

**ANALYSIS OF HUMAN RIGHTS IMPACTS OF DEVELOPMENT
INDUCED DISPLACEMENT: THE CASE OF FINCHAA AMERTI
NASHE DAM**

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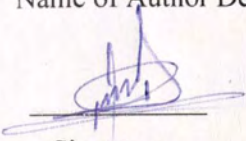
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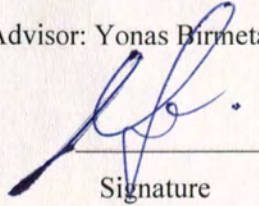
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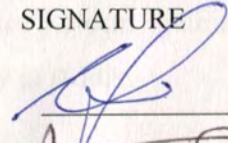
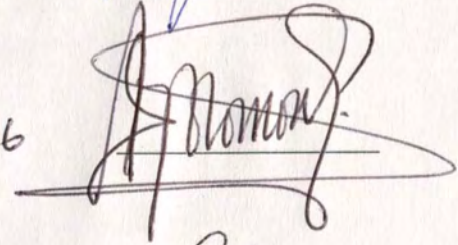
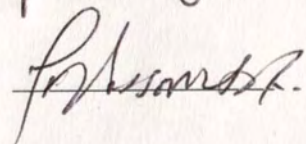
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List of Abbreviations and Acronyms

CPR - Civil and Political Rights

DID - Development Induced Displaced

DIDR - Development Induced Displaced and Resettlement

EC – Ethiopian Calender

ESCR -Economic, Social and Cultural Rights

FAN - Finchaa Amerti Nashe

FDRE- Federal Democratic Republic of Ethiopia

IDPs - Internal Displaced Persons

ICCPR - International Covenant on Civil and Political rights

ICESCR -International Covenant on Economic, Social and Cultural Rights

OECD –Organization for Economic Cooperation and Development

OP –Operational Policy

UDHR - Universal Declaration of Human Rights

UN - United Nations

WCD - World Commission on Dams

Abstract

This paper investigated the legal and practical protection of development induced displaced victims' rights in case of mega projects. For this purpose, secondary sources such as relevant legal literatures, books, laws, articles and journals were analyzed while interviews and field observations were the primary sources employed.

Each year, millions of people around the globe are forcibly relocated and resettled away from their homes, lands and livelihoods in order to make way for large-scale development projects such as dams. This forced relocation is known as Development Induced Displacement. The thesis offers an overview of the human rights violations that have been taking place in Ethiopia as a result of the implementation of mega development projects by focusing on FAN project in Horro Guduru Wollega.

This research examines the legal projection of the right not to be displaced and the impact of displacement on human rights specifically on the right to life, food, housing, adequate standard of living, the right to participation and right to development. The research revealed that although FDRE Constitution and other legislations guaranteed the right not to be displaced in arbitrary manner, the laws and practice are inconsistent with the standards set forth by international human rights instruments. In addition to this, the thesis analyzes the shortcomings of Ethiopian laws, and how the FAN has induced impoverishment and violated human rights.

To protect human rights of DID the research recommends the government to amend or repeal the laws inconsistent with human rights and to adopt laws which further protect human rights in progressive way. The study urges policy makers and concerned authority to envisage competing human rights using legality, legitimate aim and proportionality tests, to follow human rights based-approaches, to conduct human rights impact assessment before, during and after evictions, to rehabilitate the livelihood of evictees.

Finally, the thesis recommends that Ethiopia should implement and adopt a legal framework to address issues of victim of development-induced displacement and provide project affected people with legally enforceable rights regarding resettlement and rehabilitation.

Key words

Hydroelectric project, Development, Development induced Displacement -Human rights violations

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Chapter One

General Introduction

1.1 Background of the Study

Development-Induced Displacement (hereinafter DID) has become a global cause of serious human rights violation. Yearly, about 15 million individuals are left impoverished as a result of the effect of development projects,¹ some of which are sponsored by international financial institution. Like becoming a refugee, being forcibly ousted from one's land and habitat by a dam, reservoir or highway is not only immediately disruptive and painful, it is also fraught with serious long-term risks of becoming poorer than before the displacement, more vulnerable economically, and disintegrated socially.² Although the economic benefit of these projects is enormous, the resultant human rights implications are often massive. Most large forced dislocations of people do not occur in conditions of armed conflict or genocide but in routine, everyday evictions to make way for development projects.³ Although DID as categories of Internally Displaced Persons (IDPs) share similar factual circumstance with refugees, the international legal regime for the protection of refugees is not readily adaptable to their situation because of some serious doctrinal hurdles mainly sovereignty.⁴

Globally many water reservoirs have been constructed to provide electricity, irrigation, flood control and water supply for the ever-increasing population and to improve its standard of living.⁵ Currently, they are becoming in some countries, the major source of economic, social, and political advancements. Particularly in the newly developing nations, water projects are on the way of overtaking others ways of socio-economic progress. The historical development of hydroelectric projects and displacement for this purpose in Ethiopia goes back to the era of Emperor Hailesillase and has been a contemporary phenomenon of the present government.

¹ JK Maldonado, "A new path forward: researching and reflecting on forced displacement and resettlement" *Journal of refugee studies* vol.25.no.2 (2012) p.193.

² Robinson. W. Courtland. "Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement," *The Brookings Institution-SAIS Project on Internal Displacement*, May 2003, p. 7. Available at, <http://www.brookings.edu/fp/projects/idp/articles/didreport.pdf> .accessed on February 22/2015 .

³ Ibid.

⁴ Won Kidane, "Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention" (*Vanderbilt Journal of Transnational law* , vol. 44 (2011),p. 5.

⁵ WCD (World Commission on Dams); .Dams and Development: A New Framework for Decision-making (2000)

Ethiopia, as a newly emerging state in terms of its economy is making a great effort to utilize its water resources in order to feed its people and transform the economy to industrial sector since the 1950s.⁶ The construction of Fincha, Amarti dam and the recent dam constructed in Nashe River named as Finchaa Amerti Nashe (hereinafter FAN) hydro electric projects in Horro Guduru Wollega Zone of Western Ethiopia has been the part of this phenomenon. However, manmade dams for hydropower generation and irrigation often show negative effects that can raise human right issues. DID is not only a widespread, and growing, phenomenon, but evidence suggests that while the beneficiaries of development are numerous, the costs are being borne disproportionately by the poorest and most marginalized populations.⁷ There is no doubt about the developmental benefits of any planned project, but these cannot be weighed against human rights.⁸ Human rights thus have to be considered independently.

Hence, in Ethiopia the commencement of both single and multipurpose water projects is increasing. There is also a considerable emergence of major human rights impacts in their respective watersheds and regions in particular and national wide in general. Accordingly, on the one hand, FAN project is constructed for hydropower and irrigation to develop the national economy. On the other hand, it has also negative impacts on the local community. Though the FDRE constitution has provided protection to human rights by incorporating it in the substantive part dealing with fundamental rights and freedoms, it have not avoided the prevalence of its violation in the case of development displaced peoples. Therefore, the thesis investigates the human rights impacts of the project in the given area. It further analyzes legal and policy protection available for affected peoples in case of displacement.

1.2 Statement of the Problem

The human right to freedom from displacement is rights guaranteed under UDHR, ICESCR, ICCPR, and in international humanitarian instruments. The displacement of people is a

⁶ Bezuayehu T. Olana, "People and Dam: socio-economic changes induced by a reservoir in Finchaa Watershed, western Ethiopia," Tropical Resource Management Papers, Wageningen University, Netherland. (2006)p.12.

⁷ Supra note 2, p, 10.

⁸ Ms. Shilpi Jain, Development Induced Displacement, p.1. Available at <http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=d03848b7-dff9-4b57-b7c8-c7e7a4df797f&txtsearch=Subject:%20Property>

multidimensional phenomenon, not confined to physical relocation. It reduces the "quality of life" of human beings into sub-human conditions.⁹

Forced population displacement is always crisis-prone, even when necessary as part of broad and beneficial development programs.¹⁰ A World Bank study identified eight distinct predicaments facing populations displaced as a result of development: homelessness, landlessness, joblessness, marginalization, food insecurity, increased morbidity and mortality, loss of access to common property, and social disintegration.¹¹ In all cases the needs of the affected population are great and usually the response to them is grossly inadequate.¹²

People who are forced to flee from a disaster or conflict usually receive special attention and international aid. The same cannot be said for the thousands of people who have been displaced by development, even though the consequences they face may be comparably extremely serious. In Ethiopia the scenario is no exception to this trend, because the likely negative impacts of development should be part of the real concern.

Despite the people displaced from their land, home and property in the focus area of this study there is no the national development induced displaced victim policy or a State organ responsible for assistance and protection of affected community. By uprooting them from their heritage land and property, the FAN project exposed them to acute poverty and starvation. When people are displaced from habitual residences and traditional homelands their right to life, right to food, right to health and livelihood is threatened by the loss of home and means of subsistence.

Indeed, in a number of cases, not only socio-economic rights such as the right to housing, food and living standards of people that are at stake, but a number of civil and political rights, from the right to be informed about the displacement procedures to the freedom of expression, would be violated. Further more people are displaced against their will with lack of proper compensation and resettlement, no consultation and recognition of local people albeit the FDRE constitution states that "Nationals have the right to participate in national development and, in

⁹ Ibid.

¹⁰ Michael Cernea, "Bridging the Research Divide: Studying Development Ousters." In Tim Allen (ed), *In Search of Cool Ground: War, Flight and Homecoming in Northeast Africa* (London: United Nations Research institute for Social Development, Africa World Press and James Currey, (1996).p.213.

¹¹ Michael Cernea, "Social Integration and Population Displacement," *In International Social Science Journal*, vol.143,no.1.(1995)

¹² Ibid.

particular, to be consulted with respect to policies and projects affecting their community.”¹³ Displacing people from where they settled may force them to change their livelihood which badly affects right to food - one of the most fundamental rights for human dignity. Denial of right to food indirectly would overwhelmingly jeopardize right to life. Despite the human, social and economic problems faced by FAN project, the society have no chance to share in the project benefits. There is no infrastructure, no sustainable electrification and water transportation in the Zone even though the three dams and one sugar factory evicted thousands from their land and homes. In general, the living standard of the local community in was decreased when the project implementation took place.

1.3 Objective of the Study

This study has both general and specific objectives. In general, the research aims to examine whether the displacement regime laws and practices in Ethiopia are adherent to human rights standards or not. With the understanding of the above mentioned background, the main objective of this thesis is to identify the basis of protection and assistance available for victim of DID people in Ethiopia and particularly for affected community in the study area. In this way, the thesis investigates the legal and practical protection of victim of development displaced community. In doing so, it assess whether the practices in Ethiopia promotes only economic development by neglecting the existence of human right violation. The specific objectives of the study are:

- To explore the justifications of displacement in Ethiopia under the laws and practices visa-avis international, regional and national human rights standards and jurisprudences.
- To assess whether the laws and the practice in the country have given adequate protection to development induced people. It also analysis whether people have the right to determine the sort of development that a dam will bring.
- To examine whether existing laws of the country match friendly with international human right instruments.

¹³ Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Negarit Gazeta, 1st year, No.1, 21st August, 1995, (hereinafter cited as FDRE Constitution). Article, 43 and 89.

- To disclose the undesirable effects of displacement on the rights to life, right to health, right to food , right to adequate housing, right to adequate standard of living, right to participation and right to development.
- To look into the proper existence of resettlement and rehabilitation policy and laws in the country for people affected by displacement to alleviate their grievances and to avoid regressive step in their way of life.

1.4 Research Questions

This study aims at answering the following central questions:

- Can displacement in Ethiopia justified by compelling and overriding public interest criteria's?
- Can displacement for public purpose determined only by government be justified under international human rights law?
- If displacement unavoidable, are Ethiopia's laws and practices of the displacement procedure adherent to the international human rights standards?
- What are the unacceptable effects of displacement on the CPR, ESCR and group rights?
- Can victims of displacement have legal and institutional protection which averts retrogressive stage in their way of livelihood?

1.5 Review of Related Literature

In analysis of identifying the human rights of Development induced displaced people in Ethiopia; relevant literatures have been explored though not adequate. With regard to human right of DID there are few researches conducted concerning the impacts of the development induced displacements with limited area coverage, with limited rights at issues and only depending on specific right holders. Among those Fekadu's thesis reveals that children's right to participation, housing, health and educations were affected as a result of development induced displacements.¹⁴ The overall objective of Fekadu's research was examining the human rights of children in development induced relocation from Arat Kilo to Jemo focusing on the right to

¹⁴ Fikadu Malede, The Human rights of Children in Development Induced Relocation from Arat kilo to Jamo No.1 with particular reference to the right to participation, housing, health and education. MA thesis, Addis Ababa University(Unpublished), (2011), pp70-90.

participation, housing, health and education. Specifically, it was aimed to examine whether the relocation was justifiable in light of international human rights law, to assess the participation of children in the relocation process, to identify the impacts of relocation on the right of children to participation, housing, health and education and finally to assess the protection mechanisms implemented to overcome the adverse impacts of relocation. At the end the result of his study, he clearly depicted that, even if it is permissible by the Ethiopian constitution and other relevant national laws and policies, the relocation process is not in conformity with the provision of international human rights law.

Furthermore, Kalkidan's thesis explored that the development induced displacement would bring challenges to the protections of socio-economic rights.¹⁵ The Kalkidan's thesis examined the social and economic rights issues raised by development induced displacement and resettlement among Lideta displaces. The study finally indicated that the development projects that are seen to be the required essentials of the city are shown to be in conflict with poverty reduction goals of the government strategies by marginalizing certain segments of the population and exacerbating the effects of poverty on their end. At last he indicated the absence of compressive development strategy which consider the needs of the displaces. Regarding issues of expropriation for public purpose in Ethiopia Girma's paper explored the rural citizens who have been affected by the expropriation are facing difficulties to restore their life because of low amount of compensation and due to lack of commitments from the part of expropriating authorities to help them rehabilitated and public purpose has become looming crisis to the life of farmers.¹⁶ Most researches reviewed lack legal analysis to the displacement and the practices looked were only limited to city (Addis Ababa expansion or beautification) displacement.

Unlike the studies indicated above, this study is not intended on displacement because of city expansion and eviction practice in the inner-city for land redevelopment and public concessions but it is stressed on displacement of rural population because of dam construction. In addition, though those earlier studies touched the impacts of displacement on ESCRs, none of them looked into the impacts of the displacement in light of CPRs of the victims of displacement. Different

¹⁵ Kalkidan Lakew, Development Induced Displacement: Challenges to the protections of Economic and Social Rights: The Case of Lideta Sub-City. MA thesis, Addis Ababa University (Unpublished), (2011), pp.1-3.

¹⁶ Girma Kasa, Issues of Expropriation: The Law and the Practice in Oromia .LLM thesis .Addis Ababa University. (un published) (2011) pp, 1-2.

from these preceding studies, this researcher have explored the adverse effect of displacement on civil and political rights, economic, social and cultural rights, and also on the group rights by raising the indivisibility, interrelatedness and inter connection of human rights. Since the previous researchers could not deeply addressed international human right instruments and core principles and guidelines prohibiting displacement and protecting their rights in case of inevitable displacement, in this research those instruments are deeply analyzed.

