



**ADDIS ABABA UNIVERSITY**

**SCHOOL OF GRADUATE STUDIES**

**SCHOOL OF LAW**

**THE RIGHTS OF SECURITY OF PROPERTY OF**

**INTERNALLY DISPLACED PERSONS UNDER**

**INTERNATIONAL LAW**

**: THE CASE OF ETHIOPIA**

**BY: NUREDIN MOHAMMED**

**MAY, 2021**

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**BY: NUREDIN MOHAMMED**

**ADVISOR: Yonas Birmeta (DR.)**

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**(L.L.M)**

**MAY, 2021**

**ADDIS ABABA**

## DECLARATION

I hereby declare that this research is original and has never been presented in any other institution. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged.

NUREDIN MOHAMMED ASSFAW

Signature: \_\_\_\_\_

This thesis has been submitted for examination with my approval as University advisor.

YONAS BIRMETA (DR.)

Signature: \_\_\_\_\_

**APPROVAL SHEET**

**Title of Thesis:**

**THE RIGHTS OF SECURITY OF PROPERTY OF INTERNALLY DISPLACED**

**PERSONS UNDER INTERNATIONAL LAW**

**: THE CASE OF ETHIOPIA**

**BY: NUREDIN MOHAMMED**

	Board of Examiners	Signature	Date
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3.	_____	_____	_____

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## Acronyms

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
AU	African Union
CEDAW	Convention on the Elimination of Discrimination against Women
CRPC	The Commission for Real Property Claims of Displaced Persons and Refugees
ECHR	European Convention on Human Rights
ECOSOC	Economic and Social Council
FAO	Food and Agricultural Organization
FDRE	Federal Democratic Republic of Ethiopia
GPC	Global Protection Cluster
GPCWG	Global Protection Cluster Working Groups
GP	The Guiding Principles
IASC	Inter-Agency Standing Committee
ICC	International Criminal Court
ICCPR	International Covenant on the civil and political rights
ICED	International Convention on the Elimination of All Forms of Discrimination
ICESCR	International Covenant of Economic, Social and Cultural Rights
ICRC	International Committee of Red Cross
IDMC	Internal Displacement Monitoring Center
IDPs	Internally Displaced Persons
IDRC	The International Development Research Centre
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IOM	International Organization for Migration

IPCC-----The Iraq Property Claims Commission  
NDRMC-----National Disaster Risk Management Commission  
NGOs -----Non-Governmental Organizations  
OCHA-----Office for the Coordination of Humanitarian Affairs  
UDHR-----Universal Declaration of Human Rights  
UNDRIP-----United Nations Declaration on the Rights of Indigenous Peoples  
UNGA-----United Nations General Assembly  
UNHABITAT--United Nations Human Settlements Programme  
UNHCR-----United Nation High Commissioner for Refugees  
UN-----United Nations

## ***ABSTRACT***

*After 1980's our world faced a big wave of internal displacement. Then to eradicate this, the world especially the UN organs and others gave an attention to develop international rules and principles, even if international human rights and humanitarian laws already existed. So, since IDPs are the person who displaced from their homes and properties, they are vulnerable group who needs special protecting rules and principles like the GP, the Pinheiro principles and the Kampala Convention that were developed by UN organs and AU respectively.*

*Therefore, states have an international and regional obligation to ensuring respecting these norms and enforcing them according to the rules stipulated under them. Similarly, Ethiopia has a duty to enforce and apply such international and regional standards to secure the rights of IDPs including property rights. But, in Ethiopia the problem of deprivation of property and possession rights of IDPs is becoming a pressing need. For instance, in 2018 there were around 3 million IDPs whose rights including property rights were highly violated.*

*Thus the main theme of this study is to identify the international and regional legal standards which can be enforceable and applicable in Ethiopia to secure the property rights of IDPs and to forward possible way outs.*

*The study concludes that, the applicability of international and regional standards to protect from violence and provide remedies for Ethiopian IDPs property is poor.*

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# CHAPTER ONE

## 1. Introduction

### 1.1. Background of the Study

Internal displacement is not a new phenomenon, but it has become a big challenge after the cold war, since 1980's where by significant number of internally displaced persons (IDPs) displaced around the world and several humanitarian crises of unprecedented scale happened in different countries such as in Sudan, former Yugoslavia, Northern Iraq, Colombia, Democratic Republic of Congo and Turkey.<sup>1</sup> As a result, internal displacement became an international agenda. Especially, the United Nation (UN) organs have been trying to put as much emphasis to respond to the problem of IDPs.<sup>2</sup>

At the end of 2018, there were 41.3 million people internally displaced as the result of conflict and violence across 55 countries in the world of which Ethiopia, Nigeria and Afghanistan account the largest number.<sup>3</sup> In Ethiopia, around 2.9 million peoples were internally displaced and from this number, displacement of more than 2.4 million IDPs was caused by conflict.<sup>4</sup>

Taking note of the adverse effects of Internal displacement, beginning from March 1991, the UN Commission on Human Rights requested the Secretary-General to appoint a person for a report on internally displaced persons, and the Secretary-General appointed Mr. Francis Deng who has drafted and disseminated 'the Guiding Principles on Internal Displacement (GP)'<sup>5</sup> in 1998. This principle was drafted based upon existing international humanitarian and human rights laws and adopted by UN Commission on Human Rights.<sup>6</sup> Even though the

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<sup>1</sup>Catherine Phuong, the International Protection of Internally Displaced Persons (Cambridge University Press 2004), p.3-9.

<sup>2</sup> Ibid

<sup>3</sup>Global report on internal displacement, Internal Displacement Monitoring Center (IDMC), (May 2019), <<http://www.internal-displacement.org>> visited 20 March 2020.

<sup>4</sup> Ibid,

<sup>5</sup> The U.N Commission on Human Rights, the Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2 (1998). (Here in after, Guiding Principles (GP).

<sup>6</sup> Mr. Sergio Vieira de Mello, The Secretary-General on Humanitarian Affairs, (Forward Notes to the GP).

GP isn't a legally binding instrument, it gained substantial universal acceptance and recognized as the normative starting point for developing laws, policies, and practices at the national and regional level for the protection of IDPs and their rights.<sup>7</sup>

The GP define internally displaced persons (IDPs) and listed out the causes of internal displacement like; armed conflicts, situations of generalized violence, violations of human rights or natural or human-made disasters.<sup>8</sup> It used as cornerstone for the establishment of other regional and national policies and legal standards on IDPs. There were also another principles and standards adopted by UN organs after the GP come into force.

The African Union (AU) also took a decisive step by adopting the first binding regional Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) in 23 October 2009 and entered into force on 6 December 2012 as per article 17 of the Convention.<sup>9</sup>

Eleven years later, in February 13, 2020 Ethiopia ratified this convention and made it part and parcel of the law of the land as per the clear stipulations under article 9 (4) of the FDRE constitution which affirms that the ratified instruments would be an integral part of the law of the land.<sup>10</sup> Hence, the government of Ethiopia, now, has an international obligation to obey and enforce this ratified regional instrument.

However, although internal displacement is a widespread phenomenon and affects the very rights of IDPs including the rights to property and possession in Ethiopia, the above and other international instruments are not effectively applied and enforced in the country. As a

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<sup>7</sup>Roberta Cohen, the Guiding Principles on Internal Displacement: An Innovation in International Standard Setting, p. 459 <<https://www.refworld.org/4c51531f2.pdf>> accessed 15 February 2020.

<sup>8</sup> The Guiding Principles (n 5)

<sup>9</sup> The 1<sup>st</sup> Session of Conference of States Parties for the African Union Convention for the Protection and Assistance of IDPs in Africa (Kampala Convention), 3-5 April 2017, Harare, Zimbabwe, < [www.au.int](http://www.au.int) files 32304> accessed on April 3 2020.

<sup>10</sup> Proclamation No. 1/1995 Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia (hereinafter the Constitution), *NEGARIT GAZZET* 1'1Year No.1

result, IDPs are facing many problems with respect to assuring their property and possession rights during and after displacement.

## 1.2. Statement of the Problem

States have the primary obligation towards individual rights entitled by international and regional human rights laws. States should to respect, protect and fulfill the human rights.<sup>11</sup> Since IDPs are parts of the population, they shall have entitlement to the full protection of rights available to the population in general under the human rights instruments. Moreover, the GP expressly recognize the guarantees for the rights of IDPs under principle 3.1 as follows;

*“States have the primary duty and responsibility to provide protection and assistance without discrimination to its population, including the internally displaced, in accordance with international human rights and humanitarian law.”*<sup>12</sup> Furthermore, IDPs are particular vulnerable groups of population due to displacement; states are under obligation to provide extra-measures of protection and assistance for IDPs corresponding to their as per international human rights and Humanitarian laws.<sup>13</sup>

Concerning property rights of IDPs, the international human rights laws, the humanitarian laws, the GP on IDPs and other standards affirms the rights of property which imposes a reciprocal duty on states. For example, the security rights of property and possession of IDPs were guaranteed under the GP. The property and possessions left behind by IDPs should be protected against destruction and arbitrary and illegal appropriation, occupation or use.<sup>14</sup> And, the competent authorities also have the duty and responsibility to assist the IDPs to recover, to the extent possible, their property and possessions which they left behind or were dispossessed during displacement. When recovery of such property and possessions is not

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<sup>11</sup>Diakonia International Humanitarian Law Center: International Human Rights law, <https://www.diakonia.se/en/IHL/The-Law/International-Human-Rights-Law> accessed 28 March 2020.

<sup>12</sup>Guiding Principle, 3.1

<sup>13</sup>Rhodri C. Williams, Protecting IDPs: A Manual for Law and Policymakers, (October 2008) (Brookings Institution—University of Bern: Project on Internal Displacement), p.17

<sup>14</sup>The GP, 21

possible, the authorities shall provide or assist the IDPs to obtain appropriate compensation or another form of just reparation.<sup>15</sup>

During displacement, many citizens were forced to abandon their homes and leave their areas of origin as a consequence of fear of conflicts and violence or other factors of displacement. Then, the property and possession rights of IDPs may have damaged, burned or destroyed by different actors. In Ethiopian context, for instance, according to the data of the Protection Monitoring Report, Protection Cluster in Ethiopia, during the ethnic conflict between the Guji Oromo and Gedeo peoples many houses were damaged; land and properties were occupied by each other.<sup>16</sup> Moreover, since 2018, the inter-communal conflict between the Amhara and the Qemant communities in Amhara region, led to displacement of large number of people from their house in the western and central parts of Gondar and the IDPs property like house, seeds, cars and equipment were exposed to destruction, looting, burning and damaged.<sup>17</sup> Similarly, the IDPs in Tigray region who were displaced from Amhara and Oromia regions in 2017 and 2018 had got their house and other belongings burnt down and did not have time to collect and carry out their household materials.<sup>18</sup>

Despite such large scale destruction of property of IDPs, however, the Ethiopian government couldn't provide security for the property of IDPs, which resulted in violations of property rights of the IDPs guaranteed under international standards. In addition, the IDPs haven't acquired adequate remedy for their damaged property, such as restitution or compensation as

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<sup>15</sup>The GP, 29.2

<sup>16</sup>IDPs in Western Guji Zone from January to March 2019, the Guji IDPs houses were damaged, their land and other properties are occupied by Gedeos and the Guji IDPs are also occupying the houses left behind by Gedeo IDPs during the conflict. The report shows that as per the Kebele officials conducted damages and loss assessment, 336 houses were destroyed during the crisis. The report also confirmed that as per the Kebele Officials' statements, "no action has been taken against those illegally occupied houses". So this sample report shows that how much the IDPs property rights were violated and the government couldn't protect the property and possession rights of the IDPs during ethnic conflict as per international standards.

