴⁷ working together in identifying the right strategies and activities to assist IDPs in the process, and set criteria to determine and monitor the extent of achievement.⁴⁸

In the GPID, there is no explicit enumeration of durability; however, essential qualitative requirements can be implied. Those are full participation, non-discrimination, facilitation duty on the government for participation of other stakeholders, and property rights. In contrast, the KC stress on the need to ensure the sustainability of the solutions. It specifically enumerates the rights of IDPs to *participation*,⁴⁹ *creation of satisfactory conditions*,⁵⁰ *duty to cooperate*,⁵¹ *property rights*,⁵² *Compensation*,⁵³ and *documentation rights*.⁵⁴ Both instruments do not solely rely on provision of assistance and protection, but also of durable solutions, based on rights and duties. The explicit and implicit right-duty modality enumeration under the instruments is indicative that both follow a rights-based approach (RBA). This approach is specifically enumerated in detailed manner under the 2010 Framework on Durable Solutions for IDPs (IASC

⁴⁵ IASC Framework on Durable Solutions for Internally Displaced Persons, The Brookings Institution –University of Bern Project on Internal Displacement, April 2010, p-5.

⁴⁶ *Id.*

⁴⁷ National, local, humanitarian and development actors.

⁴⁸ Durable Solutions for Internally Displaced People: in a nutshell, Briefing Note 2019, p-1.

⁴⁹ The Convention, article 11(2).

⁵⁰ *Id.* article 11(1).

⁵¹ *Id.* article 11(3).

⁵² *Id.* article 11(4) & (5).

⁵³ *Id.* article 12.

⁵⁴ *Id.* article 13.

Durable Solutions Framework), which is adopted in 2010 by Inter Agency Standing Committee.⁵⁵

The Framework is a practical guide, for international, national and local actors and authorities in their efforts to support durable solutions and help IDPs resume normal lives, in safety and dignity.⁵⁶ It provides that a durable solution can be achieved ‘*when IDPs no longer have any specific assistance and protection needs that are linked to their displacement and such persons can enjoy their human rights without discrimination on account of their displacement*’.⁵⁷ It presents a series of rights-based principles to help guide and support the search for durable solutions.⁵⁸ It also asserts that ‘*the rights, needs and legitimate interests of IDPs should be the primary considerations guiding all principles and decisions relating to internal displacement and durable solutions*’.⁵⁹

It enumerates set of criteria that can be used to assist the evaluation of achievement on the durable solution.⁶⁰ That means, unless those conditions are met any solution embarked on cannot be considered truly durable. It firstly states IDPs must be allowed to make an *informed, meaningful*,⁶¹ *voluntary choice* as to the three solutions,⁶² which must be based on individual decisions.⁶³ Second, it must be achieved in long-term safety, and security.⁶⁴ Third, sustainable re-integration has to be ensured. Speaking of sustainability, it provides for sustainable access to, essential sustenance and medical services,⁶⁵ the availability of sustainable livelihood and employment opportunities,⁶⁶ and measures to promote the environmental sustainability of envisaged durable solutions.⁶⁷ Such factors also include effective and accessible mechanisms to

⁵⁵ IASC, ‘IASC Framework on Durable Solutions for Internally Displaced Persons’ (The Brookings Institution – University of Bern Project on Internal Displacement 2010).

⁵⁶ IASC Durable Solutions Framework, Foreword. Since its submission by the UN IDP mandate-holder to the UN Human Rights Council in February 2010, the Framework has received support from the UN General Assembly, which has called for its use by UN agencies, most recently in UNGA Res 70/165 (22 February 2016) UN Doc A/RES/70/165, para 29.

⁵⁷ IASC Durable Solutions Framework, 5.

⁵⁸ *Id.*, Framework, 6, 11-26.

⁵⁹ *Id.*, 11.

⁶⁰ *Id.*, 27-46.

⁶¹ *Id.*, 18.

⁶² *Id.*, 12-13 and 15-19.

⁶³ *Id.*, 17.

⁶⁴ *Id.*, 12-13 and 27-31.

⁶⁵ IASC Durable Solutions Framework, 31-32.

⁶⁶ *Id.*, 18-19 and 30.

⁶⁷ *Id.*, 18 and 30.

restore housing, land and property; IDPs who have achieved a durable solution have access to effective mechanisms for timely restitution of their housing, land and property.⁶⁸

2.3.3. The Rights-Based Approach to Finding Durable Solutions to IDPs

The international normative frameworks have adopted a multi-dimensional approach that has durable solutions at its core. For instance, the KC⁶⁹ calls for early warning systems in areas of potential displacement, disaster risk reduction strategy, and immediate protection and assistance to IDPs, which are meant to avert a disaster. Furthermore, article 5 of the Convention focus on the humanitarian ways to ameliorate the condition of IDPs through aid, and relief actions, within the humanitarian principles. Both the disaster and humanitarian approach focus on the need of IDPs, identifying the needs and seek ways of collaboration to address the situation through providing service, support and assistance - need based approach.⁷⁰ In addition to the needs, determining the violated rights, victims, duty bearers, is essential, which is called RBA,⁷¹ as included under KC.

By expressing their needs and desires, the right-holders will be able to exercise their power, discover their voice, and challenge the duty-bearers to alter the system that keeps them in quandary and denies them opportunity to live fully.⁷² This approach begins and ends with the victims discovering agency, dignity, and self-worth by recognizing their human rights and demanding space to exercise and enjoy them.⁷³ The approach focus on realizing rights than meeting needs,⁷⁴ which will gradually empower the victims to fight the unjust system.⁷⁵ In such a way, the protection would be victim-centered, that in turn allows the victims to be rights-holders and states to be duty-bearers.⁷⁶

Starting from emergency responses to frameworks that uphold the rights of beneficiaries, RBA is vital in ensuring sustainability of solutions to IDPs. This is because RBA considers victims as rights-holders creating ways for their voice to be heard, and enabling them to play an active role

⁶⁸ IASC, Policy Protection Of IDPs, December 1999, p.35.

⁶⁹ See article 4 of the convention.

⁷⁰ Peter Harney, Edmund Rice International, 2013, *The Rights-Based Approach*, https://www.erc.org.au/rights_based_approach, accessed on 6/22/2022.

⁷¹ UN WOMEN, Violence against Women in Conflict, Post-conflict and Emergency Settings, p-79-81.

⁷² Peter Harney, (n-70).

⁷³ *Id.*

⁷⁴ UN WOMEN, Violence against Women in Conflict, Post-conflict and Emergency Settings, p-79-81.

⁷⁵ *Id.*

⁷⁶ *Id.*

in rebuilding and development.⁷⁷ It is in this spirit that the normative frameworks under the GPID and the Convention endowed the solutions as right to IDPs and states as duty bearers to assist and protect the former with cooperation from stakeholders.

2.4. Return as A Solution and Durability

The return of IDPs was historically considered as an apparent and reasonable measure, desired by the international community.⁷⁸ The 1993 conference of the Vienna Declaration and Program of Action initially marks an international move taken stressing on Return as a basic lasting solution. The community specifically adopted that, “...*in terms of providing comprehensive solutions to IDPs, it emphasized on the importance of ... finding lasting solutions to questions related to IDPs including their voluntary and safe return and rehabilitation.*”⁷⁹ Such an emphasis was later echoed in the 2000 UN Millennium Declaration,⁸⁰ which was adopted at the close of the Millennium Summit of the UN.⁸¹ In that Declaration, the heads of State and government present resolved to ‘*help all refugees and displaced persons to return voluntarily to their homes ... and to be smoothly reintegrated into their societies*’.⁸² A decade later,⁸³ the UN Inter-Agency Standing Committee endorsed, through its Working Group,⁸⁴ the 2010 Framework on Durable Solutions for IDPs (IASC Durable Solutions Framework),⁸⁵ in which return became firmly framed within what is now the prevailing vision of displacement solutions as durable solutions.

From the framework, we can specifically consider four conditions to return, clarifying physical movement alone is insufficient to constitute a durable solution.⁸⁶ First, it requires IDPs effective access to accurate, objective and comprehensible information sufficient to make an informed

⁷⁷ *Id.*

⁷⁸ Megan Bradley, Durable Solutions and the Right of Return for IDPs: Evolving Interpretations, *International Journal of Refugee Law*, 2018, Vol 30, No 2, 218–242 doi:10.1093/ijrl/eey021, p.219-221.

⁷⁹ Vienna Declaration, para 23.

⁸⁰ UNGA Res 55/2 (18 September 2000) UN Doc A/RES/55/2.

⁸¹ The Millennium Summit was held in New York on 6-8 September 2000.

⁸² UN Millennium Declaration, para 26.

⁸³ In December 2009.

⁸⁴ IASC, ‘IASC Framework on Durable Solutions for IDPs’ (The Brookings Institution – University of Bern Project on Internal Displacement 2010) Foreword.

⁸⁵ *Id.*

⁸⁶ Erin Mooney, ‘The Concept of Internal Displacement and the Case for IDPs as a Category of Concern’ (2005) 24(3) *Refugee Survey Quarterly* 9, 22.

choice as to whether they wish to return voluntarily.⁸⁷ Second, IDPs return with safety, security, and once they have returned, are able to reside in an environment, in which they are free from, *inter alia*, recriminations, threats, and targeted physical violence or danger to their person.⁸⁸ Third, IDPs should have access to the support they need to successfully and sustainably re-integrate into the community. Fourth, effective and accessible mechanisms to restore housing, land and property should have to be ensured.⁸⁹ Beyond its historically growing international support it has also been gaining much recognition as a right in and of itself.

2.4.1. Return as A Right

There is no explicit, but of implicit, enumeration of the solution as a right under International Human Rights Law (IHRL).⁹⁰ Yet, the right to return is provided for individual(s) who is/are outside the country.⁹¹ For instance, Article 12 of the ICCPR recognizes the right to liberty of movement and freedom to choose one's residence. With that IDPs have the right to return to their homes and residence. Similarly, the GPID endows IDPs with the right to movement, freedom of residence.⁹² The KC on the other hand, obliges states to guarantee the right, without discrimination at all times '*...except where restrictions... are necessary, justified and proportionate to the requirements of ensuring security for IDPs or maintaining public security, public order and public health.*'⁹³ Therefore, those provisions are helpful in ensuring the recognition of the right to return for IDPs implicitly.

International Humanitarian Law (IHL) puts return as a right more explicitly. Specifically the customary international law under Rule 132 of IHL state that IDPs '*...have the right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.*'⁹⁴ Similar assertion is found under Article 49, paragraph 2 of the

⁸⁷ IASC framework, p.15.

⁸⁸ *Id.* p.27.

⁸⁹ *Id.* p.35.

⁹⁰ Specifically, Deng determined areas of '*insufficient protection*' where a general norm exists but a corollary, more specific right relevant for the protection of particular needs of IDPs has not been articulated are numerous: among which he stated the right to return. (paragraph 145 (I), ECOSOC, IDPs, Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1995/57, Compilation and analysis of legal norms (hereafter compilation and analysis).

⁹¹ Consider Article 13(2) UDHR, Article 12(4) CCPR, Article 22(5) ACHR, Article 12(2) AfCHPR, and Article 3(2) of Protocol No. 4 to the ECHR.