1.6 Scope of the Study

The scope of this paper is limited to assessing the legal and practical protection of the rights of victim of development displaced people in Ethiopia in general and in the area under study in particular. The study is delimited to explore the impact of development induced displacement on the displacees human rights in project area. The study is confined to examine the impacts of development induced displacement on the human rights of people especially on the two woreda's namely Horro and Abay Chomman woreda's, which are immediate neighbors of the project where the project evicted the society from their home land.

1.7 Significance of the Study

As it is pointed out in the above section, since displaced people due to development project doesn't match with the definition of refugee, victims of development induced displacement has been excluded from international protection. Findings of the study will bring additional knowledge on development induced displacement in Ethiopia and its impact on human rights of displaced people.

The study in its findings also exposes the inadequacies in the legal, institutional accommodations, the harmony between the legal and practical protections accorded to victims of development displaced people by reflecting up on its implication. It also contributes by forwarding additional way-outs by which protection; respect and promotion of rights of development induced persons are effectively implemented and enhanced. In case where it is not impossible to avoid displacement for public interest the thesis suggests how resettlement activities should be conceived and executed as sustainable development program. Investigating the level of protection provided for development evicted persons rights in Ethiopia and forwarding better solution for affected people is part of the study.

1.8 Research Methodology

Empirical data are central to the study. Hence, primary sources of data collection like interviews, observation and focus group discussions would be used. To this end, the researcher was conducted field work in the project site. To enhance the quality of the research, secondary sources are also collected and review of relevant literatures including books, journals, reports, researched papers and documents are used so as to conceptualize and to analyze the issues associated with development displaced victims. The research methodology is qualitative approach because the purpose of the study is to collect basic and relevant information regarding the viability and sustainability of the project on human rights of affected community.

1.9 Organization of the Study

The research report is organized in to five chapters. The first is an introductory. Following this introduction, the second chapter presents an overview of concept and definition of development induced displacement. The third chapter explores the international, regional and national legal frameworks protecting right not to be displaced. Chapter four devoted on analysis the impact of FAN project on human rights of displaced community. The chapter examines laws on displacement and attempt to present the analysis of data gathered based on interviews, FGD and field observations. Finally, the thesis presents the finding as conclusion and recommendations in chapter five as ways forward.

Chapter Two

Concept and Definition of Development Induced Displaced People: An Overview

2.1 Introduction

This chapter aims to provide a general understanding of development and displacement, and highlights some key relevant discourse in the literature. The chapter begins by introducing brief definition of development and presenting the meaning and concept of displacement. It also explores Development Induced Development as one category of Internal Displacement. In addition some of the key development perspectives and concerns within the contemporary displacement debate are further discussed.

2.2 Development: A Brief Definition

The proper connotation of the term development is the overall welfare increment of the society in every aspect whether economic, political and social. Development refers to the situation where both material and quality living standard of masses will increase.¹⁷ The most fundamental goal of economic development seems to be to advance the welfare and wellbeing of the people. But the process of development, the world is proceeding with, had created lot of sufferings and miseries to a vast sections of population.¹⁸ By the name of development many developmental projects had been developed and constructed in the form of dams, economic processing zones and many others on the private property and the holders were displaced by the name of some economic remunerations and over dues, those in the future life does not mitigate their economic and other sufferings.¹⁹ Generally, 'development' is a term that can be used to describe the growth of humans throughout their lifespan, from conception to death.²⁰ In the 1950s and 1960s, it may be said that the dominant view in development was informed by modernization theory, which, put crudely, saw development as transforming traditional, simple,

¹⁷ Raouf Ahmad lone, "Development induced Displacement" : Centre for Studies in Economics and Planning, School of Social Science, Central University of Gujarat, Gandhi agar, India:ISSN:2321-1098, p,217.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Konyana Elias G, "Why Development-Induced Displacement is morally objectionable: An ethical appraisal of Macdomarda Chisumbanje ethanol project in Chipinge, southern Zimbabwe," Afro Asian Journal of Social Sciences, Volume 5, No. 5.1 Quarter I 2014, ISSN: 2229 – 5313,p.5.

third World societies into modern, complex and westernized ones.²¹ Seen in this light, large-scale, capital-intensive development projects accelerated the speed toward a brighter and better future. According to Hardman et al the scientific study of human development seeks to understand and explain how and why people change throughout life and this includes all aspects of human growth, including physical, emotional, intellectual, social, perceptual, and personality development.²²

Development for Adger does not just involve the biological and physical aspects of growth, but also its cognitive, ethical and social aspects.²³ Looking different definition on development might leads somebody to acknowledge that there is no uniformity over the meaning of development. However, the writer argues that development should represent human growth in all aspects of life. Therefore it is logical to argue that, development suggests that citizens are meeting their basic needs such as food, clothing and shelter. Although indication of development remain arguable, that it is possible to identify the absence of development. Where there is no development, there is poverty, oppression and general discontent. The conception of development implies that development is desirable to any person because it brings with it increase in both quantity and quality. Thus, development improves, or it is the process of improving the quality of life lived by those experiencing, and affected by it. This is to say that development aims at the common good.

2.3 Displacement Conceptualization

To displace people means to force them to leave their home, village, town, or region. So that displacement is described as dislocation of people from their native place and region. Typically the term 'displacement' invokes an image of mass flight from a violent context.²⁴ Less frequently we might think of those people evicted from their homes to make way for large infrastructural projects.²⁵ Finally, on occasion, forced displacement is associated with natural disasters such as

²¹Nalin Singh Negi and Sujata Ganguly, Development Projects vs. Internally Displaced Populations in India: available at https://www.unibielefeld.de/tdrc/ag_comcad/downloads/workingpaper_103_negi_ganguly.pdf. Accessed on June 14, 2015.

²² Hardman, M. and Midgely, J. "The Social Dimensions of Development," *New York: Willy Press.* (1981)

²³ Adger, W. International Development Ethics (A short on-line introduction at: <http://www.bu.edu/wcp/Papers/OApp/OAppCroc.htm>).

²⁴ Forced migration on line available at <http://www.forcedmigration.org/about/whatisfm> accessed on June 22/2015.

²⁵ Ibid.

hurricanes or earthquakes.²⁶ These images reflect the conventional categorization of displacement or forced migration into three main types, according to the presumed cause: conflict, development, and disaster -induced.²⁷ From the three causes of forced migration the paper focus on the development induced displacement.

Displacement is seen as the result of a model of development that enforces certain technical and economic choices without giving any serious consideration to those options that would involve the least social and environmental costs.²⁸ This notion of displacement as sacrifice has influenced thinking on displacement considerably. It has stripped displacement of its political content, i.e., the fact that displacement involves the loss of people's rights to land and resources.²⁹

Displacement takes in different ways. It can be physical, economic or both.³⁰ Physical displacement refers the actual uprooting of people from their place of residence to another while economic displacement denotes the movements of individuals, families and communities, whose means of production threatened by development projects, to new areas in order to re-establish them.³¹ This later type of displacement is also known as livelihood displacement.³² This implies that projects do not only affect people residing in the designated area but also those who live in its surroundings.

The activity of the UN on displacement have focused on situations of war and social disintegration, whereas the work on forced eviction is related to access of large scale development projects, slum clearance operations and land or housing speculations among others.³³ Forced eviction is defined in its guideline as the:

“acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon thus, eliminating or limiting the ability of an individual

²⁶ Ibid.

²⁷ Ibid.

²⁸ Bartolome, J.L, et al, Displacement, Resettlement, Rehabilitation, Reparations and Development Final Draft, Cape Town: WCD, (2000), p.2.

²⁹ Ibid.

³⁰ Houshour,K& Jennifer ,K, “A Growing Global crisis: Development Induced Displacement and Resettlement” International accountability Issue paper. Sanfrancisco,CA:IAP,(2010),p.2.

³¹ Ibid.

³² UNESCO, 2003, p.47.

³³ UN Forced Evictions and Human Rights, Fact Sheet No. 25, Centre for Human Rights, United Nations, Geneva (2006).

group or community to reside or to work in a particular dwelling, residence or relocation without the provision of, and access to, appropriate forms of legal or other protection.”³⁴

It is differentiated from other forms of arbitrary displacement as it involves specific decisions, legislations or policies of the state or failure of state to intervene to halt forced evictions by third parties; an element of force or coercion, often expressed by eviction orders; the planning, formulation and announcement of evictions, prior to being carried out; and the fact that they can affect both individuals and groups.³⁵

However, these differentiations are not always valid as forced eviction shares similar consequences with arbitrary displacement.³⁶ Similar to forced eviction, the key factor determining the situation of displacement is the existence of the movement of people as well as forced and coercion.³⁷ Beside this failure of the state to provide adequate protection and its active involvement in causing the act is also present in displacement. The concepts of “forced evictions” as defined in General Comment 7 of the Committee on Economic, Social and Cultural Rights,³⁸ and that of “arbitrary displacement” as defined in the *Guiding Principles*,³⁹ have attained acceptance as similar terms in international law. They refer to overlapping practices, which involve the following three basic elements: removal of individuals or groups from their places of habitual residence and work; forced, in the sense of being undertaken involuntarily or through coercion vis-à-vis those removed; and illegal by virtue of their non-conformity with domestic law and/or arbitrary by virtue of their non-conformity with international law. At a practical level, arbitrary displacement is a result, in many contexts, of forced evictions.

³⁴ Human Rights Council, “Basic Principles and Guidelines on Development-Based Evictions and Displacement: The Report of the special Rapporteur on Adequate Housing,” submitted pursuant to the Human Rights Council Resolution 6/27, U.N. Doc. A/HRC/6L.11/Add.1, 2007, (hereinafter referred to as Basic Principle and Guidelines), paragraph 4.

³⁵ Supra note 33.

³⁶ Basic principle and Guidelines, paragraph 5 and United Nations Fact sheet No.25: Forced Evictions and human rights.

³⁷ Stavropoulou, M., “Displacement and Human rights: Reflection on UN practices” *Human Rights Quarterly*, Vol.20 No. 3(1998), p.519.

³⁸ General Comment 7 of CESCR, The Right to Adequate Housing (art. 11 (1) of the Covenant): Forced Evictions, UN Doc E/1998/22,

³⁹ *Guiding Principles on Internal Displacement: Report of the Representative of the Secretary-General, Mr. Francis M Deng, Submitted Pursuant to Commission Resolution 1997/39, U.N. ESCOR Commission on Human Rights., 54th Sess., Agenda Item 9(d), Addendum 2, 8-12, U.N. Doc. E/CN.4/1998/53/Add.2 art 2 (hereinafter Guiding principle)*

Hence forced eviction is prototype to displacement irrespective of the number of people affected and the extent of states' involvement in the process.⁴⁰ The distinction is only meant to reinforce the illegality of such practices under international law that may be allowed for eviction under exceptional circumstances in conformity with human rights standards.⁴¹ At conceptual level the broad concepts of displacement overlaps with and even incorporate the somewhat narrower concepts of eviction while at practical level arbitrary displacement is the result of forced eviction.⁴² Forced eviction are said to create situation of arbitrary displacement when they destroy homes, communities, original habitats and livelihoods. Displacement begins when eviction ends. But, the holistic and compressive understanding renders the terms as referring the same phenomenon.⁴³

While forced evictions and arbitrary displacement are often used to refer to a cause-effect phenomenon i.e. displacement is generally considered to begin when evictions end, for the purpose of this paper, they will be used interchangeably, as synonyms for the illegal act of forcibly shifting or moving people or communities to alternative locales due to external factors not related to their safety or security. A more holistic and encompassing understanding of both eviction and displacement render both terms as descriptive of and referring to, the same phenomenon.

2.4 Development Induced Displacement

It would be not well formed to proceed with the definition of DID without first describing who IDPs are. Though a consensus definition on IDPs have been contentious, there are two basic requirements that must exist for persons to fall within the category of IDPs.⁴⁴ First such persons must have fled or been forced to leave their places of habitation. Secondly, such persons, in forcefully leaving or fleeing, must not have crossed international boarder.⁴⁵ Both United Nation Guiding principle on Internal Displaced People and the African IDPs convention recognize similar situations that can give rise to internal displacement and, '... in particular, armed conflict, situations of generalized violence, violations of human rights or natural or human- made

⁴⁰ Supra note 37, p.518.

⁴¹ Chauldy ,S., "Development –induced Displacement and forced Evictions", in Kalin ,W., Koser, k., Williams, R, and Solomon ,A., eds, Incorporating the Guiding Principle on Internal Displacement into Domestic: Issues and Challenges. Washington, DC: The American Society of International Law, (2010) p.602.

⁴² Ibid.

⁴³ Ibid, p.603

⁴⁴ DA Korn , Exodus within borders: an introduction to the crisis of internal displacement (1999),p.11.

⁴⁵ Ibid.

disasters.....'.⁴⁶ While it may clearly not appear that DID is not included in the category, closer look at the provision reveals that it is not all-inclusive. Before this list, the words 'in particular' is mentioned which has noted by the former Representative of the United Nations secretary General on the human rights of IDPs, reveals that '...the listed examples are not exhaustive.'⁴⁷ As a result, DID, contained in article 6(2) c) of the Guiding Principles and article 1(k) of the convention, fall within the category of those situations that can give rise to internal displacement. Alternatively, Cohen and Deng using the paradigm of the resultant effect of dam-induced displacement has argued that DID may qualify as a human made disaster,⁴⁸ hence, falling within the scope of article 1(k) of the convention. Identifiably, there are two different reasoning on DID capable of altering the course of its rhetoric.⁴⁹ First is the conception that this form of displacement is an unavoidable consequence of development, and as earlier noted, those affected should be considered as necessary sacrifices for a national goal.⁵⁰ The other reasoning conceives of displacement as a defect of development discountenancing the economy-oriented model.⁵¹ Though the focus of this research is not to engage in this debate, it is pertinent to select out of these positions of self evident truth which is that the subject in focus is a problem. As observed by Eguavoen and Tesfai, 'displacement of people in the context or as a result of development interventions has been identified as the most important forced migration problem worldwide of our time.'⁵² According to Vesalon and Cretan, DID '... is a problem driven approach to the phenomenon of forced migration caused by bid of development projects, such as dams, mines and other industrial enterprises.'⁵³ Article 1(I) of the convection provides that 'internal displacement means the involuntary or forced movement, evacuation or relocation form of person or groups of persons within internationally recognized state borders.'⁵⁴ Hence, DID is any form of forced removal of individuals, groups of persons or communities for the purpose of

⁴⁶ Guiding Principles on Internal Displacement, art 2 and African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa(Kampala Convention) art 1(K)(here in after the convection)

⁴⁷ W kalin 'Guiding Principles on internal displacement: annotations' studies in Transnational Legal Policy 38, American society of International Law (2008)p,4.

⁴⁸ R Cohen and FM Deng, Masses in flight: the global crisis of international displacement (1998) p, 17.