<sup>17</sup>The Global Protection Cluster (GPC)'s Ethiopia, Interagency Rapid Protection Assessment - Gondar, Amhara Region 11-14 March 2019, <https://www.globalprotectioncluster.org/wp>, accessed 22 March 2020.

<sup>18</sup> The IOM report, on Tigray Region - Mekelle Displaced Persons Rapid Needs and Market Assessment, Assessment Date: February 26 – March 1, 2018 accessed on <https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/2018/12/ETH-IOM-Mekelle-Tigray-Needs-And-Market-Assessment-20180301-.pdf>

per international standards.<sup>19</sup> They couldn't also take an action to claim their property rights because they have no information about the guarantee of international laws towards their rights.<sup>20</sup>

Thus, the main theme of this thesis is to assess if Ethiopia has adequately applied the international legal norms for the protection of IDPs right on property and effectiveness of their enforcement.

### **1.3. Objective of the Research**

#### **1.3.1. General Objective:**

The general objective of this thesis is to explore the security rights of property of IDPs and its enforcement in Ethiopia based on international rules and principles.

#### **1.3.2. Specific Objectives:**

The research as the following specific objects:

- To assess the rights of security of property of IDPs provided under the international legal systems.
- To explore international and regional laws, standards and principles applicable in Ethiopia having relevance to attain the security rights of property of IDPs.
- To assess the status of applicability of the international standards in Ethiopia to protect the destruction and arbitrary deprived of property and possessions rights of IDPs.
- To investigate whether the competent authority of Ethiopia fulfills its obligation to protect the property and possession rights of IDPs and to assist the returned or resettled IDPs to recover their property and possessions.
- To identify the major practical challenges that hindered the Ethiopian IDPs or their representative and legal practitioner to invoke the violation of property rights of IDPs in line with an international standard.

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<sup>19</sup>Interview with Abrham Abebe Mola Zinabu and priest (☐☐) Gebeyehu Gessesse, the representative of IDPs displaced from different regions of Ethiopia and settled at Woldia city, on 30 March 2020.

<sup>20</sup>Ibid

- Lastly, to recommend measures that should be taken by Ethiopia, in order to provide effective protections and remedies for IDPs property rights with the application and enforcement of international and regional standards within the country.

#### **1.4. Research Questions**

1. What are the specific property rights of IDPs under the international legal arena?
2. Does Ethiopia adequately apply and enforce international and regional laws, standards and principles applicable to the country to ensure the security rights of property of IDPs.
3. How and to what extent the international law has been so far securing the property rights of the IDPs in Ethiopia?
4. What are the measures that should be taken by Ethiopia to provide effective protection and remedy for the rights of property of IDPs as per international standards?

#### **1.5. Significance of the Study**

So far, there are no comprehensive research work on the laws and practices on IDPs property rights, especially focusing on providing protection and adequate remedy for these rights during and after displacement. Therefore, as the study principally focuses on assessing the international normative frameworks to provide protection and remedy for the property of IDPs, its findings will have a paramount significance in identifying the prevailing gaps in the applicability of international laws itself and the state obligations to frame policies and laws based on international standards.

Further, this study could help to create awareness of IDPs about their rights enshrined under the international standards. It is also probable that the findings of this research may serve as a reference material for students, academicians and researchers. At last, this research may initiate other researchers for further study on the area.

#### **1.6. Scope and Limitations of the Study**

The problem of internal displacement in general and failures to providing protection or remedy for property of IDPs in current international system is multifaceted and worldwide. But, in this study due emphasis is given to the assessment of the international laws, principles

and standards with regards to the protection of the rights of property of IDPs and the Ethiopian national authorities in providing protections for the property rights of IDPs.

### **1.7. Methodology of the Study**

To conduct this study, both doctrinal and non-doctrinal legal research approaches were employed. To address this, the thesis was mainly focused on qualitative data that will be derived from both primary and secondary sources.

Concerning primary sources, the researcher relied on assessing International human rights and Humanitarian laws such as, The Universal Declaration on the Human Rights (UDHR), The International Convention on the Civil and Political Rights (ICCPR), the International Covenant of Economic, Social and Cultural Rights (ICESCR) and the international standards and principles such as the GP on IDPs, the principles on Housing and Property Restitution for Refugees and Displaced Persons ('Pinheiro Principles'). From the regional legal regimes, the Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) was assessed. Moreover, the researcher had collected primary data through interview from the key informant selected through purposive sampling techniques from Amhara region; at Woldia and Combolcha IDPs sites, and two governmental authorities, the Ministry of Peace and the Federal General Attorney.

With respect to secondary sources, various books, guidelines, reports, articles, journals, thesis, dissertations, guidelines, cases and other materials on the topic was analyzed in search for relevant solutions for the research questions so identified.

### **1.8. Limitation of the Study**

While undertaking this research the researcher had faced many challenges. It was very difficult to collect data from governmental offices, due to the political sensitivity of the topic and the Covid-19 pandemic. Further, the local and zonal concerned governmental offices were not willing to give information about the IDPs. Lastly, time was also a big challenge to me to do the paper together with my career.

### **1.9. Organization of the Study**

This study has four chapters. The first chapter deals with the proposal of the study, which is the general introduction part of the thesis. The second chapter focus on literature review deals about the definition of IDPs, the concept of property, property rights and security rights

to property and the development of international legal frameworks on IDPs in general and the rights of property of IDPs in particular. The third chapter discusses confine itself with the discussion, exploration, and evaluation of the extent, scope and applicability of international standards on IDPs property rights in Ethiopia. Under this chapter the legal and practical issues with respect to the security rights of property of IDPs was analyzed, so that the major practical problems were scrutinized.

Finally, chapter four of the thesis sum up the discussions made in the preceding three chapters and provide recommendations in the view of the researcher, necessary and relevant to the problem and questions stated in this research.

## CHAPTER TWO

### 2. The Conceptual and Legal Framework of IDPs and the Rights of Security of Property

#### 2.1. Introduction

According to the definition given by the Guiding Principle, Internal Displacement (ID) can be caused by armed conflict, situation of generalized violence, violation of human rights or natural or human-made disasters. Human-made disasters can be Civil war and internal strife, ethnic persecution or forcible relocation, ethnic conflict etc. On the other hand; flood, land slide, drought, earthquake etc are natural disasters causes of displacement.<sup>21</sup>

Once the IDPs are displaced from their place of resident by different causes, they may be subject to violation of certain rights like; family rights, the rights to food, the rights to water and sanitation, the rights to shelter and adequate housing, the rights to health, the rights to Property and possessions, the rights to education, the rights to employment, economic activities and social services.<sup>22</sup> For instance, when the property of IDPs was exposed to loss, destruction or occupied by other persons, the rights to Property and possession of IDPs is violated.<sup>23</sup>

Under this chapter, first it is essential to discuss the concept of IDPs, property and property rights and explaining the security rights of property of IDPs i.e. the rights of getting protection and effective remedy. Then, the chapter will examine those international and regional legal frameworks which can be applied to IDPs in general and IDPs property rights in particular like the International and regional human rights laws, the International

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<sup>21</sup> M.A. Arbouw, The Role of the African Union in Addressing the Lack of Legal Protection Afforded to Internally Displaced Persons in Ethiopia (2018),p. 40 <<http://arno.uvt.nl/show.cgi?fid=146413>> accessed 23 March 2020.

<sup>22</sup>Rhodri C. Williams, (n 13), p.2

<sup>23</sup> Ibid

humanitarian law (IHL), the International criminal law, the International standards and principles on the rights of IDPs and the Kampala Convention will be discussed.

## **2.2. The General Concept of Internally Displaced Persons (IDPs)**

There was confusion between the concept of Internally Displaced Persons (IDPs) and Refugees, even though both categories of persons share many similarities.<sup>24</sup> Some people argue that IDPs should be treated as Refugees because in both cases, they are referring to anyone who has been forced to leave his or her home, whether that person has left his/her country or not is immaterial.<sup>25</sup> However, as per the Convention relating to the status of Refugees, 1951 Convention<sup>26</sup>, legally speaking a person who wants to be Refugee, he/she should be displaced outside his or her country of origin due to a fear of Persecution, whereas IDPs are those people who have been displaced from one area to another area without crossing the national boundary of their own country, shows a clear difference between the two concepts.<sup>27</sup>

The UN General Assembly, the UN Commission on human Rights and the International Organization for Migration (IOM) tries to define IDPs.<sup>28</sup> Yet there is not agreed and official definition of IDPs at the international level before the GP came in to force.<sup>29</sup> The GP on IDPs and later on the Kampala Convention defines IDPs as follows;

*“persons or group of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situation of generalized violence, violation of human rights or natural or human-made disasters, and who have not crossed internationally recognized state border.”*<sup>30</sup>

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<sup>24</sup> Catherine Phuong, (n 1), p.13.

<sup>25</sup> Ibid

<sup>26</sup> Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS 15 (the 1951 Convention)

<sup>27</sup> Catherine Phuong, (n 1), p.13.

<sup>28</sup> Ketevan Mekhuzla, Basic Rights of Internally Displaced Persons: Observing the Case-Law of the European Court of Human Rights and the Inter-American Court of Human Rights (Warsaw University 2008/2009) p.7-13

<sup>29</sup> Ibid

<sup>30</sup> Guiding Principles, under Introductory number 2 and Kampala Convention article 1(2)

Even though the Guiding principle plays significant role to define the IDPs, still there were some criticism stating that, it doesn't include persons who were forced to leave from their homes for violation of economic rights.<sup>31</sup>

## **2.3. The Concept of the Rights to Property and the Security Rights of Property of IDPs**

### **2.3.1. Property and Property Rights**

Legally speaking the term property is not an object; rather it is a relationship between a person and a thing.<sup>32</sup> It also refers to the interest or the rights that a person can exercise or use, claim, dispose and sale it.<sup>33</sup> On the other hand, rights to property refers to rules that specify who may entitled and do on a particular object, and it may include; who may sell, destroy and trade on the object.<sup>34</sup> The different types of Property rights that have been recognized by law are ownership rights, enjoyment of possessory rights, usufruct right, the right to access, securing tenure rights, the right to privacy of homes etc.<sup>35</sup> So, the right to property is a legal security which is recognized under both international and national laws.

### **2.3.2. The Security Rights of Property for IDPs**

When internal displacement takes place, obviously it affects the whole life of the persons, which makes these persons more vulnerable. It leads to loss of their property and possession rights such as; their home, income, land, tangible and intangible goods.<sup>36</sup> The security right of property of IDPs means the legal guarantee towards the property and possessory rights of IDPs during and after displacement.<sup>37</sup> International and regional human rights laws have play a significant role to protect the property of IDPs by prohibiting the action of deprivation of

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<sup>31</sup>Ketevan Mekhuzla, (n 28)

<sup>32</sup>United Nations High Commission for Refugees (hereinafter UNCHR), Handbook for the Protection of Internally Displaced Persons (2010), p. 255 <<https://www.unhcr.org/en-ie/4794b5042.pdf>>accessed at 20 March 2020.

<sup>33</sup>Ibid

<sup>34</sup>Ibid

<sup>35</sup>Ibid

<sup>36</sup>Yigzaw, Gedifew Sewart and Abitew, Endalsasa Belay, "causes and impacts of internal displacement in Ethiopia," *African Journal of Social Work (AJSW)*, Volume 9 Number 2 (2019), p. 38

<sup>37</sup> UNCHR, (n 32), p.258-259.

property during all stages of displacement and providing effective remedy for damaged property.<sup>38</sup> Means, IDPs have the rights of protection of property i.e. prevent arbitrary deprivation of property and possessions and preserve property which has been abandoned or lost during displacement and the rights of access to effective remedies for the arbitrary deprived property in the form of restitution and/or compensation.<sup>39</sup> On the other hand, the right of security of property of IDPs imposes a reciprocal duty on the states. These are the duty to respect, to protect, to fulfill and to promote.