⁹² GPID, Principle 14(2).

⁹³ KC, article 9(1) (f).

⁹⁴ ICRC, IHL Database, ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule132, accessed on 6/24/2022.

Geneva Convention IV.⁹⁵ This right has also been reiterated under the Pinheiro Principles, which was drafted by Special Rapporteur on Housing and Property Restitution for Refugees and IDPs, Paulo Sergio Pinheiro and adopted through the UN human rights system.⁹⁶ The Sub-Commission on the Promotion and Protection of Human Rights endorsed the Principles on 11 August 2005 in its resolution 2005/21.⁹⁷

2.5. The Right to Restitution and Return to One's Property

2.5.1. Restitution Rights Under International Law (IHRL, IHL, ICL)

International and regional human rights law guarantees property rights that are of particular importance for those deprived of their land and property. That can be generalized as a right to peaceful enjoyment of property.⁹⁸ Those laws also provide for reparation through effective remedies.⁹⁹

The basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of IHRL and serious violations of IHL (Basic Principles and Guidelines) is the leading statement on reparation for harm.¹⁰⁰ One may argue that, the violation of the rights of IDPs needs to constitute gross violation of IHRL or serious violations of IHL, to fall under the guideline. Most of the causes for displacements are in violation of the rights (under IHRL or IHL). Specifically referring to the Rome Statute, article 7(1) (d)¹⁰¹ (as a crime against humanity), and

⁹⁵ It stresses that persons who have been evacuated during an occupation “*shall be transferred back to their homes as soon as hostilities in the area in question have ceased.*”

⁹⁶ Pinheiro was appointed as Special Rapporteur pursuant to Sub-Commission on Human Rights Res 2002/7 ‘Housing and property in the context of refugees and other displaced persons with a mandate to prepare ‘a comprehensive study on housing and property restitution in the context of the return of refugees and internally displaced persons’ (14 August 2002) UN Doc E/CN.4/Sub.2/RES/2002/7, para 6.

⁹⁷ Sub-Commission on the Promotion and Protection of Human Rights Res 2005/21 (2005) para 5.

⁹⁸ See e.g. Art. 17 of UDHR; Art 16(2)(h), and 15(2), CEDAW; Arts. 13-19 of ILO Convention No. 169; Art. 14 of AfCHPR and Art. 6(j), 7(d) and 21 of its Protocol on the Rights of Women in Africa; Art XXIII of AmDHR; Art. 21 of AmCHR; Art. 25 of ArCHR and Art 1 of Protocol 1 to the ECHR. See also Principles 3-7 of Pinheiro Principles and Principle 21 of the Guiding Principles on Internal Displacement.

⁹⁹ 2 See Art. 8 of UDHR; Art. 2(3) of ICCPR; Art. 6 of CERD; Art. 75(1) of the ICC Statute; and, at the regional level, Art. 10 and 25 of American Convention on Human Rights; Art. 7 of African Charter on Human and Peoples Rights and Art. 25 of its Protocol on the Rights of Women in Africa, and Art. 13 of European Convention on Human Rights.

¹⁰⁰ UNGA Res 60/147 ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’ (16 December 2005) UN Doc A/RES/60/147.

¹⁰¹ Deportation or forcible transfer of population, constitutes ‘crime against humanity’ when committed in a widespread or systematic manner directed against any civilian population, with knowledge.

Article 8(2) (e) (viii)¹⁰² (as a war crime), illustrates the magnitude and the seriousness in which displacement can occur.

Part VII of the Basic Principles and Guidelines, deals with the victim's right to remedy, which is generally provided as "...adequate, effective and prompt reparation for harm suffered".¹⁰³ These are restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Restitution is said to be manifold, 'including, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restitution of employment and return of property.'¹⁰⁴ Principle 19 prioritizes restitution as a remedy as it has to be provided to victims 'whenever possible'. Principle 20 further states that compensation 'should be provided for any economically assessable damage...', which include 'physical or mental harm, lost opportunities, material damages and loss of earnings, moral damage, and costs required for, inter alia, legal or expert assistance.'¹⁰⁵

2.52. IDP-Specific Frameworks

I. Guiding Principles on Internal Displacement and Pinheiro Principles

The Pinheiro Principles, similar to the GPID, is soft law. Section-II Principle 2 of the principles, all refugees and displaced persons has 'the right to housing and property restitution', which it considers as the preferred remedy for displacement. Moreover, it provides that 'states are expected to demonstrably prioritize restitution rights, and therefore, not view rights to restitution and rights to compensation as necessarily of the same value when seeking durable solutions'.¹⁰⁶ Compensation is exceptionally provided when restitution is factually impossible.¹⁰⁷ The factual impossibility occurs when housing, land and/or property are destroyed, or when it no longer exists, as determined by an independent, impartial tribunal as per principle 21.2.

The Principles further assert that IDPs have the right to full and effective compensation (monetary or in kind).¹⁰⁸ compensation is considered appropriate 'when the injured party

¹⁰² Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand can constitute a 'war crime'.

¹⁰³ Principle 11 of the basic principles and guidelines.

¹⁰⁴ *Id.*, Principle 19.

¹⁰⁵ *Id.*, Principle 20.

¹⁰⁶ Principle 24-25.

¹⁰⁷ Principle 21.1.

¹⁰⁸ *Id.*

knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation'.¹⁰⁹

Compensation and restitution are not mutually exclusive because 'in some situations, a combination of compensation and restitution may be the most appropriate remedy'.¹¹⁰

Coming to the GPID, principle 29(2) indicates that '*Competent authorities have ... to assist returned and/or resettled IDPs to recover, to the extent possible, their property and possessions, which they left behind or were dispossessed of upon their displacement*'. There is no specific reiteration of 'restitution'. However, Deng argues that '*...when IDPs return to their homes, they may find their properties occupied by other people; therefore, they need restitution of the property or compensation for its loss*'.¹¹¹ Accordingly, restitution can be read into the GPID.

Moreover, compensation is stressed under the GPID as a secondary alternative after recovery: '*When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation*'.¹¹² Both Pinheiro and GPID emphasize on two of, the five kinds of remedies, i.e. restitution and compensation, recognized under Basic Principles and Guidelines.

II. The Kampala Convention (KC)

All the instruments discussed above stress on the need to ensure the right to restitution and/or compensation for the properties of IDPs.¹¹³ The KC has significantly advanced the normative framework on internal displacement in many ways, including in the right to restitution of IDPs. In contrast to the Principles, which specify the kind of property to be affected by displacement and provide for the right for IDPs to recover them, the KC focuses on the general harms connected to displacement, which include violations of property rights.

Article 11(4) of the KC provides that '*States Parties shall establish appropriate mechanisms providing for simplified procedures where necessary, for resolving disputes relating to the property of IDPs*'. This implies that states are endowed with a wider margin of appreciation in the efforts to ensure the restoration of property rights of IDPs. However, this is taking in to

¹⁰⁹ *Id.*

¹¹⁰ Principle 21.2.

¹¹¹ Compilation and analysis, p. 269.

¹¹² Principle 29(2) of GPID.

¹¹³ In fact, the best that can be said about the principles and guidelines is that they are authoritative interpretations of international law as they are adopted by UN mandate holders, yet non-binding.

account the IDPs right to participation not only in choosing the kind of solutions provided under the convention but also in all the efforts of ensuring durability of the solutions¹¹⁴, *inter alia*, via restitution of property or other options of reparations. Thus, options of preferring the kind of reparation for the violated rights of IDPs property rests on the IDPs, the states, and other actors.¹¹⁵

However, restoration, with special emphasis, is specifically indicated for communities.¹¹⁶ What kinds of communities could be allowed to claim the restoration of their lost land? This may refer communities with defined special dependency and attachment to the land.¹¹⁷ The Convention extends to the harms that a certain community may suffer from displacement. Other than such communities, other IDPs have the right to choose the kind of reparation they want to get from their property rights.

Moreover, under article 12 of the KC, states are obliged to provide persons affected by displacement with effective remedies. The provision doesn't restrict the kind of remedy to restitution, rather it provides for an effective remedy regardless of the kind of violation, which may be property dispossession or other. Remedies will be "*for damage incurred as a result of displacement, in accordance with international standards.*"¹¹⁸ It stretches from violation of property rights (in its wider sense; i.e. real or personal properties), physical or mental harm, to others. It is open for any kind of breaches IDPs face, for remedy. A remedy also includes '*compensation*' and '*other forms of reparation*', to be supported by an effective legal framework.¹¹⁹

Moreover, the Convention differs from the Pinheiro¹²⁰ and the Guiding principles¹²¹ in putting the various kinds of remedies on an equal footing rather than define preferred remedies, leaving

¹¹⁴ Article 11(2) of the KC.

¹¹⁵ *Id.*, Article 11(3).

¹¹⁶ Article 11 (5), of the Convention. '...lands of communities with special dependency and attachment to such lands upon the communities' return, reintegration, and reinsertion.'

¹¹⁷ In which the commission recommended "Recognize rights of ownership to the Endorois and Restitute [sic] Endorois ancestral land'. Centre for Minority Rights Development and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya Communication No 276/03 (African Commission, 25 November 2009), recommendations.

¹¹⁸ Article 12(2) of the KC.

¹¹⁹ *Id.*

¹²⁰ Pinheiro principle; principle 21.1.

it to IDPs to choose. This will open a more practical, contextually appropriate approach to remedying loss. In addition, the right to compensation has been recognized under the Convention as a separate remedy than a remedy preferred when restitution is impossible.

Thus, given the special emphasis for the property rights of IDPs, it generally calls for the establishment of appropriate mechanisms, for resolving disputes relating to the property rights of IDPs. There are two kinds of reparation specified under the Convention; those are specific right to restitution of land for communities and the general rights to compensation, which is commonly provided for all kinds of violations under article-12. Moreover, what we can understand from this is that the specific right to restoration is provided for communities, and seems the preferred way of reparation.

Compensation is exclusive of other reparation and comprehensive under the convention, primarily because it is not limited to property rights, but also to all kinds of violations on the rights of IDPs. Secondly, compensation is the preferred kind of reparation when it comes to the redress of violations of IDPs rights. This is because compensation is expected to be an effective remedy, with an effective legal framework moreover, the state has to provide another form of reparation in addition to compensation, wherever appropriate. Thirdly, other kinds of reparations are indicated under the title 'Compensation' and restoration of land as a remedy is only granted for communities. Hence, compensation is a preferred way of reparation, and applies to all kinds of violations of IDPs rights.

A State is also liable to make reparation to IDPs for damage when it refrains from protecting and assisting IDPs in the event of natural disasters. Thus, in such scenario the state is liable pay to compensation for lost properties of IDPs despite the existence of fault in preventing or causing displacement. This duty also presupposes states duty to provide assistance and protection in case of natural disaster and the failure would result in the right for IDPs to claim compensation.