⁴⁹ R Dwivedi 'Model and methods in development induced development': Development and Change (2002) P.709.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵²Eguavoen & W Tesfai "Social impact and impoverishment risk of the koga irrigation scheme, blue Nile basin Ethiopia" Africa focus vol.25. No.1(2012) p,39- 40

⁵³ L Vesalon & R cretan "Development-Induced Displacement in Romania: the case of Rosia Montana mining project" Journal of Urban and Regional Analysis vol.4 No.1 (2012) p, 64.

⁵⁴The convention article 1(1)

development projects intended for economic gain and executed under the auspices of state or private actor.

2.5 Contemporary Debate on Displacement and Development

Taking into consideration the support of evictee in the case of resettlement and rehabilitation might available, this particular section attempts to provide a development perspective and highlight some concerns within the contemporary displacement discourse. Most DIDR literature is explicitly associated with decreasing economic impoverishment and targeting development to the poorest that can be linked to broader national strategies to alleviate poverty and ensure the equity of benefits across society.⁵⁵ However many other resettlement practitioners argued that there is a contradiction between the benefit of increasing 'national' welfare and the consequent poverty of resettled communities when the welfare of the displaced is 'scarified' as the end result.⁵⁶ This argument raises fundamental question of the relationship of resettlement to the protection of human rights and development.⁵⁷ A number of international treaties specify freedom of movement, choice of residence, and ownership and possession of the land peoples traditionally occupy as general human rights.⁵⁸

Furthermore, displacement raises the issue of rights at the level of national state, in which all citizens are held to be equal.⁵⁹ Those displaced clearly do not enjoy equal rights when they are forced to leave their home land. Most are suffering from socio-economic impoverishment and others are vulnerable to human right violation for the sake of national economic development. This failure on the human rights front signals is a failure for a development project.⁶⁰ Others further argued that development that comes at the price of a lessening of the human rights of the

⁵⁵Michael Cernea, The risk and reconstruction Model for resettling displaced populations: World Development, vol. 25 No.10 (1997), p.1569.

⁵⁶Barutciski.M, "International Law and Development Induced Displacement and Resettlement." In C.De Wet (Ed.), Development –Induced displacement: Problems, Policies and people. New York: Berghahn Books. Vol.18 (2006),

p.71

⁵⁷Ibid.

⁵⁸Ibid.

⁵⁹Turton,D, "Who is a forced Migrant?" In C.De Wet (Ed.) Development –Induced Displacement: Problems, policies and people. New York: Berghahn Books, Vol.18 (2006) pp.13-37

⁶⁰Rew.A.,Fisher,E.,&Pandey,B, "Policy Practices in Development –Induced Displacement and Rehabilitation." In C.De Wet (Ed.) Development Induced Displacement: Problems, Policies and people. New York: Berghahn Books. Vol.18 (2006),p.38

affected people does not qualify as development.⁶¹ A failure to provide an alternative for entitlements such as live hood ,food security home or socio-cultural heritage ,which are lost as a result of displacement ,amounts to a violation of human rights ,as well as a disregard of the principles of equity.⁶² Cernea also argued, “the outcome is an unjustifiable repartition of development’s costs and benefits: some people enjoy the gains of development, while others bear the pains”.⁶³

Moreover, while the concerns about the mitigation of the economic impoverishment have received considerable attention from governments there has been great failure to address resettlement problems effectively. Involuntary resettlement impoverish people, in part because it takes away their power to make decisions about where and how they are to live, the conditions under which they are to have access to and use productive resources, and the autonomy they are to exercises over the running and reproduction of their own socio-political institutions.⁶⁴ Further most resettlement programs have not worked as well as they could have because they have focused on the economic aspects of resettlement, while neglecting the political, and that social disarticulation can worsen powerfulness, dependency and vulnerability.⁶⁵ This is essentially impoverishing those who already have the fewest economic and political resources. Those with more political resources are often in a better position to resist displacement and negotiate adequate compensation. Most often the end result of displacement is that rich farmer, people with more power become the ‘haves ‘at the expense of the ‘have not’, who through the process become even more deprived, landless, jobless, homeless, poor, vulnerable to increased morbidity and mortality, socially disoriented, and politically powerless.⁶⁶Most academics and practitioners argued that for a resettlement program to be successful, it is necessary to get the ‘right inputs’, which refers to as having sound legal and policy frameworks, sufficient political will, necessary financial and administrative capacity, all of which are important and instrumental, to improve

⁶¹ De Wet. C, “Risk complexity and local initiative in forced resettlement out comes.” In C.De Wet (Ed.) Development –Induced Displacement: Problems, Policies and people. New York: Berghahn Books.Vol.18 (2006) p,180

⁶²Ibid.

⁶³ Cernea (2000) p,12

⁶⁴ Ibid.

⁶⁵ Koenig ,D, “Enhancing local development in development –induced displacement and resettlement projects .” In C.De Wet (Ed.), Development –induced displacement: Problems, Policies and people ,New York: Berghahn Books. Vol.18 (2006) p.105

⁶⁶ Ibid ,p.120

displacement out comes.⁶⁷ However despite the presence of the above mentioned aspects, displacement and resettlement continue to be problematic in many countries.⁶⁸ Displacement involves a long, complex process of human interactions, varying from case to case depending on its own economy, ecology, and socio-cultural disruptions.⁶⁹ Many resettlements scholars suggested that one of the problems associated with development induced displacement and resettlement is the lack of engagement of the affected population in the resettlement mitigation process.⁷⁰ Despite the development of the resettlement action plan as an instrument to mitigate displacement and resettlement impact, the lack of sufficient resettlement planning depended largely on inadequate experiences in resettlement issues and the lack of project affected people's participation.⁷¹ Consequently, a number of resettlement programs that previously attempted to restore the displaced to their former economic and social conditions have proved in effective.⁷² In most DIDR literature, there has been some discussion about the divergent interest between national authorities and displaced people. Divergence between two parties can be illustrated by the approach to common property and open-access resource.⁷³ Common property exist when groups can grant use rights to some and restrict or exclude others, while open-access resources allow utilization to anyone who can get to the resource which may lead to resource competition.⁷⁴ Centralizing governments have often turned locally managed common property into open-access resources, politicizing the reconstitution of common property resources.⁷⁵

⁶⁷ Supra Note 61.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Bartolome, L.J., De Wet, C., Mander, H., & Nagaraj, V.K., Displacement, resettlement, rehabilitation, reparation and development : WCD(2000)

⁷¹ Ibid.

⁷² Ibid.

⁷³ De Wet, C. "Introducing the issues." In C. De Wet (Ed.), Development –induced displacement: Problems, Policies and people .New York: Berghahn Books. Vol.18 (2006a) pp. 1-12.

⁷⁴ Berkes, F., & Farvar, M.T. "Introduction and Overview " .In F. Berkes (Ed.), Common property resources: Ecology and community based sustainable development .London :Belhaven (1989)p,1-17.

⁷⁵ Supra Note 73.

Chapter Three

Legal Framework Protecting the Right Not To Be Displaced

3.1 Introduction

There exist a number of broadly accepted international norms as well as emerging regional and national level jurisprudence establishing protections against forced evictions and displacement. They are discussed briefly in this chapter. The right not to be displaced has been explicitly recognized in a number of international, regional and national instruments. So the chapter examines the prohibition on forced displacement under the international human rights binding and non binding instruments and other international law legal frameworks. Furthermore regional binding and soft laws and domestic laws prohibiting displacement will be also explored. The chapter also discusses how and when displacement would be permitted and what yardsticks are required to justify displacement.

While drawing on international legal provisions that guarantee the right not to be displaced, this chapter further expounds on the Guiding Principles on Internally Displacement and also makes reference to the Basic Principles and Guidelines on Development-based Evictions and Displacement. It attempts to harmonize the key principles in both these documents with a view to preventing displacement, and where it is absolutely inevitable, to ensuring that states should adhere to international human rights standards in all processes related to displacement, including resettlement and rehabilitation.

3.2 International Human Rights Instruments

Like any other persons, victim of DID benefit from the protection of the human rights provided in international human rights law instruments. Currently, there are no international institutions and no international binding legal instruments that directly address the phenomenon of development-induced displacement. This is not to say, however, that those affected by displacement for development projects have no rights. The fact of being victim of DID does not remove or limit any of the human rights to which these categories of a population are entitled. The only distinction which should be made is a positive one: precisely because DID's are in a

situation of displacement from their homes or/and home land they are more vulnerable to abuses of their rights, and may therefore require a more specific form of human rights legal protection than other persons who have not been displaced. Therefore it is logical to mention different international human right instruments for the protection of the victim of DID people.

Thereof UDHR is the first and foremost instrument mentioned in this regard. It sets out the broad foundation of international human rights law. In this instrument when we came to issue of displacement, human rights of not to be displaced has established as "*no one shall be arbitrarily deprived of his property.*"⁷⁶ The Universal Declaration also recognizes "the right to life, liberty and security of person,"⁷⁷ as well as a prohibition against "arbitrary interference" with privacy and family.⁷⁸ Finally, the UDHR recognizes a range of economic and social rights, including, *inter alia*, the right to a standard of living adequate for health and well-being, along with the right to food, clothing, housing, medical care, social services, and the right to security in the event of "circumstances beyond one's control."⁷⁹ Besides the UDHR, ICCPR and ICESCR have played a pivotal in protecting and promoting the individual right not to be displaced.

The ICCPR recognizes that "all peoples may, for their own ends, freely dispose of their natural wealth and resources...In no case may a people be deprived of its own means of subsistence."⁸⁰ It recognizes the right to be free from "arbitrary or unlawful interference with his privacy, family, home or correspondence"⁸¹ and the right to adequate housing, as well as the recognition that "forced evictions are a gross violation of human rights."⁸² The Right to Freedom of Movement and Choice of Residence which embodied the right to freely move within one's own country and to choose one's place of residence is set out in Article 12 of ICCPR⁸³ is good way of prohibiting displacement. This right has been interpreted by the UN Human Rights Committee to include "protection against all forms of forced internal displacement."⁸⁴ In other words, even where individuals are illegally occupying their current "residence", they still have a right not to be

⁷⁶ Universal Declarations of Human Rights (adopted 10 December 1948 UNGA Res.217 A (III), (here in after UDHR) article 17.

⁷⁷ UDHR article 3

⁷⁸ UDHR article 12.

⁷⁹ UDHR article 25.

⁸⁰ International Covenant on Civil and Political Rights, G.A. Res 2200, 21 U.N.GAOR Supp. No.16, at 52, UN Doc. A/6316 (1966) (here in after ICCPR) article 1(2).

⁸¹ ICCPR article 17.

⁸² See Basic principle and Guidelines, paragraph 6.

⁸³ Article 12 (1) of the ICCPR states that: "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."

⁸⁴ UN Human Rights Committee, General Comment No. 27 (1999), paragraph 7.

arbitrarily moved somewhere else against their will. The Right to Privacy, Article 17 of the ICCPR protects all persons from unlawful or arbitrary interference with their personal and family life, including their home.⁸⁵ The UN Human Rights Committee has defined the concept of “home” broadly to mean “the place where a person resides or carries out his usual occupation.”⁸⁶ In other words, even where individuals do not have legal rights to their homes and workplaces, their possession and use of such property may not be curtailed in an unlawful or arbitrary manner.

In the event that the international community is not convinced that development-induced displacement amounts to a human rights violation under the Guiding Principles and other legislation the ICESCR may provide another mechanism for prohibiting displacement. The ICESCR requires states to recognize the right of all human beings to work⁸⁷ and the right to an adequate standard of living, including adequate food, clothing, and housing.⁸⁸ Furthermore, the U.N. Committee on Economic, Social and Cultural Rights declared that a state has prima facie failed to fulfill its obligations under the ICESCR unless it can demonstrate that it utilized all available resources in an effort to secure these rights for its citizens.⁸⁹ The Committee also stated that forced evictions are in direct contradiction with ICESCR requirements, and are only justified in the most extraordinary circumstances and in accordance with the relevant principles of international law.⁹⁰

Moreover, from a human rights perspective, the absence of tenure security is not only bad policy but can result in human rights violations in the form of forced evictions. Such violations of the right to housing are arguably a sub-category of the broader human rights violation of ‘arbitrary displacement’ introduced by the *Guiding Principles on Internal Displacement*.⁹¹ In a more recent

⁸⁵ Article 17 (1) of the ICCPR states that: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”

⁸⁶ UN Human Rights Committee, General Comment No. 16 (1988), paragraph 5.

⁸⁷ International Covenant on Economic Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976)993 UNTS3 (ICESCR) art. 6 of which mandating that the State to safeguard and to recognize “the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right”.(here in after ICESCR)

⁸⁸ See ICESCR. Article.11(1)

⁸⁹ See The Nature of States' Parties Obligations: General Comment 3, U.N.ESCOR Comm. on Econ., Soc. & Cultural Rights., 5th Sess., 10, at 86,U.N. Doc. E/1991/23 (1991) (providing additional comments to the ICESCR to clarify state obligations),

⁹⁰ See ICESCR General Comment 4(providing guidance for implementing the rights of the ICESCR through international cooperation).

⁹¹ Guiding Principle 6 provides a number of examples of types of displacement that are ‘arbitrary’, or wrongful under international law, including “large-scale development projects, which are not justified by compelling and overriding

set of human rights standards related to development- induced displacement, for instance, the former UN Special Rapporteur on housing rights, Miloon Kothari, made this connection explicit:

Forced evictions constitute a distinct phenomenon under international law, and are often linked to the absence of legally secure tenure, which constitutes an essential element of the right to adequate housing. Forced evictions share many consequences similar to those resulting from arbitrary displacement [as defined in the Guiding Principles]⁹²

The right to an adequate standard of living in Article 11 of the ICESCR includes a right to housing.⁹³ In 1991, the UN CESCR identified seven criteria for evaluating the “adequacy” of housing available to ordinary people, one of the most important being security of tenure, or legal protection against forced evictions.⁹⁴ Paragraph 3 of General Comment No. 7 defines forced evictions as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.” Paragraph 3 further provides that:

[o]wing to the interrelationship and interdependency which exists among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.

In situations of development-induced displacement, development standards and best practices should be applied together with human rights rules.⁹⁵ The *Basic Principles and Guidelines*

public interests”. Guiding Principle 7 (3), which is based in part on development standards, sets out a number of guarantees necessary to ensure that development- induced displacement is not undertaken in an arbitrary manner.

⁹² Supra note 34, Basic principle and Guidelines paragraph 5.

⁹³ Article 11 (1) of the ICESCR states that: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

⁹⁴ UN CESCR, General Comment No. 4 (1991), paragraph 8(a).