### **2.3.2.1. The Rights of Getting Protection**

The word protection refers to all activities based on the relevant bodies of law, like international human rights and humanitarian and refugee laws for the aim of obtaining full respect for the rights of individual.<sup>40</sup> Here as an objective, protection requires full and equal respect for the rights of persons without discrimination based on sex, race, and age as per international as well as national laws orders.<sup>41</sup> Protection is also a legal responsibility and duty of governmental authorities imposed by law. In this regard; states and its agents are the primary responsible body to protect the IDPs and all other persons, including their respective rights and assets based on international standards.<sup>42</sup> In case of armed conflict, armed opposition groups and in particular situation when states are unable or unwilling to fulfill their protection obligations as per the given law, humanitarian and human right actors play a significant role.<sup>43</sup>

As we know, human rights laws imposed three main duties on states; includes respecting, protecting persons from against violation of human rights by others and fulfilling.<sup>44</sup> Here for this study, it's better to see only the states duty of protection from violation of human rights

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<sup>38</sup>Ibid

<sup>39</sup>Ibid

<sup>40</sup>Global Protection Cluster Working Groups, Handbook for the protection of internally displaced persons (2007) p. 7 <[www.protection.oneresponse.info](http://www.protection.oneresponse.info)>accessed, 16 January 2020

<sup>41</sup>Ibid

<sup>42</sup>Ibid

<sup>43</sup>Ibid

<sup>44</sup>David Rutherford, States' Obligations under International Human Rights Conventions: The Implications for Government Sport Policy (2018), P.5, <<https://thecommonwealth.org/sites>>accessed, 16 January 2020.

by others. Providing protection for the IDPs rights is the way of reaffirming the states international human rights duty, which IDPs should still benefit from the same protection as anyone else benefits in the country. The right to getting protection for property of IDPs is also one part of human right protection for IDPs guaranteed under the human right instruments as explained below.

For instance, protection of property rights is guaranteed under UDHR, saying that ‘no one shall be arbitrarily depriving of his property’, the rights of adequate standards of living like the rights of food, clothing and housing is protected under the ICESCR and UDHR, the rights to equality before the law in the enjoyment of the rights protected under the ICED and the rights of property is guaranteed as enshrined under ACHPR. So states should prevent arbitral deprivation of property and possessions and preserve property of the IDPs, which has been abandoned or lost during displacement. If states couldn’t fulfill this duty of protection, especially stated under the international or regional treaties which were ratified by them, they shall be accountable and/ or provide compensation for such violated rights of IDPs.

Furthermore, states should not only treat the IDPs the same as the rest of the civilian population according to the human right treaty provisions, but it should provide an extra protection for these vulnerable populations. That is why other specific international and regional instruments were developed to response such extra protection for the vulnerable IDPs. The specific needs of IDPs property rights is protected and guaranteed like under the UN GP, the Kampala Convention and the ‘Pinhiero’ Principle.

For instance, protection of property and possessions left behind by IDPs is guaranteed against destruction, arbitrary and illegal appropriation, occupation or use under the GP.<sup>45</sup> And the binding Kampala Convention also affirms that: “*The states parties shall; take necessary measures to protect individual, collective and cultural property left behind by displaced persons...*”<sup>46</sup>

Therefore, since protection of property and possessions abandoned or left behind by IDPs is guaranteed under both international and regional legal instruments, we can say that IDPs

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<sup>45</sup>Guiding Principles, 21(3)

<sup>46</sup> The Kampala Convention, article 9(2) (i)

have the legal rights of protection for their properties and possessions left behind displacement.

### **2.3.2.2. The Rights of Effective Remedies and Justice**

The international and regional human rights instruments and the GP<sup>47</sup> primarily give an attention to protect persons from arbitrary displacement. But when no alternatives exist, and displacement were took place, the displaced persons have another guarantee which is called the rights of protection during and after displacement including their rights such as property and possession rights.<sup>48</sup> In this regard, the legal instruments obliged the Governments to have been doing their best to protect the property and possession rights of the IDPs in their regime. The primary responsible body to protect the IDPs, including their rights is the national authorities of the country.<sup>49</sup> However, if this obligation of the government failed; and the rights of property and possessions of IDPs have been violated, the injured IDPs have the rights of invoking remedies for the damaged. The IDPs whose property rights have been violated which guaranteed under the international and regional instrument have the right to full and non-discriminatory access to effective remedies and justice.<sup>50</sup> This may include, access to justice by holding perpetrators liable, providing appropriate reparations and information concerning on violations and reparation mechanisms.<sup>51</sup>

#### **2.3.2.2.1. The Rights of Access to Justice**

In cases of damaged incurred against the IDPs rights by natural disasters and non-state actors, the authority shall be liable for their having failing to provide appropriate protection for the IDPs rights.<sup>52</sup> Furthermore, even if the authorities provide best efforts to protect the IDPs rights, they should have another duty, i.e. ensuring due process guarantees and other human rights obligations that the perpetrators held criminal accountable and provide

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<sup>47</sup> Guiding Principles, 5-9

<sup>48</sup> Guiding Principles, 10-23

<sup>49</sup> Global Protection Cluster Working Groups Handbook (n 40), p. 9.

<sup>50</sup> The UN Inter-Agency Standing Committee (IASC), *Framework on Durable Solution for IDPs*, (April 2010), p. 42-43. (published by the Brookings institution's – University of Bern)

<sup>51</sup> Ibid

<sup>52</sup> Id, p. 45

reparations for the victims.<sup>53</sup> However, if such guaranteed rights of IDPs, which means the rights access to justice were violated, it is possible to conclude that the international law is not respected and applied in the concerned state. Then, it can be said that the government is failed to fulfill its duty to provide access to justice for victims of IDPs guaranteed under international instruments.

#### **2.3.1.2.2. The Rights of Reparation**

To achieve a durable solution for IDPs, reparation is very important step.<sup>54</sup> Reparation means '*the redress of an injury; amends for a wrong inflicted*'.<sup>55</sup> It is the form of restitution to recover the full rights affected by displacement.<sup>56</sup> Reparation may take the forms of; restitution, compensation, rehabilitation, satisfaction and guarantee of no-repetition.<sup>57</sup> Reparation may be made by the perpetrators themselves or by the government according to the situation.

#### **I. Restitution: -**

It is a form of the remedy in which restoring the victims to the original position before the violations of international human rights or humanitarian laws occurred, whenever possible. It may include restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of

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<sup>53</sup>Ibid

<sup>54</sup>Rhodri C. Williams, (n 13) p. 169

<sup>55</sup>Bryan A. Carner, *Black's Law Dictionary*, 8<sup>th</sup> Edition.

<sup>56</sup>Rhodri C. Williams, (n 13), p. 170

<sup>57</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the so-called van Boven/Bassiouni Principles: resolution / adopted by the General Assembly, 21 March 2006, A/RES/60/147, para.11

property.<sup>58</sup> Here, since the main focus of this paper is on the rights of property of IDPs, it's better to see the return or restitution of property only.

Since properties are the most essential assets for the livelihoods of IDPs, if possible restitution or if not, compensation of such asset is an important step to achieve durable solutions for IDPs.<sup>59</sup> Restitution of abandoned property is a form of restitution, which is enshrined under the international and regional instruments, especially under the GP, the Kampala Convention and the “Penihero” principles. For instance, under article 29(2) of GP restoring property and possessions to the extent possible is recognized as the rights for both returned and/or resettled IDPs.

However, when return of abandoned properties for IDPs is implemented, there are apparent challenges which may include;<sup>60</sup>

- The abandoned properties may have unlawfully occupied by others and such actions may be encouraged by local authorities.
- Destruction of abandoned properties by others
- When the property rights of the IDPs is contested by others, and
- Confiscated the abandoned properties of IDPs by local interests.

Moreover, although the legal remedy of restitution of properties is recognized under international laws and principles, there may be encountered certain obstacles to do it. For instance, insufficient information about the claims deadlines, the difficulty of claims process, formally unrecognized rights may have denied and inadequate enforcement systems.<sup>61</sup>

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<sup>58</sup>*OCHA, Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the ‘Pinheiro Principles (March 2007), p. 24 [https://www.ohchr.org/Documents/Publications/pinheiro principles](https://www.ohchr.org/Documents/Publications/pinheiro_principles), accessed March 10 2020.*

<sup>59</sup>Rhodri C. Williams, (n 13), p. 171

<sup>60</sup>Ibid

<sup>61</sup>Ibid

## II. Compensation: -

The remedy of compensation is award for IDPs, when restitution of Property and possession is impossible for different reasons. Restitution of property and possession may be impossible, when it occupied by other persons or destroyed. Compensation is the amount of money paid for the victims of displacement for their economically assessable damage.<sup>62</sup> Some scholars like Gilat J. Bachar argues that monetary compensation for victims may be paid by individuals or government.<sup>63</sup> So tort litigation against government plays an essential role to promote government accountability and the victims may easily rehabilitate.<sup>64</sup>

Of course, the process of property restitution and compensation is complex and may take time until a durable solution achieved. But it should be emphasized that those determined to have found durable solutions do not lose their claim to restitution or compensation on account of their displacement has ended, property rights like all human rights, remain in effect of entitlement for former IDPs.<sup>65</sup>

There were practical experience cases towards property restitution and compensation in some countries. Among them, the claims programme established in Bosnia and Herzegovina, ‘the Commission for Real Property Claims of Displaced Persons and Refugees (“CRPC” or “the Commission”)’ was established under Annex VII of the “General Framework Agreement for Peace in Bosnia and Herzegovina”, also referred to as the Dayton Peace Agreement, that was signed in Paris on 14 December 1995 following a four-year war in the former Yugoslavia. The claims programme established in Iraq, the Interim Iraqi Governing Council, the CPA, by Regulation Number 8 of 14 January 2004, authorized the Iraqi Governing Council to establish the Iraq Property Claims Commission (“IPCC”) and later this law changed to the

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<sup>62</sup>IASC, Framework on Durable Solutions, (n 50), p. 44

<sup>63</sup>Bachar, Gilat J, "Collateral Damages: Domestic Monetary Compensation for Civilians in Asymmetric Conflict," Chicago Journal of International Law, Vol. 19: No. 2, Article 2(2019), p.386 <<https://chicagounbound.uchicago.edu/cjil/vol19/iss2/2>> accessed on 25 march 2020.

<sup>64</sup>Ibid,

<sup>65</sup>Susan Martin and Erin Mooney, when displacement ends: A framework for durable solutions, (June 2007), p.16

Commission for the Resolution of Real Property Disputes (“CRRPD”) on 6 March 2006.<sup>66</sup> The government of Turkey also provides compensation to IDPs for their losses of their properties while displaced after the terrorist acts and measures taken to combat terrorism by adopting a law.<sup>67</sup> Therefore, such practical experience may help as a lesson for other states which faced internal displacement like our country Ethiopia.

### **III. Rehabilitation: -**

The dictionary definition of rehabilitation is ‘to restore somebody to a former position.’<sup>68</sup> Rehabilitation can be also defines as; “*Actions which enable the affected population to resume more or less “normal” patterns of life. These actions constitute a transitional phase and can occur simultaneously with relief activities as well as with further recovery and reconstruction activities.*”<sup>69</sup> So rehabilitation is a form of reparation which operates by way of restoring the IDPs to the position before displacement happened.

#### **2.3.1.2.3. The Rights of Providing Appropriate Information and Accessible Mechanisms for IDPs Remedies**

The existing remedies which were provided under the international and regional instruments should be fully informed and disseminated for IDPs by their language which can be understood easily for them.<sup>70</sup> This means the remedies which are stipulated under the law has no value, if it is not aware by the IDPs. The law becomes only paper value without apply by the stockholders, as per this paper the IDPs. The rights and remedies addressed by international instruments should be informed by state for the victims of violation of rights. All necessary mechanisms and institutions should be also geographically, culturally and economically accessible for IDPs.<sup>71</sup>

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<sup>66</sup> See the Canada’s International Development Research Centre (IDRC) research work on, *Property Restitution and Compensation Practices and Experiences of Claims Programmes*, (Published by the International Organization for Migration (IOM), at <http://www.iom.int>, accessed March 18 2020.