2.6. The Right to Compensation for The Properties of IDPs

Relevant international instruments often aim to either restore victims to their original position through compensation or provide compensation as complementary to other reparations. Under

¹²¹ Guiding Principles (Principle 29(2)) indicate that compensation or other forms of just reparation should be pursued "where recovery of such property and possessions is not possible."

the Basic Principles and Guidelines, the aim of compensation is ‘*to promote justice by redressing...violations...¹²² for any economically assessable damage, as appropriate and proportional to the gravity of the violation...¹²³*’ The aim seems only providing victims with proportional damage, whereas the aim of ‘*restitution¹²⁴*’ and ‘*satisfaction¹²⁵*’ are to restore victims to pre-displacement positions. International Conference on the Great Lakes Protocol on the Property Rights of Returning Persons¹²⁶ and the GPID (principle 29(2)) also calls for the payment of appropriate compensation for the property of IDPs, when restitution is impossible. On the other hand, full compensation is enumerated under the Pinheiro Principles.¹²⁷ This appears to be a more liberal standard than that of appropriate compensation. Further, it states that ‘*states in order to comply with the principle of restorative justice ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible...¹²⁸*’ Thus, compensation does not have a restorative intention. Despite the difference on the phraseology, all instruments prioritize restitution, compensation being secondary way of reparation. The KC doesn’t specify the aim of providing ‘*just and fair compensation¹²⁸*’ yet it has to be an ‘*effective remedy¹²⁹*’. It seems that states have to determine the aim of providing compensation, but such an aim has to be effective in remedying the loss. This model seems to be more pragmatic than that of previous instruments, as it favors compensation to be provided separately through an effective legal framework, considerate of international standards.¹³⁰

Studying the aim of reparation is important in understanding the yardstick and quantum of compensation. In case of restitution, the benchmark is clear; to restore victims to their original place. In compensation cases, there is no clear yardstick than putting fair, effective, proportional, appropriate-compensation, which is left for those who assess compensation claims to determine.

¹²² Principle 15 of the Basic Principles and Guidelines.

¹²³ *Id.*, Principle 20.

¹²⁴ Under principle 19

¹²⁵ Under principle 22(d)... an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim.’

¹²⁶ International Conference on the Great Lakes Region Protocol on the Property Rights of Returning Persons (30 November 2006). Article 8 ‘Member States shall determine an appropriate compensation package for the loss of the property of IDPs and refugees on the basis of national legislation which shall set out the terms of such a compensation package.’ Such compensation is made when restitution is impossible (article 4(2)).

¹²⁷ Principle 21.1 of Pinheiro. ‘...right to *full and effective compensation* as an integral component of the restitution process’

¹²⁸ Article 12 of the KC.

¹²⁹ *Id.*

¹³⁰ *Id.*

2.6.1. Responsible Organ for The Payment of Compensation

Restitution in the context of displacement aims to establish IDPs' *status quo ante*, yet restitution of property alone is an insufficient remedy and compensation-related issues are very likely to come up. However, compensation cannot be viewed as having the same objective of returning to the pre-displacement state. The domestic authorities have the discretion to decide the aim of granting compensation in individual case and its quantum. This runs the danger of leaving IDPs feeling undervalued, whether in reality or at the very least, in perception. Yet states are the main bearers of responsibility towards their citizens within their territory. IHR obliges State Parties¹³¹ for reparation. The IHL recognizes the right of reparation for victims of armed conflicts.¹³² ICL, on the other hand, imposes individual criminal responsibility when atrocious international crimes are committed,¹³³ and sets an award of reparation against perpetrators of those through its decisions¹³⁴ and from the Trust Fund¹³⁵ created under it. These are clearly accessible to IDPs who are victims of those crimes.

Coming to IDP-specific instruments, the Basic Principles and Guidelines provide that '*a State shall provide reparation to victims for acts or omissions which can be attributed to the State. ...*'¹³⁶ Even where the harm cannot be attributed, states are under obligation '*... to establish national programs for reparation ... to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations*'.¹³⁷ Strict liability of the state is also found under the guideline, but with possibility of reimbursement from the offender.¹³⁸ For offender compensation, states are still under obligation to establish an '*effective mechanisms for the enforcement of reparation judgments*'¹³⁹ As per the Pinheiro Principles, States have the duty to '*establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property*

¹³¹ Article 2 (1) (a) and (g) of the Vienna Convention on the Law of Treaties 1969, states who can participate in international agreements to be governed by international law, as a party to be bound by the treaty.

¹³² Art. 3 of Hague Convention IV of 1907 and Art.91 of Additional Protocol I (1977) to the Geneva Convention.

¹³³ Articles 6, 7 and 8 of the Rome Statute of the International Criminal Court, A/CONF.183/9 of 17 July 1998 entered into force on 1 July 2002.

¹³⁴ *Id.*, Article 75.

¹³⁵ *Id.*, Article 79.

¹³⁶ Basic Principles, Principle 15

¹³⁷ Basic Principles, Principle 16.

¹³⁸ *Id.*, Principle 15.

¹³⁹ *Id.* Principle 17.

restitution claims'.¹⁴⁰ Moreover, they have to ensure that such procedures are, *inter alia*, just, accessible, timely, and free-of-charge.¹⁴¹

Coming to the KC, it requires '*States Parties... to provide effective remedies*',¹⁴² through establishing... '*appropriate mechanisms providing for simplified procedures where necessary, for resolving disputes relating to the property of IDPs*',¹⁴³ *establishing an effective legal framework to provide just and fair compensation ... where appropriate, to IDPs for damage incurred ..., in accordance with international standards*'.¹⁴⁴ Moreover, the convention also puts responsibility on states to provide compensation when states fail to protect and assist IDPs in the event of natural disasters.¹⁴⁵ In short, there are two kinds of Compensation, namely, state and offender compensation. In both cases, states are duty bound to provide, assist, and facilitate the payment of compensation for the properties of IDPs.¹⁴⁶

Why State Compensation?

So many moral arguments justify state compensation for victims of crime.¹⁴⁷ For consequentialist, it is vital to avoid individuals taking justice into their hands to recover their properties. Hence it calls for element of reparation in the criminal system. The theory is forward-looking as it base on the fact that unless there is maintenance of law and order as well as social enhancement, criminal system may lose its purpose, and hence needs to be reinforced by the rights to compensation.¹⁴⁸ For non-consequentialist, it is unfair that victims should receive nothing from the state when substantial public expenditure is devoted to the apprehension, conviction and punishment of criminals.¹⁴⁹

Further, every offence indicates that the State has failed in its obligation to protect its citizens, and therefore owes compensation to the victim. Human life and dignity are overriding social priorities, and compensation in various forms can contribute to the continuance of quality life

¹⁴⁰ Pinheiro Principles, Principle 12.1.

¹⁴¹ *Id*, Principle 13.2.

¹⁴² KC, Article 12(1).

¹⁴³ *Id*, Article 11(4).

¹⁴⁴ *Id*, Article 12(2).

¹⁴⁵ *Id*. Article 12(3).

¹⁴⁶ Strengthening victims' rights: from compensation to reparation, For a new EU Victims' rights strategy 2020-2025, Report of the Special Adviser, J. Milquet, to the President of the European Commission, Jean-Claude Juncker – March 2019, p.11-18.

¹⁴⁷ John Haldane and Anthony Harvey, 1995, the philosophy of state compensation, vol.12, No. 3, pp.273-282.

¹⁴⁸ *Id*.

¹⁴⁹ *Id*.

and the restoration of dignity. Only the state has the resources to provide such compensation, thus the damaging consequences of violent crime for the life and dignity of the victim laid a positive duty on the government to respond with such means as available.¹⁵⁰ Such argument is backward looking as it aims to claim for victim-centered public expenditure, basing on equity, social damages for failure to protect, and duty towards life and dignity.

On the other hand, compensating victims of violent crime is a social solidarity. The focus is on the common good that in the person of the victim, harm is done to society, which he or she has no duty to bear alone.¹⁵¹ Accordingly, compensation is a means by which the loss is distributed across society as a whole, so recognizing the reality of social existence and deepening a sense of community. It may be seen both as something which is good as a means to the greater happiness and wellbeing of the citizens and as something good in itself and a laudable aim of public policy.¹⁵² This argument presupposes that the provision of reparation is good in itself. All the arguments strengthen the fact that state should compensate victims.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

Chapter Three

Ethiopian Legal Framework on The Right to Return and to Restitution; Compensation

3. Introduction

The international frameworks recognize the right to return and to compensation for violations of the rights of IDPs. Thus, the duty of the government to ensure the right to compensation, is an internationally recognized duty of states to effectively remedy the violations on the property rights of IDPs. This chapter analyzes the national frameworks dealing with the rights to compensation.

3.1. IDPs Situation in Ethiopia

There are nearly six million of IDPs in Ethiopia, being the largest in the world,¹⁵³ displaced from their home mainly due to conflict. To solve such problems the government of Ethiopia has taken numerous measures. The government planned to ensure the voluntary, safe, dignified and sustainable return or relocation of IDPs, practically where there is restricted humanitarian aid; and sometimes dismantling of IDP sites and coercing IDPs to move to return areas where aid would be provided, leaving them with no choice. The latter has often been forceful.¹⁵⁴ Besides, fear of security and lack of rehabilitation support has held many IDPs back from returning, choosing to live in secondary displacement.¹⁵⁵ Moreover, returnees struggle as their needs remain high. Lack of shelter, safe access to water, sanitation, and hygiene, security issues, and socio-economic integration, property restitution problems, all pointing to question the sustainability of return.¹⁵⁶ Lack of effective legal remedies for violations, more specifically of property related matters still lingers. Given the government's main aim on returning IDPs, there remain property restitution and compensation issues that are vital in ensuring sustainability, but with inadequate attention.

¹⁵³ UNHRC (2022), Response to Internal Displacement in Ethiopia Factsheet January to march 2022; UNHRC, the UN Refugee Agency, Global Trends Forced Displacement in 2021.

¹⁵⁴ Romola Adeola (Ed.), National Protection of Internally Displaced Persons in Africa: Beyond the rhetoric, Sustainable Development Goals Series, Enguday Meskele Ashine, The Adequacy of Law and Policy Frameworks on Internal Displacement in Ethiopia: A Critical Appraisal, p.28.

¹⁵⁵ *Id.*

¹⁵⁶ Ethiopia Crisis response plan 2021, IOM, <https://crisisresponse.iom.int/index.php/response/ethiopia-crisis-response-plan-2021> 8/6/2022, 11:48 AM.

3.2.Return as A Right in Ethiopia

As depicted in the earlier chapter, the mixture of direct (under IHL and Pinheiro principles) and implicit (IHRL and ICL) reference of return constitute its recognition as a right under international law. The recognition of return as self-standing right.

Under the FDRE Constitution, the right to return has been prescribed for nationals abroad that include refugees.¹⁵⁷ However, IDPs do not cross borders, thus their right to return are implicitly recognized, as they have the right to liberty of movement and freedom to choose residence within the national territory.¹⁵⁸ Thus, IDPs (nationals) within the territory can move and choose place of abode, which includes but not limited to returning to the original place of home/residence. Such rights are also put under the 1960 civil law as attributes of personality.¹⁵⁹ On the other hand, restraining (compelling to exercise in a particular way) such civil rights by individual or public servants, is a crime.¹⁶⁰ Moreover, preventing a person from moving freely within the territory of Ethiopia, without legal authority, is also a crime, under the 2004-revised FDRE criminal code.¹⁶¹ The recognition of the freedom of movement and the right to choose one's residence guarantee the right to return to one's home and residence for IDPs in Ethiopia.