⁹⁵ Two human rights standards addressing development-induced displacement have also been developed UN human rights mechanisms, namely the Comprehensive Human Rights Guidelines on Development- Based Displacement (UN Commission on Human Rights, 1997) and the Basic Principles and Guidelines on Development based Evictions and Displacement (UN Special Rapporteur on the Right to Adequate Housing, 2006).

elaborate on the specific human rights violations occurring under situations of forced evictions. Paragraph 6 provides that “*forced evictions constitute gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement.*”

3.3 International Humanitarian and Criminal Law

Forced evictions may violate international humanitarian law and constitute international crimes. Population transfers, mass expulsions, ethnic cleansing or similar practices which alter the ethnic, religious or racial composition of the population, collective punishment, and other practices involving the coerced and involuntary displacement of people from their homes, lands and communities also constitute forced evictions.⁹⁶

The Geneva Conventions of 1949 and their Additional Protocols of 1977 prohibit the forced displacement of the civilian population and the extensive destruction and appropriation of property not justified by military necessity in the contexts of both international and non-international armed conflict, which may also amount to forced eviction.⁹⁷ Article 7 of the Rome Statute states that deportation or forcible transfer of population is a crime against humanity “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”. According to the statute “deportation or forcible transfer of population” means “*forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law*”.⁹⁸

Article 8 of the Rome Statute of the International Criminal Court also includes as war crimes the extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly in the context of international or non-international conflicts. Development-induced displacement can give rise to severe risks for the resettled population. Forced relocation results in the disruption of the relationship between the relocated community

⁹⁶ See, for instance, the basic principles and guidelines, Para.5, and the Guiding Principles on Internal Displacement (E/CN.4/1998/53/).

⁹⁷ See, for instance, article 53 of the 1949 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, article 54 of the First Additional Protocol to the Geneva Conventions of 1949 and article 14 of the Second Additional Protocol.

⁹⁸ Rome Statute, article 7(2) (d).

and the natural, social, economic, and cultural environments upon which its means of livelihood are based.⁹⁹ The loss of a people's base threatens the continuity of its traditions and practices as well as endangers its cultural survival.

Sociologists and historians have long argued that because of its devastating effects on both the physical and cultural existence of dislocated people, development-induced displacement may amount to "developmental genocide," "cultural genocide," or "ethnocide."¹⁰⁰ Legal scholars, on the contrary, have traditionally focused on cases concerning conflict-induced displacement, such as forced dislocations of people that occur in conditions of armed conflict or civil strife. Only recently, some legal scholars have begun to evaluate forced relocations in the context of development projects through the perspectives of international law, in particular international human rights law. Referring to forced dislocations, Professor of Law and Development, Balakrishnan Rajagopal, has publicly raised concerns about the practice of "ethnically targeted development," and has called for the international indifference toward the "violence of development projects" to end. Rajagopal argued that the result of development-based resettlement is often "a soft form of genocide or crime against humanity involving systematic and deliberate destruction of ethnic, racial and religious minorities and indigenous peoples."¹⁰¹ The critical determination as to whether forced relocation amounts to genocide is whether the affected community has been forcibly dislocated from its land with the requisite "intent" to extinguish the group.¹⁰²

Development-induced forced relocations often cause foreseeable, irreparable harm to the cultures of peoples whose religious, economic, or social practices, traditions, and norms are based on the land from which they are dislocated. Displacement often results in the disintegration of local cultures, the weakening of community institutions and social networks, and the dispersion of kin groups, resulting in the cultural destruction of the affected group.¹⁰³ The question therefore arises, whether in such cases the displaced people can make out a claim for genocide provided

⁹⁹ Stefanie Ricarda Roos, "Development Genocide and Ethnocide: Does International Law Curtail Development-Induced Displacement through the Prohibition of Genocide and Ethnocide?" available at <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1458&context=hrbrief> last visited on August 14/2015 p,14

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid,p.15

¹⁰³ Ibid

that the cultural destruction was intended.¹⁰⁴ It should be recalled that the Convention on the Prevention and Punishment of the Crime of Genocide, in its Article II(c), defines genocide to include “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part”. Hence, in extreme cases, the deprivation of food with such a genocidal intent could qualify as genocide.

3.4 U.N. Guiding Principles on Internal Displacement

The Guiding Principles on Internal Displacement set out IDPs’ rights during all phases of displacement that is to say before and during displacement and in their search for durable solutions. Development has long been recognized alongside conflict and natural disasters as a cause of internal displacement that can potentially give rise to international concern.¹⁰⁵ In the 1998 Guiding Principles on Internal Displacement, for instance, one of the examples given of ‘arbitrary displacement’ in violation of international law was “large scale development projects, which are not justified by compelling and overriding public interests”.¹⁰⁶ Unlike refugees, internally displaced persons do not benefit from an international legal and institutional framework.¹⁰⁷ However, in the absence of an international agreement comparable to the 1951 Refugee Convention,¹⁰⁸ an encouraging normative framework to advance the rights of IDPs has emerged.¹⁰⁹ The U.N. Guiding Principles on Internal Displacement (“Guiding Principles”),¹¹⁰ established in 1998, were the first guidelines developed within the context of human rights law and international humanitarian law to address internal displacement and

¹⁰⁴Ibid, p.17

¹⁰⁵Cross-border displacement arising from development projects would be unlikely to be deemed grounds for claiming international protection under refugee law unless it took place in the context of broader patterns of persecution and human rights violations.

¹⁰⁶Guiding Principles on Internal Displacement, Principle,6. Several specific criteria for avoiding arbitrariness in development induced displacement are set out in Principle 7 (2).

¹⁰⁷Pooja Mehta, “Internally-Displaced Persons and the Sardar Sarovar Project: A Case for Rehabilitative Reform in Rural Media” *American University International Law Review* Volume 20, Issue 3(2005) p.11.

¹⁰⁸ See United Nations Convention Relating to the Status of Refugees, Adopted July 28, 1951, art. 1, 19 U.S.T. 629, 189 U.N.T.S. 137 (entered into force Apr. 22,1954) (setting forth the definition of a refugee and State Parties’ obligations under international law), available at <http://www.unhchr.ch/html/menu3/b/o-c-ref.htm>

¹⁰⁹ Francis Deng, Foreword to Susan Forbes Martin, Handbook for applying the Guiding principles of Internal Displacement i-iii (United Nations Office for the Coordination of Humanitarian Affairs 1999) (providing field practitioners and advocates with pointers for applying the Guiding Principles in the field)

¹¹⁰ Guiding Principles on Internal Displacement:

development-induced displacement.¹¹¹ The Guiding Principles define the internally displaced as persons "who have been forced or obliged to flee or leave their homes or places of habitual residence" to "avoid the effects of armed conflict, situations of generalized violence, violations of human rights, or natural or human-made disasters, and who have not crossed an internationally recognized state border."¹¹² The Guiding Principles are neither binding nor customary international law.¹¹³ Even without such status, the Guiding Principles are useful because they establish that every person has a right to protection from displacement.¹¹⁴ In addition it also provides guidance to governments by pulling together and restating states' obligations under international human rights and humanitarian law. To this end Principle 6 provides, *inter alia*, that "every human being shall have the right to be protected against being arbitrarily displaced." This Principle further provides that "*the prohibition of arbitrary displacement includes displacement...in cases of large-scale development projects, which are not justified by compelling and overriding public interests*" and "displacement shall last no longer than required by the circumstances."

In addition also the Guiding Principles assert that project authorities should explore all feasible alternatives in order to avoid displacement altogether, and in situations in which displacement is unavoidable, Principle 7 stresses the need for concerned authorities to minimize the adverse effects of the displacement.¹¹⁵ Such measures include providing adequate financial compensation as well as alternative accommodation of comparable value and use.¹¹⁶ According to Principle 8, "*displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.*"

¹¹¹ Norwegian Refugee Council training workshop on the U.N Guiding Principles On Internal Displacement 4(2001) <http://www.un.org/documents/ga/docs/56/a56168.pdf> last visited on August 4/2015

¹¹² Guiding Principles, Introduction, Para. 2 (declaring that the Guiding Principles serve as an international standard to guide governments in providing assistance and protection to internally displaced persons, and reflect current, as well as developing law, on the issue of displacement)

¹¹³ Marco Simons, "The Emergence of a Norm against Arbitrary Forced Relocation," *Columbian Human Rights Law Review* 34, 95, (2002) p.127-28 (discussing developments in the law of internally displaced persons that are relevant to the issue of arbitrary forced relocation).

¹¹⁴ See guiding principle supra note 110, principle 6.

¹¹⁵ See Ibid, principle 7

¹¹⁶ Bjorn Pettersson, "Development-Induced Displacement: Internal Affair or International Human Rights Issue?" *Forced migration Rev.* Jan. 2002, at 16-19.

Finally, it is recognized that the Guiding Principles provide a valuable foundation for the further development of legal norms and principles addressing issues of how the displaced are compensated and reallocated land.¹¹⁷

3.5 Regional Instruments Prohibiting Displacement

Among different regional instruments that protect the right not to be displaced the African charter has especial place. The African Charter on Human and Peoples' Rights which almost ratified by all African Union member states have provides important human rights framework applicable to situations of development displacement people. The African Commission for Human and Peoples' Rights which established by the charter has issued rulings in several complaints against African states finding an implied right to adequate housing and to be free from forced evictions in several of the Charter's other provisions.¹¹⁸ It also contains unique features, such as the right to development, that are important to victim of DIDs' protection. The right to development stipulates that development processes must lead to the empowerment of a people, that they must improve its choices, capabilities, opportunities and well-being.¹¹⁹ Where communities contribute to a development process by giving up their land, they have not only a right to just compensation but also to receive an equitable share of the benefits.¹²⁰ States undertaking or enabling a development project are obliged to inform communities fully of its nature and consequences, to consult them adequately and effectively and to allow them to participate meaningfully in all parts of the process, including the planning phase, that are relevant to their lives.¹²¹ Most notably, states must obtain communities' free and informed consent in accordance with their customs and traditions if a development project will have a major impact upon them.¹²² The right to development, which exists only in Africa as a

¹¹⁷ See Roberta Cohen & Francis M. Deng, "Masses in Flight: The global crisis of Internal Displacement" (Brookings Institution Press 1998) (discussing the role of the Guiding Principles in the international community and the goal of preventing internal displacement through eventual acceptance of the principles as legally binding) p.258

¹¹⁸ See Bret Thiele, "Centre on Housing Rights and Evictions (COHRE) v. Sudan: Applying the African Charter on Human and Peoples' Rights to Atrocities in Darfur", Housing and ESC Rights Law Quarterly, vol. 7, no. 3 (September 2010).

¹¹⁹ Internal displacement in Africa: A development challenge, "Exploring development initiatives to alleviate internal displacement caused by conflict, violence and natural disasters." p, 6. Available at <http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1265299949041/6766328-1265299960363/Brochure.pdf> last visited on July 26, 2015.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

legally binding guarantee, is particularly relevant for those internally displaced communities that constitute a "people" on the basis of a common history, culture and religion.

Another source of law relevant in some cases is the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa is the Kampala Convention which calls on States parties to, whenever possible, prevent "displacement caused by projects carried out by public or private actors and ensure that the stakeholders concerned will explore feasible alternatives."¹²³ The African Union Convention for the Protection and Assistance of Internally Displaced Persons is the first regional instrument in the world to impose detailed legal obligations on states and their authorities to respect, protect and fulfill IDPs' in general and DID's economic, social, cultural, civil and political rights in particular.

3.6 Ethiopia's Domestic Legal Framework

The FDRE Constitution is the supreme law of the land¹²⁴ that guarantees protections and regulates the issue of human right in general and displacement specifically. More than one third of its content has devoted on human rights, including the right not to be displaced, either as part of the Bill of Rights or in National Policy Principles and Objectives.¹²⁵ In addition there is also a possibility to search provisions pertaining specifically to the state's legal responsibility to its development displaced people in the international instruments which are part and parcel of the laws of the country. Accordingly, the Constitution incorporates varies human rights encompassing from civil and political rights to socio-economic rights along with group or solidarity rights.¹²⁶

Of the most important provisions pertaining to displaced rights in the Constitution is Article 14, which provides the framework for securing the right to life.¹²⁷ The Right to Freedom of

¹²³ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) Article 10

¹²⁴ FDRE Constitution, article 9(1).

¹²⁵ Chapter 3 of the FDRE Constitution deals with fundamental rights and freedoms and chapter 10 set forth the national policy principles and objectives.

¹²⁶ To illustrate some of the rights : right to life, to security of the person, to liberty, protection against cruel, inhuman, or degrading treatment or punishment, banning of slavery and trafficking in human beings for whatever reason, and forced or compulsory Labor, right to equality and equal Protection of the law from civil and political rights and the right to freely engage in economic activities, equal access to publicly funded services, the right to labor, housing, food water, health and educations from Economic social and cultural rights and the right to development and environmental rights from solidarity rights.

¹²⁷ FDRE constitution article 14. 'Every person has the inviolable and inalienable right to life the security of person and liberty.'

Movement and Choice of Residence which embodied the right to "any Ethiopian or foreign national lawfully in Ethiopia has, within the national territory, the right to liberty of movement and freedom to choose his residence, as well as the freedom to leave the country at any time he wishes to"¹²⁸ is good way of prohibiting displacement. The constitution gives special attention for Ethiopian farmers by protecting them against eviction from their possession and Ethiopian Pastoralist could not to be displaced from their own lands.¹²⁹ The constitution also provided a grant to "All persons who have been displaced or whose livelihoods have been adversely affected as a result of State programmes have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance."¹³⁰ The constitution also enshrined the economic, social and cultural Rights¹³¹ and "to the extent the country's resources permit, policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security".¹³² Moreover, the Constitution guaranteed for the prohibition of eviction, the right not to be displaced and procedural guarantee for affected people in case evictions demanded for public purposes.¹³³

Beside the constitution the expropriation laws are main legislations that aim to give effect to regulate displacements and expropriation of home or land for public purposes in the country though the proclamation is blamed with its non conformity with International Human rights laws. The current FDRE "expropriation of landholding for public purpose and payment of compensation Proclamation NO.455/2005" provides for power to expropriation holdings under art 3(1) which reads:

"A woreda or an urban administration shall, upon payment in advance of compensation in accordance with this Proclamation, have the power to expropriate rural or urban landholdings for public purpose where it believes that it should be used for a better development project to be carried out by public entities, private investors, cooperative societies or other organs, or where' such expropriation has been decided by the appropriate higher regional or federal government organ for the same purpose."

¹²⁸ FDRE Constitution article 32(1).

¹²⁹ See FDRE constitution article 40(4&5)

¹³⁰ FDRE Constitution Article 44(2)

¹³¹ FDRE Constitution Article 41

¹³² Article 90(1) of FRDE constitution

¹³³ Article 40(8) of the Constitution

From the wording of this provision it can be easy to understand individuals would not be displaced from their land holding unless their holding should be needed for public purpose for better development project and compensation should be paid in advance.