<sup>67</sup> Turkey law No. 5233, on Compensation of Losses Resulting from Terrorist Acts and Measures Taken against Terrorism, (2004).

<sup>68</sup> Bryan A. Carner, (n 55)

<sup>69</sup> Global Protection Cluster Working Groups Handbook (n 40), at glossary section p. 513

<sup>70</sup> IASC Framework on Durable Solutions (n 50), p. 45

<sup>71</sup> Ibid

## **2.4. The International Legal Instruments Applicable on the Rights of Property of IDPs**

### **2.4.1. International Human Rights Laws (IHRL) on the Rights of Property**

#### **2.4.1.1 Introduction**

The rights to property was seen as extremely controversial concept by several legal scholars and states as the result of ideological difference of cold war between Eastern and Western blocks.<sup>72</sup> The Eastern blocks argues that since property has been the privilege of the few that served as a means of excluding the large mass of non-possessors from social and political life, private property shouldn't be treated as international human rights, rather it should be governed and regulated by states national laws.<sup>73</sup> Whereas the Western lines argued that, since property can be selling, trade or destroy, it should be treated as human rights governed by international laws. Even some authors argue that, the right to property must be understood as a “fundamental human right” essential for the integrity of the individual. Other authors also argue that the right to property should be consider as human rights because, it plays a significant role in the realization of other human rights, in particular the rights to food, the rights to adequate housing and social security.<sup>74</sup>

Later on, the Western states succeeded in obtaining a protection of private property in the legally non-binding instrument UDHR, but they couldn't success when the General Assembly adopted the two legally binding international covenants i.e. the international Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights in 1966.<sup>75</sup> Property as a human rights concern is explicitly manifested under many international and regional instruments, such as under the UDHR 1948, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP 2007) the European Convention on Human Rights (ECHR 1950), the African Charter on Human and

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<sup>72</sup>Christophe Golay and Ioana Cismas, Legal Opinion: The Right to Property from a Human Rights Perspective(2010), p. 2<[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1635359](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1635359)> accessed 25 April 2020

<sup>73</sup>Ibid

<sup>74</sup> Ibid

<sup>75</sup>Jacob Mchangaba, The Right to Property in Global Human Rights Law, (June 2011), <<https://www.cato.org>> accessed on April 2 2020.

Peoples' Rights (ACHPR 1981), etc.<sup>76</sup> Moreover, the rights to property also enshrined under article 15(1) (h) of CEDAW which affirms the equal rights of property between men and women.<sup>77</sup> The right to security of property is also protected under the International Humanitarian and Criminal laws.

When we see international human rights laws with respect to IDPs rights, there is not a single provision that explicitly deals about IDPs herein. But some authors like Catherine Phuong argues that, "Human rights law applies to IDPs since human rights law applies to all individuals without distinction and in almost all circumstances."<sup>78</sup> She also argues that these instruments contain provisions which are of particular relevance to IDPs. Of course, interestingly, the non-binding GP on IDPs clearly confirms the application of human rights laws on IDPs stated as follows;

*"Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under International and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced."*<sup>79</sup>

But, in reality, as IDPs are on the ways of moving as the result of displacement, the protection of the normal human rights laws is not adequately enough.<sup>80</sup> They cannot also benefit from the special regime of protection created for refugees, 1951 convention.<sup>81</sup> Therefore, this is why the reason to adopt a new international principles on IDPs which is called the GP on IDPs mostly from the existing norms of human rights and humanitarian laws with new additional rules for the purpose of treating the special needs of IDPs.<sup>82</sup>

So under this subchapter I will explain human rights instruments by focusing on their provisions which affirm the rights of property.

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<sup>76</sup>Ibid

<sup>77</sup>Ibid

<sup>78</sup>Catherine Phuong (n 1)

<sup>79</sup>GP, principle 1(1)

<sup>80</sup> M.A. Arbouw, (n 21), p. 29

<sup>81</sup> Ibid

<sup>82</sup> Ibid

#### **2.4.1.2. The Universal Declarations of Human Right (UDHR)**

UDHR was adopted by UN General Assembly in 1948.<sup>83</sup> It was originally intended as non-binding, but later on it has gained sufficient authority and adherence over time to be considered binding rules of customary International law.<sup>84</sup> It also serves as the source of many international, regional and national law regimes. In other words the rights and principles set out in the UDHR translated in to Conventions, Customary Laws and other international documents.<sup>85</sup>

Concerning on property rights, UDHR was the first international human rights instruments that explicitly affirmed the rights to property under as follows:

*“Everyone has the right to own property alone as well as in association with others” and “No one shall be arbitrarily deprived of his property.”<sup>86</sup>*

This provision shows that the right to property can be applied to both private as well as collective ownership. The provision doesn't prohibit legal deprivation of properties.

Under this Declaration the right of effective remedy for acts violating the fundamental rights granted by the constitution or law is recognize.<sup>87</sup> Lastly, the Declaration also proclaimed that every person has the rights of adequate standard of living, including food, clothing, housing, medical care and necessary social services for him and his families.<sup>88</sup> Therefore, these rights of adequate standards of living are directly related with property rights of the person.

#### **2.4.1.3. International Convention on Civil and Political Rights (ICCPR)**

Both ICCPR and ICESCR were adopted by UN in 1966 and entered into force in 1976. ICCPR contains a number of civil and political rights which has binding effect upon

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<sup>83</sup> The Universal Declaration of Human Rights: Adopted and proclaimed by UN General Assembly Resolution 217 A (III) of 10 December 1948 Text: UN Document A/810, p. 71 (1948), (hereinafter UDHR)

<sup>84</sup> David Fisher, *Guiding to international Human Rights Mechanisms for IDPs and their Advocates* (June 2006) p.2

<sup>85</sup> Ibid, see also M.A. Arbouw, (n 21), p.30

<sup>86</sup> UDHR, article 17

<sup>87</sup> UDHR, article 8

<sup>88</sup> UDHR, article 25

those signatory states. Despite that, there is no provision which is explicitly recognized about the rights of property under ICCPR, the Convention can be applied for IDPs property rights. Because, property plays a significant role for the realization of other human rights like the right to life, the right to liberty, the rights to security, we can say that the rights to property affirmed under ICCPR.<sup>89</sup>

Moreover, since ‘Human rights are universal, indivisible and interdependent; they are also interrelated without any right taking precedence over another’<sup>90</sup> when one right is violated for the strong reason, the other rights was violated. The ICCPR stipulated that, “*State Party to the Covenant undertakes to respect and to ensure to all individuals within its territory the rights recognized in the Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*”<sup>91</sup> The state also has a duty to ensure that when any person whose rights recognized by the Convention are violated, he/she have the right to provide effective remedy.<sup>92</sup> The Convention also recognized under article 12 that the arbitrary or unlawful interference or attacks against with the privacy, family, home or correspondence of everyone is prohibited. Therefore, from the above stated strong reason and ICCPR provisions, we can observe that ICCPR can apply on IDPs property rights.

#### **2.4.1.4. The International Covenant on Economic, Social and Cultural Rights (ICESCR)**

Here, though ICESCR is not expressly recognized the right to property, it is possible to dig out this right from its article 2 and 11. Article 11(1) says 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*

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<sup>89</sup>Christophe Golay and Loana Cismas (n 72)

<sup>90</sup>Food and Agricultural Organizations (FAO), handbook on the right to food within the international framework of human rights and country constitutions(2014),p. 7<[www.fao.org/publications](http://www.fao.org/publications)> accessed April 10 2020.

<sup>91</sup>ICCPR, article 2(1)

<sup>92</sup> ICCPR, article 2(3)(a)

*right, recognizing to this effect the essential importance of international co-operation based on free consent.”<sup>93</sup>*

So according to the above provision, to realize the right of an adequate standard of living, the state should protect the property rights of everyone, from this thesis point of view the IDPs property right. Otherwise, the recognize rights has no value or couldn't achieve without security of property rights. When the property of IDPs was violated by different actors, their rights of an adequate standard of living including adequate food, clothing, housing etc. will be also violated which are protected under article 11(1) of the Convention.

#### **2.4.1.5. Other International Conventions on the Rights of Property**

There are other international Conventions which has regulating the special needs of vulnerable persons and their property on their part of non-discriminatory clause such as; the Convention on the Rights of the Child (CRC) adopted by UN in 1989, the Convention on the Elimination of Discrimination Against Women (CEDAW) adopted in 1979 under its articles 15(2) and 16(1) (h). The International Labour Organization Convention (ILO) No.169 of 1989 concerning Indigenous and Tribal Peoples, the ownership and possession rights of land and compensation for the relocation of people was recognized under its provisions 14 and 16. The International Convention on the Elimination of All Forms of Discrimination (ICED) adopted in 1965, under article 5(e) (iii) affirmed that; ‘States parties undertake to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the rights like the right to housing. The Convention also contains states duty to provide protection and remedies for an act of racial discrimination under article 6. It says;

*“States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from*

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<sup>93</sup> ICESCR article 11(1)

*such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”<sup>94</sup>*

#### **2.4.2. The Regional Human Rights Law**

The right of security of property is also enshrined in regional Human rights instruments. For instance, the African Charter on Human and Peoples’ Rights (ACHPR) clearly recognized the right to property states as follows;

*“The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provision of appropriate laws.”<sup>95</sup>*

As per this provision, property rights of any person restricted only for the interest of public needs and as per appropriate laws. Moreover, the charter clearly recognized the rights to property for people and states under article 21, says that *“...In no case shall a people be deprived of their wealth and natural resources, in case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation and States parties shall individually and collectively exercise the right to free disposal of their wealth and natural resources...”<sup>96</sup>* So the charter recognized for both rights of peoples and states’ to dispose the natural resource.

Other regional human rights laws which recognized the right to property, even if they are out of the scope of the study are; the European Convention on Human Rights (ECHR) and its Protocol and the American Convention on Human Rights (ACHR) etc.

#### **2.4.3. International Humanitarian Law (IHL)**

Humanitarian Law is a body of international law which regulates the means and methods of International warfare.<sup>97</sup> IHL regulates both civilians and civilian property. The four Geneva Conventions of 1949 and its two Additional Protocols 1977 are the main sources of the IHL.<sup>98</sup> The provision of IHL, which provides protection for property during the international

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<sup>94</sup> ICED, article 6

<sup>95</sup> ACHPR, article 14

<sup>96</sup> ACHPR, article 21

<sup>97</sup> Catherine Phuong, (n 1)p. 44

<sup>98</sup> Ibid

and non-international armed conflicts are common article 3 of the Geneva Convention and Protocol II. The law has special relevant to IDPs for humanitarian access, prohibiting transfer of populations etc.<sup>99</sup> IHL has not enforcement mechanisms. But the International Committee of the Red Cross (ICRC) plays the primary custodian role to implement and enforce the IHL during armed conflict.<sup>100</sup> Moreover, the International Criminal Court (ICC) may also apply IHL in which war crimes were committed by combatants during armed conflict.<sup>101</sup>

#### **2.4.4. The International Criminal Laws**

According to article 8(2) (a) (IV) of the Rome Statute of International Criminal Court(ICC), any acts against property protected under the provisions of the relevant Geneva Convention that extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly is consider as war crimes that should be punishable as per the Statute. Moreover, the Statute affirms the situation of reparations to victims of war. Article 75, the court (ICC), shall provide an order against conflicted person appropriate reparation to victims including restitution, compensation and rehabilitation.