In Ethiopia, there are no specific or dedicated laws governing the situations of IDPs. Recalling the importance of property right to compensation to ensure sustainable reintegration of IDPs, the following section is dedicated to explicate on the issue.

3.3.The Right to Property and Compensation of IDPs

3.3.1. The FDRE Constitution

Article 40 of the Constitution recognizes that every citizen have the right to ownership of private property, composed of acquiring, use, and disposal.¹⁶² Private property is a tangible or intangible product, which has value produced by the labor, creativity, enterprise or capital of a person.¹⁶³ Such property rights and protection is for all citizens including IDPs. Moreover, the Constitution

¹⁵⁷ Article 32(2) of the FDRE Constitution.

¹⁵⁸ *Id.* art.32(1).

¹⁵⁹ Article 12, the 1960 Civil Code of Ethiopia (the civil code).

¹⁶⁰ The 2004 revised FDRE criminal code, article 601 & 602.

¹⁶¹ *Id.*

¹⁶² FDRE Constitution, article 40(1).

¹⁶³ *Id.* 40(2).

imposes protection duties on the government.¹⁶⁴ The later has been stressed with special emphasis on sub-groups of IDPs; among those, pastoralists have the protection against displacement from their possession.¹⁶⁵ Peasants also are protected against eviction.¹⁶⁶ Enguday question such kind of reference as being inadequate as it does not state durable solution for the protected group than merely placing their right to compensation, and excludes non-pastoralist and non-peasant communities from such protection.¹⁶⁷ She further claims lack of specific laws/policies in place or inadequacy of existing laws to cover IDPs needs and vulnerabilities who lose their land due to conflict or natural disasters, calling for enactment of IDP specific law.¹⁶⁸ Despite the lack of law specific to IDPs, they still have a constitutional protection. This is because IDPs are protected under article 89(3) against displacement.¹⁶⁹

Going further to the post-displacement issues, development induced IDPs have the right to claim compensation; however, there is no explicit enumeration as to the other sub-groups of IDPs. Lack of enumeration on the kind of redress to be provided for such kinds of groups of people doesn't need to be understood as a no redress and no duty on the government. This is because every citizen is endowed with the right to property, of which its violation activates redress as per cumulative reading of article 40 and 37 of the FDRE constitution. Thus, the right to property protection upon displacement is endowed to all citizens despite its cause. This means, development induced IDPs are given a redress of compensation as a preferred way of reparation.¹⁷⁰ The others have the right to compensation, but it is not the preferred way of reparation, rather in an equal footing with other kinds of reparation.

¹⁶⁴ Generally, under article 13 of the constitution.

¹⁶⁵ FDRE Constitution, Article 40(5).

¹⁶⁶ *Id.* 40(4).

¹⁶⁷ Romola Adeola (Ed.), National Protection of Internally Displaced Persons in Africa: Beyond the rhetoric, Sustainable Development Goals Series, Enguday Meskele Ashine, The Adequacy of Law and Policy Frameworks on Internal Displacement in Ethiopia: A Critical Appraisal, p.31ff.

¹⁶⁸ *Id.*

¹⁶⁹ For that, 'avert disaster', have to be understood as a wider recognition that the government holds duty to avert any kinds of disaster, despite the kind of victims to be affected by such disaster. One of the basic effects of disaster being displacement, it can be argued that it prevents the latter and protects victims against it.

¹⁷⁰ The government expropriates private properties for public purpose. However, upon displacement, such displaced can't ask for recovery of their property, as "*Public Purpose*" is a governmental decision on the belief that the land/property use will directly or indirectly bring better economic and social development to the public. Thus, the government can only pay compensation for such property. Proclamation No.1161/2019, Expropriation of Land holdings for Public Purposes, Payments of Compensation and Resettlement of Displaced People Proclamation, art.2(1)

3.4.State Compensation

Normatively, IDPs have the right to reparation for their property under the FDRE Constitution, including the right to compensation by the state. Among the regional constitutions, Article 45(2) of the Constitution of South West regional state is a good example of state compensation in Ethiopia as it explicitly provides for the right to compensation from the government upon violation of the right to property, among others. It states that *‘the failure in respecting/protecting the right to life, physical integrity, and right to liberty, protection from inhumane treatment and the right to property,... by the government constitute payment of compensation for the victims’*.¹⁷¹ Accordingly, in such scenarios, the government is expected to pay compensation.

There is no explicit reference of the right under the FDRE Constitution, such right has legally been provided for other victims of crime. For instance, article 29(6) of the Proclamation number 1146 on human trafficking and smuggling of persons exclusively establishes a fund and provides a state compensation for victims of such crime.¹⁷² Practically, in different scenarios compensation has been made for conflict induced IDPs in different places. The *‘Somali region and the then Sidama Zone, have paid compensations only for returned IDPs for their lost or damaged property and possessions during ethnic conflict.’*¹⁷³ Similar attempts were also made in Dire Dawa City, but it was unsuccessful.¹⁷⁴ Thus, implicit recognition can be traced as protection duty rests on the government during, after, and before displacement as clearly indicated under article 89(3), cum article 13 and 40 of the constitution. Upon violation of such duty, the state is obliged to provide reparation/compensation. Accordingly, other sub-groups of IDPs are also entitled to such kinds of compensation. However, such duty has been restricted under the KC ratification Proclamation, which is incompatible and unconstitutional for the following reasons.¹⁷⁵

First, violation activates redress for victims and duty on the government; every citizen whose rights have been violated has to be allowed to bring a case before a competent authority for

¹⁷¹ የደቡብ ምዕራብ ኢትዮጵያ ህዝቦች ክልል ረቂቅ ህገ መንግስት, Article 45 (2).

¹⁷² Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No. 1178, art-29.

¹⁷³ Nuredin Mohammed, *The Rights of Security of Property of Internally Displaced Persons under International Law: The Case of Ethiopia*, 2021, p.46.

¹⁷⁴ Interview with Hayat Ahmed, DRMCO in Dire Dawa, recovery and rehabilitation team leader and Coordinator on fund, (Hereafter W/ro Hayat).

¹⁷⁵ Proclamation No. 1187/2020 (African Union Convention for the Protection and Assistance of IDPs in Africa) Ratification Proclamation (the subsequent section will deal with this specific issue).

redress,¹⁷⁶ which indirectly (directly) put duty on the government to protect the property of every citizen, granted under article 13(1) cum. Article 40(1) of the constitution. Thus, the issue of property, in general, and the issue of compensation, in particular is not covered under article 89, but of 37 cum.13 and 40 of the constitution. This way of interpretation is positive and empowering, in a sense that it allows IDPs to go for redress upon violation of property rights.

Secondly, assistance is not a redress for the violation of the right to property. Article 89(3), only impose duty on the government to prevent disasters and provide assistance. The provision doesn't state the kind of reparation to be made that is left under article 37 of the constitution. Further, it doesn't restrict the right to compensation upon provision of assistance to the victims. In other words, compensation is a constitutional right despite the (non) existence of assistance from the government. Article 89(3) doesn't restrict the duty of the government only to providing necessary assistance to victims of disasters.

Thirdly, as the right to compensation for all kinds of violation to immovable property is recognized under article 40(7), such rights can be brought before courts for reparation, as per article 11(3) of the Federal Courts proclamation. The proclamation state that *'notwithstanding the provisions of this proclamation and other relevant laws, the Federal High Court may render decision, judgment or order in order to protect justiciable human rights specified under chapter three of the Constitution.'*¹⁷⁷ Yet, it is essential to remember IDPs need for specific law that covers their needs and vulnerabilities towards effective redress and protection.

Further, unless we interpret the constitution as providing rights for IDPs to compensation, it's entirely put under government's will to redress violation. This will lead to the creation of a responsibility vacuum, in terms of accessing justice. Courts can entertain issues related to violation of human rights, as indicated above, but such right is recognized only for chapter three of the constitution. However, interpreting article 89 to cover the issues of redress will bring such rights under the house of federation, which is empowered to interpret constitutional matters under article 62. Yet, it *'... is moreover not apparent if the HoF may grant any other remedy,*

¹⁷⁶ Art-8 of UDHR, art-2 of ICCPR.

¹⁷⁷Proclamation no. 1234/2020 Federal Courts Establishment Proclamation.

*such as compensation, than declaring the unconstitutionality of the defective act or omission.*¹⁷⁸

This is because the role of the House is to ascertain whether the act or omission challenged is Constitutional. Connecting the dots, essentially victims are left with no redress for the violation they experience. In that regard, the KC¹⁷⁹ doesn't make a difference as to compensation under article 12. It imposes duty on the government to redress violations including property rights via compensation as a preferred way of reparation, as discussed in the previous chapter. Yet the ratification proclamation has made a reservation to such rights.

3.4.1. Reservation on The Right to Compensation of IDPs Under the Kampala Convention; *From National and International Perspective*

The African Union Convention for the Protection and Assistance of IDPs in Africa was ratified by Ratification Proclamation (No. 1187/2020) (hereafter ratification proclamation) on 13th March, 2020, after a decade of signing the instrument in Kampala.

The proclamation makes four declaration and three reservations on different provisions of the Convention.¹⁸⁰ The reservation on the right to compensation made under article 3(1 (a & b) reads: '*Compensation is due when displacement results from expropriation procedures. The duty of the state in the case of displacement due to natural and man-made causes is seen within the purview of providing assistance as provided under article 89 of the Constitution and ensuring rehabilitation*'. Looking at this reservation from two perspectives, its incompatible.

Considering this issue from the international law perspective, Article 19(c) of the Vienna Convention on the law of treaties¹⁸¹, provide that '*A state may when ...ratifying ...a treaty formulates a reservation unless; it is incompatible with the object and purpose of the treaty.*' Similar assertion is found under article 21 of the KC. Both instruments do not provide the effect of such a reservation. Thus, it has been a subject of debate for academicians and international human rights institutions. From the debates one can get three kinds of doctrines/options expounding the effects of incompatibility.

¹⁷⁸ Adem Kassie Abebe, Human Rights under the Ethiopian Constitution: A Descriptive Overview, Mizan Law Review Vol. 5 No.1, 2011, p.70.

¹⁷⁹ Ethiopia has ratified the convention and is the law of the land as per article 9(4) of the FDRE Constitution.

¹⁸⁰ See, article-3 of the ratification Proclamation.

¹⁸¹ Vienna Convention on the law of treaties, 1969, entered into force on 27 Jan 1980, treaty serious, vol.1155, p.331.