3.7 Inevitable Displacement and Determination of Public Interest

3.7.1 Inevitable Displacement

As expound in previous section the binding international human rights law and the Guiding Principles prohibit forced displacement not justified by compelling and overriding public interest. So that the right not to be displaced could not be absolute right as it happened in most human right cases. DID are often claimed to be "inevitable", "unavoidable" or the "necessary price for progress or development". This could clearly be manifested from different international legal frame works when they stipulated as:

*No one shall be forced to leave his or her home and no one shall be forcibly relocated or expelled from his or her country of nationality or area of habitual residence; unless under such conditions as provided by law solely for compelling reasons of national security or specific and demonstrated needs of their welfare or in a state of emergency as in cases of natural or man-made disasters.*¹³⁴

The prohibition of forced evictions does not apply to evictions carried out both in accordance with the law and in conformity with the provisions of international human rights treaties. Nevertheless, even under these circumstances, the evictions should be in line with national law and relevant international standards, including due process. The prohibition of arbitrary displacement includes displacement in cases of large-scale development projects, which are not justified by "compelling and overriding" public interests. Development's promise to reduce poverty and inequality has been used to justify large projects and disruptive policies.¹³⁵ Therefore displacement could legitimate and inevitable when it is conducted for the aim of compelling and overriding public purpose. In assessing the justifications of public interest, different lines of argument to establish the existence of public purpose are forwarded. So the next section is dedicated to elaborate what public purpose includes and explore what yardsticks required in establishing the existence of public purpose.

¹³⁴ Stavropoulou, M. "The right not to be displaced," American University Journal of International Law and Policy Vol. 9, No. 3(1994) p.749.

¹³⁵ Peter Penz, 'The Ethics of Development-induced ~displacement.' p.1.

3.7.2 Public Interest Perspective and Its Determinations

As reflected in the relevant standards, involuntary resettlement necessary to facilitate development projects generally qualifies as being in the public interest, particularly where such projects involve the extension of services that benefit local communities. For instance, the UN Guiding Principles on Internal Displacement treats such displacement as justified where such projects serve “compelling and overriding public interests.”¹³⁶ The public interest perspective, embodied in cost-benefit analysis, supports the decision that brings the greatest net benefits to the population as a whole.¹³⁷ But what is meant by the ambiguous concept of public interest and “compelling and overriding public interests”? Though fully fledged determination of the term public interest might not be available in the contemporary world, different authors and legislation have defined public purpose through different angles. For instance George S. et al. defines public purpose as “a public benefit or public advantage and may embrace anything tending to enlarge the product of capacity or resource of the community and to promote the general welfare and prosperity.”¹³⁸ On the other hand public purpose is defined as “a purpose which will benefit the public in general and not individuals.”¹³⁹ From these two definitions it would be sound to argue public purpose does not mean totally ignoring the individual interest at all. Individuals are also benefited directly or indirectly from the benefit of public. The current applicable laws of Ethiopia define public purpose as “means the use of land defined as such by the decision of the appropriate body in conformity with urban structure plan or development plan in order to ensure the interest of the peoples to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development.”¹⁴⁰ As indicated this definition is very broad by employing the activities which directly or indirectly benefit the people as amount to public purpose. But the main point which should have to get consideration at this juncture is who has authority to adjudicate that “compelling and overriding public interest”? Because the determination of who has authority to decide that can justify/non justify forcing people off their lands. In addition to this point Walter Kalin, one of the drafters of the Guiding Principles of displacement, has suggested that “development-related displacement is permissible only when

¹³⁶ UN Guiding Principles on Internal Displacement Principle 6 (2) (c).

¹³⁷ Supra note 35.

¹³⁸ George S. Gulic and Robert T. Kimbrough, *American Jurisprudence*, volume. 26(1966), p.665.

¹³⁹ Raja Muhammed Muzaffar, *Compulsory acquisition of land*(1967),p, 321.

¹⁴⁰ Expropriation of land Holdings for public purpose and payment of compensation Proclamation (proc NO 455/2005 *Federal Negarit Gazeta*, year 11, No 43) article 2(5).

compelling and overriding public interests justify this measure, that is, when the requirements of necessity and proportionality are met".¹⁴¹ For an interpretation of the last concepts, the "requirements of necessity and proportionality", Kalin refers to the World Bank's Operational Directive 4.30 on Involuntary Resettlement¹⁴² and the OECD's Guidelines for Aid Agencies on involuntary Displacement and Resettlement in Development Projects.

However, though these guidelines provide excellent guidance to governments, aid agencies and lenders on involuntary resettlement and rehabilitation of populations displaced by development projects, they do not give further light on the issue of "necessity and proportionality". Because who determine "overriding public interest", and what constitute "necessity and proportionality", existence of element of legality and protection of vulnerable group determine whether forced displacement of a population as a consequence of hydro electric dam project is a human rights violation or a legitimate development project. Therefore it is important to reflect on those issues who determine public interest, what constitute its necessity and proportionality, and existence of legality and protection of affected group.

3.7.2.1 Participatory Requirement

If we accept that international human rights are universal in scope it follows that the "public" is the whole population in a given area and not only the economic and political elite. As Raquel Rolnik, former Special Rapporteur on the Right to Adequate Housing observed, "evictions considered 'legitimate' shall always be related to works and projects that promote the public interest."¹⁴³ But a legitimate "public interest shall always be established by a participatory process that gives proper attention to, and takes into consideration, the views and interests of those living in the areas that would be impacted."¹⁴⁴ While it may be difficult to know exactly how to properly weigh those views and interests, a "public interest project should not render communities worse off than before."¹⁴⁵

¹⁴¹ Walter Kalin Guiding Principles on Internal Displacement - Annotations, p17.

¹⁴² World Bank Operational directive (OD 4.30, June 1, 1990) available at http://www.ifc.org/wps/wcm/connect/322d9d80488559f584b4d66a6515bb18/OD430_InvoluntaryResettlement.pdf?MOD=AJPERES last visited on July 26, 2015.

¹⁴³ U.N. Special Rapporteur on adequate housing, forced evictions and displacement .paragraph 11.

¹⁴⁴ Ibid at 9

¹⁴⁵ World Bank Operational Policy(OP) 4.12, paragraph 2(c) ("Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.").

It is worth noting that all relevant guidelines require consultation with affected communities with a view to seeking their consent, even though none of them set the achievement of consent as an absolute precondition for evictions to go forward.¹⁴⁶ For instance, the World Bank Operational Policy not only requires consultation but also opportunities for affected persons to “participate in planning and implementing resettlement programs”, a stipulation that goes well beyond simply seeking the passive consent of affected individuals to be moved.¹⁴⁷ When we come to Ethiopia, the situation is contrary to these yardsticks, because the expropriation law which govern the issue of displacement for public purpose would not pave way for participation of affected community to determine phenomena of “public purpose” rather it allows a “woreda” or “an urban administration” or the appropriate higher regional or federal government organ to determine it as inferred from article 3 of the expropriation proclamation.

3.7.2.2 Necessity Requirement

International law has provided some specificity as to what qualifies as “a compelling and overriding public interest.” Even if a domestic law authorizes forced eviction under eminent domain, to be justifiable under international law, the eviction must be undertaken “solely for the purpose of promoting the general welfare.”¹⁴⁸ This restriction comes from the ICCPR and ICESCR, both of which require that limitations on rights therein be “determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.”¹⁴⁹ The U.N. Principles and Guidelines on Development-Based Evictions and Displacement define “the purpose of promoting the general welfare” as “steps taken by States consistent with their international human rights obligations, in particular the need to ensure the human rights of the most vulnerable.”¹⁵⁰ As those guidelines explain, “an eviction may be considered justified if measures of land reform or redistribution, *especially for the benefit of vulnerable or deprived persons, groups or communities* are involved.”¹⁵¹ At the same time, as the CESCR explained in its general comment

¹⁴⁶ See, e.g. UN CESCR, General Comment 7, paragraph 15, World Bank, OP 4.12, paragraph 2 (b).

¹⁴⁷ World Bank OP 4.12, paragraph 2(b).

¹⁴⁸ CESCR, General Comment NO.7, Para. 5 U.N. Special Rapporteur on Adequate Housing, Principles and Guidelines on Development-Based Evictions, Para. 21.

¹⁴⁹ ICCPR, art. 4, ICESCR, art. 4; see also CESCR, General comment NO. 7, paragraph 5 (noting that this restriction applies even in situations in which it may be necessary to impose limitations on the right to adequate housing and not to be subjected to forced eviction).

¹⁵⁰ U.N. Special Rapporteur on Adequate Housing, Principles and Guidelines on Development-Based Evictions, para 21.

¹⁵¹ Ibid paragraph 22 (emphasis added).

on forced evictions, "the lack of development may not be invoked to justify the abridgement of internationally recognized human rights."¹⁵² The U.N. Guidelines on Development-Based Evictions instruct States to "refrain, to the maximum extent possible, from claiming or confiscating housing or land, and in particular when such action does not contribute to the enjoyment of human rights,"¹⁵³ and to apply appropriate penalties against anyone within its jurisdiction "that carries out evictions in a manner not fully consistent with applicable law and international human rights standards."¹⁵⁴ To take an example, where more than 80% of Ethiopian population¹⁵⁵ would depend on the agrarian form of economy and pastoralist for subsistence one could not argue the necessity of providing electricity in cities by distorting food source and destruction of livelihoods, and the loss of other rights of rural community. Because providing food for community would be more "necessary" than producing more electricity for mostly urban elite. This argument is backed by the World Commission on Dams' conclusion that large dams "produce benefits that accrue to groups other than those who bear the social and environmental costs".¹⁵⁶

3.7.2.3 Proportionality Requirement

For the public interest to justify forced eviction, the eviction should be reasonable and proportional in the given circumstances. Both the Committee on Economic, Social and Cultural Rights and the U.N. Human Rights Committee have noted that "interference with a person's home can only take place in cases envisaged by the law," and that "the law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, *reasonable in the particular circumstances*."¹⁵⁷ Thus, regardless of whether national law might allow the state's expropriation power to supersede other interests and force eviction, the eviction should be "reasonable and proportional" in light of the asserted public interest.¹⁵⁸

Regional human rights bodies have upheld this principle. For instance, the right to property under the American Convention on Human Rights provides that "*the law may subordinate*" the right to use and enjoy property "*to the interest of society*" and deprive people of their property

¹⁵² CESCR General Comment NO.7 Para18.

¹⁵³ Supra note 150, paragraph 22.

¹⁵⁴ Ibid.

¹⁵⁵ Central Intelligence Agency, "The World Fact book—Ethiopia," available at <http://www.search.ask.com/web?l=dis&q=Central+Intelligence+Agency%2C+The+World+Factbook+Ethiopia%2C>+<https://www.cia.gov> last visited on July 26/2015.

¹⁵⁶ WCD, Dams and Development, 16 November 2000, p120.

¹⁵⁷ CESCR, General Comment NO. 7, para14.

¹⁵⁸ Supra Note 150, para21.

"for reasons of public utility or social interest."¹⁵⁹ According to the Inter-American Court of Human Rights, "the necessity of legally established restrictions will depend on whether they are geared toward satisfying an imperative public interest," which the court views as requiring more than proof of "a useful or timely purpose."¹⁶⁰ Regarding proportionality, the restriction must be "closely adjusted to the attainment of a legitimate objective, interfering as little as possible with the effective exercise of the restricted right."¹⁶¹ "Finally," the restrictions "must be justified by collective objectives that, because of their importance, clearly prevail over the necessity of full enjoyment of the restricted right."¹⁶² In the African Charter on Human and Peoples' Rights, any restriction on rights there in "must be proportionate to a legitimate aim that does not interfere adversely on the exercise of the right."¹⁶³ In the landmark case *Centre for Minority Rights Development and Minority Rights Group International v. Kenya*, the African Commission on Human and Peoples' Rights held that Kenya violated the rights of the indigenous Endorois peoples by taking their land for the asserted public interest of creating a game reserve.¹⁶⁴ There, the African Commission found that "encroachment was not proportionate to any public need and was not in accordance with national and international law."¹⁶⁵ Every decision to remove people from their homes should be based on an effort to balance the public interest in undertaking such measures against the private rights and interests that are negatively affected. This 'balancing test' is implicit in development standards such as the World Bank's OP 4.12, which take the public interest in economic development as their departure point but set out measures to mitigate the "severe economic, social, and environmental risks" that the pursuit of such objectives can impose on directly affected individuals and groups.¹⁶⁶ In human rights analysis, the balancing test is explicit and performs a central role in distinguishing interferences or actions by governments that affect the enjoyment of individual rights but may possibly be justified on public interest grounds from violations, which are unjustified or

¹⁵⁹ American Convention on Human Rights "Pact of San Jose, Costa Rica," Nov.22,1969,1144 U.N.T.S. 123, O.A.S.T.S. No. 36, art. 21(1)-(2).

¹⁶⁰ *Yakye Axa Indigenous community v. Paraguay*, 2005 Inter-Am. Ct. H.R. (ser. C) No. 125, Para 145 (June 17, 2005)

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

¹⁶³ *Centre for Minority Rights Dev. and Minority Rights Group. Int'l v. Kenya*, African Commission on Human and Peoples' Rights, Communication No. 276/2003, May 2009, Para 249

¹⁶⁴ *Ibid* Para, 214,238.

¹⁶⁵ *Ibid* Para, 238.

¹⁶⁶ UN-HABITAT, Handbook on Best Practices, Security of Tenure and Access to Land. Para 1.

disproportional interferences with individual rights.¹⁶⁷ In the case of a hydroelectric project the authorities could determine a "justifiable" number of households-to-be displaced per projected megawatt produced. Of course, such unfair method of determining proportionality assumes that the electricity produced will benefit the population equally clearly not the case where a small minority enjoys access to electricity.

If the displaced are not properly resettled and their capacity to earn a living is not restored to them, it becomes irrelevant if the project forcing them off their land is of an "overriding public interest". It is still the reality that their rights have still been violated. Thus, while there is no bright-line test for whether a forced eviction is "reasonable and proportional," in some circumstances, such as forced eviction of peoples whose socioeconomic and cultural survival often depends on access to their ancestral lands, international law supports subjecting the state's asserted justification of the public interest to heightened scrutiny.¹⁶⁸

3.7.2.4 Legality Requirement

The legality requirement means that public authorities must have a mandate in the form of valid law in order to proceed with evictions and relocations.¹⁶⁹ Such laws should set out the criteria and procedures for initiating and implementing evictions as well as the rights and obligations of persons facing evictions. However, the formal existence of such legislation does not fulfill this requirement on its own. Instead, laws and policies relating to development-induced displacement should ideally result from consultative processes in which all interested groups are invited to participate not only in the development of the relevant rules but also, where appropriate, in their implementation. Legal instruments regulating evictions should also be accessible and sufficiently clear to allow those affected by them to understand their rights and obligations. Finally, such laws should incorporate the safeguards recommended in international standards to ensure that evictions are undertaken only when justified and then in a proportional manner. The UN Human Rights Committee has recommended that laws authorizing relocation "should use precise criteria and may not confer unfettered discretion on those charged with their execution."¹⁷⁰ The substantive rules in such laws should also be in accordance with broader human rights requirements.

¹⁶⁷ Ibid.

¹⁶⁸ Supra note 163 Para 212.

¹⁶⁹ See CESCR, GENERAL COMMENT NO.7, Para, 3.

¹⁷⁰ UN Human Rights Committee, General Comment No. 27 (1999), paragraph 13.