However, though Ethiopia was so far having a good trend of record to ratify many international treaties; she is not a member to the Rome Statute, as the result she hasn't a legal obligation to abide by it.<sup>102</sup>

#### **2.4.4. International Standards and Principles on the Rights of Property of IDPs**

Even though, International Standards and Principles are not binding legal instruments like human rights Conventions, they are useful instruments to provide a guarantee of protection for the rights of the IDPs.<sup>103</sup> It also provides a valuable guidance to governments, other

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<sup>99</sup>Id,P. 46-47

<sup>100</sup>David Fisher, (n 84), p.4

<sup>101</sup> Ibid

<sup>102</sup>Claiming Human Rights: Guide to international procedures available in cases of Human Rights violation in Africa, <[WWW.claiminghumanrights.org/ethiopia.html](http://WWW.claiminghumanrights.org/ethiopia.html)>accessed 14 April 2020.

<sup>103</sup>Francis M. Deng, The GP on IDPs (introductory Note)

competent authorities, intergovernmental organizations and NGOs on the IDPs including their rights.<sup>104</sup>

Due to conflict and other reasons, there were large number of IDPs, who needs to establish a claim programmes to provide restitution and / or compensation as a part of rehabilitation and peace-building strategies for victims who suffered gross violations of human rights and serious violations of international humanitarian law.<sup>105</sup> Some human rights instruments have recognized the rights of effective remedy before the national tribunals. For example, article 8 of the UDHR, article 2(3), 9(5) and 14(6) of the ICCPR and article 21(2) of the African Charter of Human and Peoples' Rights (ACHPR) stipulates the rights of remedy for the victims whose rights was violated. However, some authors like Ketuvah Mekhuzla argues that, since there is no clear definition of the rights to restitution in the human rights instruments, the perspective towards fully and adequately restoration of the rights of IDPs is decrease and seems difficult.<sup>106</sup> But if states couldn't comply with their international duty to protect the property of persons, they shall be liable to make a remedy for the victims before the international tribunals. This means wrongdoing state has the primary duty to afford redress to the victims of a violation.<sup>107</sup>

However, there is a clear legal gap in the international treaty instruments, to protect the IDPs rights. For this reason, the treaty instruments have been elaborated and formulated in the form of declaration, principles and standards by UN bodies. These are; the Guiding Principles on IDPs of 1998, the basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights and serious violations of international humanitarian law (2005) and the principles on housing and property restitution for Refugees and Displaced Persons ('Pinheiro' Principles) (2005). Now Let us see these standards one by one.

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<sup>104</sup> Ibid.

<sup>105</sup> IDRC, research work on Property Restitution and Compensation, (n 66).

<sup>106</sup> Ketuvah Mekhuzla, (n 37), p. 27

<sup>107</sup> Ibid

#### **2.4.4.1. Guiding Principles on Internal Displacement of 1998 (GP)**

The genesis of the Guiding Principles on internal displacement was started as the result of the lacuna in the international law on internal displacement.<sup>108</sup> These lacunas include; the problems of humanitarian access and protection of human rights, and the peace and security in the geographic area of internal displacement could be disrupted.<sup>109</sup>

After the cold war era, the number IDPs highly increased in the world, especially due to internal conflicts.<sup>110</sup> As the result, the UN High Commissioner for Refugees (UNHCR), together with other UN agencies like the UN Children's Fund (UNICEF), the International Committee of the Red Cross (ICRC), and NGOs, try to give humanitarian assistance to IDPs. But certain constraints, like sovereignty and others the inter-Governmental organs and NGOs couldn't effectively assist the IDPs.

Moreover, Roberta Cohen on his article stated, "the 1951 Convention Relating to the Status of Refugees did not apply to IDPs, and the UN High Commissioner for Refugees (UNHCR) had no automatic mandate to assist them, because unlike refugees they did not flee across borders."<sup>111</sup> So such legal and institutional gaps in the international system alert the international community to the rights of the displaced persons within the borders of the states especially, after 1990s.<sup>112</sup>

Then the UN Human rights Commission adopted a resolution to call the UN secretary-general to appoint a representative on IDPs and requested the representative to examine the applicability of international human rights and humanitarian and refugee law to the protection of IDPs.<sup>113</sup> Francis M. Deng was choosing as representative with other legal teams for the work. Finally, after certain effort, the legal team found that even though the idea of IDPs recognized under the existing international human rights and humanitarian law and analogous refugee law, the phrase IDPs is not explicitly recognize in these laws and there are

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<sup>108</sup> Francis Tom Temprosa, "Guiding Principles on Internal Displacement: Expression of LEX LATA or DE LEGA FERENDA? status in International Laws and implication on the law on international peace and Security," *Arizona J. of Int'l & Comparative Law*, Vol. 35, No. 2 (2018), p. 261-264.

<sup>109</sup> Ibid

<sup>110</sup> Ibid

<sup>111</sup> Roberta Cohen, (n 7)

<sup>112</sup> Francis Tom Temprosa, (n 117)

<sup>113</sup> The United Nations Commission on Human Rights, Res. 1992/73 (5 March 1992).

significant areas in which the laws fails to provide adequate protection.<sup>114</sup>For instance, there is no explicit norm on restitution of property lost as a result of displacement during conflict or on the need of IDPs for personal identification and documentation.<sup>115</sup>In addition, although the additional Protocol to the Geneva Conventions of 1949 under its article 17 can apply to IDPs, which affirmed that; displaced civilian population shall be treated and all possible measures shall be taken like satisfactory conditions of shelter, hygiene, health, safety and nutrition. However, this international law applies only to IDPs displaced by armed conflict, not for other IDPs displaced by other causes such as displaced by natural disasters.<sup>116</sup>

After that, The Human Right Commission orders the legal team representative, Mr. Deng to draft the Guiding Principles. Mr. Deng drafted the Principles and he was presented it to the UN Commission on Human Rights in 1998.<sup>117</sup>The drafted Guiding Principles contains both restating the existing norms and seek to clarify the grey areas and fill in the gap. The Guiding Principles set forth the rights of IDPs, the obligations of governments and other international community like the United Nations agencies, and non-governmental organizations (NGOs) towards the protection and needs of IDPs.<sup>118</sup> As per Roberta Cohen’s statement, “by 2003, the commission expressed “appreciation” of the Guiding Principles, called them “a standard” and an “important tool,” welcomed the fact that “an increasing number of States, United Nations agencies and regional and non-governmental organizations [were] applying them,” and also welcomed their “dissemination, promotion and application worldwide”.<sup>119</sup> Even the Security Council began to cite the principles in its resolutions and presidential statements.”<sup>120</sup>The Guiding Principles also use for the normative development of national and regional laws and policies.<sup>121</sup> Some states like Germany recognized the GP as part of

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<sup>114</sup>Roberta Cohen, (n 7) p.463-464

<sup>115</sup> Ibid

<sup>116</sup>Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, (8 June 1977)

<sup>117</sup>Rhodri C. Williams, (n 13), p. 3.

<sup>118</sup> Ibid

<sup>119</sup>Roberta Cohen, (n 7) P. 465

<sup>120</sup>Roberta Cohen,(n 7) p.463-464

<sup>121</sup>The Global Protection Cluster (GPC), paper on Regulatory Framework on International Displacement Global, regional and national developments, (2015), p.8-9 <<https://reliefweb.int/report/world>> accessed 24 March 2020.

international customary law, and in 2008 the Iraqi government in its national policy stated that the Guiding Principles had become part of international law.<sup>122</sup>

Pursuant to the Guiding Principles introduction part, it is a useful instrument for providing guidance to; “the representative of the Secretary-General on IDPs in carrying out his mandate, states when they faced to internal displacement, all other authorities, groups and persons in their relations with internally displaced persons, and Intergovernmental and non-governmental organizations when they are addressing internal displacement.”<sup>123</sup> Here, below it is better to discuss the property rights of IDPs recognized under the GP as follows.

#### **2.4.4.1.1. Property Rights of IDPs Guaranteed Under the GP**

Pursuant to the guiding principles, the security rights of Property for IDPs are two. These are: the legal guarantees towards the protection of IDPs property rights and possessions, and the rights to redress for violated property rights which are abused during or after displacement under principles 21 and 29.2 respectively.

#### **2.4.2. The Rights of Protection of Property: -**

Property and possession rights of IDPs are specifically protected under principle 21 of the GP. The legal foundation of this principle is the UDHR and other human rights instruments. This principle recognized the rights for the protection of property of IDPs includes their abandoned homes, property and land. It also imposed obligation on the states to take basic measures to secure homes, lands and property left behind by IDPs against destruction, unlawful use or occupation and appropriation. Here the principle identifies the rights of IDPs to getting legal protection from the competent authorities on one hand and it imposes an obligation on the states, to provide protection against destruction, unlawful use or occupation and appropriation, of the property which are left behind by IDPs.<sup>124</sup>

Therefore, according to the GP, the national authorities of each state have the primary duty to provide protection against destruction or arbitrarily deprives of properties of the IDPs by taking measured like establishing laws and institutions.

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<sup>122</sup>Ibid

<sup>123</sup>Guiding Principle, under Introduction no 3(a-d).

<sup>124</sup>Rhodri C. Williams, (n 13), p.172. see also the GP, 3 and 21.

### 2.4.3. The Rights to Redress of Property: -

To achieve a durable solution for IDPs, they should have access to effective mechanisms for timely restitution of their housing, land and property, regardless of whether they return or opt to integrate locally or settle elsewhere in the country.<sup>125</sup> The standard of restitution applies to all properties including; residential, agricultural, commercial, lease and tenancy agreements.<sup>126</sup> The right of redressing of property is enshrined under principle 29.2 of the GP states as follows;

*“Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.”<sup>127</sup>*

From this principle, it is possible to conclude that the GP imposes a duty and responsibility on competent authorities i.e. governments to assist the IDPs to recover their property and possessions which they left behind. However, when recover is not possible, the principle obligated the competent authorities not only assist the IDPs in obtaining compensation or another form of reparation, but also they should provide compensation or another form of just reparation by themselves. Compensation or another form of reparation of property is not appreciated, unless recovery of property and possession is impossible. The Guiding Principles also provides that, the competent authorities should develop facilitated procedures and national laws for the seeks of restoring or compensating the IDPs’ rights of property; where this is not possible, they should also support to formal and informal dispute resolution bodies to take into account human rights laws.<sup>128</sup>

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<sup>125</sup> Ibid

<sup>126</sup> Ibid

<sup>127</sup> GP, Principle 29.

<sup>128</sup> IASC, Framework on Durable Solutions, (n 50), p. 50.

#### **2.4.4.2. The Principle on the Housing and Property Restitution for Refugees and Displaced Persons or ‘Pinheiro’ Principle: -**

The United Nation Sub-Commission on the promotion and protection of human rights adopted a resolution, 1998/26 on housing and property restitution in 1998. After that, the sub-commission special rapporteur on housing and property restitution, Paulo Sergio Pinheiro has studied and proposed the principles to the sub-commission. The sub-commission endorsed without a vote on 11 August 2005 by resolution no 2005/21 in Geneva.<sup>129</sup> The Principle is useful instrument to provide policy guidance for the aim of ensuring the rights to housing and property restitution in practice based on existing international human rights, humanitarian, refugee and national standards.<sup>130</sup>

According to section one of the Principles, it was designed to assist all relevant actors, national and international, in addressing the legal and technical issues surrounding housing, land and property restitution. This shows that the concerned bodies shall take responsibility to apply the principles. The main point of the ‘Pinheiro’ principles is stated under its principle 2. It proclaimed that; refugees and displaced persons have the rights to restitution of their housing, land and/ property. If such restitution is no possible, they should be compensated.