The primary trend is considering the reservation as legitimate so long as the state continues to be a party to the full treaty, in effect, it entails removing the diseased or reserved clause by the states, and dubbed as "*surgical doctrine*".¹⁸² Considering the incompatible reservation to render state's instrument of ratification illegitimate, the second effect excludes state from the treaty as a whole. The "*backlash*" option is so named because the ineffectiveness of the reservation renders the instrument of agreement ineffective.¹⁸³ This is because the state's desire to impose an unfavorable condition on its acceptance of treaty membership outweighs its desire to join the treaty, a reservation that is inconsistent with the treaty's goal and purpose renders the state's acceptance of that instrument ineffective.¹⁸⁴ Third, an incompatible reservation may be '*severed*' from the state's instrument of ratification, leaving it as a party to the treaty without the benefit of its reservation.¹⁸⁵

From those effects, most academicians (practice also),¹⁸⁶ prefer the third effect - *severability doctrine*. Initially, for it strengthens the protection of human rights, which is expected to be the very purpose of the state ratifying that treaty. Goodman argue that many non-democratic countries ratify human rights conventions as a negotiating ploy to appease domestic and international lobbying groups, with no real intention of upholding their duties under the convention.¹⁸⁷ Thus, the vitality of keeping such states within the treaty becomes clear when those states move towards democracy. He further points that for such states, the doctrine will '*provide a meaningful opportunity to keep a state bound to a human rights treaty despite an invalid reservation*'.¹⁸⁸

This researcher also calls for the severability of the reservation made by Ethiopia under the KC. This is because, it is against the universality of human rights instruments, which is the very purpose of allowing reservation, i.e. applying the surgical effect would go against the purpose of

¹⁸² Iain Cameron and Frank Horn, 'Reservations to the European Convention: *The Belilos Case*' (1990) 33 German Yearbook of International Law 69, 115.

¹⁸³ *Id.*

¹⁸⁴ Roslyn Moloney, Incompatible Reservations To Human Rights Treaties: Severability and the Problem of State Consent, accessed from https://law.unimelb.edu.au/data/assets/pdf_file/0010/1680427/Moonely.pdf, p.5.

¹⁸⁵ Ryan Goodman, Human Rights Treaties, Invalid Reservations, and state consent, *The American journal of International Law*, Jul, 2002, Vol.96, No.3, pp-532-560, p.531.

¹⁸⁶ The practice of ICJ, UN Human Rights Council shows similar trend. Moreover, ECHR has adopted the severability approach for incompatible reservations. See Roslyn Moloney, p 8-11.

¹⁸⁷ *Id.* p.551-555.

¹⁸⁸ *Id.*p.554.

that treaty (as it allows the reservation to be effective). Also applying the backlash doctrine would undermine the former idea of universality of human rights instruments (as it renders states ratification ineffective), and it is against the interest of IDPs. Thus, it is optimal to apply the severability effect to such reservations.¹⁸⁹

Having such theoretical framework at hand, the reservation made under the KC is incompatible to the objective and purpose. Its Objectives are promoting/strengthening national measures to prevention, to protection and assistance, and to durable solutions.¹⁹⁰ The purpose of the convention can be gathered from the preamble, that it aims to give a normative response to IDP's plight given its gravity being a source of continuing instability for African states and the suffering and vulnerability of citizens. Such response is considerate of adherence to the principles of non-discrimination, equality and equal protection of the law as per the pertinent laws of regional and international instruments. With an affirmation that state duty to respect, protect, and fulfill the rights of IDPs without discrimination of any kind, with the aim of filling the binding normative gap for the protection and assistance of IDPs.¹⁹¹ More specifically, it provides for state parties to '*... protect the rights of IDPs regardless of the cause of displacement by refraining from, and preventing... Discrimination against such persons in the enjoyment of any rights or freedoms on the grounds that they are IDPs.*'¹⁹²

However, the ratification proclamation makes a categorized way of accepting the duty to provide compensation only to development-induced one, which is against article 9(1) (a) of the KC. This is because states are obliged to provide protection and assistance, including durable solutions regardless of the cause of displacement. States cannot, deny the right to sub-groups of IDPs and allow other sub-groups to enjoy the right, which is against the very purpose of the convention, and thus incompatible. Thus, the cross-reference made under the ratification proclamation to article 89(3) of the FDRE Constitution regarding compensation is unfounded. The Constitution recognizes the right to property in a way that includes right to claim compensation in case of

¹⁸⁹ See Moonely, p.1-14., Goodman p.535ff.

¹⁹⁰ Article 2 of the Convention.

¹⁹¹ See, the Preamble of the Convention.

¹⁹² Article 9(1)(a) of the KC.

violation. To be explicit, claim of compensation is provided as a right for the immovable property¹⁹³ and upon governments actions, as a preferred way of reparation.¹⁹⁴

Considering the reservation, article 89(3) of the FDRE constitution is concerned about prevention of disaster and assistance to be given after a disaster occurs. However, article 12 of the KC is concerned with issues of redress and not assistance when violation occurs. Articles 89 of the FDRE Constitution do not cover issues of redress when violation occurs. This means, assistance could not be understood as a redress. Thus, Article 89(3) doesn't restrict the governments duty only to providing necessary assistance to victims of natural or human made disasters. It is unconstitutional to restrict the duty only to providing assistance, excluding the right to compensation for the victims of displacement.

Underscoring the essentiality of the Convention for IDPs in Ethiopia for durable solution (for that Ethiopia has adopted a Durable Solution Initiative), the reservation made on the right to compensation of IDPs is unconstitutional. This is first, considering the duty to provide measures for durable solutions, which cannot be achieved without providing redress for violations, *inter alia*, through compensation (the preferred redress under the Convention).

Therefore, the *dejure* restriction bars the right to access justice for the violations on IDPs property rights, specifically to compensation against the very purpose and objective of the Convention. That would put the sustainability of the solution provided questionable. This in turn calls for severing such incompatible reservation and move towards activism from different actors in the process of achieving the right to compensation in particular and the provision of durable solution in general.

3.5.Offender Reparation

States have the obligation to provide remedies and reparation including compensation, for all kinds of human rights violations, including violations on property rights.¹⁹⁵ Such violations entail criminal and/or civil liability under ordinary civil and criminal laws of Ethiopia. Victims are

¹⁹³ FDRE constitution, Article 40(7).

¹⁹⁴ *Id.* Article 44, and 40(8).

¹⁹⁵ Abdi Jibril Ali, Remedies for Human Rights Violations: A Reform Proposal for Addressing Victims of Criminal Proceedings in Ethiopia, 19 NW. J. HUM. RTS. 12 (2021). <https://scholarlycommons.law.northwestern.edu/njihr/vol19/iss1/2>, p.13.

entitled to claim compensation from the offender fulfilling the legal requirement(s) laid. Yet, those laws are inadequate for effective remedy for IDPs, as indicated below.

3.5.1. The FDRE 2004 Criminal Code of Ethiopia

The criminal law of Ethiopia provides compensation for victims of crime. The victims have privilege to claim compensation under article 101, and courts also have discretion to order compensation under article 102. The former case, entitles victim(s), facing a considerable damage, to claim that the criminal be ordered to pay compensation, which is governed by the Criminal Procedure Code.¹⁹⁶

Yet, such entitlement is bridled by two mandatory provisos, namely, the damage has to be considerable and is subject to criminal procedure code. The term ‘considerable’ is ambiguous and open to many legal interpretations. As a result, it makes it difficult, if not impossible, to estimate how much harm was done and how much compensation should be given. Without any objective criteria, it’s being left for exclusive determination of the court, restricting the privilege only to bring the case.

Under Article 102 compensation is entirely within the discretion of the court. It states that ‘*where it appears that compensation won’t be paid by the criminal..., the Court may order ...proceeds (part thereof) of the sale of the articles distrained, or the sum guaranteed as surety, or a part of the fine or of the yield of the conversion into work, or confiscated property be paid to the injured party*’. When the state makes such payment, it can subrogate for the paid amount from the offender.¹⁹⁷ In this case, the courts discretion is very wide that it stretches from the necessity of paying the victim compensation to the determination of the quantum, and kind of payment. Thus, the actual damage suffered (victims needs and his family) is not the main focus, as it is put under courts sensitivity and concern.

Coming to the criminal procedure for compensation, it is composed of complex hurdles that may bridle the right of victims; in effect, discouraging victims from pursuing such procedure and rather choose to suffer in silence. The first kind of compensation under article 101 is governed under the Criminal Procedure Code. Accordingly, such application for compensation is to be

¹⁹⁶ Article 101 of the criminal code of Ethiopia.

¹⁹⁷ *Id.* Article 103(1&2).

made in written form specifying the nature and amount of compensation sought.¹⁹⁸ After consideration, the court can dismiss the case on its own or on the request of the prosecution or the defense where:

- the accused is a young person,
- *ex parte* proceeding,
- civil case is instituted,
- unqualified person applying,
- the claim requires calling numerous witnesses,
- the hearing is likely to confuse, complicate or delay the criminal hearing.¹⁹⁹

The first four are objective that proving either of the facts would result in dismissal. However, the last two are subjective to courts discretion. Whatever the case, no appeal lays from such dismissal, of course with the right to go for civil bench.²⁰⁰ This provision restricts the right of victims to participate on those matters leading to dismissal/otherwise of the application for compensation. Such participation may have had an importance e.g. to prove the subjective criteria. Such an unequal participation puts victims at the disadvantageous position and denies them right to equality and fair opportunity to defend their claim for compensation. Moreover, restricting the right to appeal precludes the victim(s) from challenging such decision. This in effect leaves victims to pursue lengthy civil process.

The provision doesn't require the payment of court fee in an initial stage, if the victims wins the case, the offender will repay the fee, and costs incurred. However, the Code is silent regarding the repayment of the fee upon acquittal or discharges of the accused, or upon losing the case.²⁰¹ In such a case, the injured person is left to curse himself for being an unfortunate victim of the crime and for paying the court fees and suffering the costs in his pursuit for 'relief' from the criminal and 'justice' from the court. In the end, such a scenario results in a sort of double victimization, one by the criminal and the other by the state. In the event of the accused's

¹⁹⁸ Article 154(1) of the criminal procedure.

¹⁹⁹ *Id.* Article 155.

²⁰⁰ *Id.* art-155(3).

²⁰¹ This is regarding the payment made upon courts accepting the case for consideration.

acquittal and release, the injured person must forego the court expenses and costs incurred in summoning witnesses and experts in support of his claim.²⁰²

Up on acquittal or discharge of the accused, the court ‘... *shall not adjudicate on the question of compensation and shall inform the injured party that he may file a claim against the accused in the civil court having jurisdiction.*’²⁰³ That makes compensation in criminal proceeding contingent on conviction. In the criminal case, victims are not empowered to produce evidence, nor are they permitted to cross-examine witnesses produced by the prosecution and/or defense in order to unearth the truth leading to the accused's conviction and the judicial pronouncement on the payment of compensation and costs. Unless the case is filed by a private complainant, a victim cannot go for appeal against the decision of the court as per article 185(2) of the criminal procedure code, which is entirely the power of the public prosecutor to make as per article 134(1) of the same.

3.5.2. Compensation Claims Under Civil Cases

A scenario in which breach of property rights causes compensation rights is governed under the 1960 Ethiopian Civil Code. The code concerning tortious liability provides three sources of liability that can lead to the claim for compensation.²⁰⁴ Under fault-based liability, infringing any specific and explicit provision of a law constitutes an offence and damage for compensation.²⁰⁵ Human rights are guaranteed in international treaties, which are part of the law of Ethiopia,²⁰⁶ thus, a violation of human rights is a breach of law, constituting tort under the Civil Code. Consequently, the right to property ownership as recognized internationally and under the FDRE Constitution, if violated would cause a damage to be made good. Precisely, the tort law deals with this matter in gravity, this is inclusive of the assault on property as a fault, to be made good, by material²⁰⁷ and moral damage.²⁰⁸ Surprisingly, the code also put duty on the state upon the

²⁰² Article 222(1) of cri.pr code.