3.7.2.5 Existence of Protection of Vulnerable Group

The public interest cannot justify forced eviction where the affected people will be vulnerable to human rights violations. Even where the public interest may appear reasonable and proportional to justify eviction, it “should not result in individuals being rendered homeless or vulnerable to the violation of other human rights.”¹⁷¹ This recognition is important given that “forced evictions frequently violate other human rights”¹⁷² or, as the U.N. Guidelines on Development-Based Evictions explain, “constitute gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement.”¹⁷³

¹⁷¹ CESCR, General comment NO.7, para 16

¹⁷² Ibid Para 4

¹⁷³ N. Special Rapporteur on Adequate Housing, Principles and Guidelines on Development-Based Evictions, para 6; see also General Comment No. 7, Para 4.

Chapter Four

Analysis of Impacts of Finchaa Amerti Nashe Dam on Human Rights of Development Induced Displaced Communities

4.1 Introduction

The chapter is organized into three main parts, besides this introduction. The first part provides a brief presentation of the FAN Hydroelectric power Dam. The second part of the chapter covers, more specifically, seven of the main types of human rights violations that the project has committed by executing the dam: violations of the right to life, the right dignified housing, the right to food, the right to health, the right to participation, the right to adequate standard of living and, finally, violations of the human rights of development. This section draws on the legal basis of the rights that are constitutionally guaranteed and established by International treaties ratified by Ethiopia. The third part reflects on the responsibility of the State for human rights violations, from a perspective of reparation and access to justice, as well as prevention.

4.2 An Overview Finchaa Amerti Nashe (FAN) Dam

FAN Dam which was built on the River Nashe in Horro Guduru Wollega Zone of western Ethiopia, is the recent hydropower project constructed in Ethiopia. The dam could be used to generate electricity, with a planned output of 100 megawatts, and will irrigate some 6000 hectares on banks of the Finchaa valley for Finchaa sugar Factory.¹⁷⁴ Prior to construction of FAN, Finchaa and Amerti hydropower dam was constructed in 1973 and 1987 respectively as a strategy for fostering economic growth in the country through generation of hydroelectricity in the same area on the Finchaa and Amerti river.

The FAN dam construction which would be the focus of this study is third hydroelectric dam in the same area on the Nashe River that follows parallel to Amert River to generate additional power for the country. The construction of this dam was started in 2008 and commissioned in 2012. It has displaced more than 1300 households which approximately (averagely eight family per house)

¹⁷⁴ <http://hornaffairs.com/en/2011/12/20/ethiopia-fincha-hydropower-plant-becomes-operational/> accessed on September 2/2015.

makes 10,000 people.¹⁷⁵ Before construction of a Dam, *Nashe* watershed was known for surplus crop production and has high potential of agricultural activity, vast expanses of pasture and great herds of livestock.¹⁷⁶ It is one of the potential areas of the zone in terms of agricultural productivity and natural resources.

The construction of a dam was completed and the river was dammed before promised services had not materialized or had been denied to local community. These promises include, paying good and enough for property and land compensations; building beautiful and standardized residential areas at least one step better than before; provisions of electricity, pure water supply, and provision of modern agricultural inputs that were not used previously like tractors, etc. Because of broken promise and the resettlement area is not conducive for production of live stock and non suitable for agriculture even for life of human being, the community resist to move to the area. On the other hand the china's company dammed the river in summer season before the farmers were collecting their harvest and compensation is not paid. Unsuitability of resettlement area merged with broken promises irritated the community and this brought resistance to move to the area. Even some houses of displaced community totally occupied by water they prefer to took refuge to their relatives than to resettle to the resettlement area. Others, who their house are not covered by water till now, but included in buffer zone of the project still their resisting the official to evacuate the area even though they have no farm land. The absence of proper resettlement added with other non observation and inadequate of property expropriation laws of the country would bring gross human right violation in the area which will be discussed in next sub topic.

4.3 Human Rights Violations

It would be impossible, given the limits imposed by this thesis, to address the full range of human rights violations caused by FAN dam project. In order to limit the scope, this chapter will focus on seven specific issues that are generally considered the main types of human rights

¹⁷⁵ Finchaa-Amartiii-Nashee Project Document, Addis Ababa, Ethiopia (EEPCO)(2007).

¹⁷⁶ Interview with Mr. Alemayo Olkeba, Horro Wereda Administration Head, on August 17/2015, Interview with Mr. Dirriba Bedassa vice Administrator and Head of Agriculture Department, on August 19, 2015.

violations in this context. Obviously the absence of grazing and harvesting land for community based their live on land added with absence of adequate shelter, pure water for subsistence and contamination of river would brought gross human right violation. The list of violations includes everything from right to life to development mentioned in the above. These rights are derived from the UDHR, ICCPR and ICESCR all of which are binding instrument in Ethiopia.

It is important to note, however, that this division is merely instructive, since the interrelatedness, interdependence and indivisibility of human rights implies that a single situation can produce several rights violations at the same time. The presented cases do indeed reveal that the violations are truly interrelated.

4.3.1 Right to Life

Under Article 6(1) of the ICCPR, "every human being has the inherent right to life."¹⁷⁷ Commentators generally agree that the right to life is the most fundamental of all human rights because it is the essential right from which all other rights derive; if an individual is deprived of his right to life, all other human rights will be meaningless.¹⁷⁸ This phenomenon stipulates as no person could be deprived of his life arbitrarily and unjustly. This envisages as state has obligation to providing the greatest possible protection for the right to life to avoid arbitrarily loss of life. In case FAN project people lost their life in different ways. Among those acute problems which expose the local community to death is absence of transportation on the dammed river. People used a boat like structure made from a big tree trunk used to transport people across the river which easily sunk by occurrence of air pressure on river and exposed life to death. As data from Abbay Chomman woreda indicates averagely ten people could be died by the river yearly because of the absence of transport.¹⁷⁹ Two of my informants told me as their children have been died by the river when they tried to cross by the traditional boat.¹⁸⁰ Despite this

¹⁷⁷ ICCPR. Article 6(1) provides that "every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

¹⁷⁸ See, e.g., Yoram Dinstein, *The Right to Life, Physical Integrity, & Liberty*, in *The International Bill of Rights: The Covenant on Civil & Political Rights* 114, 114 (Louis Henkin ed., 1981) (commenting that "civilized society cannot exist without legal protection of human life"); H.A. Kabaalioglu, *The Obligations To 'Respect' and To 'Ensure' the Right to Life*, in *The Right to Life in International Law* 160, 160 - 61 (B.G. Ramcharan ed., 1985).

¹⁷⁹ Document prepared for public discussion with public and higher level Federal government officials by Abbay Chomman Woreda Administration, February 2015.

¹⁸⁰ Interview with Mr. Tolessa Rigata, and Dereje Habtamu from Ejersa Mecha kebele of Horro Wereda, on August 18/2015.

problem government could provide neither modern transportation nor stable resettlement to the community.



Photo taken by Author August 2015

Figure 4.1. Picture which show when affected people cross the river by traditional boat which is risk for life of human being.

On the top of this protection to the right of life requires the State to take positive measures including adopting the measures to illuminate mal nutrition. According to the Human Rights Committee, which monitors the International Covenant on Civil and Political Rights, the protection of the right to life requires States to adopt positive measures, such as measures to eliminate malnutrition.¹⁸¹ Even though state required taking such positive measure in case of FAN the displaced people faced contrary circumstances. To quote communities expression, *“We know only farming and rearing animals. That is our livelihood, but the government took away*

¹⁸¹ Human Rights Committee, general comment No. 6 (1982) on the right to life, Para. 5.

*our land and no proper settlement is provided for us. Now we are just like being buried alive because the project cut our throat. Since we are deprived of our land, now we are not harvesting and due to diminished pasture and environmental pollution our cattle died like a worm, we have nothing to eat. The eviction rendered us to starvation.*¹⁸²

Beside this problem farmers complain about insufficiency of compensation and lack of other economic options to make life livable. If there are no alternative provisions of farm land given to them, if they do not have alternative means of livelihood than farming, their right to livelihood predominantly their right to food is at jeopardy that ultimately put their right to life under question. When people are not able to feed themselves and face the risk of death by starvation, malnutrition or resulting illnesses, their right to life would also be at stake.

4.3.2 Right to Food

The right to food is one of the fundamental human rights comprehensively recognized under article 25 of UDHR, article 11 (1) of ICESCR of which Ethiopia is a part. The human right to adequate food is of critical significance for the satisfaction of all rights that demands more immediate and urgent steps to ensure the essential right to freedom from hunger and malnutrition.¹⁸³ According to CESCR General Comment No.12 'The Right to Adequate Food', the duty to implement adequate access to food belongs to state authorities. The primary cause of food insecurity facing displaced people is related to the loss of land. Following FAN projects, local communities lose access to common property, like pastures and forests. Resettlement to less valuable farmland is another cause of food insecurity. The CESCR asserted that since the right to food has inseparable link to intrinsic dignity of the human person, it require adopting appropriate economic, environmental and social policies towards oriented to the eradication of poverty¹⁸⁴

Accordingly, the primary obligation of States corresponding to the right to food is not to provide food for every person, it is to respect the space available to everyone who is able to their own

¹⁸²FGD conducted with displaced people from Homa Kulkula kebele of Abbay Chomman Wereda, on August 20/2015, FGD conducted with displaced people from Alshaya Igu kebele of Horro Wereda, on August 22/2015.

¹⁸³ Article 11(2) of ICESCR; see also the CESCR, General Comment No.12, para.1.

¹⁸⁴ Ibid. CESCR, General Comment No.12.

means to produce their own food or to obtain it through exchange.¹⁸⁵ The right to food is not a right to be fed, but primarily the right to feed oneself in dignity. Individuals are expected to meet their own needs, through their own efforts and using their own resources. To be able to do this, a person must live in conditions that allow him or her either to produce food. To produce his or her own food, a person needs land, seeds, and other resources. The right to food requires States to provide an enabling environment in which people can use their full potential to produce or procure adequate food for themselves and their families.

Dispossession of the farm land put off the individuals from taking care of their own food needs by the use of their land use rights.¹⁸⁶ This eviction is one of the root causes for the violations of right to food. The F.D.R.E Constitution States that "*Ethiopian peasants have the right to obtain land and the protection against eviction from their possession.*"¹⁸⁷ In addition to this the expropriation proclamation entitles farmers to have land replacement in case of displacement.¹⁸⁸ In practice, the governments officials have confirmed that the farmer displaced from the six Kebele of project area were entitled a substitute plot of farm land though they agree on its non replacement in quality and quantity with their original land.¹⁸⁹ On the other hand the displaced farmers denied this fact as they did not get any farm land which is suitable for agriculture and as there is no any legal certificate which shows their possession.¹⁹⁰ Since the area of resettlement and replacement of land is not suitable for production of food crops and also impossible for existence of cattle no one could plough the land till now. To expound the situation informants told:

We were providing enough crops for the market and we need market only to buy salt and kerosene before the dam took our land/house. Now days, we are moving in market when we get money by doing daily works to buy for our consumption since we are exposed to starvation. Initially the project office was proposed to provide foreign breed cattle those that easily adopt the climate of the desert area and promised to plough the

¹⁸⁵ Allan Rosas, "The right to development in Economic Social and Cultural Rights", in (A. Edie, et al, (ed.) *Kluwer Law International*, Netherlands, 2nd ed,2001) p.135.

¹⁸⁶ Ibid.

¹⁸⁷ Article 40(4) of the FDRE Constitution.

¹⁸⁸ See 8(3) of Proclamation No. 455/2005.

¹⁸⁹ Supra note 176.

¹⁹⁰ Supra note 182.

*land by tractor until we adopt to the environment but this is mere lip service which we couldn't see it.*¹⁹¹

Following the blocking of the river households faced food shortage mainly because they were not allowed to collect their annual harvest and other sources of income such as milk, butter and honey were eroded.¹⁹² The other point which could be listed at this juncture is, the right to get rehabilitated in case of eviction for public purpose has no legal protection under the Ethiopian laws. Besides, there is no institution legally mandated to carry out the rehabilitation functions in the rural areas.

4.3.3 Right to Health

The UDHR Article 25(1) states that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”¹⁹³ The ICESCR affirms the right to an adequate standard of living in similar terms to the UDHR in Article 11. Article 12.1 of the ICESCR recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”¹⁹⁴ Numerous provisions of regional human rights treaties also set out the right to health and an adequate standard of living.¹⁹⁵

In delineating actions to be taken by states, General Comment 14 noted that the right to prevention, treatment, and control of epidemic, endemic, occupational, and other diseases “includes the creation of a system of urgent medical care in cases of accidents, epidemics and similar health hazards, and the provision of disaster relief and humanitarian assistance in emergency situations.” General Comment 14 also set out a number of “core obligations” under the ICESCR that require immediate rather than progressive implementation.

¹⁹¹ Ibid.

¹⁹² Supra note 176.

¹⁹³ UDHR Art 25.

¹⁹⁴ ICESCR

¹⁹⁵ See Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”), and art. 10, O.A.S. Treaty Series No. 69 (1988), 29 I.L.M. 156 (1989); African Charter on Human and Peoples’ Rights, June 26, 1981, art. 16, O.A.U. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) [hereinafter African Charter]; European Social Charter, Oct. 18, 1961, arts. 11, 30, 529 U.N.T.S. 89.

Inevitably, mega development projects have serious impacts on the ecosystems where they are implemented. There is no doubt that the pollution and damage caused to the water resources and the biodiversity of the ecosystems have negative consequences on the living conditions of the residents of these regions. In case of FAN the failure of resettling displaced people made the situation of health to harsh. Since the dam result in the contamination of air, soil, and water in the immediate vicinity, this leads to the deterioration of the condition to many health related problems. Community living around a river has been exposed to skin infection diseases caused by black fly and malaria, bilharzias as well as cold related disease like asthma which emerged in area because of environmental pollution. Despite this epidemic problem, neither hospital nor other health facilities exist for the community.



Figure 4.2 Picture which shows where human body is infected by disease

caused by parasitic worm transmitted from person to person by the black fly. Taken from Abbay Chomman woreda Administration document prepared for public discussion about impacts of the dam on health with Federal higher officials.

4.3.4 The Right to Housing

The obligation of states to take steps towards the realization of the right to adequate housing for all is laid down in a number of international legally binding human rights instruments. The ICESCR perhaps contains the most significant foundation of the right to housing found in international human rights law. Article 11(1) of the ICESCR provides that "State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions." The UN CESCR further clarified the normative and legal content, as well as state obligations under this right in its General Comment 4 on the ICESCR, "The Right to Adequate Housing." Consistent with Article 2 of the ICESCR, the Committee detailed how progressive realization of this right is required under international law, and also affirmed that deliberate or negligent retrogression of housing conditions is a violation of the ICESCR. General Comment 4 specifies the state's obligations to ensure progressive realization of the human right to adequate housing. Key aspects of the criteria of "adequacy," are categorized as: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.¹⁹⁶ Displacing people and providing them "shelter on once head" not make the eviction lawful. In order to make the eviction acceptable, the alternative houses provided shall be adequate. Informants evicted by FAN project those who preferred resettlement by government explained that though the government built houses for them to replace their houses the quality of the houses built to them is worse off than they had before, and addition to this they claim that the house is built in place worst for living.¹⁹⁷ Initially the project promised for community to build a

¹⁹⁶Housing rights groups (such as the Housing and Land Rights Network: <http://www.hlnr.org>) and the UN Special Rapporteur on adequate housing, have further developed the list of components of "adequacy" beyond those mentioned in General Comment 4. These include: physical security; participation and information; access to land, water and other natural resources; freedom from dispossession, damage and destruction; resettlement, restitution, compensation, non-refoulement and return; access to remedies; education and empowerment; and freedom from violence against women.