Moreover, under the principles, the duty of states is strictly stated. As per principle 18, States should recognize the right of refugees and displaced persons to housing, land and property restitution under its rule of law.<sup>131</sup> The states should also ensure its policy; legal, procedural and institutional mechanisms that shall be fully compatible with international human rights, refugee and humanitarian laws and related standards.<sup>132</sup> The state should also establish an accessible national procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims.<sup>133</sup>

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<sup>129</sup> Ibid.

<sup>130</sup> ibid

<sup>131</sup>The principles on Housing and Property Restitution for Refugees and Displaced Persons, (2005), endorsed by the UN Sub-Commission on the promotion and protection of Human Rights, U.N. Doc. E/CN.4/Sub.2/2005/17 (2005), principle 18 (hereinafter the Pinheiro Principles).

<sup>132</sup> Id, principles 11

<sup>133</sup> Id, principles 13.

However, the ‘Pinhiero’ Principles do not have the legal status of binding effect.<sup>134</sup> Nevertheless, since the Principles are framed based on existing international, regional and national laws, and it was also endorsed by the UN Sub-Commission on the promotion and protection of human rights, they do have persuasive authoritative effect.<sup>135</sup>

#### **2.4.4.3. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights and Humanitarian Law**

It is a soft international instrument established by UN organs with their respective resolutions in 2005.<sup>136</sup> But, although it is not a binding international instrument like treaties, it has a persuasive power, because the instrument was developed mainly from binding international human rights and humanitarian instruments and it was adopted by UN General Assembly.

When we see the rules and principles under the Basic Principles and Guidelines, it imposed an obligation on states to respect and implement international human rights law and international humanitarian law that emanates from treaties to which a State is a party, customary international law, the domestic law of each State.<sup>137</sup> Under principle 3 of the instrument, the Gross violations of international human rights law and serious violations of international humanitarian law that constitute crimes under international law is enshrined. Lastly but not least, under the instrument the victims’ rights to remedy was stipulated, which is mostly related with my work.<sup>138</sup>

Remedial right for the victims of gross violation of his/her right, under the international law as stated in the Basic Principles and Guidelines includes; Equal and effective access to justice (example, access to judicial remedy, administrative and other remedies as per international or domestic laws); adequate, effective and prompt reparation for harm suffered (the victim

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<sup>134</sup> Handbook on Housing and Property Restitution for Refugees and Displaced Persons, (n 58) p. 19

<sup>135</sup> Ibid

<sup>136</sup> Basic Principles and Guidelines, (n 57)

<sup>137</sup> Ibid, No I

<sup>138</sup> Ibid, No VII

should have a standing) and Access to relevant information concerning violations and reparation mechanisms.<sup>139</sup>

The Basic Principles and Guidelines<sup>140</sup> also contain an interesting issue about reparation for the harm suffered. It provides a duty on the states to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations. Reparation, as laid out in principle 18 the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property. Moreover, Compensation includes; Physical or mental harm; Lost opportunities, including employment, education and social benefits, Material damages and loss of earnings, including loss of earning potential; Moral damage; Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.<sup>141</sup>

When we take this discussion with the research topic, the remedies for the victims in our case the IDPs on the gross violations of international human rights and humanitarian law, they have the right to restitution (return of their property), but if this is not possible, compensation should be awards for their damaged properties.

## **2.5. The Regional AU Kampala Convention for the Protection and Assistance of IDPs**

Since Africa has contained one third of the world's IDPs, the continent has took the most concrete political development on internal displacement.<sup>142</sup> So in Africa, the essential instruments on the issue of IDPs were adopted. Among them, the African Union Convention for Protection and Assistance to IDPs (Kampala Convention) (2012), the Great Lakes

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<sup>139</sup> Ibid

<sup>140</sup> Basic Principles and Guidelines (n 57)

<sup>141</sup> Basic Principles and Guidelines (n 57), Principles 19 and 20.

<sup>142</sup> The UNHCR and the Inter-Parliamentary Union (IPU), Handbook for parliamentarians, on Internal Displacement: Responsibility and Action, No 20- 2013, forward note.

Protocols on IDPs i.e. Great Lakes Protocol on the Property Rights of Returning Persons (2006), and the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons (2006) which obliging Member States to implement the UN Guiding Principles.<sup>143</sup>

The Kampala Convention is the binding instrument to protecting and assisting the needs of IDPs, adopted by African Union, mostly derived from Guiding Principles of UN.<sup>144</sup> It represents the first significant effort to transform the United Nation's Guiding Principles on IDPs into a legally binding instrument of protection. So the Kampala Convention is the first legally binding regional instrument in Africa on the rights of IDPs to ensuring the wellbeing of people forced to flee their homes by conflict, violence, disasters and human rights abuses.<sup>145</sup>

As per the Convention state parties has a primary duty to ensure respecting and protecting the arbitrary displacement of populations with their rights and takes measures, ensuring responsibility for the acts of arbitrarily displacement, assist the IDPs for their needs and cooperate and facilitates for the international and local organizations who provide protection and assistance for IDPs.<sup>146</sup> The Convention also imposed a duty on the members of armed group that they should be held responsible for acts violating the rights of IDPs.<sup>147</sup> In addition to this, even though the Convention doesn't have a legally binding effect on international organizations and humanitarian agencies, it imposes a duty to provide protection and assistance to IDPs.<sup>148</sup> The Convention also assures that the Africa Union has the right to intervene in those member states for violations of the rights of IDPs.<sup>149</sup>

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<sup>143</sup> Ibid

<sup>144</sup> Id, p. 28

<sup>145</sup> The 1<sup>st</sup> Session of Conference of States Parties for Kampala Convention (n 17)

<sup>146</sup> The African Union Convention for the Protection and Assistance of IDPs in Africa (Kampala Convention) adopted by the special summit of the African Union in Kampala, Uganda, 23<sup>rd</sup> October 2009, from article 2-5.

<sup>147</sup> Kampala convention, article 7(4)

<sup>148</sup> Kampala convention, article 6

<sup>149</sup> Kampala convention, article 8

Concerning the property rights of IDPs, the Kampala Convention recognized both protection and redress of property rights under its article 9(2) (i), 11(4 and 5) and article 12. Pursuant to article 9(2)(i) of the convention the states parties have a legal obligation to protect the property of IDPs as states below;

*“The states parties shall; take necessary measures to protect individual, collective and cultural property left behind by displaced persons as well as in areas where the IDPs are located, either within the jurisdiction of the state parties, or areas under their effective control.”<sup>150</sup>*

The states parties also have an obligation to established mechanisms and provides simplify procedure for resolving property disputes and take measures to restore the land of IDPs as stipulated under article 11(4, 5)) of the Convention. The most essential and crucial provision of the Convention which provides a remedy for damaged property of IDPs is article 12(1) says that:

*“States parties shall provide persons affected by displacement with effective remedies.”<sup>151</sup>*

The Kampala Convention requires state parties to establish an effective legal framework to provide just and fair compensation and other forms of reparations, where appropriate, for damage incurred as a result of displacement, in accordance with international standards.<sup>152</sup> The phrase “for damage incurred” may include any damage incurred material such as in so far as damage to property and others or moral damages as a result of displacement. Furthermore, the Convention also obliged the state parties to pay reparation for IDPs when it were failed to provide protection and assistance in case of natural disasters.<sup>153</sup>

As per article 3(2)a)) of the Convention, the national law or policy of states parties should be incorporate or elaborates or amends on one or more specific rights of displaced people, such as the right to restitution and compensation for lost property. Finally, the Convention tries to put a system of monitoring compliance mechanism stated as follows:

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<sup>150</sup>Kampala Convention, article 9(2)(i)

<sup>151</sup>Kampala Convention, article 12(1)

<sup>153</sup>Kampala Convention, article 12(3)

- ✓ Established a conference of state parties; to monitor and review the implementation of the Convention and
- ✓ Provide a duty on states parties to report the legislative and other measure that have been taken by them, to give effect to the Convention, when they report under article 62 of African Charter on Human and Peoples' Rights.<sup>154</sup>

But the Convention has not recognized individual compliant system like other human rights systems.

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<sup>154</sup>Kampala Convention, article 14.

## CHAPTER THREE

### 3. The Security Rights of Property of IDPs in Ethiopia with an International Law Perspective

#### 3.1. Introduction

This chapter explores rules and principles derived from international legal instruments, which are applicable and enforcement for property rights of IDPs, in Ethiopia. This requires identifying and ascertaining enforceability of legal instruments such as international and African Regional Conventions or principles and standards, which are made enforceable based on ratification by responsible organs of the Ethiopian government or some times without ratification in case of international principles and standards which are not made in the form of treaty, but served as a general guideline in international arena.

In addition, the chapter examines the extent of applicability of such international legal instruments in Ethiopia for the purpose of protection or ensuring security of the rights to own, utilize or dispose property and to provide effective remedies for the arbitrary deprived properties and possessions of IDPs which were left behind the displacement.

#### 3.2. Application of International Legal Norms in Ethiopia: General

Ethiopia has a good experience to be a party to many international and regional legal norms. The country is a member of both UN and AU, and ratified many human rights and humanitarian instruments.<sup>155</sup> As the result, she has a duty to abide by these international instruments as per the Vienna Convention on the Laws of Treaty of 1969 (VCLT). Moreover, the FDRE Constitution of Ethiopia<sup>156</sup> stated that: “*all international agreements ratified by Ethiopia are an integral part of the law of the land.*”<sup>157</sup> This means, ratification by competent authority is the only constitutional criteria to be met for enforcement of an international agreement in the national arena. But, the Ethiopia Federal Negarit Gazette establishment proclamation No.3/1995 under its article 2(2) and 2(3) provides that all Laws of the Federal Government shall be published in the Federal Negarit Gazette. Here, this shows the existence

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<sup>155</sup> Claiming Human Rights, (n 102)

<sup>156</sup> The Constitution), (n 10)

<sup>157</sup> The Constitution, Article 9(4)

of inconsistency between the two laws. However, according to article 9 (1) of the Constitution “*the constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect.*”<sup>158</sup> Therefore, we can argue that as per the FDRE Constitution, an international agreement ratified by the parliament becomes an integral part of the laws of the Country and judicial notes can be exercised upon it, even though it is not published in the Negarit Gazette.

However, the international norms which aren't published and reproduced in the form of Negarit Gazette or other means of publication makes it a challenge for accessing and applying by IDPs, even by lawyers and legal practitioners. Lack of publication and translation of the international Conventions or principles into the working language of Ethiopia, which can be easily understood by IDPs, create a gap to enforce and apply the international norms. Therefore, the international norms especially, the human rights laws shall be publicized and translated into the working language of Ethiopia to trace the gap of enforcement in the national legal systems.

The other issue worth considering is “who is bound to enforce the international norms especially the human rights laws in Ethiopia?” Regarding this, the FDRE Constitution under chapter three clearly stipulates that the three branches of the government both at the federal and regional level are duty bound to respect and enforce the provisions of the constitution dealing with human rights.

*“All Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this Chapter. The fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia.”*<sup>159</sup>

In addition to this, the Human Rights Committee of ICCPR has addressed this issue on its General Comment No.31 [80] on article 2 of the ICCPR as follows;

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<sup>158</sup> The Constitution, article 9(1)

<sup>159</sup> The Constitution, article 13.

*“All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local – are in a position to engage the responsibility of the State Party.”<sup>160</sup>*

Thus, as per the above discussion, the executive organs of the government can't escape from legal liability by raising breach of the human rights norms by another branch of government or other bodies as a defense.<sup>161</sup>

This section will dedicate to explore the main international rules and principles, which can be enforced for the security rights of property of IDPs in Ethiopia, such as some international and regional human rights laws, the Kampala Convention, the UN Guiding Principles on IDPs and other standards.