²⁰³ Article 158 of the criminal procedure code.

²⁰⁴ See, article 2027 of the civil code.

²⁰⁵ *Id.* article 2035.

²⁰⁶ See article 9(4) of the FDRE constitution.

²⁰⁷ *Id.* Article 2054.

²⁰⁸ *Id.* Article 2112. ...*fair compensation*...

omission or commission of ‘*professional fault*’²⁰⁹ by its employees.²¹⁰ In those claims the victims bears the burden of proving both the amount of damage and existence of the fault.²¹¹

On the other hand, an individual whose right to possession have been deprived or interfered with may claim compensation for damages.²¹² Such right expires unless it is brought within a year of the usurpation or interference.²¹³ Such kind of period of limitation restricts IDPs right to claim compensation, as they are likely to stay more than a year in different camps far from their residence.

In tort cases, the period of limitation is limited to two years, unless specifically stated for particular claims,²¹⁴ commencing from the time one started to suffer the damage.²¹⁵ But if the suffering arises from criminal commission, the longer period will apply if any under the code for the crime.²¹⁶ However, such limitation doesn’t include ‘*restitution of property rights or for unlawful enrichment claims.*’²¹⁷ Apparently, property rights affected during the commission of atrocious crimes as indicated under the constitution article 28, compensation can be claimed at any time, as there is no period of limitation for those crimes.

The Code contains all forms of reparation recognized in international law, as discussed under chapter two (*Compensation, restitution, satisfaction, Injunction, and others*).²¹⁸ A form of reparation is compensation for material damage that clearly concern, property damage, which is an equivalent amount in damages.²¹⁹ Moreover, the court may order, in addition to compensation, other measures to make it good. Such measures are provided as ‘*other kinds of compensation*’.²²⁰ Yet those kinds of compensation are ordered, granted taking into account the

²⁰⁹ *Id.* It is a person who committed a fault being in good faith he acted within the scope of his duties and in the interest of the State.

²¹⁰ *Id.* Article 2126.

²¹¹ *Id.* Article 2141.

²¹² *Id.* Article 1149.

²¹³ *Id.* Article 1149 (2).

²¹⁴ Article 1677 (1) of the civil code ‘*provides the applicability of the evidentiary rules to the whole claims under the civil code unless there is special law towards it.*’

²¹⁵ *Id.* Article 2143(1).

²¹⁶ *Id.* Article 2143(2).

²¹⁷ *Id.* article 2143(3).

²¹⁸ See, 2118 and the following articles of the civil code.

²¹⁹ See article 2090 (1) of the civil code.

²²⁰ *Id.* See article 2118 and the following.

'liberty of person' and *'rights of third parties'*.²²¹ Quantum of compensation for tortious liability is equivalent to the damage suffered;²²² this also includes future damage that is certain to occur.²²³

More importantly, if the author of the damage is unknown due to the involvements of several persons causing impossibility to ascertain the offender, the court may order the damage to be made good jointly by the group of persons who could have caused it and among who the author of the damage is certainly to be found.²²⁴ Alternatively, the court may order the damage to be made good by the person who is beyond doubt liable under the law for the undetermined author of the damage.²²⁵ Such provisions are important for IDPs to claim compensation for their property upon return. At the backdrop of this legal inadequacy to IDPs, the subsequent section will review policy frameworks relevant to IDPs right to get compensation upon return.

3.6.Relevant Policies and Strategies for IDP Right to Return and o Compensation

3.6.1. The National Policy and Strategy on Disaster Risk Management

The Policy and Strategy, which is adopted in 2013, constitutes the major policy framework on the issues of IDPs. The policy aims to save lives, protect livelihood, and ensure all disaster-affected populations including IDPs²²⁶ are provided with recovery and rehabilitation assistance.²²⁷ It also aims to build resilience by applying “*building back better*” principle in all its interventions.²²⁸ The recovery effort does not include property restitutions; however, practically there is a damage and loss assessment for *'assistance purpose'*.²²⁹ Thus, recovery is comprehended as an assistance concept not as a redress with the aim of building back better. Moreover, it doesn't state its scope of application, yet one can argue from the definition provided for *'displacement'*²³⁰ that it includes all kinds of IDPs.

²²¹ *Id.*

²²² *Id.* Article 2091.

²²³ *Id.* Article 2092.

²²⁴ *Id.* Article 2142(1).

²²⁵ *Id.* article 2142(2).

²²⁶ *Id.* Though there is no definition of what IDP is under the policy, it defines “displacement” as ‘... *the process of people being forced to move from their homes to other places because of a natural hazard, war/conflict, or other human-made action.*’

²²⁷ *Id.*

²²⁸ *Id.* 8(20).

²²⁹ W/ro Hayat.

²³⁰ *Id.* p.20.

3.6.2. Durable Solution Initiative (DSI)

The initiative establishes principle-based framework to design and implement durable solution for IDPs, having solidarity and international standards (GPID and IASC) at its center.²³¹ Unlike the previous policy, the initiative is not only a need-based approach; it rather includes other approaches like the rights-based approach, participatory, Government led, sustainability and other principles leading the implementation of the initiative.²³² Among the kinds of intervention, it assumes return to be sustainable upon safe and voluntary facilitation. For that, it allows go-and-see visits before return, trainings for the executives and victims, medical helps, strengthening local conflict resolution mechanisms and other activities.²³³

However, coming to the issue of property the initiative lacks strong commitment. It asserts that ‘*Where relevant, facilitate restitution of land and other property and addressing other challenges related to housing, land and property (HLP) rights as well as facilitate access to justice for crimes committed during conflict.*’ First, who assess the relevance of restitution of property rights? It is an unnecessary requirement, redress and justice for violation is always vital. Secondly, access to justice is only limited to criminal matters; hence, the responsible organ is not obliged to facilitate civil claims for compensation. Thus, it’s a subjective right to get an assistance to pursue property rights from the government, and such is also limited to criminal matters. The initiative doesn’t have the restoration of property rights in view in general. The assistance that IDPs can get from the government in this regard is very restricted to ‘*restoration of documentation and personal identification*’,²³⁴ which is essential for property rights, yet inadequate. Moreover, the initiative also provides the financial support to be provided for IDPs for health and other social services,²³⁵ doesn’t include legal service for IDPs.

²³¹ Durable Solution initiative, Ethiopia, (DSI).

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.* p.6.

²³⁵ *Id.*

Chapter Four

4. Practical Challenges IDP's Face on Restitution Rights

4.1. Introduction

IDPs face numerous pitfalls relating to their right to return home or relating to their right to compensation for their property upon return. Under this chapter, the challenges IDP's face specifically of returnees and the problems they face because of their right to compensation/restitution not respected/protected will be discussed. Accordingly, the researcher's observation to returnee's area and interviews made with the returnees in Dire Dawa City will be discussed in the following sections of the chapter.

4.2.Challenges of Returnees in Dire Dawa City, 08 And 09 Kebele

The disturbance that broke out in Jigjiga on 4 August, 2018 has resulted in increased humanitarian needs in boundary Woredas of Oromia and Somali region. The conflict has also spilled over to Dire Dawa city on August 5, 2018 causing further casualties and human displacement.²³⁶

On 05 October, 2018, disaster risk management coordination office (DRMCO) and partners of kebele leaders and police staff met in DRMCO head office and agreed to assess damage and loss need assessment of kebele 08 and 09 of Dire Dawa City. A joint rapid assessment team to these areas made a visit and assessed the damage and losses of residents through house to house visit. The objective of the assessment was to acquire adequate information about the IDPs in the above localities that was induced by conflict. Moreover, the results of the assessment were also made for coordinated action in the delivery of humanitarian assistance and to propose recovery and rehabilitation of the victims. As an objective the team initially planned to provide compensation after the assessment, however due to fear of precedent, it was only restricted to assistance.²³⁷

²³⁶ Dire Dawa Disaster Risk Management Coordination Office, damage and loss assessment report, October 19/2018.

²³⁷ Hayat.

Yet, it has to be understood that the assessment was done to facilitate recovery and rehabilitation for IDPs, upon understanding the severity of damage and the need for documenting.²³⁸

The assessment found that from 08 and 09 Kebele of Dire Dawa City, 1540 IDPs were displaced from their home. The team made assessment on damaged homes (and other properties), which it estimated at 11,965,000 birr (eleven million nine hundred sixty five thousand birr) including houses that were burned, damaged, and looted.²³⁹ However, the recovery and rehabilitation plan was only restricted to 2,042,560 (two million forty two thousand five hundred sixty) for the homes. With this, the plan was to return those IDPs to their homes.²⁴⁰ Given the security situation, the limited assessment that was made only for 40 peoples, out of 1540, was very disproportionate.²⁴¹ While many victims were left out of the assessment, the assistance was inadequate.²⁴² With this restricted and meager assistance, the IDPs were left to fight for their rights, yet with many challenges. From interviews with the returnees and field observations conducted by the researcher, the IDPs and returnees in Dire Dawa City have faced the following problems, among others.

Negative coping; most of returnees has lost their economic source due to destruction, economic loss, and other factors, which has forced them to engage in begging, being dependent on their families, and their children stopped going to school.²⁴³

Documentation and registration problems; the exact number of IDPs whose properties have been destroyed or lost, is unknown.²⁴⁴ The damage and loss assessment was made only for 40 IDPs in the two Kebele. Consequently, the assistance was made only for those assessed. The returnees claim that the ‘*assistance was made only for those near the road (visible), the investigation lacked comprehensive investigation.*’²⁴⁵

Disempowering and inadequate assistance; returnees claim that most of the assistance was made from the community than the government. However, initially the intention of the

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Interview with Hussein Hamit, Returnee in Dire Dawa City 09 Kebele on 19/7/2022, and W/ro Hayat.

²⁴² They were only provided with roof sheets, nails, and some money, DRMCO office Dire Dawa.

²⁴³ Interview with returnee Zeytuna Mohammed, on 20/7/2022.

²⁴⁴ W/ro Hayat.

²⁴⁵ Returnee Hussein Hamit.

committee was to give compensation to those returnees, and according to an informant from DRM office, there was no lack of budget at the time.²⁴⁶ However, compensation was not given due to the fear that if compensation were paid for those 40 returnees, others who were not given compensation would ask for the compensation, which is not feasible to pay for all.²⁴⁷

The majority of returnees' properties have been destroyed and looted, and the majority of IDPs weren't provided assistance.²⁴⁸ The monitoring did not have a follow-up after returning them to their home.²⁴⁹ Moreover, despite their need to get to their original place, most of the IDPs do not know their rights to property and they were returned to the damaged and looted property including if they have rights to claim restitution/compensation to their lost or damaged properties after all.²⁵⁰ This came as the committees mostly focused on advocating for peace and they believed that restitution of property issues will bring another problem in the area.²⁵¹ Thus, beyond the lack of awareness to pursue property claims, they were disempowered given the lack of information as to their rights and various barriers they face that will keep them silent and accept the violation. Among the barriers;

- ***Lack of safety and security in areas of origin;*** most compensation claims on property are to be made in the place where the offender resides. Thus, IDPs who didn't return to their original place find it difficult to go through such process for their property.²⁵² Moreover, returnees themselves are stranded in such problem, as the reintegration process sometimes doesn't bring the required peace to pursue property claims.²⁵³
- ***Secondary occupation of their property;*** - the prevalent problem of most returnees were that most of their properties have been taken away and looted. Sometimes they are left with a cleared land, reducing their capacity to go for property claims, moreover with their

²⁴⁶ W/ro Hayat

²⁴⁷ W/ro Hayat,

²⁴⁸ Returnees in 09 Kebele, Dire Dawa City.