¹⁹⁷ Supra note 182.

house in a modern way by concrete and blocket.¹⁹⁸ However the house built for the evictee has been mad house which has less quality than house which the evicted framers had owned before. This is contrary to principle of “Persons, groups or communities affected by an eviction should not suffer detriment to their human rights, including their right to the progressive realization of the right to adequate housing”.¹⁹⁹ The following picture clearly indicates houses replaced for community less in everything in when compared with prior communities houses.



Figure 4.3 Photo of Sample houses owned by individuals' n taken by Author from buffer Zone of the dam (August 2015)

¹⁹⁸ Ibid.

¹⁹⁹ Guide line on eviction and displacement. Par 58



Figure 4.4 Houses built by government for replacement of communities' houses photo taken by author from resettlement area (August 2015)

As the pictures disclose it, all most all houses are destructed because of defect of quality construction and affected by termite before transferred to community. To expound the situation of inhabitability of the area of resettlement informants said "*we are a human being even though ordinary citizen but the site selected for our resettlement is only suitable for snake and python.*"²⁰⁰ Besides this, the new houses location has no access to road, water, and electricity even though the community lost their life for hydroelectric power generation.²⁰¹ On the other way international human rights law obliges the identified relocation sites must fulfill the criteria for adequate housing. These include:²⁰² (a) security of tenure; (b) services, materials, facilities and infrastructure such as potable water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services, and to natural and common resources, where appropriate; (c) affordable housing; (d) habitable housing providing inhabitants with adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors, and ensuring the physical safety of occupants; (e) accessibility for disadvantaged groups; (f) access to employment options, health-care services, schools, childcare centers and other social facilities, whether in urban or rural areas; and (g) culturally appropriate housing. In order to ensure security of the home, adequate housing should also include the following essential elements: privacy and security; participation in decision-making; freedom from violence; and access to remedies for any violations suffered.

4.3.5 Right to Adequate Standard of Living

Basically the right to adequate standard of living could be fulfilled when means of securing the basic necessities -food, water, shelter and clothing- of life have easily acquired. Individuals or community have this right when easily exercise his/her way of earning a gain in order to live. Article 11 of ICESCR obliges states to "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." Displacement inevitably affects the livelihood of

²⁰⁰ Supra note 182.

²⁰¹ Official Letter from Abay Comman Woreda to Oromia Regional state, on 07/06/2007 E.C., Official Letter from Horro Woreda to Oromia Regional state, on 0706/2007 E.C.,

²⁰² See general comment No. 4 on adequate housing adopted by the Committee on Economic, Social and Cultural Rights in 1991.

affected groups when it is not backed proper compensation, resettlement and rehabilitation for lost property and way of life.

On the other way all persons, groups and communities those displaced have the right to resettlement, which includes the right to alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education.²⁰³

According to FDRE constitution individuals displaced by development project should be guaranteed alternative accommodations and adequate compensation with adequate state assistance.²⁰⁴ However, a large number of people directly affected by the FAN dam, whose homes and land were acquired for damming the river, are not considered properly and are therefore ineligible for alternative housing or compensation. Land that is provided is often unsuitable for farming, far from the locations desired by the displaced, and void of basic amenities such as drinking water, road, and health care.

A closer look at the expropriation laws of Ethiopia highlights the government's failure to protect its citizens from the hardships and distress caused by the eviction. Under the expropriation laws, displaced persons receive compensation only if they can present legal title to their land.²⁰⁵ This provision ignores the fact that the vast majority of displaced people do not possess legal title to land even though they have property attached to commonly owned land. The limited scope of remedies is particularly harsh for individuals those depend on cattle rearing on common grazing land and live by participating on share cropping because they often lack formal title to land in a reality though they live better life by such activity. To expound the situation one key informant said *"before Nashe River was dammed I manage 13 families by having more than 50 cattle's and participating in share cropping with those persons who have a land. I have places where my animals go to feed and I don't have the title deeds for the land. When our common grazing land invaded by water neither grazing land nor compensation was provided for me because of this our living standard is worse off. Now days rather than stretching out my hands to God I have no*

²⁰³ See general comment No. 4 on the right to adequate housing, adopted by the Committee on Economic, Social and Cultural Rights in 1991.

²⁰⁴ FDRE constitution article 44(2).

²⁰⁵ Article 2 (3) of proclamation 455 landholder" means an individual, government or private organization or any other organ which has legal personal.ity and has lawful possession over the land to be expropriated and Owns property, situated thereon;

way of life?²⁰⁶ It worsened the life of people by exposing into situation they never seen before. It bears pain to the displaced while it is a gain for the government.

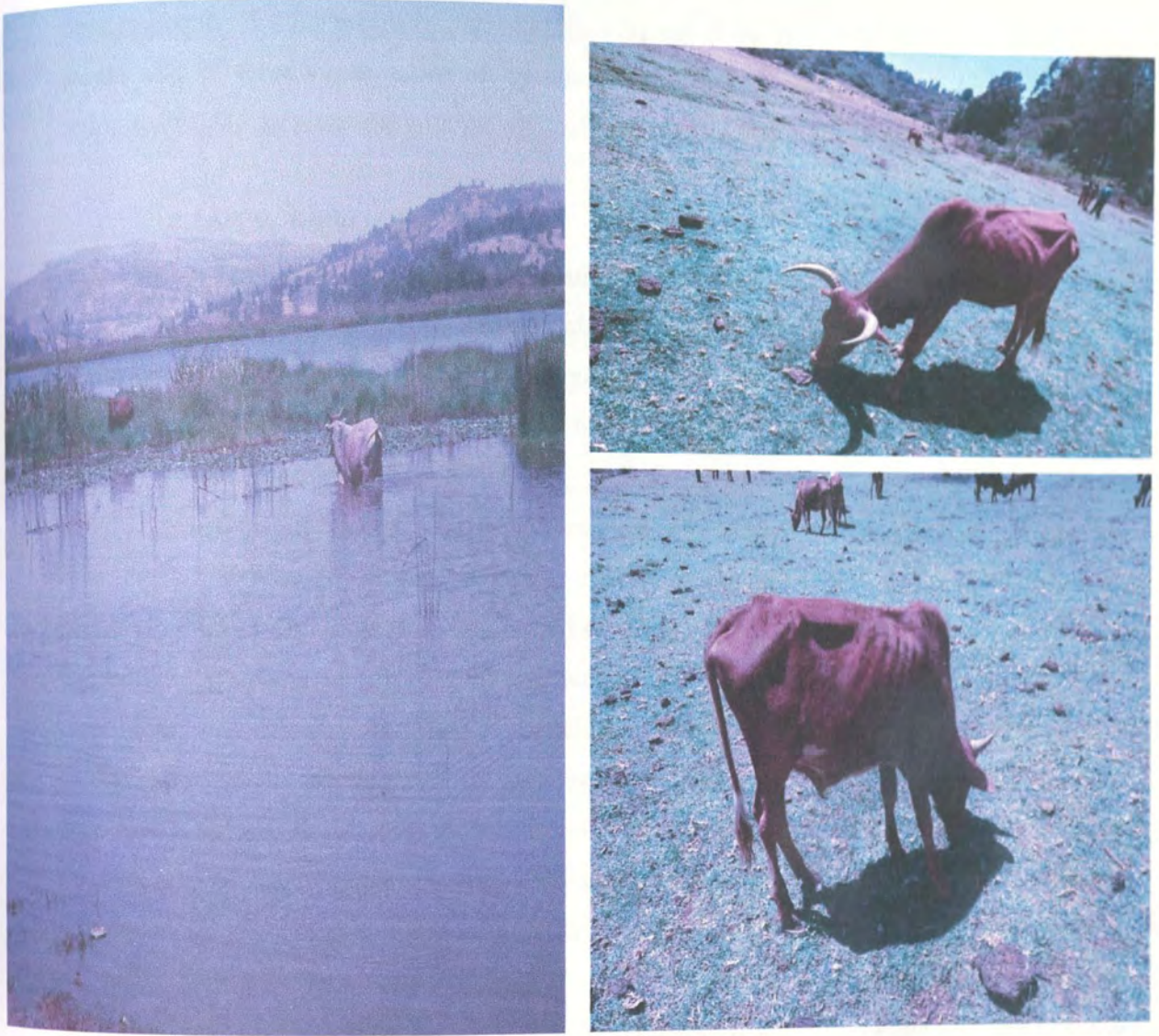


Figure 4.5 Pictures which show community's remnant cattle enter into the river to find fodder and affected by absence of fodder taken by author from affected area.(August 2015).

Another problem that affects the living standard of community is the fact that provision of the expropriation laws limits compensation to land that is individually owned, and thus community assets do not merit compensation under the expropriation laws of Ethiopia. However, community

²⁰⁶ Interview with Mr. Hailu Hinge evictee from Ejersa Macha Kebele, on August 18/2015.

assets like grazing grounds and forests are critical for the livelihood of many of the affected community. As a result, the expropriation laws deprives people of their means of survival because it recognizes only the rights of individuals with title to the land and denies the rights of those whose use of the land is customary. The Researcher would argue that it is unacceptable to deprive people of their means of subsistence or regress in the fulfillment of their human rights for the sake of some vague notion of "greater good." To do so would be fairly characterized as retrogressive and inconsistent with the obligation of states under international human rights law.

4.3.6 The Right to Participation

The right to participation has been internationally recognized as a human right as part of the right to self-expression in several instruments, including the Universal Declaration of Human Rights. Participation forms an integral component of several other human rights, including the right to adequate housing and the right to live with dignity. Article 19.1 of the ICCPR and regional instruments, including Article 9.1 of the African Charter on Human and Peoples' Rights, guarantee the right to receive information which is a base for right to participation. Effective participation in decision-making is essential to the fulfillment of all Human rights. All members of the community must be allowed to ask questions and express doubts regarding the feasibility, logistics, and other details of the project.²⁰⁷ Beside this, according to the FDRE constitution nationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community.²⁰⁸ However the project affected people in case of FAN expound the situation they faced were contrary to the guidance stipulated in the constitution. To quote their expression "*we were forced to leave our home/home land or our possession as a result of development process that undermines, excludes or ignores our full participation and put our live in danger without any protection. Officials informed and aware us about the dam at a moment they came to enumerate our property and when they conducted meeting for this purpose. When we oppose the situation they told us whether we love the dam or hate it, whether we want it or we don't, it is a price being paid for it. Nobody was interested to hear our voice neither regarding the construction of the dam nor*

²⁰⁷ Basic Principles and Guidelines Para 37. General Comment 7 of CESCR, *The Right to Adequate Housing* (art. 11 (1) of the Covenant): *Forced Evictions*, UN Doc E/1998/22, annex IV .Para 15.

²⁰⁸ See article 43 and 89 of FDRE constitution.

concerning the selection of site of settlement".²⁰⁹ On the other hand, relocation for development purposes cannot be carried out in the absence of a comprehensive human rights-based resettlement and rehabilitation policy developed through intensive consultation and collaboration of the affected people and government.

In the context of forced eviction, the U.N. Guidelines explain that all potentially affected groups and persons, as well as others working on behalf of the affected, "have the right to . . . propose alternatives that authorities should duly consider," as well as to "relevant information, full consultation and participation throughout the entire process."²¹⁰ After the impact assessment study is completed, the results "must be publicized and used to decide whether to go ahead with the project or not."²¹¹ A State must not inform the affected people of the project, and resulting eviction, as a *fait accompli*.²¹²

Lack of participation by affected people in case of FAN has resulted in problematic resettlement efforts. Generally speaking, "projects that result in involuntary displacement without the involvement of affected parties in the planning and decision-making processes do not comply with international human rights standards."²¹³

4.3.7 Right to Development

In the DRD, the right to development means "an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."²¹⁴ The DRD makes it clear that this implies the full realization of the right of peoples to self-determination and "their inalienable right to full sovereignty over all their natural wealth and resources."²¹⁵ It is then clear that local communities and individuals have the right to development. Beside this, Article 22 of the African Charter on Human and Peoples Rights which Ethiopia is a party conferred a legally binding right to development on

²⁰⁹ Supra note 184.

²¹⁰ U.N. Special Rapporteur on Adequate Housing, *Principles and Guidelines on Development-Based Evictions*, supra note 34, para 38; see also U.N. Special Rapporteur on adequate housing, para 14.

²¹¹ U.N. Special Rapporteur on adequate housing, forced evictions and displacement, para 14.

²¹² See Centre for Minority Rights Dev. and Minority Rights Group. Int'l v. Kenya, African Commission on Human and Peoples' Rights, Communication No. 276/2003, May 2009, Para 281 ("The African Commission . . . is convinced that community members were informed of the impending project as a *fait accompli*, and not given an opportunity to shape the policies or their role in the Game Reserve." (footnote omitted)).

²¹³ Supra note 211 Para 9.

²¹⁴ UN General Assembly, Declaration on the Right to Development, 1986, A/RES/41/128, Article 1.

²¹⁵ Ibid article 2.

African people's.²¹⁶ This Peoples' Right to Development is currently the only explicit hard law dedicated solely to the right to development.²¹⁷ Beside this Nationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community.²¹⁸ On top of the fact that the people are not allowed by expropriation law of Ethiopia to jointly determine what constitute public purpose and/or challenge if they think otherwise clearly contradicts the principle enshrined in right to development.

The first issue that arises in this juncture is the very decision to build dams and the political and moral justifications given for it. If one adopts a narrow understanding of the right to development, then the state's right to build a dam for ensuring respect for economic and social rights of people to provide electricity will take precedence. However, if one adopts the DRD approach, the communities that stand to be most affected by the dams need to approve the decision to build dams. In Ethiopia, since the decision to build a dam would be determined by high level authorities, local community have no right to determine the sort of development that a dam will bring as part of their right to development. On the other hand in rural part of Ethiopia, it is only through appropriate access to land for rural communities that sustainable development can be achieved as the livelihood of the rural community is closely linked with access to land. In case of FAN project the absence of adequate replacement of land could be great cause to violate right to development of the community.

4.4 State Responsibilities

In accordance with the parameters established by international law, States have the obligation to respect, protect, and fulfill the human rights norms they have committed to international treaties. Rules of customary law establish that any violation of these obligations, by action or omission, is the responsibility of the State. Taking responsibility implies the duties of immediately ceasing the unlawful act and redressing the damage caused, while also guaranteeing that it will not be repeated. State responsibility implies the duty on a state to act in conformity with the obligation imposed by the provision of a treaty that has been ratified by that state.