### **3.2.1. Human Rights Laws Enforceable in Ethiopia to Secure IDPs Property Rights**

The rights of IDPs, including their property and possession rights was not expressly stated in both international and African human rights instruments as discussed under chapter two of this paper. However, since IDPs are a part of other population whose rights were recognized under these human right instruments, they are not an exception to apply and enforce these norms for them,<sup>162</sup> which can possibly be applied and enforced to IDPs in Ethiopia. Ethiopia also is a member state to many international and African regional human rights laws. For instance, she has ratified the ICCPR and the ICESCR in 1993, the ICERD in 1991, and the CEDAW in 1981.<sup>163</sup> So these human rights laws can be enforced in Ethiopia, towards securing the property rights of Ethiopian IDPs.

In addition to this, although UDHR is not legally binding instrument, the declaration is considered as customary international law by many scholars and it has also get recognition under the FDRE Constitution, article 13(2). Therefore, the principles of UDHR which affirms the property rights of IDPs can be applied and enforced for Ethiopian IDPs.

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<sup>160</sup>General Comment No. 31(80) of the Human Rights Committee on the nature of the general legal obligation imposed on States Parties to the Covenant, adopted on 29 March 2004 (2187th meeting), UN doc CCPR/C/21/Rev.1/Add. 13.

<sup>161</sup>Ibid

<sup>162</sup> Catherine Phuong (n 1)

<sup>163</sup>Claiming Human Rights (n 102)

Ethiopia has also been a party to the ACHPR in 1998, from African regional human rights instruments.<sup>164</sup> Therefore, she has an obligation to respect the Charters' provisions which are imposed a duty as a party state. However, Ethiopian government signed the protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' rights in 1998 but without ratifying it.<sup>165</sup> As the result, all Ethiopians including IDPs can't take their human right violation before the African Court on Human and Peoples' Rights. But, though still Ethiopia has not ratified the establishment protocol of an African Court on Human and Peoples' rights, she has an obligation to bind by the charter of ACHPR and the charter can be applied and enforced in Ethiopia. So, Ethiopian IDPs are protected under the charter of ACHPR.

### **3.2.2. Enforceability of the Kampala Convention in Ethiopia**

The Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention) was the first binding special law on internal displacement.<sup>166</sup> Ethiopia ratified the Convention on February 13, 2020.<sup>167</sup> As the result, she has an obligation to be bind by the Convention. However, though internal displacement was a widespread problem in Ethiopia for a long period of time, she was very late to ratify this Convention. After ratified the Convention, the country tries to take a political decisions in order to domesticate and creating awareness to the society about the Convention based on its capacity.<sup>168</sup> This is an appreciable and good work to address the future problems of IDPs in Ethiopia.

Since Ethiopia is a party state to the Convention, she has a legal duty to respect and ensure respect for the Conventions' provision.<sup>169</sup> Therefore, the Kampala Convention is a fully enforceable regional legal instrument for Ethiopian IDPs property rights.

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<sup>164</sup> Ibid

<sup>165</sup> Ibid

<sup>166</sup> The 1<sup>st</sup> Session of Conference of States Parties for Kampala Convention (n 17)

<sup>167</sup> Xinhua News, (n 18)

<sup>168</sup> Interview with Mr. Migbaru Ayalew, Early Warning Response and Sustainable Solutions Director General in the FDRE Ministry of Peace, on March 20 2020.

<sup>169</sup> The Kampala Convention, article 3

### **3.2.3. Enforceability of the Guiding Principles and other Standards in Ethiopia**

Legally speaking, the guiding principle on internal displacement of 1998 (GP), the Pinheiro principle and the ‘Boven/ Bassiouni’ principles are non-binding international legal norms. But, as many authors argue this is not true because they provide universal and persuasive legal standards for the protection of the rights of IDPs for the following reason:<sup>170</sup>

- First, these standards are formulated mostly from the relevant and binding international legal rules and principles.
- Second, they were prepared by well-known legal experts.
- Third, they were approved by UN human rights and other bodies.

Therefore, even if Ethiopia has no direct legal obligation to respect these international norms, based on the above strong reasons, she has an indirect obligation to respect the norms, which provides effective protection for IDPs rights, in which internal displacement is currently become a problem in Ethiopia. So, legally speaking international principles and standards which regulates on IDPs including their rights can be enforced for Ethiopian IDPs property rights.

### **3.3. Practical Application of the Laws, Principles and Standards on Property Rights of IDPs in Ethiopia**

To understand the practical applicability of international laws on IDPs property rights, it is better to see by classifying the security rights of property of IDPs guaranteed under international standards. There are two types of guarantee towards security rights of property of IDPs under the international and regional legal instruments. These are:<sup>171</sup>

- The rights of getting protection which means prevent arbitrary deprivation of property and preserve property which has been abandoned or lost during and after displacement and

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<sup>170</sup>Handbook on Housing and Property Restitution for Refugees and Displaced Persons, (n 58); Francis M. Deng, (n 103) and the Basic Principles and Guidelines (n 57)

<sup>171</sup>UNCHR handbook, (n 32)

- The rights of access to effective remedies for the arbitrary deprived property in the form of restitution and/or compensation.

So, in this section, the practical applicability of international and regional instruments with respect to the security rights of property of IDPs will be examined. This means, whether the security rights of property (the rights of protection and remedies) of IDPs is being fully implemented and enforced in Ethiopia or not as per international and regional legal standards is discussed as follows.

### **3.3.1. The Practical Enforcement of the Laws, Principles and Standards to Protect Property Rights**

The government authority has an international and regional legal obligation to provide protection against destruction, unlawful use or occupation and appropriation, of the property which are left behind by IDPs.<sup>172</sup>

Interestingly, the most important legal instruments to protect the property rights of IDPs are the GP, the Kampala Convention and the Pinheiro principles. Example, principle 21 of the GP and Principles 3-7 of Pinheiro Principles affirmed the right to peaceful enjoyment of property of IDPs. In addition, the Kampala Convention provides an obligation on states to take necessary measures to protect individual, collective and cultural property left behind by displaced persons as well as in areas where the IDPs are located.<sup>173</sup> As per the above instruments, governmental authorities should not only refrain from arbitrarily depriving people's property, but also they should protect it from illegal interference by third parties. The same is true for Ethiopian authorities to have an international and regional legal obligation to protect the abandoned properties of IDPs from arbitrary deprivation.

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<sup>172</sup>From human rights instruments, under the UDHR the rights of property of all population, including IDPs has been guaranteed. Article 17 affirms that; arbitrary deprivation of property is totally prohibited. Other international and regional human rights instruments which are directly or indirectly protect the rights of property of people, including IDPs are; ICCPR article 12 and 2(3) (a), ICESR article 11(1), CEDAW article 15(2) and 16(1), ICED article 5(e) and 6, ACHPR article 14 and 21, arts. 13-19 of ILO Convention No. 169. The right to property is also further affirmed in various resolutions of the GA, SC and the Commission on Human Rights, as well as its Sub-Commission. From international humanitarian norms, common article 3 of the Geneva Convention and Protocol II can be list.

<sup>173</sup>Kampala Convention, article 9(2)(i)

Considering such big international and regional legal responsibilities up on a government to protect the property of IDPs, the researcher has made a visit to two IDPs sights in Ethiopia and he found out that, their property and possession rights were not protected by the government.<sup>174</sup> For instance, at Woldia sights there were 335 total IDPs and almost all of them were lost their properties and possession such as; their houses, household equipment's, animals, shop goods and warehouses. Such properties and possessions were either destroyed, burned, illegal appropriated or occupied by local ethnic groups, whose displacement was caused by ethnic tension and violence.<sup>175</sup> Similarly, at Combolcha sights there were also 183 IDPs and no one prevented their property and possessions from burning, robbery and occupation by local communities.<sup>176</sup>

According to the International Organization for Migration displacement tracking matrix (IOM's DTM) round 18 reports in 2019, there were 1,642,458 IDPs across 1,163 sights in Ethiopia and from these, 77.7% of IDPs were prevented from returning to their origin of homes because their shelter (house) were damaged or destroyed.<sup>177</sup> From those IDPs who returned to their place of displacement, around 22% of IDPs don't have access to their lands.<sup>178</sup> Similarly, IOM's DTM round 19 reports in the same year, from the total number of 1,606,086 IDPs in 1,149 sights, and from these sights 915 sights (79.6%) IDPs houses were damaged or destroyed.<sup>179</sup> These reports show us the property and possession rights of IDPs in Ethiopia aren't fully protected as per the international and regional legal standards.

Moreover, in the current federal government structure of Ethiopia, some regional governments were reluctant towards protecting the arbitrary displacement of the people

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<sup>174</sup>Interview with Oumer Gizaw, and Tadesse Habtye , the representative of IDPs displaced from different regions of Ethiopia and settled at Combolcha city, on 2 April 2020 and Interview with Abrhama Abebe, Molla Zinabu and priest (ቆስ) Gebeyehu Gessesse,(n 28)

<sup>175</sup> Interview with Abrhama Abebe, Molla Zinabu and priest (ቆስ) Gebeyehu Gessesse,(n 28)

<sup>176</sup>Interview with Oumer Gizaw, and Tadesse Habtye, (n 174)

<sup>177</sup>IOM's DTM 'Ethiopian national displacement report round 18: July-August 2019'. (IOM Addis Ababa, 22 October 2019). P.4<[www.displacement.iom.int/ethiopia](http://www.displacement.iom.int/ethiopia)> accessed at 20 March 2020.

<sup>178</sup> Ibid, p.33

<sup>179</sup>IOM's DTM 'Ethiopian national displacement report round 19: September- October 2019 <<https://dtm.iom.int/reports/ethiopia>> accessed 20 March 2020.

including protecting their properties, although the federal government tried to calm down the illegal actions.<sup>180</sup> Currently, the prevailing political thought is that the land of each regional state or ethnic groups is considered as their sole rights which may exclude other ethnic groups who live in that region.<sup>181</sup> This is the source of ethnic conflict, which is the main cause for internal displacement and violation of the property rights in Ethiopia.<sup>182</sup> This means, different regional political party instigate the ethnic group to forcefully displaced other ethnic groups from the region by destroying and illegally occupying the IDPs properties and possessions, especially land. The regional police force or other governmental organs also couldn't prevent such illegal acts even if they have a duty under the international, regional and national laws.<sup>183</sup>

Therefore, the above discussion indicated that even if the federal government tried to fulfill its duty of protection, the regional governments of Ethiopia couldn't fulfill the duty of protection of the property of Ethiopian IDPs. Although, the rights of protection of property of IDPs is stipulated under the international and regional human rights instruments, which can be legally enforced in Ethiopia, the norms couldn't prevent deprivation of property and possessions which has been abandoned or lost during and after displacement and that the enforcement of the international and regional human right laws, other principles and standards on the protection of property rights of IDPs in Ethiopia is poor.

### **3.3.2. The Practical Enforcement of the Laws, Principles and Standards to Provide Effective Remedies**

When a state couldn't fulfill its legal duty to protect the property and possessory rights of IDPs from arbitrary deprivation, obviously the rights of IDPs would be violated. Thus, IDPs need to have another legal guarantee, called the rights of access to effective remedies for the arbitrary deprived property and possession rights in the form of restitution and/or compensation, whether they return or integrate locally or settle elsewhere in the country.<sup>184</sup> The rights of effective remedies may include; access to justice by holding

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<sup>180</sup>Interview with Mr. Migbaru Ayalew, (168)

<sup>181</sup>Ibid

<sup>182</sup>Ibid

<sup>183</sup>Ibid

<sup>184</sup>IASC, Framework on Durable Solutions, (n 50) p. 42, and Rhodri C. Williams, (n 13)

perpetrators liable for both criminal and civil, providing appropriate reparation and information concerning on violations and reparation mechanisms.<sup>185</sup>

The international and regional human rights laws have provisions which confirmed a remedial right for the unprotected properties and possession of IDPs which were lost or damaged during or after displacement. Among these; article 8 of UDHR, article 6 of ICED and article 21 of ACHPR can be list. Moreover, the rights of redressing for the lost property and possession which were left behind and dispossessed during displacement is best regulated under principle 29.2 of the GP, article 12 of the Kampala Convention, principle 2 of the ‘Pinhiero’ principles and under principle VII of the basic principles and guidelines on the gross violations of international human rights law and serious violations of international humanitarian law.