²⁴⁹ *Id.*

²⁵⁰ Interview with returnee Zeytuna Mohammed, on 20/7/2022.

²⁵¹ W/ro Hayat.

²⁵² Interview with Mohammed Ahmed, living in camp in 09 kebele Dire Dawa, on 21/7/2022.

²⁵³ Interview with returnee Ahmed Salih Mohamed, 09 Kebele Gende, on 20/7/2022. And Hussein Hamit.

use right taken away.²⁵⁴ Such challenges have created fear, if not impossible, to return and claim their property.

- ***Physical damage of property***; returnees in 09 kebele in Dire Dawa have lost their property due to damage and destruction. Most returnees have sustained damage to their property and got no assistance to make that good.²⁵⁵ Some claim that they were promised to get money in compensation for the destruction.²⁵⁶ However, no payments were made in effect, in that regard the DRM office paid assistance only for 40 returnees, which doesn't include those returnees.
- ***Secondary Displacement***; numerous returnees live in rented houses leaving their destroyed property.²⁵⁷
- ***The forced (fraudulent) property contracts block their ability to reclaim***; some of the returnees in 09 Kebele have been forced to move to other places (secondarily displaced) selling their property. Most of the IDPs have moved away from that area selling away their property upon return with lower price due to fear of security.²⁵⁸ As the researcher observed some house were completely destroyed and looted without their owner.
- ***Loss (lack) of documentation***; documentation stands as the prevalent problem for IDPs, when it comes to claiming compensation rights, in Ethiopia,²⁵⁹ for it is the basic evidence to show ownership. A returnee in 09 kebele is undergoing a civil case to recover his documentation that was destroyed in his house, that process took him more than a year and to reclaim back his property.²⁶⁰
- ***Lack of resources (financial, legal and social support)***; IDPs face challenges to pursue property claims, including lack of expertise, capacity or capability. Most returnees claim lack of resource to pursue their property rights. Some even claim that *'we are struggling to live ... our children are out of school, and we don't have source of income to pursue*

²⁵⁴ Interview with Mohammed Ahmed, 'when I moved to my hometown to visit for the purpose of peace building process as a committee, my land was taken away by the community and they don't want me back to my home'.

²⁵⁵ Zeytuna Mohammed, Hussein Hamit Abdi, and Misra Abdalla, Amdiya Jibril, Najat Shamsadin, Faxuma Usman, and Kadija Aliyi in Gande 02 Sefer.

²⁵⁶ *Id.*

²⁵⁷ Gulle Abdi, Misra Abdalla, and others in Gande.

²⁵⁸ The researcher observed with Commander Basha Abdurahman, many houses being left completely destroyed and empty, with no owners and sometimes sold or leased, living in another area. Observation made in Gande Grada 02 Kebele on 20/7/2022.

²⁵⁹ Ethiopian Human Rights Commission, የኢትዮጵያ ሰብአዊ መብቶች አመታዊ ሪፖርት፣ p.69

²⁶⁰ Interview made on 19/7/2022.

claims in court of law, our previous source of income was closed, we want our property back but we can't afford to go to court, so we have ceased it'.²⁶¹

- ***There was no investigation after the occurrence of the conflict;*** the criminal investigation was made on those offenders who were found looting, destroying, and burning the properties of individuals at the time of the occurrence. Following that, there were many property cases at the time, however the investigation was made on those individuals who were found in the act and many of them have been sentenced. The IDPs did not bring any case regarding property issues after they were displaced or returned to their home.²⁶²

Chapter Five

Conclusion and Recommendation

Conclusion

While the duty of ameliorating IDPs plight inherently flows from state sovereignty, finding durable solution discharges it. Guarantying the right to return that has the right of IDPs at the center than their need is vital. The return process, *inter alia*, has to guarantee the restitution of property to be durable. Property restitution is central to the successful return, and reintegration of IDPs. Without it, perceptions of injustice are perpetuated, and underlying causes of conflicts remain unresolved. Restitution rights touches on all aspects related to successful return; protection, law and order, reconciliation and peace building, restoration of livelihoods, strengthening of local institutional capacity and, ultimately, the chance to restore or create social harmony.²⁶³ However, restitution alone cannot ensure durability of the solutions; compensation issues are likely to arise. That is encircled with many challenges for IDPs. There are two kinds of compensation, namely, state and offender-centered; both have to inculcate an RBA. This is because the HRBA to return and the recovery of IDP's property yields the best, fairest and most

²⁶¹ Misra Abdalla, Amdiya Jibril, in Gande 09 Kebele.

²⁶² Commander Basha Abdurahman, in 09 Kebele.

²⁶³ Forced Migration Review, Home for good? Anne Davies, *challenges of return and reintegration*, Anne Davies, 21, September, 2004, p.12.

suitable results.²⁶⁴ Governments attempt to deal adequately with property issues, specifically of the right to compensation from the state must be entrenched within a legal framework, based firmly on the internationally recognized rights and fully consistent with the status of relevant international human rights standards.

Given the increase in the number of IDPs in Ethiopia, there has been much from the government to solve the matter, starting from ratifying the KC, and adopting strategies, initiatives, and policies. Prioritizing return out of the three durable solutions, the government has made many efforts towards it. However, such efforts have been criticized for being forceful. Ethiopia doesn't have a specific law on IDPs issues.

On the other hand, there are constitutional and legal implicit guarantees for the existence of the right to return to one's home and residence in Ethiopia. This also calls for the explicit recognition of the right in law by domesticating the KC, *inter alia*. That said, the concern of this paper has not only been on issues of return but also of 'to what should IDPs return?' this typically hinges upon the right to get compensation for damages to their properties, without which the return, recovery and reintegration effort would be challenging and futile in some instances.

The thesis has identified that the reservation made by the government of Ethiopia to the right to compensation for IDPs under the KC is found to be incompatible with the object and purpose of the Convention. It argued that the reservation would in effect make *dejure* restriction that only bars disaster and conflict induced displaced people from exercising the right to compensation, under the KC. Such has been criticized, as it is against equity, government's duty to protect the property of its citizens, regulation of law and order, social damage, and legal obligation. Moreover, the offender compensation scheme recognized in Ethiopia is legally inadequate to cover the needs and vulnerabilities of IDPs in claiming compensation from the offender. Beyond examining the legal lacuna, the researcher has made a field observation in cities where returnees lived in Dire Dawa City. The lack of knowledge and information on their rights, lack of capacity to pursue those rights, security issues after return, secondary occupation and secondary displacement are the challenges returnees face in Dire Dawa City 08 and 09 Kebele to return and

²⁶⁴ Deborah Casalin, April 2022, 'Development-oriented' Durable Solutions: (Re-) entry point for a human rights based approach?, https://researchinginternaldisplacement.org/short_pieces/development-oriented-durable-solutions-re-entry-point-for-a-human-rights-based-approach/. *Human rights-based approach to IDPs solution offers 'the best, fairest and most sustainable results.*

claim their right to compensation. Even when they know their rights to property those challenges have made the returnees accept and live with their situation, in effect disempowering them and creating a moral vacuum. Beyond that, lack of specific law for IDPs has created a huge responsibility vacuum from the government side, regarding the properties of IDPs. Such a system will cause those citizens to be dependent on the government and other technocratic actors. Hence, ensuring rights for victims and taking responsibility for its enforcement would make the victims to be active to stand for their rights, and such a process is called RBA to IDPs response.

Recommendation

Human rights violations without redress, strengthens impunity, repetition of violations, and inflicts additional suffering on victims.²⁶⁵ Human rights matter because they embody the power of people standing up for change. Such changes come when the citizens are empowered to exercise it, claim their rights, and shape the decisions, policies, rules and conditions that affect their lives. This requires addressing their obstacles to build the knowledge and skills that enables them to act as agents of their own development via promotion and protection of human rights so that they could stand up for themselves and for each other, for equality, and for inclusive societies.²⁶⁶

From the government side, protecting the housing, land, and property rights of IDPs during post-conflict reconstruction and stabilization can be a highly complex undertaking, one requiring the development of legal, policy, and institutional frameworks, as well as activism from other actors in the area of human rights. This thesis suggests at a minimum, these frameworks to contain the following elements.

A. The Policies

It's essential to adopt a comprehensive IDP Policy, including a DS strategy, which will help in showing action plans for the stakeholders towards better protection and assistance. Alternatively, the DRM and DSI in the previous sections needs to be amended in that;

- The DRM has to include an understanding in its '*build back better*' during recovery - the right to property restitution and compensation for IDPs. It has to extend financial

²⁶⁵ Council of Europe, 2011, eradicating impunity for serious human rights violations, guidelines and reference texts, p.18.

²⁶⁶ UNHR, Empowerment, Inclusion, Equality: Accelerating sustainable development with human rights, p.1-2.

assistance to all displaced persons upon early warning assessments, not only for development induced one.

- The DRM need to adopt the right-based approach than entire focus on need-based approach.
- The DSI has to lift subjective criteria to help IDPs get access to justice and assist them in the process, not only in criminal claims but in civil cases too.

B. Legal Matters

Adopting a new law that covers the needs and vulnerabilities of IDPs along with administrative framework²⁶⁷ through domesticating the KC would be vital in this regard, and withdrawing the reservation on the right to compensation. Alternatively, clearly articulating property rights of IDPs, and ensuring compliance of national laws with international standards by repealing or amending incompatible existing laws, including the amendment of the ratification proclamation of the KC. Moreover, other relevant laws dealing with offender compensation has to be amended in a way accommodating the needs and vulnerabilities of IDPs. In this regard the Criminal code allotting wider discretion to court needs to be restricted by defining the subjective criteria like ‘*Considerable Damage*’. Moreover, extending the period of limitation for victims of crime to claim compensation as they spend most of their time in camps or other places.

C. The Need for Establishing Effective Redress Mechanisms

Equitable, transparent and non-discriminatory procedures need to be established to assess property claims, *inter alia*, within peace settlements. There was a mechanism in Dire Dawa City, however, the committee didn’t give compensation. Accordingly, such actors can be empowered to assess the amount of compensation for IDPs. Technically, working as ad hoc property commissions to process large numbers of claims. Nationally establishing such institutions stands vital.