²¹⁶ Organization of African Unity (OAU), African Charter on Human and Peoples' Rights, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Article 22 www.achpr.org/instruments/achpr/ accessed on

²¹⁷ Nienke van der Have, "The right to development: Can states be held responsible?" In Dick Foeken et al (eds.) *Development and Equity: An Interdisciplinary Exploration by Ten Scholars from Africa, Asia and Latin America* (Brill 2014)pp. 157, 159.

²¹⁸ FDRE constitution article 43(2).

Article 12 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts provides that a state breaches an international obligation when „...an act of that state is not in conformity with what is required of it by that obligation, regardless of its origin or character.²¹⁹ Even when a state only signs a treaty it accepts responsibility to desist from its acts which are contrary to the aims of that treaty.

While development can be the proper expression of a state's responsibility to ensure the protection and welfare of its citizens, where development leads to arbitrary displacement, injustice, and impoverishment, the responsibility still falls primarily to the state to take corrective action. Therefore the government of Ethiopia has responsibility to stop human right violation and to redress damage caused because of FAN dam.

²¹⁹ Draft Articles on Responsibility of states for International wrongful Acts, considered by the UN General Assembly Resolution 56/83, UN Doc A/RES/56/83(28 January 2002).

Chapter Five

Conclusion and Recommendations

5.1 Conclusion

Basically development projects are expected to fulfill citizen's basic need and make contribution in realization of human rights. This could be achieved when development policies and plans are integrated and framed with human right laws. It requires also all activities carried out for the purpose of development must necessarily conform to human rights. The construction of FAN dam is aimed at contributing to the "national purpose," or "common good," even if it result in the displacement of communities and serious human rights violations in the area.

The research has revealed that although the FDRE Constitution and human right instruments ratified by Ethiopia endows with prohibition of arbitrary displacement, subsidiary laws and practice in reality are inconsistent with the standards set forth by human rights laws. Though displacement is allowed in exceptional circumstances in order to protect the compelling and overriding public interest which could be justified when element of proportionality, necessity, participation and protection of vulnerable group is fulfilled, the expropriation laws of Ethiopia which displaced people from their home and property could not supported by this yardsticks. The definition of public purpose is at best elusive and the process of determining it is often arbitrary, usually non-participatory, and based on criteria which are never clearly defined. It has been used not only as a justification but also to exclude the displaced people from the process of determining the acceptability of these costs and effectively from the very process of deciding to build the dam. In this sense forced displacement not only runs against the grain of participatory development and democracy but is also contrary to the spirit of public purpose.

As examined in the previous chapters most resettlement continues to be involuntary and forced. Legal and policy instruments still continue to be dominated by notions of displacement as sacrifice in the interests of larger public purpose without fulfillment of its justification. Such activity would be fairly characterized as retrogressive and inconsistent with the obligation of states under international human rights law.

Of all the ways in which people can be treated wrongly when they are displaced by development, four finding of the research are most salient. First, displaced people are subjected

to inadequate compensation to losses in assets and well-being. Second, they are contributing to development that benefits others without sharing in those benefits. Third, they are disempowered from regaining their losses and sharing in benefits. Finally, they have been subjected to all of this for the sake of development that in its own right fails to meet development standards.

Beside this, Ethiopia's resettlement and rehabilitation of the people displaced by the FAN has been unsuccessful and inconsistent with all international instruments. On top this there is no legislation and institution which guide the issue of resettlement. Since its inception, the FAN has run against of international human rights norms and violated the above indicated rights of community.

5.2 Recommendations

The paper is intended to provide recommending guidelines to government that could be incorporated into their action plans and laws, with the ultimate goal of ending all human rights violations related to the forceful displacement of peoples from their homes, homelands, and natural habitats.

To achieve this, States should furthermore enact legislation and set up procedures to protect people against forced eviction, including in the context of development activities. They should include in national development plans and resettlement policies, a clear statement that forced displacement or relocation induced by development projects can only take place in very exceptional cases, must be authorized by law, justified by compelling and overriding public interests, required to protect those interests, and carried out with full respect for the human rights of affected persons, and in accordance with international human rights law and principles.

At a minimum, it is necessary to enact provisions on the procedures for eviction or relocation and the available remedies, including resettlement and rehabilitation. Resettlement plans must be discussed with the affected persons as early as possible before the displacement takes place. Full information regarding the resettlement site, its exact location, and its layout, proximity to the original living site and work place, and accessibility of services must be provided to the community to be displaced. Beside this government should have to establish appropriate organ which take the mandate to implement and facilitate necessary activities for resettlement. Hence, to avoid the negative impacts of displacement for public purpose projects and to reconcile with human rights standards:

- The people who directly depend on natural resources for their subsistence should have the authority to be involved in decentralized decision-making regarding management and control of such resources
- “Development” needs to be defined and evaluated with certain indicators to assess whether a project is in reality a “development” project, i.e., does it bring about an overall improvement in well-being for the people or does it result in more harm than good.
- States must adopt legislative and policy measures prohibiting the execution of evictions that are not in conformity with their international human rights obligations. ...²²⁰
- Where displacement is absolutely inevitable, utmost priority must be given to ensuring that just and adequate resettlement and rehabilitation is provided immediately and is based on the principles of community participation, adequate consultation, prior informed consent, substantive equality, non-discrimination, indivisibility of human rights, progressive realization and non-retrogression. Land must be compensated by land of commensurate or better quality. Livelihoods must be restored where violated.
- At a minimum, ..., competent authorities shall ensure that evicted persons or groups, ..., have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; (g) education for children and childcare facilities. ...²²¹

²²⁰ Para ,22 of Guiding Principle.

²²¹ Para 52 above .

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Annex-1

Interview Guide Questions to Focus group discussion and Individual Farmer Displaced.

Name _____ Age _____ Occupation _____ No. of families _____ Addresses _____

Questions

1. Do you think that the government claims of producing electricity to providing energy grounds are sufficiently justify your displacement?
2. Did the authorities consult you to explore feasible alternative options before your displacement?
3. How do you describe the manner and means used to inform you about your Displacement? Do you think adequate and reasonable?
4. Do compensation paid to you includes your right to food and ensure sustainable food security and leaving standard?
5. How do you evaluate your post displacement human rights situations in relation to right to food, right to life, right to adequate housing, right to health, and right to development?
6. Did you get an equitable alternative land in replacement of the farm land you displaced from? If not what are the government plan or program to ensure your right to food?
7. Do you have you any prior experience on other economic activity than agriculture?
8. How do you explain the impacts of displacement to you?
9. What is your source of livelihood after displacement (food, income and the like?)
10. Do you have access to forest, grazing land and common land other resources you previously had?

Annex-2

Interview Guide Questions to Concerned Government officials

Name _____ Government Organization _____ Position _____ Address _____

Questions

1. Do you think that the government claims of producing electricity to providing energy grounds are sufficiently justify community's displacement?
- 2 Does the livelihood restoration program available to reconstruct the livelihoods for displaced people by FAN project.
3. Does the resettlement area have adequate shelter, water, supply and sanitation? Are displaced people happy and agree to accept with their replaced house and garden? What is the state of transport infrastructure and social services?
4. Does the existing development policy and legislation promote the human rights of development displaced people?
5. How you can describe displaced people livelihood experience before and after displacement.
6. Are there any health care facilities available for displaced community in or near their resettlement area?
7. What types of information/ knowledge /skill that displaced people have concerning displacement? Did they participate in holistic manner?
8. What the well being of project affected community looks like after displacement?

Annex 3.

ቀን 2011/08/25/00

ቁጥር 07-06-2000

ለአሮሚያ ክልላዊ መንግስት ፕረዘዳንት ጽ/ቤት

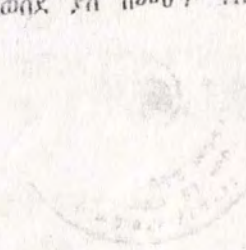
አ/አበዳ

ጉዳዩ፡- በፊንጫና ዓመርቲ ነጂ ፕሮጀክት የመልሶ መቋቋም መረጃ ግብር አፈፃፀምን የሚመለከት ይሆናል።

ከላይ በርዕሱ እንደተጠቀሰው በፊንጫና ዓመርቲ ነጂ ፕሮጀክት ግንባታ ምክንያት ከአካባቢ የሚነሱ አርሶ አደሮችን መልሶ ለማቋቋም ከዚህን በፊት ከፕሮጀክቱ ጋር በአካልም ሆነ በደብዳቤ ስንወያይ መቆየታችን ይታወሳል። ሆኖም በመልሶ ማቋቋም ስራ ላይ በተፈጠረው ክፍተት እንዲያስተካክሉ ከዞናችን በደብዳቤ ቁጥር ሆፕ-ወ/አ/1074/551 በቀን 2/06/2004 ከሆሮ ጉዳዩ ወሰጋ ዞን አስተዳደር በቀጥታ ለመ/ቤታችሁ ተጽፎ በግልጻዊ ለጽ/ቤታችን አሳውቀውናል።

ይሁን እንጂ በመ/ቤታችሁ በኩል መስተካከል ያለበት እስከአሁን ያልተስተካከሉ ችግሮች

1. በሥፍራው ቦታ ለሁሉም መንደር በቂ የመጠጥ ዉሃ ባለመኖሩ ወይም ተሠርቶ እስመጠናቀቁና ያለዉ ዉሃም በሳብራቶሪ ያልተረጋገጠ ስለመሆኑና በሎቲ 1 2 3 ላይ የተሰራው ሀንዲ ፓፕ በቂና አስተማማኝ ስላልሆኑ በሆሮ የሚከፈሉበትን መንገድ አለመመቻቸት በሎት 4 5 6 7 8 እና 9 ላይ የተዘጋጀው የዉሃ ታኒክ ጠረት በመሆኑ የጠረት ቀለም ቢቀጥም ቦታው በረሃ በመሆኑ ዉሃውን ስለሚያሞቀው ወደ ዮንክሪት ታኒክ ለመቀየር ያልተመቻቸ በመሆኑ።
2. ተነጂ አርሶ አደሮች በሚሰፍሩበት ቦታ የቆላ ዝንብ በባህት የሚገኝና የገንዳ በሽታ በከብቶቻቸው ላይ ጉዳት ማድረስ የሚችል በመሆኑ።
3. በክረምትና በጋ ወደ ስፍራያ ጣቢያዉ የሚወስደዉ መንገድ ያልተሰራ በመሆኑና በሰንቀሌ ወንዝ ላይ እስካሁን ድልድይ ያልተሰራ ስለመሆኑ።
4. የተሻሻሉ የዉጭ ዝርያ ያላቸዉ ጊደሮችና ወይፊኖች ለአርሶ አደሮች እናቀርባለን ተብሎ ቃል የተገባዉ ያልቀረበ በመሆኑ።
5. የሰዉ መድሃኒት አቅርቦት በፕሮጀክቱ በኩል በተሟላ መልኩ ያልቀረበ በመሆኑና የሥራ መሰረያ በተለይም የላይበራቶሪ መሳሪያ ያልገባ በመሆኑና መብራትም አለመኖሩ።
6. ለመንግሥት ሠራተኞች በቂ የመኖሪያ ቤት ያልተሰራላቸዉ በመሆኑ
7. አሁን እየተሠራ ያለዉ የማላ ዝግጅት በባለሙያ የተደገፈ ባለመሆኑና የሰከር 4-ብራሳ የአርሶ አደሩ ክልል ገብቶ እየወሰደ ያለ በመሆኑ የአርሶ አደሩ ማሳ ያልተካለሰ ስለመሆኑ።



3ኛ. የጠረጴዔ መስተዳደር የስነዚህ 117(መቶ ስምራ ሰባት) ስብወራዎች ክፍያ በሰነድ ስንድክረባቸው ስለተከሰባቸው ሲፈጠሩ የሚችሉ ችግሮችን ከገምተ በማስገባት ስለሮሚያ ክፍላዊ መንግስት ሃረዚዳት ዩ/ቤተ በደብዳቤ ቁጥር ፳፻፶/501/፳፻፯ በቀን 06/5/2004 በዓፊነዊ ደብዳቤ መግለጻችን።

4ኛ. ስነዚህ 117 (መቶ ስምራ ሰባት) ስብ ወራዎች ንብረት ስንዳባቸው የሚገባል በጠረጴዔ ካብራ ስባባት ጠላን የተደገፈ ደብዳቤ ሰነድ መንግስት ስንደያስተሳሰፍ ሰዎን ስለተዳደር በሞጥተ በደብዳቤ ቁጥር ፳፻፶/688/፳፻፯ በቀን 2/04/2004 ስዓፊጠቀ ስለሰነድን የተሰጠ ስንዳችንም መፍትሔ የሰጠ ።

ስለዚህም በሰነድ ጠቅላይ ስነዚህ ስብወራዎች ስከፍተኛ ማህበራዊ እና ስኮሎሎጂያዊ ችግሮች ስየተደረጉ ደገኛሉ በሚደረግ ደህ ችግር ስለሮ የገለጸካና የጠጥተ ችግር ሲሆን ስንደምቸዎ ያሰን ሲገተ ስፍተኛ ስለሆነ ስነዚህ ችግሮች ከመፈጠራቸው በፊት ሁሰገባ ጠላን ተሰጥቶ ደህንን ችግር በሰነድ ስንዳት ስንደተ ስሙሰን በሰነድ ስንጠይቃለን ።

ገቢዎች

- > ስጠቀባዬ ሚኒስትር ዩ/ቤተ
- > ስጠቀባዬ ምሥጃና ስነጥሪ ሚኒስትር ዩ/ቤተ
- > ስሴተኛ ስላዎ ስለሰነድ ስነጥሪ ኮርፕራሽን
- > ስኮሎሎጂያ ክፍላዊ መንግስት ግብርና ዩ/ቤተ
- > ስኮሎሎጂያ ክፍላዊ መንግስት ስከባቢ ግብርና መፈተ ስለተዳደር ዩ/ቤተ
- > ስኮሎሎጂያ ክፍላዊ መንግስት ስለተዳደርና ስጥተ ዩ/ቤተ
- ፊንጊፊ
- > ስሆር ጉዳይ ጠሰን ዩን ስለተዳደር ዩ/ቤተ
- > ስሆር ጉዳይ ጠሰን ስከባቢ ግብርና መፈተ ስለተዳደር ዩ/ቤተ
- > ስሆር ጉዳይ ጠሰን ዩን ስለተዳደርና ስጥተ ዩ/ቤተ
- > ስሆር ጠረጴዔ ስለተዳደር ዩ/ቤተ
- > ስሆር ጠረጴዔ ስከባቢ ግብርና መፈተ ስለተዳደር ዩ/ቤተ



ከሚገኝታ ገር
 ለጠቅላይ ጠቅላይ ሚኒስትር
 ለግብርና ሚኒስትር
 የግብርና ሚኒስቴር
 ስነ-ምግባር ጠቅላይ ሚኒስትር
 የትምህርትና ስነ-ምግባር ጠቅላይ ሚኒስትር