According to these legal standards, the government authorities have a legal duty by assisting the IDPs to recover the property and possessions to the extent possible and if recovery isn’t possible, they shall provide or assist the IDPs to get appropriate compensation or just another form of reparations. Here, the word ‘assist’ may refers to the authorities’ duty to provide some kind of helps to recover the property and possessions and/ or to get compensation or reparation for IDPs and it may include; the act of holding perpetrators for liable i.e. liable for both tortuous and criminal and provides appropriate information on violations and reparation mechanisms for IDPs. Moreover, the authorities have also a duty to provide Adequate, effective and prompt reparation for harm suffered by the IDPs.

In the Ethiopian context, the information that I collected from Woldia and Combolcha towns IDPs sights shows that, both the federal and regional governments were not willing or reluctant to assist to recover property or to assist and provide compensation for their dispossessed or damaged property during displacement.<sup>186</sup> For instance, IDPs told me that they approached different Amhara region governmental offices, including the presidential office to help them to recover or to get compensation for their lost and damaged property in other regions where they lived before displacement but didn’t get any assistance.<sup>187</sup>

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<sup>185</sup> Ibid.

<sup>186</sup> See (n 174)

<sup>187</sup> Ibid

According to the collected data, most of the two sights haven't information or knowledge about the existing of legal remedies available to them from government as per international legal standards and that they are still waiting humanitarian assistance or aid.

In this regard, the interviewee from the ministry of peace stated that, the regional and the federal governments have tried to assist the IDPs to recover their property and adjust rehabilitation programs, if recovery is not possible.<sup>188</sup> For instance, he affirmed that rehabilitation programs were made for IDPs of the Somalia and Oromo societies, Amhara region (the Gonder and Qimant IDPs) and the Gedeo's and Guji Oromo's IDPs. Yet, due to limitations in the capacity of the country, the government couldn't pay appropriate compensation equivalent to the international standards.'<sup>189</sup> However, in some cases, the regional governmental authorities didn't want to cooperate with the federal government to rehabilitate the IDPs.<sup>190</sup> As a result, the IDPs rights of effective remedies have not been achieved effectively.<sup>191</sup> The second respondent from the Ministry of Justice stated that, regional government, such as, Somali and the previous Sidama Zone, the current Sidama region, have paid compensations only for returned IDPs for their lost or damaged property and possessions during ethnic conflict.<sup>192</sup> But he pointed out that, he has a doubt with the appropriateness of the compensations as per international standards.<sup>193</sup> This respondent also asserted that the compensation or rehabilitation programs were mostly took place only for returned IDPs not for integrated or resettled IDPs."<sup>194</sup>

Similarly, the IOM's DTM 2019 report shows that, from 1,642,458 IDPs, 816,813 of the IDPs returned to their home but around 52% of them didn't get compensation for damaged or destroyed house and land.<sup>195</sup>

Therefore, from the above discussion, it can be inferred that, although the Ethiopian government has tried to rehabilitate and provide compensation for returned IDPs, it didn't

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<sup>188</sup>Interview with Mr. Migbaru Ayalew, (n 168)

<sup>189</sup>Ibid

<sup>190</sup>Ibid

<sup>191</sup>Ibid

<sup>192</sup>Interview with Mr. Temesegene Lapiso, the Director General of Organized and transnational crimes prosecution on FDRE Attorney General, on March 14 2021.

<sup>193</sup> Ibid

<sup>194</sup> Ibid

<sup>195</sup>IOM's DTM round18 report 2019, (n 177)

fulfill its duty of providing and assisting the unreturned IDPs, to recover their property and possessions abandoned during displacement or to pay appropriate compensation. In other words, the Ethiopian government didn't fully fulfill its duty of providing and assisting the IDPs to reconstitute their property and possessions like house, land and other properties or receive appropriate compensation as per the international rules and principles enshrined for example, under principle 29.2 of the GP, article 12 of the Kampala Convention, article 8 of UDHR, article 21 of ACHPR, article 6 and 5(e) (iii) of ICED and article 2 of the Pinheiro principles. This indicates that, the enforcement of the international and regional norms with regard to providing effective remedies for IDPs in Ethiopia is very limited.

### **3.4. Challenges in the Practical Application of the Legal Norms with Respect to Protection of IDPs' Property Right in Ethiopia**

International and regional norms were established for the aim of protecting the rights of persons by imposing a duty on the states. The application and implementation of such international and regional norms on the rights of IDPs in general and on the rights of property and possession in particular is limited in Ethiopia as outlined above. As the result, many IDPs property and possession rights including the rights of getting protection and the rights of effective remedies was violated in different parts of the country. The prominent factors for such limitation of application of international norms can be summarized in to the following four categories: first, IDPs lack knowledge about the international and regional laws regarding the protection of their rights.<sup>196</sup> As a result, to the knowledge of the researcher, so far, no IDP had brought a legal action against the government or the perpetrators for the violation of their property and possession rights. Secondly, though the Ethiopian government has a legal obligation to adopt specific laws and policies on IDPs; it didn't adopt any specific laws so far.<sup>197</sup> The Ethiopian government adopted a law on refugee for aliens who comes from other states, yet still it doesn't have a law for IDPs who are its own citizens, even if, the international and regional laws and principles give a more attention on states to provide protection for its own sovereign citizens.<sup>198</sup> Thirdly, lack of capacity of the Ethiopian government to pay appropriate compensations to IDPs and fourthly, the current political

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<sup>196</sup> Interview with Abrhama Abebe, Molla Zinabu and priest (ቅስ) Gebeyehu Gessesse,(n 28)

<sup>197</sup> Interview with Mr. Migbaru Ayalew, (n 168) and Temesgen Lapiso, (n 192)

<sup>198</sup> Interview with Mr. Migbaru Ayalew, (n 168)

instability in the country is another challenge in the enforcement of the legal norms on IDPs rights to property.<sup>199</sup>

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<sup>199</sup>Ibid

# CHAPTERFOUR

## 4. Conclusion and Recommendation

### 4.1. Conclusion

After the cold war, there were a large number of IDPs who faced for certain humanitarian crises thorough out the world. As a result, the international community especially the UN organs and AU concerned with the problem and developed special legal frameworks like the GP, the Pinheiro Principles and the Kampala Convention to overcome the special needs of IDPs including their rights. The non-binding GP and the binding Kampala Convention are the relevant legal frameworks for the needs of IDPs and they clearly define what IDPs means.

The right of security of Property of IDPs is one of the protected IDPs rights under the international and regional laws, principles and standards among other rights. The right of security of property refers to a legal entitlement for property and possessions of persons including IDPs which may exclude others from interference. It includes the rights of getting protection by government authorities and the rights of providing effective remedies.

Of course, before the coming of the special international and regional rules to IDPs like GP and Kampala Convention, the rights to security of property has also recognize in international and regional human rights laws like UDHR, ACHPR, CEDAW, CERD, ICED, ILO Convention No. 169 and in international humanitarian and criminal laws, which can be similar application for IDPs property rights. Therefore, the rights of security of property of IDPs including the rights of getting protection for their property and possession from appropriate authorities and the rights of providing effective remedies is well articulated under the international legal norms.

States have a legal obligation which arises from the rights of property of IDPs provides under the international legal norms. Ethiopia has become a State party to many international and African regional instruments that are of potential relevance to IDPs property rights. So she has an international legal duty to respect these instruments.

Therefore, this study has come up with the following findings on the enforceability of the international and regional laws and principles in case property rights of IDPs in Ethiopia.

- The right to Property is explicitly or implicitly recognized in many international and regional instruments. For instance, from Human right laws like UDHR, ACHPR, ICCPR, ICED and the like directly or indirectly recognized the rights to property. Here, since human right laws are applied for all people without distinction, IDPs can also invoke these instruments for their rights of property. Moreover, the right of property is clearly affirmed under the specific instruments for IDPs like GP, Kampala Convention and so on. Therefore, the study found that, there are two specific property rights of IDPs recognized under the international instruments. These are; the rights of getting protection from arbitrary deprivation, destruction, occupation by others and the rights of providing and assisting effective remedies for damaged or lost property and possessions.
- Ethiopia has a legal duty to enforce and apply the international and regional instruments it has ratified and the guiding principles which are used as persuasive legal standards for the protection of the rights of IDPs. But the truth on the ground shows that there are a large number of IDPs throughout the country, whose rights of property and possession is gravely violated. This indicates that the extent of the applicability and enforceability of these laws and principles to protect the property and possession rights of IDPs is limited in Ethiopia.
- The data collected from the two IDPs sights, government authorities and IOM reports shows that, most IDPs property and possession rights were not effectively protected from loss, damage or illegal interference and occupying by others. In addition to this, the data confirmed that most IDPs who couldn't return to the displaced area haven't got any remedy, although the international legal norms provide a legal guarantee to provide and assist effective remedies and justice such as reinstate the lost or damaged property and possession or pay appropriate compensations or other means of reparations for the IDPs whether they are returned, reintegrated or resettled.
- The study has identified four main challenges that triggered the poor practical application of the international and regional legal norms with respect to the protection of IDPs' property rights in Ethiopia. These are;

- a. The Ethiopian IDPs have no knowledge about the international and regional laws, principles and standards regarding the protection of their rights including property and possession rights.
- b. The Ethiopian government didn't adopt any specific laws so far;
- c. Lack of capacity of the Ethiopian government to pay appropriate compensations to IDPs and
- d. The current political instability in the country.

#### **4.2. Recommendation**

Based on the above conclusions, the researcher recommends the following:

- The Ethiopia government should take necessary measures to insuring the protection of properties and possessions left behind by IDPs against destruction, unlawful use or occupation and appropriation in accordance with international, regional laws and principles.
- The government of Ethiopia should take necessary measures to provide and assists to effective remedies for the lost, damaged and unlawful occupied properties and possessions left behind by IDPs. The government should provide a situation in which IDPs enable to recover their left property or disposed one and if this no possible, make them to enabling them to compensate for the damage they incurred.
- Ethiopia should develop a national policy and legal frameworks for addressing the problem of internal displacement and specific needs of IDPs, including their property rights based on the international standards. So, to do this, the country should consider issues like, provides a legal recognition for the rights of having protection for the abandoned property and possessions and having the rights to appropriate remedies for such property and possessions of IDPs. Furthermore, the drafting policies and laws shall include the IDPs rights to have claiming of their lost property left behind at their original residence from the perpetrators who causes for their displacement and damaged to property if possible, and from the concerned government body who failed to fulfill their duty to protect the property and possession rights of IDPs.
- Ethiopia shall facilitate training programmes for displaced persons in international and regional laws, principles and standards which regulates about housing, land and

property rights of IDPs and mechanisms for claiming compensation for lost property. Here, the Ethiopian authorities should work on ensuring the possible dissemination and application of the GP, the Kampala and the Pinheiro principles in the country for the sake of easily achieving the needs of IDPs.

- The government should establish accessible national procedures, institutions and mechanisms to assess and enforce the rights of property and possession, restitution or compensation claims of IDPs based on the international human rights, and humanitarian laws and related standards.
- Finally, to solve the financial problem the government faced to compensate the IDPs for lost or damaged property, it should allocate adequate budget and if this is insufficient, the government needs to work in consultation and cooperation with the international communities and NGOs so that the latter can offer financial or material assistance to the IDPs.

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