Make IDPs property claims free of charge, or at least reduced to a minimum accessible; CSO’s and law schools can play essential roles in this. The process has to be easy to understand and with little legal jargons possible. Making mechanisms available to assist potential claimants through legal counsel or direct representation to claimants requiring assistance. Providing financial support for restitution mechanisms. Registering IDPs property rights upon displacement with detailed information to provide a reasonably objective source of information for use in

²⁶⁷ This is considerate of Ethiopia duty to adopt legislative measures as obliged under the KC.

eventual compensation efforts. But no specific organ is empowered to register IDPs, and no systematic registration procedures. This was the main problem with IDPs in Dire Dawa City in particular, but also in the country.²⁶⁸

D. The Need for Activism from Other Actors

NHRI's, and CSO have to be active in empowering victims to claim their rights from the state and from offenders, through advocacy and building the capacity of government organs in the field. Moreover, engaging in strategic litigation for victims is a tenable movement in ensuring the respect and protection of property rights of IDPs. Public education and “know your property rights” campaigns that describe rights, remedies, and procedures related to resolving property disputes, in general is essential. Moreover, advocating for the withdrawal of the incompatible reservation under the KC is also an area where those actors can intervene.

²⁶⁸ Registration problems of IDPs themselves including their vital events were one of the pressing issues to be points of concern in Ethiopia as reported by Ethiopian Human Rights Commission. See Ethiopian Human Rights Commission, የኢትዮጵያ ሰብአዊ መብቶች ዐመታዊ ሪፖርት፣ ሰኔ 2014.

Reference

Journals

- Abdi Jibril Ali, Remedies for Human Rights Violations: A Reform Proposal for Addressing Victims of Criminal Proceedings in Ethiopia, 19 NW. J. HUM. RTS. 12 (2021). <https://scholarlycommons.law.northwestern.edu/njihr/vol19/iss1/2>
- Adem Kassie Abebe, Human Rights under the Ethiopian Constitution: A Descriptive Overview, MIZAN LAW REVIEW Vol. 5 No.1, 2011,
- Council of Europe, 2011, eradicating impunity for serious human rights violations, guidelines and reference texts,
- Erin Mooney, ‘The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern’ (2005) 24(3) Refugee Survey Quarterly 9.
- Forced Migration Review, Home for good? Anne Davies, *challenges of return and reintegration*, Anne Davies, 21, September, 2004,
- Francis Deng and Dennis McNamara, International and national responses to the plight of IDPs, Forced Migration, review 10,
- Frank Vanclay (2017), Project-induced displacement and resettlement: from impoverishment risk to an opportunity for development? impact assessment and project appraisal, <http://doi.org/10.1080/14615517.2017.12786>
- Iain Cameron and Frank Horn, ‘Reservations to the European Convention: *The Belilos Case*’ (1990) 33 German Yearbook of International Law 69, 115.
- John Haldane and Anthony Harvey, 1995, the philosophy of state compensation, vol.12, No. 3,
- Luke Glanville (2010), the antecedents of ‘sovereignty as responsibility’, European Journal of International Relations, 17(2) 233–255, DOI: 10.1177/1354066109346889,
- Megan Bradley, Durable Solutions and the Right of Return for IDPs: Evolving Interpretations, International Journal of Refugee Law, 2018, Vol 30, No 2, 218–242 doi:10.1093/ijrl/eey021,
- Refugees Magazine Issue 103 (IDPs) - Interview: Dr. Francis M. Deng, advocate for the uprooted, By UNHCR | 01 March 1996)

- Roslyn Moloney, Incompatible Reservations To Human Rights Treaties: Severability and the Problem of State Consent, accessed from https://law.unimelb.edu.au/_data/assets/pdf_file/0010/1680427/Moonely.pdf,
- Ryan Goodman, Human Rights Treaties, Invalid Reservations, and state consent, The American journal of International Law, Jul, 2002, Vol.96, No.3, pp-532-560,
- Strengthening victims' rights: from compensation to reparation, For a new EU Victims' rights strategy 2020-2025, Report of the Special Adviser, J. Milquet, to the President of the European Commission, Jean-Claude Juncker – March 2019,
- UNHRC, the UN Refugee Agency, Global Trends Forced Displacement in 2021.
- UNHR Office of the High Commissioner, Empowerment, Inclusion, Equality: Accelerating sustainable development with human rights
- Wakgari Kebeta, 'The Protection of Internally Displaced Persons in Ethiopia: Leave No One Behind' (2019) 9(1) JID 40;
- Walter Kälin (2001), How Hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework, Brookings/CUNY Project on Internal Displacement,

Laws

National Laws and Policies

- Durable Solution initiative, Ethiopia, (2019)
- Expropriation of Land Holding for Public Purposes, Payment of Compensation and Resettlement of Displaced People Proclamation No. 1161/2019
- FDRE, National Policy and Strategy on Disaster Risk Management, 2013
- Ministry of Agriculture, Disaster Risk Management Strategic Program and Investment Framework,
- Proclamation No 1187/2020, Proclamation to Ratify the African Union Convention for The Protection and Assistance of Internally Displaced Persons in Africa
- የደቡብ ምዕራብ ኢትዮጵያ ህዝቦች ክልል ረቂቅ ህገ መንግስት
- Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No. 1178.
- The 1960 Ethiopian Civil Code

- The 1960 Ethiopian Criminal Procedure Code
- The 1995 FDRE Constitution

Regional and International Instruments

- American Convention on Human Rights, Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969
- Convention on the Elimination of All Forms of Discrimination against Women Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981
- European Court of Human Rights, European Convention on Human Rights, as amended by the provisions of Protocol No. 15 (CETS No. 213) as from its entry into force on 1 August 2021 and of Protocol No. 1, (CETS No. 194) as from its entry into force on 1 June 2010.
- Hague IV Convention Respecting the Laws and Customs of War on Land (Hague IV 1907)
- Human Rights Committee, General Comment Number 18 nondiscrimination, 37th session, 10 November 1989,
- ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169)
- International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976.
- International Convention on the Elimination of All Forms of Racial Discrimination New York, 21 December 1965
- Pinheiro Principles, United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons Centre on Housing Rights and Evictions,
- Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto - [1963] COETS 4 (16 September 1963)
- Protocol to The African Charter on Human and Peoples' Rights on The Rights of Women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, 11 July 2003

- Rome Statute of the International Criminal Court, A/CONF.183/9 of 17 July 1998 entered into force on 1 July 2002.
- UNGA United Nations Millennium Declaration, Res 55/2 (18 September 2000) UN Doc A/RES/55/2. A/RES/55/2:
- UNGA Res 60/147 ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Vienna Declaration program of action, The Vienna Declaration and Program of Action adopted on June 25, 1993 by consensus by the representatives of the 171 States attending the World Conference on Human Rights and subsequently endorsed by the United Nations General Assembly on 20 December 1993.
- Universal Declaration of Human Rights,
- Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’ (16 December 2005) UN Doc A/RES/60/147.
- Vienna Convention on the law of treaties, 1969, entered into force on 27 Jan 1980, treaty series, vol.1155,

Reports

- Dire Dawa Disaster Risk Management Coordination Office, damage and loss assessment report, October 19/2018.
- Durable Solutions for Internally Displaced People: in a nutshell, Briefing Note 2019,
- ECOSOC, IDPs, Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1995/57, Compilation and analysis of legal norms.
- Ethiopian Human Rights Commission, የኢትዮጵያ ሰብአዊ መብቶች አመታዊ ሪፖርት፣ p.69
- IASC Framework on Durable Solutions for Internally Displaced Persons, The Brookings Institution –University of Bern Project on Internal Displacement, April 2010,
- iDMC, Training on the Protection of IDPs, the right of IDPs to return home and property restitution
- International Conference on the Great Lakes Region Protocol on the Property Rights of Returning Persons (30 November 2006).
- IPI, Reaching Internally Displaced Persons to Achieve the 2030 Agenda, 2018, p-1

- OCHA, Ethiopia: Oromia – Somali Conflict-Induced Displacement, Situation Report No. 4, 20 June 2018,
- OCHA, Humanitarian bulletin Ethiopia, Issue #19/04-17, Nov 2019, p.1. IOM Ethiopia, DTM Ethiopia, Mobility Overview 2021, Feb 2022.
- Principles on Housing and Property Restitution for Refugees and Displaced Persons, in Final Report of the Special Rapporteur on Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons, E/CN.4/Sub.2/2005/17,
- UNCHR (2001), Report of the representative of the Secretary General on internally displaced persons, Mr. Francis M. Deng (E/CN.4/2001/5)
- UN WOMEN, Violence against Women in Conflict, Post-conflict and Emergency Settings
- UNCHR, UNCHR welcomes Ethiopia’s ratification of Kampala Convention, news, Feb 14, 2020.

Books

- Andrew Solomon, Forced Displacement and Housing, Land, And Property Ownership Challenges in Post-conflict And Reconstruction, INPROL Consolidated Response (09-003)
- CEHRO, Anchoring the human rights landscape in the post-2018 ‘Reform’ period in Ethiopia: *Addressing issues entangled by evolving promises and recurring challenges (2021)*; Behaylu Girma, the Human rights protection of IDPs in Ethiopia: *Brief overview of the normative and practical culminations and backlogs of the reform,*
- Francis M. Deng et al, *SOVEREIGNTY AS RESPONSIBILITY*. Conflict Management in Africa.
- Global Protection Cluster Working Group, 2007, Handbook for the protection of internally displaced persons
- Handbook on Housing and Property Restitution for Refugees and Displaced Persons Implementing the ‘Pinheiro Principles’, March 2007
- Romola Adeola (Ed.), National Protection of Internally Displaced Persons in Africa: Beyond the rhetoric, Sustainable Development Goals Series, Enguday Meskele Ashine,

The Adequacy of Law and Policy Frameworks on Internal Displacement in Ethiopia: A Critical Appraisal,

- Scott Leckie, in: *Returning Home, Housing and Property Restitution Rights of Refugees and Displaced Persons*, ed. Scott Leckie, Transnational Publishers 2003,

Website

- ICRC, IHL Database, ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule132.
- Peter Harney, Edmund Rice International, 2013, *The Rights-Based Approach*, https://www.erc.org.au/rights_based_approach.

Case

- Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya (Endorois communication) Communication No 276/03 (African Commission, 25 November 2009).

Thesis

- Elias Lema Ngugi, *Internally Displaced Persons: Towards an Effective International Legal Protection Regime* (LLM thesis, University of Cape Town)
- Tilahun Gebre, *Compensation of Victims of Human Rights Violations in Ethiopia In Light of International Human Rights Law: With Specific Reference to Addis Ababa And Oromia*, (2010), LLM thesis, AAU
- Nuredin Mohammed, *The Rights of Security of Property of Internally Displaced Persons under International Law: The Case of Ethiopia*, 2021,

Interview

- Ahmed Salih Mohamed, 09 Kebele Gende,
- Amdiya Jibril, returnee 09 Kebele
- Commander Basha, Police in 09 Kebele
- Faxuma Usman, returnee in 09 Kebele
- Gulle Abdi, returnee in 09 Kebele
- Hayat Ahmed, DRMCO in Dire Dawa, recovery and rehabilitation team leader

- Hussien Hamit Abdi, returnee in 09 kebele Genda Gerada Qucuuci,
- Kadija Aliyi returnee in 09 Kebele, in Gande 02 Sefer.
- Misra Abdalla, returnee 09 Kebele
- Mohammed Ahmed, living in camp in 09 kebele Dire Dawa,
- Najat Shamsadin, returnee 09 Kebele
- Zeytuna Mohammed, returnee in 09 Kebele